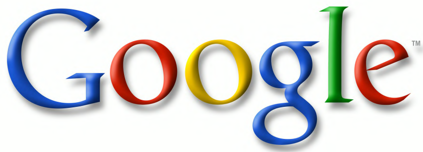


This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at http://books.google.com/

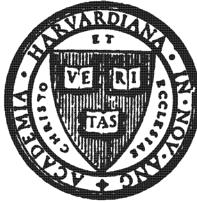
The judicial dictionary, of words and phrases judicially ...

Frederick Stroud

Digitized by Google

Gov 5078.90.2(2)

Harvard College Library



FROM THE
J. HUNTINGTON WOLCOTT
FUND

GIVEN BY ROGER WOLCOTT [CLASS OF 1870] IN MEMORY OF HIS FATHER FOR THE "PURCHASE OF BOOKS OF PERMANENT VALUE, THE PREFERENCE TO BE GIVEN TO WORKS OF HISTORY, POLITICAL ECONOMY AND SOCIOLOGY"

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

THE

JUDICIAL DICTIONARY.

Digitized by Google

Digitized by Google

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. II.

LONDON:

SWEET AND MAXWELL, LIMITED, 3, CHANCERY LANE,

STEVENS AND SONS, LIMITED, 119 & 120, CHANCERY LANE.

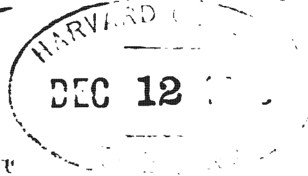
BOSTON, U. S. A.: THE BOSTON BOOK CO.

1903.

All rights reserved.

Digitized by Google

~~KR 775.9~~
Gov 5078.90.2 (2)



Wolcott Fund

COPYRIGHT, 1903, BY
FREDERICK STROUD

UNIVERSITY PRESS · JOHN WILSON
AND SON · CAMBRIDGE, U. S. A.

Digitized by Google

EACH. — A gift to "each" of two or more persons, or to "each of their respective heirs" (*Gordon* v. *Atkinson*, 1 D. G. & S. 478: *Cp*, *Doe* d. *Littlewood* v. *Green*, *Ex p. Tanner*, and *Re Atkinson* all cited RESPECTIVE: *Vf* 2 Jarm. 257), creates a Tenancy in Common. That proposition is not in controversy; but on another point *Gordon* v. *Atkinson* is hardly in agreement with the other cases. There the direction was "to *pay*, assign, and transfer," moneys, &c, to four persons "and to each of their respective heirs, exs, ads, and assigns." That, Knight-Bruce, V. C., held was an absolute Tenancy in Common; whereas on similar, but not identical, words in *Doe* d. *Littlewood* v. *Green* and *Ex p. Tanner*, the ruling was that the named donees took as Joint Tenants for life, with remainder to their heirs, &c, in Common. In *Re Atkinson*, North, J., followed these two latter cases and explained *Gordon* v. *Atkinson*, on its slight difference in language; for "if money is to be *paid* to persons who take no absolute interest, it is difficult to see how you can pay to them as Joint Tenants." *Vf* PAY.

As to effect of "each" in a contract or bond; *V.* *Mathewson's Case*, 5 Rep. 22: *Collins* v. *Prosser*, 1 B. & C. 682: *Armstrong* v. *Cahill*, 6 L. R. Ir. 440: *Re Boulton and Cullingford*, 37 S. J. 25, 248.

The Scale Fee for Lease, Sch 1, Part 2, Solrs Rem Ord, of £2. 10. 0 "in respect of *each* subsequent £100 of rent," applies only to every full £100 of rent, and nothing can be charged thereunder for an amount of rent less than £100; for the words "per cent" are omitted in this place (*Re McGarel*, 1897, 1 Ch. 400; 66 L. J. Ch. 185; 76 L. T. 70; 45 W. R. 321).

Preference Dividend "out of Profits in each *Year*"; *V.* CUMULATIVE.

Remuneration to Directors of so much "in each year"; *V.* YEAR.

Cp, EITHER: EVERY.

EARNED. — A Commission to be paid on all "Hire earned," *e.g.* by a Ship, means only upon the Hire actually earned; and, if there be no Wilful Default by the person who is to pay the commission, he will not be liable if events happen which prevent hire from being earned (*White* v. *Turnbull*, 78 L. T. 727; 8 Asp. 406; 3 Com. Ca. 183).

V. EARNINGS.

EARNEST. — For the derivation, history, and effect of the "Earnest" of a Bargain; *V.* jdgmt of Fry, L. J., *Howe* v. *Smith*, 53 L. J. Ch.

Digitized by Google

1061; 27 Ch. D. 89. *Va* Deposit. Giving an "Earnest" to bind a bargain, s. 17, Statute of Frauds, repld. s. 4 (1), Sale of Goods Act, 1893, connotes an overt Act; resigning a debt, or verbally discharging a liability, is not such an Earnest, or Part Payment (*Walker* v. *Nussey*, 16 M. & W. 302; 16 L. J. Ex. 120: *Norton* v. *Davison*, 1899, 1 Q. B. 401; 68 L. J. Q. B. 265). *V.* Argentum Dei.

"It is my Earnest *Hope* and I particularly request" non-alienation, when added to a devise in fee, does not qualify, but is repugnant to, the devise (*Hood* v. *Oglander*, 34 L. J. Ch. 528; 34 Bea. 513).

EARNINGS. — "Earnings and property," s. 21, 20 & 21 V. c. 85, means honest earnings, not the wages of prostitution (*Mason* v. *Mitchell*, 34 L. J. Ex. 68; 3 H. & C. 528; 29 J. P. 119).

"Earnings," s. 3, Employers' Liability Act, 1880, means, money or Money's worth, *e.g.* rent, food, and clothes, but not so vague a thing as an apprentice's tuition (*Noel* v. *Redruth Foundry Co*, 1896, 1 Q. B. 453; 65 L. J. Q. B. 330; 74 L. T. 196; 44 W. R. 407: *Pomphrey* v. *Southwark Press*, cited Partial Incapacity). Deductions from wages, — *e.g.* 6*d.* a week from those of a Miner for the oil for his working lamp, — are not to be allowed in ascertaining "Earnings," quà Workmen's Comp Act, 1897 (*Houghton* v. *Sutton Heath Co*, 83 L. T. 472). *Vf,* Average Weekly Earnings.

"Earnings," s. 2, M. W. P. Act, 1882; *V. Re Poole*, 46 L. J. Ch. 803; 6 Ch. D. 739.

V. Earned: Personal Labour: Income: Profits.

EARTH. — "As the Heavens are the habitation of Almightie God, so the Earth hath He appointed as the suburbs of heaven to be the habitation of man: *Cœlum cœli domino terram autem dedit filiis hominum*, Psal. cxv. 16" (Co. Litt. 4 a).

EARTH CLOSET. — Quà P. H. Ireland Act, 1878, "'Earth Closet' includes any place for the reception and deodorization of fæcal matter, constructed to the satisfaction of the Sanitary Authority" (s. 46). *V.* Sufficient Privy.

EARTHENWARE. — "Earthenware Works"; *V.* Sch 4, Part 1, 41 V. c. 16, repld, Sch 6, s. 3, Factory and Workshop Act, 1901: Non-Textile Factories.

EASE. — Chapel of Ease; *V.* Cowel: *Line* v. *Harris*, 1 Lee Ecc. 155.

EASEMENT. — "'Easement,' is a privilege that one neighbour hath of another, by Writing or Prescription, without profit; as a Way, or Sink through his land or such like" (Termes de la Ley, cited by Bayley, J., *Hewlins* v. *Shippam*, 5 B. & C. 229, 230).

The strict sense and proper use of "Easement" implies "a *Dominant* Tenement in respect of which the easement is claimed and a *Servient*

Digitized by Google

Tenement upon which the right claimed is exercised" (per Coleridge, C. J., *Hawkins* v. *Rutter*, 1892, 1 Q. B. 671; 61 L. J. Q. B. 146; 40 W. R. 238: *Vf, Mounsey* v. *Ismay*, 34 L. J. Ex. 52; 3 H. & C. 486).

"Easements," s. 2, Prescription Act, 1832, has been said to be confined to easements analogous to rights of Way and Water (per Erle, C. J., *Webb* v. *Bird*, 30 L. J. C. P. 387); but that dictum was disapproved by Selborne, C., in *Dalton* v. *Angus* (50 L. J. Q. B. 733, 734: *Vf, Lemaitre* v. *Davis*, 51 L. J. Ch. 173; 19 Ch. D. 281: *Bass* v. *Gregory*, 59 L. J. Q. B. 574; 25 Q. B. D. 481: *Simpson* v. *Godmanchester*, 1896, 1 Ch. 214; 1897, A. C. 696; 64 L. J. Ch. 843; 65 Ib. 154; 66 Ib. 770); but as used in this section the word does not apply to *Light*, which is governed entirely by s. 3 and the subsequent sections which have to be read therewith (*Perry* v. *Eames*, 1891, 1 Ch. 658; 60 L. J. Ch. 345; 39 W. R. 602: *Wheaton* v. *Maple*, 1893, 3 Ch. 48; 62 L. J. Ch. 963; 41 W. R. 677: *Vf* OTHER). So an easement to be within the section must be one of Utility and Benefit, and not of mere Amenity, *e.g.* a Prospect, nor Indefinite, such as the access of air to a windmill, a chimney, or to an open structure for storing timber (*Webb* v. *Bird*, 30 L. J. C. P. 384; 31 Ib. 335; 10 C. B. N. S. 268; 13 Ib. 841: *Bryant* v. *Lefever*, 48 L. J. C. P. 380; 4 C. P. D. 172: *Dalton* v. *Angus*, 50 L. J. Q. B. 689; 6 App. Ca. 740: *Harris* v. *De Pinna*, 56 L. J. Ch. 344; 33 Ch. D. 238; 54 L. T. 770; 50 J. P. 486. *Vf*, Add. T. 299, 325: Rosc. N. P. 806), nor a CUSTOM (*Mounsey* v. *Ismay*, sup).

"Easement," s. 55, Landed Estates Court (Ir) Act, 1858, 21 & 22 V. c. 72, is used in a popular, and not in its strict, sense, and includes a PROFIT À PRENDRE, *e.g.* a Right to a Several Fishery (*Hamilton* v. *Musgrove*, Ir. Rep. 6 C. L. 129).

"Easements," s. 20, Artizans and Labourers Dwellings Improvement Act, 1875, 38 & 39 V. c. 36, means, easements of every kind (*Badham* v. *Marris*, 45 L. T. 579; 52 L. J. Ch. 237: *Swainston* v. *Finn*, 52 L. J. Ch. 235), including the right to *Light* (*Barlow* v. *Ross*, cited RIGHTS).

"Easement," s. 60, Co. Co. Act, 1888, is used in its strict sense, and does not include a public Right of Navigation (*Hawkins* v. *Rutter*, sup). *Vf, Howorth* v. *Sutcliffe*, 1895, 2 Q. B. 358; 64 L. J. Q. B. 729; 44 W. R. 33; 73 L. T. 277; 59 J. P. 678.

Parliamentary running powers over a railway, are not an "Easement" (per Jessel, M. R., *G. W. Ry* v. *Swindon Ry*, 52 L. J. Ch. 314, 317; *secus*, per Cotton, L. J., Ib. 320; *Va*, per Bowen, L. J., Ib. 321, 322: *Vthc* in H. L. 53 L. J. Ch. 1075; 9 App. Ca. 787).

A statutably authorised Ry Tunnel under a public street, is not a mere Easement but, is an HEREDITAMENT within s. 4, Land Tax Act, 1797, 38 G. 3, c. 5 (*Metrop Ry* v. *Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270); *secus*, of the Mains of a Water Co (*Chelsea W. W. Co* v. *Bowley*, 17 Q. B. 358; 20 L. J. Q. B. 520).

Digitized by Google

A limited right to use of Gaspipes for supply of gas to Customers, is an "Easement" and is not assessable to the Poor Rate (*Southport* v. *Ormskirk*, 1894, 1 Q. B. 196; 63 L. J. Q. B. 250; 69 L. T. 852; 42 W. R. 153; 58 J. P. 212). *Vf* EXCLUSIVE OCCUPATION.

Necessary Easement; *V.* NECESSARY.

Contract to sell land "subject to rights of Way and other Easements"; *V. Re Hughes and Ashley*, cited WAYS.

Vh, Gale on Easements: Goddard on Easements: Watson Eq. 139 *et seq*: 4 Encyc. 370–375. *Cp* LICENSE.

"Easement," in the application of Acts to Scotland, is sometimes interpreted to mean, "Servitude," *e.g.* 35 & 36 V. c. 68, s. 15; 55 & 56 V. c. 31, s. 21 (6).

EAST AFRICAN COURTS.—Stat. Def., 42 & 43 V. c. 38, s. 2.

EAST INDIA.—"The East India Company (Money) Acts, 1786 to 1858"; *V.* Sch 2, Short Titles Act, 1896.

"The East India Loans Acts, 1859 to 1893"; *V.* Ib.

"East India Stock," as used in s. 32, 22 & 23 V. c. 35, explained by s. 1, 30 & 31 V. c. 132: Other Stat. Def., 36 & 37 V. c. 17, s. 2.—*Scot.* 47 & 48 V. c. 63, s. 2. *V.* INDIA.

"Limits of East India Company's Charter"; *V.* 16 & 17 V. c. 107, s. 357.

EAST INDIES.—The Mauritius is not in the East Indies, nor is it an East Indian Island (*Robertson* v. *Clarke*, 1 Bing. 445).

Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "'East Indies,' shall mean every port and place within the territorial acquisitions now vested in the East India Company in trust for Her Majesty, and every other port or place within the limits of the Charter of the said Company (China excepted), and shall also include the Cape of Good Hope" (s. 47).

EASTER.— *V.* MICHAELMAS.

EASY TERMS.—A representation that money will be lent on "Easy Terms" which in fact is lent on hard terms, throws on the lender the burden of showing that, before making the loan, he had removed from the borrower's mind the impression created by the representation, and had clearly explained to him the terms on which the loan would be made (*Moorhouse* v. *Wolfe*, 46 L. T. 374). In *Helsham* v. *Barnett* (21 W. R. 309), Malins, V. C., said, "Easy Terms" "meant not more than 10 per cent." *Cp, Gordon* v. *Street*, 1899, 2 Q. B. 641; 69 L. J. Q. B. 45; 81 L. T. 237; 48 W. R. 158; followed in *Levin* v. *O'Keeffe*, 1900, 2 I. R. 628.

Digitized by Google

EAVES-DROPPER. — "'Evesdroppers,' are such as stand under wals or windowes, by night or by day, to heare news, and to carry them to others to make strife and debate amongst their neighbors" (Termes de la Ley). *Cp* NIGHT-WALKER.

EBB AND FLOW. — *V. A-G.* v. *Chambers,* cited SHORE: *Ilchester* v. *Raishley,* cited NAVIGABLE.

ECCLESIASTICAL APPEAL. — Quà Judicial Committee Act, 1843, 6 & 7 V. c. 38, "Ecclesiastical and Maritime Cause of Appeal" extends to "Causes appealed from Ecclesiastical Courts, and such Court as shall exercise the jurisdiction, or any part of the jurisdiction, exercised by any Ecclesiastical Court, or be substituted for the same" (s. 17).

ECCLESIASTICAL ASSESSMENT. — In Scotland an "'Ecclesiastical Assessment,' means, an Assessment for any of the purposes mentioned in s. 23, 31 & 32 V. c. 96" (s. 4, 63 & 64 V. c. 20).

ECCLESIASTICAL CENSURE. — The Ecclesiastical Censures are those, —

1. To which both Clergy and Laity are subject, *i.e.* Admonition or Monition; Penance; Suspension *ab ingressu ecclesiæ*; Excommunication:

2. To which only the Clergy are subject, *i.e.* Suspension from Office; Sequestration; Deprivation; Degradation.

Vh Phil. Ecc. Law, Part 4, ch. 12.

ECCLESIASTICAL CHARITY. — A CHARITY is not an "Ecclesiastical Charity," within s. 75 (2), Loc Gov Act, 1894, whose objects are Eleemosynary, though to be administered by the Churchwardens on the recurrence of a Church Festival, with simply a *preference* to be given to those "most constant in their attendance on the Public Service of the Church" (*Re Ross,* 1897, 2 Ch. 397; 66 L. J. Ch. 662; affd 1899, 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366; 47 W. R. 197; 63 J. P. 52). But where it can be gathered that the Members "AS SUCH," *i.e.* in their character of Members, of any "Particular Church or Denomination" (subs. *e*) are alone intended to have the eleemosynary benefit, then there is an "Ecclesiastical Charity" (*Re Perry Almshouses,* cited CHURCH; which case also adopted, but distinguished, the principles of interpretation of *Eleemosynary Charities* as laid down in *A-G.* v. *Calvert,* 26 L. J. Ch. 682; 23 Bea. 248). *Vf* FOUNDATION.

The section cited provides that, quà Loc Gov Act, 1894, "the expression 'Ecclesiastical Charity,' includes, a Charity the ENDOWMENT whereof is held for some one or more of the following purposes: —

(*a*) For any SPIRITUAL Purpose which is a legal purpose; or

(*b*) For the BENEFIT of any Spiritual Person, or Ecclesiastical Officer, as such; or

Digitized by Google

(c) For use, if a BUILDING, as a Church, Chapel, Mission Room, or Sunday School, or otherwise, by any Particular CHURCH or Denomination; or

(d) For the maintenance, repair, or improvement, of any such Building as aforesaid, or for the maintenance of DIVINE SERVICE therein; or

(e) Otherwise for the Benefit of any Particular Church or Denomination, or of any Members thereof, as such.

"Provided that where any Endowment of a Charity (other than a Building held for any of the PURPOSES aforesaid) is held in part only for some of the purposes aforesaid, the Charity, so far as that Endowment is concerned, shall be an Ecclesiastical Charity, within the meaning of this Act.

"The expression shall also include any Building which, in the opinion of the Charity Commissioners, has been erected or provided within 40 years before the passing of this Act mainly by, or at the cost of, Members of any Particular Church or Denomination."

All this "does not define, or profess to define, the meaning of 'Ecclesiastical Charity,' but says that, unless the context otherwise requires, that expression shall INCLUDE these various things" (per Smith, L. J., *Re Ross* and *Re Perry Almshouses*, sup).

Vf, as to the Distinction between an Ecclesiastical and an Eleemosynary Charity, *A-G.* v. *St. John's Hospital Bath*, 45 L. J. Ch. 420; 2 Ch. D. 554.

"Ecclesiastical Charity," quà Loc Gov (Scot) Act, 1894; *V.* s. 54.

ECCLESIASTICAL COMMISSIONERS.—*V.* s. 12 (15), Interp Act, 1889. As to their constitution and functions, *V.* 4 Encyc. 377–386.

"The Ecclesiastical Commissioners Acts, 1840 to 1885"; *V.* Sch 2, Short Titles Act, 1896.

V. COMMISSIONERS.

ECCLESIASTICAL CORPORATION. — *V.* CORPORATION.
Stat. Def. — 14 & 15 V. c. 104, s. 11; 57 & 58 V. c. 46, s. 94.

ECCLESIASTICAL COURT.—*V. Re Green*, 51 L. J. Q. B. 25; 7 Q. B. D. 273; nom. *Green* v. *Penzance*, 6 App. Ca. 657. Stat. Def., 6 & 7 V. c. 38, s. 17.

"The Ecclesiastical Courts Acts, 1787 to 1860"; *V.* Sch 2, Short Titles Act, 1896.

ECCLESIASTICAL DUTIES.—*V.* DUTIES.

ECCLESIASTICAL PARISH. — Stat. Def., 41 & 42 V. c. 68, s. 14.

Digitized by Google

ECCLESIASTICAL PERSON. — Quà Irish Church Act, 1869, 32 & 33 V. c. 42, " 'Ecclesiastical Person,' shall mean and include, any Archbishop, or Bishop, or person holding any BENEFICE or CATHEDRAL PREFERMENT as hereinafter defined" (s. 72); *Vf* 38 & 39 V. c. 42, s. 8. But quà Glebe Loan (Ir) Act, 1870, 33 & 34 V. c. 112, the phrase "means and includes any Archbishop, Bishop, Clergyman, Priest, Curate, or Minister of any Religious Denomination whatsoever" (s. 2).

In the Victorian Statutes for Ireland prior to 1869, the phrase was confined to a Spiritual Person in the Church as then by law established; *e.g.* 14 & 15 V. c. 73, s. 1; 20 & 21 V. c. 47, s. 2; 23 & 24 V. c. 72, s. 2.

ECCLESIASTICAL PURPOSE. — Marriage, when it takes place in a Church, is an Ecclesiastical Function; and the solemnization of marriages is an "Ecclesiastical Purpose" within the New Parishes Acts, 1843 and 1856, 6 & 7 V. c. 37, s. 15; 19 & 20 V. c. 104, s. 14 (*Fuller* v. *Alford*, 52 L. J. Q. B. 265; 10 Q. B. D. 418); so is Burial (*Hughes* v. *Lloyd*, 58 L. J. Q. B. 122; 22 Q. B. D. 157).

Paying off a mtge on the Vicarage and Glebe, and structural repairs to the Church, are "Ecclesiastical Purposes" within s. 34, Church Building Act, 1822, 3 G. 4, c. 72 and s. 19, Church Bg Act, 1840, 3 & 4 V. c. 60 (*Re Christ Church, East Greenwich*, 1896, 1 Ch. 520; 65 L. J. Ch. 331).

Stat. Def. —31 & 32 V. c. 109, s. 10.

ECONOMICALLY. — *V.* EFFICIENTLY.

EDITION. — In a contract between an author and a publisher, an "Edition" consists of so many copies as are issued to the public at a time; and, where the work is stereotyped, every fresh issue is a new Edition (*Reade* v. *Bentley*, 27 L. J. Ch. 254; 4 K. & J. 656). In that case Wood, V. C., said (27 L. J. Ch. 259), "I apprehend the meaning of the word 'Editions,' is the putting forth the work *at successive periods*; and whether that is done by moveable type or by stereotype does not seem to me to make any substantial difference." *Vf*, *Blackwood* v. *Brewster*, 23 Sess Ca. 2nd Ser. 142: Copinger on Copyright, 2 ed., 605: BOOK.

EDUCATED. —*V.* EDUCATION.

EDUCATION. — "Education" means training up the young in general learning (*V. Re Christ's Hospital*, cited EDUCATIONAL ENDOWMENT); not teaching for a business or profession. Therefore the property of the Institution of Civil Engineers is not exempt (under s. 11 (3), Customs and Inl. Rev. Act, 1885) from assessment because used "for the promotion of Education"; but it is so exempt under the word "SCIENCE" (*Re Institution of Civil Engineers*, 19 Q. B. D. 610; 20 Ib. 621; 56 L. J. Q. B. 576; 57 Ib. 353; 36 W. R. 523, 598; 3 Times Rep. 729,

Digitized by Google

affd in H. L. nom. *Inl. Rev.* v. *Forrest,* 60 L. J. Q. B. 281; 15 App. Ca. 334; 63 L. T. 36; 39 W. R. 33; 54 J. P. 772).

So a statutory exemption from rates for a building used for the "Education of the Poor," will not include a building where pauper children are clothed, maintained, and doctored, as well as instructed (*Hadfield* v. *Liverpool,* 80 L. T. 566).

"Education *and* Learning," in a Charitable Bequest, read "Education *in* Learning" (*Whicker* v. *Hume,* 7 H. L. Ca. 124; 21 L. J. Ch. 406; 28 Ib. 396; 1 D. G. M. & G. 506; 14 Bea. 509).

A FORFEITURE if the objects of a gift be not "educated in England, and in the Protestant Religion according to the rites of the Church of England" is uncertain; and, *semble,* could only have effect given to it in a plain case of adverse conduct (*Clavering* v. *Ellison,* 3 Drew. 451; 25 L. J. Ch. 274; 4 W. R. 330; 26 L. T. O. S. 319: *V.* the jdgmt for discussion as to what is meant by being "educated," either generally or in the Protestant Religion: jdgmt affd in H. L. 29 L. J. Ch. 761; 7 H. L. Ca. 707). *Cp,* LIVE AND RESIDE.

Trust, &c for "Maintenance and Education"; *V.* MAINTENANCE.

"The ELEMENTARY Education Acts, 1870 to 1893"; *V.* Sch 2, Short Titles Acts, 1896.

"The Education (Scotland) Acts, 1872 to 1893": *V.* Ib.

V. INTERMEDIATE: TECHNICAL: SCHOOL: PUBLIC EDUCATION.

EDUCATION CODE.—Quà 61 & 62 V. c. 57, and by s. 11, "Education Code," means in England, "such Minutes of the Education Department as are for the time being in force for the purpose of the Elementary Education Act, 1870"; in Scotland, it means "the Scotch Education Code" (s. 12).

EDUCATION DEPARTMENT.— *V.* s. 12 (6), Interp Act, 1889.

EDUCATIONAL ENDOWMENT.—Quà "the Endowed Schools Acts, 1869 to 1889" (*V.* Sch 2, Short Titles Act, 1896), "'Educational Endowment,' means an ENDOWMENT, or any part of an Endowment, which or the income whereof has been made applicable, or is applied, for the purposes of Education at School (of boys and girls, or either of them), or of Exhibitions tenable at a School or an University or elsewhere, whether the same has been made so applicable by the Original Instrument of Foundation or by any subsequent Act of Parliament, Letters Patent, Decree, Scheme, Order, Instrument or other Authority, and whether it has been made applicable, or is applied, in the shape—

"Of Payment to the Governing Body of any School, or any Member thereof, or to any Teacher or Officer of any School, or to any person bound to teach, or to Scholars in any School, or their Parents, or

"Of Buildings, Houses, or School Apparatus for any school, or otherwise howsoever" (s. 5, 32 & 33 V. c. 56).

Digitized by Google

If that section stood alone there might be a doubt whether property given for no other purpose than that of Maintenance or Clothing would be comprised though it be attached to a School; but (as was ruled in *Re Christ's Hospital*, inf), "s. 29 is adapted to remove this doubt, and does not cut down the def of 'Educational Endowment' given in s. 5": — s. 29 is as follows, "Endowments attached to any School for the payment of Apprenticeship Fees, or for the Advancement in life, or for the Maintenance or Clothing or otherwise for the Benefit, of Children educated at such school, shall be deemed to be Educational Endowments."

Re Christ's Hospital elucidates the meaning of these definitions.

At the dissolution of the Monasteries Henry 8 appropriated the church and house of the Grey Friars in the City of London, together with some other property of theirs. This he conveyed to the City Corporation as a Foundation for Christ's Hospital, — the motive of the King (expressed under the deed in remarkable language) being to relieve and help "poore aged sick sore and impotente people, and for thadvoydinge of the great daunger and infeccion" occasioned by their "greate sicknesses and horrible disseases." By the deed the Corporation covenanted to maintain certain clergy and almspeople, and then to apply the whole profits of the property for the relief and sustentation of the poor.

In June, 1553, Edward 6 conveyed other property to the Corporation for the benefit of (1) Christ's Hospital; (2) St. Thomas' Hospital, Southwark; and (3) the Poor of Bridewell, — his motive being expressed thus, — "The King, of his mere mercy, having pity and compassion on the miserable estate of the poor fatherless and motherless children and sick sore and impotent people, and most graciously considering the good and godly endeavours of his most humble and obedient subjects the Mayor and Commonalty and Citizens of London who diligently by all ways and means do travail for the good provision of the said poor and every sort of them and that by such sort and means as neither the child in his infancy shall want virtuous education and bringing up neither when the same shall grow into full age shall lack matter whereon the same may virtuously occupy himself in good occupation or science profitable to the commonweal, neither the sore nor sick when they shall be healed shall be permitted nor suffered to wander as vagabonds in the commonweal but shall likewise be put to labour and good and wholesome exercise and so be made profitable members of the same."

Shortly afterwards, the Ordinances of the Corporation show that at Christ's Hospital there was a Grammar School in which "suche of the children as be pregnant and very apt to learninge be reserved and kept . . . in hope of preferment to the Universitie"; and a Minute of a General Court holden at Christ's Hospital on Sep. 27, 1557, records that the objects of the Foundations had been distributed thus, — Education, to Christ's Hospital; Medicine, to St. Thomas'; and Correction of Malefactors, to Bridewell.

Digitized by Google

The 22 G. 3, c. 77, established a statutory separate GOVERNING BODY for Christ's Hospital.

Almost immediately after its Foundation, and certainly ever since 1557, the Governors for the time being of Christ's Hospital, — dealing separately with its locality, property, and management, — have applied to Education its original property and the large gifts since made to it.

Held, — Although the grant of King Henry does not specifically contemplate Education but rather general eleemosynary objects, and although King Edward's grant only contemplates Education among other objects equally important, yet that all its Endowments of a General Character are "Educational" within s. 5, and those for Maintenance of Scholars are "Educational" within s. 29 (*Re Christ's Hospital*, 15 App. Ca. 172; 59 L. J. P. C. 52; 62 L. T. 10; 38 W. R. 758).

Vf, *Re Holgate's School*, 56 L. J. P. C. 52: *A-G.* v. *Christ Church, Oxford*, 1894, 3 Ch. 524; 63 L. J. Ch. 901; 71 L. T. 472; 43 W. R. 198: DIRECTLY AFFECTED: ENDOWED: ENDOWMENT.

Other Stat. Def. — Educational Endowments (Scot) Act, 1882, 45 & 46 V. c. 59, s. 1: — E. E. (Ir) Act, 1885, 48 & 49 V. c. 78, s. 1.

V. EDUCATION.

EELS. — *V.* FRESHWATER FISH.

EFFECT. — The "Effect" of a Cause, is anything which would not have happened but for that cause; and it is none the less an Effect of such a Cause, because it has been developed or accelerated by something supervening. Therefore where a Policy assured against "any injury *caused by* Accident or Violence . . . , and if the assured should die from the *Effects* of such injury," and the assured met with an accident and died from pneumonia resulting from a cold the catching of which and its fatal result were due to the bad condition of his health which was the consequence of the injury caused by the accident; — Held, that the death resulted from "the Effects" of the injury (*Re Isitt and Railway Passengers' Assrce*, 58 L. J. Q. B. 191; 22 Q. B. D. 504; 5 Times Rep. 194). *Cp* CAUSED BY.

The "effect" of a Document; *V.* TENOR.

When a Saving Clause to a Repealing Act, — *e.g.* s. 71, Conv & L. P. Act, 1881, — preserves the "effect" of any instrument made prior to the Act, such "effect" may happen as well after, as before, the Act (*Re Solomon and Meager*, 58 L. J. Ch. 339; 40 Ch. D. 508).

Effecting a Contract will sometimes (perhaps, generally) mean, obtaining it (*Earle* v. *Kingscote*, cited NEED NOT).

To *prosecute* a Replevin, within the condition of a Replevin Bond (or any other matter ?) "*with* Effect," is to conduct it to a not unsuccessful termination (*Perreau* v. *Bevan*, 4 L. J. O. S. K. B. 177; 5 B. & C. 284: *Jackson* v. *Hanson*, 10 L. J. Ex. 396; 8 M. & W. 477: *Bently* v. *Hast-*

Digitized by Google

ings, cited PROSECUTE); and such is the meaning even where a replevin is removed by the Defendant (*Tummons* v. *Ogle*, 25 L. J. Q. B. 403; 6 E. & B. 571); so that in no case can the death of the plaintiff be a breach (*Ormond* v. *Bierly*, Carth. 519: *Morris* v. *Matthews*, 11 L. J. Q. B. 57; 2 Q. B. 293).

"*Immaterial* to the Effect," in the Specification of a Patent; *V.* *Neilson* v. *Harford*, 11 L. J. Ex. 20; 8 M. & W. 806.

"To the like Effect"; *V.* LIKE: IN THE FORM.

"No" or "None" Effect; *V.* VOID.

EFFECTIVE. — "Most proper and effective manner"; *V.* WORKABLE.

EFFECTS. — "'Effects,' used *simpliciter*, will carry the whole PERSONAL ESTATE, *e.g.* 'all my Effects,' without more. But it is frequently used in a restricted sense, meaning 'Goods and Moveables,' *e.g.* 'Furniture and Effects.' In every case the Court has to collect from the context the particular sense in which the testator has intended to use it. In *Campbell* v. *Prescott* (15 Ves. 500) there were added to the words 'Effects' '*of what nature and kind soever*'; and this addition excluded its restricted sense. 'Effects,' in the present case, is followed by 'that he shall *die possessed of*,' which leads to the same conclusion" (per Leach, V. C., *Michell* v. *Michell*, 5 Mad. 72); the learned judge also observed that in that case the words were "Household Goods and Furniture *and* Effects," which, as he added, "imports a distinct sense in the word 'Effects.'" *Vf*, *Marshall* v. *Bentley*, 3 W. R. 566.

"The word 'Effects' (and even the word 'Goods' or 'Chattels') will, it seems, comprise the entire Personal Estate of the testator, unless restrained by the context within narrower limits" (1 Jarm. 751: *Va*, Wms. Exs. 1040: 3 Jur. 306: *Hodgson* v. *Jex*, 45 L. J. Ch. 388; 2 Ch. D. 122: *Re Shepheard*, 48 L. J. P. D. & A. 62: *Re Jupp*, 1891, P. 300; 60 L. J. P. D. & A. 92; 65 L. T. 166: *Dunally* v. *Dunally*, 6 Ir. Ch. Rep. 540): — for examples of such a context, *V. Rawlings* v. *Jennings*, 13 Ves. 39, on *whev*, *Fleming* v. *Burrows*, 1 Russ. 280: *Borton* v. *Dunbar*, 30 L. J. Ch. 8. But generally such a context will not be furnished by a preceding enumeration of particular articles, "because a testator often throws in such specific words and then winds up the catalogue with some comprehensive expression for the very purpose of preventing the bequest from being restricted" (per Pepys, M. R., *Arnold* v. *Arnold*, 2 My. & K. 373, cited OTHER: *Vf*, *Lowry* v. *Patterson*, Ir. Rep. 8 Eq. 372); still, instances to the contrary are furnished by *Re Hammersley*, cited OTHER, and by *Hutchinson* v. *Rough*, 40 L. T. 289.

"Effects," standing alone, will *not* comprise Realty (1 Jarm. 724: Hawk. 55, cited by Lindley, L. J., *Hall* v. *Hall*, inf: *Doe* d. *Hick* v. *Dring*, 2 M. & S. 448: *Henderson* v. *Farbridge*, 1 Russ. 479, cited 1 Jarm. 742: *Cross* v. *Wilks*, 35 Bea. 562: *Doe* d. *Haw* v. *Earles*,

Digitized by Google

16 L. J. Ex. 242; 15 M. & W. 457: *Belaney* v. *Belaney,* 2 Ch. 138; 35 Bea. 469; 36 L. J. Ch. 265); *secus,* where there is a manifest intention to dispose of the whole of the testator's property (*Smyth* v. *Smyth,* 8 Ch. D. 561: *Re Turner, Arnold* v. *Blades,* 36 S. J. 28: *Hall* v. *Hall,* 1892, 1 Ch. 361; 61 L. J. Ch. 289; 66 L. T. 206; 40 W. R. 277). *Cp* THINGS.

In a case which came from British Honduras, the P. C. said, "Their Lordships think that the word 'Effects' would pass land; and that word is certainly sufficient to pass a privilege of cutting logwood on a definite piece of land" (*A-G. British Honduras* v. *Bristowe,* 50 L. J. P. C. 18; 6 App. Ca. 143).

"Effects" means Realty (and it should seem nothing else) in such a phrase as REAL EFFECTS; and "Effects" may include Realty if aided by a context: *e.g.* (possibly) if the operative word be "Devise" (*Hall* v. *Hall,* sup: *Phillips* v. *Beal,* 25 Bea. 25: *Titchfield* v. *Horncastle,* 7 L. J. Ch. 279; 2 Jur. 610: *Doe* d. *Chilcott* v. *White,* 1 East, 33: *Milsome* v. *Long,* 3 Jur. N. S. 1073: *Sv,* contra, *Camfield* v. *Gilbert,* 3 East, 516: *V.* DEVISE: *Va, Stelfox* v. *Stelfox,* W. N. (74) 161: *Glover* v. *Chancellor,* W. N. (76) 152, *whlc* dissents from *Doe* v. *Dring,* 2 M. & S. 454: DIVIDE: PROPERTY: REST: SITUATE. For full discussion of the cases on this contextual construction, *V.* 1 Jarm. 744–747, 749: Watson, Eq. 1319–1322). That the Will is inartificially drawn is a circumstance to be considered (*V.* jdgmt of Lindley, L. J., *Hall* v. *Hall,* sup). *Vf* TEMPORAL.

Bequest, *inter alia,* of "Effects" may carry moneys and book debts (*Re Parrott,* 53 L. T. 12; W. N. (85) 127: *Sv, Hotham* v. *Sutton,* 15 Ves. 326, cited OTHER); but a bequest of "Household Furniture and Effects" does not pass jewellery (*Northey* v. *Paxton,* 60 L. T. 30: *V.* HOUSEHOLD); and a localized bequest, *e.g.* "Furniture and Effects *at* the testator's house," will not pass bank-notes, bonds, or personal jewellery (*Re Miller,* 61 L. T. 365: *Vf,* CONTENTS), or cash (*Campbell* v. *M'Grain,* Ir. Rep. 9 Eq. 397: *Watson* v. *Arundel,* 10 Ib. 299; nom. *Singleton* v. *Tomlinson,* 3 App. Ca. 404). *Cp,* "Household Effects," sub HOUSEHOLD.

Bequest of Stock in Trade, Goodwill, and "Effects," held to pass Trade Fixtures (*Pinder* v. *Pinder,* 18 W. R. 309).

Exchequer Bills, held "Effects," within 15 G. 2, c. 13, s. 12 (*R.* v. *Aslett,* Russ. & Ry. 67).

As to "Effects" in a Marine Insurance; *V. Duff* v. *Mackenzie,* 26 L. J. C. P. 313; 3 C. B. N. S. 16.

Quà Mer Shipping Act, 1894, "'Effects' includes Clothes and Documents" (s. 742).

"Effects, Stock, Books, and Book Debts," in an Assignment for the Benefit of Creditors by a Grocer and Farmer, will, under "Effects," convey the farm cattle (*Lewis* v. *Rogers,* 3 L. J. Ex. 326; 1 Cr. M. & R.

Digitized by Google

48; 4 Tyr. 872). In that case Lyndhurst, C. B., said, "'Effects' is *nomen generalissimum*, and the rule that it ought to be limited does not apply, because it precedes, instead of following, the enumeration of specific things." And, apart from a controlling context, an assignment of "Effects" for the benefit of crs, includes a Contingent Interest under a Will (*Ivison* v. *Gassiot*, 3 D. G. M. & G. 958, in view of *whc*, Is such a controlling context discoverable in *Pope* v. *Whitcombe*, 3 Russ. 124, or in *Re Wright*, 15 Bea. 367?).

"Effects *and Things*," in Partnership Articles, held equivalent to "Assets," and to include GOODWILL (*Rolt* v. *Bulmer*, W. N. (78) 119: *Reynolds* v. *Bullock*, Ib. 122: *Hall* v. *Barrows*, 4 D. G. J. & S. 150: *V.* THINGS); so, of the phrase "other the Estate and Effects" (*Steuart* v. *Gladstone*, 47 L. J. Ch. 423; 10 Ch. D. 626; 40 L. T. 145); so, of "the Property, Stock, Goods, and Effects then employed or used in carrying on the said Business" (*Page* v. *Ratliffe*, 76 L. T. 63).

"Property and Effects" in a Co's mortgaging powers; *V.* PROPERTY.

"Stores and other Effects," does not include Tap-Cinders (*Boileau* v. *Heath*, cited IRON).

V. ESTATE AND EFFECTS: PROPERTY AND EFFECTS.

EFFECTUAL.—"Valid and Effectual"; *V.* VOID.

EFFECTUALLY.—"Effectually repair"; *V. Doe* d. *Dymoke* v. *Withers*, cited REBUILD.

EFFICIENT.—A stipulation in a Charter-Party that the Ship shall be "Efficient" may easily have, at varying times, varying applications; it generally means "that the Ship shall be efficient to do what she is required to do when she is called upon to do it" (per Halsbury, C., *Hogarth* v. *Miller*, 1891, A. C. 48; 60 L. J. P. C. 1).

"Efficient School"; *V.* CERTIFIED: RECOGNIZED.

EFFICIENTLY.— *V.* FAIRLY.

A Covenant by a Lessee of a Ry to work it "efficiently," does not, necessarily, entail an obligation on him to work it with Passenger Trains as well as Goods Trains (*West London Ry* v. *Lond. & N. W. Ry*, 11 C. B. 254), nor to work it so as to produce the largest quantity of gross proceeds; but it does connote that the railway must, by all fairly possible means, be so worked as to secure the stipulated benefits to the covenantee (*Ib.* 327; 22 L. J. C. P. 117).

"What can be required of Ry Companies to work a Line 'efficiently' must vary according to their respective powers; and a mode of working which would be sufficient in one case would not be so in another" (*East London Ry* v. *L. B. & S. Ry*, cited TRAFFIC). *Cp* POSSIBLE.

As to what alteration in a Co's Mem of Assn will enable it "to carry on its business more economically, or more efficiently," s. 1 (5 *a*), Comp Mem of Assn Act, 1890; *V. Re Governments Stock Investment Co*,

Digitized by Google

1892, 1 Ch. 597; 61 L. J. Ch. 381; 66 L. T. 608; 40 W. R. 387; *wh cp* with the same Co's previous application, 1891, 1 Ch. 649; 60 L. J. Ch. 477; 64 L. T. 339; 39 W. R. 375: *Re Bernicia S. S. Co.*, 81 L. T. 816; 69 L. J. Ch. 194: *Cp*, CONVENIENTLY: MAIN PURPOSE.

EFFLUXION OF TIME. — *V.* DETERMINATION.

EFFORTS. — *V.* REASONABLE EFFORTS: UTMOST.

EGRESS. — *V.* INGRESS.

EITHER. — "Originally, 'Either' had much of the meaning of 'Both.' For some centuries, however, its normal meaning has been, 'One or other,' *V. Murray's English Dictionary.* Certainly that is its *primâ facie* meaning at the present time" (per Rigby, L. J., *Re Pickworth*, 68 L. J. Ch. 328; *Sc*, per Williams, L. J., *Ib.*).

Where there is a Devise to two, "but in case *either one* of them should die without children that share to go to the other," and both die without children, the property on the death of the one who died first goes to the other (*Drennan* v. *Andrew*, 36 L. J. Ch. 1). But where there was a gift for life to A., with a vested interest after her death to B. and C., "and if *either of them* shall be THEN dead, Upon trust for the SURVIVOR of them ABSOLUTELY," and both died in the lifetime of A.; held (Rigby, L. J., diss.) that the vested interest of B. and C. was not divested, and that their representatives took equally (*Re Pickworth*, 1899, 1 Ch. 642; 68 L. J. Ch. 324; 80 L. T. 212, in *whc* were considered *Browne* v. *Kenyon*, 3 Mad. 410: *White* v. *Baker*, 29 L. J. Ch. 577; 2 D. G. F. & J. 55: *Harrison* v. *Foreman*, 5 Ves. 207: and *Scurfield* v. *Howes*, 3 Bro. C. C. 90). Observe, that the decision in *Re Pickworth* refused to read "Either" as "Both," or "Survivor" as "Longest Liver."

In *Re Hill to Chapman* the question turned on the following phrase in a Will, "in case of the death of either of them"; on which Brett, M. R., observed, "I think the word 'either' means 'one,' and not 'the other'" (54 L. J. Ch. 597). So, in *Sharp* v. *Sharp* (2 B. & Ald. 405; stated, Lewin, 776), a power to appoint new Trustees "in case *either*" of the appointed Trustees should die, &c, "either" was held to mean "some one" of the Trustees, not "all" of them.

V. ANY: ONE.

"In either Case"; *V. Ireland* v. *Harris*, 14 M. & W. 432.

"On either Side," s. 3 (1), 51 & 52 V. c. 52; *V. Warren* v. *Mustard*, cited SIDE. "'On either side of the road,' means, 'on each side'" (per Lindley, M. R., *Re Pickworth*, sup).

Cp EACH.

EJECTMENT. — "Ejectment," generally means, an Action for the RECOVERY OF LAND; *V.* 44 & 45 V. c. 49, s. 57; 50 & 51 V. c. 33, s. 34. *Cp* EVICTION. *V.* REAL ACTION.

Digitized by Google

EJUSDEM GENERIS. — For examples of this Rule of Construction, *V.* OTHER: OTHERWISE. For criticism on it, *V.* per Fry, L. J., *Jersey* v. *Neath*, cited WHATSOEVER: "it ought to be applied with great caution" (per Rigby, L. J., *Smelting Co* v. *Inl. Rev.*, cited LOCALLY SITUATE).

ELDEST. — The *primâ facie* meaning of "Eldest" is "Eldest, or First, born" (2 Jarm. 213: *Craven* v. *Errington*, *Bathurst* v. *Errington*, 46 L. J. Ch. 748; 2 App. Ca. 698: *Meredith* v. *Treffry*, 48 L. J. Ch. 337; 12 Ch. D. 170: *Locke* v. *Dunlop*, cited OTHER SONS: *Tuite* v. *Bermingham*, L. R. 7 H. L. 634), and applies if there is only one (*Tuite* v. *Bermingham*). It is, however, sometimes construed as meaning the person already provided for: *V.* YOUNGER.

Where provisions are made by any person, whether *in loco parentis* or not, for "Younger Children," by an instrument that does not make provision, or does not refer to or is not shown by extrinsic evidence to be connected with provisions already made, for the "Eldest" child, the words "Younger" and "Eldest" are used in their primary meaning. On the other hand, where the provisions are made by a person *in loco parentis* for "Younger" children, by an instrument which limits an estate to, or refers to, or is shown by extrinsic evidence to be connected with, an instrument limiting an estate to the "Eldest" child, the word "Eldest" is a designation of the person succeeding to the estate, *i.e.* "provided for," — and "Younger," of the person not doing so, *i.e.* "unprovided for" (Elph. ch. 24, and cases there cited in illustration and exception: *Vf* 2 Jarm. 201). But "*Livesey* v. *Livesey* (2 H. L. Ca. 419) is a decision of the H. L. that where you cannot read 'Eldest Son' as meaning son entitled to a particular estate, the words must have their literal signification" (per Kay, J., *Domvile* v. *Winnington*, 53 L. J. Ch. 786; 26 Ch. D. 382, in *whc* the phrase was construed literally). "And the rule is that, subject to any special terms in the settlement, the time for ascertaining the Class of Younger Children who are entitled to Portions is the time fixed by the settlement for the distribution of the portions fund" (per Chitty, J., *Re Fitzgerald*, cited YOUNGER: *Vf*, 2 Jarm. 204–213: Wms. Exs. 947).

"An eldest or only son, *primâ facie*, means one individual and not a series of persons" (per Kay, J., *Domvile* v. *Winnington*, sup); and it was accordingly held in that case that when once a clause of exclusion has had its application, it has become satisfied and its operation exhausted.

V. ENTITLED IN POSSESSION.

It requires a strong context to construe "Eldest Son" as words of limitation, and so giving an Estate Tail to the person whose eldest son is referred to (*V.* discussion hereon, 2 Jarm. 407–410); yet *Madden* v. *Ikin* (2 Dr. & Sm. 207; 32 L. J. Ch. 3) is, to some extent, an example of such a context. So, of "Eldest MALE ISSUE," which describes an individual and *primâ facie* means, a first-born son who, if entitled in pos-

Digitized by Google

session after a tenancy for life, takes a vested interest at his birth (*Sheridan* v. *O'Reilly*, 1900, 1 I. R. 386).

In *Thellusson* v. *Rendlesham* (28 L. J. Ch. 948; 7 H. L. Ca. 429), a case on the celebrated Thellusson Will, "Eldest"—in the phrase "Eldest Male Lineal Descendant,"—was construed prior in line, not senior by birth. In his judgment in that case, Lord Wensleydale said,—"The 'eldest' Magistrate, or Officer, might not mean him who had lived the greatest number of years, nor even him who had filled the office for the longest time, for it might indicate rank only, and the 'Eldest Earl of England' would not mean him who was most advanced in years, but the eldest in point of family origin,—The Premier Earl." For a statement of the prior litigation on Mr. Thellusson's Will, *V.* Sug. Prop. 263-271. *Vf* LINEAL.

"Eldest or Only Son *entitled in possession or remainder*"; *V. Carter* v. *Ducie*, W. N. (71) 236.

"*Become* Eldest Son"; *V. Craven* v. *Errington*, *Bathurst* v. *Errington*, sup. The character of "Eldest Son" is, in ordinary cases, to be ascertained at the period of vesting, and not of payment (*Adams* v. *Adams*, 25 Bea. 652).

Vh Chitty Eq. Ind. 7678, 7710. *V.* PUER.

ELECTION.—"'Election,' is when a man is left to his owne free will to take or doe one thing *or* another which he pleaseth" (Termes de la Ley). Thus, Bauldwin, C. J., puts this case, "Home face lease reservant devaunt tiel feast un liber de pepper *ou* saffron, ore devant le feast est in le election del lessee quel de eux il voile paier" (Dyer, 18 a).

From this simple Common law rule has been evolved the Equitable doctrine of Election, of which the leading case is *Streatfield* v. *Streatfield* (Ca. t. Talb. 176; 1 White & Tudor, 416), and which doctrine, as stated at the beginning of White & Tudor's notes to that case, is this,—"Election, is the obligation imposed upon a party to choose between two inconsistent, or alternative, rights or claims, in cases where there is a clear intention of the person from whom he derives one that he should not enjoy both. Every case of Election, therefore, presupposes a plurality of gifts or rights, with an intention, expressed or implied, of the party who has a right to control one or both that one should be a substitute for the other. The party who is to take has a choice, but he cannot enjoy the benefit of both." Jarman, at the commencement of ch. 14, states the doctrine thus,—"He who accepts a benefit under a Deed or Will, must adopt the whole contents of the instrument, conforming to all its provisions, and renouncing every right inconsistent with it": in other words, he cannot approbate and reprobate the instrument. *Vh*, Story, s. 1075: Watson, Eq. 176: Vaizey, 40: Snell, Eq. ch. 11: 4 Encyc. 399-402: Flood on Election.

Digitized by Google

"Election," in Acts relating to the Representation of the People, is usually defined as, the Election of a Member to serve in Parliament; *V.* 17 & 18 V. c. 102, s. 38; 30 & 31 V. c. 102, s. 61; 31 & 32 V. c. 125, s. 3; 46 & 47 V. c. 51, s. 64. In 35 & 36 V. c. 60, it "means an Election to an Office" (s. 2). In Loc Gov Act, 1894, "'Election' includes both the Nomination and the Poll" (s. 75). *Vf,* 45 & 46 V. c. 50, s. 77: 53 & 54 V. c. 55, s. 2: PARLIAMENTARY: MUNICIPAL: CONTESTED ELECTION.

Election *Agent*; *V.* 4 Encyc. 402–406.

Election *Commissioners*; *V.* 46 & 47 V. c. 51, s. 64: 4 Encyc. 406–409.

Election *Court*; *V.* 35 & 36 V. c. 60, s. 2; 45 & 46 V. c. 50, s. 77; 46 & 47 V. c. 51, s. 64. — *Scot.* 53 & 54 V. c. 55, s. 2. — *Ir.* 35 & 36 V. c. 60, s. 28. *Vf* MUNICIPAL.

Election *Expenses*; *V.* 4 Encyc. 410–415.

Election *Petition*; *V.* 45 & 46 V. c. 50, s. 77; 46 & 47 V. c. 51, s. 64. — *Scot.* 53 & 54 V. c. 55, s. 2. — *Vf* 4 Encyc. 415–442.

On all the last five preceding pars, *V.* Leigh & Le Marchant on Elections: Rogers.

ELECTIVE. — Quà London Gov Act, 1899, and by its s. 24, "'Elective Vestry,' means any Vestry elected under Metrop Man. Act, 1855."

ELECTOR. — Stat. Def., 46 & 47 V. c. 51, s. 64. — *Scot.* 39 & 40 V. c. 49, s. 3.

V. COUNTY: PARLIAMENTARY: PAROCHIAL ELECTOR: VOTER.

ELECTORAL DIVISION. — Stat. Def., 55 & 56 V. c. 31, s. 20.

ELECTRIC. — The "fees and reasonable expenses of an Electric *Inspector*," — which, under s. 47, Electric Lighting Orders Confirmation (No. 15) Act, 1890, are payable by the Undertakers of Electric Works, — are confined to the expenses of making tests and inspections, and do not include the Inspector's salary or the expenses of his laboratory (*Crawford* v. *City of London Electric Lighting Co*, 67 L. J. Q. B. 942; 47 W. R. 45; 78 L. T. 841).

"Electric *Lighting Acts*"; *V.* 62 & 63 V. c. 19, s. 1.

"Electric *Line*"; Stat. Def., 45 & 46 V. c. 56, s. 32.

"Electric *Supply Company*"; Stat. Def., 62 & 63 V. c. 19, Sch s. 18 (6).

"*Electrical Stations*"; *V.* NON-TEXTILE FACTORIES.

"*Electricity*"; Stat. Def., 45 & 46 V. c. 56, s. 32.

V. ENERGY.

ELEEMOSYNARY CHARITY. — *V.* ECCLESIASTICAL CHARITY. CHARITY SCHOOL.

ELEMENTARY. — Quà 48 & 49 V. c. 78, "'Elementary EDUCATION,' shall mean such education as may be given in the National

Digitized by Google

Schools which are aided by grants for the Commissioners of National Education in Ireland" (s. 11): quà 56 & 57 V. c. 42, "'Elementary Education,' may include Industrial Training, whether given in the school which the child attends or not" (s. 15).

"Elementary SCHOOL"; Stat. Def., 33 & 34 V. c. 75, s. 3; 34 & 35 V. c. 13, s. 3; 51 & 52 V. c. 42, s. 6; 56 & 57 V. c. 73, s. 75.

V. PUBLIC ELEMENTARY SCHOOL.

ELIGIBLE.—This word, as applied to the selection of persons, has two meanings, *i.e.* "legally qualified," or "fit to be chosen" (per Ld Chelmsford, *Baker* v. *Lee*, 30 L. J. Ch. 631; 8 H. L. Ca. 495).

"Eligible as a Director," "must mean, capable of being elected at some future election" (per Selborne, C., *Forbes' Case*, 8 Ch. 774).

A provision in the Articles of a Co that no person shall be "eligible" as a Director unless he holds a stated number of shares, applies only to persons to be elected, and not to persons appointed by the Articles (per Turner, L. J., *Ex p. Stock*, 33 L. J. Ch. 731; 4 D. G. J. & S. 426).

If a house is accurately described in a Contract for Sale with the addition that it is an "Eligible" property for *Investment*, that addition is ground for withholding specific performance if the house is used as a BROTHEL, though that be without the knowledge of the vendor (*Hope* v. *Walter*, 1900, 1 Ch. 257; 69 L. J. Ch. 166; 82 L. T. 30, distinguishing *Lucas* v. *James*, 18 L. J. Ch. 329; 7 Hare, 418).

V. FIT: QUALIFICATION: QUALIFIED.

Lord ELLENBOROUGH'S ACT.—43 G. 3, c. 58.

ELOPE.—"If the wife elope from her husband,—that is, if the wife leave her husband, and goeth away and tarrieth with her adulterer,—she shall lose her DOWER until her husband, willingly without coertion ecclesiasticall, be reconciled unto her" (Co. Litt. 32 a, b: *Vf* Termes de la Ley, *Elopement*). "And if she goeth willingly with or to the avowtrer, this is a departure and a tarrying, albeit she remaineth not continually with the avowtrer" (Ib. 32 b). *V.* WILLINGLY.

"Elope" "is never used in any other sense than criminally" (per Best, C. J., *Hunt* v. *De Blacquiere*, 5 Bing. 557).

ELSE.—"What else"; *V.* WHAT IS LEFT.

ELSEWHERE.—"Elsewhere" is "the most significant, sensible, and comprehensive, word" that can be used in a testamentary gift of property; thus, a devise of "all my lands in A. and B. and elsewhere," is equivalent to a devise of all testator's land in A. and B. "or in any other place whatsoever" (*Chester* v. *Chester*, 3 P. Wms. 61). So, a testamentary gift of all in a certain locality, "or elsewhere," includes the residuary personal estate (*Re Scarborough*, 30 L. J. P. M. & A. 85).

In a devise of freeholds copyholds and leaseholds in the Counties of

Digitized by Google

Lincoln and Cambridge, and of leaseholds in the County of Dorset "and elsewhere," the "elsewhere" was extended to the whole of the sentence so that the devise passed freeholds in Norfolk, or wherever situate (*Pinney* v. *Marriott*, 32 Bea. 643).

"The words 'the UNITED KINGDOM or elsewhere' (s. 2, Sch D, Income Tax Act, 1853, 16 & 17 V. c. 34), by the alternative description, include the whole world" (per Fry, L. J., *Colquhoun* v. *Brooks*, 57 L. J. Q. B. 443; 21 Q. B. D. 52; 59 L. T. 661; 36 W. R. 657; 52 J. P. 645). But the decision of the majority of the Court of Appeal (affd 14 App. Ca. 493; 59 L. J. Q. B. 53) was the other way, and Esher, M. R., said, — "I do not think, when the Act is looked at, that 'Elsewhere' is meant to include every other part of the inhabited globe. There may be some outlying parts of the Queen's dominions which are not colonies, but over which the Queen exercises all sovereign rights, and therefore places in which Parliament has a right to exercise all its rights, and the words 'or elsewhere' may have been inserted by way of caution to include such places. I cannot think that they are meant to include all Colonies which have their own Parliaments, nor all Foreign Countries." *Vf* CARRY ON, p. 264, 265.

"Elsewhere in England," in a Co's Mem of Assn; *V. Re Silver Valley Mines*, 18 Ch. D. 472: *Re New Terras Co*, 63 L. J. Ch. 397; 1894, 2 Ch. 344; 70 L. T. 625; 42 W. R. 504. Where one of the Objects is to work mines "in West Australia, or elsewhere," a working in Victoria is not within it (*Re Coolgardie Gold Mines*, 76 L. T. 269).

As to an Assignment of Goods at A. "or elsewhere"; *V. Greenbirt* v. *Smee*, 35 L. T. 168: *Cp*, *Tailby* v. *Official Receiver*, cited ALL.

V. INSURED ELSEWHERE.

Bishop of ELY'S ACT. — The Liberties Act, 1836, 6 & 7 W. 4, c. 87: sometimes this is called the Archbishop of York's Act.

EMANCIPATION. — Quà a Pauper Settlement, "ordinarily speaking, one of these things must happen before a son can be said to be 'emancipated' from his father; either he must have obtained a Settlement for himself, — or have become the head of a family, — or at most he must have arrived at that age when he may set up in the world for himself" (per Kenyon, C. J., *R.* v. *Offchurch*, 3 T. R. 116: *Vf*, *R.* v. *Roach*, 6 Ib. 252: *R.* v. *Rothwell*, 7 Q. B. 576). In *thlc* Denman, C. J., said, "Ld Mansfield and Wilmot, J., might dislike the introduction of the word 'Emancipation' from the Roman into the English law; but it has been so introduced and is now well understood by Parish Officers and Justices."

EMBARGO. — "An Embargo is an ARREST laid on ships or merchandize by public authority, or an order prohibiting ships from putting to sea, and sometimes from entering ports" (Wood 353: *Vf*, 4 Encyc.

Digitized by Google

478: *Rodocanachi* v. *Elliott*, cited ARREST). It does not put an end to any subsisting contract relating to the ship affected, but is only a temporary suspension of such contract (*Hadley* v. *Clarke*, 8 T. R. 259: *Touteng* v. *Hubbard*, 3 B. & P. 291: *Vthe*, *Jackson* v. *Union Mar. Insrce*, 42 L. J. C. P. 284; 44 Ib. 27; L. R. 8 C. P. 572; 10 Ib. 125). *Vf* Abbott, 761.

As to effect of Embargo on Wages; *V.* Abbott, 791.

EMBARRASS. — To "embarrass," R. 27, Ord. 19, R. S. C., means to state, in a party's pleading, matter that he is not entitled to make use of (per Jessel, M. R., *Heugh* v. *Chamberlain*, 25 W. R. 742; W. N. (77) 128: *Va*, *Spurr* v. *Hall*, 46 L. J. Q. B. 693; 2 Q. B. D. 615: *Berdan* v. *Greenwood*, 47 L. J. Ex. 628; 3 Ex. D. 251). A Defence is not embarrassing by reason of alleging several inconsistent statements of fact (*Re Morgan*, 35 Ch. D. 492; 56 L. J. Ch. 603; 56 L. T. 503; 35 W. R. 705; affd 39 Ch. D. 316).

Cp, FRIVOLOUS OR VEXATIOUS.

EMBEZZLE. — "When a Clerk or a Servant, or person employed in the capacity of a clerk or servant, commits theft by converting any chattel, money, or valuable security, delivered to or received, or taken into possession by him for or in the name or on account of his master or employer, his offence is called Embezzlement" (Steph. Cr. ch. 36, *whv* hereon).

"The distinction between Embezzlement by a clerk or servant and other kinds of THEFT is, that in other kinds of theft the property stolen is taken out of the possession of the owner, whereas in Embezzlement by a clerk or servant the property embezzled is converted by the offender whilst it is in the offender's possession on account of his master and before that possession has been changed into a mere custody" (Ib. 241).

Vf, Arch. Cr. 523–560: Rosc. Cr. 397–414: 4 Encyc. 479–484: *Re Bellencontre*, 1891, 2 Q. B. 122; 60 L. J. M. C. 83; 64 L. T. 461; 39 W. R. 381.

"Purloin, embezzle"; *V.* PURLOIN.

EMBLEMENTS. — "Emblements" is the right which the occupier of land (or his personal representatives) has to reap in peace the crop which he sowed, when his occupation has been determined by his death or otherwise unexpectedly comes to an end from a cause beyond his control (Litt. s. 63: Co. Litt. 55 a–56 a). As to Emblements as between Heir and Executor, *V.* Wms. Exs. 622 *et seq*; and as between Landlord and Tenant, *V.* Woodf. 789–791: Redman, ch. 9, s. 2: Fawcett, 497. In the latter connection, *V.* 14 & 15 V. c. 25, which in most cases substitutes the right of continued occupation for Emblements. *Va*, Dart, 235: Jacob.

Digitized by Google

EMBRACE. — "Embrace," in an Interp Clause, may sometimes connote an exhaustive enumeration (*Marshall* v. *Orpen*, 1895, A. C. 606; 64 L. J. P. C. 177; 72 L. T. 783). *Cp*, EXTEND TO; INCLUDE.

EMBRACERY. — "Everyone commits the misdemeanor called Embracery who by any means whatever, except the production of evidence and argument in open Court, attempts to influence or instruct any juryman, or to incline him to be more favourable to the one side than to the other in any judicial proceeding, whether any verdict is given or not, and whether such verdict, if given, is true or false" (Steph. Cr. 88, 89). *Vf*, Rosc. Cr. 618: Co. Litt. 369 a: Termes de la Ley, *Embrasour*.

EMENDALS. — "Is an old word used in the Accounts of the Inner Temple where so much in Emendals at the Foot of an account signifies so much in bank in the stock of the House for the supply of all emergent occasions" (Cowel).

EMIGRANT. — "Emigrant *Labourer*"; *V.* LABOURER.

"Emigrant *Ship*," quà Part 3, Mer Shipping Act, 1894, — unless the context otherwise requires, — means, "every SEA-GOING Ship (whether British or Foreign, and whether or not conveying Mails) carrying, — upon any Voyage to which the provisions of this part of this Act respecting Emigrant Ships apply, — more than 50 STEERAGE PASSENGERS, or a greater number of Steerage Passengers than in the proportion

(*a*) If the Ship is a Sailing Ship, of one STATUTE ADULT to 33 tons of the ship's registered tonnage; and

(*b*) If the Ship is a Steam Ship, of one Statute Adult to every 20 tons of the ship's registered tonnage; and

includes a Ship which, having proceeded from a Port outside the BRITISH ISLANDS, takes on board at any Port in the British Islands such number of Steerage Passengers, whether British Subjects or Aliens resident in the British Islands, as would, either with or without the Steerage Passengers which she already has on board, constitute her an Emigrant Ship" (subs. 1, s. 268). *V.* SHIP: PASSENGER SHIP.

EMOLUMENT. — *V.* ADVANTAGES.

An "Emolument" is a Profit or Advantage, — anything by which a person is benefited, *e.g.* a person dispossessed of an OFFICE, or EMPLOYMENT, who is entitled to Compensation calculated according to his "Annual Emolument" derived therefrom, is entitled to have taken into consideration the profit he has made on the allowance made to him for travelling expenses (*R.* v. *Postmaster General*, 47 L. J. Q. B. 435; 3 Q. B. D. 428). The word has a wider meaning than "REMUNERATION" (per Quain, J., *Ib.* 1 Q. B. D. 665). *Cp* PAY.

Quà Poor Law Officers' Superannuation Act, 1896, 59 & 60 V. c. 50, "'Emoluments,' includes all fees, poundage, and other payments, made

Digitized by Google

to any Officer or Servant, AS SUCH, for his own use; also the money value of any apartments, rations, or other allowances in kind, appertaining to his office or employment" (s. 19).

"Emoluments," as used in R. 2, Case 2, Sch D, and R. 4, Sch E, Income Tax Act, 1842, "means some more tangible benefit than a servant's residence in his master's house, or a meal, or a suit of livery, supplied by the master" (per Ld Watson, *Tennant* v. *Smith*, cited INCOME). *Cp* PERQUISITE.

The share of revenues which Canons have immemorially received in common with the rest of a Chapter, is "Emoluments" within s. 1, 4 & 5 W. 4, c. 90 (*Ecc. Commrs* v. *Kildare*, 8 Ir. Ch. Rep. 93).

"Emoluments" of the Universities of Oxford and Cambridge; Stat. Def., 17 & 18 V. c. 81, s. 48; 19 & 20 V. c. 88, s. 50; 40 & 41 V. c. 48, s. 2; 43 & 44 V. c. 11, s. 2: — of Durham, 24 & 25 V. c. 82, s. 13.

EMPANEL. — *V.* PANEL.

EMPIRIC. — *V.* QUACK.

EMPLOY. — A contract "to employ" does not, generally, mean to find actual employment; it rather means, to retain and pay a person, whether employed or not, but if employed then to be employed in the work only in respect of which the contract is made. "Medical advisers may be employed at a salary to be ready in case of illness; members of theatrical establishments in case their labours should be needed; household servants in performance of their duty when their masters wish: in these and other similar cases the requirement of actual service is distinct from the employment by the party employing" (per Parke, B., delivering jdgmt of the Ex. Cham. in *Elderton* v. *Emmens*, 17 L. J. C. P. 309; 6 C. B. 176, 177; affd nom. *Emmens* v. *Elderton*, 13 C. B. 495; 4 H. L. Ca. 624). In an agreement to "*retain and employ*," "employ" means only to "retain" in the service "and is mere tautology" (per Parke, B., *Ib.* 13 C. B. 532; 4 H. L. Ca. 668). *Vh*, *Whittle* v. *Frankland*, 2 B. & S. 49: *Turner* v. *Goldsmith*, cited AGENT: *thlc* distd *Turner* v. *Sawdon*, 1901, 2 K. B. 653; 70 L. J. K. B. 897.

"In his employ"; *V.* SERVANT.

A person in the "employ" of a Creditor or his Solr, R. 154, Bankry Rules, 1886, may be one employed *pro hac vice* (*Ex p. Branfill, Re Blackman*, 40 W. R. 670).

V. EMPLOYED: EMPLOYMENT.

EMPLOYED. — "Person employed under the Post Office," s. 26, 7 W. 4 & 1 V. c. 36; "The term 'employed' in this statute, means 'engaged or occupied'" (per Parke, B., *R.* v. *Reason*, 23 L. J. M. C. 13; Dears. 226), and it was there held that a person who, at a postmaster's request, gratuitously assisted him in sorting letters was within the section.

Digitized by Google

Buildings used by the City Lieutenancy for arms and stores of Militia, are "employed for Her Majesty's use or service," within s. 6, 18 & 19 V. c. 122 (*R.* v. *Jay*, 8 E. & B. 469; nom. *Jay* v. *Hammon*, 27 L. J. M. C. 25)

"Employed for the purpose or in the capacity of a CLERK or Servant," s. 68, 24 & 25 V. c. 96; a son who lived with and gratuitously assisted his father as Clerk to a Local Board, was held to have been "employed" by the father (*R.* v. *Foulkes*, 44 L. J. M. C. 65; L. R. 2 C. C. R. 150; 23 W. R. 696; 39 J. P. 501).

Solicitor "employed," s. 28, 23 & 24 V. c. 127; *V. Baile* v. *Baile*, L. R. 13 Eq. 497; 41 L. J. Ch. 300; 20 W. R. 534; 26 L. T. 283: RECOVERED OR PRESERVED.

The phrase "employed in a Mine," s. 18, Coal Mines Regn Act, 1872, means employed *by the mine-owner* (*Hopkinson* v. *Caunt*, 54 L. J. Q. B. 284; 14 Q. B. D. 592).

"Persons employed on or about" a Mine, as this phrase is used in a Special Rule for the due management of the Mine, include those so employed who have discharged themselves whilst in the Mine, and the character of being so employed attaches to such until they get out of the Mine or until a reasonable time has elapsed before they are let out (*Higham* v. *Wright*, 46 L. J. M. C. 223; 2 C. P. D. 397).

Stevedore "appointed by charterers, but employed and paid by the Ship-owners," is the servant of the latter to this extent, — they cannot recover DEMURRAGE if the Stevedore is in default (*Harris* v. *Best-Ryley*, 68 L. T. 76; 7 Asp. 276; 9 Times Rep. 149).

CHILD "employed" in PRINT-WORKS; *V. Hardcastle* v. *Jones*, 3 B. & S. 153; 32 L. J. M. C. 49; 7 L. T. 322; 11 W. R. 36: *Hoyle* v. *Oram*, 12 C. B. N. S. 124; 31 L. J. M. C. 213.

Child "employed" in a WORKSHOP, or FACTORY; *V. Beadon* v. *Parrott*, 40 L. J. M. C. 200; L. R. 6 Q. B. 718; 19 W. R. 1144: WORK.

Stat. Def., — 7 & 8 V. c. 15, s. 73; 26 & 27 V. c. 40, s. 2; 30 & 31 V. c. 146, s. 4.

Seaman "employed or engaged on Board" ship; *V.* SEAMAN.

Contract to pay freight so long as SHIP "employed"; *V. Ripley* v. *Scaife*, 5 B. & C. 167.

The exemption from TURNPIKE Toll when a horse, &c, is "employed" in carrying Manure, s. 1, 5 & 6 W. 4, c. 18, applied whether the manure was for the land of the person for whom it was being carried or for sale (*R.* v. *Freke*, 5 E. & B. 944; 25 L. J. M. C. 64; 26 L. T. O. S. 236; 4 W. R. 264: *Foster* v. *Tucker*, 39 L. J. M. C. 72; L. R. 5 Q. B. 224). An Officer's Private Carriage which he chooses to use when on duty, is not "employed" in MILITARY SERVICE, within s. 143, Army Act, 1881 (*Craig* v. *Nicholas*, 1900, 2 Q. B. 444; 69 L. J. Q. B. 608; 82 L. T. 765; 49 W. R. 48; 64 J. P. 569).

V. EMPLOY: EMPLOYER: EMPLOYMENT: ENGAGE: CAPITAL EMPLOYED: COASTING TRADE: HOWEVER: FOLLOW.

Digitized by Google

EMPLOYER.—Stat. Def., 37 & 38 V. c. 48, s. 7; Employers' Liability Act, 1880, s. 8; Workmen's Comp Act, 1897, s. 7 (2).

As to who is the "Employer" under 38 & 39 V. c. 90, and Employers' Liability Act, 1880, *V. Marrow* v. *Flimby, &c Co*, 1898, 2 Q. B. 588; 67 L. J. Q. B. 976; 79 L. T. 397. In this connection, a man may serve two masters; *V.* per Williams, L. J., *Ib.*

An "Employer" under Agricultural Children Act, 1873, 36 & 37 V. c. 67, must occupy "not less than one acre of land" (s. 4).

EMPLOYMENT.—"Contract or Employment"; *V.* Contract.

"Contract or Employment," "Office, Commission, Place, or Employment"; *V.* Office.

"Public Office or Employment"; *V.* Public Office.

"Employment" in Workmen's Comp Act, 1897; *V.* Employer: Average Weekly Earnings.

A Ry Ticket Collector, having collected all the tickets from the passengers, stood on the foot-board of the train, just as it was starting, to speak to a friend in the train; the train moved, and in getting off the foot-board the collector fell and was caught between the train and the platform and killed; held, that the accident did not "arise *out of and in the course of*" the Collector's "Employment," for what he was then doing was for his own pleasure (*Smith* v. *Lanc. & Y. Ry*, 1899, 1 Q. B. 141; 68 L. J. Q. B. 51; 79 L. T. 633; 47 W. R. 146: *Vf, Holness* v. *Mackay*, 1899, 2 Q. B. 319; 68 L. J. Q. B. 724; 80 L. T. 831; 47 W. R. 531); but an emergency service, though not in the scope of a workman's employ, is "in the Course of his Employment" (*Rees* v. *Thomas*, 1899, 1 Q. B. 1015; 68 L. J. Q. B. 539; 80 L. T. 578; 47 W. R. 504). So, a person's Employment may begin before, and continue after, his actual work, *e.g.* a collier's begins when he leaves the bank of the pit and does not end till he gets back there, or a Railway Servant's begins when he gets into the train by which his masters have agreed to carry him to his work, and, *semble*, does not end till he has finished his return journey (*Holmes* v. *G. N. Ry*, 1900, 2 Q. B. 409; 69 L. J. Q. B. 854; 83 L. T. 44; 48 W. R. 681; 64 J. P. 532: *Cp, Higham* v. *Wright*, cited Employed).

An accident caused by Disobedience to orders, cannot be "in the Course of" employment (*Lowe* v. *Pearson*, 1899, 1 Q. B. 261; 68 L. J. Q. B. 122; 79 L. T. 654; 47 W. R. 193: *Va* Accident).

Vf, Harrison v. *Whitaker*, 64 J. P. 54: *McNicholas* v. *Dawson*, 1899, 1 Q. B. 773; 68 L. J. Q. B. 470; 80 L. T. 317; 47 W. R. 500: Workman.

Employment "for the purposes of Gain"; *V.* Gain.

Employment and Working for Hire, quà Factory and Workshop Act, 1901; *V.* s. 152.

V. Common Employment: Customary Employment: Industrial Employment: Serious.

Digitized by Google

EMPOWER. — *V.* AUTHORISE: PRECATORY TRUST.

EMPOWERED. — *V.* MAY: SHALL AND LAWFULLY MAY.

EMPTY. — A Gale liable to be forfeited to the Crown for non-working, under s. 29, Dean Forest (Mines) Act, 1838, 1 & 2 V. c. 43, is not *empty* till the Officer of the Crown has exercised the option to forfeit the Gale (*James* v. *Young,* 53 L. J. Ch. 793; 27 Ch. D. 652).
Cp EXHAUSTED.

ENABLE. — To "enable" means, to give power to do something, but does not connote a compulsion to some one else to concur therein. "'Enable,' in itself, has the primary meaning, in the case of a person under any Disability as to dealing with another, of removing that disability; not of conferring a compulsory power as against that other" (per Rigby, L. J., *West Derby* v. *Metrop. Life Assrce,* 66 L. J. Ch. 208). Therefore, though s. 2, 34 V. c. 11, "enables" Poor Law Guardians to redeem current loans, it does not give them power to do so compulsorily as against the lenders (*S. C.* 1897, A. C. 647; 66 L. J. Ch. 726; 77 L. T. 284; 61 J. P. 820).
Gift to Trustees "in order to enable them" to bring-up Children; *V.* *Pearman* v. *Pearman,* 33 Bea. 394.

ENABLING. — "IN EXERCISE of the power thereby reserved, and of all other powers enabling me in this behalf"; as to the comprehensiveness of this phrase, *V.* *Southall* v. *Jones,* 28 L. J. P. & M. 112; 1 Sw. & Tr. 298: *secus, Re Porter,* 59 L. J. Ch. 599; 45 Ch. D. 179; 63 L. T. 431.

ENCHANTMENT. — *V.* CONJURATION.

ENCLOSE. — *V.* INCLOSE.

ENCLOSED LANDS. — *V.* INCLOSED LANDS.

ENCLOSING WALLS. — *V.* INCLOSING WALLS.

ENCLOSURE. — A permission, — *e. g.* by a Lord of the Manor, — to occasionally erect a temporary circus on a small part of a Waste, is not an "Enclosure or ENCROACHMENT" on the Waste, within an Act for its free preservation (*Malvern Hill Conservators* v. *Foley,* 4 Times Rep. 672).
V. INCLOSURE: PARCEL: SURFACE.

ENCROACHMENT. — An Encroachment is "an unlawful gaining upon the right or possession of another man" (Jacob, cited by counsel, *Easton* v. *Richmond,* L. R. 7 Q. B. 73). Jacob's def follows that in Termes de la Ley.
V. ENCLOSURE.

Digitized by Google

ENCUMBRANCE. — *V.* Incumbrance.

END. — When a person has to do a thing "at the End" of a period of Time, — *e.g.* claim "at the end of the year," repayment of Income Tax under s. 133, 5 & 6 V. c. 35, — that does not mean that he is to do it at any time, or within a reasonable time after such period; "but it is to be done in the shortest time a person can do it if he has made every exertion which (in the particular case) he ought to have made" (per Esher, M. R., *R.* v. *Income Tax Commrs*, 57 L. J. Q. B. 516; 21 Q. B. D. 313; 59 L. T. 455; 36 W. R. 776); so, *semble*, as to a Re-Arrangement of a Ry Working Agreement "at the end" of a stated period (*Eastern & Midlands Ry* v. *Mid. Ry*, 4 Ry & Can Traffic Ca. 344, 345).

The "End" of a Term of years granted by a Lease, means its ceasing in any way in accordance with the provisions of the lease; but (probably) not including its abrupt Determination under a clause of Forfeiture. Thus, where a Lease for 21 years gave the Lessee an option (which he exercised) to determine it at the end of the 14th year, the Lessor was held liable to pay for specified tenant's improvements which the lease provided he was to pay for "at the End" of the term, although there were other clauses in the lease which spoke of "the End, *or other Sooner Determination*" of the Term (*Bevan* v. *Chambers*, 12 Times Rep. 417).

"End of the Current Year," in a Notice to Quit; *V. Wride* v. *Dyer*, cited Current.

V. Expiration.

The shorter sides of an oblong quadrilateral "would be commonly spoken of as 'Ends'" (*Read* v. *Lincoln, Bp*, 1892, A. C. 644; 62 L. J. P. C. 1; 67 L. T. 128; 56 J. P. 725). *V.* Side.

"At the Foot or End"; *V.* Foot.

"End of Highway," s. 85, Highway Act, 1835; *V. R.* v. *Surrey Jus.*, cited Highway.

ENDANGER. — *V.* Danger: Imperil.

ENDEAVOURS. — *V.* Utmost.

ENDORSE. — "'Indorsement,' is that that is written upon the backe of a Deed, as the Condition of an Obligation is said to bee indorsed, for that that is written on the backe of the obligation" (Termes de la Ley).

A direction to "endorse" anything on a document means, as a general rule, to write it on the *back* of the document (*Ackers* v. *Howard*, 55 L. J. Q. B. 278; 16 Q. B. D. 739; 54 L. T. 651; 34 W. R. 609; 50 J. P. 519: which was a decision on R. 36, Ballot Act, 1872).

But this definition is not of universal application; for it is not essential to the validity of an indorsement of a Bill of Exchange or Promissory Note that it should be on the back of the document; it may equally well

Digitized by Google

be on the face (Byles on Bills, 14 ed., 171, citing *R.* v. *Bigg*, 1 Stra. 18; 3 P. Wms. 419: *Ex p. Yates*, 27 L. J. Bank. 9: *Yarborough* v. *Bank of England*, 16 East, 12). So s. 32 (1), Bills of Ex. Act, 1882, says that an Indorsement "must be written *on* the Bill itself." *Vf*, as to the requisites of an Indorsement of a Bill or Note, ss. 32 to 37 of that Act; and as to liability of an Indorser, s. 55 (2): SANS RECOURS.

In *R.* v. *Fitzroy-Cowper* (cited SIGNED), "endorse" was held equivalent to "sign."

V. INDORSEMENT: NEGOTIATE.

ENDOW.—*V.* ENDOWMENT, for its primary meaning; *Vf* Exodus, xxii. 16. A bequest "to endow" an Institution does not offend the law of mortmain (*Edwards* v. *Hall*, 25 L. J. Ch. 82; 11 Hare, 1; 6 D. G. M. & G. 74; 4 W. R. 38). In that case Cranworth, C., in giving jdgmt said,—"By the Endowment of a School, an Hospital, or a Chapel, is commonly understood not the building, or providing a site for, a school or hospital or chapel; but the providing of a fixed revenue for the support of those by whom the Institutions are conducted": a def which applies whether the Institutions are present or future (*Sinnett* v. *Herbert*, 7 Ch. 232: *Chamberlayne* v. *Brockett*, 8 Ch. 206). *Vf*, *Kirkbank* v. *Hudson*, 7 Price, 212: *Re Robinson*, 1892, 1 Ch. 95; 61 L. J. Ch. 17; 66 L. T. 81; 40 W. R. 137: Tudor Char. Trusts, 410, 413: 1 Jarm. 228, 230: PROVIDE: FOUND: ERECT. *Cp*, ESTABLISH.

ENDOWED.—"Endowed INSTITUTION," quà Endowed Institutions (Scot) Act, 1878, 41 & 42 V. c. 48, "means a School, Hospital, or other Institution, WHOLLY or partly maintained by means of any ENDOWMENT; and includes a mortification or bequest for Educational or Charitable uses, or for uses partly educational and partly charitable, or for the establishment or maintenance of a PUBLIC LIBRARY" (s. 3). This Act repealed by Statute Law Revision Act, 1883.

"Endowed SCHOOL," quà "The Endowed Schools Acts, 1869 to 1889" (*V.* Sch 2, Short Titles Act, 1896), "means a School which is (or, if it were not in abeyance, would be) WHOLLY or partly maintained by means of any ENDOWMENT; provided that a School belonging to any person or body corporate shall not by reason only that Exhibitions are attached to such School be deemed to be an Endowed School" (s. 6, 32 & 33 V. c. 56). *Vh.* 5 Encyc. 16–21.

"Endowed Schools Commrs"; *V.* COMMISSIONERS.

ENDOWMENT.—"'Indowment,' signifies properly the giving or assigning of DOWER to a woman. But it is sometimes, by a metaphor, used for the setting-out or severing of a sufficient part or portion to a Vicar for his perpetuall maintenance when the BENEFICE is appropriated. And so it is used in 15 Rich. 2, c. 6, and 4 H. 4, c. 12" (Termes de la Ley). In this latter sense "'Endowment,' properly means, the grant of

Digitized by Google

Lands or Tithes to a Spiritual Person or Body to enable him to discharge the spiritual functions of his cure" (per Crampton, J., *Shaw* v. *Woods*, 5 Ir. Com. Law Rep. 165). *Vf*, *Re St. John Street Chapel*, 62 L. J. Ch. 927; 1893, 2 Ch. 618.

Quà Charitable Trusts Act, 1853, 16 & 17 V. c. 137, "'Endowment' shall mean and include all Lands and Real Estate whatsoever of any tenure, and any Charge thereon or Interest therein, and all Stock, Funds, Money, Securities, Investments, and Personal Estate whatsoever which shall, for the time, belong to or be held in trust for any Charity, or for all or any of the objects or purposes thereof" (s. 66). Those words "mean that all Property of every description belonging to, or held in trust for, a Charity (and whether held upon trusts or conditions which render it lawful to apply the Capital to the maintenance of the Charity, or upon trusts which confine that charitable application to the Income) is an 'Endowment,' within the meaning of the Act" (*Re Clergy Orphan Corp*, 1894, 3 Ch. 151; 64 L. J. Ch. 66; 71 L. T. 450; 43 W. R. 150; hereby giving a larger interp than that of Romilly, M. R., in *Corp for Relief of Widows and Children of the Clergy* v. *Sutton*, 27 Bea. 651; nom. *Corp of the Sons of Clergy* v. *Sutton*, 29 L. J. Ch. 393: *Vf*, *Sons of Clergy Corp* v. *Skinner*, 1893, 1 Ch. 178; 62 L. J. Ch. 148; 67 L. T. 751; 41 W. R. 461).

But applying that interpretation to the exemption from the Act contained in s. 62, these rules apply, —

(1) "Income arising from any endowment," *primâ facie* means, Income derived from any Invested Funds;

(2) But that, — in the case of a Charity maintained "partly by Voluntary Subscriptions and partly by Income" so arising, — bequests and donations for the general purposes of a Charity which may be lawfully applied as Income consistently with the terms of the gift, are exempt;

(3) And such gifts and the income thereof are not brought within the jurisdiction of the Charity Commrs by being invested by the governing body (*Re Clergy Orphan Corp*, sup). *Vh* 39 S. J. 38.

Other Stat. Def. — quà Endowed Schools, 32 & 33 V. c. 56, s. 4; quà Endowed Institutions, 41 & 42 V. c. 48, s. 3; quà London Parochial Charities, 46 & 47 V. c. 36, s. 53.

An alternative bequest to "such other Charitable Endowment" as may be preferred, "must be taken to mean a *lawful* charitable endowment" and one not infringing the law of Mortmain (per Wood, V. C., *Salusbury* v. *Denton*, 26 L. J. Ch. 853; 3 K. & J. 529).

V. Charity: Charitable Trust: Endow: Educational Endowment: Private Endowment.

ENEMY. — Pirates "are never recognized as Enemies, the word 'Enemy' applying to States" (1 Maude & P. 487): A State is an Enemy when we are at War with it.

Digitized by Google

Quà Army Act, 1881, "'Enemy,' includes all Armed Mutineers, Armed Rebels, Armed Rioters, and Pirates" (subs. 20, s. 190).

The word "Enemies," or "King's Enemies," or "Queen's Enemies," in Bills of Lading and Charter Parties, is, probably, confined to the Enemies of the Sovereign of the stipulator; it certainly includes them; RESTRAINTS OF KINGS being generally added to comprise every other case of interruption by lawful authority (*Russell* v. *Niemann*, 34 L. J. C. P. 10; 17 C. B. N. S. 163). *Vf*, QUEEN'S ENEMIES: ALIEN.

ENERGY.—"Electrical Energy"; Stat. Def., 62 & 63 V. c. 19, Sch s. 1. *V.* ELECTRIC: POWER.

ENFEOFF.— *V.* FEOFFMENT.

ENFORCE.—To seek to "enforce" a Contract AFFECTING land, R. 1 (*b*), Ord. 11, R. S. C., means to seek its Specific Performance (per Smith, J., *Agnew* v. *Usher*, 54 L. J. Q. B. 371; 14 Q. B. D. 78; 51 L. T. 576; 33 W. R. 126). But this narrow construction was questioned by Charles, J., in *Kaye* v. *Sutherland* (20 Q. B. D. 151), and in *Tassell* v. *Hallen* (36 S. J. 202) Collins, J., said "'enforced' must refer not merely to an action for specific performance, but also for breach of covenant."

To "enforce *and put in execution*" a Jdgmt; *V. Ex p. Holden*, 13 C. B. N. S. 641; 32 L. J. C. P. 111; 7 L. T. 791.

Order "may be enforced," R. 24, Ord. 42, R. S. C., "includes enforcing by Action as well as by Execution" (per Lindley, M. R., *Pritchett* v. *English & Colonial Syndicate*, 1899, 2 Q. B. 428; 68 L. J. Q. B. 801; 81 L. T. 206; 47 W. R. 577, citing *Re Boyd*, cited FINAL JUDGMENT: *Godfrey* v. *George*, 1896, 1 Q. B. 48; 65 L. J. Q. B. 249).

A Rule requiring a Court to "*enforce Obedience*" to its provisions, does not justify a committal without a previous Order requiring obedience (*Re Royle*, 50 L. J. Q. B. 656).

ENFRANCHISEMENT.— *V.* Litt. s. 204: Co. Litt. 137 a, b: Termes de la Ley.

Quà Copyhold Act, 1894, 57 & 58 V. c. 46, "'Enfranchisement' includes the discharge of FREEHOLD lands from heriots and other manorial rights" (s. 94).

Compensation for loss "by the Enfranchisement" of Copyholds (end of s. 96, Lands C. C. Act, 1845), is not to be assessed as at the date of the execution of the Enfranchisement Deed, but as at the date when the Right to the Enfranchisement arose (*Lowther* v. *Caledonian Ry*, 61 L. J. Ch. 108; 1892, 1 Ch. 73).

ENGAGE.—To "engage" to do anything "has the same force as the word 'Covenant'" (per Parke, B., *Rigby* v. *G. W. Ry*, 15 L. J. Ex. 62; 14 M. & W. 816).

Digitized by Google

"Employed or Engaged"; *V.* Seaman.

A Patentee is, *semble*, "engaged *in*" business relating to the patented goods, so long as he receives royalties, even though he does not himself manufacture (*Re Ralph*, 53 L. J. Ch. 188; 25 Ch. D. 194). *V.* Carry on: Concerned in: Interested in.

"Engaged *in Working*" a Mine, s. 81, Comp Act, 1862, means, is, or has been, engaged in working, or now or formerly engaged in working (*Re Silver Valley Mines*, 18 Ch. D. 472): *Vthc*, *Re New Terras Co* (1894, 2 Ch. 344; 63 L. J. Ch. 398), where it was pointed out that the phrase is replaced by "formed for Working," s. 1 (4), 53 & 54 V. c. 63.

V. Employed.

ENGAGEMENT. — "All Engagements"; *V. Jones* v. *McCraw*, W. N. (71) 141.

"Money payable under any Engagement," in def of "Personal Property," s. 1, Sucn Dy Act, 1853; *V. A-G.* v. *Montefiore*, 21 Q. B. D. 461; 59 L. T. 534; 4 Times Rep. 658. *V.* Accruing.

Marine Policy "to cover Freight from the time of the Engagement of the Goods," does not widen the risk covered if the Policy is "at and from" a place (*V. The Copernicus*, cited At and from).

Attack on, or Engagement with, Pirates; *V.* Attack.

The "Engagement" of an Actor leaves him his Sundays free (*Kelly* v. *London Pavilion*, cited Perform).

ENGINE. — This word, derived from *ingenium*, includes a Snare; and a Snare is accordingly within s. 3, Game Act, 1831, 1 & 2 W. 4, c. 32 (*Allen* v. *Thompson*, 39 L. J. M. C. 102; L. R. 5 Q. B. 336: *Vthc*, *Jones* v. *Davies*, cited Other).

The word "Engine" is to be "found, for the first time, in 9 G. 3, c. 29, where it is confined to Engines for draining mines, or drawing coals out of coal-mines" (6 M. & S. 185). In 1812 the legislature used it in two different senses; — (1) As indicating a moveable Utensil (52 G. 3, c. 16, on *whv* 54 G. 3, c. 42), (2) As indicating a large structure for carrying on a manufactory, and, ejusdem generis with "Erection" or "Building," and, therefore, as not including Frames for making Lace only fixed to the floor of a factory to keep them steady when at work (52 G. 3, c. 130, expounded by *Orgill* v. *Smith*, 6 M. & S. 182, cited also Demolish).

Erect a Steam Engine; *V.* Erect.

V. Fixed Engine: Locomotive Engine: Machine.

ENGINEER. — *V.* Civil Engineer: Principal Engineer.

ENGINEERING WORK. — A Bridge forming part of the Line of a Railway, is an "Engineering Work," within s. 14, Ry C. C. Act, 1845 (*A-G.* v. *Tewkesbury Ry*, 32 L. J. Ch. 482).

Digitized by Google

"Engineering Work," s. 7 (1, 2), Workmen's Comp Act, 1897; *V. Chambers* v. *Whitehaven Harbour Commrs,* cited In or About: *Cosgrove* v. *Partington,* 64 J. P. 788; 17 Times Rep. 39.

ENGLAND.—"Except where the jurisdiction has been extended by an Act of Parliament, 'England,' and the sovereignty of the Queen, stop at Low-Water Mark" (per Coleridge, C. J., *Harris* v. *The Franconia,* 46 L. J. C. P. 363; 2 C. P. D. 173; thus interpreting the decision in *R.* v. *Keyn,* 46 L. J. M. C. 17; 2 Ex. D. 63). *V.* Realm: Sea Coast.

"England," includes Wales (7 H. 8, c. 26).

"England," in an Act of Parliament, includes Wales and Berwick-upon-Tweed (20 G. 2, c. 42, s. 3: *Va,* 6 & 7 W. 4, c. 79, s. 64; 5 & 6 V. c. 35, s. 192; 9 & 10 V. c. 56, s. 3); but not Scotland or Ireland (*Ex p. Cunningham, Re Mitchell,* 53 L. J. Ch. 1067), unless by an Interp Clause, *e.g.* s. 17, 52 & 53 V. c. 72. *Cp,* Great Britain: United Kingdom: British Islands.

Quà Colonial Clergy Act, 1874, 37 & 38 V. c. 77, "England," includes, "the Isle of Man and the Channel Islands" (s. 14).

An English Ship on the High Seas is a part of England; therefore, an Affiliation Order may be obtained in respect of an illegitimate child born on such a ship (*Marshall* v. *Murgatroyd,* 40 L. J. M. C. 7; L. R. 6 Q. B. 31). *Vf, Seagrove* v. *Parks,* 1891, 1 Q. B. 551; 60 L. J. Q. B. 355.

Church of England; *V.* Church.

"District of England"; *V.* District.

ENGLISH.—"The English *Channel District,*" quà Mer Shipping Acts, comprises, "the Seas between Dungeness and the Isle of Wight" (s. 370 (2), 17 & 18 V. c. 104, repld s. 618 (1, ii), 57 & 58 V. c. 60). *Cp* London District.

The words "'English Marriage' are capable of two very different meanings,—(1) As signifying the substance of the contract or union between the parties out of which their rights as Spouses arise, or (2) As signifying the mere place of celebration" (per Ld Watson, *Harvey* v. *Farnie,* 52 L. J. P. D. & A. 33; 8 App. Ca. 43). *Cp* British Seaman.

Note.—As to the inefficiency of a Foreign Divorce on a Marriage celebrated in England, *V. R.* v. *Lolley,* Russ. & Ry. 237: *Green* v. *Green,* 1893, P. 89; 62 L. J. P. D. & A. 112.

The "English *Weight*" of a Quarter of Barley is 400 lbs. (*Dreyfus* v. *Allen,* 9 Times Rep. 1).

ENGRAVE.—"Truly engraved with the name of the Proprietor," s. 1, 8 G. 2, c. 13; *V.* Name.

ENGRAVING.—*Semble,* Prints and Coloured Prints are "Engravings," within the Carriers Act, 1830 (*Boys* v. *Pink,* 8 C. & P. 361). *V.* Painting: Picture: Copy.

Digitized by Google

ENGROSSER.—*V.* INGROSSER: REGRATOR.

ENHERITANCE.—*V.* INHERITANCE.

ENJOINED.—*V.* PRECATORY TRUST.

ENJOY.—*V.* BEGIN: PURCHASE: UNDERTAKE, 2nd par.

ENJOYED.—*V.* APPURTENANCES: PASTURAGE: RIGHT: WAYS: HELD: ACTUALLY ENJOYED.

Where a testator gives his Residence "with the lands thereunto BELONGING, *as now enjoyed by me,*" he includes those lands which he has connected in enjoyment, although not connected in title (*Bodenham* v. *Pritchard*, 1 B. & C. 350: *Vthc, Polden* v. *Bastard*, cited OCCUPATION). In *Bodenham* v. *Pritchard*, Bayley, J., said that, "thereunto belonging" may, "in its popular and more comprehensive sense, include all that is united in occupation, although not connected in title."

Easement "enjoyed *by*"; *V.* BY.

ENJOYMENT.—As to the meaning of an Enjoyment under the Prescription Act, 1832, 2 & 3 W. 4, c. 71; *V.* RIGHT: ACTUALLY ENJOYED: *Cooper* v. *Hubbuck*, 12 C. B. N. S. 456; 31 L. J. C. P. 323: *Beytagh* v. *Cassidy*, 16 W. R. 403: *Battishill* v. *Reed*, 18 C. B. 696; 25 L. J. C. P. 290: *Onley* v. *Gardiner*, 4 M. & W. 496.

V. ACTUAL: BENEFICIAL: FULL ENJOYMENT: IMMEDIATE USE OR ENJOYMENT.

ENLARGE.—"For the purpose of enlarging a CHURCH," &c, s. 3, 47 & 48 V. c. 72; *V. Re St. James the Less, Bethnal Green*, 1899, P. 55.

To "enlarge" a MARKET, means "to increase the space in which the Market is held" (per Ld Chelmsford, *A-G.* v. *Cambridge*, L. R. 6 H. L. 310; 22 W. R. 38); it was there held that, under the power given by the Cambridge Market Act, 1850, to "enlarge" their Market, the Corporation were authorised to extend the Market to streets in the neighbourhood of the ordinary market-place.

"Enlargement of Term into Fee Simple"; Stat. Def., Yorkshire Registries Act, 1884, 47 & 48 V. c. 54, s. 3, applying s. 65, Conv & L. P. Act, 1881.

ENLIST.—To "enlist" is to accept or agree to accept a "commission or engagement in the Military or Naval Service" of the Crown (*V.* s. 4, Foreign Enlistment Act, 1870, 33 & 34 V. c. 90). *V.* MILITARY SERVICE: NAVAL SERVICE.

"Enlisted" in the Regular Forces; *V.* s. 80 (4 *b*), Army Act, 1881.

ENQUIRY.—*V.* INQUIRY: REQUISITION: INQUEST.

ENROL.—"Admit or enrol"; *V.* ADMIT.

"Enrolled Law Agent"; Stat. Def., 36 & 37 V. c. 63, s. 1; 59 & 60 V. c. 49, s. 1.

Digitized by Google

ENTAIL. — As to what words create an Entail; *V.* HEIRS; HEIRS OF THE BODY: TAIL: MALE: PROPER ENTAIL.

For an example of an Entail being construed from the general structure of a Will, *V. Crumpe* v. *Crumpe,* 1899, 1 I. R. 359; affd in H. L., 1900, A. C. 127; 69 L. J. P. C. 7.

"In a Course of Entail"; *V.* COURSE.

"Deed of Entail"; *V.* DEED.

"The Entail Acts"; *V.* Sch 2, Short Titles Act, 1896.

ENTAILED. — *V.* TO BE ENTAILED: TO BE SETTLED.

"Entailed Estate," in Scotland; Stat. Def., 11 & 12 V. c. 36, s. 52; 16 & 17 V. c. 94, s. 25; 31 & 32 V. c. 84, s. 2; 38 & 39 V. c. 61, s. 3.

ENTER. — "The word 'enter' (quà BURGLARY and HOUSEBREAKING), means, the entrance into the house of any part of the offender's body, or of any instrument held in his hand for the purpose of intimidating any person in the house, or of removing any goods; but does not include the entrance of part of an instrument used to break the house open" (Steph. Cr. 248). *Vf,* Arch. Cr. 601: Rosc. Cr. 319.

"Enter into a RECOGNIZANCE," quà Application of Acts to Scotland, generally means, grant a Bond of Caution, *e.g.* 41 & 42 V. c. 49, s. 74; 52 & 53 V. c. 44, s. 17; 57 & 58 V. c. 41, s. 26. *Vf,* 35 & 36 V. c. 76, s. 61, c. 93, s. 56.

To "enter on a REFERENCE," means, "not merely making an appointment to hear the parties but, actually beginning to hear them"; the time limit is "reckoned, — not from when the Arbitrator accepted the office or took upon himself the functions of arbitrator by giving notice of his intention to proceed but, — from when he entered into the matter of the Reference, either with both parties before him or under a peremptory appointment enabling him to proceed *ex parte*" (per Stirling, J., *Baring-Gould* v. *Sharpington Syndicate,* 1898, 2 Ch. 633; 67 L. J. Ch. 622; 79 L. T. 185; 47 W. R. 23, stating the effect of *Baker* v. *Stephens,* 36 L. J. Q. B. 236; L. R. 2 Q. B. 523; 15 W. R. 902; 8 B. & S. 438). *Cp* "Called on to act," sub CALLED.

V. ENTRY.

ENTERED. — *V.* SIGNED, ENTERED, OR OTHERWISE PERFECTED.

If Lessee "have entered," s. 2, 12 & 13 V. c. 26; *V. Sutherland* v. *Sutherland,* 62 L. J. Ch. 953; 1893, 3 Ch. 169.

ENTERED IN RELIGION. — "'*Entered and professed in religion.*' It is to be observed, that a man doth enter into religion at his first comming, and liveth under obedience; but he is not professed, till a yeare be past, or some time of probation. And he is said to be professed, when he hath taken the habit of religion, and vowed three things,

Digitized by Google

obedience, wilfull poverty, and perpetual chastity. And therefore our author saith here (s. 200), *entred and professed*" (Co. Litt. 131 b, 132 a). *Cp* ABJURATION.

ENTERING OR BEING. — This phrase, in the Game Acts (1 & 2 W. 4, c. 32, s. 30; 9 G. 4, c. 69, s. 1), constitutes but one offence (*R.* v. *Mellor*, 2 Dowl. P. C. 173), and means, a personal and not a constructive entry, and does not include the mere sending a dog into a cover or firing into it (*R.* v. *Pratt*, 24 L. J. M. C. 113: *Mayhew* v. *Wardley*, 8 L. T. 504). *V.* SEARCH.

ENTERTAINMENT. — By 23 & 24 V. c. 27, s. 6, a REFRESHMENT-HOUSE requiring a license is a building "kept open for Public Refreshment, Resort, and *Entertainment.*" "Entertainment" as there used, means, "not diversion or amusement but, the provision of food, drink, and whatever else might be reasonably required for the *personal* comfort of guests" (*Taylor* v. *Oram*, 31 L. J. M. C. 252; 1 H. & C. 370; 7 L. T. 68; 10 W. R. 800; 27 J. P. 8); *e.g.* cigars, coffee, ginger-beer or lemonade, the provision of which does not cease to be "Entertainment" because no seats are provided for their more comfortable consumption (*Muir* v. *Keay*, 44 L. J. M. C. 143; L. R. 10 Q. B. 594: *Howes* v. *Inl. Rev.*, 45 L. J. M. C. 86; 46 Ib. 15; 1 Ex. D. 385). A Temperance Hotel is a Refreshment-house within the section (*Kelleway* v. *Macdougal*, 45 J. P. 207).

In *Taylor* v. *Oram*, sup, Pollock, C. B., said that "Entertainment" in the section then being construed "refers to bodily not mental gratification"; but he also said that, "with reference to some other Acts of Parliament, I should be strongly disposed to think the word meant amusement and gratification of some sort, other than food, meat, and drink"; and accordingly the prohibition in Bishop Porteous' Act, *i.e.* the Sunday Observance Act, 1780, 21 G. 3, c. 49, against the opening of places "for Public Entertainment or Amusement" on Sunday, is offended by an Aquarium (without a band of music) in connection with which is a museum, a reading-room (without newspapers), and a restaurant (*Terry* v. *Brighton Aquarium Co*, 44 L. J. M. C. 173; L. R. 10 Q. B. 306: *Warner* v. *Brighton Aq. Co*, 44 L. J. M. C. 175; L. R. 10 Ex. 291), or by a Lecture (illustrated by limelight representations) on Art, Science, Literature, or Sociology, though not for profit (*Reid* v. *Wilson*, 1895, 1 Q. B. 315; 64 L. J. M. C. 60; 71 L. T. 739; 43 W. R. 161; 59 J. P. 516). But a place duly and honestly registered as a place of Public Worship, in which no music but sacred is performed or sung, where nothing dramatic is introduced, where the discourses delivered are intended to be instructive, and contain nothing hostile to religion, where the objects of the promoters may be either to advance their own views of religion or to make science the handmaid of religion, is not used for

Digitized by Google

"Public Entertainment or Amusement" within Porteous' Act (*Baxter* v. *Langley*, 38 L. J. M. C. 1; L. R. 4 C. P. 21). *V.* Keeper: Admitted.

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).

"*Public* Entertainment"; *V.* Public Ball: Public Dancing: Public Singing.

"Entertainment of the *Stage*," 10 G. 2, c. 28; Tumbling was not comprised herein (*R.* v. *Handy*, 6 T. R. 286). "Pepper's Ghost" is an "Entertainment of the Stage" within 6 & 7 V. c. 68, s. 23 (*Day* v. *Simpson*, 12 L. T. 386); so of a Ballet of Action, but (probably) a mere Dance on the stage is not (*Wigan* v. *Strange*, cited Stage Play).

ENTICE. — *V.* Procure.

ENTIRE. — Medical Drugs "vended Entire," Sch, Medicines Stamp Act, 1812, 52 G. 3, c. 150, *semble*, do not include a drug mixed with, or dissolved in, spirits of wine and sold in the form of a tincture (*Smith* v. *Mason*, 1894, 2 Q. B. 363; 70 L. T. 909; 63 L. J. M. C. 201; 58 J. P. 432).

Entire Contract; *V.* notes to *Cutter* v. *Powell*, 2 Sm. L. C. 1: Hudson, 181.

"Entire County"; Stat. Def., Loc Gov Act, 1888, s. 100.

"To the Entire Exclusion of the Donor," 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; 43 W. R. 118; 59 J. P. 467.

"Entire Property"; *V. Murphy* v. *Donnelly*, cited Executor.

A Contract to render a person's "Entire Services," precludes the contractor from accepting any other employment (*Woodworth* v. *Sugden*, 32 S. J. 742). *V.* Exclusively.

"'Entire *Tenancie*' is that which is contrary to Severall Tenâncie, and signifieth, a sole possession in one man, — where the other signifieth, joynt or common in more" (Termes de la Ley).

ENTITLED. — The phrase "seized, or possessed of, or *entitled to*," very frequently occurs in Settlements and Wills, and other instruments where undefined property is dealt with by general words. Let us take the words in their order: —

"*Seized.*" — When you use the word "seized" it is obvious that this is the verb correlative with the Anglo-Norman noun "seizin." "Seizin" means the actual possession of an hereditament, and was that ceremony by which, in feudal times, the relationship of lord and vassal was consummated. A person acquires the seizin "either by his own entry, or by the possession of his own or his ancestor's lessee for years, or by receiving rent from a lessee of the freehold, or what is equivalent to corporal seizin in hereditaments that are incorporeal, such as the receipt of rent,

Digitized by Google

a presentation to the church in case of an advowson, and the like" (2 Bl. Com. 209: *Vf* SEIZED). To speak, therefore, of an equitable seizin seems inaccurate, — seizin, by the force of the term, implying the LEGAL, immediate, and corporeal, possession of a corporeal hereditament, or the nearest approach thereto of an incorporeal hereditament.

"*Possessed of.*" — These words, when following "seized," as in the phrase under notice, seem to be coloured by that word so far as to be made to mean, having an interest in possession in the thing possessed. The action of the word "possessed" seems to be equivalent to that of "seized," the difference between the two consisting in the subjects on which they respectively operate. "Seized" applies to the legal interest in realty; "possessed of" applies to every other kind of property or interest *in possession, e.g.* an equitable interest in realty, or a legal or equitable interest in goods, chattels, money deposited or invested, and other property, respecting which no seizin can be had (*V.* obs of Kindersley, V. C., *Wilton* v. *Colvin*, 25 L. J. Ch. 853, 854; 3 Drew. 617).

"*Entitled to.*" — These are the most comprehensive words of the phrase under notice. Under them will pass all kinds of property in which the person spoken of has any title at law or in equity; and this whether the property is in possession, reversion, or remainder (*Hughes* v. *Young*, 32 L. J. Ch. 137: *Va* obs of Kindersley, V. C., *Archer* v. *Kelly*, 29 L. J. Ch. 912); but it seems that a mere contingent interest dependent on the happening of some future event will not be comprised in the words "entitled to" (*Atcherley* v. *Du Moulin*, 2 K. & J. 186, commented on by Wood, V. C., *Hughes* v. *Young*, sup). And where a person who, — being an object of a Power of Appointment is entitled to the property in default of appointment, — conveys all the interest to which he is "entitled" under the instrument creating the Power, and afterwards the Power is executed in his favour, nothing passes by the conveyance, because he takes by the Appointment, and was, therefore, not "entitled" at the time of the conveyance (*Sweetapple* v. *Horlock*, 48 L. J. Ch. 660; 11 Ch. D. 745: *Lovett* v. *Lovett*, 1898, 1 Ch. 82; 67 L. J. Ch. 20; 46 W. R. 105; 77 L. T. 650).

Observe, that Seizin is a fact, and that its simple unqualified recital is one of fact (*Bolton* v. *London School Bd*, cited FACT); but a recital that A. is "seized of *or* otherwise well entitled to" a property, is ambiguous and creates no estoppel quà the Legal Estate (*Heath* v. *Crealock*, cited SEIZED).

In *Turner* v. *Gosset* (34 Bea. 593) the phrase "become entitled" in a bequest was, under the circumstances of that case, held to mean "become ENTITLED IN POSSESSION." It was held otherwise in *Hunter* v. *Hawke*, 29 S. J. 556. *Vf* 2 Jarm. 202, notes (*b*) and (*g*). At p. 811, Ib., it is stated that, in gifts over on death before becoming "entitled," "the word 'entitled,' like 'vested,' points *primâ facie* to the right, and not to the possession." But the cases there cited (*Commrs of Charitable*

Digitized by Google

Donations v. *Cotter*, 1 Dr. & War. 498; 2 Dr. & Wal. 615: *Henderson* v. *Kennicott*, 18 L. J. Ch. 40; 2 D. G. & S. 492) were distinguished in *Re Noyce* (55 L. J. Ch. 114; 31 Ch. D. 75; 53 L. T. 688; 34 W. R. 147); and under the circumstances of that latter case, Bacon, V. C., held that "entitled" meant "entitled in possession," and not "entitled in right"; but on a review of the foregoing cases, Kay, J., said he could extract no principle from *Turner* v. *Gossett* and *Re Noyce*, and held in the case before him that "entitled" did not mean "entitled in possession," and that "in case of A.'s death before he became entitled," meant "in case of his dying in the testator's lifetime" (*Re Crosland*, 54 L. T. 238). *Vf*, *Re Clinton*, L. R. 13 Eq. 295; 41 L. J. Ch. 191: *Jopp* v. *Wood*, 29 L. J. Ch. 406; 28 Bea. 53; 2 D. G. J. & S. 323: *Chorley* v. *Loveband*, 33 Bea. 189; 9 L. T. 596; 12 W. R. 187: *Umbers* v. *Jaggard*, L. R. 9 Eq. 200; 18 W. R. 283: *Beale* v. *Connolly*, Ir. Rep. 8 Eq. 412: Watson Eq. 1228–1230.

"Entitled," in s. 2, Sucn Dy Act, 1853, means "entitled in possession" (per Jessel, M. R., *Fryer* v. *Morland*, cited SUCCESSION: *Vh*, *De Rechberg* v. *Beeton*, 38 Ch. D. 192).

"Persons entitled," 19 & 20 V. c. 120, are those BENEFICIALLY ENTITLED (*Grey* v. *Jenkins*, 26 Bea. 351). *Cp*, ABSOLUTELY ENTITLED.

The privileges and educational advantages to which a Class of persons is "entitled," and which are to be considered in any scheme abolishing or modifying them (s. 11, Endowed Schools Act, 1869, 32 & 33 V. c. 56) are legal rights, and not benefits merely enjoyed by permission or bounty (*Re Sutton Coldfield Grammar School*, 51 L. J. P. C. 8; 7 App. Ca. 91; 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).

The provision in s. 12, 11 G. 4 & 1 W. 4, c. 65, authorising the surrender of any Lease to which an Infant is "entitled," applies as well to a lease where the infant is beneficially entitled as to one in which the legal interest is vested in him (*Re Griffiths*, 54 L. J. Ch. 742; 29 Ch. D. 248; 53 L. T. 262; 33 W. R. 728).

"So entitled," in s. 2 (6), Settled Land Act, 1882, means entitled for life (*Re Atkinson*, 55 L. J. Ch. 49; affd 31 Ch. D. 577; 54 L. T. 403; 34 W. R. 445. *Vth*, *Re Horne*, 39 Ch. D. 89).

Separate property which married woman "entitled to," s. 1 (4), M. W. P. Act, 1882; *V.* SEPARATE PROPERTY.

"Entitled under"; *V.* UNDER.

When a party to a *Contract* is "*not entitled*" to maintain an action in respect of disputes thereon until after ARBITRATION, that means that no liability shall arise until after arbitration, which, therefore, is a Condition Precedent to an action (*Viney* v. *Norwich Union Insrce*, 57 L. J. Q. B. 82).

In *Covenants to Settle*, the following canons have been extracted from the cases for the interpretation of such phrases as;—

I. "*Is now* entitled."

II. "*Shall become* entitled."

Digitized by Google

I. "Where the covenant includes property to which the wife '*is now* entitled,' or 'at the time of the marriage shall be entitled,' all reversionary interests, whether vested or contingent, to which she is entitled at the date of the Settlement or Marriage, as the case may be, are bound." *Vh, Sweetapple* v. *Horlock,* sup.

II. — 1. "Property to which the wife is entitled in possession at the date of the Settlement is not bound by the covenant, where the subject-matter of the covenant is described by words of future acquisition only (*e.g.* 'shall become entitled'); *Re Clinton,* L. R. 13 Eq. 295; 41 L. J. Ch. 191": *Vf, Re Bendy,* 1895, 1 Ch. 109; 64 L. J. Ch. 170; 71 L. T. 750; 43 W. R. 345: *Sv, Williams* v. *Mercier,* cited DURING.

2. "In the absence of special words, a covenant to settle property to which the intended wife 'shall become entitled,' will be construed to mean 'shall become entitled DURING *the coverture*'; *Re Edwards,* 9 Ch. 97; 43 L. J. Ch. 265; 22 W. R. 144, approving *Carter* v. *Carter,* L. R. 8 Eq. 551; 39 L. J. Ch. 268; and *Dickinson* v. *Dillwyn,* L. R. 8 Eq. 546; 39 L. J. Ch. 266; and over-ruling on this point *Stevens* v. *Van Voorst,* 17 Bea. 305." *Note.* — But this is a somewhat forced interpretation; and where a reversion, belonging to the wife at the time of her marriage, fell into possession after her death, but during the husband's life, it was held to be bound by the husband's covenant, that covenant not, in terms, being confined to property coming to the wife "during the coverture" (*Fisher* v. *Shirley,* 59 L. J. Ch. 29; 43 Ch. D. 290: Stirling, J., there said that the principle of *Re Edwards* was only applicable where the wife was the survivor).

3. "Property which the wife acquires in possession during coverture and to which she had no title of any kind at the date of the marriage, is bound by the covenant, where the subject-matter of the covenant is described by words of future acquisition only; *Re Clinton,* sup": and this will, according to some authorities, include permanent investments of income from the settled property (*Lewis* v. *Madocks,* 8 Ves. 149; 17 Ib. 48: *Re Turcan,* 58 L. J. Ch. 101; 40 Ch. D. 5: *Re Bendy,* 1895, 1 Ch. 109; 64 L. J. Ch. 170; 71 L. T. 750; 43 W. R. 345); but in *Finlay* v. *Darling* (1897, 1 Ch. 719; 66 L. J. Ch. 348; 76 L. T. 461; 45 W. R. 445), Romer, J., explained *Lewis* v. *Madocks* and declined to follow *Re Bendy,* and held that a wife's investments of accumulations of income is no more bound by such a covenant than the income itself when first to hand.

4. "Where a Vested Remainder or Reversionary Interest, to which the wife is entitled at the date of the Settlement, falls into possession during the coverture, it is bound by a covenant in which the property to be settled is described by words applicable to future acquisition only."

5. "Where a Vested Remainder or Reversionary Interest, to which the wife is entitled at the date of the settlement, does *not* fall into possession until after the determination of the coverture, it is not bound by a

Digitized by Google

covenant in which the property to be settled is described by words applicable to future acquisition only."

6. "If the property be described by words of future acquisition only, and during the coverture the wife 'become entitled' to a Vested Remainder or Reversionary Interest, even though it does not fall into possession till after the termination of the coverture, it will be bound by the covenant."

7. "Where the property included in the covenant is described by words applicable to future acquisition only, property in which the wife has a Contingent Interest at the date of the settlement or of the marriage, is bound by the covenant if it fall into possession during the coverture, but not otherwise — (Obs. There may possibly be some doubt whether the rule applies where the contingent interest to which the wife was entitled at the time of the marriage vests in interest, but not in possession, during the coverture; but probably the rule does apply)." (Elph. 510–523, *whv* for the authorities in support and illustration of the above propositions). *Vf*, *Re Parsons*, cited CONTINGENT: Vaizey, ch. 4, s. 11: Watson, Eq. ch. 10, p. 660 *et seq*: DURING. *Cp*, COME TO: ACCRUE.

A Covenant to Settle a wife's present or future property, does not bind property over which she is deprived of the power of disposition (*Coventry* v. *Coventry*, 32 Bea. 612).

A Covenant to Settle After-acquired property, severs an after-acquired Joint Tenancy (*Brown* v. *Raindle*, 3 Ves. 256: *Re Hewett*, 1894, 1 Ch. 362; 63 L. J. Ch. 182; 70 L. T. 393; 42 W. R. 233).

As to the ordinary limitation of the amount or value to be settled; *V.* LESS.

Stat. Def. — *Ir.* 18 & 19 V. c. 39, s. 1; 44 & 45 V. c. 65, s. 1.

V. NEXT ENTITLED: PERSON ENTITLED: PRESUMPTIVE: SETTLE: SETTLED.

ENTITLED FOR THE TIME BEING. — This phrase in a power of Maintenance has been held to mean "absolutely or presumptively entitled" (*Sidney* v. *Wilmer*, 25 Bea. 260), and beneficially (*Wolley* v. *Jenkins*, 26 L. J. Ch. 385; 23 Bea. 60).

"Mortgagor entitled for the time being *to Possession*," s. 25 (5), Jud. Act, 1873; *V. Bennett* v. *Hughes*, 2 Times Rep. 715.

V. TIME BEING.

ENTITLED IN IMMEDIATE EXPECTANCY. — *V. Westcar* v. *Westcar*, 25 L. J. Ch. 866; 21 Bea. 328.

ENTITLED IN POSSESSION. — In a gift over on death before becoming "entitled in Possession" (*Re Yates*, 21 L. J. Ch. 281, — "a most remarkable authority," per Malins, V. C., *West* v. *Miller*, 37 L. J. Ch. 425), or "entitled to the Payment" (*Re Williams*, 19 L. J. Ch. 46, 12 Bea. 317), or "to the Receipt" (*Hayward* v. *James*, 29 L. J. Ch. 822; 28 Bea. 523); these phrases will generally mean "entitled *in Inter-*

Digitized by Google

est," and so receive a construction similar to that of PAYABLE; *Vf* 2 Jarm. 809.

"Entitled in Possession"; *V. Re Angerstein,* cited ACTUAL FREEHOLD.

"ELDEST, or only, SON," quà a Settlement by a person *in loco parentis,* will, generally and as regards a clause of exclusion from a Portion Fund, mean, an Eldest Son who comes into Possession of the Settled Estate; but "Eldest or only Son, entitled to the Possession or Receipt of the Rents and Profits of" the settled estate, includes one originally entitled in Tail who has joined in disentailing the estate and re-settling it in a way by means of which he takes a benefit, although the estate has been sold before he could come into Possession (*Collingwood* v. *Stanhope,* cited YOUNGER: *Domvile* v. *Winnington,* 53 L. J. Ch. 783; 26 Ch. D. 382): But where the settlor is not *in loco parentis, V. Shuttleworth* v. *Murray,* 1901, 1 Ch. 819; 70 L. J. Ch. 453.

V. ENTITLED: POSSESSION: ACTUAL.

ENTITLED TO BE ON BURGESS LIST. — S. 28, 5 & 6 W. 4, c. 76; *V. Ex p. Hindmarch,* L. R. 3 Q. B. 12; 37 L. J. Q. B. 58; 8 B. & S. 642.

"Entitled to be enrolled as a Burgess," s. 11 (2), Mun Corp Act, 1882; *V. Unwin* v. *McMullen,* 1891, 1 Q. B. 694; 60 L. J. Q. B. 400; 39 W. R. 712.

ENTITLED TO REDEEM. — S. 15, Conv & L. P. Act, 1881; *V. Teevan* v. *Smith,* cited MORTGAGOR ENTITLED TO REDEEM: LIEN.

"Persons for the time being entitled to *the Equity of Redemption,*" s. 5, Bg Socy Act, 1836; *V. Hosking* v. *Smith,* 58 L. J. Ch. 367; 13 App. Ca. 582; 59 L. T. 565.

ENTITLED TO VOTE. — A dead man is not "entitled to vote"; and therefore to PERSONATE a dead elector is not Personation within s. 3, 14 & 15 V. c. 105 (*Whiteley* v. *Chappell,* 38 L. J. M. C. 51; L. R. 4 Q. B. 147; 32 J. P. 775); but if the words to be construed were "entitled, *or supposed to be* entitled" (54 G. 3, c. 93, s. 89), the case would be different (*R.* v. *Martin,* Russ. & Ry. 324: *R.* v. *Cramp,* Ib. 327). Referring to *R.* v. *Martin,* Lush, J. (in *Whiteley* v. *Chappell*), said, "If the Court had construed the words 'supposed to be entitled,' as 'alleged to be entitled,' there would be no difficulty in the judgment." *Vf* PERSONATE.

ENTRANCE. — A Bye Law relating to the construction of New Streets which requires an "Entrance" of a specified width to be made to each NEW STREET, must be complied with even though such Entrance can only be made on land over which the maker of the intended new street has no control (*Hendon* v. *Pounce,* and *Bromley* v. *Lloyd,* cited CONSTRUCTION).

ENTREAT. — *V.* PRECATORY TRUST.

Digitized by Google

ENTRUST.—*V.* INTRUSTED: IN TRUST.

ENTRY.—An "'Entre' is where a man entreth into any lands or tenements in his proper person, or any other by his commandement" (Termes de la Ley: Cowel: Jacob: *whv* for the various old Writs of Entry).

"Right to make Entry," s. 2, Real Property Limitation Act, 1833; *V. Re Lidiard and Jackson*, 58 L. J. Ch. 785: *Doe* d. *Spencer* v. *Beckett*, 12 L. J. Q. B. 236; 4 Q. B. 601.

V. ENTER: FORCIBLE ENTRY: OUSTER: VIOLENT: POSSESSION.

"Entry" quà Part 7, Mer Shipping Act, 1894; *V.* s. 492.

Entry on BENEFICE; *V.* 5 Encyc. 32.

EN VENTRE.—Child *en ventre*; *V.* LIVING: BORN: 5 Encyc. 33.

EQUAL.—Salvage "for Owners' and Charterers' Equal *Benefit*"; *V.* SALVAGE, at end.

"Equal *Fares*," in an agreement between Railway Cos; *V. Mid. Ry* v. *G. W. Ry*, cited COMPETITIVE.

"Equal to an estate of *Inheritance*"; *V.* PUR AUTRE VIE.

"Equal to Sample"; *V.* SAMPLE.

Covenant to settle an "Equal Child's *Share*"; *V. Stephens* v. *Stephens*, 19 L. R. Ir. 190.

V. NEARLY EQUAL.

EQUALLY.—A testamentary gift to two or more, "equally," or "equally to be divided," or "in equal shares," or "equally amongst them," or "to be distributed in joint and equal proportions," creates a Tenancy in Common (*Rigden* v. *Vallier*, 3 Atk. 733: *Davenport* v. *Hanbury*, 3 Ves. 259, 260: 2 Jarm. 257: Wms. Exs. 1327: Hawk. 112: Watson Eq. 506). But this construction may be, though it rarely is, varied by the context (2 Jarm. 260–262: *Oakley* v. *Young*, 2 Eq. Abr. 536); and generally the distribution would be PER CAPITA (2 Jarm. 194, 195). *Vh* Chitty Eq. Ind. 7927–7929. *Cp*, CONJOINTLY: JOINTLY AND EQUALLY: SHARE AND SHARE ALIKE.

"To take equally and in common as Joint Heiresses"; *V. Watkins* v. *Frederick*, 11 H. L. Ca. 367.

EQUIP.—To "equip" a War Vessel; *V. A-G.* v. *Sillem*, 2 H. & C. 431; 33 L. J. Ex. 92.

"Equipping" a Ship, quà Foreign Enlistment Act, 1870, 33 & 34 V. c. 90; *V.* s. 30.

EQUIPMENT.—"Equipment," in s. 24, Army Act, 1881, "includes any article issued to a SOLDIER for his use, or entrusted to his care, for MILITARY PURPOSES" (s. 4, 56 & 57 V. c. 4).

"Equipment," quà Seal Fisheries Acts; Stat. Def., 54 & 55 V. c. 19, s. 3; 56 & 57 V. c. 23, s. 5; 57 & 58 V. c. 2, s. 5; 58 & 59 V. c. 21, s. 7.

Digitized by Google

EQUITABLE.— *V.* JUST AND EQUITABLE.

"Equitable ASSIGNMENT"; —"An agreement which does not exhibit the intention of the parties that the property shall pass at once, does not take effect as an Equitable Assignment at once; but only when, according to the terms of the agreement it can be gathered that the intention of the parties is that the actual property shall pass. On the other hand, where the intention is that the property shall pass, either at once or upon the satisfaction of some CONDITION, then the actual property does pass at once or upon satisfaction of that Condition" (per Fry, L. J., *Re Casey*, 1892, 1 Ch. 104; 61 L. J. Ch. 61; 66 L. T. 93; 40 W. R. 180).

"Equitable *Charge*"; *V.* MORTGAGE OR CHARGE.

"Legal or Equitable" DEBT; *V. Vyse* v. *Brown*, 13 Q. B. D. 199.

"Equitable EXECUTION": It is not strictly accurate to speak of the appointment of a Receiver as an "Equitable Execution"; it is not an Execution, it is a relief judicially granted (*Re Sheppard*, 43 Ch. D. 131; 59 L. J. Ch. 83; 62 L. T. 337; 38 W. R. 133). *Sv*, *Blackman* v. *Fysh*, cited EXECUTION.

Relief on "Equitable *Grounds*," s. 83, Com. L. Pro. Act, 1854, means, Grounds depending on equity law, not equity practice (*Phelps* v. *Prothero*, 7 D. G. M. & G. 722; 25 L. J. Ch. 105).

"Equitable INTEREST in a CORPOREAL Heredit," s. 4, 47 & 48 V. c. 71, includes an undisposed of residue of the proceeds of sale of freeholds devised in trust for sale (*Re Wood*, 1896, 2 Ch. 596; 65 L. J. Ch. 814; 75 L. T. 28; 44 W. R. 685).

A CONTRACT for the SALE of an "Equitable *Estate or Interest*" in property, s. 59 (1), Stamp Act, 1891, means, a contract the subject-matter of which is Equitable, and does not include one for a Legal Assignment of Leaseholds, and which (failing the lessor's assent) gives an option to the purchaser to call for a Declaration of Trust of the term (*West London Syndicate* v. *Inl. Rev.*, 1898, 2 Q. B. 507; 67 L. J. Q. B. 218, 956: *Muller* v. *Inl. Rev.*, 1900, 1 Q. B. 310; 69 L. J. Q. B. 291; 81 L. T. 667: *Vf*, *Danubian Sugar Factories* v. *Inl. Rev.*, 64 J. P. 441. *Sv*, *Chesterfield Brewery Co* v. *Inl. Rev.*, cited "Conveyance on Sale," sub CONVEYANCE). The exception in the section of "Lands, Tenements, Heredits or Heritages, or Property LOCALLY SITUATE out of the United Kingdom," does not apply to the phrase "Equitable Estate or Interest," and an Equity of Redemption of lands in New South Wales is within such phrase, notwithstanding s. 25, New South Wales Trust Property Act, 1862 (*Farmer* v. *Inl. Rev.*, 1898, 2 Q. B. 141; 67 L. J. Q. B. 775; 79 L. T. 32).

"Equitable MORTGAGE," quà Stamp Act, 1891; *V.* s. 86 (2).

Equitable *Waste*; *V.* WASTE.

EQUITABLY.—*V.* LEGALLY.

Digitized by Google

EQUITY. — Equity is "that portion of remedial justice which was, formerly, exclusively administered by a Court of Equity as contradistinguished from that portion which was, formerly, exclusively administered by a Court of COMMON LAW" (5 Encyc. 41, citing Story, s. 25: *V.* 3 Bl. Com. 429–437). *Vf,* LEGAL: LEGAL ESTATE: LEGALLY.

"'Within the Equity,' means the same thing as 'Within the Mischief' of a statute" (per Byles, J., *Shuttleworth* v. *Fleming,* 19 C. B. N. S. 703).

Where Claims, — *e.g.* Land Claims in a Colony, — are to be determined "by Equity and Good Conscience," and the Court is not to be bound "by the strict rules of Law or Equity, or by any Technicalities or Legal Forms whatever"; the decisions are not judicial and are not appealable, or within the Royal Prerogative of allowing appeals (*Moses* v. *Parker,* 1896, A. C. 245; 65 L. J. P. C. 18; 74 L. T. 112).

V. RIGHT IN EQUITY.

"Equity of *Redemption,*" is the Right, established in Equity, whereby a Mtgor is entitled to redeem and get back the mortgaged property on payment of principal and interest and mtgee's costs, although the day appointed for the payment of the principal has passed; provided he comes before FORECLOSURE or Sale by the mtgee. *Vh,* Fisher on Mortgages: Robbins Ib: Beddoes Ib.

"Clogging the Equity"; *V.* MORTGAGE.

A Wife's "Equity to a *Settlement,*" is this, — Where her husband or his assignee seeks the aid of Equity to recover property belonging to her, she is entitled to have a due proportion of it settled on her (Wms. R. P. Part 4, ch. 5); her conduct in the matter may affect the quantum to be settled (*Roberts* v. *Cooper,* 1891, 2 Ch. 335; 60 L. J. Ch. 377).

EQUIVALENT. — "The Report or Award of any Official or Special Referee, or Arbitrator, on any such REFERENCE (shall)" . . . "be *equivalent* to the Verdict of a Jury," s. 15 (2), Arb Act, 1889, means, quà a Report or Award by an Official Referee (and, probably, one by a special Referee), that its findings must be accepted by the Court, "unless they can set it aside, according to the ordinary rules which would be applicable to the finding of a jury, or to the finding of a judge trying a cause without a jury. It is open to appeal, therefore, whether improper evidence has been received by the O. R., or whether he in considering the facts has, so to speak, misdirected himself," or because it is against the weight of evidence (per Brett, L. J., *Longman* v. *East,* 3 C. P. D. 155; 47 L. J. C. P. 220; 38 L. T. 11; 26 W. R. 183). The Report of an O. R. is a matter "within the control of the Court, which it is the duty of the Court to investigate" to see how far it ought to be enforced by jdgmt; that is not so quà ARBITRATION, of which "finality has always been the great attribute," and an Award by an Arbitrator is not "Equivalent to the Verdict of a Jury," in the sense that it "can be

Digitized by Google

re-opened for the purpose of seeing whether the arbitrator has made some mistake by the admission of improper evidence, or upon some point of law" (per Day, J., *Darlington Wagon Co* v. *Harding*, 1891, 1 Q. B. 245; 60 L. J. Q. B. 110; 64 L. T. 409; 39 W. R. 167: *Vthc*, cited CAUSE): — quà the Award of an Arbitrator, the phrase means, that it "may be dealt with in the way that the verdict of a jury may be dealt with, after it has been obtained, *e.g.* with respect to enforcing it" (*Ib.*: *Glasbrook* v. *Owen*, 7 Times Rep. 62); or by applying the rule that the Costs follow the EVENT, when the Award is silent as to costs (*Carr* v. *Dougherty*, 67 L. J. Q. B. 371).

EQUIVOCATION. — *V.* PATENT AMBIGUITY.

ERECT. — "It has been much questioned whether a bequest of money to be applied in the 'Erection' of a school-house or other building, for CHARITABLE PURPOSES, is bad as involving a trust to purchase. Lord Hardwicke considered that if the trustees could get a piece of ground given to them, so that land need not be purchased, the gift was good; but the contrary is now settled, and to make such a bequest valid, the testator must point to land already in mortmain, or he must forbid the PURCHASE of land" (1 Jarm. 230: *A-G.* v. *Parsons*, 8 Ves. 191), or declare his expectation or desire that land will be provided from other sources (*A-G.* v. *Parsons*, sup: *Philpott* v. *St. George's Hosp.*, 6 H. L. Ca. 338; 27 L. J. Ch. 70; 5 W. R. 845; 30 L. T. O. S. 15, over-ruling *Trye* v. *Gloucester*, 14 Bea. 173; 21 L. J. Ch. 81), or that the trust to "erect" or "build" is to wait till land be so otherwise provided (*Chamberlayne* v. *Brockett*, 8 Ch. 206; 42 L. J. Ch. 368; 21 W. R. 299; 28 L. T. 248: *Vth, Re White*, 33 Ch. D. 453: *Vf* 1 Jarm. 206). *Vh* Tudor Char. Trusts, 409–412: but consider INTEREST IN LAND, espy 1st par.

V. ENDOW: FOUND: PROVIDE.

A power to "erect in a STREET," "points to a building upon the surface, and not under-ground" (per Smith, L. J., *Baird* v. *Tunbridge Wells*, 64 L. J. Q. B. 154; in H. L. 1896, A. C. 434; 65 L. J. Q. B. 451: *Vf* VEST).

To "erect" a Steam Engine, s. 70, Highway Act, 1835, does not, necessarily, connote that it must be fixed to the soil; a portable steam engine set up for working, is within the enactment; *secus*, if only stopping by the road-side, *e.g.* to take in water: the object of the section shows its meaning to be that whilst a steam engine is set-up and is working it shall be screened from the Highway (*Smith* v. *Stokes*, 4 B. & S. 84; 32 L. J. M. C. 199). *V.* ERECTED.

To "erect" a BUILDING, &c, s. 75, Metrop Man. Act, 1862, does not mean that the bg is being erected *de novo*, "erect" is satisfied by a further erection on an erection already in existence (*Wendon* v. *London Co. Co.*, 1894, 1 Q. B. 812; 63 L. J. M. C. 55, 117; 70 L. T. 440; 42 W. R. 370; 58 J. P. 606: *London Co. Co.* v. *Cross*, 61 L. J. M. C. 160 *V.* ERECTION.

Digitized by Google

"Erect, set-up, continue, or keep" a Foreign Lottery, 9 G. 1, c. 19, s. 4; *V.* FOREIGN LOTTERY.

Agreement not to "erect, or assist or be in any way CONCERNED OF INTERESTED IN the erection, or USE" of competing Works; *V. Southland Frozen Meat Co* v. *Nelson*, 1898, A. C. 442; 67 L. J. P. C. 82; 78 L. T. 363.

V. BUILD.

ERECTED. — *V.* ERECT.

Assignment of all Machinery and Fixtures whatsoever, "now erected, or set up, or standing, or being, — or which shall at any time hereafter be erected, or set up, or stand, or be, — in or upon the said lands, mills and premises, or any part thereof"; these words "are as comprehensive as could be devised to include the Machinery which is moved, as well as the moving Machinery" (per Campbell, C., *Haley* v. *Hammersley*, 30 L. J. Ch. 773, 774; 3 D. G. F. & J. 587).

A BRIDGE is not "erected or built," s. 5, 43 G. 3, c. 59, by being repaired, though the repairs be ever so substantial (*R.* v. *Devon*, 5 B. & Ad. 383; 2 L. J. M. C. 74), nor by being widened (*R.* v. *Lancashire*, 2 B. & Ad. 813).

"Having erected" or "Improved" Buildings, s. 8 (1), S. L. Act, 1882, following and being controlled by "In consideration," *semble*, has reference to Erections or Improvements included in the transaction of which the Lease to be granted under the section is part (*Re Chawner*, cited CONSIDERATION).

"The walls of a building were up, and all the brick and stone work finished, &c, the roof was not on nor were the sash and door frames in; no floors were laid: — The building in this condition was held to be 'erected' within the meaning of the contract: *Johnston* v. *Ewing*, 35 Ill. 518" (Hudson, 142). *Cp* ROOFED IN.

ERECTION. — *V.* ERECT: STRUCTURE.

"Erection," generally, is a wider term than "BUILDING," and may include Trade FIXTURES (*Bidder* v. *Trinidad Petroleum Co*, 17 W. R. 153. *Vf*, *Naylor* v. *Collinge*, 1 Taunt. 19). It may include a Fence, quà a Bye Law by a Local Authority prohibiting any "Erection" within a defined open space contiguous to a building (*Adams* v. *Bromley*, 36 J. P. 743: *Sv*, *Borgnis* v. *Edwards*, 2 F. & F. 111).

Cp IMPROVEMENT.

"Erection used in conducting the business of any MINE," s. 29, 24 & 25 V. c. 97; a scaffold erected at some distance *above the bottom* of a Mine, for the purpose of working a vein of coal on a level with the scaffold, is within these words (*R.* v. *Whittingham*, 9 C. & P. 234); and so is a wooden trough by means of which water is conveyed to, and for the purposes of, a Mine (*Barwell* v. *Winterstoke*, 19 L. J. Q. B. 206; 14 Q. B. 704; 15 L. T. O. S. 23).

Digitized by Google

"Erection of a Court House"; Stat. Def., 23 & 24 V. c. 79, s. 2.

"Erection, Improvement, and Enlargement," of Parochial Buildings; Stat. Def., 29 & 30 V. c. 75, s. 1.

ERRONEOUS. — *V.* IMPERFECT.

ERROR. — "'Errour,' is a fault in a Judgment, or in the process or proceeding to judgment or in the execution upon the same, in a Court of Record; — which in the Civill Law is called a Nullitie" (Termes de la Ley). *Vf,* Jacob: 5 Encyc. 46.

The phrase in Conditions of Sale of realty whereby a purchaser is precluded from compensation in respect of any "Error, Mis-statement, or Omission," in the Particulars, only covers small errors, and will not deprive a purchaser of his right to compensation for such a mistake as where 573 square yards have been represented as 753 square yards (*Whittemore* v. *Whittemore,* L. R. 8 Eq. 603: *Va, Ayles* v. *Cox,* 16 Bea. 23; 20 L. T. O. S. 4: *Portman* v. *Mill,* 2 Russ. 570: *Cordingley* v. *Cheesebrough,* 31 L. J. Ch. 617; 3 Giff. 496; 4 D. G. F. & J. 379: *Dimmock* v. *Hallett,* 36 L. J. Ch. 146; 2 Ch. 21: *Terry to White,* 55 L. J. Ch. 345; 32 Ch. D. 14; 34 W. R. 379); or, where there is one entire Ground Rent whereas the Particulars spoke of several ground rents on "each" of six houses (*Re Boulton and Cullingford,* 37 S. J. 25, 248). But in *Re Severne to Bird* (7 Aug 1883), Kay, J., held that a purchaser who had bought under conditions similar to those in *Whittemore* v. *Whittemore* was not entitled to compensation for a mis-statement, whereby a cellar was wrongly stated to belong to the house described in the Particulars (*Va, Taylor* v. *Bullen,* 20 L. J. Ex. 21; 5 Ex. 779).

On the other hand the "Error," &c, may be so substantial that it will, at the purchaser's option, avoid the contract altogether, even though there be a Compensation Clause; for the purchaser is not bound to take something substantially different from that he contracted to buy (*Flight* v. *Booth,* 4 L. J. C. P. 66; 1 Bing. N. C. 370: *Re Fawcett and Holmes,* 58 L. J. Ch. 763; 42 Ch. D. 150: *Jacobs* v. *Revell,* 1900, 2 Ch. 858; 69 L. J. Ch. 879; 49 W. R. 109). *Vf, Phillips* v. *Caldcleugh,* cited FREEHOLD, at end.

"Error, Mis-statement, and Omission" would not, unless the Condition were precise in that sense, be limited to the Description of the property and nothing else; the phrase, generally, would embrace matters relating to the property (*Palmer* v. *Johnson,* 13 Q. B. D. 354).

But "Incorrect Statement, Error, or Omission, in Particulars" would, *semble,* not embrace a defect in TITLE (*Re Neale and Drew,* 41 S. J. 274); nor would an *innocent* Omission to state that the Local Authority had given Notice to execute certain works respecting the property, be a ground for claiming compensation under a Condition providing for compensation "if any Error, Mis-statement, or Omission," in the Particulars

Digitized by Google

be discovered (*Re Leyland and Taylor*, 1900, 2 Ch. 625; 69 L. J. Ch. 764); though, possibly, it would be such a ground if it could be shown that the Omission affected the value of the property bought (per Collins, L. J., *S. C.*).

V. ADMEASUREMENTS: MATERIAL ERROR.

"If the Vendor, on a sale of CHATTELS, is not to be responsible for any defect or 'Error,' the stipulation will protect him from all unintentional misdescription and mis-statement" (Add. C. 569). *Vf* FAULTS.

A Settled Account is not rendered Open by reason of its being made "Errors excepted" (*Johnson* v. *Curteis*, 3 Bro. C. C. 266).

An Election (under Thames Conservancy Act, 1894) by Proxies for a Corporation who (contrary to the provisions of the Act) were not Shareholders or Officers of the Corp, was not invalidated thereby, because this was only an "Error *or Irregularity*," and, as such, saved by s. 25 of the Act (*R.* v. *Samuel*, 1895, 1 Q. B. 815; 64 L. J. Q. B. 515; 72 L. T. 572; 11 Times Rep. 358).

Quà Appellate Jurisdiction Act, 1876, 39 & 40 V. c. 59, "'Error' includes a Writ of Error, or any proceedings in or by way of Error" (s. 25).

V. FAULTS: NEGLECT OR DEFAULT: OMISSION: WRIT OF ERROR.

ESCAPE.—"'Escape,' is where one that is arrested commeth to his liberty before that he be delivered by award of any Justice or by Order of law" (Termes de la Ley); "a privy evasion out of some lawful restraint" (Cowel). *Vf*, Jacob: 5 Encyc. 50–53: *Cp*, RESCUE.

"Escape of Water"; *V.* FLOOD.

ESCHEAT.—"Escheat is a Word of Art, and signifieth properly when, by accident, the lands fall to the lord of whom they are holden, in which case we say the fee is escheated" (Co. Litt. 13 a: *Vf*, Ib. 92 b); the "accident" being, the death of the owner without an heir and intestate. If there is a Mesne Lord the escheat is to him; if not, to the King (*V. A-G. of Ontario* v. *Mercer*, 52 L. J. P. C. 84, 86; 8 App. Ca. 767: *Vf*, *St. Catherine's Co* v. *The Queen*, 14 App. Ca. 46). *Vh*, 2 Bl. Com. 72, 89, 244: Wms. R. P. ch. 5: 5 Encyc. 53: Termes de la Ley, *Eschate*.

A legal or equitable estate or interest in an INCORPOREAL HEREDIT, or an equitable estate or interest in a CORPOREAL Heredit, is now the subject of Escheat (s. 4, 47 & 48 V. c. 71).

Cp FORFEITURE.

ESCROW.—*V.* DELIVERY.

ESCUAGE.—Escuage was one of the old military Tenures,—a "Service of the Shield" whereby the tenant (being "well and conveniently arrayed for war") had, in person or by proxy, for 40 days to attend the King when he, in person, made "a VOYAGE Royall into Scotland to sub-

Digitized by Google

due the Scots" (Litt. ss. 95–102: Co. Litt. 68 b–74 b). *Cp* CORNAGE. But "'into Scotland' is put but for an example, for if the tenure be to goe *in Wallium*, *Hiberniam*, *Vasconiam*, *Pictaviam*, &c, it is all one" (Co. Litt. 69 b). *Vf*, Termes de la Ley: SCUTAGE.

Blackstone (2 Com. 74) says that Escuage "was a Pecuniary, instead of a Military, Service," and Wms. R. P. 99, also speaks of Escuage as a "money payment"; but this would seem to refer to the secondary kind of Escuage, — Escuage Certain, assessed after a "Voyage Royall," on absentees (Litt. s. 97), — for the primary Escuage (Escuage Uncertain), which Littleton had previously dealt with, was the real "Escuage and Knight's Service, being subject to HOMAGE, FEALTY, and (formerly) WARD, and MARRIAGE" (Cowel).

ESQUIRE. — "Esquier, — *Armiger*, in French *Escuier*, i.e. *Scutiger*, — was originally such a one as, attending a Knight in time of War, did carry his shield; but this addition hath not of long time had any relation to that office, but signifieth with us a Gentleman, or one that beareth Arms as a testimony of his nobility or gentry, and is a meer Title of Dignity next to and below a Knight" (Cowel, *Esquier*). *Vf*, Jacob: 1 Bl. Com. 406: 5 Encyc. 55, 56: *Cp* GENTLEMAN.

A Lessee and Manager of a Theatre is not properly described as "Esquire" for the purposes of the Bills of Sale Acts (*Ex p. Homann*, *Re Vining*, 39 L. J. Bank. 4; L. R. 10 Eq. 63; 18 W. R. 450).

"I do not agree with the proposition that an 'Esquire' cannot be a miiler or a farmer. I would be slow to hold that this Statute (Com. L. Pro. Act, Ir., 1853, ss. 124, 125), was constructed to lay traps for persons registering their judgments and getting security. Am I to rule that the title meant was according to chivalry or ancient observances, or that the reasonable intendment of the world is what is referred to?" (per Lynch, J., *Re Doughty*, Ir. Rep. 2 Eq. 237). But in referring to that case, Porter, M. R., said: — "As usual, Judge Lynch is again relied on as the champion of doubtful registrations" (*Spaddacini* v. *Treacy*, 21 L. R. Ir. 559). And on the Bills of Sale Act for Ireland, 17 & 18 V. c. 55, it was held that a Merchant was not properly described as "Esquire" (*Re O'Connor*, 27 L. T. O. S. 27).

Vf, *Perrins* v. *Marine Insrce*, 2 E. & E. 317; 8 W. R. 41, 563.

ESSART. — *V.* ASSART.

ESSENCE. — "TIME of the Essence of the Contract," means, that the time agreed for the performance of a stipulation must be strictly observed. At Common Law, this was always the rule; but in Equity, — quà such contracts as those for the sale of Realty, as distinguished from Mercantile Contracts (per Cotton, L. J., *Reuter* v. *Sala*, 48 L. J. Q. B. 499; 4 C. P. D. 249), — Time is only of the Essence of the Contract "in

Digitized by Google

cases of Direct Stipulation, or of NECESSARY Implication" (per Romilly, M. R., *Parkin* v. *Thorold*, 22 L. J. Ch. 170; 16 Bea. 59: *Vh*, *Oakden* v. *Pike*, 34 L. J. Ch. 620; 12 L. T. 527; 13 W. R. 673). A contract for the sale of a PUBLIC-HOUSE exemplifies what is such "Necessary Implication," for "in the sale and purchase of a Public-house as a going concern, time is of the essence of the contract" (per Romilly, M. R., *Day* v. *Luhke*, 37 L. J. Ch. 332; L. R. 5 Eq. 336: *Claydon* v. *Green*, 37 L. J. C. P. 226; L. R. 3 C. P. 511); whilst the absence of a Direct Stipulation does not preclude the contractee from giving his contractor subsequent notice requiring the fulfilment of the latter's stipulation at or within a specified time, if such time is reasonable (*Crawford* v. *Toogood*, 49 L. J. Ch. 108; 13 Ch. D. 153; 41 L. T. 549; 28 W. R. 248: *Howe* v. *Smith*, 53 L. J. Ch. 1055; 27 Ch. D. 89; 50 L. T. 573; 32 W. R. 802: *Compton* v. *Bagley*, 1892, 1 Ch. 313; 61 L. J. Ch. 113; 65 L. T. 706). *Vf* Dart, ch. 10.

Since the Jud. Act, 1873, "Stipulations in Contracts, as to Time or otherwise, which would not before the passing of this Act have been deemed to be, or to have become, of the Essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in Equity" (subs. 7, s. 25).

Quà the sale of Goods, "unless a different intention appears from the terms of the contract, stipulations as to *Time of Payment* are not deemed to be of the Essence of a Contract of Sale. Whether any other stipulation as to Time is of the Essence of the Contract or not, depends on the terms of the contract" (s. 10 (1), Sale of Goods Act, 1893).

ESSENTIAL.—"Essential Particular" of a TRADE-MARK; *V.* s. 10, 51 & 52 V. c. 50, on *whv*, *Orr-Ewing* v. *Registrar of Trade-Marks*, 48 L. J. Ch. 707; 4 App. Ca. 479; *Vthc*, applied in *Baker* v. *Rawson*, 60 L. J. Ch. 55; 45 Ch. D. 519. *Vf*, *Re Bryant and May*, cited DISTINCTIVE.

As to what is such an "Essential Particular" quà s. 92, Patents, &c, Act, 1883, *V. Re Phillips*, 1891, 3 Ch. 139; 61 L. J. Ch. 40; 65 L. T. 373; *Re Henry Clay Bock & Co*, 1892, 3 Ch. 549; 62 L. J. Ch. 143; 67 L. T. 614: *secus*, *Re Guinness*, 5 Pat. Ca. 316. In *Re Phillips*, Chitty, J., pointed out that there might be a MATERIAL ALTERATION of an Old Trade-Mark not allowable under the section, although not an alteration in an "Essential Particular" of a New one which might be allowed.

Cp "Material Particular," sub CORROBORATED.

ESTABLISH.—*Cp* ENDOW. *V.* FOUND: NEWLY ESTABLISH: PUBLIC MARKET.

To "establish" a Law, does not, necessarily, mean to "INTRODUCE" it: "the Court in *Beverley* v. *Lincoln Gas Co* (6 A. & E. 839, *n*) ob-

Digitized by Google

served that the Action for Use and Occupation is 'established' by 11 G. 2, c. 19, s. 14; which expression must not be taken as meaning that it was *introduced* by that Act, but only that it was *established* even in cases where there was an express demise at a certain rent, if not under seal" (per Denman, C. J., *Gibson* v. *Kirk*, 1 Q. B. 855; 10 L. J. Q. B. 298).

ESTABLISHED CUSTOM. — *V.* Woodf. 807.

ESTABLISHMENT. — "Domestic Establishment"; *V.* SERVANT.

"Establishment in the World"; *V.* ADVANCEMENT.

"Part of the Establishment," s. 2, 8 & 9 V. c. 29; *V. Hoyle* v. *Oram*, cited EMPLOYED.

V. TRADE ESTABLISHMENT.

"Establishment Expenses"; *V.* EXPENSES.

ESTATE. — "'State' or 'Estate' signifieth such inheritance, freehold, terme for yeares, tenancie by statute merchant, staple, elegit, or the like, as any man hath in lands or tenements, &c. And by the grant of his Estate, &c, as much as he can grant shall passe" (Co. Litt. 345 a: *Vh* Elph. 204). "The word 'Estate' doth comprehend all that a man hath property or ownership in, and is divided into Real and Personal" (*Anon.*, Skinner, 194: *Vf*, *Barnes* v. *Patch*, 8 Ves. 604).

"'Estate,' is a *genus generalissimum*, predicable of two species that have their difference, whereby they are divided, that is, Estate Real, and Estate Personal. 'Estate Real,' is *genus subalternum* and has its species too; that is Estate Real *in fee* or *for life*. And so is Estate Personal in like manner to be branched into Chattel Real and Chattel Personal; and it has that difference of a chattel real, not because it is a real estate, but because it has a real extraction. If a man seized in fee make a lease for years, the lessee for years has a chattel real, because his estate is derived out of a real estate; but still it is not a real estate" (per Holt, C. J., delivering jdgmt of Q. B., *Bridgewater* v. *Bolton*, 6 Mod. 107). "'Estate' comes from '*stando*,' because it is fixed and permanent, and imports the most absolute property that a man can have" in the thing of which it is spoken (Ib. 109). *Vf*, Jacob: 5 Encyc. 59–64.

"It is now (A.D. 1775) clearly settled, that the words 'all his Estate,'— in a Will, — will pass *every thing* a man has" (per Ld Mansfield, *Hogan* v. *Jackson*, 1 Cowp. 306: *Vf*, *O'Toole* v. *Browne*, 3 E. & B. 579; 2 W. R. 430: 1 Jarm. 721 *et seq*); but "all my Freehold hereditaments and estate," will not pass copyholds (*Quennell* v. *Turner*, 20 L. J. Ch. 237; 13 Bea. 240).

"Estate," is so absolute to include Realty that it will pass lands acquired by a testator after the date of his Will which speaks chiefly of Personalty, and it will not be cut down by the operative words being "Give and Bequeath," or by the gift being to trustese " their exs, ads,

Digitized by Google

and assigns," or by preceding words of enumeration which only comprise personalty (*O'Toole* v. *Browne*, 3 E. & B. 572; 23 L. J. Q. B. 282; 2 W. R. 430).

"It appears to me to be perfectly clear that the word 'Estate,' before the new Wills Act, was a word sufficient to carry the FEE if there was nothing at variance with that construction upon the whole of the Will. It would not be a word of the vigour and force of a gift to a man 'and his Heirs'; but it would have the effect of carrying the fee equally, unless there was something in the context which led one to a different conclusion" (per Earl Cairns, *Bowen* v. *Lewis*, 54 L. J. Q. B. 62; 9 App. Ca. 890. The first case laying this down seems to have been *Bridgewater* v. *Bolton*, sup; and for a collection of the subsequent cases, *V.* 2 Jur. 834: *Doe* d. *Lean* v. *Lean*, cited SAME).

"It has been long established that a devise of a testator's 'Estate' includes not only the *corpus* of the property, but the whole of his interest therein" (2 Jarm. 275, *whv* to p. 282, for cases illustrating and qualifying this proposition: *Vf*, 1 Jarm. 732–737: *Moore* v. *James*, W. N. (74) 80. *Cp*, *Doe* d. *Burton* v. *White*, 18 L. J. Ex. 59; 2 Ex. 797, with *Burton* v. *White*, 22 L. J. Ex. 129; 7 Ex. 720).

Devise of A. "and *all my Estate therein*"; held to pass an after-acquired Interest in A. (*Leckey* v. *Watson*, Ir. Rep. 7 C. L. 157).

As to this word when used as one of description or reference; *V.* 1 Jarm. 786, 788: Watson, Eq. 1318, 1319: *Doe* d. *Beach* v. *Jersey*, 1 B. & Ald. 550; 3 B. & C. 870: *Doe* d. *Norris* v. *Tucker*, 3 B. & Ad. 473: *Vick* v. *Sueter*, 3 E. & B. 219; 23 L. J. Q. B. 212: *Hill* v. *Brown*, 63 L. J. P. C. 46; 1894, A. C. 125; 70 L. T. 175.

V. TEMPORAL: WORLDLY ESTATE: REAL ESTATE: PERSONAL ESTATE: ESTATE AND EFFECTS: ESTATE AND INTEREST. *Cp*, INTEREST: INTEREST IN LAND: PRIVY: PARTICULAR ESTATE: THREE ESTATES.

"Any PART of an Estate" the retention of which entitles a Vendor to retain the Title Deeds, R. 5, s. 2, V. & P. Act, 1874, means a Freehold, Copyhold, or Leasehold Estate; and does not include an unsold Life Policy comprised in the deed giving the power of sale over the realty sold (*Re Fuller and Leathley*, 1897, 2 Ch. 144; 66 L. J. Ch. 543; 76 L. T. 646; 45 W. R. 627).

Quà Fines and Recoveries Act, 1833, "'Estate,' shall extend to an Estate in EQUITY as well as at Law; and shall also extend to any INTEREST, CHARGE, LIEN, or INCUMBRANCE in, upon, or affecting, LANDS either at Law or in Equity, or in, upon, or affecting, Money subject to be invested in the Purchase of Lands" (s. 1); "Estate," in s. 77, *V.* *Allcard* v. *Walker*, cited INTEREST.

"Estates," s. 7, Jdgmts Act, 1839, 2 & 3 V. c. 11, means "Land, and land only"; and "PROPERTY" has a like meaning in s. 2 of the Amending Act, Crown Debts and Jdgmts Act, 1860, 23 & 24 V. c. 115 (per Lindley, L. J., *Wigram* v. *Buckley*, cited LIS PENDENS.)

Digitized by Google

As to the words of the *All the Estate Clause* ("Estate," "Right," "Title," and "Interest"), *V.* Co. Litt. 345 a: Elph. 204–209. This Clause may now be omitted from Conveyances (s. 63, Conv & L. P. Act, 1881, on which section, *V. Thellusson* v. *Liddard*, 1900, 2 Ch. 635; 69 L. J. Ch. 673; 82 L. T. 753; 49 W. R. 10). As to the literal effect of the Clause, whether expressed or implied by statute, being narrowed by the recitals, *V. Williams* v. *Pinckney*, 66 L. J. Ch. 551; 67 Ib. 34.

"All other Estates and Heredits"; *V.* HEREDITAMENT.

"Duties incident to an Estate conveyed by way of Mtge"; *V.* TRUST.

"Deceased Debtor's Estate"; *V.* DECEASED.

Order in Probate Action that Costs be paid "OUT OF the Estate," means, out of the Personal Estate (*Re Shaw*, 1894, 3 Ch. 615; 64 L. J. Ch. 47; 71 L. T. 515; 43 W. R. 159).

Estate of Inheritance; *V.* INHERITANCE: *Cp*, PUR AUTRE VIE.

Stat Def. — 21 & 22 V. c. 96, s. 4; 34 & 35 V. c. 84, s. 3. — *Scot.* 2 & 3 V. c. 41, s. 3; 19 & 20 V. c. 79, s. 4; 37 & 38 V. c. 94, s. 3; 43 & 44 V. c. 4, s. 3; 54 & 55 V. c. 29, s. 12. — *Ir.* 11 & 12 V. c. 48, s. 1; 12 & 13 V. c. 77, s. 54; 21 & 22 V. c. 72, s. 1; 44 & 45 V. c. 49, s. 57; 54 & 55 V. c. 45, s. 6: PRIVATE ESTATES: RECORDED.

ESTATE AND EFFECTS. — On the presentation of an Insolvency petition under 5 & 6 V. c. 16, all the "Estate and Effects" of the petitioner became vested in the Official Assignee. Choses in Action were included in those words (*Sayer* v. *Dufaur*, 17 L. J. Q. B. 50; 11 Q. B. 325). Denman, C. J., in giving judgment in that case, said, — "The words 'Estate and Effects' are, at least, as strong as 'Personal Estate.'"

"Real or Personal Estate or Effects," in a Covenant to Settle after-acquired property, includes Jewels and things of a like nature (*Willoughby* v. *Middleton*, 31 L. J. Ch. 683; 2 J. & H. 344).

A testamentary gift of "All my Estate and Effects" will, under the word "Estate," generally, pass realty as well as personalty (*Stokes* v. *Salomons*, 20 L. J. Ch. 343; 9 Hare, 75: *D'Almaine* v. *Moseley*, 1 Drew. 629: *O'Toole* v. *Browne*, 3 E. & B. 572; 2 W. R. 430; 23 L. T. O. S. 111; 23 L. J. Q. B. 282: *Patterson* v. *Huddart*, 17 Bea. 210; 1 W. R. 423); so, of the phrase, "Goods, Chattels, Estate and Estates whatsoever" (*Churchill* v. *Dibben*, 9 Sim. 447, *n*). *Cp*, *Saunderson* v. *Dobson*, 16 L. J. Ex. 249; 1 Ex. 141, as decided by the Court of Ex., but sent by M. R., 10 Bea. 484, for opinion of C. P., when that Court differed from the Exchequer, 7 C. B. 81.

But "All Estate, Effects, and PROPERTY, whatsoever and wheresoever," has been held, upon the context, not to pass realty (*Woollam* v. *Kenworthy*, 9 Ves. 137: *Courd* v. *Holderness*, 24 L. J. Ch. 388; 20 Bea. 147; *Svthlc*, *Lloyd* v. *Lloyd*, L. R. 7 Eq. 458; 38 L. J. Ch. 458: *Streatfield* v. *Cooper*, 27 Bea. 343), and especially such a phrase will not pass realty when occur-

Digitized by Google

ring in a gift the qualifying word of which is "personal" (*Belaney* v. *Belaney*, 35 Bea. 469; 36 L. J. Ch. 265; 2 Ch. 138: *Jones* v. *Robinson*, 47 L. J. C. P. 673; 3 C. P. D. 344), or (but not so strongly) where the gift is coupled with a limitation to the personal representatives of the donee, *e.g.* "Exors or Admors," and there is no other context (*Doe* d. *Spearing* v. *Buckner*, 6 T. R. 610, and *Doe* d. *Hurrell* v. *Hurrell*, 5 B. & Ald. 18, both stated in *Stokes* v. *Salomons*, sup: *Pogson* v. *Thomas*, 6 Bing. N. C. 337: *Coard* v. *Holderness*, sup: *Lloyd* v. *Lloyd*, L. R. 7 Eq. 458; 38 L. J. Ch. 458; 17 W. R. 702; 20 L. T. 898).

"*Freehold* Estate and Effects"; *V.* FREEHOLD.

The GOODWILL is included in "other the Estate and Effects" of a Partnership (*Steuart* v. *Gladstone*, 47 L. J. Ch. 423; 10 Ch. D. 626). *Va* ESTATE AND INTEREST.

"Estate and Effects" as regards Probate Duty, s. 2, 55 G. 3, c. 184; *V. A-G.* v. *Brunning*, 8 H. L. Ca. 243; 30 L. J. Ex. 379: *A-G.* v. *Partington*, 6 L. T. 900; *A-G.* v. *Ailesbury*, 12 App. Ca. 672: *Sudeley* v. *A-G.*, 1897, A. C. 11; 66 L. J. Q. B. 21: *Re Smyth*, 1898, 1 Ch. 89; 67 L. J. Ch. 10; 77 L. T. 514; 46 W. R. 104.

Vh, *Stein* v. *Ritherdon*, 37 L. J. Ch. 369; 16 W. R. 477 · W. N. (68) 65: *Charlton* v. *Charlton*, W. N. (71) 241: *Guthrie* v. *Walrond*, 52 L. J. Ch. 165; 22 Ch. D. 573: *Re Hotchkys*, *Freke* v. *Calmady*, 32 Ch. D. 408.

V. ESTATE: EFFECTS.

ESTATE AND INTEREST.—"All my Estate and Interest in the lands" at C. passes Charges on those lands in favour of the testator, as well as his Reversion in Fee therein (*Kilkelly* v. *Powell*, 1897, 1 I. R. 457), and such a devise passes Mortgages on land, as well as the Fee Simple therein (*Mackesy* v. *Mackesy*, 1896, 1 I. R. 511).

"All the Estate, TERM, and Interest" of Assignor in Leaseholds; held to mean, not "all such estate, &c, *if any*" as he had but, an indication that he was not conveying Freeholds; and that it did not save the Assignor from liability under his covenant for Title, he having previously assigned a part of the property described in the assignment (*May* v. *Platt*, 1900, 1 Ch. 616; 69 L. J. Ch. 357; 83 L. T. 123; 48 W. R. 617).

A contract for the sale of a person's "Estate and Interest" in a Business Property and in the Business, will carry the GOODWILL (*Pearson* v. *Pearson*, 54 L. J. Ch. 32; 27 Ch. D. 145). *Va* ESTATE AND EFFECTS.

"Estate or Interest *claimed*," s. 3, Real Property Limitation Act, 1833; *V. Grant* v. *Ellis*, 11 L. J. Ex. 233; 9 M. & W. 113: *Howitt* v. *Harrington*, 1893, 2 Ch. 497; 62 L. J. Ch. 577. In *Grant* v. *Ellis*, the Court spoke of "Interest" as being a word of a very "large and comprehensive nature." As to "Estate, Interest," &c, s. 20, Ib., *V.* RIGHT.

"Estate or Interest *in Land*," s. 4, Public Works (New Zealand)

Digitized by Google

Act, 1882; *V. Plimmer* v. *Wellington*, 9 App. Ca. 699; 53 L. J. P. C. 105: *Ramsden* v. *Dyson*, L. R. 1 H. L. 129.

V. subs. 1, 2, 3, s. 2, Settled Land Act, 1882.

"Estate or Interest, in POSSESSION," s. 3, Real Property Limitation Act, 1833; *V. Corpus College* v. *Rogers*, 49 L. J. Ex. 4: *Ecclesiastical Commrs* v. *Rowe*, 49 L. J. Q. B. 771; 5 App. Ca. 736: *Ib.* v. *Treemer*, 1893, 1 Ch. 166; 62 L. J. Ch. 119; 41 W. R. 166; 68 L. T. 11.

"According to his Estate and Interest"; *V.* ACCORDING.

Future "Money, or Property" in which a Bankrupt has no "Estate or Interest," s. 47 (2), Bankry Act, 1883; *V. Re Bishop*, cited MONEY.

V. INTEREST IN LAND.

ESTATE DUTY.—"Estate Duty," s. 6, Finance Act, 1894, included Settlement Estate Duty under s. 5 (*Re Webber*, 1896, 1 Ch. 914; 65 L. J. Ch. 544); but this was altered by s. 19, Finance Act, 1896, on *whv*, *Re Gibbs*, cited DECEASED: *Re Maryon-Wilson*, cited DEDUCTION.

V. Austen-Cartmell on the Finance Acts.

"'Estate Duty Grant,' means, the Grant made under s. 19, Finance Act, 1894, in substitution for the Probate Duty Grant" (s. 2, 62 & 63 V. c. 17).

ESTATE TAIL.— *V.* HEIRS: HEIRS OF THE BODY: ISSUE: TAIL.

Quà Fines and Recoveries Act, 1833, "'Estate Tail,' in addition to its usual meaning, shall mean, a BASE FEE into which an Estate Tail shall have been converted" (s. 1).

"Estate Tail in Possession"; *V.* POSSESSION.

ESTATES.—Power to Lease "Estates, Heredits, and Premises," or any Part or Parts thereof; *V. Dayrell* v. *Hoare*, and other cases, cited ANY.

V. THREE ESTATES.

ESTIMATE.—An OFFER is not less binding for being in the form of an Estimate, and headed "Estimate" (*Croshaw* v. *Pritchard*, 16 Times Rep. 45).

ESTIMATED: ESTIMATION.—When Particulars of Sale state the property to be of an "Estimated" value, and an honest estimate has been made, no ground for compensation arises because the estimate is mistaken (*Re Hurlbalt and Chaytor*, 57 L. J. Ch. 421). *Cp* ADMEASUREMENT.

The qualification of a quantity by the phrase "*By Estimation*," is equivalent to MORE OR LESS (*Joliffe* v. *Baker*, 52 L. J. Q. B. 609; 11 Q. B. D 255: Sug. V. & P. 559: Dart, 736).

"Estimated Price of Commission"; *V.* PRICE.

V. FAIRLY.

Digitized by Google

ESTOPPEL.—"'Estoppe,' commeth of a French word *estoupe*, from whence the English word stopped, and it is called an estoppel, or conclusion, because a man's owne act or acceptance stoppeth or closeth up his mouth to allege or plead the truth; and *Littleton's* case here (s. 667) proveth this description" (Co. Litt. 352 a, where it is said Estoppel is of three kinds, *i.e.* Matter (1) of Record, (2) in Writing, *i.e.*, *semble*, by Deed, (3) *in Paiis*). To the same effect is the def in Termes de la Ley.

Vh, *Dixon* v. *Kennaway*, 1900, 1 Ch. 833; 69 L. J. Ch. 501; 82 L. T. 527, and cases there cited: *Dalton* v. *Fitzgerald*, 1897, 2 Ch. 86; 66 L. J. Ch. 604: *Norris* v. *Craig*, 64 L. J. Q. B. 432: ACQUIESCENCE: WHEREAS: White & Tudor, 446: Everest on Estoppel: 5 Encyc. 74–81.

Note. Estoppel cannot apply to a Married Woman's property that she is restrained from alienating (*Bateman* v. *Faber*, 1897, 2 Ch. 223; 1898, 1 Ch. 144; 66 L. J. Ch. 721; 67 Ib. 130; 77 L. T. 576; 46 W. R. 215).

ESTOVERS.—"'Estovers' are nutrishment or maintenance" (Termes de la Ley). *Vf*, Cowel: 5 Encyc. 81.

"By the grant of Estovers, will pass houseboote, hayboote, and plowboote. But if a man grant to me estovers out of his manor, I may not by this grant cut down any of the fruit trees within his manor" (Touch. 96). *V.* BOTE. Excess of user may amount to WASTE (*Simmons* v. *Norton*, 7 Bing. 640).

ESTRAY.—"'Estray' is where any beast or cattel is in my lordship and none knoweth the owner thereof" (Termes de la Ley). *Vf*, Cowel: 5 Encyc. 82: Elph. 573.

ESTREAT.—To estreat, *e.g.* estreat a Recognizance, or Fine, is to enforce an obligation to the Crown: *Vh.* 5 Encyc. 82–84.

An Estreat is "a true copy, or duplicate, of an original Writing. For example, of Amerciaments or Penalties set down in the Rolls of a Court, to be levyed by the Bayliff, or other officer, of every man for his Offence. See F. N. B. fol. 57, 76" (Cowel). *Vh*, 3 G. 4, c. 46; 3 & 4 W. 4, c. 99; 22 & 23 V. c. 21; Sum Jur Act, 1879, s. 9.

ESTREPEMENT.—WASTE, voluntary or permissive, by a tenant for life or years (Spelm.: Cowel). "It also signifies the making land barren by continual ploughing, 6 Edw. I. c. 13" (Jacob).

ESTUARY.—Estuary of a RIVER; *V. Horne* v. *Mackenzie*, cited MOUTH.

Quà Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, "'Estuary,' and 'Bay,' shall include and extend to any HARBOUR or Roadstead" (s. 1).

ET CETERA.—A bequest of "all my household furniture and effects, plate, glass, wearing apparel, *&c*," was held to pass the articles

Digitized by Google

enumerated, and others *ejusdem generis*, but not the general residue (*Newman* v. *Newman*, 26 Bea. 220); and a like construction was given to the words "all my furniture, &c" (*Barnaby* v. *Tassell*, L. R. 11 Eq. 363). But though those cases were cited to Jessel, M. R., in *Chapman* v. *Chapman* (46 L. J. Ch. 104; 4 Ch. D. 800), he held that the general residue passed under a bequest, to the testator's widow, of "all my money, cattle, farming implements, *&c*, she paying my brother the sum of £ ." *Vf*, *Hertford* v. *Lowther*, 7 Bea. 9: *Gover* v. *Davis*, 30 L. J. Ch. 505; 29 Bea. 225: *Dean* v. *Gibson*, 36 L. J. Ch. 657; L. R. 3 Eq. 713: *Twining* v. *Powell*, 2 Coll. 262; 1 Jarm. 755, *n*: *Mullally* v. *Walsh*, 3 L. R. Ir. 244.

The insertion of "&c" in some of the terms of an Agreement for a Lease or Sale, does not produce such uncertainty as to render the Agreement incapable of specific performance, if the material points are sufficiently stated (*Parker* v. *Taswell*, 27 L. J. Ch. 812; 2 D. G. & J. 559: *Naylor* v. *Goodall*, 45 L. J. Ch. 53; *Sv*, *Price* v. *Griffith*, 21 L. J. Ch. 78; 1 D. G. M. & G. 80). On the sale of "GOODWILL, &c," the "&c" carries the belongings of the Goodwill, *e.g.* trade-marks (*Cooper* v. *Hood*, 28 L. J. Ch. 215; 26 Bea. 293; 4 Jur. N. S. 1266).

"&c" is used in Littleton, s. 246 (*Vth* Co. Litt. 167 a) and in s. 389 (*Vth* Co. Litt. 239 b); on *whr*, per Ld St. Leonards in the *Montrose Peerage Case*, 1 Macq. 432, 433.

V. OTHER.

EUROPE.—Ship "TRADING to any Port in Europe, North and East of Brest," s. 379 (3), Mer Shipping Act, 1854, as extended by Order in Council 21 Dec 1871 (for *whv* 2 Maude & P. 78),—"Europe" is there used in contradistinction to the UNITED KINGDOM the exemption as to which was provided by subs. 1 (per Bruce, J., *The Winestead*, 1895, P. 170; 64 L. J. P. D. & A. 53; 72 L. T. 91). *V.* COASTING TRADE.

EVANESCENT.—*V.* FLEETING.

EVANGELICAL.—A Trust for purchasing Advowsons of Churches where the Services are "Evangelical," is, *semble*, a good CHARITY (*Re Hunter*, 1897, 2 Ch. 105; 66 L. J. Ch. 545; 76 L. T. 725; 45 W. R. 610); but such a Trust must be declared in apt language (*S. C.* 1899, A. C. 309; 68 L. J. Ch. 449; 80 L. T. 732; 47 W. R. 673).

EVASION.—"I never understood what is meant by an Evasion of an Act of Parliament; either you are within the Act of Parliament or not. If you are not within it you have a right to avoid it, to keep out of the prohibition; if you are within it, say so, and then the course is clear" (per Cranworth, C., *Edwards* v. *Hall*, 25 L. J. Ch. 84).

Thus, where an occupier of land adjoining a TURNPIKE ROAD made a

Digitized by Google

road on that land which opening on to the Road at one place swept to another such opening, the Turnpike Gate being between the two openings, and so he used the Turnpike Road without paying toll; held, that he had done no act "with intent to evade the payment" of Toll, s. 41, 3 G. 4, c. 126, because the Toll was payable "at" the gate by a person going "through" it, and he had not come within either phrase (*Harding* v. *Headington*, 43 L. J. M. C. 59; L. R. 9 Q. B. 157). *Vf*, per Jessel, M. R., and Lindley, L. J., *Yorkshire Ry Wagon Co* v. *Maclure*, 51 L. J. Ch. 857; 21 Ch. D. 309: *Sv*, s. 6, Pawnbrokers Act, 1872.

"Everybody agrees that 'evade' is capable of being used in two senses;—(1) which suggests underhand dealing, (2) which means nothing more than the intentional avoidance of something disagreeable" (*Simms* v. *Registrar of Probates*, 69 L. J. P. C. 56). Probably, it may be said that it is in the first of these two meanings that the word is generally used in Penal Statutes, *e.g.* s. 27 (South Australia) Succession Duties Act, 1893 (which corresponds with s. 8, Sucn Dy Act, 1853) whereby property comprised in any "Non-testamentary Disposition" made "with the intent to evade the payment" of Succession Duty, is rendered liable to double duty. "Evade," there, "means some device or stratagem: some arrangement, trust, or other device (whether concealed, or apparent on the face of the Non-testamentary Disposition) by which what is really a part of the Estate of the Deceased is made to appear to belong to somebody else in order to escape payment of Duty" (per Way, C. J., adopted by P. C., *Simms* v. *Registrar of Probates*, 69 L. J. P. C. 54; 1900, A. C. 323; 82 L. T. 433); and, accordingly, it was there held that a covenant by a deceased to pay £200,000 to his children which conferred on them a complete ownership of the debt, and which (not having been paid during his life) diminished by that amount his Net Assets liable to Duty, and though it was a "DISPOSITION of Property" within the meaning of the Act, yet it was not entered into "with the intent to evade" the Duty, there being no evidence to show that the covenant was not a genuine transaction, or anything to impeach its *bona fides*. *Vf*, *Bullivant* v. *A-G. Victoria*, 1901, A. C. 196; 70 L. J. K. B. 645.

EVASIVELY.—Pleading "evasively," R. 19, Ord. 19, R. S. C., is the converse of answering the POINT OF SUBSTANCE, *whv*, for cases hereon: *Va* AS ALLEGED.

EVEN DATE.—*V.* BEARING.

EVENING.—*V.* AFTERNOON: EVERY.

EVENT.—"Event" in the well-known phrase in arbitration agreements, and in the Rules of Court (Ord. 65, R. 1) that "the Costs shall follow the Event," is "a *nomen collectivum*, and may be said to be equivalent to 'Result,'" of which there may be more than one in the action or enquiry (per Bramwell, L. J., *Myers* v. *Defries*, 49 L. J. Ex. 270).

Digitized by Google

"The Event is the outcome or the result of the trial, and although there may be one verdict and one judgment, still there may be more than one event" (per Baggallay, L. J., *Ib.* 271). "Event" in this phrase is therefore to be read, distributively, as "Events" (*Ellis* v. *Desilva*, 50 L. J. Q. B. 328; 6 Q. B. D. 521). The result of each distinct issue, in an action or an enquiry, is its "Event"; the costs of which will go to the party who succeeds on it (*Hardy* v. *Fetherstonhaugh*, 38 L. J. Q. B. 337; 10 B. & S. 628; L. R. 4 Q. B. 725: *Myers* v. *Defries*, 49 L. J. Ex. 266; 5 Ex. D. 180: *Ellis* v. *Desilva*, sup: *Abbott* v. *Andrews*, 51 L. J. Q. B. 641; 8 Q. B. D. 648: *Goutard* v. *Carr*, 53 L. J. Q. B. 55; 13 Q. B. D. 598, *n*: *Hawke* v. *Brear*, 54 L. J. Q. B. 315; 14 Q. B. D. 841). Those costs mean the whole litigation relating to the "Event," including a wrong non-suit or verdict that has been set aside (*Creen* v. *Wright*, 46 L. J. C. P. 427; 2 C. P. D. 354: *Field* v. *G. N. Ry*, 47 L. J. Ex. 662; 3 Ex. D. 261), the "Event" in the latter case being the "Event" of the fresh contest on which the rule is granted (*Jones* v. *Williams*, 42 L. J. Q. B. 48; L. R. 8 Q. B. 280). The general costs of a trial or an enquiry would, as a rule, in the one case follow the judgment and in the other would follow the general result, or balance, of the findings (*Goutard* v. *Carr*, sup: *Lund* v. *Campbell*, 54 L. J. Q. B. 281; 14 Q. B. D. 821: *Shrapnel* v. *Laing*, 57 L. J. Q. B. 195; 20 Q. B. D. 334; 58 L. T. 705; 36 W. R. 297). But in *Myers* v. *Defries*, sup, Bramwell, L. J., said, "The costs of the writ, for instance, are necessarily incurred by the plaintiff if there is *an* Event in his favour. Where *an* event is in the plaintiff's favour and where he gets costs, he will get the general costs of the cause; where, however, he recovers nominal damages and gets no costs, he will not have to pay any general costs to the other party" (49 L. J. Ex. 271). *Vf*, where there is a Counter-Claim, *Stooke* v. *Taylor*, 49 L. J. Q. B. 859; 5 Q. B. D. 569, dissenting from *Staples* v. *Young*, 2 Ex. D. 324, and distinguishing *Chatfield* v. *Sedgwick*, 4 C. P. D. 459: *Forrest* v. *Carte*, 1897, 2 I. R. 314: *Curtis* v. *Armstrong*, Ib. 327.

As to the deprival of plt's costs where action should have been in the County Court, *V. Ferguson* v. *Davison*, cited RECOVER.

Costs to "abide the Event," s. 113, Co. Co. Act, 1888; *V. White* v. *Headland's Co*, cited RECOVER: *Wright* v. *Bull*, 1900, 2 Q. B. 124; 69 L. J. Q. B. 529; 82 L. T. 568.

V. VERDICT: RESULT.

Deposit "to abide the Event" of a Wager; *V.* DEPOSIT: COVER. *Cp*, GAMING CONTRACT.

The common "Sweep-stake" on a Horse-race is not money received as a consideration for an undertaking to pay "on any Event or Contingency of or relating to any Horse-race," s. 1, 16 & 17 V. c. 119, for the receiver is but a stake-holder, and the Event or Contingency on which the money is to be distributed is not a "HORSE-RACE," but is only the drawing of the names of the successful horses (*R.* v. *Hobbs*, 1898, 2 Q. B. 647; 67

Digitized by Google

L. J. Q. B. 928; 47 W. R. 79; 79 L. T. 160; 62 J. P. 551). But such a Sweep-stake is a LOTTERY (*V.* SUBSCRIPTION OR CONTRIBUTION).

The death of a Copyhold Tenant, or the devolution of his title (during proceedings for Enfranchisement), would be an "Event" requiring Admittance within s. 1, 15 & 16 V. c. 51 (*Myers* v. *Hodgson*, 45 L. J. C. P. 603; 1 C. P. D. 609).

"In the event of Decease," in a Will, are (probably) words of futurity (per Kekewich, arg. *Re Webster*, 52 L. J. Ch. 768).

EVER.—*V.* FOR EVER.

EVERY.—In *Brown* v. *Jarvis* (29 L. J. Ch. 595; 2 D. G. F. & J. 168; 8 W. R. 644) a gift over "after the decease of *every* of them," *i.e.* certain prior legatees, "every" was read "EACH." In that case Campbell, C., said, "Dr. Johnson tells us in his Dictionary that 'every' was formerly spelt 'Everich,' that is, Ever-each; and that the true meaning is, 'each one of all.' The word may be used in this sense, although other lexicographers may give another meaning to it." *V.* ALL AND EVERY.

"Every *Building*"; *V.* BUILDING.

"Every *Dispute*," s. 22, Friendly Societies Act, 1875; *V. Morrison* v. *Glover*, 19 L. J. Ex. 20; 4 Ex. 430. *V.* DISPUTE: FRIENDLY SOCIETY.

"Every *Evening*," in an Artiste's Agreement to perform at a Place of ENTERTAINMENT, means, every evening on which the Place "may be legally opened and the artiste called upon to perform" (per Hawkins, J., *Kelly* v. *London Pavilion*, 77 L. T. 217), a def which excludes Sundays.

"Every such *Offence*," s. 20, 58 G. 3, c. 194; *V. Apothecaries Co* v. *Jones*, cited PRACTICE.

"Every *Person*," 5 G. 4, c. 83, s. 43, does not apply to a deserted married woman who has not the means of supporting her children who have become chargeable to the parish (*Peters* v. *Cowie*, 46 L. J. M. C. 177; 2 Q. B. D. 131); nor did this phrase entitle a married woman to vote for municipal councillors under ss. 1 and 9, 32 & 33 V. c. 55 (*R.* v. *Harrald*, 41 L. J. Q. B. 173; L. R. 7 Q. B. 361).

"Every *Person*," having served in the Militia, should have freedom to set up a TRADE (26 G. 3, c. 107), related only to persons exercising trades, and not to common labourers (*R.* v. *Gwenop*, 3 T. R. 135). So "Every Person" who impounds an animal is to feed it, s. 5, 12 & 13 V. c. 92, does not include the pound-keeper (*Dargan* v. *Davies*, cited IMPOUND OR CONFINE); nor is an Innkeeper, whilst in his own inn after the same is closed, within the phrase "Every person found drunk on licensed premises," s. 12, 35 & 36 V. c. 94 (*Lester* v. *Torrens*, cited LICENSED PREMISES). But "Every Person" committed "for any offence or misdemeanour" to bear his own charges of being conveyed (3 Jac. 1,

Digitized by Google

c. 10), includes deserters as well as ordinary criminals (*R.* v. *Pierce*, 3 M. & S. 62).

Vf, for example of restricted meaning of "Every Person," *Beilby* v. *Shepherd*, 3 Ex. 40; 18 L. J. Ex. 73: PERSON.

A penalty on "Every *Person*" concerned in an OFFENCE, may be recovered, for the same offence, against each person therein concerned (*R.* v. *Dean*, 13 L. J. Ex. 33; 12 M. & W. 39).

"Every *Power*" enabling; *V.* ENABLING.

"Every *Reference*" to Arbitration shall be under the Act except where inconsistent with a Special Prior Act (s. 24, Arb Act, 1889), indicates that "the Act was intended to introduce a Code with regard to ARBITRATION; and its operation is only excluded from Arbitrations with which it is absolutely inconsistent" (per Fry, L. J., *Re Knight and Tabernacle Bg Socy*, cited INCONSISTENT).

Devise to "Every *Son* during his life"; *V. Surtees* v. *Surtees*, L. R. 12 Eq. 400: SON.

EVERY THING ELSE. — Held to include undisposed of Realty in FEE (*Wilce* v. *Wilce*, 9 L. J. O. S. C. P. 197; 5 Moore & P. 682; 7 Bing. 664); but in that case there was a preamble very comprehensively showing that the testator meant to dispose of all he had in the world, whilst the words of gift were "All the Rest of my Worldly Goods, Bonds, Notes, Book Debts, and Ready Money, and Every Thing Else *I die possessed of*." But where the bequest was of "All my Stock-in-Trade, Household Goods, Wearing Apparel, Ready Money, Securities for Money, and Every Other Thing my property, of what nature or kind soever," it was held that land did not pass, the testatrix's intention being uncertain (*Doe* d. *Bunny* v. *Rout*, 7 Taunt. 79; 2 Marsh. 397).

V. EVERYTHING: THINGS.

EVERYTHING. — "Under a bequest of 'Everything' in a house, Money and Bank Notes will pass" (Watson, Eq. 1327, citing *Popham* v. *Aylesbury*, Amb. 68: *Stuart* v. *Bute*, 11 Ves. 662: *Vthlc*, Watson Eq. 1328).

Vh, *Re Methuen and Blore*, 50 L. J. Ch. 464; 16 Ch. D. 696; 29 W. R. 656; 44 L. T. 332: EVERY THING ELSE.

EVICTION. — "The word 'Eviction' has in latter times been understood to mean what formerly it was not intended to express. Formerly it meant what was expressed by the language of Pleading, 'evicted, expelled, removed, and put out,' — describing the different modes in which it might take place. 'Eviction,' from *evincere*, to evict or dispossess by course of law, was used originally when the person having the permanent title asserted it and expelled his tenant. But that sort of Eviction is not absolutely necessary in order to operate as a suspension

Digitized by Google

of the rent, and the word is now used when that has been done which deprives the tenant of the enjoyment of the premises, and the rent is therefore suspended, and the right of the landlord to recover it is gone. The word 'Eviction' has come to have a popular meaning, and to be applied to every kind of expulsion in fact. Now, getting rid of the old notion of an Eviction, it may be taken to mean, not a mere trespass without anything more, — because, though every Eviction implies a Trespass, every Trespass does not amount to an Eviction, — but something of a more permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the whole or part of the demised premises. If that be shewn, the Eviction may be in various ways" (per Jervis, C. J., *Upton* v. *Townend*, 25 L. J. C. P. 51; 17 C. B. 30: *Vth, Wilson* v. *Burne*, 24 L. R. Ir. 20). *Cp*, Ejectment: Entry.

EVIDENCE. — For examples of what is "Evidence" in a Pleading, contrary to R. 4, Ord. 19, R. S. C.: *V. Davy* v. *Garrett*, 7 Ch. D. 473; 47 L. J. Ch. 218. *Cp* Material Fact.

"The Evidence" sufficient to justify an Election Court to order a prosecution for Corrupt Practice, s. 28 (5), 47 & 48 V. c. 70, is the Evidence which has already been given before that Court in the enquiry in which such prosecution is directed (*R.* v. *Shellard*, 58 L. J. M. C. 142).

V. Conclusive Evidence: Sufficient Evidence: Satisfactory: Hearsay: Primary: Presumption: Judicial Persuasion: No Evidence: Extrinsic: Fresh Evidence: Material Evidence.

"The Evidence Acts, 1806 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

EVIDENCE OF A CONTRACT. — "Agreement, or any Memorandum of an Agreement . . . Under Hand only . . . whether the same be only *Evidence of a Contract* or obligatory upon the parties from its being a written Instrument"; — This form of words, — which appeared in 48 G. 3, c. 149, Sch tit. "Agreement," and has re-appeared in the subsequent Stamp Acts of 1815, 1850, 1860, 1870, and 1891, — has imposed a Stamp Duty (which since the Act of 1860 has been 6*d.*) on Agreements except such as come within the prescribed Exemptions.

The "Memorandum" of an Agreement differs from an "Agreement" chiefly in that it is less formal (*V.* Note).

But the words "Evidence of a Contract" strike against and nullify the possible argument that the document requiring a stamp must, like "Agreement" in the Statute of Frauds, contain the whole agreement (per Maule, J., *Vaughton* v. *Brine*, 1 M. & G. 359: *Beeching* v. *Westbrook*, 10 L. J. Ex. 464; 8 M. & W. 411). Therefore, an Auctioneer's Sold Note, which omits the vendor's name (*Ramsbottom* v. *Wortley*, 2 M. & S. 448), or a Guarantee under s. 3, Mer Law Amend Act, 1856, which omits the consideration (*Glover* v. *Halkett*, 26 L. J. Ex. 416; 2 H. & N. 490), re-

Digitized by Google

quires the stamp. So, *a fortiori*, of any document which contains within itself the terms of the contract (*Knight* v. *Barber*, 16 L. J. Ex. 18; 16 M. & W. 66: *Hegarty* v. *Milne*, 23 L. J. C. P. 151; 14 C. B. 627: *Bowen* v. *Fox*, 2 M. & R. 167).

On the other hand, *Beeching* v. *Westbrook* (sup) shows that a document not intended to operate as a contract and only used as proof of the existence of a contract, is not "Evidence of a Contract," within the above phrase. "No document requires an Agreement Stamp unless it amounts to an Agreement or a Mem of an Agreement. The mere fact that a document may assist in proving a contract, does not render it chargeable with stamp duty. A mere proposal or offer, until accepted, amounts to nothing. If accepted in writing, the offer and acceptance *together* amount to an Agreement; but if accepted by parol, such acceptance does not convert the offer into an Agreement or Mem of an Agreement; unless, indeed, after the acceptance, something is said or done by the parties to indicate that in the future it is to be so considered" (per Hawkins, J., *Carlill* v. *Carbolic Smoke Ball Co*, 1892, 2 Q. B. 484; 61 L. J. Q. B. 696, citing *Edgar* v. *Blick*, 1 Starkie, 464: *Chaplin* v. *Clarke*, 4 Ex. 407: *Hudspeth* v. *Yarnold*, 19 L. J. C. P. 321; 9 C. B. 625: *Clay* v. *Crofts*, 20 L. J. Ex. 361). Therefore, the offer of a REWARD to any person who uses unsuccessfully an advertised specific (*Carlill* v. *Carbolic Smoke Ball Co*, 1893, 1 Q. B. 256; 62 L. J. Q. B. 257; 67 L. T. 837; 41 W. R. 210; 57 J. P. 325), or a private mem, or an Auctioneer's unsigned note (*Ramsbottom* v. *Tunbridge*, 2 M. & S. 434), or an acknowledgement of a fact (*Mullett* v. *Huchison*, 7 B. & C. 639: *Blackwell* v. *M'Naughtan*, 1 Q. B. 127), does *not* require a stamp.

An insufficiently stamped Receipt may be Evidence of a Contract (*Evans* v. *Prothero*, 21 L. J. Ch. 772; 1 D. G. M. & G. 572: *Cp* AVAILABLE, at end).

V. MINUTE.

EVIDENCES.—"Evidences and Information," s. 3 (6), Conv & L. P. Act, 1881; *V.* per Kay, L. J., *Re Stuart and Seadon*, cited INFORMATION.

EVIL.—"Suspected of Evil"; *V.* WALK.

EVIL LIVER.—"An open and notorious Evil-Liver" who may be rejected from Communion (Rubric to Communion Office), is limited to one whose moral conduct, as distinguished from religious belief, is bad (*Jenkins* v. *Cook*, 45 L. J. P. C. 1; 1 P. D. 80); and, *semble*, such bad moral conduct must be "open and notorious": *V.* COMMON AND NOTORIOUS.

EWART'S ACT.—The Trial for Felony Act, 1836, 6 & 7 W. 4, c. 114.

Digitized by Google

EX FIRST PARCEL. — "Ex the first parcel of brimstone we have in the Tyne on our account"; *V. Gray* v. *Leidemann*, 5 W. R. 294; 26 L. J. Ex. 162; 28 L. T. O. S. 341.

EX MERO MOTU. — These "are words frequently used in Kings Charters, whereby hee signifies that hee doth that which is contained in the Charter of his owne Will and Motion, without Petition or Suggestion made by any other: and the effect of these words is to barre all exceptions that might be taken to the instrument wherein they be contained by alleaging that the King, in passing that Charter, was abused by any false suggestion . . . these words shall be taken most strongly against the King" (Termes de la Ley).

EX PARTE MATERNÂ. — *V.* Next of Kin.

EX QUAY OR WAREHOUSE. — "In a contract for the sale of goods 'Ex Quay or Warehouse,' there is an implied condition that the vendor shall give notice to the purchaser of the place of storage; and until such notice has been given, the purchaser is not in default for non-acceptance" (Benj. 671, citing *Davies* v. *McLean*, 21 W. R. 264; 28 L. T. 113).

EXACT. — An exact *Imitation* of an ordinary article, is an imitation which cannot, by ordinary eyesight, be distinguished from the original. "Exact Imitation" has a much stricter meaning than a "Colourable Imitation"; *V.* Copy. Therefore, where a firm of Ladies' Corset Manufacturers dissolved partnership and the retiring partner covenanted that he would not manufacture, or sell, corsets which should be an "Exact Imitation" of the corsets previously manufactured by the firm, it was held no breach of that covenant for the covenantor to manufacture and sell corsets which were a Colourable imitation of the firm's corsets but were distinguishable therefrom by small, though readily recognisable, differences, *e.g.* the numbers of the bones used and their relative positions, or the colour of the silk or thread by which the decorative stitching was executed (per Chitty, J., *Reynolds* v. *Brown*, Dec 7, 1894).
V. Exactly.

EXACTION. — "'Exaction' is a wrong done by an Officer, or by one pretending to have authority, in demaunding or taking any reward or fee for that matter, cause, or thing, for which the law alloweth not any fee at all. . . . 'Extortion' is where an officer demaundeth and wresteth a greater summe or reward than his just fee" (Termes de la Ley, *Exaction*).

But Coke treats "Extortion" as including "Exaction," for he defines "Extortion" as, "unlawfully taking by any Officer, by colour of his Office, any money or valuable thing, of or from any man, either that is

Digitized by Google

not due or more than is due or before it be due" (Co. Litt. 368 b: *Vf, Beawfage's Case*, 10 Rep. 99 b).

"Exactions"; *V.* DEMAND.

EXACTLY. — An Insolvent was to have the benefit of the Act 1 & 2 V. c. 110, though (s. 93) a debt was specified in his schedule "not exactly," if the error was "without any culpable negligence, or fraud, or evil intention"; *V. Hoyles* v. *Blore*, 15 L. J. Ex. 28; 14 M. & W. 387.

V. EXACT.

EXAMINATION. — A Power to a Court to "take Examinations," or other accusation or proof, implies that it is to be done on oath (Dalt. c. 115, cited Dwar. 672).

The "Examination," s. 79, 4 & 5 W. 4, c. 76, "means the ENTIRE body of Evidence taken on the occasion of making the Order (of Pauper Removal) the whole of which should be sent, that the Parish, which is ordered to receive the pauper, may have an opportunity of considering whether that Order should be resisted or submitted to" (per Coleridge, J., *R.* v. *Outwell*, 9 A. & E. 839).

FINAL EXAMINATION: INTERMEDIATE: PRELIMINARY.

EXAMINED COPY. — *V.* CERTIFIED: Rosc. N. P. 98.

EXCAMBIATOR. — "'Excambiator,' was anciently used for an Exchanger of Land, such, I suppose, as we now call BROKERS" (Cowel).

EXCAMBION. — As used in Stamp Act, 1891; *V. Coats* v. *Inl. Rev.*, 66 L. J. Q. B. 434: *G. N. Ry* v. *Inl. Rev.*, 1899, 2 Q. B. 661; 68 L. J. Q. B. 983.

EXCEED. — Every contract made by an Urban Authority whereof the Value or Amount "exceeds" £50, must be IN WRITING and under its Common Seal (s. 174 (1), P. H. Act, 1875), *i.e.* the contract must necessarily exceed £50 *at the time of its making* (*Eaton* v. *Basker*, 50 L. J. Q. B. 444; 7 Q. B. D. 529, distinguishing *Hunt* v. *Wimbledon*, 48 L. J. C. P. 207; 4 C. P. D. 48). *V.* NOT TO BE: SMALL.

An Act in which a Justice "shall have exceeded his Jurisdiction," s. 2, 11 & 12 V. c. 44, means, "assuming to do something which the Act under which he is proceeding could, by no possibility, justify, — as in *Leary* v. *Pattrick* (19 L. J. M. C. 211), where there could have been no authority to issue a Distress for Costs not adjudged by a Conviction, or as in *Barton* v. *Bricknell* (20 L. J. M. C. 1), where there was no power to order the plt to be put in the Stocks" (per Jervis, C. J., *Ratt* v. *Parkinson*, 20 L. J. M. C. 212). *Vf, Kendall* v. *Wilkinson*, 24 L. J. M. C. 89; 4 E. & B. 680: *Pease* v. *Chaytor*, 31 L. J. M. C. 1; 1 B. & S. 658.

Digitized by Google

Rate not to "exceed" one penny in the £; *V. Ex p. Brown*, 31 L. J. M. C. 108.

"Not exceeding"; *V.* LESS: NOT EXCEEDING.

V. EXCESS.

EXCEPT. — A bequest of all testator's property, "except" so much a year to A., gives A. an ANNUITY in perpetuity, for a thing excepted is of the same nature as that from which it is excepted (*Hill* v. *Potts*, 31 L. J. Ch. 380; 2 J. & H. 634).

"Property except Lands"; *V.* PROPERTY OTHER THAN LAND.

"Except where otherwise provided by statute"; *V. Re Tarn*, 1893, 2 Ch. 280; 62 L. J. Ch. 564; 68 L. T. 311; 41 W. R. 397: *Buckley* v. *Hull Dock Co*, 1893, 2 Q. B. 93; 62 L. J. Q. B. 449; 69 L. T. 347: *Cp* EXPRESSLY PROVIDED.

"Except," may sometimes be read as "In addition to" (*Sowerby* v. *G. N. Ry*, 7 Ry & Can Traffic Ca. 164).

V. EXCEPTION: UNLESS.

EXCEPTING. — This word, — *e.g.* a Lease "excepting free passage" over premises demised, — may create a covenant (*Bush* v. *Cole*, Carth. 232; 12 Mod. 24; nom. *Bush* v. *Calis*, Show. 247: *Cole's Case*, 1 Salk. 196).

EXCEPTION. — An Exception in a Grant, "keeps the things from passing thereby, being a saving out of the deed as if the same had not been granted: but it is to be a particular thing out of a general one, — as a room out of a house, ground out of a manor, timber out of land, &c. And it must not be of a thing expressly granted; also it must be of what is severable from, and not inseparably incident to, the grant" (Jacob, citing Co. Litt. 47: 1 Lev. 287: *Kenson* v. *Reading*, Cro. Eliz. 244). *V.* RESERVATION.

"It is a rule of construction that where there is a Grant and an Exception out of it, the words of the Exception are to be considered as the words of the grantor and are to be construed in favour of the grantee" (per Holroyd, J., *Bullen* v. *Denning*, 5 B. & C. 850). *Vf* Elph. 93, 94, 427.

Exceptions in a BILL OF LADING, or CHARTER PARTY; *V. Schmidt* v. *Royal Mail S. S. Co*, cited FIRE ON BOARD. For connected treatment and discussion of these Exceptions, frequently called "Excepted Perils," *V.* Abbott, Part 3, ch. 4.

EXCESS. — *V.* EXCEED: ABANDON.

"In Excess"; *V.* RECEIVE.

For Order for Reduction of Capital of a Co when "in Excess" of its wants, s. 3, Comp Act, 1877; *V. Re Nixon Co*, 1897, 1 Ch. 872; 66 L. J. Ch. 406.

"'Excess,' in the Execution of POWERS, consists in the transgression either of the rules of law or of the scope of the Power" (Farwell, 285).

Digitized by Google

EXCESSIVE. — "In one sense, no doubt, an 'Excessive' (Railway) Charge is 'Illegal'; but there are many charges which are not Excessive which are also Illegal" (per Field, J., *G. W. Ry* v. *Ry Commrs*, 50 L. J. Q. B. 487; 7 Q. B. D. 182). *V.* REASONABLE.

"To be 'Excessive,' a DISTRESS must be obviously disproportioned to the Rent" (Redman, 388, 389, citing *Field* v. *Mitchell*, 6 Esp. 71). *Vf*, Bullen on Distress, 2 ed., 239.

Excessive *Weight*; *V.* EXTRAORDINARY TRAFFIC.

EXCHANGE. — *V.* Termes de la Ley: Jacob: 4 Cru. Dig. 74: 5 Encyc. 102.

A Power of Sale or Exchange, authorises PARTITION.

"Exchange" formerly implied a Warranty to vouch and a Condition to give re-entry (Co. Litt. 173 b, 174 a, and Hargrave's note thereon); but it has now no special meaning (per Russell, C. J., *Baynes* v. *Lloyd*, 1895, 1 Q. B. 825; 64 L. J. Q. B. 414).

When a transaction is a "Conveyance on Sale," quà Stamp Act (*V.* CONVEYANCE), it cannot be an "Exchange" quà stamp duty (*Coats* v. *Inl. Rev.*, 1897, 2 Q. B. 423; 66 L. J. Q. B. 434, 732; 77 L. T. 270; 46 W. R. 1).

"Exchange Area"; Stat. Def., 62 & 63 V. c. 38, s. 3 (6).

EXCISE. — For a brief account of the Excise Laws, *V.* 5 Encyc. 106–121.

"Excise Trader," "Excise Warehouse"; Stat. Def., 43 & 44 V. c. 24, s. 3.

EXCISEABLE LIQUOR. — BEER was not an "Exciseable Liquor" (*Jones* v. *Whittaker*, 39 L. J. M. C. 139; L. R. 5 Q. B. 541; 22 L. T. 535: 43 & 44 V. c. 20, s. 47), nor, *semble*, is Sweet Wine (*Lancashire* v. *Staffordshire Jus.*, 26 L. J. M. C. 171; nom. *R.* v. *Lancashire*, 7 E. & B. 839).

Exciseable Liquors, now include *Beer* (s. 11, 43 & 44 V. c. 20; s. 3, 52 & 53 V. c. 7) except quà a Billiard License (s. 47, 43 & 44 V. c. 20); *Spirits* (s. 1, 23 & 24 V. c. 129; s. 6, 53 & 54 V. c. 8); *Mum, Spruce, or Black Beer* (s. 3, 44 & 45 V. c. 12); *Berlin White Beer* (s. 3, 52 & 53 V. c. 7). *Va*, WINE: SWEETS.

EXCLUDED. — "Excluded Charges"; Stat. Def., Loc Gov (Ir) Act, 1898, s. 56 (1).

Sunday "excluded"; *V.* DAYS.

EXCLUSION. — "Entire Exclusion"; *V.* ENTIRE.

EXCLUSIVE OCCUPATION. — The ordinary Railway Station Bookstall does *not* have an "Exclusive Occupation" of any part of the platform, so as, thereby, to be rateable to the poor (*Smith* v. *Lambeth*,

Digitized by Google

10 Q. B. D. 327; 52 L. J. M. C. 1; 48 L. T. 57; 47 J. P. 244; *Vf*, *R.* v. *Morrish*, 32 L. J. M. C. 245; 11 W. R. 960; 8 L. T. 697; 10 Jur. N. S. 71). So of a limited right to the use of Gas Pipes (*Southport* v. *Ormskirk*, 1894, 1 Q. B. 196; 63 L. J. Q. B. 250; 69 L. T. 852; 42 W. R. 153; 58 J. P. 212).

But there *is* an Exclusive Occupation assessable to the Poor Rate, quà ordinary Gas or Water Mains (*R.* v. *West Middlesex W. W. Co*, 28 L. J. M. C. 137: *R.* v. *Chelsea W. W. Co*, 5 B. & Ad. 156); Telephone Wires (*Lancashire Telephone Co* v. *Manchester*, 54 L. J. M. C. 63; 14 Q. B. D. 267); a Tramway (*Pimlico Tramway Co* v. *Greenwich*, 43 L. J. M. C. 29; L. R. 9 Q. B. 9); a Watercourse (*Talargoch Mining Co.* v. *St. Asaph*, 37 L. J. M. C. 149); or a Ry or other Tunnel (*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: *Holywell* v. *Halkyn Drainage Co*, 1895, A. C. 117; 64 L. J. M. C. 113; 71 L. T. 818; 59 J. P. 566). In *thlc* Ld Davey said, "'Exclusive Occupation,' does not mean that nobody else has any rights in the premises. The familiar case of Landlord and Lodger is an illustration. The cases show that if a person has only a Subordinate Occupation subject at all times to the control and regulations of another, then that person has not OCCUPATION, in the strict sense, for the purposes of Rating; but the Rateable Occupation remains in the other who has the right of regulation and control"; but, *semble*, an EASEMENT may be such as to make a Rateable Occupation (per Herschell, C., *Ib.*). *Vf*, *Rochdale Canal Co* v. *Brewster*, 1894, 2 Q. B. 852; 64 L. J. Q. B. 37; 71 L. T. 243; 59 J. P. 132.

As to rating Advertising Stations; *V. Taylor* v. *Pendleton*, 56 L. J. M. C. 146; 19 Q. B. D. 288; 57 L. T. 530; 35 W. R. 762; 51 J. P. 613: *Chappell* v. *St. Botolph*, cited OCCUPIED: *Burton* v. *St. Giles*, cited PERMIT: 52 & 53 V. c. 27.

V. BENEFICIAL: CEASE: NEW OCCUPIER.

EXCLUSIVE POSSESSION. — *V. Marshall* v. *Taylor*, 1895, 1 Ch. 641; 64 L. J. Ch. 416; 72 L. T. 670: EXCLUSIVE OCCUPATION: POSSESSION.

EXCLUSIVE PRIVILEGE. — *V.* CONVEY.

EXCLUSIVE RIGHT. — *V.* RIGHT: RIGHT OF SALE.

The "Exclusive" Right of Legislation given respectively to the Dominion and Provinces of Canada (ss. 91, 92, 30 V. c. 3) renders invalid any law passed by either which is not within its own prescribed competence (*A-G. Canada* v. *A-G. Ontario*, 1898, A. C. 700; 67 L. J. P. C. 90): *Vh* BANKRUPTCY AND INSOLVENCY. *Vf* EXCLUSIVELY.

"An Exclusive Right to all the Profit of a particular kind can, no doubt, be granted but such a Right cannot be inferred from language

Digitized by Google

which is not clear and explicit" (*Sutherland* v. *Heathcote,* cited LIBERTY OF WORKING). *V.* AGIST.

Exclusive Right of Sporting, &c; *V.* A: FISHERY.

The "Exclusive Right" to Supply Goods, is equivalent to a Negative Covenant that no other person shall be the supplier (*Catt* v. *Tourle,* 38 L. J. Ch. 401; 4 Ch. 654); but it is conditional on the covenanted supplier being able and willing to supply the goods of a proper quality and at reasonable prices (*Luker* v. *Dennis,* 47 L. J. Ch. 174; 7 Ch. D. 227: *Va, Edwick* v. *Hawkes,* 18 Ch. D. 199; 50 L. J. Ch. 577; 29 W. R. 913; 45 L. T. 168). *V.* SPIRITUOUS LIQUOR: *Cp* SOLE AGENT.

"Exclusive Right" to USE a Patent; *V. Smith* v. *Scott,* cited INVENTED.

EXCLUSIVELY.—A direction that a Charitable Bequest shall be paid "exclusively" out of Pure Personalty, implies marshalling the assets (*Wills* v. *Bourne,* L. R. 16 Eq. 487; 43 L. J. Ch. 89: *Re Arnold,* 57 L. J. Ch. 682; 37 Ch. D. 637; 58 L. T. 469; 36 W. R. 424: 1 Jarm. 237). *Cp* RESERVE.

Heredit "used exclusively" for a Charitable Purpose; *V.* PURPOSE.

Will "act exclusively for" Employers; *V. Mutual Reserve Assn* v. *New York Insrce,* cited WHOLE: SOLE AGENT.

"Exclusively" in performance of duties; *V.* WHOLLY: "Entire Services," sub ENTIRE.

Contract between Ship Brokers to "exclusively correspond" with each other in specified Ports; *V. Pearce* v. *Lindsay,* 1 L. T. 456.

"Wholly and exclusively" for Trade; *V.* PURPOSES.

V. DOMESTIC: PUBLIC PURPOSE: SCIENCE.

EXCOMMUNICATION.—Is "an Ecclesiastical Censure divided into (1) The Greater, and (2) The Lesser. By the latter, a person is excluded from the Communion of the Church only; by the former, from that Communion and also from the company of the faithful" (Jacob, *whvf*). *Va,* Phil. Ecc. Law, 1087: 5 Encyc. 123, 124.

EXCREMENTITIOUS.—*V.* FILTHY WATER.

EXCURSION TRAIN.—*V.* PASSENGER TRAIN.

EXCUSABLE.—Excusable BREACH OF TRUST; *V.* REASONABLY. Excusable HOMICIDE; *V.* 4 Bl. Com. 182 et seq. *Cp* JUSTIFIABLE.

EXCUSE.—*V.* LAWFUL EXCUSE: REASONABLE EXCUSE: REASONABLY.

EXECUTE.—*V.* UNDERTAKE, 2nd par.

V. APPOINTMENT: DEED: WILL: MADE: SIGNATURE: SIGNED, SEALED, AND DELIVERED.

Digitized by Google

EXECUTED.—To speak of a Writ of Execution as "executed and levied" is to use synonymous terms signifying SEIZURE (*Cheston* v. *Gibbs*, 13 L. J. Ex. 53; 12 M. & W. 111; *Vth, Congreve* v. *Evetts*, 10 Ex. 311: *Vf, Whitmore* v. *Greene*, 13 L. J. Ex. 311; 13 M. & W. 112: *Hall* v. *Wallace*, 10 L. J. Ex. 133; 7 M. & W. 353). *V.* EXECUTION: TO BE EXECUTED: LEVY: SERVED.

Instrument "executed"; *V.* INSTRUMENT.

Quà Stamp Duty, "Executed" and "Execution," "with reference to Instruments not under Seal, mean 'signed' and 'signature'" (s. 27, 54 & 55 V. c. 38; s. 122, Stamp Act, 1891). *V.* EXECUTE.

"When the Trusts prescribed by the settlor are declared by him in the settlement or Will itself, and no further instrument is required in order to define what are the limitations or provisions to which he intends to subject the property, such trusts are said to be 'Executed TRUSTS'; and the strict legal meaning and effect are given to any expressions he has used" (Godefroi, 152). *Cp* EXECUTORY.

EXECUTING.—Creditor "executing" a Composition Deed, s. 3, 31 & 32 V. c. 104, meant, one who "shall execute" (*Ellis* v. *McCormick*, 10 B. & S. 83; 38 L. J. Q. B. 127; L. R. 4 Q. B. 271).

EXECUTION.—"'*Execution*,' *Executio*, and signifieth in law the obtaining of actual possession of any thing acquired by judgement of law, or by a fine executory levied, whether it be by the sherife or by the entry of the party" (Co. Litt. 154 a). *Vf*, Termes de la Ley: Jacob: 5 Encyc. 125–181: Ord. 42, 43, R. S. C., on *whv* Ann. Pr.

"Afore Execution *had*," 3 H. 7, c. 10, means before obtaining the fruits of Execution (*Newlands* v. *Holmes*, 11 L. J. Ex. 456; 4 Q. B. 858).

An "Execution" proceeds from a judgment (*Re Hastings*, 61 L. J. Q. B. 654; 67 L. T. 234), and does not include a distraint for rent or other cause (*Ex p. Birmingham & Staffordshire Gas Co, Re Fanshaw*, 40 L. J. Bank. 52; L. R. 11 Eq. 615: *Ex p. Harrison, Re Peake*, 13 Q. B. D. 760), nor a Garnishee Order (per Coleridge, C. J., *Fellows* v. *Thornton*, 54 L. J. Q. B. 279; 14 Q. B. D. 335; 52 L. T. 389; 33 W. R. 258; but consider jdgmt of Stephen, J.); nor is a Charging Order under s. 14, 1 & 2 V. c. 110, an "Execution against the goods of a debtor," within s. 45, Bankry Act, 1883 (*Re Hutchinson*, 55 L. J. Q. B. 582; 16 Q. B. D. 515; 54 L. T. 302; 34 W. R. 475; 3 Morr. 19: *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; 45 W. R. 224), nor is an Equitable Exon by obtaining a Receiver an "Execution" within that section (*Re Potts, Ex p. Taylor*, 1893, 1 Q. B. 648; 62 L. J. Q. B. 392).

A Receivership is not an "Execution" within R. 8, 23, Ord. 42,

Digitized by Google

R. S. C. (*Norburn* v. *Norburn*, 1894, 1 Q. B. 448; 63 L. J. Q. B. 341; 70 L. T. 411; 42 W. R. 127). Indeed, and speaking generally, a Receivership cannot in strictness be called even an Equitable Execution (*Re Sheppard*, cited EQUITABLE); but it will work a FORFEITURE of a life interest determinable if such interest "shall be TAKEN IN EXECUTION by any process of law for the benefit of any creditors" (*Blackman* v. *Fysh*, 60 L. J. Ch. 666; 64 L. T. 590; 39 W. R. 520).

Proceedings to obtain a Committal under Debtors Act, 1869, are not a mode of "Execution," within s. 4 (limiting s. 1) Jdgmts Extension Act, 1868, 31 & 32 V. c. 54 (*Re Watson*, 1893, 1 Q. B. 21; 62 L. J. Q. B. 85; 67 L. T. 519; 41 W. R. 34); so, of a Bankry Notice under s. 4 (1 *g*), Bankry Act, 1883 (*Re Bankry Notice*, 1898, 1 Q. B. 383; 67 L. J. Q. B. 308); but a Garnishee Order is within this section (*Johnstone* v. *Bucknall*, 1898, 2 I. R. 499).

As to what is a sufficient Execution entitling a Sheriff to Poundage; *V. Bissicks* v. *Bath Colliery Co*, 46 L. J. Q. B. 611; 2 Ex. D. 459, and cases there cited: there must be a Sale or, at least, a realization of the money due without a sale (*Re Thomas*, 1899, 1 Q. B. 460; 68 L. J. Q. B. 245; 80 L. T. 62; 47 W. R. 259). *Vf* LEVY.

Execution "*completed*," s. 45, Bankry Act, 1883; *V. Mackay* v. *Merritt*, 34 W. R. 433: *Figg* v. *Moore*, 1894, 2 Q. B. 690; 63 L. J. Q. B. 709: *Burns* v. *Brown*, 1895, 1 Q. B. 324; 71 L. T. 825; 43 W. R. 195: *Re Hastings*, sup: *Re Ford*, 1900, 1 Q. B. 264; 69 L. J. Q. B. 74; 81 L. T. 648; 48 W. R. 173.

The "*Costs of Execution*" mentioned in s. 46 (1), Bankry Act, 1883, repld s. 11 (1), Bankry Act, 1890, do not include the Sheriff's Poundage; but under the same phrase in subs. 2 of the same sections, such poundage is included (*Re Ludford*, 53 L. J. Q. B. 418; 33 W. R. 152; nom. *Re Ludmore*, 13 Q. B. D. 415; 51 L. T. 240). Expenses of reaping and harvesting growing crops, are not "Costs of Execution," though the selling value is thereby increased (*Re Woodham*, 57 L. J. Q. B. 46; 20 Q. B. D. 40; 58 L. T. 116; 36 W. R. 526). *Note:* After Notice under subs. 1 there are no Costs of Exon (*Re Harrison*, 1893, 2 Q. B. 111; 62 L. J. Q. B. 266; 68 L. T. 590: *Re Thomas*, 79 L. T. 356); but before such Notice possession money may be allowed even for so long a period as 15 months as "Costs of Exon," if the sheriff refrains from selling at the request of debtor and with the assent of the exon creditor (*Re Hurley*, 41 W. R. 653; 10 Morr. 120: *Re Beeston*, 1899, 1 Q. B. 626; 68 L. J. Q. B. 344; 80 L. T. 66; 47 W. R. 475).

As to the phrase "money, goods, or chattels, taken or intended to be taken *in execution* under any process," R. 1 *b*, Ord. 57, R. S. C.; *V. Smith* v. *Critchfield*, 54 L. J. Q. B. 366; 14 Q. B. D. 873.

"Enforce and *put in execution*" a Jdgmt; *V. Ex p. Holden*, 13 C. B. N. S. 641; 32 L. J. C. P. 111; 7 L. T. 791.

A covenant in a DEED commencing "ON," or "FROM," its "Execu-

Digitized by Google

tion," is obligatory on the covenantor on or from the time that *he* executes the deed (*Northampton Gas Co* v. *Parnell*, 15 C. B. 630; 24 L. J. C. P. 60; 3 W. R. 179; 24 L. T. O. S. 239).

V. DELIVERED IN EXECUTION: EQUITABLE: EXECUTE: EXECUTED.

"In Pursuance or Execution of" powers; *V.* PURSUANCE.

Stat. Def. — 7 & 8 V. c. 113, s. 49.

EXECUTION OF STATUTORY POWERS. — By many statutes protection, absolute or qualified, is given for works done "in execution" of statutory powers (*V.* NUISANCE). This means a careful and skilful execution, and no protection is afforded to carelessness or the absence of proper skilfulness (*Clothier* v. *Webster*, 31 L. J. C. P. 316; 12 C. B. N. S. 790). *Vf, Canadian Pacific Ry* v. *Parke*, 1899, A. C. 535; 68 L. J. P. C. 89.

V. PURSUANCE.

EXECUTIVE. — Executive Proceedings; *V. Nouvion* v. *Freeman*, cited REMATE.

EXECUTOR. — "'Executor' is when a man makes his Testament and last Will and therein nameth the person that shall execute his Testament, then he that is so named is his Executor; and is as much in the Civill Law as *hæres designatus*, or *testamentarius*" (Termes de la Ley). *Cp* UNIVERSAL HEIR.

"The Roman law did not recognize the Office of Executor; the *hæres institutus* was a true heir, although he might be burdened with legacies and *fideicommissa*" (*Farnum* v. *Admor-Gen. British Guiana*, 59 L. J. P. C. 10; 14 App. Ca. 651); and, accordingly, where the Roman-Dutch law prevails the "Executors" of a Testament are, in reality, procurators; their powers in relation to the estate falling to the testator's heirs are merely those of management (*Ib.*: *De Montmort* v. *Broers*, 57 L. J. P. C. 47; 13 App. Ca. 154).

Executor according to the Tenor; *V.* TENOR.

By what words Executors may be appointed, *V. Re Oliphant*, 30 L. J. P. M. & A. 82: Wms. Exs. 189. An appointment of Executors would be revoked by a codicil naming a "sole Executor" (Ib. 198).

Vh, generally, Wms. Exs.: 5 Encyc. 184-221: Jacob, *Executor*.

"'Executor *de son Tort*' is he that takes upon him the Office of an Executor by intrusion, not being so constituted by the testator" (Cowel). *Vh, Padget* v. *Priest*, 2 T. R. 97: *Thompson* v. *Harding*, 22 L. J. Q. B. 448; 2 E. & B. 630: Wms. Exs., Part 1, Bk. 3, ch. 5: Rosc. N. P. 1141: 5 Encyc. 187: *A-G.* v. *New York Breweries Co*, cited POSSESSION.

"Executor," quà Part 1, Finance Act, 1894, means the Exor or Admor of a deceased person, and includes an Exor de son Tort (subs. 1*d*, s. 22; subs. 11, s. 23).

Digitized by Google

Quà 53 & 54 V. c. 70, "exs, ads, or assigns" means in Scotland "heirs, exs, or assignees" (subs. 11, s. 96).

Other Stat. Def. —38 & 39 V. c. 83, s. 34.

A substitutionary gift to the "Executors or Administrators" of a legatee in the event of his death in the testator's lifetime, does not vest the gift in the legatee's exors upon trust for his Next of Kin, but the exors take, and have to apply it, as part of the personal estate of the legatee (*Re Clay*, 54 L. J. Ch. 648; 52 L. T. 641; 32 W. R. 516; which distinctly over-rules *Palin* v. *Hills*, 1 My. & K. 470, *whv* discussed Wms. Exs. 1004–1007; 2 Jarm. 114: *Vf* 2 Jarm. 117–120). A bequest to A. "*and* his exors, admors, and assigns," or to A. "*and* his representatives," will lapse by the death of A. in the testator's lifetime (Wms. Exs. 1074); *secus*, if it be to A. "and his *heirs*" (Ib. 1074), or to A. "*or* his exors," &c (Ib. 1076).

A gift to A. for life, remainder as he may appoint and, in default of appointment, to his "exors and admors," is equivalent to an absolute gift to A. (*Devall* v. *Dickens*, 9 Jur. 550: *Page* v. *Soper*, 22 L. J. Ch. 1044; 11 Hare, 321); and, since the M. W. P. Act, 1882, that rule applies even if A. be a married woman (*Re Davenport*, 1895, 1 Ch. 361; 64 L. J. Ch. 252; 71 L. T. 875; 43 W. R. 217). *Cp*, Rule in *Shelley's Case*, cited Heirs.

A testamentary gift large enough to carry Realty will sometimes be restricted to Personalty when coupled with a limitation to "exors or admors"; *V*. Estate and Effects.

As to when a legacy to an Executor is conditional on his accepting office and acting; *V*. Wms. Exs. 1146.

As to Right of Retainer by Exor; *V*. Retain.

For the rules and cases on Limitations to "Executors," and the distinction between "Executors" and "Next of Kin," and as to whether and when "Executors and Administrators" may mean "Next of Kin," *V*. Elph. 312–316: Watson Eq. 1406, 1407: Seton, 1574: Chitty Eq. Ind. 7690: *e.g.* in a Marriage Settlement the "exs and ads" of a Wife may mean her Next of Kin (*Allen* v. *Thorp*, 7 Bea. 72: *Smith* v. *Dudley*, 9 Sim. 125: *Daniel* v. *Dudley*, 11 Sim. 162; 1 Phill. 1).

In *Grafftey* v. *Humpage* (1 Bea. 52; 8 L. J. Ch. 98), Langdale, M. R., said that "exors, admors, and assigns" cannot mean Next of Kin: Why not? says Elph. 314.

As to construction of "Executors" in a Power; *V*. Lewin, 717, 718, 777.

A Power to "my Exors *herein named*" to select Charities, does not differ from one to Exors generally; and those words do not authorise a Renouncing Exor to take part in the selection (*Crawford* v. *Forshaw*, 1891, 2 Ch. 261; 60 L. J. Ch. 683; 65 L. T. 32; 39 W. R. 484). On the context in that case, the remaining exors were held entitled to make the selection.

Digitized by Google

An appointment of A. as "Executor of my Entire Property for the purpose of putting it to the best advantage of my sister, wife, and children"; held, to pass fee simple lands (*Murphy* v. *Donnelly*, Ir. Rep. 4 Eq. 111).

An appointment of A. as "Executor of all my lands for ever," passes the FEE to such exor (*Doe* d. *Gillard* v. *Gillard*, 5 B. & Ald. 785: *Vf*, *Pit* v. *Pelham*, Jo. T. 25: *Thomas* v. *Phelps*, 4 Russ. 348: *Doe* d. *Hickman* v. *Haslewood*, 6 A. & E. 167; 1 N. & P. 352: *Doe* d. *Pratt* v. *Pratt*, 6 A. & E. 180; 1 N. & P. 366: SOLE HEIR).

As to "By direction of the Exors" being a sufficient description of a Vendor; *V.* PROPRIETOR.

A devise of land to A. "and his exors," even before s. 28, Wills Act, 1837, passed the Fee (*Rose* v. *Hill*, 3 Burr. 1882).

V. LEGAL REPRESENTATIVES: PERSONAL REPRESENTATIVES: REPRESENTATIVES: HEIRS, EXECUTORS, ADMINISTRATORS, AND ASSIGNS.

EXECUTORSHIP EXPENSES. — This phrase is equivalent to "TESTAMENTARY EXPENSES" (*Sharp* v. *Lush*, 48 L. J. Ch. 231; 10 Ch. D. 468).

EXECUTORY. — An Executory *Bequest* of Personalty, is a bequest in futuro, whether preceded by a partial gift or not; for a REMAINDER cannot be limited in Personalty (1 Jarm. 879, citing Fearne, Cont. Rem. 402).

"An Executory *Devise*, is a limitation by Will of a future estate or interest in Land, which cannot, consistently with the rules of law, take effect as a Remainder" (1 Jarm. 864: *Vh*, 2nd Part, Fearne Cont. Rem.): for restriction on such limitations, *V.* s. 10, Conv Act, 1882. *V.* SPRINGING: THEREAFTER TO BE BORN.

An Executory *Estate* or *Interest* may, perhaps, be defined as, an Estate or Interest to arise of its own vigour on the happening of some future event. *Vh*, Jarm. ch. 26: Theobald, 566: Wms. R. P., Part 2, ch. 3: 5 Encyc. 221–237.

"A *Trust* is said to be Executory or Directory where the objects take, not immediately under it but, by means of some further act to be done by a third person, usually him in whom the Legal Estate is vested" (2 Jarm. 344: *Vh*, Lewin, 119 *et seq*: Godefroi, ch. 10). But in a direction to settle property, an Executory Trust is one which "is to be executed by the preparation of a complete and formal Settlement carrying into effect, through the operation of an apt and detailed legal phraseology, the general intention compendiously indicated" in the document directing it (per Ld Cairns, *Sackville-West* v. *Holmesdale*, 39 L. J. Ch. 517; L. R. 4 H. L. 571). *Cp* EXECUTED.

EXEMPT. — To be "exempt" from rating, "may be taken to mean, 'precluded from being chargeable'" (per Ellenborough, C. J., *R.* v. *Leeds, &c Canal Co*, 5 East, 331).

Digitized by Google

"Exempted," s. 18, Sucn Dy Act, 1853, does not mean "free from," but means those legacies that were by the then existing Legacy Duty Acts expressly exempted from duty (*A-G.* v. *Fitzjohn*, 27 L. J. Ex. 79; 2 H. & N. 465).

EXEMPTION.—"'Exemption,' is a priviledge to be free from Service or Appearance" (Termes de la Ley). *Vf* Jacob.

Quà Shipping Dues Exemption Act, 1867, 30 & 31 V. c. 15, "'Exemption from Dues' shall, in addition to its ordinary meaning, include every privilege of paying smaller Dues than the Public at large pay under like circumstances" (s. 3).

EXERCISE.—*V.* GAME.

"In Exercise"; *V.* PURSUANCE: IN EXERCISE.

"The Exercise of any of the powers of the Act," s. 308, P. H. Act, 1875; *V. Burgess* v. *Northwich*, 50 L. J. Q. B. 219; 6 Q. B. D. 264. Giving a Notice under s. 16 is such an Exercise (*Davis* v. *Witney*, 63 J. P. 279).

"COSTS, CHARGES, AND EXPENSES, of or INCIDENTAL to the Exercise of the powers . . . of this Act," s. 21 (10), S. L. Act, 1882; *V. Re Llewellin*, 57 L. J. Ch. 316; 37 Ch. D. 317: *Re Smith*, 60 L. J. Ch. 613; 1891, 3 Ch. 65; 64 L. T. 821; 39 W. R. 590.

To "exercise" a BUSINESS or TRADE is the same thing as to carry it on (*V.* CARRY ON).

Business "exercised within the UNITED KINGDOM," Sch D, s. 2, Income Tax Act, 1853, 16 & 17 V. c. 34; *V. Grainger* v. *Gough*, 1896, A. C. 325; 65 L. J. Q. B. 410; 44 W. R. 561: *Watson* v. *Sandie*, 1898, 1 Q. B. 326; 67 L. J. Q. B. 319.

"Use, exercise, and vend" an INVENTION; *V.* USE: VEND. In such a phrase "exercise" means "put in practice" (*Saccharin Corp* v. *Reitmeyer*, 1900, 2 Ch. 659; 69 L. J. Ch. 761).

"Used or exercised"; *V.* ART: USE.

"Trained or exercised"; *V.* TRAINING.

EXHAUSTED.—A Coal Gale is "exhausted," 1 & 2 V. c. 43, s. 61, when there is not enough coal left in it to make it worth working (*Ellway* v. *Davis*, 43 L. J. Ch. 75; L. R. 16 Eq. 294). *Cp*, EMPTY.

EXHIBIT.—An Exhibit, is a document or other thing shown to a witness and referred to by him in his evidence,—more particularly, a document or thing referred to by an affidavit (5 Encyc. 238). "Any person entitled to see the affidavit, is entitled to see the exhibit also" (per Smith, L. J., *Re Hinchliffe*, 1895, 1 Ch. 117; 64 L. J. Ch. 76; 71 L. T. 532).

"Exhibiting of the Bill," formerly meant the commencement of the suit (*Rees* v. *Morgan*, 5 B. & Ad. 1035).

V. EXPOSE.

Digitized by Google

EXHIBITION. — "Exhibition," "Exhibitioners"; *V.* Endowed Schools Act, 1869, s. 7.

EXILEMENT. — *V.* BANISHMENT.

EXISTENCE. — *V.* VALIDITY.

EXISTING. — Sometimes the Stat. Def. for "existing" is "existing at the COMMENCEMENT of this Act" (*e.g.* Jud. Act, 1873, s. 100; Jud. Act (Ir), 1877, s. 3; 42 & 43 V. c. 78, s. 3; 51 & 52 V. c. 44, s. 3; 54 & 55 V. c. 66, s. 95); and sometimes it is "existing at the PASSING of this Act" (*e.g.* 36 & 37 V. c. 81, s. 7; 38 & 39 V. c. 17, s. 108, c. 22, s. 11; 60 & 61 V. c. 66, s. 14).

"Existing," quà the Loc Gov Acts; *V.* 51 & 52 V. c. 41, s. 100; 52 & 53 V. c. 50, s. 105; 61 & 62 V. c. 37, s. 109.

"Existing *Company*"; *V. Richmond W. W. Co* v. *Richmond*, 45 L. J. Ch. 441; 3 Ch. D. 82.

Existing *Fact*; *V.* FALSE PRETENCE.

"Existing *Governing Body*," quà Public Schools Act, 1868, 31 & 32 V. c. 118; *V.* s. 3.

"Existing *Leases or Lettings*," to which a Conveyance is made subject, does not comprise parol unenforceable leases (*Rice* v. *O'Connor*, 11 Ir. Ch. Rep. 510). *Cp*, *Caballero* v. *Henty*, inf.

On death of A. "without issue, his part of the property to fall to whatever *Existing Member of my Family* he may be disposed to will it to"; — "existing" means, living at the date of A.'s Will (*Sinnott* v. *Walsh*, 5 L. R. Ir. 27).

"Existing *Officers*," quà London Gov Act, 1899; *V.* s. 30 (3): — "Existing *Officer of a Prison*," quà Superannuation Allowance; *V.* 56 & 57 V. c. 26, s. 1.

"Existing *Registrar*," "Registry," "Registry Acts," quà Yorkshire Registries Act, 1884, 47 & 48 V. c. 54; *V.* s. 3.

"Existing *Sewer*," s. 13, P. H. Act, 1875; *V. Falconar* v. *South Shields*, 11 Times Rep. 223.

"Existing *Slave Trade Treaty*"; Stat. Def., 36 & 37 V. c. 88, s. 2: — "Existing East African Slave Trade Treaty"; *V.* 36 & 37 V. c. 59, s. 2.

"Existing *Street*," in last proviso to s. 6, Metrop Man. Act, 1878; *V. Ellis* v. *London Co. Co.*, 67 L. T. 558; 57 J. P. 24: *London Co. Co.* v. *Mitchell*, 63 L. J. M. C. 104.

"Existing *Suit*," quà power of Amendment given by s. 222, Com. L. Pro. Act, 1852, meant "you may take the Record in the Existing Suit and make any alteration in the Parties or Pleadings so as to meet the justice of the case" (per Pollock, C. B., *Blake* v. *Done*, 7 H. & N. 471, 472; 31 L. J. Ex. 100).

"Existing *Tenancies*," to which a Sale is made subject; *V. Caballero*

Digitized by Google

v. *Henty*, 43 L. J. Ch. 635; 9 Ch. 447; 30 L. T. 314; 22 W. R. 446. *Cp*, *Rice* v. *O'Connor*, sup.

"Existing *Trustees*," quà Sale of Advowsons Act, 1856, 19 & 20 V. c. 50; *V*. s. 1. *Cp*, Continuing Trustee.

EXONERATION. — A direction in a Will to pay debts "In aid of the personal and in exoneration of the real estate" (*Re Newmarch*, 48 L. J. Ch. 28; 9 Ch. D. 12), or, "in exoneration of the real estate" (*Re Rossiter*, 49 L. J. Ch. 36; 13 Ch. D. 355), will not exonerate the testator's mortgaged property from its primary liability to pay the mortgage debt.

As to Exoneration of Mortgaged Property before and since Locke King's Acts; *V*. 2 Jarm. 644–651: Wms. Exs. 1570: Contrary Intention: — and as to exoneration of Personalty from debts; *V*. 2 Jarm. 651–673: Wms. Exs. 1576.

EXORCIST. — "The Exorcist is he who abjures (*Cp*, Conjuration) evil spirits in the name of Almighty God to go out of persons troubled therewith" (Phil. Ecc. Law, 89).

EXPECTANCY. — *V*. Entitled in Immediate Expectancy.

"Property in Expectancy"; *V*. Contingent: Presumptive.

Quà Finance Act, 1894, "'Interest in Expectancy,' includes, an Estate in Remainder or Reversion, and every other Future Interest whether vested or contingent, but does not include Reversions expectant upon the determination of Leases" (subs. 1 *j*, s. 22).

EXPECTANT HEIR. — "Every person who is entitled, either absolutely or contingently, to any Reversion or Remainder in a property or a portion, or who has the Hope of Succession to the property of an ancestor or relative, either by reason of his being the heir apparent or presumptive, or by reason merely of any supposed or presumed affection on the part of his ancestor or relative, is an Expectant Heir within the meaning of the rule" for setting aside catching bargains (Seton, 2343, citing *Beynon* v. *Cook*, 10 Ch. 391, n *g*: *Aylesford* v. *Morris*, 8 Ch. 497: *Tyler* v. *Yates*, 6 Ch. 665: *Tottenham* v. *Emmet*, 14 W. R. 3). *Vf*, *James* v. *Kerr*, 40 Ch. D. 449.

EXPECTATION. — Contracting debt without "reasonable or probable *Ground of Expectation* of being able to pay it," s. 28 (3 *c*), Bankry Act, 1883; *V*. *Ex p. White*, 14 Q. B. D. 600; 54 L. J. Q. B. 384; 33 W. R. 670: Reasonable Expectation.

EXPECTED. — Cargo "expected *to arrive*"; *V*. *Bold* v. *Rayner*, 1 M. & W. 343; 5 L. J. Ex. 172; *Smith* v. *Myers*, L. R. 7 Q. B. 139; 41 L. J. Q. B. 91. *V*. Arrive: Cargo.

Where a Charter Party states that the Ship is "expected *to be*" at a

Digitized by Google

stated place by a stated time, that is a Warranty that she will be there at that time, or that she is in such a part of the world that she may be reasonably expected to be there about that time (*Corkling* v. *Massey*, L. R. 8 C. P. 395; 42 L. J. C. P. 153; 28 L. T. 636; 21 W. R. 680).

EXPEDIENT.—*V.* INEXPEDIENT: JUST.

EXPEND.—"'Expenditure,'—What do you expend? You expend that which you have. In common parlance, you say that a man has spent more than his income. That is common parlance; but that is not language which you would suppose the legislature to use. A man cannot spend what he has not got: he can mortgage or pledge, but he cannot actually spend" (per Kekewich, J., *Re Bristol*, 1893, 3 Ch. 161; 62 L. J. Ch. 901).

EXPENDED.—*V.* EXPENSES.

EXPENSE.—A *Legacy* made "free of all Expense," is duty free (*Gosden* v. *Dotterill*, 1 My. & K. 56).

"If a *Charter Party* provides that if the charterer gives certain directions respecting the vessel he will bear any expense which the vessel may incur in consequence of those directions, he is liable to pay only such expenses as are the natural consequence of the directions" (Wood, 167, citing *Sully* v. *Duranty*, 3 H. & C. 270; 33 L. J. Ex. 319).

"At Ship's Expense"; *V.* RISK.

EXPENSES.—"Expenses" means, actual disbursements, not allowances for loss of time (*Jones* v. *Carmarthen*, 10 L. J. Ex. 401; 8 M. & W. 605). Therefore, a charge by a Town Clerk for preparing Lists of Parliamentary Voters, is not an "Expense INCURRED" by him, within s. 55, 6 V. c. 18, even though the result be that otherwise he would do the work gratuitously (*R.* v. *Hull*, 2 E. & B. 182; 22 L. J. Q. B. 324).

But moneys "expended,"—*e.g.* by a Local Board and recoverable from owners or occupiers,—are not confined to moneys actually paid but include money expended in the sense that the owner or occupier is bound to pay it (per Esher, M. R., *R.* v. *Marsham*, 61 L. J. M. C. 55; 1892, 1 Q. B. 379; 65 L. T. 778; 40 W. R. 84; 56 J. P. 164). *Vf*, *R.* v. *St. Mary, Islington*, cited REPAID: *R.* v. *Dublin*, 32 L. R. Ir. 662.

"Expenses incurred"; *V. R.* v. *Hull*, sup: INCURRED: PURSUANCE.

"Expenses necessarily incurred"; *V.* NECESSARILY. *Cp*, NECESSARY.

The kind of "Expenses," incidental to the stopping or diverting a highway, within s. 84, Highway Act, 1835, 5 & 6 W. 4, c. 50, are the expenses attending the view, the preparation of necessary plans, and of physically stopping or diverting the highway; but not a solicitor's costs of taking the necessary legal steps in the matter (*United Land Co* v. *Tottenham*, 53 L. J. M. C. 136; 13 Q. B. D. 640).

Digitized by Google

Brokerage on an issue of Debentures by a Co is not deductible "Expenses," quà Sch D, s. 2, Income Tax Act, 1853, 16 & 17 V. c. 34 (*Texas Co* v. *Holtham*, 63 L. J. Q. B. 496; 1 Manson, 429).

"Expenses," s. 10, 51 & 52 V. c. 54; *V. R.* v. *Plymouth*, 1896, 1 Q. B. 158; 65 L. J. Q. B. 258; 44 W. R. 620.

"Expenses, Rent Charge," &c, s. 10 (4), 54 & 55 V. c. 8; *V.* TITHES.

"Expenses of or incident to the making the Apportionment" of Tithes, s. 75, 6 & 7 W. 4, c. 71; *V. Hinchliffe* v. *Armitstead*, 11 L. J. Ex. 253; 9 M. & W. 155.

"Expenses" quà Blind or Deaf *Child* at an Elementary School; Stat. Def., 56 & 57 V. c. 42, s. 15.

"*Establishment* Expenses," "*Patients'* Expenses," "*Structural* Expenses"; Stat. Def., Isolation Hospitals Act, 1893, 56 & 57 V. c. 68, s. 17.

"Expenses," quà Detention of an *Inebriate*; Stat. Def., 61 & 62 V. c. 60, s. 27.

"Expenses of *leaving*"; *V.* LEAVING.

Expenses of *Maintenance*; *V.* MAINTENANCE: COSTS: NECESSARY.

"Expenses of *Management*," s. 58 (ix), S. L. Act, 1882; *V. Clarke* v. *Thornton*, 56 L. J. Ch. 304; 35 Ch. D. 307; 56 L. T. 294; 35 W. R. 603:—"Management Expenses"; *V.* WORKING EXPENSES.

"Expenses attaching to the *Meeting*"; *V.* MEETING.

"Expenses of *Noting*," are a LIQUIDATED DEMAND.

V. PERSONAL EXPENSES: PRIVATE IMPROVEMENT: SPECIAL.

Expenses of *removing Wrecks*, &c; *V.* REMOVAL.

Expenses of *Working*; *V.* WORKING EXPENSES.

Other Stat. Def.—30 & 31 V. c. 102, s. 31; 32 & 33 V. c. 100, s. 10; 51 & 52 V. c. 41, s. 100; 54 & 55 V. c. 76, s. 135 (9); 56 & 57 V. c. 73, s. 11 (3).

"Clear of all Expenses"; *V.* CLEAR.

"Free from all Expenses WHATEVER in connection with the said Tramways," exonerates the covenantee from all Assessments, Rates, and Taxes, whether imperial or local (*Glasgow* v. *Glasgow Tramway Co*, 1898, A. C. 631).

V. INCIDENTAL EXPENSES: MONEY, COSTS, CHARGES, AND EXPENSES. *Cp*, DISBURSEMENTS.

EXPERT.—"Engineer, Valuer, Accountant, or *other Expert*," whose Report or Valuation may shield a Director from liability, includes, under the word "Expert," "any person whose profession gives authority to a statement made by him" (s. 3 (4), Directors Liability Act, 1890).

An Expert *Witness*, is one who has made the subject upon which he speaks a matter of particular study, practice, or observation; and he must have a particular and special knowledge of the subject (*Dole* v. *Johnson*, 50 N. Hamp. 454). *Note.* As to the province of an Expert's

Digitized by Google

evidence, *V. Salvin* v. *North Brancepeth Co*, 9 Ch. 705; 44 L. J. Ch. 149: Rosc. N. P. 84, 85, 121, 122, 177, 178: and as to when dispensed with, *Cooper King* v. *Cooper King*, 1900, P. 65; 69 L. J. P. D. & A. 33.
V. QUALIFY.

EXPIRATION.—"Expiration of the said term of years"; "'Expiration,' which is here used by similitude to things living, implies any end whatever. For as we signify by 'Expiration' the death of a man and his last end, whatever way it happens, so the word 'Expiration' being applied to an estate for years, may aptly enough signify the end of it, whatever way it be" (*Wrotesley* v. *Adams*, Plowd. 198). *Cp*, END.

But when a consequence follows on the "Expiration" of a term, may that not mean exclusively, expiration by effluxion of the time? *Vh*, jdgmt of Coleridge, C. J., *Hall* v. *Comfort*, 56 L. J. Q. B. 187.

In this connection "to expire" would seem rather to mean, for the term to run itself out by effluxion of time or otherwise in due course, as distinguished from being forcibly put an end to—*e.g.* by forfeiture, or surrender.

This is the meaning put on the word in R. 6, Ord. 3, R. S. C.: for whilst speedy judgment for recovery of land may, under that Rule and Ord. 14, be obtained where the action, or a previous notice, puts an end to a tenancy created by an ATTORNMENT in a mortgage deed (*Daubuz* v. *Lavington*, 53 L. J. Q. B. 283; 13 Q. B. D. 347: *Hall* v. *Comfort*, 56 L. J. Q. B. 185; 18 Q. B. D. 11; 55 L. T. 550; 35 W. R. 48: *Kemp* v. *Lester*, 1896, 2 Q. B. 162; 65 L. J. Q. B. 532), yet the Rule, quà "expired," is inapplicable to a case of Forfeiture of a term (*Burns* v. *Walford*, W. N. (84) 31: *Mansergh* v. *Rimell*, W. N. (84) 34: *Arden* v. *Boyce*, 1894, 1 Q. B. 796; 63 L. J. Q. B. 338; 70 L. T. 480; 42 W. R. 354), though (by R. S. C. Jan 1902) it now embraces a term "liable to forfeiture for non-payment of rent." *Vh* Ann. Pr. *Cp*, DETERMINATION. *Note*: that in *Arden* v. *Boyce*, the lease enabled the lessor to determine by notice if there should be default, and he gave notice accordingly, but that was held to be substantially the same as forfeiture; but, *semble*, such a ruling would not apply to a prescribed determination by notice at the end of a stated year of the term.

"At the expiration"; *V.* AT: quà covenant for Renewal of a Lease; *V.* RENEWAL.

V. UNEXPIRED: NOT BEFORE.

EXPLANATION.—*V.* CORRECTION.

EXPLICITLY.—*V.* CLEARLY.

EXPLOSION.—*V. Stanley* v. *Western Insrce*, 37 L. J. Ex. 73; L. R. 3 Ex. 71; 17 L. T. 513; 16 W. R. 369, cited GAS. *Vh*, *Taunton* v. *Royal Insrce*, 33 L. J. Ch. 406; 2 H. & M. 135; 12 W. R. 549; 10 L. T. 156.

Digitized by Google

EXPLOSIVE. — Quà the Explosives Act, 1875, 38 & 39 V. c. 17, an "Explosive,"

"(1) *means*, gun-powder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance (whether similar to those above mentioned or not) used or manufactured with a VIEW to produce a practical effect by explosion or a pyrotechnic effect; and

"(2) *includes*, fog-signals, fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an Explosive as above defined" (s. 3). *Vf*, DANGEROUS: GUNPOWDER.

Fog-signals are a "preparation or composition of an Explosive *Nature*," ss. 6, 7, 23 & 24 V. c. 139 (*Bliss* v. *Lilley*, 3 B. & S. 128; 32 L. J. M. C. 3; 7 L. T. 319). *Cp* FIREWORKS.

"Explosive *Substance*"; *V.* s. 9 (1), 46 & 47 V. c. 3.

Vh. 5 Encyc. 243–250.

EXPORT. — An inland town whence butter is sent direct to a foreign market, is not a "Place of Export" within 52 G. 3, c. 134, and 7 & 8 G. 4, c. 61 (*Hayes* v. *Dexter*, 13 Ir. Com. Law Rep. 22).

EXPORTATION. — Unless a vessel has proceeded out of the limits of the Port with her cargo, it is not such an Exportation of the goods as will protect the cargo from duties subsequently imposed on the Exportation of goods of the same nature; although the vessel is not only freighted and afloat but has gone through all the formalities of CLEARANCE, &c at the Custom House and has paid the Exportation Dues (*A-G.* v. *Pougett*, 2 Price, 381).

The words "Shipped for Exportation" are not, necessarily, restricted to an exportation to foreign countries, but may mean Exportation in its evident sense, *i.e.* a carrying out of Port, and thus include carrying commodities from one port to another within the Kingdom (*Stockton Ry* v. *Barrett*, 11 Cl. & F. 590: *Vth* Dwar. 648, 691).

V. EXPORTED.

EXPORTED. — "Exported" means, "carried out"; therefore dues on "coals exported" from a Port are payable on coals to be consumed on board (*Muller* v. *Baldwin*, L. R. 9 Q. B. 457; 43 L. J. Q. B. 164).

V. EXPORTATION: IMPORTED.

EXPORTER. — The manufacturer of goods though he contracts to ship them "F. O. B." but who then ceases to have any further interest in the adventure, is not their "Exporter" (*Camelo* v. *Britten*, 4 B. & Ald. 184).

"Exporter of goods for which no bond is required"; Stat. Def., 39 & 40 V. c. 36, s. 284.

Digitized by Google

EXPOSE.—"Expose," and "Exhibit," are not Works of Art and have no legal meaning (per Parke, B., *R.* v. *Webb*, 2 C. & K. 940; *S. C.* 18 L. J. M. C. 40).

Articles of food "Exposed for sale, or Deposited in any place for the purpose of sale," s. 116, P. H. Act, 1875, s. 47, P. H. London Act, 1891; *V. R.* v. *White*, 49 L. J. M. C. 19; 5 Q. B. D. 15; 41 L. T. 524; 28 W. R. 168; 44 J. P. 87, 102: *Newton* v. *Monkcom*, 58 L. T. 231; 4 Times Rep. 205: *Barlow* v. *Terrett*, 1891, 2 Q. B. 107; 60 L. J. M. C. 104: *R.* v. *Dennis*, 1894, 2 Q. B. 458; 63 L. J. M. C. 153; 71 L. T. 436; 42 W. R. 586; 58 J. P. 622; *V.* Knowingly.

Margarine may be "exposed for sale," s. 6, 50 & 51 V. c. 29, though not itself visible, being in a closed package (*Wheat* v. *Brown*, 1892, 1 Q. B. 418; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 462; 56 J. P. 153); but the package must be visible to a purchaser (*Crane* v. *Lawrence*, 59 L. J. M. C. 110; 25 Q. B. D. 152; 63 L. T. 197; 38 W. R. 620; 54 J. P. 471). *Vf* Retail, at end.

A person though "other than a Licensed Hawker,"—*V.* Pedlar,—does not "sell" goods, or "expose" them "for sale" in contravention of s. 13, Markets and Fairs Clauses Act, 1847, by merely delivering goods previously ordered, *e.g.* a baker taking round bread to his habitual customers (*White* v. *Yeovil*, 61 L. J. M. C. 213: *Vf*, *Quilligan* v. *Limerick Market Trustees*, 14 L. R. Ir. 265: *Stretch* v. *White*, 25 J. P. 485); so, of a like provision in a Local Act (*Newton-in-Makerfield* v. *Lyon*, 69 L. J. Q. B. 230; 81 L. T. 756; 48 W. R. 222). *Cp*, *Pletts* v. *Campbell*, cited Sale.

V. Abandon: "Expose to Obvious Risk"; *V.* Obvious.

Exposing the person "in any Street," &c; *V.* Place.

EXPRESS.—Express *Agreement*; *V.* Agreement.

"Express *Condition*"; *V. Wright* v. *Wilkin*, cited Condition.

"Express or Implied" *Contract*; *V.* Implied.

There was an "Express *Decision*" by a Revising Barrister, s. 98, 6 V. c. 18, when a case was *sub silentio* treated as governed by another which at the same revision had been decided by him (*Bewdley*, 1 O'M. & H. 177).

Express *Declaration*, s. 38, Settled Estates Act, 1877; *V. Re Peake*, 1893, 3 Ch. 430; 69 L. T. 281; 42 W. R. 125; 63 L. J. Ch. 109.

Express *Loss*; *V.* "Special Damage," sub Special.

"Express Notice" of an Absolute Assignment, s. 25 (6), Jud. Act, 1873; *V.* Absolute Assignment.

Express Postal Mail, quà Post Office (Offences) Act, 1837, 1 V. c. 36, means, "every kind of Conveyance employed to carry letters on behalf of the Post Office other than the Usual Mail" (s. 47).

Where an "Express *Provision*" only is mentioned, *e.g.* s. 5, Jud. Act, 1890, "none is to be implied" (per Chitty, J., *Re Fisher*, 63 L. J. Ch. 71, 235).

Digitized by Google

"Express Provision," exempting from ESTATE DUTY, s. 14 (1), Finance Act, 1894, *V. Fitzhardinge* v. *Jenkinson*, and *Re Parker-Jervis*, cited DEDUCTION: — or from Settlement Estate Duty, s. 19, Finance Act, 1896, *V. Re Lewis*, 1900, 2 Ch. 176; 69 L. J. Ch. 406; 82 L. T. 291; 48 W. R. 426.

Express *Stipulation*; *V.* EXPRESSLY STIPULATED.

"*Trains* to be sent express"; *V. Rigby* v. *G. W. Ry*, 15 L. J. Ch. 266; 14 M. & W. 811: *Phillips* v. *G. W. Ry*, 7 Ch. 417.

"The words '*Express Trust*' in this statute, s. 25, Real Property Limitation Act, 1833 (*Vf*, s. 25 (2), Jud. Act, 1873) are used by way of opposition to trusts arising from Implication, trusts Resulting, or trusts by Operation of Law" (per Westbury, C., *Dickenson* v. *Teasdale*, 1 D. G. J. & S. 59: *Vf*, per Kindersley, V. C., *Petre* v. *Petre*, 1 Drew. 393, and, per Cairns, C., *Cunningham* v. *Foot*, 3 App. Ca. 984; 26 W. R. 860; 38 L. T. 889: *Re Barker*, 62 L. J. Ch. 76; 1892, 2 Ch. 491); so, of "Express Trust," s. 1, Larceny Act, 1861 (*R.* v. *Fletcher*, cited TRUSTEE). But an "Express Trust" may arise without the formal language usually employed in creating a Trust, and if a Trust clearly arises from the language of a document, an "Express Trust" will be created (*Salter* v. *Cavanagh*, 1 Dr. & Wal. 668: *Patrick* v. *Simpson*, 59 L. J. Q. B. 7; 61 L. T. 686; 24 Q. B. D. 128; 6 Times Rep. 23: *Francis* v. *Grover*, 15 L. J. Ch. 99; 5 Hare, 39: *Vf* CESTUI QUE TRUST).

Trusts for sale and for application of purchase moneys in an ordinary mortgage, are not "Express Trusts" within the statute just cited (*Re Alison, Johnson* v. *Mounsey*, 11 Ch. D. 284: *Chapman* v. *Corpe*, 27 W. R. 781). *Vh*, *Re Rowe*, 58 L. J. Ch. 703.

Cp, "Express Trusts" as used in s. 25 (2), Jud. Act, 1873, and in s. 10, 37 & 38 V. c. 57: — on this latter section, *V. Re Davis*, cited LEGACY: SECURED.

As to what are Express Trusts; *Vf*, Lewin, 1065. *Va*, Express and Constructive Trusts distd by Bowen, L. J., *Soar* v. *Ashwell*, 1893, 2 Q. B. 395, *vthc* per Alverstone, M. R., *Re Dixon*, 69 L. J. Ch. 612: TRUSTEE.

Cp, PARTICULAR TRUST.

An Executor is not an "Express *Trustee*" (*Re Lacy*, cited A).

EXPRESSION. — "Expression of Time"; *V.* TIME.

EXPRESSLY FOR SAFE CUSTODY. — Though it is not absolutely necessary to declare the value of goods, deposited with an Innkeeper "expressly for safe custody," s. 1, Innkeepers' Liability Act, 1863, 26 & 27 V. c. 41, yet there must be something stated substantially, though not necessarily formally, disclosing to the Innkeeper the nature and object of the deposit; merely to take a parcel to the bar and deposit it there saying to the barmaid, "Keep this for me," or words to that effect, is not to deposit it "expressly" for safe custody (*O'Connor* v. *Grand International Hotel Co*, 1898, 2 I. R. 92). *Cp*, WILFUL ACT.

Digitized by Google

EXPRESSLY NAMED. — A person, — *e.g.* an attorney to attest a Warrant of Attorney, s. 9, 1 & 2 V. c. 110, — is "named," or even "expressly named," by another if such other adopts a name that is suggested to him, for "expressly" does not mean "originally" (*Taylor* v. *Nicholl*, 6 M. & W. 91; 9 L. J. Ex. 78). *Vf* NAMED.

EXPRESSLY PRESCRIBED. — "In any manner expressly prescribed"; *V.* MANNER.

EXPRESSLY PROVIDED. — "EXCEPT as expressly provided"; *V. Thames Conservators* v. *Smeed*, 1897, 2 Q. B. 334; 66 L. J. Q. B. 716; 77 L. T. 325; 45 W. R. 691; 61 J. P. 612.

EXPRESSLY PURCHASED. — S. 77, Ry C. C. Act, 1845; *V. Errington* v. *Metrop District Ry*, 51 L. J. Ch. 305; 19 Ch. D. 559.

EXPRESSLY REFER. — A condition that a General Power of Appointment is not to be executed by Will unless it "expressly refer" to the Power or its subject-matter, will prevent the operation of s. 27, Wills Act, 1837 (*Re Phillips*, 58 L. J. Ch. 448; 41 Ch. D. 417: *Phillips* v. *Cayley*, 59 L. J. Ch. 177; 43 Ch. D. 222: *Re Tarrant*, W. N. (89) 146: *Phillips* v. *Cayley*, over-ruled *Re Marsh*, 57 L. J. Ch. 639; 38 Ch. D. 630: *Vh*, Key & Elphinstone's Prec., 3 ed., 668, n *c*). *V.* GENERAL POWER: POWER.

EXPRESSLY STIPULATED. — This is a very bad phrase as used in s. 7, Apportionment Act, 1870, for "one does not talk of 'Stipulations' in a Will" (per Lindley, M. R., *Re Lysaght*, cited ACCRUE: *Vthc* hereon, and *Vf*, *Tyrrell* v. *Clark*, 23 L. J. Ch. 283; 2 Drew. 86). Under that section Non-apportionment of Income is not "expressly stipulated" simply because the gift is specific (*Pollock* v. *Pollock*, 44 L. J. Ch. 168; L. R. 18 Eq. 329: *Capron* v. *Capron*, 43 L. J. Ch. 677; L. R. 17 Eq. 288: *Re Meredith*, 67 L. J. Ch. 409; 78 L. T. 492, correcting *Whitehead* v. *Whitehead*, L. R. 16 Eq. 528): *Sv* WHOLE.

EXPRESSLY VARIED. — Where one Act incorporates another, except where "expressly varied" by the incorporating statute, it is not essentially necessary that there should be express words saying, this particular section or provision shall not apply. Express words are not required for that purpose; but there must be something that indicates an express intention that a particular provision in the prior statute shall not apply to the incorporating statute. A mere variation in the incorporating statute from the ordinary type and form of a general Act would not be sufficient to prevent the general clauses applying. A variation in the incorporating Act showing that a provision in the prior Act was inapplicable, would have the same effect as if that provision were expressly varied (per Blackburn, J., *Metrop District Ry* v. *Sharpe*, 50 L. J. Q. B.

Digitized by Google

21). In that case it was held that s. 34, Lands C. C. Act, 1845, was not "expressly varied" by a special enactment as to arbitration which made no provision for costs (50 L. J. Q. B. 14; 5 App. Ca. 425); but s. 16, Ib. is "expressly varied" by an Act authorising the issue of new shares by a Ry Co for the purpose of an extension and the general purposes of the Undertaking (*Weld* v. *S. W. Ry*, 32 Bea. 340; 11 W. R. 448; 8 L. T. 13: *Vf, R.* v. *G. W. Ry*, 1 E. & B. 253; 22 L. J. Q. B. 65: APPLICABLE).

EXTEND. — *V.* ALTER.

EXTEND TO AND INCLUDE. — The words "shall extend to and include" (and so of the word "include" alone) in an Interpretation Clause, are wider and go further than the words "shall mean"; and denote that, in addition to the popular meaning given to a word or phrase, such word or phrase shall also have the meanings given to it by the Interpretation Clause (per Baggallay, L. J., and Brett, M. R., *Portsmouth* v. *Smith*, 53 L. J. Q. B. 92; 13 Q. B. D. 184: *Va, R.* v. *Elliott*, 41 L. J. Adm. 67; nom. *Dyke* v. *Elliott*, L. R. 4 P. C. 184).

V. INCLUDE: EMBRACE.

EXTENDED. — S. 180 (9), P. H. Act, 1875; *V. Yeadon Case*, 58 L. J. Ch. 563; 41 Ch. D. 32; 60 L. T. 550: ARBITRATION.

EXTENSION. — " 'Extension,' is a term properly used for the purpose of enlarging, or giving further duration to, any existing right, but does not import the re-vesting of an expired right; that would not be an 'Extension' but a 'Re-Creation'" (per Richardson, arg. *Brooke* v. *Clarke*, 1 B. & Ald. 399, and adopted per Cur.).

" 'Extension' is very commonly used in connection with Railways and Tramways both in legal documents and by people at large. When an 'Extension' of the G. W. Ry is spoken of, no one supposes that the thing meant is merely to prolong the existing line or to increase its breadth for laying down more rails. Branches are contemplated as well as the original main line when Extensions are spoken of. That is certainly a common use of language; nor can their lordships see that in point of etymology or philology it is incorrect" (*Shanghai Corp* v. *McMurray*, 69 L. J. P. C. 20). That def applies to "Extension of the lines of roads at present laid down" in Regn. 6, Shanghai Land Regns, 1869 (*S. C.* 1900, A. C. 206; 69 L. J. P. C. 19; 82 L. T. 101).

"Extension of Term of PATENT"; *V.* s. 25, 46 & 47 V. c. 57.

EXTENT. — *V.* TO THE EXTENT.

Writ of Extent; *V.* 5 Encyc. 254–257.

EXTERNAL. — In an Insurance against "bodily injury caused by VIOLENT, ACCIDENTAL, External, and VISIBLE means" but excepting "Natural Disease, or Weakness or Exhaustion consequent upon Dis-

Digitized by Google

ease," — "External" is used in contradistinction to such internal causes as disease or weakness; therefore, a dislocation of the cartilage of the knee caused by stooping to pick up an object is caused by "External" means, which are also "Violent, Accidental, and Visible" (*Hamlyn* v. *Crown Insrce,* 1893, 1 Q. B. 750; 62 L. J. Q. B. 409; 68 L. T. 701; 41 W. R. 531).

EXTERNAL ALTERATION. — A Lessee's covenant not to make "external" Alterations, "applies to everything external to the house, or, as it is popularly called, 'out-of-doors'" (per Williams, J., *Perry* v. *Davis,* 3 C. B. N. S. 777). *Va,* same case on construction of "Internal" alterations.

EXTERNAL PARTS. — A Covenant to repair the "External Parts" of a house includes a Wall by which it adjoins to, and is divided from, another house, — the "External Parts" of premises being those which form the enclosure of them and beyond which no part of them extends (*Green* v. *Eales,* 2 Q. B. 225; 11 L. J. Q. B. 63; 1 G. & D. 468): the phrase also includes the WINDOWS, they being part of the skin of the house (*Ball* v. *Plummer,* 23 S. J. 656).

EXTERNAL WALL. — Quà London Bg Act, 1894, "External Wall," "means, an outer WALL, or vertical enclosure, of any BUILDING not being a PARTY-WALL" (subs. 15, s. 5).

EXTINCT. — "'*Extinct*' commeth of the verbe *extinguere,* to destroy or put out; and a rent is said to be extinguished, when it is destroied and put out" (Co. Litt. 147 b), *e.g.* by the owner of the rent becoming the purchaser of the land, for "one may not have rent going out of his owne land" (Termes de la Ley, *Extinguishment*), so, if a freeholder purchase a lease of his land, the lease becomes extinct (Ib.).

V. MERGER: SUSPENSE.

EXTINCTION. — "Where the title to any Succession shall be *accelerated* by the Surrender or Extinction of any prior interests," s. 15, Sucn Dy Act, 1853; *V. Ex p. Sitwell, Re Drury Lowe,* 21 Q. B. D. 466; 59 L. T. 539.

Extinction of a Peerage; *V.* PEERAGE.

EXTINGUISHED. — *V.* MERGER: SUSPENSE: EXTINCT.

Rights to be "extinguished" under s. 20, Artizans and Labourers Dwellings Improvement Act, 1875; *V.* Fry, L. J., *Barlow* v. *Ross,* cited RIGHTS.

EXTORTION. — The offence of Extortion consists in a Public Officer "taking under colour of office from any person any money or valuable thing which is not due from him at the time when it is taken.

Digitized by Google

"If the illegal act consists in inflicting upon any person any bodily harm, imprisonment, or other injury not being extortion, the offence is called 'Oppression'" (Steph. Cr. 83). *V.* EXACTION: Termes de la Ley: 5 Encyc. 261–263: *Dive* v. *Maningham*, Plowd. 68.

Vf, Arch. Cr. 1030: Rosc. Cr. 712, 713: Co. Litt. 368 b.

As to what is Extortion *colore officii*, entitling the payer to recover back; *V. Bootle* v. *Lancashire Co. Co.*, 60 L. J. Q. B. 323.

V. MISCONDUCT: TAKE OR DEMAND. *Cp*, MENACE.

EXTRA.—An Extra to a Contract for Works, whether a Building or Ship, or any such thing, is something not specified in, or fairly comprised within, the contract, but which is cognate to the subject-matter of the contract and applicable to the carrying out of its design; *e.g.* if a deal door be specified and a subsequent order be given to substitute one of mahogany, the difference in value is an Extra; but if (say) the building of a house be the subject-matter and afterwards the building owner gives an order to the builder to furnish the house, that furniture is not an Extra, for that order is an independent contract (per Byles, J., *Russell* v. *Sa Da Bandeira*, 32 L. J. C. P. 68; 13 C. B. N. S. 149; 7 L. T. 804). *Vh* 1 Hudson, ch. 8.

Extra *Pilotage Services*; *V. The Servia*, 1898, P. 36; 67 L. J. P. D. & A. 36; 78 L. T. 54; 46 W. R. 492; 8 Asp. 353.

EXTRACT.—"Extract *Conviction*," or "Extract of Previous Conviction," quà Criminal Procedure (Scot) Act, 1887, 50 & 51 V. c. 35; *V.* s. 1.

Extract of *Decree*; *V.* DECREE.

EXTRADITION.—Is the delivery up by one State to another of a FUGITIVE CRIMINAL: *Vh*, Clarke on Extradition: 5 Encyc. 263–281.

"Extradition *Crime*"; Stat. Def., Extradition Act, 1870, s. 26; Extradition Act, 1873, s. 8 and Sch. *Cp*, POLITICAL.

EXTRAORDINARILY.—It is "dangerous" and "extraordinarily inconvenient to Passengers or Carriages," s. 53, Ry C. C. Act, 1845, for a Ry Co to lay down rails and run trains along a portion of a Highway; before doing so, they must comply with the section and "cause a sufficient road to be made instead of the road to be interfered with" (*A-G.* v. *Widnes Ry*, 30 L. T. 449; 22 W. R. 607).

EXTRAORDINARY.—"Extraordinary" means, what is less than, as well as what is more than, ordinary.

The charges for Attendances "in Extraordinary Cases," Sch 2, Solrs Rem Ord, may be diminished or increased by the Taxing Master according as he may regard the attendances as less or more onerous than ordinary (*Re Mahon*, 1893, 1 Ch. 507; 62 L. J. Ch. 448; 68 L. T. 189; 41 W. R. 257: *Vf* IF THEY SHALL THINK FIT).

Digitized by Google

EXTRAORDINARY CHARGE.—"Extraordinary Charge" to which a Poor Law Union is liable; *V. Waddington* v. *London*, 28 L. J. M. C. 113; E. B. & E. 370, on *whcv*, *R.* v. *Leigh*, 1898, 1 Q. B. 836; 67 L. J. Q. B. 562; 78 L. T. 604; 46 W. R. 471; 62 J. P. 355.

Stat. Def., Extraordinary Tithe Redemption Act, 1886, 49 & 50 V. c. 54, preamble: *V.* TITHES.

EXTRAORDINARY EXPENSES.—S. 23, 41 & 42 V. c. 77; *V.* EXTRAORDINARY TRAFFIC.

EXTRAORDINARY RESOLUTION.—*V.* RESOLUTION.

EXTRAORDINARY SACRIFICE.—*V.* GENERAL AVERAGE SACRIFICE.

EXTRAORDINARY SERVICES.—By a Ry Co; *V. Dunkirk Colliery Co* v. *Manchester, S. & L. Ry*, 2 Ry & Can Traffic Ca. 402: *Neston Co* v. *Lond. & N. W. Ry*, 4 Ib. 257: *Hall* v. *L. B. & S. Ry*, cited INCIDENTAL. *Cp*, "Terminal Charges," sub TERMINAL: REASONABLE SUM.

EXTRAORDINARY TITHE.—*V.* TITHE.

EXTRAORDINARY TRAFFIC.—"What constitutes '*Excessive Weight*' or '*Extraordinary Traffic*' (within s. 23, 41 & 42 V. c. 77), must, to a great extent, depend upon the opinion of those (*i.e.* the Justices) who know the neighbourhood" (per Grove, J., *Pickering* v. *Barry*, 51 L. J. M. C. 19; 8 Q. B. D. 59; 30 W. R. 246; 46 J. P. 215). In the same case, Lopes, J., said, "I think that the Legislature intended something Excessive in Weight or Extraordinary in Kind of Traffic, either,—

"1. As compared with what is usually carried over roads of the same nature in the neighbourhood, or

"2. As compared with that to which the road in its ordinary and fair use may reasonably be subjected. It would not be sufficient to compare the Weight and Traffic complained of with the traffic usually carried on the particular road, because the traffic usually carried might be of the lightest kind; but surely the Legislature never intended that a man was not to use the road for carrying materials for building a dwelling-house, farm-house, or barn, provided he used it in a reasonable way for those purposes. The comparison must be larger, and I think the definition I have given, if not exhaustive, will be found useful."

For cases illustrating clause 1 of that definition; *V. Aveland* v. *Lucas*, 5 C. P. D. 351; 49 L. J. C. P. 643; 28 W. R. 571; 43 J. P. 830: *Savin* v. *Oswestry*, 44 J. P. 766: *Williams* v. *Davis*, Ib. 347: *Northumberland Whinstone Co* v. *Alnwick*, Ib. 360: *Wallington* v. *Hoskins*, 50 L. J. M. C. 19; 6 Q. B. D. 206; 29 W. R. 152; 45 J. P. 173: *R.* v.

Digitized by Google

Ellis, 8 Q. B. D. 466; 30 W. R. 613 (Traction Engine case): *Ellis* v. *Maidstone*, 46 J. P. 295: and *Cp*, *Tunbridge* v. *Sevenoaks*, 33 W. R. 306; 49 J. P. 340, with *Raglan* v. *Monmouth Steam Co*, 46 J. P. 598.

And as illustrating Clause 2 of the definition, *V. Pickering* v. *Barry*, sup, where Grove, J., whilst agreeing that using a road for carrying materials for the building of an ordinary dwelling-house would not be exceptional, said, "I do not mean to say that there might not be Excessive Weight or Extraordinary Traffic for an extraordinary building such as a College or Workhouse."

But *Pickering* v. *Barry* soon became the subject of adverse criticism; and the leading def of "Extraordinary Traffic" was given by Bowen, L. J., in *Hill* v. *Thomas* (62 L. J. M. C. 164; 1893, 2 Q. B. 333; 69 L. T. 553: 42 W. R. 85; 57 J. P. 628) as follows: —

"It is true that Extraordinary Traffic is a traffic to be specially distinguished from other traffic by the section; but the distinction cannot solely depend on the unusual character of articles carried but rather on the *effect* which the carriage of the particular articles (call them by whatever name or classification one will) may presumably be expected to have upon the road. If so, Extraordinary Traffic is really, A carriage of articles over the road, at either one or more times, which is so exceptional, — in the quality or quantity of articles carried or in the mode or time of user or the road, — as substantially to alter and increase the burden imposed by ordinary traffic on the road, and to cause damage and expense thereby beyond what is common."

"In other words, there must be an exceptional user of the highway" (per Charles, J., *Wolverhampton* v. *Salop Co. Co.*, 64 L. J. M. C. 179; 43 W. R. 494).

The jdgmt in *Hill* v. *Thomas* deals with and disposes of *R.* v. *Williamson* (45 J. P. 505; nom. *Hall* v. *Thomas*, 9 Times Rep. 443), so far as it may have been regarded as laying down, as matter of law, that unusual frequence of ordinary loads does not constitute "Extraordinary Traffic." Observe, too, that only the particular road in question, and not the ordinary traffic of the district, has to be regarded (*Etherley Grange Coal Co* v. *Auckland*, 1894, 1 Q. B. 37; 69 L. T. 702; 42 W. R. 198; 58 J. P. 102; 10 Times Rep. 62).

As to the person "*by whose Order*" Extraordinary Traffic "has been conducted"; *V. Kent Co. Co.* v. *Vidler*, 1895, 1 Q. B. 448; 64 L. J. M. C. 77; 72 L. T. 77; 43 W. R. 273: *Kent Co. Co.* v. *Gerard*, 1897, A. C. 633; 66 L. J. Q. B. 677; 77 L. T. 109; 46 W. R. 111; 61 J. P. 804: *Colchester* v. *Gloucestershire Co. Co.*, 66 L. J. Q. B. 290: *Pethick* v. *Dorsetshire Co. Co.*, 62 J. P. 579. *Semble*, the phrase is to be interpreted literally and as meaning, the immediate masters of the men who are engaged in the Extraordinary Traffic. But by s. 12 (1 *c*), 61 & 62 V. c. 29, these words "by whose Order" are to be replaced by the words "by, *or in consequence of*, whose Order," on *whv*, *Epsom* v. *London Co.*

Digitized by Google

Co., 1900, 2 Q. B. 751; 69 L. J. Q. B. 933; 83 L. T. 284; 64 J. P. 726.

Note. Proceedings to recover expenses of Ex. Traffic must be within 6 cal. months after Certificate (*Wirrall v. Newell*, 1895, 1 Q. B. 827; 64 L. J. M. C. 181; 72 L. T. 535; 43 W. R. 328; 59 J. P. 183, *whv* as to validity of Certificate): *Vf*, *Whitehead* v. *Sevenoaks*, 1892, 1 Q. B. 8; 61 L. J. M. C. 59; 65 L. T. 855; 56 J. P. 214. The proceedings are FOUNDED ON Tort, and the maxim *Actio personalis moritur cum persona* applies (*Story* v. *Sheard*, 61 L. J. M. C. 178; 1892, 2 Q. B. 515; 67 L. T. 423; 41 W. R. 31; 56 J. P. 760).

EXTRAPAROCHIAL. — A place is Extraparochial which is "out of any Parish; anything privileged and exempt from the duties of a Parish" (Jacob: Termes de la Ley).

Quà New Parishes Act, 1856, 19 & 20 V. c. 104, "'Extraparochial Place,' means any township, vill, village, or hamlet, being extraparochial" (s. 33).

V. TITHES.

EXTRAVAGANCE. — *V.* UNJUSTIFIABLE EXTRAVAGANCE.

EXTRINSIC. — Extrinsic EVIDENCE, is evidence of statements, facts or circumstances outside, or not referred to in, a written document which serve to explain or vary its meaning and sometimes to contradict it. Generally, it is not receivable, and is only so in a qualified way or in exceptional cases: *Vh*, Wigram on Extrinsic Evidence in the Interpretation of Wills: Elph. ch. 4, 5, 8: Leake, ch. 4, s. 2. *V.* PAROL.

EY. — "*Ey*, *ing*, and *worth*, signifieth a watry place or water" (Co. Litt. 5 b).

EYRE. — Justices in Eyre; *V.* SUPERIOR COURT.

Digitized by Google

F. C. S.—"Free of Capture and Seizure" (1 Maude & P. 449). *Vh*, 5 Encyc. 324: CAPTURE.

F. G. A.—"Free of General Average" (1 Maude & P. 449).

F. O. B.—"Free on Board." This expression throughout the whole of England, means that the seller is to put the goods on board at his own expense, but on account of, and thenceforward at the risk and as the property of, the purchaser; and this is so whether the goods are specific or only a proportion of a quantity (*Cowas-jee* v. *Thompson*, 5 Moore, P. C. 173: *Brown* v. *Hare*, 27 L. J. Ex. 372; 29 Ib. 6; 3 H. & N. 484; 4 Ib. 822: *Inglis* v. *Stock*, 54 L. J. Q. B. 582; 10 App. Ca. 263: Benj. 315: Blackb. 362). In *Ex p. Rosevear Co, Re Cock* (11 Ch. D. 565), Bacon, C. J. in Bankry, said,—"Delivery 'free on board' only means, 'The price shall be that which we stipulate for, and you shall not have to pay for the wagons or carts necessary to carry (to the ship); we will bear all those charges and put it free on board the ship, the name of which you furnish.'"

As to whether "Free on Board" indicates that the transitus is at an end as soon as the goods are on the purchaser's Ship; *V. Berndtson* v. *Strang*, L. R. 4 Eq. 488.

A contract for PIG IRON made at Glasgow and deliverable "F. O. B." may, by a mercantile usage, be shown to mean a particular kind of iron made in the neighbourhood of Glasgow (*Mackenzie* v. *Dunlop*, 1 Paterson, 669).

F. O. W.—"FIRST OPEN WATER": the phrase is "used in Charter-Parties, with reference to Ports in the Baltic, to mean 'immediately after the Ice breaks up'" (5 Encyc. 471). *V.* "Open Water," sub OPEN.

F. P. A.—"Free of Particular Average" (1 Maude & P. 449).

"Where, in the Memorandum, the words 'Warranted free from Particular Average' are used, these words are not confined to losses arising from injury to the goods themselves, but amount to a warranty against any loss other than a Total Loss, or General Average; and therefore, under a Marine Policy in the ordinary form on goods, the Underwriters are not liable for expenses incurred in relation to the goods unless such expenses are paid to avert a General Average loss, and are therefore

Digitized by Google

recoverable under the Suing and Labouring Clause" (1 Maude & P. 493, citing *Meyer* v. *Ralli*, 1 C. P. D. 372, 373; 45 L. J. C. P. 741: *Great Indian Peninsular Ry* v. *Saunders*, 1 B. & S. 41; 30 L. J. Q. B. 218; 31 Ib. 206). *Vh, Hendricks* v. *Australasian Insrce*, 43 L. J. C. P. 188; L. R. 9 C. P. 461: *Stewart* v. *Merchants Mar Insrce*, 55 L. J. Q. B. 81; 16 Q. B. D. 619.

FABRIC LANDS.—"'Fabrick-Lands,' are lands given to the re-building, repair, or maintenance, of Cathedrals or other Churches,"—as in 12 Car. 2, c. 11 (Cowel). *V.* 5 Encyc. 284, 285: Tudor, Char. Trusts, 436.

FABRICATE.—*V.* FALSELY ASSUMING TO ACT.

FACILITIES.—By s. 2, Ry and Canal Traffic Act, 1854, Ry and Canal Companies "shall, according to their respective powers, afford all reasonable *Facilities*" for receiving, forwarding, and delivering, Traffic. The word "Facilities," here, does not mean merely facilities afforded by the management of traffic, *e.g.* Through Booking (*Didcot, &c Ry* v. *G. W. Ry*, 1897, 1 Q. B. 33; 66 L. J. Q. B. 33; 75 L. T. 401; 45 W. R. 282); but a Company violates the Act "if (*having sufficient powers*) it keeps its platforms, booking-office, and other structures, at any station, in such a condition as to space and other arrangements as to cause dangerous or obstructive confusion, delay or other impediment to the proper reception, transmission, or delivery, of the ordinary traffic of that station, whether consisting of passengers or of goods" (per Selborne, C., *S. E. Ry* v. *Ry Commrs*, 50 L. J. Q. B. 206; 6 Q. B. D. 586; 3 Ry & Can Traffic Ca. 508). But Refreshment-rooms, and Covered Platforms and Carriage Yards, even at places where invalids resort, are not "facilities" within the section (*Ib.*), nor are free Water-Closets (*West Ham* v. *G. E. Ry*, 9 Ry & Can Traffic Ca. 7; 64 L. J. Q. B. 340; 72 L. T. 395; 11 Times Rep. 264).

"When you speak of giving 'Reasonable Facilities' you imply that the thing with regard to which you order a Facility is an existing thing" (per Esher, M. R., *Darlaston* v. *Lond. & N. W. Ry*, 1894, 2 Q. B. 694; 63 L. J. Q. B. 826; 71 L. T. 461; 43 W. R. 29; 8 Ry & Can Traffic Ca. 233); therefore, there is no power, under the section, to order the opening of a New Station or the Re-Opening of one that has been closed (*S. E. Ry* v. *Ry Commrs*, sup: *Darlaston* v. *Lond. & N. W. Ry*, sup).

The section includes Facilities for Passengers (*Winsford Local Bd* v. *Cheshire Lines Committee*, 59 L. J. Q. B. 372; 24 Q. B. D. 456: *Re Willesden Local Bd and Mid. Ry*, 37 S. J. 176), *e.g.* a Cloak Room (*Singer Co* v. *Lond. & S. W. Ry*, 1894, 1 Q. B. 833; 63 L. J. Q. B. 411; 70 L. T. 172; 42 W. R. 347). *V.* RAILWAY.

Vf, G. W. Ry v. *Ry Commrs*, 50 L. J. Q. B. 483; 7 Q. B. D. 182; 29

Digitized by Google

W. R. 901: *Brown* v. *G. W. Ry*, 51 L. J. Q. B. 529; 9 Q. B. D. 744; 3 Ry & Can Traffic Ca. 523: *R.* v. *Ry Commrs*, 58 L. J. Q. B. 233; 22 Q. B. D. 642: *Nichol* v. *N. E. Ry*, 4 Times Rep. 464: *Barry Ry* v. *Taff Vale Ry*, 1895, 1 Ch. 128; 64 L. J. Ch. 230; 71 L. T. 688; 43 W. R. 372: *Newington* v. *N. E. Ry*, 3 Ry & Can Traffic Ca. 306: *Watkinson* v. *Wrexham, &c Ry*, Ib. 446: *Tharsis Co.* v. *Lond. & N. W. Ry*, Ib. 455: *James* v. *Taff Vale Ry*, Ib. 540: *Beeston Brewery Co.* v. *Mid. Ry*, 5 Ib. 53: *Distington Iron Co.* v. *Lond. & N. W. Ry*, 6 Ib. 123: *Highland Ry* v. *G. N. of Scotland Ry*, 7 Ib. 94.

"Proper and Sufficient Facilities" for TRAFFIC in a Ry Arrangement Act; *V. G. W. Ry* v. *Central Wales Ry*, 5 Ry & Can Traffic Ca. 1.

The "Facilities for IMPROVEMENT" which, under s. 16, Copyhold Act, 1852, 15 & 16 V. c. 51, are to be taken into account in valuing the Lord's rights on an Enfranchisement, are questions of fact depending in great measure on the state of the particular land and the local circumstances (*Lingwood* v. *Gyde*, cited CUSTOMARY FREEHOLD).

FACT.—An action on a Distress for church rates is commenced within three calendar months "*after the Fact committed*," 53 G. 3, c. 127, s. 12, if brought within that time after the sale under the distress (*Collins* v. *Rose*, 5 M. & W. 194; 8 L. J. Ex. 273).

A recital that A. B. is seised in fee, is a "recital or statement of a *Fact*" (and not merely of a proposition of law); and if contained in a Deed 20 years old will be sufficient evidence of the truth of that fact within s. 2 (2), V. & P. Act, 1874, 37 & 38 V. c. 78, until the contrary is proved (*Bolton* v. *London School Board*, 47 L. J. Ch. 461; 7 Ch. D. 766: *Vf*, *Cooper* v. *Phibbs*, L. R. 2 H. L. 170). *Vh*, ENTITLED.

"Question of Fact arising in the Action"; *V. Fennessey* v. *Clark*, 57 L. J. Ch. 398; 37 Ch. D. 184; 58 L. T. 289.

Existing Fact; *V.* FALSE PRETENCE.

"False Statement of Fact"; *V.* FALSE STATEMENT.

V. MATERIAL FACT: PERJURY.

FACTO.—*V.* DE JURE.

FACTOR.—"A Factor is an Agent entrusted with the possession of GOODS for the purpose of selling them for his Principal" (per Cotton, L. J., *Stevens* v. *Biller*, inf). *V.* POSSESSION.

"There are two extensive classes of Mercantile Agents, namely;—*Factors*, who are entrusted with the possession as well as the disposal of property; and *Brokers*, who are employed to contract about it without being put in possession" (Smith, Mer. Law, 9 ed., 106, cited with approval by Brett, L. J., *Ex p. Dixon*, 46 L. J. Bank. 20; 4 Ch. D. 133, and by Chitty, J., *Stevens* v. *Biller*, 53 L. J. Ch. 249; 25 Ch. D. 31. *Vf*, as to "Factor," *A-G.* v. *Trueman*, 13 L. J. Ex. 70; 11 M. & W.

Digitized by Google

694; and as to distinction between "Factor" and "Broker," *Baring* v. *Corrie*, 2 B. & Ald. 143). *Vh*, Evans on Agency, 2 ed., 4: Story on Agency, s. 34: 5 Encyc. 286–288: *Cp*, Broker.

"Factor," ss. 41, 44, Income Tax Act, 1842, "is used in its strict legal sense as meaning a person who is in possession of the goods of his principal" (per Esher, M. R., *Grainger* v. *Gough*, 1895, 1 Q. B. 71; 64 L. J. Q. B. 197; *Vthc*, in H. L. 1896, A. C. 325; 65 L. J. Q. B. 410).

"Factors, Servants, or Assigns," in the Suing and Labouring Clause of a Marine Insurance; *V. Uzielli* v. *Boston Mar Insrce*, 15 Q. B. D. 11; 54 L. J. Q. B. 142.

Note. There is no definition of "Factor" in the Factors Act, 1889, but there is one of "Mercantile Agent." The Act of 1889 is extended to Scotland by 53 & 54 V. c. 40, which does not alter the general Scotch law quà Pledge; *V. Inglis* v. *Robertson*, cited Mercantile Agent.

V. Buy.

In Scotland, "Factor" usually connotes a Land Steward or Agent, *e.g.* "'Factor,' shall mean a person acting under a Probative Factory and Commission for the proprietor or proprietors (including corporations being proprietors) for whom he is Factor, and in the *bonâ fide* actual management, as such Factor, of the lands and heritages belonging to such proprietor" (s. 42, 17 & 18 V. c. 91). *V.* Judicial Factor.

A quaint use of "Factor" occurs at 2 Inst. 15, where it is said that Ranulph, Chaplain to William Rufus, "a man *subacto ingenio* and *profunda nequitia*, was a Factor for the King in making merchandize of Church Livings."

FACTORY.—A "Factory," within s. 3, 30 & 31 V. c. 103, related to trades carried on in covered buildings, and not to open-air processes, such as a Quarry, or Cement Works on a large piece of land (*Kent* v. *Astley*, 39 L. J. M. C. 3; 10 B. & S. 802; L. R. 5 Q. B. 19: *Redgrave* v. *Lee*, 43 L. J. M. C. 105; L. R. 9 Q. B. 363). That ruling is not applicable to the Factory and Workshop Act, 1901 (s. 149, subs. 5).

A code of law relating to Factories and Workshops is now provided by the said Act of 1901, which repealed the previous legislation, but re-enacted its provisions with emendations and amplifications. Its main definitions of "Factory" and "Workshop" are contained in s. 149, whereby "Factory" is classified as either a "*Textile* Factory," or a "*Non-Textile* Factory," and either may be a "*Tenement* Factory," each phrase receiving by the section an elaborate def, in addition to which there is a List of "Non-Textile Factories" given in Part 1, Sch 6, whilst Part 2 of that Sch gives a List of places which are "Non-Textile Factories, *and* Workshops" (*V.* Non-Textile Factories):—whilst "Work-

Digitized by Google

shop," comprises those lastly mentioned places, and others defined by the section, and also a "Tenement Workshop" as thereby defined.

By s. 104, "Every Dock, Wharf, Quay, and Warehouse, and all Machinery or Plant used in the Process of loading or unloading or coaling any Ship in any Dock, Harbour, or Canal" is included in "Factory," the "Occupier" of which is defined by such section.

By s. 105, "Premises on which Machinery worked by steam, water, or other mechanical power, is temporarily used for the purpose of the construction of a Building or any Structural Work in connection with a Building" is included in "Factory," the "Occupier" of which is defined by such section: by this section too, quà Notice and Investigation of Accidents, "Factory" includes, "(*a*) Any Building which exceeds 30 feet in Height and which is being constructed or repaired by means of a Scaffolding; and (*b*) Any Building which exceeds 30 feet in height and in which more than 20 persons, not being Domestic Servants, are employed for wages."

By s. 115, "'*Domestic* Factory' and '*Domestic* Workshop,' mean a private house, room, or place, which, though used as a Dwelling, is, by reason of the work carried on there, a Factory or a Workshop (as the case may be) within the meaning of this Act; and in which neither steam, water, nor other mechanical power, is used in aid of the manufacturing process carried on there; and in which the only persons employed are Members of the same Family dwelling there."

"The Factory and Workshop Acts, 1878 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

Quà Workmen's Comp Act, 1897, "'Factory,' has the same meaning as in the Factory and Workshop Acts, 1878 to 1891; and also includes any Dock, Wharf, Quay, Warehouse, Machinery, or Plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every Laundry worked by steam, water, or other mechanical power" (subs. 2, s. 7). That def must now be read as though it referred to and adopted the meanings of "Factory" as given in the Factory and Workshop Act, 1901 (s. 38 (1), Interp Act, 1889).

Semble, as of general application, that a Part of a Building separately occupied, does not become a "Factory" by reason of the rest of the bg being so used (*London Co. Co.* v. *Lewis*, 82 L. T. 195; 69 L. J. Q. B. 277; 64 J. P. 39).

Quà P. H. Scotland Act, 1897, "'Factory' includes, Workshop and Workplace" (s. 3). *V.* House.

"Factory or Workshop," quà Bills of Sale; *V.* 41 & 42 V. c. 31, s. 5.—*Ir.* 42 & 43 V. c. 50, s. 5.

"Factory Magazine," quà Explosives Act, 1875, 38 & 39 V. c. 17; *V.* s. 108.

FACTUM.—*V.* Deed: Fait.

Digitized by Google

FACULTY. — " 'Faculty' signifies a priviledge or speciall dispensation, granted unto a man by favour and indulgence to doe that which by the law he cannot doe" (Termes de la Ley).

Quà Ecclesiastical Matters; *V.* Phil. Ecc. Law: 5 Encyc. 307.

FAIL. — "Fails to land and take delivery," s. 67, Mer Shipping Act, 1862, need not imply a wilful default in the cargo owner (*Miedbrodt* v. *Fitzsimon*, 44 L. J. Adm. 25; L. R. 6 P. C. 306).

If Mine shall "fail," in a proviso for cesser in a Mining Lease, means (probably) if it shall become not WORKABLE, and (probably) does not refer to "exhaustion" (*Jervis* v. *Tomkinson*, 26 L. J. Ex. 44).

Where, in case of dispute, an agreement has appointed A. as Arbitrator, or "failing him" then B., — there is a "failure" of A. if, at the time when a dispute arises, he is abroad on business and not likely to come back at once so as not to be available for the arbitration in a proper business sense (*Re Wilson and Eastern Counties Nav.*, 8 Times Rep. 264).

"Failing the MALE ISSUE," construed contextually as "if there shall be no Son then living" (*Murray* v. *Addenbrook*, 4 Russ. 407; 8 L. J. O. S. Ch. 79).

FAILURE. — "Failure, Neglect, or Default" to perform an obligation; *V. Lewis* v. *Swansea*, 4 Times Rep. 706. *Vf* DEFAULT.

"Failure" applied to a *Business* man or concern, means inability, by Insolvency, to pay his or its debts (*Boyce* v. *Ewart*, 1 Rice, 140).

Failure of *Issue*; *V.* DIE WITHOUT ISSUE.

Leave to Appeal if Court is "satisfied that a Failure of *Justice* will take place if the leave is not granted," Art. 26, Sch 2, 53 & 54 V. c. 70; *V. Ex p. Birch*, 1894, 2 I. R. 181.

FAIR. — A Fair "is a solemn or greater sort of MARKET granted to any Town by priviledge for the more speedy and commodious provision of such things as the subject needeth, or the utterance of such things as we abound in above our own uses and occasions" (Cowel). *Vf*, Jacob.

In a Local Act prohibiting the setting up a "Market or Fair" without permission of the Local Authority, — Is the setting up of Swing-boats, Merry-go-rounds, and such like, within the word "Fair"? The justices said "Yes" and therein were upheld by Lawrence, J., but Bruce, J., said "No," who, however, being the junior judge withdrew his jdgmt and the conviction stood (*Collins* v. *Cooper*, 68 L. T. 450; 57 J. P. 248); in *the* Bruce, J., said that the selling of goods is a necessary element in a "Fair."

Grant of a Fair "with all Liberties"; *V.* WITH ALL LIBERTIES.

V. FAIR OR MARKET TOLLS.

Digitized by Google

FAIR AND REASONABLE.—A "Fair and Reasonable" *Agreement* In Writing between a Solicitor and Client as to Costs in *Contentious* Business, ss. 4, 9, Solrs Act, 1870, must be reasonable as well as fair; and therefore, though the agreement is fully explained to and understood by the Client yet if the amount to be paid to the Solr is unreasonable, *e.g.* nearly 5 times the ordinary remuneration, the Agreement will not be valid (*Re Stuart, Ex p. Cathcart*, 1893, 2 Q. B. 201; 62 L. J. Q. B. 623; 69 L. T. 334; 41 W. R. 614). *Vh, Re Hodgson*, 29 S. J. 149. *Note*: For an example of "a perfectly fair agreement" (per Cave, J., *Re West*, 61 L. J. Q. B. 642) *V. Stedman* v. *Collett*, 17 Bea. 608. Such an agreement, quà *Non-Contentious* Business, is now governed by s. 8, Solrs Rem Act, 1881, under subs. 4, of which it may be "objected to by the Client as 'Unfair *or* Unreasonable.'"

"Fair and Reasonable *Compensation*," under 2nd par, s. 5, Agricultural Holdings (England) Act, 1883; *V.* Woodf. 822.

"Fair and Reasonable *Supposition*" of Right, s. 52, 24 & 25 V. c. 97; *V. White* v. *Feast*, L. R. 7 Q. B. 353; 41 L. J. M. C. 81; followed in *Brooks* v. *Hamlyn*, 79 L. T. 734: *Va* Bonâ fide.

V. Reasonable.

FAIR ANNUAL VALUE.—*V.* Full Annual Value.

FAIR AVERAGE QUALITY.—"If goods coming from a particular Port are sold as being of 'a fair average quality,' a fair average quality of the various sorts of the article which comes from that Port is meant, and not of the sorts which come from all parts of the world" (Wood, 354, citing *Jones* v. *Clarke*, 2 H. & N. 725; 27 L. J. Ex. 165). *Vh, Couturier* v. *Hastie*, 25 L. J. Ex. 253; 5 H. L. Ca. 673; 9 Ex. 102; 1 W. R. 495.

FAIR COMMENT.—"A Fair Comment (excusing what would otherwise be a Libel) is a Comment which is either true, or which, if false, expresses the real opinion of its author (as to the existence of matter of fact, or otherwise), such opinion having been formed with a reasonable degree of care and on reasonable grounds" (Steph. Cr. 202).

"The nearest approach, I think, to an exact definition of the word 'fair,' is contained in the judgment of Tenterden, C. J., in *Macleod* v. *Wakley* (3 C. & P. 313), where he said,—'Whatever is fair and can be reasonably said of the works of authors or of themselves, as connected with their works, is not actionable, unless it appears, that, under the pretext of criticising the works, the defendant takes an opportunity of attacking the character of the author: then it will be a libel'" (per Bowen, L. J., *Merivale* v. *Carson*, 20 Q. B. D. 283).

Vh, Public Interest: Quack: 84 L. T. 114: Odgers, 42–58.

FAIR OR MARKET TOLLS.—The duties which are usually paid at a fair or market are tolls, stallage, and pickage; and this toll is

Digitized by Google

a reasonable sum due to the owners of the fair or market upon the sale therein of things which are tollable (Gunning on Tolls, 44).

V. TOLL.

FAIR PRICE. — The "Fair Price," "agreed to be paid," by an Agister and which gives his Live Stock a conditional exemption from DISTRESS (s. 45, Agricultural Holdings (England) Act, 1883), includes agreements for barter as well as for payments in cash (*London and Yorkshire Bank* v. *Belton*, 54 L. J. Q. B. 568; 15 Q. B. D. 457). In that case Coleridge, C. J., said, — "In ordinary colloquial language 'Price' does not always mean money, and 'Fair Price' is not necessarily an adequate sum of current coin: it may be used where the result of a transaction is that a man gave a fair equivalent for what he got." In the same case, Mathew, J., said, "I think that 'Fair Price' means 'Equivalent.'" *Vf* AGIST.

V. BEST PRICE.

FAIR RENT. — "Fair clear annual rent"; *V. R.* v. *Lacy*, cited CLEAR.

As to fixing a "Fair Rent" of land in Ireland; *V. Adams* v. *Dunseath*, 10 L. R. Ir. 109: *Davies* v. *M'Mahon*, 24 Ib. 447: *Sutton* v. *Walsh*, 26 Ib. 629.

V. JUDICIAL RENT.

FAIR REPORT. — A Fair Report of a judicial proceeding (excusing what would otherwise be a LIBEL) is one that "is substantially accurate, and either complete or condensed in such a manner as to give a just impression of what took place"; but this does not extend to comments of the reporter or to observations of persons not entitled to take part in the proceedings (Steph. Cr. 206). The report may be "fair," although it contains only the speech of counsel and the summing-up of the judge (*Milissich* v. *Lloyds*, 46 L. J. Q. B. 404; 36 L. T. 423; W. N. (77) 36): *Vf*, Odgers, 285.

FAIR VALUATION. — When the terms of a contract, under which the produce of land is to be taken at a Fair Valuation, do not conclusively and clearly define what the parties mean by a "Fair Valuation," it will be a question of fact for the jury what is such a Valuation (*Cumberland* v. *Bowes*, 15 C. B. 348; 24 L. J. C. P. 46; 1 Jur. N. S. 236; 3 Com. L. R. 149).

"It appears probable that a general agreement to sell 'at a Fair Valuation' may be enforced" (Dart, 257; *V.* cases there cited).

FAIR-WAY. — The "Fair-Way" of a River, means, a clear passage way by water, and is not, necessarily, confined to that part of the channel

Digitized by Google

which is marked by buoys but includes all that part of the river inshore of the buoys which is navigable for vessels of moderate draught (*The Blue Bell*, 1895, P. 242; 64 L. J. P. D. & A. 71; 72 L. T. 540).

FAIRLY.—As to covenants "Fairly and Regularly," or "Diligently and Regularly," or "Uninterruptedly, Efficiently and Regularly," to work a Mine; *V.* MacS. 217, 233.

The introduction of the adverb "fairly" in the power to the Court to determine that a Liability in a Bankry shall not be proveable therein if it is incapable of being "fairly *estimated*" (s. 31, Bankry Act, 1869; s. 37 (6), Bankry Act, 1883), "involves the principle that all liabilities, subject to the express statutory exceptions, were intended to be included, but that in the one case where the Court should adjudicate that the liability was such that, at that time, it could not be 'fairly estimated,' then, and then only, should the liability continue" (per Halsbury, C., *Hardy* v. *Fothergill*, 58 L. J. Q. B. 45; 13 App. Ca. 351). *V.* DEBTS DUE: DEBT OR LIABILITY: INCAPABLE.

"Ought fairly to be excused," s. 3, Judicial Trustees Act, 1896; *V.* REASONABLY.

Fairly *workable*; *V.* WORKABLE.

Fairly *wrought*; *V.* WROUGHT.

FAIT.—"In Latine, Factum, a DEED" (Cowel).

FAITH.—*V.* GOOD FAITH: BONÂ FIDE: TRUE FAITH.

FAITOUR.—"An evill doer, or an idle companion," and, as used in 7 Rich. 2, c. 5, "it seemeth a synonymon to VAGABOND" (Termes de la Ley).

FALDA.—"A sheepfold. Rot. Cart. 16 Hen. 3, m. 6" (Cowel).

FALDAGE.—"'*Faldagium*' is a priviledge which anciently several Lords reserved to themselves of setting up Folds for Sheep in any Fields within their Mannors, the better to manure them; and this not onely with their own, but their tenants, sheep, which they called *Secta faldæ*. This Faldage, in some places, they call a FOLD-COURSE, or *Free-fold*, and, in some old Charters, *Faldsoca*, that is, *Libertas faldæ*, or *faldagii*" (Cowel). *V.* FRANKFOLDAGE. *Cp*, FOLDAGE.

FALESIA.—"*Falesia* is a bank or hill by the sea-side; it commeth of *falaize*, which signifieth the same" (Co. Litt. 5 b).

FALL.—"Fall into RESIDUE"; *V. Re Rhoades*, 29 Ch. D. 142; 54 L. J. Ch. 573; 33 W. R. 608: *Re Savage*, 50 L. J. Ch. 131, and *Re Ballance*, 42 Ch. D. 62; 37 W. R. 600, considering *Humble* v. *Shore*, 7 Hare, 247; 1 H. & M. 550 *n*: *Holgate* v. *Jennings*, 37 S. J. 303: *Lightfoot* v. *Burstall*, 1 H. & M. 546; 33 L. J. Ch. 188; 12 W. R. 148: *Crawshaw* v. *Crawshaw*, 14 Ch. D. 817; 49 L. J. Ch. 662; 29

Digitized by Google

W. R. 68: *Re Barker*, 15 Ch. D. 635. *Humble* v. *Shore*, is now definitely over-ruled by *Re Palmer* (1893, 3 Ch. 369; 62 L. J. Ch. 988; 69 L. T. 477; 42 W. R. 151). *Vf*, Rest: Sink.

Person "who causes to *fall or flow*" Sewage-matter into a Stream, s. 3, 39 & 40 V. c. 75; *V. Kirkheaton* v. *Ainley*, 1892, 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. 209; 41 W. R. 99.

FALSE COIN. — "False or Counterfeit Coin," quà Coinage Offences Act, 1861, 24 & 25 V. c. 99, includes "any of the Current Coin which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble or be apparently intended to resemble or pass for" any Current Coin of a higher denomination (s. 1).

FALSE DOCUMENT. — *V.* Forgery.

FALSE ENTRY. — False Entry on Registration of a Birth, Death, or Marriage; *V. R.* v. *Brown*, 2 C. & K. 504: *R.* v. *Mason*, Ib. 622: *R.* v. *Dewitt*, Ib. 905.

FALSE IMPRISONMENT. — "Is a trespass committed against a man by imprisoning him without lawful cause" (Cowel). *V.* Imprisonment.

Vh, Rosc. N. P. 903–910: Add. T. 146–164: Arch. Cr. 849: 5 Encyc. 311–315.

FALSE OR UNJUST. — *V.* Unjust.

FALSE PRETENCE. — An indictable "False Pretence," "means a false representation made either by words, by writing, or by conduct (*Sv*, *R.* v. *Jones*, cited Credit), that some fact exists or existed, and such a representation may amount to false pretence, although a person of common prudence might easily have detected its falsehood by inquiry, and although the existence of the alleged fact was in itself impossible.

"But the expression 'False Pretence' does not include —

"(*a*) A promise as to future conduct not intended to be kept, unless such promise is based upon or implies an existing fact falsely alleged to exist; or,

"(*b*) Such untrue commendation or untrue depreciation of an article which is to be sold as is usual between sellers and buyers, unless such untrue commendation or untrue depreciation is made by means of a definite false assertion as to some matter of fact capable of being positively determined" (Steph. Cr. 265, and *V.* to p. 267 for cases in illustration). *Vf*, 62 & 63 V. c. 22, s. 3: per Halsbury, C., *Aaron's Reefs* v. *Twiss*, 1896, A. C. 283; 65 L. J. P. C. 59, 60: *R.* v. *Button*, 1900, 2 Q. B. 597; 69 L. J. Q. B. 902; 83 L. T. 288; 64 J. P. 600; 48 W. R. 703, over-ruling *R.* v. *Larner*, 14 Cox C. C. 497: Arch. Cr. 562–589: Rosc. Cr. 429–452.

Digitized by Google

Observe, that if A. falsely says that he is prepared to do a thing as an inducement to B. to do something else, that is a False Pretence because it is a false representation of an *Existing Fact* (*R.* v. *Gordon*, 23 Q. B. D. 354; 58 L. J. M. C. 117; 60 L. T. 872; 53 J. P. 807: *R.* v. *Pockett*, 40 S. J. 509). Those cases seem also to warrant the broad proposition that, an Existing Intention is an Existing Fact a false statement of which may be a False Pretence. In *R.* v. *Gordon* (as reported 23 Q. B. D. 360), Mathew, J., said, "The phrase that the deft 'was prepared' indicates an Existing Intention as distinguished from one that is prospective only"; and Wills, J., said, "I find it difficult to see why an allegation as to the present existence of a State of Mind may not be, under some circumstances, as much an allegation of an Existing Fact as an allegation with respect to anything else." At any rate, it seems fairly clear that if A. falsely says to B. that C. has the intention to do a thing, that is a false representation of an Existing Fact.

"False Colour or Pretence" of Process; *V.* PROCESS.

FALSE REPRESENTATION.—For examples of False Representation in a Co Prospectus; *V. Aaron's Reefs* v. *Twiss*, 1896, A. C. 273; 65 L. J. P. C. 54; 74 L. T. 794: *Components Tube Co.* v. *Naylor*, 1900, 2 I. R. 1, with which cases *cp Bellairs* v. *Tucker*, 13 Q. B. D. 562. *Vf*, Hamilton, 418 *et seq*: LEGAL FRAUD: NOTICE.

Cp, MISREPRESENT: FALSE PRETENCE: QUALITY.

FALSE RUMOUR.—False Rumour to enhance or decry prices; *V.* REGRATOR: RIGGING. False News; *V.* 3 Edw. 1, c. 34, on *whv* 2 Inst. 227; Steph. Cr. 66.

FALSE STATEMENT.—A "False Statement of FACT in relation to the personal Character or Conduct" of a CANDIDATE at a Parliamentary Election, s. 1, 58 & 59 V. c. 40, must be one "of Fact, as distinguished from a false statement of Opinion," and does not include an attack upon a candidate attributing to him non-patriotic motives in seeking for "a Stream of Facts" wherewith to confound the Government, *e.g.* in their Transvaal policy (*Ellis* v. *National Union of Conservative Associations*, 44 S. J. 750) or "a mere argumentative statement of the conduct of a public man, although it may be in respect to his private life" (per Pollock, B., *Sunderland*, 5 O'M. & H. 62, 63): *Vthlc* hereon.

FALSE SWEARING.—"Every one commits a misdemeanor, who swears falsely before any person authorised to administer an oath upon a matter of public concern, under such circumstances that the false swearing if committed in a judicial proceeding would have amounted to perjury" (Steph. Cr. 95). *Cp*, PERJURY.

FALSE TRADE DESCRIPTION.—Quà Merchandize Marks Act, 1887, "'False Trade Description,' means, a TRADE DESCRIPTION which

Digitized by Google

is false in a *Material Respect* as regards the goods to which it is applied; and includes, every Alteration of a Trade Description (whether by way of Addition, Effacement, or otherwise) where that alteration makes the Description false in a Material Respect;—and the fact that a Trade Description is a TRADE-MARK or part of a Trade-Mark shall not prevent such Trade Description being a False Trade Description, within the meaning of this Act" (subs. 1, s. 3). In determining whether a Description is false in a "Material Respect," you must not resort to the doctrine of equivalents; therefore, to describe Cigarettes as "Hand-made" when they are machine-made is false in a "Material Respect," though the cigarettes be found to be as pure, clean, and proper for all smoking purposes as they could have been if hand-made (*Kirshenboim* v. *Salmon*, 1898, 2 Q. B. 19; 67 L. J. Q. B. 601; 78 L. T. 658; 46 W. R. 573; 62 J. P. 439). *Vf, Lipton* v. *The Queen*, 32 L. R. Ir. 115: *Bischop* v. *Toler*, cited INTENT: *Williamson* v. *Tierney*, 17 Times Rep. 174: *Hooper* v. *Balfour*, 62 L. T. 646.

Vh, INNOCENTLY ACTED: INTENT TO DEFRAUD.

FALSE WARRANTY.—A "False Warranty" under s. 27 (3), Sale of Food and Drugs Act, 1875, is one false to the knowledge of the person giving it (*Derbyshire* v. *Houliston*, 1897, 1 Q. B. 772; 66 L. J. Q. B. 569; 76 L. T. 624; 45 W. R. 527; 61 J. P. 374). *V.* KNOWINGLY: WRITTEN WARRANTY.

FALSEHOOD.—*V.* ANANIAS.

FALSELY ASSUMING TO ACT.—"Merely filling up a Voting Paper without authority, and witnessing it as if signed by the voter, is not 'falsely assuming to act' in the name of the voter (*Bell* v. *Morson*, 43 J. P. 638). Signing a Voting Paper at an election for member of Board of Health, by direction of voter's wife who has been authorised by her husband to sign it, is not '*fabricating*' a vote (*Aberdare* v. *Hammett*, 44 L. J. M. C. 49; L. R. 10 Q. B. 162; 39 J. P. 598). Nor is attesting a wife's signature of her husband's name to a Voting Paper for Guardians (*Wickham* v. *Phillips*, 47 J. P. 260)." Stone, 24 ed., 220.

FALSIFY.—"Note, that 'to falsifie,' in legall understanding, is to prove false,—that is, to avoyd, or, as Littleton here (s. 149) saith, to defeat, in Latine *falsare, seu falsificare, falsum facere*" (Co. Litt. 104 b).

"Liberty to Surcharge and Falsify"; *V.* Dan. Ch. Pr. 420.

FAMILIA.—*V.* FAMILY.

"'Familia,' is sometimes taken by our Writers for a HIDE, sometimes called a *Manse*, sometimes CARUCATA or a *Plough-land* containing as much as one Plough and Oxen can till in one year" (Cowel).

Digitized by Google

FAMILY.—The primary legal meaning of "Family" is not equivalent to *familia* or *famille*, but means "Children" (per Jessel, M. R., *Pigg* v. *Clarke*, 45 L. J. Ch. 849; 3 Ch. D. 672: *Beales* v. *Crisford*, cited CASH: *Re Terry*, 19 Bea. 580: *Sv*, *Sinnott* v. *Walsh*, 5 L. R. Ir. 27: *Vthlc*, *Armstrong* v. *Armstrong*, 21 L. R. Ir. 119). Therefore, where there is a gift to the "Family" of a person who has *Children* living at the Testator's death, the word means exclusively the children of that person and does not include grandchildren or great-grandchildren (*Barnes* v. *Patch*, 8 Ves. 604: *Woods* v. *Woods*, 1 My. & C. 401: *Re Parkinson*, 20 L. J. Ch. 224; 1 Sim. N. S. 242: *Burt* v. *Hellyar*, L. R. 14 Eq. 160; 41 L. J. Ch. 430: *Pigg* v. *Clarke*, sup: *Re Muffett*, 56 L. J. Ch. 600; 56 L. T. 685; 51 J. P. 660; 3 Times Rep. 126: *Vf*, *Re Mulqueen*, 7 L. R. Ir. 127: *Re Battersby*, 1896, 1 I. R. 600: in *Elgood* v. *Cole*, 21 L. T. 80, a Grandchild was included although there were children); or wife (*Re Hutchinson and Tennant*, 8 Ch. D. 540: *Re Muffett*, sup); but an illegitimate child, treated and recognized as a child, would be entitled to participate as part of the "Family" (per James, L. J., *Lambe* v. *Eames*, 40 L. J. Ch. 448; 6 Ch. 597: *Humble* v. *Bowman*, 47 L. J. Ch. 62). *Sq*, Would the foregoing be the rule in a case where the person spoken of had children living at the date of the Testator's Will but none at his death? It should seem not; for a Will speaks as if executed immediately before death (1 V. c. 26, s. 24), and to construe "family" as "children" in the case supposed would be to work an intestacy.

The word "Family" may, however, without difficulty, be controlled by the context, and "is, in itself, a word of a most loose and flexible description" (per Kindersley, V. C., *Green* v. *Marsden*, 1 Drew. 651; 1 W. R. 512, 513); it "is a popular, and not a technical, expression" (per Wickens, V. C., *Burt* v. *Hellyar*, sup). Thus, where a testator directed his business to be carried on by his wife and son "for the mutual benefit of my Family" it was held that the wife was included (*Blackwell* v. *Bull*, 5 L. J. Ch. 251; 1 Keen, 176). So the word "Family" may, by the context, be controlled to mean "Posterity or DESCENDANTS" generally, as in *Williams* v. *Williams* (20 L. J. Ch. 280; 1 Sim. N. S. 358; *thlc* was doubted by Jessel, M. R., in *Pigg* v. *Clarke*, 45 L. J. Ch. 852; *Vf*, *Re Sargent*, inf); or to mean "Heirs" or "Next of Kin" (per Cranworth, V. C., *Williams* v. *Williams*, 20 L. J. Ch. 283: *V.* Wms. Exs. 989–991); or "Heir" or "heir-at-law" or "Heirs of the body" (*Doe* d. *Chattaway* v. *Smith*, 5 M. & S. 126: *Wright* v. *Atkyns*, 19 Ves. 299: *Griffiths* v. *Evan*, 11 L. J. Ch. 219; 5 Bea. 241: *Lucas* v. *Goldsmid*, 30 L. J. Ch. 935; 29 Bea. 657: 2 Jarm. 91–93); or "Blood Relations" (*Re Macleay*, 44 L. J. Ch. 441; L. R. 20 Eq. 186); or "Relations" (2 Jarm. 95: *Snow* v. *Teed*, 39 L. J. Ch. 420; L. R. 9 Eq. 622) or relations by marriage (*McLeroth* v. *Bacon*, 5 Ves. 158); or even rejected as surplusage (*Robinson* v. *Waddelow*, 5 L. J. Ch. 350; 8 Sim. 134: *Svthlc*

Digitized by Google

questioned in *Re Parkinson*, sup), or as being too uncertain (*Doe* d. *Hayter* v. *Joinville*, 3 East, 172: Lewin, 143).

Obviously, where the person spoken of is *single*, the word "Family" cannot be construed as meaning his or her "Children," and accordingly the statutory Next of Kin would in such a case be denoted quà personalty (*Cruwys* v. *Colman*, 9 Ves. 319: *Grant* v. *Lynam*, 4 Russ. 292; 6 L. J. O. S. Ch. 129); and probably the heir-at-law would take the realty. It is submitted that the construction would be the same if the person spoken of were married but never had a child; and possibly also if he had had a child, but none living either at the date of the Will or at the death of the Testator. So also, though less strongly, it is submitted that the construction would be the same if the person spoken of had had a child living at the date of the Will but none at the death of the testator. But in *Snow* v. *Teed* (sup) James, V. C., held that a Power to a SPINSTER to appoint amongst "her own Family, or Next of Kin," enabled her to appoint to any relative.

Indeed, in all cases where there is a POWER of Appointment amongst a person's "Family" the rule of *Harding* v. *Glyn* (cited RELATIONS) applies so that the donee of the POWER is not restricted in his choice but may appoint to any relative of the person (*Grant* v. *Lynam*, sup).

Vf, *Re Sibery*, W. N. (68) 251: *Re Norman*, W. N. (79) 175: *Re Price*, W. N. (87) 216; and for a full consideration of this word 2 Jarm. 90–98: *Va*, Vaizey, 172: Watson Eq. 1403: Chitty Eq. Ind. 7694: and per Pearson, J., *Re Collins*, 55 L. J. Ch. 674.

As to when persons taking under it would take *per stirpes* and when *per capita*, *V.* Wms. Exs. 1384, 1385, *n* (a).

A devise to A. and his "Family" gives A. the Fee Simple (*Chapman's Case*, Dyer, 333: *Counden* v. *Clerke*, Hob. 33: *Wright* v. *Atkyns*, 17 Ves. 261; T. & R. 143: *Doe* d. *Chattaway* v. *Smith*, 5 M. & S. 126). Probably, where the devise directs the land "to be kept in the Family as long as can be," an Entail is created (*Vh*, *Doe* d. *Wood* v. *Wood*, 1 B. & Ald. 518).

A devise of lands upon trust to distribute the rents "among certain Families (thereinafter named) according to their circumstances as in the opinion of the trustees they may need assistance," has been held a good Trust, and not void as a Charitable Use or as a Perpetuity or as being uncertain (*Liley* v. *Hey*, 11 L. J. Ch. 415; 1 Hare, 580: *Svthc*, *Gillam* v. *Taylor*, cited POOREST).

In an Order in Council to discontinue Burials in a Churchyard except to "Members of the Families of Parishioners," "Families" is equivalent to DESCENDANTS (*Re Sargent*, 15 P. D. 168).

V. HOGHENHINE.

FAMILY ARRANGEMENT.—S. 4 (1), S. L. Act, 1890; *V. Re Ailesbury*, 62 L. J. Ch. 1012; 69 L. T. 493; 42 W. R. 45.

Digitized by Google

FAMILY MANSION. — To an application, under Settled Estates Act, 1877, for an Order to sell two properties in one lot, it was objected that one of the properties was a Family Mansion. "The answer is, it is not. The whole property consists of a house and 165 acres, which were purchased in 1842, so that the whole is not sufficiently large to entitle it to be called a Family Mansion. There are only 165 acres of land, and it is not really a Family Mansion in the sense that there is anything in the shape of *pretium affectionis* about it at all" (per Jessel, M. R., *Re Spurway*, 48 L. J. Ch. 214; 10 Ch. D. 230: *Cp*, "Principal Mansion House," s. 15, S. L. Act, 1882).

FAMILY PHYSICIAN. — Signifies the physician who usually attends and is consulted by the Members of a Family in the capacity of a physician (*Price* v. *Insrce Co*, 17 Minn. 519). *Cp*, Usual Medical Attendant.

FANCY BREAD. — *V.* French Bread.

FANCY WORD. — A "Fancy Word not in common use," quà Trade-Mark as used in the Patents, Designs, and Trade-Marks Act, 1883, 46 & 47 V. c. 57, s. 64, subs. 1 *c*, "must either have, to ordinary English people to whom this Act of Parliament is addressed, no meaning, — like the word 'Eureka' or the word 'Aeilyton,' — or, if it has any meaning at all, it must be obviously meaningless when used as a Trade-Mark" (per Lindley, L. J., *Re Van Duzer*, 56 L. J. Ch. 377). "I think a word to be a 'Fancy Word' must be obviously meaningless as applied to the article in question. I think it must be a word fanciful in its application to the article to which it is applied in the sense of being so obviously and notoriously inappropriate as neither to be deceptive nor descriptive, nor calculated to suggest deception or description. Further than that, I think that the word must have an innate and inherent character of fancifulness which must not depend on evidence, and cannot be supported by evidence, to show that, in fact, it is neither deceptive nor descriptive, nor calculated to be deceptive or descriptive. What I mean is that a Fancy Word, in my opinion, must speak for itself; it must be a Fancy Word of its own inherent strength" (per Lopes, L. J., Ib. 378).

The following are *not* such "*Fancy* Words"; —

"Alpine" as applied to Cotton Embroidery (*Re Van Duzer*, 56 L. J. Ch. 370; 34 Ch. D. 623, disapproving *Re Alpine*, 54 L. J. Ch. 727; 29 Ch. D. 877: *Re Van Duzer*, was explained, *Re Bovril*, 1896, 2 Ch. 600; 65 L. J. Ch. 715):

"Apollinaris," as applied to Water (*Re Apollinaris Co*, 1891, 2 Ch. 186; 61 L. J. Ch. 625; 65 L. T. 6; 8 Pat. Ca. 137):

"Beatrice," as applied to Shoes (*Re Harris*, 9 Pat. Ca. 492):

"Ben Ledi," as applied to Whisky (*Re Ainslie*, 4 Pat. Ca. 212):

Digitized by Google

"Bökol," as applied to Beer (*Davis* v. *Stribolt*, 59 L. T. 854; 6 Pat. Ca. 207):

"Britannia," as applied to Soap (*Hodgson* v. *Sinclair*, 9 Pat. Ca. 22):

"Brymbo," as applied to Steel (*Re Batt*, 6 Pat. Ca. 493):

"Carnival," as applied to Cigarettes (*Re Lloyd*, 10 Pat. Ca. 281):

"Electric," as applied to Velveteen (*Re Van Duzer*, sup):

"Electroid," as applied to Anti-fouling Composition (*Re Hannay*, 7 Pat. Ca. 46):

"Emollio," as applied to a Perfumer's Cream (*Re Grossmith*, 6 Pat. Ca. 180; 60 L. T. 612):

"Emolliolorum," as applied to an Emollient (*Re Talbot*, 70 L. T. 119; 63 L. J. Ch. 264; 42 W. R. 501):

"Friedrichshall," as applied to Water (*Re Apollinaris Co*, sup):

"Gem," as applied to Air-guns (*Re Arbenz*, 35 Ch. D. 248; 56 L. J. Ch. 524; 56 L. T. 252; 35 W. R. 527: *Va*, per Cotton, L. J., *Re Van Duzer*, sup):

"Granolithic," as applied to Stone (*Stuart* v. *Scottish Co*, 13 Sess. Ca. 4th Ser. 1):

"Hand Grenade Fire Extinguisher" (*Re Harden Co*, 55 L. J. Ch. 596; 54 L. T. 834):

"Herbalin," as applied to a Medicine (*Humphries* v. *Taylor Co*, 59 L. T. 820):

"Hunyadi Janos," as applied to Water (*Re Apollinaris Co*, sup):

"John Bull," as applied to Beer (*Re Paine*, 61 L. J. Ch. 365; 66 L. T. 642; 9 Pat. Ca. 130):

"Jubilee," as applied to Paper (*Towgood* v. *Pirie*, 56 L. T. 394; 35 W. R. 729):

"Kokoko," as applied to Cotton Goods (*Re Jackson*, 60 L. T. 93; 6 Pat. Ca. 80):

"Manor," as applied to Tin Plates (*Re Thompson*, 6 Pat. Ca. 213):

"Melrose," as applied to a Hair Restorer (*Re Van Duzer*, sup):

"Monobrut," as applied to Champagne (*Re Vignier*, 61 L. T. 495; 6 Pat. Ca. 490):

"National Sperm," as applied to Candles (*Re Price Candle Co*, 54 L. J. Ch. 210; 27 Ch. D. 681):

"Parchment Bank," as applied to Paper (*Pirie* v. *Goodall*, cited NAME):

"Red, White and Blue," as applied to Coffee (*Re Hanson*, 37 Ch. D. 112; 57 L. J. Ch. 173; 57 L. T. 859; 5 Pat. Ca. 130):

"Reversi," as applied to a Game (*Waterman* v. *Ayers*, 57 L. J. Ch. 893; 39 Ch. D. 29; 59 L. T. 17; 37 W. R. 110):

"Sanitas," as applied to a Disinfectant (*Re Sanitas Co*, 58 L. T. 166; 4 Pat. Ca. 533):

"Self-Washer," as applied to Soap (*Lever* v. *Goodwin*, 36 Ch. D. 1; 57 L. T. 583; 36 W. R. 177):

Digitized by Google

"Shakspere," as applied to Cigars (*Re Banks*, 44 W. R. 32; 11 Times Rep. 506):

"Strathmore," as applied to Whisky (per Cotton, L. J., *Re Van Duzer*, sup, commenting on *Blair* v. *Stock*, 52 L. T. 123):

"Tower," as applied to Tea (*Tower Tea Co* v. *Smith*, 6 Pat. Ca. 165):

"Washerine," as applied to Soap (*Burland* v. *Broxburn Co*, 42 Ch. D. 274; 58 L. J. Ch. 816; 61 L. T. 618; 6 Pat. Ca. 482):

"Zephyr Asiatic Walnut Pipe" (*Re Friedlander*, 29 S. J. 397).

Geographical and Dictionary words might, when very odd and uncommon, have been "Fancy Words," but they should have been avoided and must have been "obviously meaningless" (*Re Van Duzer*, sup).

The following *are* such "Fancy Words"; —

"Bovril," as applied to Fluid Beef (*Re Bovril*, sup):

"Mazawattee," as applied to Tea (*Re Densham*, 1895, 2 Ch. 176; 64 L. J. Ch. 634; 72 L. T. 614; 43 W. R. 515):

"Oomoo," an Australian word as applied to Wine (*Re Burgoyne*, 61 L. T. 39).

S. 10, Patents, Designs, and Trade-Marks Act, 1888, 51 & 52 V. c. 50, substitutes an amended clause for s. 64 of the prior Act. This amending clause omits the phrase "Fancy Word" &c, and substitutes for it, —

"(*d*) An *Invented Word* or Invented Words; or

"(*e*) A word or words having no reference to the CHARACTER or Quality of the goods, and not being a GEOGRAPHICAL Name."

These two clauses are not to be read together; they are independent of each other (*Eastman Co* v. *Comptroller of Patents*, 1898, A. C. 571; 67 L. J. Ch. 628; 79 L. T. 195; 47 W. R. 152, over-ruling *Re Farbenfabriken*, 1894, 1 Ch. 645; 63 L. J. Ch. 257). Under clause (*e*) "any word in the English language may serve as a Trade-Mark" provided it has no reference to the Character or Quality of the goods and is not a Geographical Name (per Ld Herschell, *Eastman Case*, sup); on the other hand, under clause (*d*) "an Invented Word or Invented Words" is "a separate, independent, and sufficient, condition of registration" (per Ld Macnaghten, *Ib.*), and, per H. L. in the same case, such a Word may have reference to the Character or Quality of the goods. But an "Invented Word" must really be one "new and freshly coined" (per Ld Macnaghten, *Ib.*), "it may no doubt sometimes be difficult to determine whether a word is an Invented Word or not. I do not think the combination of two English words is an 'Invented Word,' even although the combination may not have been in use before; nor do I think that a mere variation of the orthography or termination of a word would be sufficient to constitute an 'Invented Word' if to the eye or ear the same idea would be conveyed as by the word in its ordinary form. Again, I do not think that a Foreign word is an 'Invented Word' simply because it has not been current in our language. At the same time I am not pre-

Digitized by Google

pared to go so far as to say that a combination of words from foreign languages so little known in this country that it would suggest no meaning except to a few scholars might not be regarded as an 'Invented Word'" (per Ld Herschell, *Ib.*). *Vf, Re Linotype Co*, 1900, 2 Ch. 238; 69 L. J. Ch. 625; 82 L. T. 794.

The following *are* such "Invented Words";—

"Magnolia," without more, as applied to a Metal (*Re Magnolia Metal Co*, 1897, 2 Ch. 371; 66 L. J. Ch. 598; 76 L. T. 672):

"Mazawattee," as applied to Tea (*Re Densham*, sup):

"Savonol," as applied to Soap (*Re Field*, 44 S. J. 315, in *whc* Buckley, J., said the termination "ol" was unlike "ine" and was quite meaningless: *Vf, Field* v. *Wagel Syndicate*, 1900, 1 Ch. 651; 69 L. J. Ch. 365; 82 L. T. 231; 48 W. R. 390):

"Solio," as applied to Photographic Articles (*Eastman Co* v. *Comptroller of Patents*, sup):

"Tachytype," as applied to Typographical Machines (*Re Linotype Co*, sup):

The following have been held *not* such "Invented Words";—

"Cellular," as applied to Cloth and other like materials (*Cellular Clothing Co* v. *Maxton*, 1899, A. C. 326; 68 L. J. P. C. 72; 80 L. T. 809):

"Eboline," as applied to Silk Goods (*Re Sa.t*, 1894, 3 Ch. 166; 63 L. J. Ch. 756):

"Magnolia Metal," as applied to a Metal (*Re Magnolia Metal Co*, sup):

"Pirle," as applied to Woollen Fabrics (*Re Ripley*, 78 L. T. 367):

"Satinine," as applied to Starch (*Re Meyerstein*, 59 L. J. Ch. 401; 43 Ch. D. 604):

"Somatose," as applied to a Pharmaceutical Product (*Re Farbenfabriken*, sup):

"Trilby," as applied to Ladies' Aprons, &c (*Re Holt*, 1896, 1 Ch. 711; 65 L. J. Ch. 142, 410: *Sv* WORD).

But in view of the jdgmts of the House of Lords in *Eastman's Case*, (sup), some of these latter decisions will, probably, require re-consideration: *Vh* 44 S. J. 548, 549.

V. WORD: NAME: INDIVIDUAL: DISTINCTIVE.

FAR AS.—*V.* SO FAR AS.

FARDELLA. — "Fardella; Ferdella; Fardendela; Fardingdela; Farding; Ferdingel; Farthindel; Farundel; Ferlingus — a Rood; Spelm" (Elph. 574: *Va*, Termes de la Ley, *Fardingdeale*).

FARE.—Quà Cheap Trains Act, 1883, 46 & 47 V. c. 34, "'Fare,' includes all sums received or charged for the hire, fare, or conveyance of passengers upon or along any Railway" (s. 8). Payment for extra

Digitized by Google

comfort in "Reserved" carriages is part of the "Fare," and if it makes the whole payment more than 1*d.* per mile the Ry Passenger Duty is payable (*A-G.* v. *Furness Ry*, 1899, 2 Q. B. 267; 68 L. J. Q. B. 623; 80 L. T. 710; 63 J. P. 326).

V. His Fare: Reasonable.

FARM.—"The word 'Farm' or 'Ferme,' called in Latine *firma*, is a compound word and doth comprehend many things. And therefore by the grant of a Ferme, will pass a messuage and much land, meadow pasture, wood, &c, thereunto belonging or therewith used; for this word doth properly signify a capital, or principal, messuage and a great quantity of demesnes thereunto appertaining. Also by the grant of all Farmes, or all Ferms, it seems leases for years do pass" (Touch. 93: *Va*, Co. Litt. 5a: *Portman* v. *Mill*, 8 L. J. Ch. 161; 2 Russ. 570; 3 Jur. 356: *Goodtitle* v. *Paul*, 2 Burr. 1089: *Goodtitle* v. *Southern*, 1 M. & S. 299: *Wrotesley* v. *Adams*, Plowd. 195: *Black* v. *Hill*, 32 Ohio St. 318: Termes de la Ley).

This definition treats the word "Farm" in its two-fold aspect:—

1. As a word of description:—
2. As an abstract phrase.

1. When a person speaks of his "Farm" *at* such a place, then the first part of the definition in the *Touchstone* applies, and as a word of description it is very strong. Thus in a devise of "my *freehold* farm and lands at" A., the word "farm" is the essential part of the description, and so much of the farm as is copyhold will pass as well as the freehold part (*Re Bright-Smith*, 55 L. J. Ch. 365; 31 Ch. D. 314; 54 L. T. 47; 34 W. R. 252); though perhaps if such a devise be accompanied with limitations inapplicable to leaseholds, leaseholds would not pass (*Hall* v. *Fisher*, 1 Coll. 47: *Sutho* and also *Stone* v. *Greening*, 13 Sim. 390, questioned by Ld Selborne in *Hardwick* v. *Hardwick*, 42 L. J. Ch. 636; L. R. 16 Eq. 168, and *Va*, *Re Bright-Smith*, sup: Freehold).

So a devise of "my farm" called Whiteacre, *in the occupation of A.*, will pass parts of Whiteacre Farm not in A.'s occupation (*Goodtitle* v. *Southern*, sup: *Down* v. *Down*, 7 Taunt. 343); *secus*, if the words were "All those my lands at Whiteacre Farm in the occupation of A." (per Ld Cranworth, *Slingsby* v. *Grainger*, 7 H. L. Ca. 283; 28 L. J. Ch. 617). *Va*, *Whitfield* v. *Langdale* (1 Ch. D. 61; 45 L. J. Ch. 177), where a devise of "All that my Farm called H. in the parish of L., containing by estimation 80 acres more or less, in the occupation of J. C.," passed a farm called H. in J. C.'s occupation, containing 175 acres of which 155 acres, partly freehold and partly copyhold, were in L., and the rest was situate in an adjoining parish. *Vf*, *Burley* v. *Saint*, W. N. (71) 221.

2. When a person devises all his messuages, farms, and heredits, then it is not correct to say that, necessarily, Leases for years will pass. It is indeed said, on the authority of Co. Litt. 5a, and *Doe* d. *Belasyse* v.

Digitized by Google

Lucan (9 East, 448), that "the word 'Farm' is construed, according to its obvious meaning, as including houses, lands, and tenements, of every tenure" (1 Jarm. 784). But in *Holmes* v. *Milward* (47 L. J. Ch. 522), the word came before the Court as part of a residuary devise of "manors, messuages, *farms*, lands, tithes, tenements, heredits, and real estate as well copyhold as freehold." And in giving jdgmt Fry, J., said, — "It is said that the word 'Farm' is an ambiguous word, and that it may as well mean the estate of the lessee as well as the estate of the lessor, and for that the case of *Lane* v. *Stanhope* (6 T. R. 345) has been pressed upon me. I have no hesitation in saying that where there is a gift of 'Farms,' with real estate, with limitations which import that the fee is given, that carries the interest in real estate only, and does not carry with it the leasehold interest in a farm. The word 'Farm' undoubtedly may mean the interest of the lessor or lessee. Apparently, to refer to the old definition given in Plowden (pp. 132, 169, 195), it primarily and more naturally means the interest of the lessor, but it may also mean the interest of the lessee. The emphatic meaning of the word 'Farm' is this, — that it means lands which have not been held in hand by the owner, but granted out and occupied by another person. Where that is the case, the interest of the lessor or lessee may pass by the description of 'Farm'; but where it is contained in a devise of real estate upon limitations which import the fee, I have no hesitation in saying it carries the fee simple farms, *and fee simple farms only*."

Vf, *Arkell* v. *Fletcher*, 10 Sim. 299; 3 Jur. 1099. *Cp*, Land: Town Park: Holding: Tack.

But "Farm" is oftentimes used in other senses than those already stated; *e.g.* "Farmers," in Statute of Marlbridge, c. 23, means Lessees, and sometimes "Farm" means a Rent reserved (*Wrotesley* v. *Adams*, Plowd. 195: Termes de la Ley).

"Farm," in a Reservation (in a Lease of Sporting Rights) to each tenant on his "Farm"; *V. Newton* v. *Wilmot*, 10 L. J. Ex. 476; 8 M. & W. 711.

Wherever there is a right to Emblements which though small is not frivolous, there you have a "Farm or Lands" within s. 1, 14 & 15 V. c. 25; a Cottage with about an acre of land partly a garden and partly sown with corn and planted with potatoes, is within such phrase (*Haines* v. *Welch*, cited Recover).

"Ordinary Agricultural Farm"; *V.* Agricultural.

V. Meux v. *Cobley*, cited Improvement.

FARM BUILDING.—*V. Wiltshear* v. *Cottrell*, 22 L. J. Q. B. 177; 1 E. & B. 674: Farming Buildings.

FARM HOUSE.—"Farm-houses," s. 25 (11), S. L. Act, 1882, includes a house for the Land Agent if it be really a farmer's house (*Re*

Digitized by Google

Houghton, 55 L. J. Ch. 37; 30 Ch. D. 102); but not such a house as is usually occupied by a superior Land Agent, *e.g.* one containing 2 Sitting Rooms, 5 Bedrooms, and a Bath Room (*Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23; 69 L. T. 393, *V.* espy jdgmt of Lopes, L. J.). *V.* FARMING BUILDINGS.

V. IMPROVEMENT.

FARM LET.—"To farm let"; as to origin of this phrase, *V.* 1 Platt, 2: 2 Bl. Com. 318.

FARM SERVANT.—A Land Agent is not a "Farm Servant" within s. 25 (10), S. L. Act, 1882; but a Farm Bailiff is (per Lopes, L. J., *Re Gerard*, cited FARM HOUSE): *Sv*, quà Farm Bailiff, *Davis* v. *Berwick*, cited SERVANT IN HUSBANDRY.

FARMER.—A farmer is one who cultivates his own land, or that of another, for his own profit;—he is not, as such, a TRADESMAN; nor, though he do the labour with his own hand, is he a LABOURER (*R.* v. *Silvester*, 33 L. J. M. C. 79; nom. *R.* v. *Cleworth*, 4 B. & S. 927). *V.* FERMOR: CATTLE SALESMAN: DAIRY.

FARMING BUILDINGS.—A testamentary direction to repair "Farming Buildings," includes FARM HOUSES (*Cooke* v. *Cholmondeley*, 4 Drew. 328). *V.* FARM BUILDING.

FARMING MAN.—*V. Reynolds* v. *Whelan*, 16 L. J. Ch. 434.

FARMING STOCK.—A bequest of "Farming Stock" includes not only all moveable property upon or belonging to the farm (Wms. Exs. 1051: *Harvey* v. *Harvey*, 32 Bea. 441), but also growing crops (per Jessel, M. R., *Re Roose*, *Evans* v. *Williamson*, 50 L. J. Ch. 197; 17 Ch. D. 696; 43 L. T. 719; 29 W. R. 230, following *Cox* v. *Godsalve*, 6 East, 604, *n*: *West* v. *Moore*, 8 East, 339: *Blake* v. *Gibbs*, 5 Russ. 13, *n*; and dissenting from *Vaisey* v. *Reynolds*, 6 L. J. O. S. Ch. 172; 5 Russ. 12). In *Re Roose* the M. R. said, "the reasoning of *Vaisey* v. *Reynolds* is quite untenable in the face of the previous decisions."

In *Brooksbank* v. *Wentworth* (3 Atk. 64) a bequest of "Stock on Farm" was held, on a context, to include a lessee's trade interest in a malt-house and a stock of malt.

Vh, *Bryant* v. *Easterson*, 5 Jur. N. S. 166: LIVE AND DEAD STOCK.

V. IMPLEMENT OF HUSBANDRY.

FAST.—"As fast as Steamer can deliver"; *V.* CUSTOMARY.

FAST AND LOOSE.—In the Greenland Whale Fisheries (and also in the Cumberland Inlet) there is a custom called "Fast and

Digitized by Google

Loose," by which "a person who first harpoons a fish and retains his hold of that fish until it is finally captured, is to be regarded as the proprietor of the fish, although the actual capture and killing of the whale may be accomplished by the assistance of other persons. But the rule also involves this condition, — that if the fish, after it has been harpooned, breaks away from the person who first harpooned it or if the fish is subsequently abandoned, that fish, though dying in consequence of the wound originally inflicted by the harpoon, is a 'Loose Fish' and becomes the property of the person who first finds it and takes possession of it. Nay, to such an extent has the rule been carried that, supposing a whale or any number of whales to be killed and the captors of those whales are driven by stress of weather to abandon them and to moor them to the ice or even to the land, if another ship, which has had no part in the capture, comes up and finds the whales in that position, that other ship's party may take possession of them and appropriate them as the captors" (per Westbury, C., *Aberdeen Arctic Co* v. *Sutter*, 4 Macq. 355; 10 W. R. 516); that rule as to a "Loose" fish is not displaced by the original harpooner fixing a Drog to the whale, before it breaks away, and pursuing the fish, but only comes up to the fish after it has been killed and captured by some one else (*S. C.*).

FASTENED. — *V.* Fixed and Fastened.

FATAL. — A Fatal Accident occurs where it happens, though the resulting death is elsewhere, *e.g.* a "Fatal Accident in the Mine" occurs in the Mine where the injury is received, though the patient be removed to a hospital and die there (*Denaby Co* v. *Fenton*, 14 Times Rep. 268).

FATHER. — Father, Grandfather, Mother, Grandmother, Child, as those words are used in the statutes (43 Eliz. c. 2, s. 7; 59 G. 3, c. 12, s. 26) relating to the maintenance of Poor Relations, mean only such of those persons as are legitimately related to a poor person *by blood*, *e.g.* a man is not liable to maintain his Mother-in-law or his Daughter-in-law (*R.* v. *Munden*, Strange, 3 ed., 189, and cases cited in note: *R.* v. *Dempson*, Ib. 954). *Vf*, Mother: Child: Parent.

FAULT. — *V.* Actual Fault: Default.

Quà Sale of Goods Act, 1893, "'Fault,' means, wrongful act or default" (subs. 1, s. 62).

A "Fault" by a Servant, includes "Negligence, in the ordinary acceptation of the term" (per Cockburn, C. J., *Lond. & N. W. Ry* v. *Grace*, 2 C. B. N. S. 559).

FAULTS. — "With all faults," means all the faults that are consistent with a thing being what it is described (*Shepherd* v. *Kain*,

Digitized by Google

5 B. & Ald. 240; commented on in *Taylor* v. *Bullen*, 5 Ex. 779; 20 L. J. Ex. 23). Subject to that qualification, a sale "with all Faults" will release the vendor from responsibility for honest mis-statements that are capable of being detected by a rigid examination (*Baglehole* v. *Walters*, 3 Camp. 154: *Schneider* v. *Heath*, Ib. 506: *Pickering* v. *Dowson*, 4 Taunt. 779: *Taylor* v. *Bullen*, 20 L. J. Ex. 21; 5 Ex. 779: *Ward* v. *Hobbs*, 48 L. J. Q. B. 281; 4 App. Ca. 13; 27 W. R. 114; 40 L. T. 73; 43 J. P. 252). *Vh*, Dart, 102, 103.

In *Taylor* v. *Bullen* (sup), a Ship was sold "without any allowance for deficiency in length, height, quantity, quality, *or any Defect or Error whatever*," and Pollock, C. B., said, — "The real meaning of the contract is this, and the defendant may be supposed to have used this language to the plaintiff: — 'There is a vessel now lying at St. Katharine's Dock, I describe her as being the *Intrepid*, A. 1, and call her a teak-built barque; but I expressly give you notice that I do not mean to warrant anything; I point out what I mean, go and look at the Inventory of stores, examine and judge for yourself, but understand that you must take her with all her faults and without allowance for any defect or error whatever'" (5 Ex. 784; 22 L. J. Ex. 23).

An Auction of goods "with all Faults, Imperfections, or Errors of Description," refers to the quantity, as well as the quality, of the goods (per Coltman, J., *Pettitt* v. *Mitchell*, 4 M. & G. 838).

But "with all faults" does not mean "with all frauds," and such a stipulation will not avail as against material representations that are false to the vendor's knowledge and fraudulently made by him, nor as against defects which he has fraudulently concealed, nor (possibly) as against material defects within his knowledge but upon which he has been silent and which were undiscoverable by examination (Add. C. 568, 569, and cases there cited. *Va*, Benj. 657: 1 Maude & P. 53, *n* (*w*): *Freeman* v. *Baker*, 3 L. J. K. B. 17; 5 B. & Ad. 797), nor as against faults which go to the substance of the whole consideration, *e.g.* where eggs sold are all, or nearly all, unmerchantable (*Peters* v. *Planner*, 11 Times Rep. 169).

"Faults or Errors in Navigation"; *V.* NAVIGATION.

V. ERROR.

FAVOUR. — "The words 'in Favour of,' when used in relation to a BILL OF EXCHANGE, do not ordinarily mean that it is payable only to the person in whose favour it is said to be drawn; the words are equally applied when the Bill is made payable to his Order. The words 'in favour of,' therefore, are properly paraphrased by 'payable to or to the order of'" (per Ld Herschell, *Meyer* v. *Decroix*, 1891, A. C. 520; 61 L. J. Q. B. 205: *Sv*, per Ld Bramwell, *S. C.*).

"In favour or against any particular Co or Person," s. 90, 8 V. c. 20; *V. Manchester, S. & L. Ry* v. *Denaby Colliery*, 4 Ry & Can Traffic Ca. 453; 54 L. J. Q. B. 103.

Digitized by Google

FAVOURABLY.—An undertaking in writing to "favourably consider" an application, falls short of a Contract and cannot be aided by oral evidence (*Montreal Gas Co* v. *Vasey*, 1900, A. C. 595; 69 L. J. P. C. 134; 83 L. T. 233).

FEALTY.—"'Fealtie,' is a Service, called in Latine *fidelitas*, and shall be done in such manner, viz.,—the Tenant shall hold his right hand upon a book and shall say to his Lord,—'I shall be to you faithfull and true and shall beare to you faith for the lands and tenements which I claime to hold of you, and truely shall doe to you the Customes and Services that I ought to do to you at the termes assigned, So helpe mee God,'—and shall kisse the booke; but he shall not kneele as in the doing HOMAGE" (Termes de la Ley). *Vf*, Co. Litt. Bk. 2, ch. 2: Cowel: Jacob: 1 Bl. Com. 367: 5 Encyc. 325.

FEAR.—*V.* DURESS.

FEBRUARY.—*V.* NEXT.

FED.—"To be fed"; *V.* AGIST.

FEE.—"Fee commeth of the French *fief* (*i.e.*) *prædium beneficiarium*, and legally signifieth inheritance" (Co. Litt. 1 b: *Vf*, Wright's Tenures, 3: 1 Preston on Estates, 2 ed., 42). "Fee in our legall understanding signifieth, that the land belongs to us and our heires, in respect whereof the owner is said to be seized in fee" (Co. Litt. 1 b: *V.* SEIZED). "So, if Fee (only) is mentioned, it shall be intended Fee-simple" (*Metcalfe's Case*, 11 Rep. 39 a). *Vf*, Termes de la Ley: Cowel.

V. FEE SIMPLE: TAIL: BASE: QUALIFIED.

"Fees and Reasonable Expenses"; *V.* ELECTRIC INSPECTOR.

"Salaries, Fees, Wages, Perquisites, or Profits," R. 1, Sch E, Income Tax Act, 1842; *V.* INCOME.

"Fee," quà Public Offices Fees Act, 1879, 42 & 43 V. c. 58; *V.* s. 7.

FEE FARM.—"'Fee Farme,' is when a Tenant holdeth of his Lord in FEE SIMPLE, paying to him the value of halfe, or of the third part, or of the fourth part, or of the other part of the land by the yeere. And hee that holdeth by fee farme, ought not to pay reliefe, or do any other thing that is contained in the feoffment but FEALTY, for that belongeth to all kinde of Tenures" (Termes de la Ley: *Vf*, Cowel). The substance of that definition remains to this day,—Fee Farm lands being those which are held in Fee Simple subject to a Fee Farm Rent, and (generally) made subject to covenants for repair, and insurance, and as to user and occupation. *Vf*, Copinger & Munro on Rents, 21, 22: Co. Litt. 143 b, and Hargrave's note (5) thereto: 2 Bl. Com. 43: QUIT RENT: CHIEF: RENT.

A Sub-Perpetuity Grant made under the Church Temporalities Acts

Digitized by Google

(3 & 4 W. 4, c. 37; 4 & 5 W. 4, c. 90; 6 & 7 W. 4, c. 99) is a "Fee Farm *Grant*" within s. 1, Redemption of Rent (Ir) Act, 1891, 54 & 55 V. c. 57 (*Re Hamilton and Casey*, 1894, 2 I. R. 224).

Note. Renewable Leaseholds in Ireland are converted into Fee Farm Lands (12 & 13 V. c. 105; 31 & 32 V. c. 62).

FEE OR REWARD.—*V.* Reward.

FEE SIMPLE.—"Fee" "signifieth inheritance," "and Simple is added, for that it is descendible to his heires generally, that is, simply, without restraint to the heires of his body, or the like. . . . This word (simple) properly excludeth both conditions and limitations, that defeat or abridge the fee" (Co. Litt. 1 b). *Vf,* Termes de la Ley: Jacob. So in the United States, a Fee Simple is a pure Inheritance in perpetuity, clear of Qualification or Condition and freely alienable (*Lott* v. *Wyckoff,* 1 Barb. N. Y. 575).

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "'Fee Simple,' includes estates held under Fee Farm Grants and Perpetuity Grants" (s. 95).

Prior to the Conv & L. P. Act, 1881, the apt and necessary word of limitation for conveying a fee simple by *Deed*, was "heirs" (Co. Litt. 8 b: Wms. R. P. ch. 3: *Vf, Re Hudson*, 72 L. T. 892), even if it was merely Equitable (*Re Whiston*, 1894, 1 Ch. 661; 63 L. J. Ch. 273). That word still remains apt, though it is no longer necessary, "the words 'in fee simple' without the word 'heirs'" will suffice (s. 51, Conv & L. P. Act, 1881).

But though the old rule had its influence on *Wills* (*Hill* v. *Brown*, 1894, A. C. 125; 63 L. J. P. C. 46; 70 L. T. 175), yet "a conviction that the rule is generally subversive of the actual intention of testators, always induced the Courts to lend a willing ear whenever a plausible pretext for a departure from it could be suggested" (2 Jarm. 268, *wh,* to p. 286, *V.* for a collection of the cases as to what words, in a Will, would pass the fee simple prior to the Wills Act, 1837: *Vf,* Watkins on Conveyancing, 8 ed., 353 *et seq*). And now by s. 28 of that Act a simple devise of real estate will pass the fee simple without any words of limitation; unless a Contrary Intention shall appear.

It remains however that a *Grant* to a man "and his heir," in the singular number, gives only a life estate (Co. Litt. 8 b: Touch. 106); and that in a conveyance to a Corporation Sole the limitation to create a fee simple, must, generally, be to the incumbent and his "successors" (Co. Litt. 8 b, 94 b), "but a fee will pass to a Corporation *Aggregate* without the word 'successors,' and sometimes to a Corporation Sole" (Hargrave's *n* to Co. Litt. 8 b, referring to Co. Litt. 94 b; Vin. Ab. *Estate*, L).

"Seized in Fee Simple or in Fee Tail in Possession," s. 8, 17 G. 3,

Digitized by Google

c. 26 (Registration of Annuities Act); *V. Halsey* v. *Hales*, 7 T. R. 194.

A Power to Trustees to purchase heredits "of an indefeasible estate of inheritance in Fee Simple in Possession," authorises the purchase of Freehold GROUND RENTS (*Re Peyton*, 38 L. J. Ch. 477; L. R. 7 Eq. 463).

A Power to Trustees to sell "the Fee Simple and Inheritance" of *Pews or Seats in a Church* only enables them to sell an Easement, and does not enable them to sell the soil on which a Pew or Seat stands, so as to convey a Parliamentary Freehold (*Hinde* v. *Charlton*, 36 L. J. C. P. 79; L. R. 2 C. P. 104: *Brumfitt* v. *Roberts*, 39 L. J. C. P. 95; L. R. 5 C. P. 224). *V.* PEW.

Tenant in Fee Simple of a RENT, s. 1, 32 H. 8, c. 37; *V. Prescott* v. *Boucher*, 3 B. & Ad. 849.

FEE TAIL.—*V.* TAIL: HEIRS OF THE BODY: FEE SIMPLE.

FEEDING.—*V.* KEEPING: PASTURES: AGIST.

FEEL AGGRIEVED.—*V.* AGGRIEVED.

FEINTS.—Quà Spirits Act, 1880, "'Feints,' means, spirits conveyed into a feints receiver" (s. 3).

FELLOW SERVANT.—*V.* COMMON EMPLOYMENT.

FELLOWS.—A bequest to "the Fellows and Demies of Magdalen College, Oxford," held void, it being uncertain whether the gift was charitable, or for individuals (*A-G.* v. *Sibthorp*, 2 Russ. & My. 107).

FELO DE SE.—"A *felo de se* is he that deliberately puts an end to his own existence; or commits any unlawful, malicious, act the consequence of which is his own death, as if attempting to kill another he runs upon his antagonist's sword; or shooting at another the gun bursts and kills himself" (4 Bl. Com. 189, cited by Pollock, C. B., *Clift* v. *Schwabe*, 3 C. B. 476). *V.* SUICIDE.

FELON.—A Felon is a person convicted of FELONY, whose offence is unpardoned and whose sentence, or any part of it, remains to be suffered.

When a person, convicted of Felony, has suffered the punishment, it is actionable to call him a "Felon" (*Leyman* v. *Latimer*, 47 L. J. Ex. 470; 3 Ex. D. 352; 26 W. R. 305; 37 L. T. 819), for the "endurance of the punishment does away with the Felony" (per Brett, L. J., *Ib.*, citing *Cuddington* v. *Wilkins*, Hob. 67, 81). A FREE PARDON also purges the offence (2 Hale P. C. 278: *Hay* v. *Tower Jus.*, cited CONVICTED).

V. HEALER: PROHIBITED.

Digitized by Google

FELONY: FELONIOUSLY.—These are terms of Art, which, in an INDICTMENT, cannot be supplied by equivalent expressions (Co. Litt. 391 a: 4 Bl. Com. 307: *Holford* v. *Bailey*, 18 L. J. Q. B. 109; 13 Q. B. 426: *R.* v. *Gray*, 33 L. J. M. C. 78; 1 L. & C. 365; 12 W. R. 350); but their redundant or inapt use would not vitiate (*R.* v. *Butterworth*, 25 L. T. 850). *Cp*, PERJURY. In a Warrant of Commitment (*R.* v. *Judd*, 2 T. R. 255), or in a PLEADING (*Beatson* v. *Rushforth*, 3 Price, 48) their omission would not be fatal so long as the proper facts are stated.

In an Indictment, "Felony" is not *nomen collectivum* meaning felony generally, but points to one particular charge of felony (*Ryalls* v. *The Queen*, 11 Q. B. 795: *Campbell* v. *The Queen*, Ib. 799, 837). *Cp*, MISDEMEANOR.

In Termes de la Ley it is said of serious crimes,—"It seemeth that they are called Felonies, . . . of the ancient English word '*fell*' or 'fierce,' because that they are intended to be done with a cruell, bitter, fell, fierce, or mischievous, minde."

Vf, Spelm.: Cowel: 4 Bl. Com. 95: 2 Turner's Hist. of Anglo-Saxons, 508: 1 Pollock & Maitland's Hist. of English Law, 284–286, 2 Ib. 125, 463–468, 476–478, 509: 5 Encyc. 327: *Coombes* v. *Queen's Proctor*, 16 Jur. 821.

"Every CRIME, the perpetrator of which is, by any statute, ordained to have judgment of '*Life or Member*' is a Felony: although the word *Felony* be not contained in the statute" (Dwar. 673, citing 1 Inst. 391: 2 Inst. 434: 3 Inst. 91): but an offence is not made Felony if only prohibited "*under Pain of forfeiting Body and Goods*," or of being "*at the King's will* for Body, Lands, and Goods" (Dwar. 673, citing 1 Inst. 391: 3 Inst. 145: Hob. 270).

"Felony," as respects Scotland; *V.* s. 28, Interp Act, 1889; 26 & 27 V. c. 28, s. 2; 45 & 46 V. c. 56, s. 36; 46 & 47 V. c. 3, s. 9.

"'Felony' and 'Misdemeanor' are different things; and on an Indictment for one there can be no conviction of the other except by express statutory enactment. At Common Law upon an Indictment for a Felony there may be a conviction for another and cognate felony; and so on an Indictment for a Misdemeanor a conviction of a like misdemeanor" (per Coleridge, C. J., *R.* v. *Thomas*, L. R. 2 C. C. R. 145: *Vf*, *R.* v. *Woodhall*, 12 Cox C. C. 240).

FEMALE.—*V.* MALE.

"Heirs Female," in Marriage Articles, means Daughters (Lewin, 123, 124, citing *West* v. *Errissey*, 2 P. Wms. 349), and, probably, that is the general meaning of the phrase (*Chambers* v. *Taylor*, 6 L. J. Ch. 193; 2 My. & C. 376). *Vh*, per Jessel, M. R., *Bathurst* v. *Stanley*, 4 Ch. D. 263: *Majendie* v. *Carruthers*, 2 Bligh, 692.

"Heirs Female of the body," held by H. L. to mean, Heirs Portioners

Digitized by Google

of Trust Funds who take as a CLASS (*Mackenzie* v. *Devonshire*, 1896, A. C. 400, reversing *Sutherland's Trustees* v. *Cromartie*, 22 Rettie, 839).

In Acts after 1850, words importing the Masculine gender include Females, unless a contrary intention appears (s. 1 *a*, Interp Act, 1889); but a CONTRARY INTENTION does appear wherever there is a Public Function to be exercised: therefore, a woman cannot exercise the Parliamentary Franchise (*Chorlton* v. *Lings*, 38 L. J. C. P. 25; L. R. 4 C. P. 374), or the Office of County Councillor (*Beresford-Hope* v. *Sandhurst*, 58 L. J. Q. B. 316; 23 Q. B. D. 79; 61 L. T. 150; 37 W. R. 548; 53 J. P. 805: *De Souza* v. *Cobden*, 60 L. J. Q. B. 533; 1891, 1 Q. B. 687; 65 L. T. 130; 39 W. R. 454; 55 J. P. 565). *V.* LEGAL INCAPACITY: MAN: SEX.

FEMALE LINE. — *V.* MALE LINE.

FEME. — Though "Feme," in the old phrase "Baron and Feme," denotes a Wife (Jacob, *Baron and Feme*), yet, *semble*, its proper meaning is a Woman noble by birth (*V.* Index to Hargrave & Butler's Notes to Co. Litt., *Feme*). Taking a still wider view, "Feme" means simply, a Woman; for we say "Feme Sole" to indicate a woman unmarried, and "Feme Covert" a wife.

Apart from a context "Feme Sole" may mean (1) a woman who has been married but has become single, or (2) a woman who has never been married. But where an enactment says that a Married Woman shall, as regards PROPERTY, be considered as a "Feme Sole," that means, not that her status shall be changed but, that quà such property she shall "be competent to act in all respects as if she were a Feme Sole" (per Thurlow, C., *Hulme* v. *Tenant*, 1 Bro. C. C. 16: *Vf*, per Westbury, C., *Taylor* v. *Meads*, cited SEPARATE USE). S. 25, Matrimonial Causes Act, 1857, enacts an express provision to that effect (per Stirling, J., *Hope* v. *Hope*, 1892, 2 Ch. 336; 61 L. J. Ch. 441: *Vf*, "During the Coverture," sub DURING); but though no such express provision is contained in the M. W. P. Act, 1882, the same effect results from the enactment (s. 1) that a Married Woman may dispose of property (which by ss. 2, 5 of the Act becomes her Separate Property) "in the same manner as if she were a Feme Sole." Those words do not mean "in the same manner as if her husband were dead," but mean "in the same manner as a Feme Sole could do." Therefore, her Will executed during Coverture, is effectual (without Re-Execution) to pass her after-acquired Separate Property, whether such property is hers by a Settlement or under the Act (*Re Bowen*, 1892, 2 Ch. 291; 61 L. J. Ch. 432, distinguishing *Willock* v. *Noble*, 44 L. J. Ch. 345; L. R. 7 H. L. 580); and, on the other hand, if she leaves her Separate Realty undisposed of, her husband's Estate by the CURTESY arises and is unaffected

Digitized by Google

(*Hope* v. *Hope*, sup, applying by analogy *Cooper* v. *Macdonald*, 47 L. J. Ch. 373; 7 Ch. D. 288). Still her Will, made during Coverture, did not pass property acquired after the Coverture was over unless it were re-published after such acquisition (*Willock* v. *Noble*, sup: *Re Smith*, 60 L. J. Ch. 57; 45 Ch. D. 632; 63 L. T. 448; 39 W. R. 93); but that is altered by s. 3, M. W. P. Act, 1893, on *whv*, *Re Wylie*, cited MADE.

"As a Feme Sole for the purposes of Contract," s. 26, Matrimonial Causes Act, 1857, means, that a woman to whom that section applies may contract in the same way as a man; therefore, her obligations contracted whilst the section applied to her, are payable out of a fund appointed by her under a GENERAL POWER (*Re Hughes*, 1898, 1 Ch. 529; 67 L. J. Ch. 279; 78 L. T. 432; 46 W. R. 502, distinguishing *Re Roper*, cited SEPARATE PROPERTY).

V. COVERTURE: HUSBAND: WIFE: WIDOW: WOMAN: UNMARRIED: NEIFE: WAIVE.

FENCE.—A DITCH may be a "Fence," *e.g.* quà a requirement in an Enclosure Act to fence Allotments (*Ellis* v. *Arnison*, 1 B. & C. 70; 1 L. J. O. S. K. B. 24).

V. SECURELY: "Party Fence Wall," sub PARTY WALL.

FENCE MONTH.—"'Fence Moneth,' is a forrest word, and signifies the time in which it is forbidden for any man to hunt in the forrest or to goe into it to disquiet the wild beasts" (Termes de la Ley). *Vf,* Cowel.

FENLAND.—"Fenland," in a contract description, implies its liability to usual fen land taxes (*Barraud* v. *Archer*, 2 Sim. 433; 2 Russ. & My. 751).

FEOFFMENT.—The excellent and "ancient manner of Conveyance" (Co. Litt. 49 a) called Feoffment, was a CONVEYANCE of "Lands, Houses, or other Corporall Things which be hereditable" in FEE SIMPLE accompanied by LIVERY of Seizin (Termes de la Ley: Co. Litt. 48 a, b, 49 a); and, before the Statute of Frauds, it might have been "by Deed, or without Deed" (Litt. s. 59).

"'Feoffment' is derived of the Word of Art *feodum, quia est donatio feodi*; for the antient writers of the law called a Feoffment *donatio*, of the verb *do* or *dedi*, which is the aptest word of feoffment. And that word Ephron used (Genesis, 23) when he enfeoffed Abraham, saying,—'I give thee the field of Macphelah over against Mamre, and the cave therein I give thee, and all the trees in the field and the borders round about'; all which were made sure unto Abraham for a possession in the presence of many witnesses" (Co. Litt. 9 a: from what version of the Bible is this an exact excerpt?).

Digitized by Google

Vf, as to the word, Mad. Formul. Angl. Dissert. p. 3: 2 Inst. 110: And as to the Document itself, Butler's *n* Co. Litt. 271 b: Touch. ch. 9: Jacob: 2 Bl. Com. 310, 311, App. i: Wms. R. P. ch. 7: Goodeve, 364 *et seq*: 5 Encyc. 330–332.

Cp, GIFT.

FERÆ NATURÆ.—Animals *feræ naturæ*; *V.* GAME, *Animals*: DOMESTIC ANIMAL.

FERDELLA.— *V.* FARDELLA.

FERLINGUS.— *V.* STADIUM.

FERMEHOLT.—In Lancashire, a farm (Co. Litt. 5 a).

FERMENTED.—"Fermented Liquor" includes British Wine (*Harris* v. *Jenns*, cited WINE). *Vf*, SPIRITS.

FERMOR.—The term "Fermors" in the Statute of Marlbridge, 52 H. 3, c. 23, s. 2, comprehends all who hold by lease for life or lives or for years, by deed or without deed (2 Inst. 300, cited in *Woodhouse* v. *Walker*, 49 L. J. Q. B. 611; 5 Q. B. D. 404). *V.* FARMER.

FERRY.—Is a HIGHWAY common to all the Queen's subjects paying the Toll (*North Shields Ferry Co.* v. *Barker*, 2 Ex. 149), usually across a large and deep river. It is "a liberty by prescription, or the King's grant, to have a boat for passage upon a river for carriage of horses and men for reasonable toll (Termes de la Ley). Its termination must be in places where the public have rights,—as towns, or vills, or highways leading to towns or vills (per Abinger, C. B., *Huzzey* v. *Field*, 4 L. J. Ex. 243; 2 Cr. M. & R. 442: *Va*, *Newton* v. *Cubitt*, 12 C. B. N. S. 32; on app. 13 Ib. 864; 31 L. J. C. P. 246); or on ground that the owner of the ferry has a right to use: but he need not have the ownership of the soil at either end of the ferry (*Peter* v. *Kendal*, 6 B. & C. 703), nor need he have the ownership of the water (*Ipswich* v. *Brown*, Savile, 11, 14). *V.* the form of the King's grant in *Pim* v. *Curell*, 6 M. & W. 236. As to Ferries, *Va*, Woolrych on Ways, 363: Coulson & Forbes on the Law of Waters, ch. 8, 486: and *V.* the cases collected 7 Fisher, Dig. 786, Tit. *Way*" (Elph. 575). *Va*, *Trotter* v. *Harris*, 2 Y. & J. 285: *Letton* v. *Goodden*, 35 L. J. Ch. 427; L. R. 2 Eq. 123; 14 L. T. 296: *Londonderry Bridge Commrs* v. *M'Keever*, 27 L. R. Ir. 464: 5 Encyc. 332–334.

A ferry is a FRANCHISE, and, as such, a Hereditament as that word is ordinarily used (per Cockburn, C. J., *R.* v. *Cambrian Ry*, cited HEREDITAMENT); though whether it is a heredit within the def of "LANDS" in s. 3, Lands C. C. Act, 1845, is doubtful (*G. W. Ry* v. *Swindon, &c Ry*, cited HEREDITAMENT).

Digitized by Google

A Public Ferry is a Public THOROUGHFARE (*Coulbert* v. *Troke*, cited NEAREST).

As to when a Ferry is "Injuriously Affected," within s. 68, Lands C. C. Act, 1845; *V. Hopkins* v. *G. N. Ry*, cited INJURIOUSLY AFFECTED.

V. OPPOSITION FERRY.

FÊTE-DAY. — *V.* HOLIDAY.

FEU. — Quà Conveyancing (Scot) Act, 1874, 37 & 38 V. c. 94, "'Feu' shall include 'Blench,' and 'Feu Duty' shall include 'Blench Duty'" (s. 3).

Quà Scotch Entail Acts, "'Feu Charter' shall comprehend a Feu Contract, a Feu Disposition, and every other Grant of a like kind" (31 & 32 V. c. 84, s. 2).

FEUD. — Feuds are "stipendiary lands" (2 Bl. Com. 46), *i.e.* lands held of a lord on condition of rendering Suit or Service; the antithesis are ALLODIAL lands: *Vh*, 2 Bl. Com. ch. 4: TENURE: FEALTY: FEE FARM.

FICTITIOUS. — A Fictitious Name cannot be the name of a registered proprietor of land (*Gibbs* v. *Mercer*, cited PROPRIETOR, towards end).

"Fictitious or Non-existing Person," s. 7 (3), Bills of Exchange Act, 1882; *V. Bank of England* v. *Vagliano*, 1891, A. C. 107; 60 L. J. Q. B. 145; 64 L. T. 353; 39 W. R. 657; 55 J. P. 676: *Clutton* v. *Attenborough*, 1897, A. C. 90; 66 L. J. Q. B. 221; 75 L. T. 556; 45 W. R. 276: *Edinburgh Ballarat Co* v. *Sydney*, 7 Times Rep. 656.

"Fictitious Stamp"; Stat. Def., Post Office (Protection) Act, 1884, 47 & 48 V. c. 76, s. 7, *vth*, LAWFUL EXCUSE: *Va*, 61 & 62 V. c. 46, s. 1.

"Illusory or Fictitious," R. 12, Ord. 12, R. S. C.; *V. Hoar* v. *Loe*, W. N. (84) 241: Ann. Pr.

FIDUCIARY CAPACITY. — An Admor who has received money under Letters of Admon, and who is ordered to pay it over in a suit for the recall of the Grant, holds it "in a fiduciary capacity" within s. 4 (3), Debtors Act, 1869 (*Tinnuchi* v. *Smart*, 54 L. J. P. D. & A. 92; 10 P. D. 184: *Re Hickey*, 35 W. R. 53; 55 L. T. 588); so of moneys in the hands of a Receiver (*Re Gent*, 58 L. J. Ch. 162; 37 W. R. 151; 60 L. T. 355; 40 Ch. D. 190), or Agent (*Hutchinson* v. *Hartmont*, W. N. (77) 29), or Manager (*Marris* v. *Ingram*, 49 L. J. Ch. 123; 13 Ch. D. 338), or moneys due on an account from the London Agent of a Country Solr (*Litchfield* v. *Jones*, 36 Ch. D. 530; 57 L. J. Ch. 100; 36 W. R. 396; 58 L. T. 20), or proceeds of sale in the hands of an Auctioneer (*Crowther* v. *Elgood*, 34 Ch. D. 691; 56 L. J. Ch. 416; 56 L. T. 415; 35 W. R. 369), or moneys which in the compromise of an action have been ordered

Digitized by Google

to be held on certain trusts (*Preston* v. *Etherington*, 37 Ch. D. 104; 57 L. J. Ch. 176; 36 W. R. 49; 58 L. T. 318). *Secus*, of Partnership moneys received by a partner (*Piddocke* v. *Burt*, 1894, 1 Ch. 343; 63 L. J. Ch. 246; 70 L. T. 553; 42 W. R. 248). *Note*: that the period to be looked to is that of the act done (*Re Strong*, 32 Ch. D. 342; 55 L. J. Ch. 553). *V.* Possession.

V. Bribery: Cestui que trust: 5 Encyc. 336–339.

FIFTH. — *V.* Seventh.

FIGURES. — In s. 64, Patents, &c Act, 1883, amended by s. 10, Patents, &c Act, 1888, "Figures" means Numerals (*Ex p. Stephens*, 3 Ch. D. 659; 46 L. J. Ch. 46; 24 W. R. 963).

FILED. — "'Filed,' held to be included in return of *non est inventus*" (Dwar. 673, citing *Hunter* v. *Caldwell*, 10 Q. B. 69; 16 L. J. Q. B. 274).

A document is "filed" when delivered to the proper officer to be filed (*Peterson* v. *Taylor*, 15 Georgia, 484).

V. R. 10, Ord. 19; R. 4, Ord. 67, R. S. C.

FILICETUM. — "A brackie ground" (Co. Litt. 4 b); "or place where such things as fern grow" (Touch. 95).

FILTH. — *V.* Dust.

FILTHY WATER. — "Sewage or Filthy Water," conveyed by a Local Authority into a natural Stream, &c, under s. 17, P. H. Act, 1875, is to be "freed from all Excrementitious or other Foul or Noxious Matter such as would affect or deteriorate the purity and quality of the water in such Stream," &c; — that does not mean that the effluent is to be rendered pellucid. Sand or Silt (from a road) which to a great extent gets in by natural drainage is not such Matter; nor does it "affect or deteriorate" the water in the Stream if that water be already charged with Sand and Silt from natural causes of which no one can complain (*Durrant* v. *Branksome*, 1897, 2 Ch. 291; 66 L. J. Ch. 517, 653; 76 L. T. 739; 46 W. R. 134). But Sand or Silt cast by a private individual into a Fishery so as to cause a Disturbance, is actionable (*Fitzgerald* v. *Firbank*, 1897, 2 Ch. 96; 66 L. J. Ch. 529; 76 L. T. 584). *Vf*, as to this section, *Ainley* v. *Kirkheaton*, 60 L. J. Ch. 734; 55 J. P. 230. *Cp*, Polluting: Solid Matter.

FINAL. — Where a statute provides that a specified determination shall be "final," — *e.g.* the decision of a Poor Law Auditor quà an untaxed Solr's Bill, s. 39, 7 & 8 V. c. 101, — it is not open to review even though the Court does not see the reasonableness of the provision (*R.* v. *Napton*, 25 L. J. Q. B. 296; nom. *R.* v. *Hunt*, 6 E. & B. 408).

"Final to all Intents and Purposes"; *V.* Inconsistent.

Digitized by Google

FINAL AND CONCLUSIVE.—When a decision is "Final and Conclusive," an appeal is taken away (*Waterhouse* v. *Gilbert*, 54 L. J. Q. B. 440; 15 Q. B. D. 569: *Bryant* v. *Reading*, 17 Q. B. D. 128; *Lyon* v. *Morris*, 19 Q. B. D. 139; 56 L. J. Q. B. 378; 57 L. T. 324; 35 W. R. 707).

So, a Co. Co. Order in an Interpleader, which by s. 157, Co. Co. Act, 1888, is "final and conclusive" between the parties, not only determines claims actually made but also bars those which might then have been made, *e.g.* damages against the Execution Creditor (*Death* v. *Harrison*, 40 L. J. Ex. 26; L. R. 6 Ex. 15; 23 L. T. 495: *Hills* v. *Renny*, 5 Ex. D. 313; 49 L. J. Ex. 710: *Davies* v. *Wise*, 50 L. J. Q. B. 655).

Justices' decision as to what is "Refuse" "shall be final and conclusive," s. 129, Metrop Man. Act, 1855; *V. R.* v. *Bridge*, cited REFUSE.

By the Poututu Jurisdiction Act, 1889, of New Zealand, Jurisdiction quà certain lands was given to the Native Land Court whose decisions were to be "final and conclusive"; held, on the principle *generalia specialibus non derogant*, that the right of re-hearing under the Native Land Acts was not excluded (*Barker* v. *Edger*, 1898, A. C. 749; 67 L. J. P. C. 115; 79 L. T. 151).

Cp, CONCLUSIVE EVIDENCE, under which make *Note* that *Re Dudley Trams Co* was disapproved in *A-G.* v. *Bournemouth*, 71 L. J. Ch. 730.

FINAL APPORTIONMENT.—*V.* APPORTION.

FINAL ARRANGEMENTS.—A. wrote "I will accept the appointment of Surgeon to your vessel on the terms you propose," adding "I expect to be in London Saturday or Monday when I will call on you and make *final arrangements*"; held, that the contract was complete, though A. did not call to make final arrangements (*Richards* v. *Hayward*, 2 M. & G. 574; 10 L. J. C. P. 108; 2 Sc. N. R. 670). *Cp*, SUBJECT TO.

FINAL AWARD.—Quà Drainage (Ir) Act, 1846, 9 & 10 V. c. 4, "Final Award" means, the Award required to be made by the Commrs after the completion of the Works (s. 44).

FINAL DECREE.—A Cognovit, by a defendant, was not to be enforced "until after Final Hearing" of a Chancery Suit, "and the Final Decree or Order to be pronounced thereon"; at the Hearing the Decree was for the plaintiff, but the defendant appealed; held, that the appeal must be determined before there was a "Final Decree" (*Jones* v. *Reynolds*, 1 A. & E. 384; 3 N. & M. 465). *Cp*, FINAL JUDGMENT.

Where money paid into Court by the deft with a Denial of Liability has been accepted by the plt in satisfaction, a refusal to make an Order for the taxation and payment of the plt's Costs, is a "Final Decree or

Digitized by Google

Order" within s. 26, Co. Co. Admiralty Jurisdiction Act, 1868 (*The Vulcan*, 1898, P. 222; 67 L. J. P. D. & A. 101; 47 W. R. 123).

V. FINAL ORDER.

"Final Decree of Nullity of Marriage, or Dissolution of Marriage," s. 5, Matrimonial Causes Act, 1859, applies, in its ordinary meaning, to ANY Marriage declared null or dissolved even though that be on the ground of Impotency (*Dormer* v. *Ward*, cited PROPERTY).

FINAL DISCHARGE.—Remainder of FREIGHT to "become DUE" on "Final Discharge" of the vessel, is not payable if the vessel be lost and final discharge rendered impossible (*Byrne* v. *Pattinson*, Abbott, 619–621).

FINAL DIVIDEND.—*V. Murdock* v. *Heath*, 80 L. T. 50.

FINAL DIVISION.—The "Final Division" of a testator's estate, means the end of the dead year (*Spencer* v. *Duckworth*, 50 L. J. Ch. 774; 18 Ch. D. 634).

FINAL EXAMINATION.—Of an Articled Clerk to a Solr; Stat. Def., 40 & 41 V. c. 25, s. 4; 61 & 62 V. c. 17, s. 4.

FINAL HEARING.—*V.* FINAL DECREE.

FINAL JUDGMENT.—"No Order, Judgment, or other Proceeding, can be final which does not at once affect the status of the parties, for whichever side the decision may be given; so that if it is given for the plaintiff it is conclusive against the defendant, and if it is given for the defendant it is conclusive against the plaintiff" (per Brett, L. J., *Standard Discount Co* v. *La Grange*, 3 C. P. D. 71; 47 L. J. C. P. 3; *Salaman* v. *Warner*, 1891, 1 Q. B. 734; 60 L. J. Q. B. 624; 64 L. T. 598; 39 W. R. 547). "Where any further step is necessary to perfect an Order or Judgment, it is not final but interlocutory" (per Baggallay, L. J., *Collins* v. *Paddington*, 5 Q. B. D. 370. *Vf, Metcalfe's Case*, 11 Rep. 38 a). *Cp,* FINAL DECREE.

For the purposes of the Bankry Act, 1883, s. 4 (1 *g*)—*V.* OBTAINED—a judgment for default in pleading is "final" quà the taxed costs thereon, although it may provide for an enquiry as to damages which remains unexecuted (*Ex p. Moore, Re Faithfull*, 54 L. J. Q. B. 190; 14 Q. B. D. 627; 33 W. R. 438); so of a jdgmt on part of the matters in litigation (*Re Alexander*, 1892, 1 Q. B. 216; 61 L. J. Q. B. 377; 66 L. T. 133; 40 W. R. 202). *V.* CREDITOR.

But a mere *Order* cannot be a "Final Judgment," because it is not a Judgment at all, even though it put an end to the matter with which it deals. Thus an Order dismissing an action for *non pros* is not a Judgment, and costs thereon could accordingly not be due on a "Final Judgment" (*Cremetti* v. *Crom*, 48 L. J. Q. B. 337; 4 Q. B. D. 225: *Ex p.*

Digitized by Google

Strathmore, Re Riddell, 20 Q. B. D. 512; 36 W. R. 532; 57 L. J. Q. B. 259; 58 L. T. 838); nor is a Garnishee Order absolute, a "Final Judgment" (*Ex p. Chinery*, 53 L. J. Ch. 662; 12 Q. B. D. 342; 32 W. R. 469; 50 L. T. 342); nor an Order for Costs (followed by taxation) on an action which has been stayed (*Ex p. Schmitz*, 53 L. J. Ch. 1168; 12 Q. B. D. 509; 50 L. T. 747; 32 W. R. 812); nor an Order for Costs on a Divorce decree (*Re Binstead, Ex p. Dale*, 1893, 1 Q. B. 199; 62 L. J. Q. B. 207; 68 L. T. 31; 41 W. R. 452); nor, *semble*, an Order for Costs in a Probate action (*Re Arkell*, 61 L. T. 90; 6 Morr. 182); nor a "Balance Order" upon a contributory to a Company (*Ex p. Whinney, Re Sanders*, 13 Q. B. D. 476: *Ex p. Grimwade*, 55 L. J. Q. B. 495; 17 Q. B. D. 357); nor an Order for Alimony *pendente lite* (*Re Henderson*, 20 Q. B. D. 509; 36 W. R. 567; 57 L. J. Q. B. 258; 58 L. T. 835); nor an Order under s. 102, Bankry Act, 1883, setting aside a Deed of Assignment (*Ex p. Official Recr.*, 1895, 1 Q. B. 609; 64 L. J. Q. B. 429; 72 L. T. 312; 43 W. R. 305).

But if an Action be brought on an Order for Costs (*Philpott* v. *Lehain*, 35 L. T. 855) and plt obtains jdgmt therein, that is a "Final Jdgmt" (*Re Boyd*, 1895, 1 Q. B. 611; 64 L. J. Q. B. 439; 72 L. T. 348, disapproving *Re Shirley*, 58 L. T. 237).

A Final Jdgmt within the Bankry Act, 1883, means one against the debtor personally, and therefore does not include a jdgmt against a Married Woman which only affects her Separate Estate (*Ex p. Lester, Re Lynes*, 1893, 2 Q. B. 113; 62 L. J. Q. B. 372; 68 L. T. 739; 41 W. R. 488).

A judgment obtained by a deceased person is not "final" in the hands of his executor, within the Bankry Act, until leave to issue execution thereon has been obtained under R. 23 (a), Ord. 42, R. S. C. (*Ex p. Woodall*, 53 L. J. Ch. 966; 13 Q. B. D. 479; 32 W. R. 774). *V.* Creditor: Obtained.

Note. A Final Jdgmt, quà Bankry Notice under s. 4, Bankry Act, 1883, must be obtained in England (*Re Bankry Notice*, 1898, 1 Q. B. 383; 67 L. J. Q. B. 308; 77 L. T. 710; 46 W. R. 325).

Under the R. S. C., Ord. 58, R. 15, the following are Final Judgments:—On Pleading admissions (*Emmet* v. *Emmet*, 13 Ch. D. 489); Default in Pleading (*Ex p. Moore, Re Faithfull*, sup: *Sv, Gossett* v. *Campbell*, W. N. (77) 134); Foreclosure under Ord. 15 (*Smith* v. *Davies*, 55 L. J. Ch. 496; 54 L. T. 478; 31 Ch. D. 595); Findings by judge of Ch. D. on facts, the issues on which have *not*, at the commencement of the trial, been agreed shall be first tried (*Lowe* v. *Lowe*, 48 L. J. Ch. 383; 10 Ch. D. 432; distinguishing *Krehl* v. *Burrell*, 48 L. J. Ch. 252; 11 Ch. D. 146).

As to finality of Judgment in Ecclesiastical Cases; *V. Ridsdale* v. *Clifton*, 46 L. J. P. C. 27; 2 P. D. 276.

"Judgment of the Court under this section shall be final," s. 28, 40 V.

Digitized by Google

(Canada) c. 41, abolished the Canadian right of appeal to the Queen (*Cushing* v. *Dupuy*, 49 L. J. P. C. 63; 5 App. Ca. 409).

Final Judgment of a Foreign Court; *V. Re Henderson*, 57 L. J. Ch. 367; 37 Ch. D. 244; 58 L. T. 242.

"Final Judgment" quà Sheriff Courts in Scotland; Stat. Def., 39 & 40 V. c. 70, s. 3.

V. FINAL ORDER: ORDER: FURTHER ORDER: INTERLOCUTORY: JUDGMENT: LIBERTY TO SIGN.

FINAL ORDER. — The judgment of a Divisional Court on an appeal from a County Court in an Interpleader Issue, is a "Final Order" within R. 3, Ord. 58, R. S. C. (*Hughes* v. *Little*, 56 L. J. Q. B. 96; 18 Q. B. D. 32; 55 L. T. 476; 35 W. R. 36); so is an Order on Further Consideration (*Cummins* v. *Herron*, 46 L. J. Ch. 423; 4 Ch. D. 787; unless action is not thereby concluded, *Re Johnson*, 42 Ch. D. 505); or an Order at a trial by jury depriving a successful party of his Costs (*Marsden* v. *Lancashire and Yorkshire Ry*, 50 L. J. Q. B. 318; 7 Q. B. D. 641); or an Order on a Case stated by an Arbitrator, which provides that in one event the case is to be referred back, but in the other judgment is to be entered (*Shubrook* v. *Tufnell*, 9 Q. B. D. 621; 30 W. R. 740; distinguishing *Collins* v. *Paddington*, 5 Q. B. D. 370). But an Order under R. 3, Ord. 25, R. S. C., dismissing an action on a point of law raised by the pleadings is not "final" within R. 3, Ord. 58, because had the decision been the other way the action would have proceeded (*Salaman* v. *Warner*, 1891, 1 Q. B. 734; 60 L. J. Q. B. 624; 64 L. T. 598; 39 W. R. 547, applying the test laid down by Brett, L. J., *Standard Discount Co* v. *La Grange*, cited FINAL JUDGMENT): *Vf*, Ann. Pr. *V.* INTERLOCUTORY.

An Appeal against an Order, in its nature "final," when made in Chambers, must be made within 21 days (s. 50, Jud. Act, 1873: *Re Lewis*, 31 Ch. D. 623; 34 W. R. 420: *Re Johnson*, 42 Ch. D. 505; 37 W. R. 765; 59 L. J. Ch. 99: *Re Giles*, 59 L. J. Ch. 226; 43 Ch. D. 391; 62 L. T. 375; 38 W. R. 273).

V. FINAL DECREE: FINAL JUDGMENT.

FINAL PORT. — A Marine Policy until the ship arrives "at her Final Port of Discharge," covers her only until she arrives at her Port of Discharge; and does not protect her while she is a seeking vessel from island to island (*Moore* v. *Taylor*, 3 L. J. K. B. 132; 1 A. & E. 25; 3 N. & M. 406). In such a connection "Final Port of Destination or of Discharge," means, "the Port where the ship is intended to, and does, discharge the bulk of her cargo; and the Last Port of Discharge is, not the Port where the ship may have been originally destined to discharge any part of her cargo but, the Place where she does actually discharge the whole of it (*Preston* v. *Greenwood*, 4 Doug. 28, 33: *Moffatt* v. *Ward*,

Digitized by Google

Ib. 29): 'Last Port of Discharge,' means, 'the Last Practicable Friendly Port of Discharge'; per Bayley, J., *Browne* v. *Vigne*, 12 East, 283" (5 Encyc. 340: *Sv*, there cited, *Oliverson* v. *Brightman*, 8 Q. B. 781).

Vh, *Crocker* v. *Sturge*, cited PORT: LAST.

FINAL SAILING.—"Final Sailing," in a Charter-party, means, the final departure of the vessel from the port named, with her papers on board, and everything complete for the purpose, and with the view of proceeding on her voyage without intending to come back; even though, without clearing the fiscal limits of the port, she may have been driven back to it by stress of weather (*Roelandts* v. *Harrison*, 23 L. J. Ex. 169; 9 Ex. 444: *Hudson* v. *Bilton*, 26 L. J. Q. B. 27; 6 E. & B. 565: *Price* v. *Livingstone*, 53 L. J. Q. B. 118; 9 Q. B. D. 679: *Sailing-Ship "Garston" Co* v. *Hickie*, 15 Q. B. D. 587).

V. SAIL: DEPART.

FINALLY DETERMINED.—*V.* HEARD AND FINALLY DETERMINED.

FINANCE.—*V.* MANAGEMENT.

FINANCED.—Goods "financed"; *V. Bank of China* v. *American Trading Co*, 1894, A. C. 266; 63 L. J. P. C. 92; 70 L. T. 849.

FINANCIAL.—"Financial *Agent*," as a description of Occupation quà Bills of Sale Acts, 1878 and 1882; *V. Sharp* v. *McHenry*, 38 Ch. D. 428; 57 L. J. Ch. 961; 57 L. T. 606.

"Financial *Period*"; Stat. Def., 54 & 55 V. c. 62, s. 3.

"Financial *Position*"; *V.* BUSINESS TRANSACTIONS.

"Financial *Relations*"; Stat. Def., Loc Gov (Ir) Act, 1898, s. 71 (2).

FINANCIAL YEAR.—In all Acts of Parliament passed after the 31 Dec 1889, "'Financial Year' shall, unless the contrary intention appears, mean,—as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial Taxes or Finance,—the twelve months ending the 31st day of March" (s. 22, Interp Act, 1889). So, "Financial Year," means, the year ending 31st March in the following Acts,—36 & 37 V. c. 49 (s. 6); 37 & 38 V. c. 9 (s. 6); 45 & 46 V. c. 72 (s. 26); 50 & 51 V. c. 16 (s. 19).

Quà Life Assurance Companies Act, 1870, 33 & 34 V. c. 61, "'Financial Year,' means, each period of 12 months at the end of which the balance of the accounts of the Company is struck; or, if no such balance is struck then, each period of 12 months ending with the 31st day of December" (s. 2).

Quà Public Libraries Act, 1892, 55 & 56 V. c. 53, "'Financial Year,'

Digitized by Google

means, the period of 12 months for which the accounts of a Library authority are made up" (s. 27).

"Current Financial Year"; *V.* 50 & 51 V. c. 16, s. 19.

V. LOCAL FINANCIAL YEAR.

FIND. — "Find a Purchaser"; *V.* PROCURE, last par.

FINDING. — "Finding unto the said apprentice sufficient Meat, Drink, Lodgings, and other necessaries"; "finding" means, to supply gratis (*Abbott* v. *Bates*, 45 L. J. C. P. 117).

V. BEING.

Quà Criminal Procedure Act, 1851, 14 & 15 V. c. 100, "'Finding of the INDICTMENT,'" includes, "'the Taking of an Inquisition,' 'the Exhibiting of an Information,' and 'the Making a Presentment'" (s. 30). *V.* VERDICT.

A trust to apply funds towards "finding a MASTER" is well executed by applying part of the funds in rebuilding and repairing the school-room and school-house (*A-G.* v. *Stamford*, 2 Swanst. 592).

FINE. — "*'Fine,'* *finis.* Here (Litt. s. 194) signifieth a pecuniarie punishment for an offence, or a contempt committed against the King, and regularly to it imprisonment appertaineth. And it is called *finis*, because it is an end for that offence. And in this case a man is said *facere finem de transgressione*, &c, *cum rege*, to make an end or fine with the King for such a transgression. It is also taken for a summe given by the tenant to the lord for CONCORD and an end to be made. It is also taken for the highest and best assurance of lands, &c" (Co. Litt. 126 b). *Vf*, Termes de la Ley: Cowel: Jacob: 5 Encyc. 341–343: for form of Fine of Lands, *V.* 2 Bl. Com. App. xiv. *Cp*, REDEMPTION.

A Royal Charter which grants "Fines," passes Fines for not appearing in proper time according to the tenor of Recognizances, but not the money payable on Estreated Recognizances (*Re Nottingham Corp*, cited AMERCIAMENT).

A "Fine, or sum of money in the NATURE of a Fine" (which, by s. 3, Conv & L. P. Act, 1892, is not, without express provision, to be exacted for a License to assign a Lease) means, "something which is to go irrevocably into the pocket of the person who requires it as a condition of consenting to an assignment" (per Russell, C. J., *Re Cosh*, 66 L. J. Ch. 30); accordingly, it was there held that a Lessor may require a guarantee for the performance of unfulfilled covenants by deposit of a sum of money as a condition for such a License, because such a deposit, being returnable on the performance of the covenants, is not a "Fine" or "in the Nature of a Fine" (*Re Cosh*, 1897, 1 Ch. 9; 66 L. J. Ch. 28; 75 L. T. 363; 45 W. R. 117).

Quà Conv & L. P. Act, 1881, "'Fine,' includes Premium or Foregift, and any payment, consideration, or benefit in the Nature of a Fine, Pre-

Digitized by Google

mium, or Foregift" (s. 2, ix). To the like effect is the def of "Fine" in s. 7, Rating Act, 1874, 37 & 38 V. c. 54, and s. 10 (ii), S. L. Act, 1882.

Quà Sum Jur Act, 1879, 42 & 43 V. c. 49, "'Fine,' includes any pecuniary penalty, or pecuniary forfeiture, or pecuniary compensation, payable under a CONVICTION" (s. 49).

Other Stat. Def. — 63 & 64 V. c. 25, s. 6.

Conveyance of land by levying a Fine; *V.* Co. Lit. 120 b, 121 a, and note thereon by Hargrave: 2 Bl. Com. 348 *et seq*: Wms. R. P. ch. 2: 5 Encyc. 343–346. These Fines were abolished by Fines and Recoveries Act, 1833.

V. AMERCIAMENT: ARBITRARY FINE: CRIME: REASONABLE FINE.

FINE AND RANSOM. — "The punishment of 'Fine and Ransom' is a single pecuniary penalty" (Maxwell, 427, citing Co. Litt. 127 a). *V.* RANSOM.

FINE ARTS. — *V.* SCIENCE.

FINE BARLEY. — *V.* BARLEY.

FINIS. — *V.* FINE.

FINLAND. — Gulf of Finland; *V.* BALTIC.

FINLAY'S ACT. — The Supreme Court of Judicature Act, 1890, 53 & 54 V. c. 44.

FIRE. — "Loss or damage occasioned by Fire," in a Fire Policy, are words to be construed as ordinary people would construe them. "They mean loss or damage either by ignition of the article consumed, or by ignition of part of the premises where the article is: in the one case there is a loss, in the other a damage, occasioned by Fire" (per Byles, J., *Everett* v. *London Assrce,* 19 C. B. N. S. 133; 34 L. J. C. P. 301; 13 W. R. 862). "Fire" means, in this connection, an actual burning directly causing the injury, for *In jure non remota causa, sed proxima spectatur* (Bac. Max. Reg. 1).

Thus neither artificial nor solar heat (*Austin* v. *Drewe,* 6 Taunt. 436; 2 Marsh. 130: per Byles, J., *Everett* v. *London Assrce,* sup), nor lightning, nor an explosion of gunpowder, or of fire-damp, or of a steam-engine, nor the discharge of ordnance, nor a projectile from either a volcano or a gun, is "Fire" within a Fire Policy, unless there be an actual setting on fire directly causing the injury insured against (*Everett* v. *London Assrce,* sup). *Vf,* Porter on Insurance, 3 ed., 121–126.

But "any loss resulting from an apparently necessary and *bonâ fide* effort to put out a fire, whether it be by spoiling the goods by water or throwing the articles of furniture out of window or even the destroying of a neighbouring house by an explosion for the purpose of checking

Digitized by Google

the progress of the flames, in a word, every loss that clearly and proximately results, whether directly or indirectly, from the fire is within the policy" (per Kelly, C. B., *Stanley* v. *Western Insrce*, L. R. 3 Ex. 74; 37 L. J. Ex. 73; 17 L. T. 513; 16 W. R. 369: *Vthc*, Gas). But, on the authority of some American cases, it has been stated that if a fire has not actually reached the premises whence articles are removed, the damage occasioned by such removal would not be occasioned by "Fire," even though the removal was under the reasonable apprehension that the fire would reach the premises in which the articles were (Porter, 131: *Vf, Marsden* v. *City & County Assrce*, 35 L. J. C. P. 60; L. R. 1 C. P. 232; 14 W. R. 106; 13 L. T. 465).

A Marine Insrce on Freight against "Fire, and all other Perils, Losses, and Misfortunes," covers loss through discharge of a cargo of coal to avoid imminent spontaneous combustion; for although not strictly speaking a loss by "fire" yet it is a loss *ejusdem generis* and covered by "all other Perils," &c (*The Knight of St. Michael*, 1898, P. 30; 67 L. J. P. D. & A. 19; 78 L. T. 90; 46 W. R. 396).

Note. A Marine Insrce against Fire remains valid though the fire be occasioned by the negligence of the Master or Mariners (*Busk* v. *Royal Ex. Assrce*, 2 B. & Ald. 73: *Dixon* v. *Sadler*, 9 L. J. Ex. 48; 5 M. & W. 405; 8 Ib. 895: *Vthc*, per Smith, L. J., *Trinder* v. *Thames & Mersey Insrce*, 1898, 2 Q. B. 123).

"Fire," in an exception to a covenant to repair, is not, in an open contract to sell the Lease, to be extended by adding "or other casualty" (*Crosse* v. *Morgan*, 60 L. T. 703; 37 W. R. 543).

V. Set Fire. *Vh*, Bunyon on Fire Insurance.

FIRE ON BOARD.—An Exception in a Bill of Lading of "Fire on Board," does not take away the liability of the owners of the ship to General Average; it only relates to their contract as Common Carriers (*Schmidt* v. *Royal Mail S. S. Co*, 45 L. J. Q. B. 646).

"The protection afforded by the 26 G. 3, c. 86, s. 2, in cases of fire, was confined to cases in which the fire arose *on board* the ship, and, consequently, did not extend to a casual fire occurring on board a lighter employed by the shipowners to convey the goods from the shore to the ship" (1 Maude & P. 80, citing *Morewood* v. *Pollok*, 1 E. & B. 743; 22 L. J. Q. B. 250). *V.* Fire.

FIREARM.—*V.* Gun: Attempt: Loaded Arm: 5 Encyc. 347.

FIRE-BOTE.—*V.* Bote.

FIREPLUG.—"Such Fireplug," s. 40, 10 & 11 V. c. 17, means, fireplugs fixed at the request of the Authority sought to be charged (*Grand Junction W. W. Co.* v. *Brentford*, 1894, 2 Q. B. 735; 63 L. J. Q. B. 717).

Vh, 5 Encyc. 354. *Vf*, Plug.

Digitized by Google

FIRE-RESISTING.—Quà London Bg Act, 1894, "Fire-resisting Material" "means, any of the materials and things" described in its 2nd Sch (subs. 36, s. 5).

V. Incombustible.

FIREWORKS.—In *Bliss* v. *Lilley* (32 L. J. M. C. 3; 3 B. & S. 128; 7 L. T. 319) Wightman, J., held that Fog-Signals were "Fireworks" within ss. 6 and 7, 23 & 24 V. c. 139; but Cockburn, C. J., said that "'Fireworks' must refer to things that are made for amusement," and Blackburn, J., was of the same opinion. Cockburn, C. J., also asked,—"Take the case of a shell or a rocket used in war, could you call that a 'Firework'?" *Cp,* Explosive.

FIRM.—"The word 'Firm,' I believe, like many mercantile terms, is derived from an Italian word, which means simply 'Signature,' and it is as much the name of the house of business as John Nokes or Thomas Stiles is the name of an individual. The name of a Firm is a very important part of the Goodwill" (per Wood, V. C., *Churton* v. *Douglas,* 28 L. J. Ch. 841: Johns. 174; 7 W. R. 365).

FIRMA BURGI.—*V.* Madox, *Firma Burgi*: 1 Stubbs, Const. Hist., 4 ed., 445: Elph. 575: 1 Pollock & Maitland's Hist. of English Law, 635–638, 653, 650.

FIRST.—*V.* In the first place.

An Appellant from Justices, s. 2, 20 & 21 V. c. 43, has to Transmit the Case to the Court "*first giving*" the prescribed Notice to the Respondent; accordingly, such Notice must precede the transmission of the Case (*Ashdown* v. *Curtis,* 31 L. J. M. C. 216: *Edwards* v. *Roberts,* 1891, 1 Q. B. 302; 60 L. J. M. C. 6; 55 J. P. 439).

FIRST ACCRUED.—Within 12 years after the right of action "shall have first accrued," s. 1, Real Property Limitation Act, 1874, 37 & 38 V. c. 57; *Vh,* ss. 2 and 3, 3 & 4 W. 4, c. 27, and as to both Acts, *V. Randall* v. *Stevens,* 2 E. & B. 641; 23 L. J. Q. B. 68: *Irish Land Commission* v. *Junkin,* 24 L. R. Ir. 40: *Ecclesiastical Commrs* v. *Treemer,* cited Estate and Interest. The new title obtained by a Mtgee by Foreclosure "first accrues" at the date of the Order Absolute, and not at the date of the mtge (*Heath* v. *Pugh,* 51 L. J. Q. B. 367; 50 Ib. 473; 7 App. Ca. 235; 6 Q. B. D. 345).

V. Accrue: *Cestui que Trust,* sub Cestui: Tenant at Will.

FIRST AND NEAREST.—"First and Nearest of Kindred"; *V. Leigh* v. *Leigh,* cited Name. *Cp,* Next of Kin.

FIRST AND READIEST.—Agreement to pay an Annuity out of the "First and Readiest of Means"; *V. Bannatyne* v. *Ferguson,* 1896, 1 I. R. 149, 162.

Digitized by Google

FIRST BORN. — *V.* First Son: Eldest.

FIRST CHARGE. — A Debenture charging all the property, present and future, of a Company, and being a Floating Security, although expressed to be a "First Charge," will give a First Charge as against general creditors for the time being, but not as against a subsequent specific mortgagee, even if only equitable, whose security has been duly created (*Wheatley* v. *Silkstone Co*, 54 L. J. Ch. 778; 29 Ch. D. 715).

The "First Charge" in favour of Debentures given by the (New Zealand) East and West Coast, &c Ry and Railways Construction Act of 1884, only operates against Creditors of the Co, and does not militate against the right of the Government under the Act of 1881 to take possession of the Ry and retain it as Government property in case the Co should make default in completing the Ry, — such a Right is paramount and not a Charge at all (*Coates* v. *The Queen*, 1900, A. C. 217; 69 L. J. P. C. 26; 82 L. T. 162).

FIRST CLASS. — *Semble*, the amount of accommodation implied by the expression "First Class Station," depends on the number of passengers using the railway station (*Hood* v. *N. E. Ry*, 5 Ch. 525; 17 W. R. 1085).

FIRST COUSIN. — A person's First Cousin is the child of his uncle or aunt; and only persons standing in that relationship to him will take under a gift to his "First Cousins"; first cousins once removed will not be comprised (*Sanderson* v. *Bailey*, 8 L. J. Ch. 18; 4 My. & C. 56: *Stoddart* v. *Nelson*, 25 L. J. Ch. 116; 6 D. G. M. & G. 68: *Glasier* v. *Foyster*, 39 S. J. 656: *Vf*, 2 Jarm. 152), unless there be no first cousins properly so called (1 Jarm. 153: Wms. Exs. 964).

V. Cousin: Second Cousin: Cousin German.

FIRST DEMISED. — "Land which when first demised was Demesne"; *V.* Demesne, at end.

FIRST DISCLOSED. — *V.* s. 85, 24 & 25 V. c. 96: Disclose.

FIRST DULY PAID. — *V.* Having.

FIRST FRUITS. — "'First Fruits,' *Primitiæ*, are the profits of every Spirituall Living for a yeere, which were anciently given to the Pope, but by 26 H. 8, c. 3, translated to the King" (Termes de la Ley).

By 5 Anne, c. 24, and 6 Anne, c. 27, Benefices under £50 per annum were discharged of First Fruits. By 2 & 3 Anne, c. 11, the First Fruits of the larger Benefices were settled for the establishment of Queen Anne's Bounty.

Vh, Jacob: 10 Encyc. 614–616: Annats.

Digitized by Google

FIRST INVENTOR. — The grant of a Patent must be "to the True and First Inventor" (Statute of Monopolies, 21 Jac. 1, c. 3). "It is a material question," says Tindal, C. J., "to determine whether the party who got the patent was the real and original inventor or not, because these patents are granted as a reward, not only for the benefit that is conferred upon the public by the discovery, but also to the ingenuity of the first inventor; and although it is proved that it is a new discovery so far as the world is concerned, yet, if anybody is able to show that, although that was new, the party who got the patent was not the man whose ingenuity first discovered it, that he had borrowed it from A. or B. (*Barber* v. *Walduck*, cited 1 C. & P. 567), or taken it from a book that was publicly circulated in England (*Vh*, *Stead* v. *Williams*, 7 M. & G. 818; 2 Webster, 126: *Heurteloup's Case*, 1 Webster, 553: *Plimpton* v. *Malcolmson*, 45 L. J. Ch. 505; 3 Ch. D. 531, 558: *Plimpton* v. *Spiller*, 47 L. J. Ch. 211; 6 Ch. D. 412; *Harris* v. *Rothwell*, 35 Ch. D. 416: *Re Avery*, 26 Ch. D. 307) and which was open to all the world; then, although the public had the benefit of it, it would become an important question whether he was the first and original inventor of it." There is nothing, however, to prevent him from employing his servants in assisting him to bring a design to perfection, or to work out an idea first suggested by him (*Minter* v. *Wells*, 1 Webster, 132), or from employing third persons for such a purpose (*Bloxam* v. *Elsee*, 1 C. & P. 558). He is still the true and first inventor. If there are two persons, actual inventors in this country, who invent the same thing simultaneously, he who first takes out the patent is the first and true inventor; and a person is also entitled to that title who patents an invention previously invented, but not sufficiently disclosed (*Plimpton* v. *Malcolmson*, sup). The rule, it will be observed, is, he who is first *in* England is the first *for* England; and therefore if an invention be new *within the Realm*, the person who introduces it is its first inventor, although it may previously have been practised abroad (*Edgeberry* v. *Stephens*, 2 Salk. 446: *Plimpton* v. *Malcolmson*, sup). The communication however made in England by one British subject to another, of an invention does not make the person to whom the communication is made the first and true inventor. If, therefore, a man makes an invention, and dies before he has taken out a patent for it, his representatives cannot take one out (*Marsden* v. *Saville Street Co*, 3 Ex. D. 203).

Vf, Add. T. 561 *et seq*: PATENTEE.

FIRST LORD OF THE ADMIRALTY. — Stat. Def., 30 & 31 V. c. 98, s. 3.

FIRST MAKING. — "First making Satisfaction"; *V. Lond. & N. W. Ry* v. *Evans*, cited SATISFACTION.

FIRST MALE HEIR. — "First Male Heir of the Branch of C.'s family"; *V. Doe* d. *Winter* v. *Perratt*, 5 B. & C. 48; 9 Cl. & F. 606;

Digitized by Google

6 M. & G. 314; Sug. Prop. 271–280, on which latter page is this remark, "A careful study of the case, although it may perplex the student, will amply repay his trouble."

V. MALE: MALE LINE.

FIRST MONEYS. — "Out of the First Moneys"; *V.* OUT OF.

FIRST OPEN WATER. — In a contract of Shipment; *V. Kemp* v. *Batt*, 5 Times Rep. 27: F. O. W.

An ICE-BOUND Ship is relieved "when there is 'Open Water,' *i.e.* when the water is so open that she can get out of the ice" (per Esher, M. R., *Sunderland S. S. Co* v. *North of England Insrce*, 14 The Reports, 196; 11 Times Rep. 106); but in the same case Lopes, L. J., said that, "Open Water" means, "Water in such a condition as would permit access to a ship for the purpose of salving." *Vf,* "Open Water," sub OPEN.

FIRST PARCEL. — *V.* EX FIRST PARCEL.

FIRST PLACE. — *V.* IN THE FIRST PLACE.

FIRST PRODUCED. — *V.* PRODUCED.

FIRST PUBLICATION. — "The First Publication" of a BOOK, s. 3, Copyright Act, 1842, may take place in the United Kingdom though SIMULTANEOUSLY published elsewhere (*Cocks* v. *Purday*, 2 C. & K. 269; 17 L. J. C. P. 273; 5 C. B. 860: *Vf, Routledge* v. *Low*, L. R. 3 H. L. 100; 37 L. J. Ch. 454; 18 L. T. 874; 16 W. R. 1081).

A mere reprint of a book, though called a new edition, is not "the First Publication" of itself or of the book of which it is a reprint, within s. 13, Copyright Act, 1842; *Secus*, if the new edition is substantially a new work (*Thomas* v. *Turner*, 56 L. J. Ch. 56; 33 Ch. D. 292; 55 L. T. 534; 35 W. R. 177).

Book, &c "first published out of Her Majesty's dominions," s. 19, International Copyright Act, 1844, 7 & 8 V. c. 12; — this section has a limited purpose only; "a Book is published by being printed and issued to the public; a Dramatic Piece, or a Musical Composition, is published by being publicly performed; a piece of Sculpture, or other Work of Art, by being multiplied by casts or other copies" (per James, L. J., *Boucicault* v. *Chatterton*, 5 Ch. D. 275; 46 L. J. Ch. 307).

V. PUBLICATION: PRODUCED.

FIRST RATE BUILDING LOT. — *V. Dykes* v. *Blake*, 4 Bing. N. C. 463; 7 L. J. C. P. 282; 6 Sc. 320.

FIRST REFUSAL. — A valid Contractual "First Refusal" to a person to buy property, connotes that the owner shall, before selling to

Digitized by Google

any one else, intimate to such person the cash price which some other person is willing to give, and shall be ready and willing to sell at that price to the person having the "First Refusal" (*Manchester Ship Canal Co* v. *Manchester Racecourse Co*, 1900, 2 Ch. 352; 69 L. J. Ch. 850; affd 1901, 2 Ch. 37; 70 L. J. Ch. 468; 84 L. T. 436; 49 W. R. 418).

V. Option: Perpetuity.

FIRST SON. — The "First Son," or "Child," means *primâ facie* the first-*born*. And in like manner if a child be designated by any other numeral, — such as "second," "third," &c, — the reference is to the *order of birth*. But this construction may be varied by the context or circumstances (2 Jarm. 213–216: Elph. 352: *Va* Eldest).

A limitation to "First and other Sons," imports successive interests and excludes the idea of a Joint Tenancy (*Lewis* v. *Waters*, 6 East, 336).

FIRST STOREY. — *V.* Storey.

FIRST VOYAGE. — "It seems that a 'First Voyage' is taken to be, one entire trading voyage out and home, however long or indirect that voyage may be" (Wood, 354, citing *Fenwick* v. *Robinson*, 3 C. & P. 323: *Pirie* v. *Steele*, 8 C. & P. 200).

FISH. — Crayfish are "Fish" within s. 24, 24 & 25 V. c. 96 (*Caygill* v. *Thwaite*, 1 Times Rep. 386); and Oysters are "Fish" within 13 Ric. 2, St. 1, c. 19, and 17 Ric. 2, c. 9 (*Maldon* v. *Woolvet*, 12 A. & E. 13). From those cases, *semble*, Shell Fish are generally included in the word "Fish."

Quà Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, "'Fish' shall extend to and include Oysters and Oyster Brood" (s. 1). So, quà the Thames Conservancy, "'Fish,' includes Oysters and Shell-Fish, and also the spawn, brood, or fry, of Fish, Oysters, and Shell-Fish" (27 & 28 V. c. 113, s. 3: Thames Conservancy Act, 1894, s. 3).

V. Freshwater Fish: Royal Fish: Sea Fish: Shell Fish.

Note. As to the origin of "Fish" and "Fishing," as applied to a mechanical contrivance of a groove or support; *V.* note to *Harwood* v. *G. N. Ry*, 11 H. L. Ca. 655.

FISH TEINDS. — Quà Fish Teinds (Scot) Act, 1864, 27 & 28 V. c. 33, "'Fish Teinds,' shall mean, the Vicarage Teinds on Fish, payable to the Minister of any Parish in Scotland and forming part of his stipend" (s. 2).

FISHERMAN. — As to what vessel may be called a "Fisherman"; *V. Shepherd* v. *Hills*, 25 L. J. Ex. 6; 11 Ex. 55.

V. Sea Fisherman.

FISHERY: PISCARY. — "There appears to be some confusion between the names given to Fisheries of different sorts. They are

Digitized by Google

divided by Holt, C. J. (*Smith* v. *Kemp*, 2 Salk. 637; 4 Mod. 187; Carth. 285; Holt, 322; *Sv* Skin. 342), into —

1. *Separalis Piscaria*, where he who has the Fishery is owner of the soil;

2. *Libera Piscaria*, which is where a mere Right of Fishing is granted; and

3. *Communis Piscaria*.

"But the term 'Several Fishery' is sometimes applied to a right of fishing in public waters, which may be exerciseable by many people, and the term 'Free Fishery' is sometimes applied to a Several Fishery, either in private or in public waters, and sometimes to a right of fishing in common with others (*V.* 6 Bac. Abr. tit. *Pischary*, and *Bloomfield* v. *Johnston*, Ir. Rep. 8 C. L. 68, 107, 108, — where Fitzgerald, B., after observing that, according to Blackstone (2 Com. 39), the name 'Free Fishery' is properly applicable only to a Several Fishery in public waters, said that, 'Free Fishery when used, as all admit it may be used, in the sense of a right of fishing not exclusive, is, if *in alieno solo*, not distinguishable from Common of Fishery').

"In *Malcomson* v. *O'Dea* (10 H. L. Ca. 593), where the question related to a fishery granted by the Crown before Magna Charta, Willes, J. (delivering the unanimous opinion of the judges), said: 'Some discussion took place during the argument as to the proper name of such a fishery, whether it ought not to have been called in the pleadings (following Blackstone) a 'Free' instead of a 'Several' fishery. This is more of the confusion which the ambiguous use of the word 'free' has occasioned, from a period so early as that of the Y. B. 7 H. 7, fol. 13, down to the case of *Holford* v. *Bailey* (18 L. J. Q. B. 109; 13 Q. B. 426), where it was clearly shown that the only substantial distinction is between an exclusive right of fishery, usually called 'several,' sometimes 'free' (used as in 'free warren'), and a right in common with others, usually called 'common of fishery,' sometimes 'free' (used as in 'free port'). The fishery in this case is sufficiently described as a 'Several' Fishery, which means an exclusive right to fish in a given place, either with or without the property in the soil.'

"A Several Fishery is presumed to comprehend the soil, till the contrary appears" (Hargrave's *n*, Co. Litt. 122 b: *Vh*, *Marshall* v. *Ulleswater Nav. Co*, 32 L. J. Q. B. 139; 3 B. & S. 732): *Vf*, *R.* v. *Old Alresford*, inf: Stat. Def., inf: Several Fishery.

"*Common of Fishery*, sometimes also called 'Free Fishery,' is the right of fishing in another man's water in common with the owner of the soil, and perhaps also with other persons who may be entitled to the same right (Wms. on Rights of Common, 259). As this right is a *profit à prendre* (*V. Fitzgerald* v. *Firbank*, inf), it cannot be claimed by the inhabitants of a parish (*Bland* v. *Lipscombe*, 24 L. J. Q. B. 155 *n*; 4 E. & B. 713 *n*: *Sv*, *Goodman* v. *Saltash*, 52 L. J. Q. B. 193; 7 App. Ca.

Digitized by Google

633), or of a parish and manor (*Allgood* v. *Gibson*, 34 L. T. 883; 25 W. R. 60).

"A *Common Fishery* (called by Hale, de Jur. Mar., cited 8 App. Ca. 177, 'A Public Common of Piscary'), which must be carefully distinguished from a Common of Fishery, is a Fishery which is free to all the public (*Benett* v. *Costar*, 8 Taunt. 183). It is submitted that a Common Fishery, being a *profit à prendre*, can only exist in a tidal river or the sea (*Pearce* v. *Scotcher*, 9 Q. B. D. 162, and the cases there cited)." (Elph. 576–579, *whv*). *Va*, Dart, 426, 427.

A "Fishery in Gross," is applicable either to a Several Fishery or to a Common of Fishery if it belong to a person or class of persons independently, in contradistinction to appendancy (Woolrych on Waters, 2 ed., 127).

In a parish settlement case it has been held that a lease of a Fishery, with the sedge flags and rushes therein, passed the soil (*R.* v. *Old Alresford*, 1 T. R. 358). But as to whether the grant of a "Fishery," simpliciter, will pass the soil, *V.* Co. Litt. 4 b: Dart, 427, 428: and as to what passes by "Fishery," *V.* per Littledale, J., *Scratton* v. *Brown*, 4 B. & C. 503. But neither such a grant, nor the grant of a "Free Fishery," will exclude the grantor from the right to fish (*Bloomfield* v. *Johnston*, Ir. Rep. 8 C. L. 68); but a Reservation of The right of fishing, means the exclusive right (*Paget* v. *Milles*, 3 Doug. 43), so, of course, where such an exclusive right is expressly granted (*Fitzgerald* v. *Firbank*, inf). *Vf*, A.

"It was laid down in *Smith* v. *Kemp* (sup) and is repeated in 5 Com. Dig. p. 362, tit. *Piscary*, — 'If a grant be *de libera piscaria*, the grantee shall have the property of the fish there, and shall maintain Trespass for fishing there.' If a person chooses to pay anything for the sport of catching fish and returning them to the water, of course, he can do so; but that is not what is understood by lawyers, or men of sense, as a Right of Fishing" (per Lindley, L. J., *Fitzgerald* v. *Firbank*, 1897, 2 Ch. 96; 66 L. J. Ch. 529; 76 L. T. 584).

In construing a conveyance from the Landed Estates Court (Ir) purporting to convey "the Right of the Fishery" in certain waters, the Court will look at the rights of the parties at the time of the execution of the grant; and if the Owner, whose estate is being sold by the Court, had no Right of Fishery at the date of the grant nothing will pass by it (*Gore* v. *M'Dermott*, Ir. Rep. 1 C. L. 348).

"The Fishing in the Weirs of Garrynoe"; held, capable of passing a Fishery not, necessarily, confined to the portion of the river abutting upon the lands of Garrynoe (*Powell* v. *Heffernan*, 8 L. R. Ir. 130).

As to implied grant of Fishery; *V. Devonshire* v. *Pattinson*, 57 L. J. Q. B. 189; 20 Q. B. D. 263; 58 L. T. 392; 52 J. P. 276.

Quà Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, "'Fisheries,' shall

Digitized by Google

mean and include, all fisheries whether Several or Public; and the words 'Several Fisheries,' shall mean and include, all fisheries lawfully possessed and enjoyed, as such (under any title whatsoever, being a good and valid title at law) exclusively of the public by any person or persons, whether in navigable waters or in waters not navigable, and whether the soil covered by such waters be vested in such person or persons or in any other person or persons" (s. 1); *Vf,* as to "Several Fishery," 5 & 6 V. c. 106, s. 114.

"The Fisheries (Ir) Acts, 1842 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

Quà Salmon Fisheries (Scot) Act, 1862, 25 & 26 V. c. 97, "'Fisheries' and 'Fishery,' shall mean, Salmon Fisheries, and a Salmon Fishery, in any river or estuary, or in the sea" (s. 2). *V.* SALMON.

By the law of Scotland, Salmon Fishings are *inter regalia* and *primâ facie,* Crown property; and by a Grant of "Fishings," without more, Salmon fishing will not pass, but if such a Grant is followed by 40 years' possession of Salmon fishing it will establish a right of Salmon Fishing, even against the Crown: being *inter regalia* such a right will not pass under the mere word "Pertinents" (*Lord Advocate* v. *Sinclair,* L. R. 1 Sc. & D. App. 174).

"Fishery" as used in s. 20, Salmon Fishery Act, 1861, 24 & 25 V. c. 109, includes a contrivance, *e.g.* a Fishing Mill-Dam, which, with little trouble and expense, can be put into a state to be capable of catching fish (*Hodgson* v. *Little,* 14 C. B. N. S. 111, 121; 16 Ib. 198; 33 L. J. M. C. 229; 11 W. R. 782; 8 L. T. 358).

"Fishery," quà Thames Conservancy Act, 1894, "includes Oyster and Shell fishery" (s. 3).

V. SEA COAST: Paterson on the Fishery Laws: 5 Encyc. 359–365.

FISHGARTH. — Is "a Dam or Weare in a River for taking fish, especially in the Rivers of Ouse and Humber" (Cowel). *V.* GARTH.

FISHING. — *V.* HUNTING: NET.

Quà Part 4, Mer Shipping Act, 1894, "'Fishing BOAT,' means, a VESSEL, of whatever size and in whatever way propelled, which is for the time being employed in SEA FISHING or in the Sea Fishing Service; but (save as otherwise expressly provided) that expression shall not include a Vessel used for catching fish otherwise than for PROFIT" (s. 370): *Vh* 5 Encyc. 365–369. *V.* SEA FISHING.

Quà Sea Fisheries Act, 1883, 46 & 47 V. c. 22, "'Fishing IMPLEMENT,' means, any net, line, float, barrel, buoy, or other instrument, engine, or implement, used or intended to be used, for the purpose of Sea-fishing" (s. 28).

"Fishing *Interests*"; Stat. Def., 51 & 52 V. c. 54, s. 14. — *Scot.* 58 & 59 V. c. 42, s. 28.

A Dam built solely for milling purposes, and without any contrivances for catching fish, is not a "Fishing *Mill Dam,*" within s. 4, 24 & 25 V.

Digitized by Google

c. 109 (*Garnett* v. *Backhouse*, L. R. 3 Q. B. 30; 37 L. J. Q. B. 1; 8 B. & S. 490). Other Stat. Def., 26 & 27 V. c. 114, s. 44.

Fishing VESSEL; *V.* FISHERMAN.

"Fishing WEIR," as interpreted in Salmon Fishery Acts, 1861, 1865; *V. Rolle* v. *Whyte*, 37 L. J. Q. B. 105; L. R. 3 Q. B. 286; 8 B. & S. 116: *Leconfield* v. *Lonsdale*, 39 L. J. C. P. 305; L. R. 5 C. P. 657. For more recent Stat. Def., *V.* 36 & 37 V. c. 71, s. 4.

FIT.—"As may seem fit"; *V.* OPINION.

"A 'Fit' *Person* to execute an Office, is he,—'qui melius et sciat et possit, officium illud intendere.' 'This word *idoneus*,' says Ld Coke, is oftentimes in law attributed to those who have any office or function; and he is said in law to be *idoneus*, apt and fit to execute his office, who has three things, Honesty, Knowledge, and Ability: Honesty to execute it truly, without malice, affection, or partiality; Knowledge to know what he ought duly to do; and Ability, as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it'" (Dwar. 685).

But "Fit" or "Fit and Proper" has also the meaning just stated with the added condition that the person to be appointed is legally eligible, *e.g.* a "fit and proper" person to be appointed Churchwarden, s. 16, 1 & 2 W. 4, c. 38, must be resident in the parish (*R.* v. *Harding*, 6 Times Rep. 53; 34 S. J. 64: *R.* v. *Cree*, 67 L. T. 556; 57 J. P. 72: as to such residency, *V. Stephenson* v. *Langston*, 1 Hagg. Con. 379).

So if legally eligible the "fit person" to be appointed a Workhouse Chaplain, s. 48, 1 & 2 V. c. 56, connotes "his fitness in point of years, activity, zeal, and discretion, as well as physical capability" (per Crampton, J., *R.* v. *Poor Law Commrs*, 3 Ir. Com. Law Rep. 159). *V.* OFFICIATE.

V. ELIGIBLE: IF THEY SHALL THINK FIT: THINK FIT.

FIT FOR.—A house is "fit for *Habitation*," within an agreement for a lease, although (being a new house) there may be slight settlements and though there may be minor matters of defective papering or such like (*Faulkner* v. *Llewellin*, 11 W. R. 1055). *Vh*, KEEP.

Roll Tobacco, or Cut Tobacco "fit for *Sale*"; Stat. Def., 50 & 51 V. c. 15, s. 4.

FIT TO BE.—An Action charging a serious Libel is "fit to be *prosecuted* in the High Court," and ought not to be remitted under s. 66, Co. Co. Act, 1888 (*Farrer* v. *Lowe*, 5 Times Rep. 234).

An Action "fit to be *tried*" in the High Court, means, one *more* fit to be tried there than in an Inferior Court (*Banks* v. *Hollingsworth*, 1893, 1 Q. B. 442; 62 L. J. Q. B. 239; 68 L. T. 477; 41 W. R. 225; 57 J. P. 436); and where fraud and falsehood are alleged, the action is one emi-

Digitized by Google

nently "fit" to be so tried (*Simpson* v. *Shaw*, 56 L. J. Q. B. 92; 56 L. T. 24; 3 Times Rep. 120: *Vh, Cherry* v. *Endean*, 55 L. J. Q. B. 292; 54 L. T. 763; 34 W. R. 458).

FITS. — *Semble*, that Fainting Fits are not "Epileptic, or other Fits," within a Declaration leading to a Life Policy (*Shilling* v. *Accidental Insrce*, 1 F. & F. 116).

V. CAUSED BY.

FITTED. — *V.* FINISH.

FITTING. — "More fitting," ss. 31 and 35, Ry C. C. Act, 1845; *V. Morris* v. *Tottenham Ry*, 1892, 2 Ch. 47; 61 L. J. Ch. 215; 66 L. T. 585; 40 W. R. 310.

FITTINGS. — "Fittings for Gas," s. 14, Gasworks Clauses Act, 1847, includes all the apparatus for the supply or consumption of gas, including gas stoves used for heating (*Gaslight & Coke Co* v. *Hardy*, 56 L. J. Q. B. 168; 17 Q. B. D. 619; 55 L. T. 585; 35 W. R. 50; 51 J. P. 6; 2 Times Rep. 851: *Same* v. *Smith*, 3 Times Rep. 15).

Water Supply "Fittings"; Stat. Def., Metropolis Water Act, 1871, 34 & 35 V. c. 113, s. 3.

"Fixtures and *Fitting up*"; *V.* FIXTURES.

Vesey FITZGERALD'S ACT. — The Consolidated Fund Act, 1816, 56 G. 3, c. 98.

FIVE MILE ACT. — 35 Eliz. c. 2.

FIX. — To "fix" an amount does not, necessarily, mean that one definite sum is to be ascertained once for all, therefore, the Loc Gov Board, in "fixing" the amount which, under s. 32, 4 & 5 W. 4, c. 76, is to be received or paid by a Parish affected by an alteration of a Poor Law Union, may order that the amount may be ascertained from time to time according to the varying sum of the assessment of the property in the Union altered and the Parish taken away respectively (*R.* v. *Willesden*, 82 L. T. 385).

FIXED AND FASTENED. — As applied to a Conveyance of Machines; *V. Metrop Counties Assrce* v. *Brown*, 28 L. J. Ch. 581; 26 Bea. 454. *Vf*, FIXTURES: PERSONAL CHATTELS.

"Affixed"; *V.* WINDOW.

FIXED ENGINE. — Stop Nets are "Fixed Engines" within the Salmon Fishery Acts (*Gore* v. *Commrs for English Fisheries*, 40 L. J. Q. B. 252; L. R. 6 Q. B. 561). By ss. 4 and 11, Salmon Fishery Act, 1861, 24 & 25 V. c. 109, "Fixed Engines" are to include "Stake Nets,

Digitized by Google

Bag Nets, Putts, PUTCHERS, and all Fixed Implements for catching or facilitating the catching of fish," and "a Net that is secured by anchors or otherwise temporarily fixed to the soil"; and by s. 39, Salmon Fishery Act, 1865, 28 & 29 V. c. 121, the phrase includes "any net or other implement for taking Fish, fixed to the soil, *or made stationary* in any other way, not being a fishing weir or fishing mill-dam." In the case cited Stop Nets were used in the following way:—The fisherman first steadied his boat athwart the current of the River Usk by pushing poles, lashed to either end of the boat, into the bed of the river in a slanting direction, and when the boat was steadied the net was put overboard. The net was about 30 feet wide at the mouth, tapering to a point. The net was distended by two light poles, called rames, about 22 feet long, tied together at the upper end with the tapered end of the net. The fisherman kept his hand upon this upper end when fishing, the rames being gradually distended until at their furthest end they stretched out the mouth of the net to its full width of 30 feet, and were kept distended by a stretcher. The net when used for fishing was lowered overboard in a slanting direction with its mouth to the current, until the two rames rested on the side of the boat at about 8 feet from their upper end. The net was kept steady in the water by the fisherman; and when he felt a fish he pulled the upper end of the rames down, using the side of the boat as a fulcrum, and so raised the mouth of the net out of the water and caught the fish; Held, that this was a "Fixed Engine" within the Acts cited, because the net was kept *stationary* by the rames being rested on the boat and the fisherman keeping his hand upon them. *Vf*, *Olding* v. *Wild*, 30 J. P. 295: *Holford* v. *George*, 37 L. J. Q. B. 185: 18 L. T. 817; and upon the phrase as defined in 24 & 25 V. c. 109, *Thomas* v. *Jones*, 34 L. J. M. C. 45; 5 B. & S. 916.

"'Fixed Engine,' shall include, in addition to the nets, fixed implements, engines, and devices, respectively mentioned in 'The Salmon Fishery Acts, 1861 and 1865,' any net placed or suspended in any inland or tidal waters unattended by the owner, or any person duly authorised by the owner to use the same, for catching Salmon, and all engines, devices, machines, or contrivances (whether floating or otherwise) for placing or suspending such nets or maintaining them in working order or making them stationary" (s. 4, Salmon Fishery Act, 1873, 36 & 37 V. c. 71).

Quà Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, "'Fixed Engine' shall extend to and include, weirs, stake bag stop and still nets, and all other engines or devices used for the like purposes, of whatsoever construction or materials the same may be or however known or styled, and whether fixed to the soil or held by hand or made stationary in any other way" (s. 1).

V. DAM: NET: SALMON: STATIONARY: STROKEHALL.

Digitized by Google

FIXED FURNITURE. — Looking-glasses, standing on chimney-pieces and nailed to the wall, and a Book-case standing on (but not fastened to) brackets and screwed to the wall, held within this phrase (*Birch* v. *Dawson*, 4 L. J. K. B. 49; 2 A. & E. 37; 4 N. & M. 22); but a Book-case merely placed in, but not fastened to, the wall, was held by Littledale, J., not "fixed furniture" (*S. C.* 6 C. & P. 658).

V. FIXTURES: FURNITURE.

FIXED MOTIVE POWERS. — "Fixed Motive Powers," "Fixed Power Machinery," s. 5, Bills of Sale Act, 1878; *V. Topham* v. *Greenside Co*, 57 L. J. Ch. 583; 37 Ch. D. 281; 58 L. T. 274; 36 W. R. 464.

FIXED NET. — Stat Def., Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, s. 1.

V. FIXED ENGINE: NET.

FIXED PERIOD. — The Apportionment Act, 1834, 4 W. 4, c. 22, s. 2, provides for the apportionment of all Rents, Dividends, and other Payments, "made payable, or coming due, at Fixed Periods"; a Co's Dividends, out of profits to be divided half-yearly, were held payable at "Fixed Periods" (*Hartley* v. *Allen*, 27 L. J. Ch. 621; 31 L. T. O. S. 69; 6 W. R. 407). Wood, V. C., doubted (but followed) that decision, but held that Ry Dividends, where there was no obligation to pay them at any stated period, were not payable at "Fixed Periods" (*Re Maxwell*, 32 L. J. Ch. 333; 1 H. & M. 610; 11 W. R. 480). So, Royalties on ore when obtained, are not so payable (*St. Aubyn* v. *St. Aubyn*, 30 L. J. Ch. 917: 1 Dr. & Sm. 611). *Vf*, *Harris* v. *Harris*, 11 W. R. 451.

V. now, as to Apportionment of Income, Apportionment Act, 1870, sub PERIODICAL: *Vf*, DIVIDEND.

FIXED PLANT. — *V. Re Nutley and Finn*, cited PLANT.

FIXTURES. — "The word 'Fixtures' has no precise legal meaning; it is not to be found in Termes de la Ley" (per Campbell, C. J., *Wiltshear* v. *Cottrell*, 22 L. J. Q. B. 179). It is "used by different writers to express different meanings; but it is always applied to articles of personal nature which have been affixed to land. In its most extensive sense it means anything annexed to the *freehold* in such a manner as to become parcel of it" (Woodf. 661: *Vf*, *Minshall* v. *Lloyd*, 6 L. J. Ex. 115; 2 M. & W. 450: *Mackintosh* v. *Trotter*, 7 L. J. Ex. 65; 3 M. & W. 184: *Monti* v. *Barnes*, 17 Times Rep. 88), and it will pass with it (*Colegrave* v. *Dias Santos*, 2 B. & C. 76). But "the word 'Fixtures,' though properly applicable to something annexed to the freehold, is sometimes used in a larger sense, — *Sheen* v. *Rickie* (5 M. & W. 182; 8 L. J. Ex. 217), where it is said by Parke, B., it does not necessarily

Digitized by Google

follow that the word 'Fixtures' must import things affixed to the freehold, nor has the word necessarily acquired that legal sense. It is a very modern word, and is generally understood to comprehend any article which a tenant has a power of removing" (per Coleridge, J., delivering jdgmt of the Court in *Wiltshear* v. *Cottrell*, 22 L. J. Q. B. 177; 1 E. & B. 674. *Vf, Horsfall* v. *Key*, 17 L. J. Ex. 266; 2 Ex. 778: *Ex p. Barclay*, 5 D. G. M. & G. 403; 1 Jur. N. S. 1145; 26 L. T. O. S. 97; 4 W. R. 80: *Gibson* v. *Hammersmith Ry*, 32 L. J. Ch. 337; 11 W. R. 299; 8 L. T. 43).

Therefore, the expression "*Landlord's* Fixtures" "is a most inaccurate one," for, if irremovable by the tenant, everything that sets up a house is as much a part of it as are walls or roofing or flooring (per Martin, B., *Elliott* v. *Bishop*, 24 L. J. Ex. 33; 10 Ex. 522). But the general acceptation of "*Landlord's* Fixtures" is, those things which, whether for use or ornament, the landlord himself incorporates into the premises, or which (being annexed by the tenant) are of such a kind that he cannot disannex them; "*Tenant's* Fixtures" are, those things which (being annexed by the tenant) are intended for his personal convenience or delight,—*e.g.* a highly ornate chimney-piece,—and are disannexable by him; "*Trade* Fixtures" are, those which are annexed by the tenant for the more profitable or convenient carrying on his trade in the premises (*Elliott* v. *Bishop*, sup: *Bishop* v. *Elliott*, 24 L. J. Ex. 229; 11 Ex. 113: *Ex p. Daglish*, 21 W. R. 893; 29 L. T. 168).

Such chattels as are annexed for the better enjoyment of the article itself,—*e.g.* machines screwed to the floor,—can hardly be called Fixtures at all (*Hellawell* v. *Eastwood*, 20 L. J. Ex. 154; 6 Ex. 295: *Vthe, Turner* v. *Cameron*, 39 L. J. Q. B. 125; L. R. 5 Q. B. 306; 22 L. T. 525). *Cp, Re Richards*, 38 L. J. Bank. 9; 4 Ch. 630.

Vf, Chamberlayne v. *Collins*, cited CHATTELS, at end.

Statues and Vases resting on their own weight in an ornamental garden may, frequently, be regarded as Fixtures as between the Exors of a Tenant for Life and a Remainder-man (*Re Lyne-Stephens*, 11 Times Rep. 564). Tapestry to the walls of a room in a Mansion-house may also as Fixtures be part of the house (*D'Eyncourt* v. *Gregory*, 36 L. J. Ch. 107; L. R. 3 Eq. 382: *Norton* v. *Dashwood*, 1896, 2 Ch. 497; 65 L. J. Ch. 737; 44 W. R. 680; 75 L. T. 205: *Cave* v. *Cave*, 2 Vern. 508); *Secus*, of a collection of stuffed birds in fixed cases (*Hill* v. *Bullock*, 1897, 2 Ch. 482; 66 L. J. Ch. 705; 77 L. T. 240; 46 W. R. 84). *Cp, Petre* v. *Ferrers*, cited HOUSEHOLD.

As to what will pass under an Assignment of "Fixtures"; *V. Southport Banking Co* v. *Thompson*, 57 L. J. Ch. 114; 37 Ch. D. 64; 58 L. T. 143; 36 W. R. 113: *Ex p. Fletcher*, 8 Ch. D. 218: *Ex p. Brown*, 9 Ch. D. 389.

"Fixtures *and Fitting up*," will not pass Household Furniture (*Simmonds* v. *Simmonds*, 6 Hare, 352; 12 Jur. 8). *Cp*, PERSONAL CHATTELS.

Digitized by Google

Fixtures "separately assigned or charged," by Bill of Sale: *V.* SEPARATELY.

V. FIXED FURNITURE: OTHER: PLANT.

Vf, as to Fixtures, Amos & Ferard on Fixtures: Brown on Fixtures: Woodf. 661–689: Redman, ch. 9, s. 1: Fawcett, 479 *et seq*: Wms. Exs. 640: Dart, 607, 608: Add. C. 627–633: notes to *Elwes* v. *Mawe,* 2 Sm. L. C. 182: 5 Encyc. 370–388.

FLACO.—Is "a place covered with standing water: 1 Mon. Angl. 209" (Jacob).

FLAG.—*V.* BANNER.

To "flag" a Street, means, to flag it with stones; and that is its meaning in s. 152, P. H. Act, 1875 (per Jessel, M. R., *A-G.* v. *Bidder,* 47 J. P. 263).

Quà Metrop Man. Acts, "'Flag' or 'Flagging,' shall include asphalte or other similar paving material" (s. 4, 53 & 54 V. c. 54). *Cp,* PAVEMENT: PAVE.

FLAGRANTE DELICTO.—*V.* BLOODY HAND: MANNER.

FLANGE WHEEL.—As used in s. 54, Tramways Act, 1870; *V.* *Cottam* v. *Guest,* 6 Q. B. D. 70; 50 L. J. Q. B. 174; 29 W. R. 305.

FLAT.—Residential flat; *V. Kimber* v. *Admans* and *Rogers* v. *Hosegood,* cited HOUSE: *Moir* v. *Williams,* cited BUILDING: *Hudson* v. *Cripps,* 1896, 1 Ch. 265; 65 L. J. Ch. 328.

FLAX.—"Flax Scutch Mills"; *V.* NON-TEXTILE FACTORIES.

FLEETING.—The Private Wrong that gives a right of action for a Public Nuisance, "must be of a substantial character, not fleeting or evanescent" (per Brett, J., *Benjamin* v. *Storr,* L. R. 9 C. P. 407). "What is the meaning of those words 'fleeting or evanescent'? It is, perhaps, not easy to answer that, but it appears to me that nothing can be deemed to be 'fleeting or evanescent' which results in substantial damage; and that, therefore, the question is not one to be measured by time but by its effects upon the plt" (per Fry, J., *Fritz* v. *Hobson,* 49 L. J. Ch. 326; 14 Ch. D. 556).

FLETH.—"Land is anciently called *Fleth*" (Co. Litt. 4 a).

FLOATING FISH.—*V.* SEA FISH.

FLOATING SECURITY.—As to the effect of this phrase in a Debenture; *V. Re Horne and Hellard,* 54 L. J. Ch. 919; 29 Ch. D. 736: *Brunton* v. *Electrical Co,* 1892, 1 Ch. 434; 61 L. J. Ch. 256; 65 L. T. 745; *Driver* v. *Broad,* 1893, 1 Q. B. 744; 63 L. J. Q. B. 12; 69 L. T. 169: *Re Opera,* 1891, 3 Ch. 260; 60 L. J. Ch. 839; 39 W. R. 705. It,

Digitized by Google

at least, gives the holders "an Equitable Charge on all the Assets of the Co. That involves this, — that if their money is due (or in danger, *Edwards* v. *Standard Syndicate*, 62 L. J. Ch. 605) that Equitable Charge gives them a right in Equity to the appointment of a Receiver" (per Lindley, L. J., *Taunton* v. *Sheriff of Warwickshire*, 1895, 2 Ch. 319; 64 L. J. Ch. 500; 72 L. T. 712; 43 W. R. 579); but until that be done, or a Winding-up begins, the Co can carry on its business, and the ordinary rights and obligations of its debtors are not affected (*Re Standard Co*, 1891, 1 Ch. 627; 60 L. J. Ch. 292; 39 W. R. 369: *Robson* v. *Smith*, 1895, 2 Ch. 118; 64 L. J. Ch. 457; 72 L. T. 559; 43 W. R. 632: *Biggerstaff* v. *Rowatt's Wharf*, 1896, 2 Ch. 93; 65 L. J. Ch. 536; 74 L. T. 473; 44 W. R. 536), and the Co may, if not expressly forbidden, give a valid specific mortgage or charge (*Governments Stock Co* v. *Manilla Ry*, 1897, A. C. 81; 66 L. J. Ch. 102; 75 L. T. 553; 45 W. R. 353). But, on the other hand, the charge created by a Floating Security, though for the time being only Equitable, is valid as against an Execution Creditor (*Davey* v. *Williamson*, cited ORDINARY COURSE).

Va, as to the effect of a Floating Charge on the property of a Co, Buckley, 186: Palm. Co. Prec. Part 3, p. 63: Lindley Comp. 197: Hamilton, 279. *Vf*, UNDERTAKING.

Note. By Scotch law a Floating Security is inefficacious quà Scotch Assets.

As to Preferential payments over Floating Security, *V*. 60 & 61 V. c. 19; which Act is not retrospective (*Re Waverley Type Writer Co*, 67 L. J. Ch. 360; 1898, 1 Ch. 699: *Weeks* v. *Kent*, W. N. (98) 40).

FLOOD. — Damages from "any Bursting, or Flood, or Escape of Water from any Reservoir," &c, include damages occasioned by flood waters from a reservoir, no matter how such flood is caused even if it be by an extraordinary rise of the waters of a stream flowing into the reservoir (*Rothes* v. *Kirkcaldy W. W.*, 7 App. Ca. 694).

Cp, *Ruck* v. *Williams*, 27 L. J. Ex. 357; 3 H. & N. 308: *Stretton Co* v. *Derby*, 1894, 1 Ch. 431; 63 L. J. Ch. 135: *Buckley* v. *Buckley*, 1898, 2 Q. B. 608; 67 L. J. Q. B. 953.

FLOOR. — *V*. STOREY.

FLOTATION. — The condition of "Flotation," in a South African agreement between a Mining Prospector and his Employers, is fulfilled when Claims pegged off under licenses to, and registered in the name of, the employers or their nominees are sold to a Mining Co in consideration of fully paid-up shares of the Co, and the undertaking by the purchasers of the contracts and obligations of the vendors. It is not necessary that the purchasing Co should have offered its shares to the PUBLIC, or be actually working at a profit, or that the word should be confined to the particular kind of "Flotation" referred to in the Mining Regulations in force in the territories of the British S. Africa Co (*Torva Syndicate*

Digitized by Google

v. *Kelly*, 1900, A. C. 612; 69 L. J. P. C. 115; 83 L. T. 34; 16 Times Rep. 495).

Vf, Gifford v. *Willoughby's Expedition Co*, 15 Times Rep. 71; 16 Ib. 24.

FLOTSAM. — "*Flotsam*, is when a Ship is sunk, or otherwise perished, and the Goods *float* on the Sea:

"*Jetsam*, is when the Ship is in danger of being sunk, and, to lighten the Ship, the Goods are *cast* into the Sea and afterwards the ship perish:

"*Lagan* (or Ligan), is when the Goods which are so *cast* into the Sea and afterwards the Ship perishes and such Goods cast are so heavy that they sink to the bottom, and the mariners, to the intent to have them again, tie to them a buoy or cork, or such other thing that will not sink, so that they may find them again.

"None of these Goods which are called Flotsam, Jetsam, or Ligan are called Wreck so long as they remain in or upon the SEA; but if any of them (by the Sea) be put upon the land, then they shall be said WRECK," and will then, but not till then, pass by the grant of "Wreck" (*Constable's Case*, 5 Rep. 106): *Vf*, Termes de la Ley, *Floatsam, Jetsam, Lagan*: 1 Bl. Com. 292: (as to Flotsam) *Palmer* v. *Rouse*, 3 H. & N. 508.

Note. All three are included in the interp of "Wreck" quà Mer Shipping Acts.

V. JETTISON: WAVESON.

FLOUR. — *V.* CORN.

FLOW. — Causing "to fall or flow"; *V.* FALL.

Flow of the Sea; *V.* EBB AND FLOW: SHORE: INFRA.

FODDER. — From the moment produce is destined for food for cattle, it is "Fodder for Cattle" within a Turnpike exemption, *e.g.* rye-grass or vetches cut and brought home at once, or turnips on their way to be boiled, or threshed barley on its way to be ground into meal; but not corn in the straw (*Clements* v. *Smith*, 30 L. J. M. C. 16; 3 E. & E. 238).

Quà Diseases of Animals Act, 1894, 57 & 58 V. c. 57, "'Fodder,' means, hay or other substances commonly used for food of animals" (s. 59).

FOLDAGE. — Is "an allowance for the benefit to land by the dung of sheep folded thereon" (per Bruce, J., *Re Constable and Cranswick*, 80 L. T. 166). *Cp,* FALDAGE.

FOLDCOURSE. — "By the grant of a fouldcourse, lands and tenements may passe" (Co. Litt. 6 a: *Va*, Touch. 93).

"Here *fold-course* seems to be understood for land used as a *sheep-walk*; but the word has various other senses. Sometimes it signifies land

to which is appurtenant the sole right of folding the cattle of others. Sometimes it means merely *such* right of folding. It is also used to denote the right of folding on another's land, which is called *common* of faldage. See in W. Jo. 375, and Cro. Car. 432, a case in which *common* of *faldage* was claimed; and 2 Ventr. 139, one in which the right of folding the cattle of others is prescribed for " (Hargrave's *n* to above quotation from Co. Litt. 6 a).

"Foldcourse" has been recently defined as, "The right of a man to pasture his sheep on the commonable grounds of a manor or superior lordship, without being obliged to fold them in the lord's field" (Elph. 579, *whv*). *Vh*, *Robinson* v. *Dhuleep Singh*, 11 Ch. D. 798; 48 L. J. Ch. 758.

Cp, FALDAGE: FRANKFOLDAGE.

FOLK-LAND.—*V.* CHARTER-LAND: 5 Encyc. 399.

FOLKMOOT.—"'Folkmoot,' signifies (according to Lambard in his Exposition of Saxon Words) two kinds of Courts; one now called the COUNTY COURT, the other the Sheriff's Tourn. And in London it signifies at this day *celebrem ex omni Civitate Conventum*: Stow's Survey" (Termes de la Ley).

FOLLOW.—Covenant "not to follow or be EMPLOYED in" a business (if properly limited as to ambit), restrains the covenantor from engaging in that business, either on his own account or as an employee for another (*Ward* v. *Byrne*, 9 L. J. Ex. 14; 5 M. & W. 548).

V. RESTRAINT OF TRADE: *Cp*, CARRY ON: OCCUPATION.

In a Marine Insurance, "The meaning of 'To follow Policy for £4,000. No. $\frac{3}{4246}$' is, that there being consecutive policies, any loss declared is to be borne first by the earlier policies, and that it is not till after the Policy No. $\frac{3}{4246}$ is exhausted, either by losses or declared adventures which have come in safe, that the underwriters on the policy which follows are to bear the balance of the loss, if any" (per Ld Blackburn, *Inglis* v. *Stock*, 54 L. J. Q. B. 586; 10 App. Ca. 269).

"Costs to follow the event"; *V.* EVENT.

As to the correct way of stating the offence of "following," s. 7, 38 & 39 V. c. 86; *V. R.* v. *McKenzie*, 1892, 2 Q. B. 519; 61 L. J. M. C. 181; 67 L. T. 201; 41 W. R. 144; 56 J. P. 712: *Exp. Wilkins*, 64 L. J. M. C. 221; 72 L. T. 567; 59 J. P. 294.

V. AS FOLLOWS.

FOOD.—Quà Sale of Food and Drugs Act, 1875, "'Food,' shall include every ARTICLE used for food or drink by man, other than drugs or water" (s. 2). Baking Powder is not "Food" within that def (*Warren* v. *Phillips*, 44 J. P. 61: *James* v. *Jones*, 1894, 1 Q. B. 304; 63 L. J. M. C. 41; 70 L. T. 351; 58 J. P. 230), nor is Chewing Gum (*Shortt* v.

Digitized by Google

Smith, 11 Times Rep. 325: *Bennett* v. *Tyler*, 81 L. T. 787; 64 J. P. 119); but, *semble*, Mustard is (*Sandys* v. *Markham*, 41 J. P. 52).

Walnuts are "Food," within s. 47, 54 & 55 V. c. 76 (*R.* v. *Dennis*, 1894, 2 Q. B. 458; 71 L. T. 436; 63 L. J. M. C. 153; 42 W. R. 586; 58 J. P. 622).

Quà Sale of Food and Drugs Act, 1875, the above def is repealed and amplified, and the def now is, "'Food' shall include every Article used for food or drink by man, other than drugs or water, *and* any Article which ordinarily enters into, or is used in the composition or preparation of, human food; and shall also include flavouring matters and condiments" (s. 26, 62 & 63 V. c. 51). Baking Powder and Mustard would, therefore, now be "Food," within the Act.

Note. Fraud is no element of the offence under s. 6, S. F. & D. Act, 1875 (*R.* v. *Field*, 64 L. J. M. C. 158); and Justices may act on their own knowledge (*Shortt* v. *Robinson*, 68 L. J. Q. B. 352; 80 L. T. 261; 63 J. P. 295).

V. Drug: Written Warranty: Prejudice of Purchaser.

FOOL.—"'Thou are a Foole and Ass,' be but words of scorn," and are not actionable Slander (*Cawdry* v. *Highley*, Cro. Car. 270). *Vf*, Beetle-headed.

FOOT.—As to the requirement in the Wills Act, 1837, that a Will is to be signed "at the Foot or End thereof"; *V.* 15 V. c. 24, s. 1; and *Vth*, *Sweetland* v. *Sweetland*, 34 L. J. P. M. & A. 42; 4 Sw. & Tr. 6: *Margary* v. *Robinson*, 56 L. J. P. D. & A. 42; 12 P. D. 8; 57 L. T. 281; 35 W. R. 350; 51 J. P. 407: *Re Anstee*, 1893, P. 283; 63 L. J. P. D. & A. 61; 42 W. R. 16 (on which three cases, *V.* 38 S. J. 123): *Royle* v. *Harris*, 1895, P. 163; 72 L. T. 474; 43 W. R. 352; 64 L. J. P. D. & A. 65: *Re Fuller*, 1892, P. 377; 62 L. J. P. D. & A. 40: *Hunt* v. *Hunt*, L. R. 1 P. & M. 209; 35 L. J. P. & M. 135. *V.* Signed.

One third part of the Imperial Standard Yard," is a Linear Foot (s. 11, 41 & 42 V. c. 49).

FOOT-PATH.—"Footpath or Causeway by the side of any road made or set apart for the use or accommodation of foot passengers," s. 72, Highway Act, 1835; this only applies to a Footpath that is "by the side" of the road, and not to a mere footpath (*R.* v. *Pratt*, 37 L. J. M. C. 23; L. R. 3 Q. B. 64; 32 J. P. 246).

That case seems to show that "Foot-way" and "Causeway" are used in the Act as convertible terms; but in the interp clause (s. 5) both words are used. So, in s. 112, 3 G. 4, c. 126, "Causeway" seems used as a convertible term for "Foot-path."

A power in a Water Works Co's Act enabling the Co to "dig, and break up the Soil and Pavement of any of the Roads, Highways, *Footways*, Commons, Streets, Lanes, Alleys, Passages, and Public Places," in a

Digitized by Google

defined area, does not under the word "Footways" include a public footway over a private ground, *e.g.* over a field, — "Footway," in such a connection, means, a paved way running by adjacent buildings (*Scales* v. *Pickering*, 4 Bing. 448; 6 L. J. O. S. C. P. 53).

V. TURNPIKE ROAD, at end: CALCEY: ROAD: BRIDLE-PATH: DRIFTWAY.

FOOT-RACE. — "One person running alone *against time*, may be properly called a Foot-Race, as well as one horse starting alone to be an HORSE-RACE which has often been the case" (per Bathurst, J., *Lynall* v. *Longbothom*, 2 Wils. 38). *V.* GAMING.

FOOT TRAFFIC. — *V.* TRAFFIC.

FOOT-WAY. — *V.* FOOT-PATH.

FOOTING. — *V.* ON THE FOOTING.

FOR. — "For," used with the active participle of a verb — *e.g.* a power "for making" Rules, — means, "for the purpose of" (*V.* jdgmt of Westbury, C., *A-G.* v. *Sillem*, 33 L. J. Ex. 213). So, an unlicensed person does not fish "for" Salmon (Trout or Char, 41 & 42 V. c. 39, s. 7) within s. 35, Salmon Fishery Act, 1865, unless he fishes for the purpose of catching salmon, &c (*Marshall* v. *Richardson*, 58 L. J. M. C. 45); but the intent is immaterial quà the offence (s. 36) of using (without license) an instrument other than rod and line "for catching" salmon, &c (*Lyne* v. *Leonard*, 37 L. J. M. C. 55; L. R. 3 Q. B. 156). *Vf*, TAKE. *Cp*, IN AND FOR.

Crossed Cheque received for payment "for" a Bank Customer; *V.* *Clarke* v. *London & County Bank*, cited PAYMENT.

For contrast between "for" and "subject to"; *V.* SUBJECT TO.

Sometimes "For" creates a CONDITION Precedent. "When one promises, agrees, or covenants, to do one thing *for* another, there is no reason he should be obliged to do it till that thing, *for* which he promised to do it, be done; and the word 'for' is a Condition Precedent in such cases. But upon this head some diversities are to be observed. *First*, if there be a day set for the payment of money, or doing the thing which one promises, agrees, or covenants, to do, *for* another thing, and that day happens to incur before the time the thing for which the promise, agreement, or covenant, is made, is to be performed by the tenor of the agreement; there, though the words be 'that the party shall pay the money,' or, 'do the thing *for* such a thing,' or, 'in consideration of such a thing,' after the day is past the other shall have an action for the money or other thing, although the thing, *for* which the promise, agreement, or covenant, was made, be not performed; for it would be repugnant there to make it a Condition Precedent; and, therefore, they are in that case left to mutual remedies, on which, by the express words of the agree-

Digitized by Google

ment, they have depended. *V.* 48 Edw. 3. 2, 3, cited in *Ughtred's Case*, 7 Rep. 10 b, where the diversity is taken when there are mutual remedies and not: it is thus put in that book: *Sir R. Pool* covenants with *Sir R. Tolcelser* to serve with him three Esquires in the wars of France. Sir R. Tolcelser covenants, *in consideration* of those services, to pay him so much money; and there it is said, action will lie for the money without any services performed. But if you look into the book at large, you will find it was upon the diversity which I have taken; for the Case in 48 Edw. 3. 2, 3 is, *R. Pool* covenants with *R. Tolcelser* to serve him with three Esquires in the wars of France, and *R. Tolcelser* covenanted with him to pay him so much for the service; and it was further agreed, that twenty marks of the money should be paid in England, at a day certain, before they went for France, and the rest by quarterly payments, which might likewise incur before the service; and upon action brought by *Sir R. Pool*, it was objected that the service was not performed; but there was no room for that objection upon the diversity which I have taken, the money, by the agreement, being made payable at a day certain, before the service was to have been performed" (per Holt, C. J., *Thorp* v. *Thorp*, 12 Mod. 460, 461; 1 Raym. Ld, 662).

"According to *Cowper* v. *Andrews* (Hob. 41), cited in *Chase* v. *Westmore* (5 M. & S. 187) the word 'for' works by Condition Precedent in all Personal Contracts; as, if I sell you my horse 'for' £10, you shall not take my horse except you pay the £10" (per Parke, B., *Scarfe* v. *Morgan*, 4 M. & W. 284).

A legacy to a Trustee or Exor "for" his trouble, will, probably, not be payable if he refuses, or neglects to act in, the trust; but if there be no such refusal or neglect, the legacy is payable though the trustee or exor die without having acted (*Brydges* v. *Wotton*, 1 V. & B. 134).

Cp, On the account.

An obligation signed "for," or "*for and on behalf of*," or "on behalf of," or "on account of," another, makes that other, if any one, liable; not the signatory (*Aggs* v. *Nicholson*, 25 L. J. Ex. 348; 1 H. & N. 165: *Ogden* v. *Hall*, 40 L. T. 751; *Gadd* v. *Houghton*, 1 Ex. D. 357; 46 L. J. Ex. 71; 35 L. T. 222: *Cp*, *Lewis* v. *Nicholson*, cited On behalf): but evidence is admissible to show that, by the custom of a market, a contract signed "*for and on account of* the owner," binds the signatory personally (*Pike* v. *Ongley*, 18 Q. B. D. 708; 56 L. J. Q. B. 373; 35 W. R. 534; 3 Times Rep. 549); and an unauthorised Acceptance "for and on behalf of" another binds the acceptor personally (*West Lond. Commercial Bank* v. *Kitson*, 13 Q. B. D. 360; 53 L. J. Q. B. 345).

Semble, an Acceptance by a Partner "for A. B. & Co (his firm) *and self*," does not entitle the Drawer to payment out of the separate estate of the partner which is being administered by the Court (*Malcomson* v. *Malcomson*, 1 L. R. Ir. 228).

Digitized by Google

As to signatures in a representative capacity of Bills of Exchange and Promissory Notes, *Vf*, s. 26, Bills of Ex. Act, 1882: PER PROCURATION.

A Receipt or Pleading that a Bill of Ex or Promissory Note is or was given "for and on account of" an antecedent debt, only amounts to an allegation of a conditional payment, *i.e.* a payment if the Bill or Note is duly met; it does not amount to a SATISFACTION or an averment of it (*Belshaw* v. *Bush*, 22 L. J. C. P. 24; 11 C. B. 191); so, if the phrase is "for and on account of, and *in payment and discharge of*" (*M'Dowall* v. *Boyd*, 17 L. J. Q. B. 295: *Vf*, *Maillard* v. *Argyll*, 6 Sc. N. R. 938; 6 M. & G. 40: *Emblin* v. *Dartnell*, 13 L. J. Ex. 255; 12 M. & W. 830: *Kemp* v. *Watt*, 15 M. & W. 672).

Sitting for a gratis Photograph, does not show that the negative was taken "for or on behalf" of the sitter, within s. 1, 25 & 26 V. c. 68 (*Ellis* v. *Marshall* and *Melville* v. *Mirror of Life Co*, cited GOOD). *Vf*, on this phrase, *Petty* v. *Taylor*, cited PROPRIETOR: *Cp*, AUTHOR.

Action "for" Accounts; *V.* MERCHANTS' ACCOUNTS.

FOR DEBT.—*V.* ATTACHMENT FOR DEBT.

FOR DEFAULT OF ISSUE.—*V.* DEFAULT.

FOR EVER.—These words are useless or surplusage in a limitation *by Deed* of a Fee Simple, as in the not uncommon expression "his heirs and assigns *for ever*" (Litt. s. 1). In a *Devise* they would have passed the fee simple even before the Wills Act, 1837 (2 Jarm. 328: Watson Eq. 1370). They are not inconsistent with an Estate Tail (1 Jarm. 485, *n*; Ib. 328, 391), and would sometimes create such an estate (*Wright* v. *Vernon*, 2 Drew. 463: *Good* v. *Good*, 7 E. & B. 295; 28 L. T. O. S. 266): added to words creating an entail, the phrase "for ever" is insufficient to enlarge the gift to a fee simple (*Vernon* v. *Wright*, 28 L. J. Ch. 198; 7 H. L. Ca. 35).

As to the value of "for ever" in a covenant for Renewal of a Lease, so as to give the right of perpetual renewal; *V. Swinburne* v. *Milburn*, 54 L. J. Q. B. 6; 9 App. Ca. 844, and espy jdgmt of Ld Fitzgerald. *Vf*, RENEWAL.

FOR SALE.—Bread is carried out "for sale," within s. 7, 6 & 7 W. 4, c. 37, if anything (including its being actually weighed in the presence of the *buyer*) remains to be done in reference to its sale (*Robinson* v. *Cliff*, 45 L. J. M. C. 109; 1 Ex. D. 294: *Ridgway* v. *Ward*, 54 L. J. M. C. 20; 14 Q. B. D. 110); *Secus*, if the bread has been bought in the seller's shop, weighed in the presence of the buyer, and merely sent by the seller to the house of the buyer for the latter's convenience (*Daniel* v. *Whitfield*, cited CARRY OUT).

The Import Duties payable to the Corporation of London, under the Metage Act, 1872, on "all GRAIN brought into the Port of London *for*

Digitized by Google

sale," apply only to grain to be sold *as grain*, and not to grain to be manufactured into another article and then sold (*Cotton* v. *Vogan*, 1896, A. C. 457; 65 L. J. Q. B. 486; 74 L. T. 598; 12 Times Rep. 14).

"Supply gas for sale"; *V.* SUPPLY.

FOR THE PURPOSE.—*V.* PURPOSE.

FOR THE TIME BEING.—*V.* TIME BEING.

FOR USE.—*V.* USE.

FOR WANT OF.—"In default," or "For want of" signifies "all that is comprehended in the word 'Remainder,' being merely an expression employed in carrying on the series of limitations" (1 Jarm. 800). *Cp*, FROM AND AFTER.

FORBEAR.—To "forbear" to press for immediate payment, means to give reasonable time; which, though indefinite, is a sufficient consideration for a GUARANTEE (*Oldershaw* v. *King*, 27 L. J. Ex. 120; 2 H. & N. 517; *Vth*, per Bowen, L. J., *Miles* v. *New Zealand Alford Estate Co*, 32 Ch. D. 289: *Coles* v. *Pack*, L. R. 5 C. P. 65; 39 L. J. C. P. 63: *Crears* v. *Hunter*, 56 L. J. Q. B. 518; 19 Q. B. D. 341; 57 L. T. 554; 35 W. R. 821: *V.* contra *Semple* or *Temple* v. *Pink*, 1 Ex. 74; 16 L. J. Ex. 237). *Vf*, SUSPEND, at end.

FORBES MACKENZIE'S ACT.—The Licensing (Scot) Act, 1853, 16 & 17 V. c. 67; amended by MUIR'S ACT.

FORCE.—"'*With force and armes,*' *vi et armis*. Force, *vis*, in the common law is most commonly taken in ill part, and taken for unlawful violence, for *maximè paci sunt contraria vis et injuria*. And therefore *Britton* (116 a) said well, speaking in the person of the King, *nous volons, que touts gents pluis usent judgement que force*.

"*Arma*, Armes, in the common law signifieth anything that a man striketh or hurteth withall" (Co. Litt. 161 b). *Vf*, Cowel, *Vis*: Jacob: 5 Encyc. 403, 404.

"One or more may commit a force" (Co. Litt. 257 a).

An averment in a Statement of Claim that a trespass was committed *vi et armis*, would, it seems, not amount to an allegation of a breach of the peace (*Harvey* v. *Brydges*, 14 L. J. Ex. 272; 14 M. & W. 437: *Wright* v. *Burroughes*, 16 L. J. C. P. 6; 4 Dowl. & L. 438; 3 C. B. 685). *Vf*, *Perry* v. *Fitzhowe*, 8 Q. B. 757; 15 L. J. Q. B. 239.

V. BY FORCE: IN FORCE: PUT IN FORCE: DURESS: POLICE.

Note. "With Force and Arms," not now necessary in an Indictment (s. 24, 14 & 15 V. c. 100), nor in a Statement of Claim in Trespass (s. 49, 15 & 16 V. c. 76).

FORCES.—*V.* AUXILIARY: MILITARY FORCES: POLICE: RESERVE FORCES: VOLUNTEER.

Digitized by Google

FORCIBLE DETAINER.—"Everyone commits the misdemeanor called a Forcible Detainer who, having wrongfully entered upon any lands or tenements, detains such lands and tenements in a manner which would render an entry upon them for the purpose of taking possession forcible" (Steph. Cr. 55). *Vf,* Arch. Cr. 1052–1058: Rosc. Cr. 461–465: 5 Encyc. 404.

FORCIBLE ENTRY.—"Everyone commits the misdemeanor called a Forcible Entry who, in order to take possession thereof, enters upon any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person, or in threats, or in breaking open any house, or in collecting together an unusual number of persons for the purpose of making such Entry. It is immaterial whether the person making such an entry had or had not a right to enter; provided that a person who enters upon lands or tenements of his own, but which are in the custody of his servant or bailiff, does not commit the offence of Forcible Entry" (Steph. Cr. 54, 55). *Vh, Milner* v. *Maclean,* 2 C. & P. 17: *R.* v. *Smyth,* 5 Ib. 201: *Lows* v. *Telford,* 45 L. J. Ex. 613; 1 App. Ca. 414: *Edwick* v. *Hawkes,* 18 Ch. D. 199; 50 L. J. Ch. 577; 45 L. T. 168; 29 W. R. 913: *Beddall* v. *Maitland,* 17 Ch. D. 174; 50 L. J. Ch. 401; 44 L. T. 248; 29 W. R. 484: *Svthlc, Jones* v. *Foley,* 1891, 1 Q. B. 730; 60 L. J. Q. B. 464; 64 L. T. 538.

Vf, Arch. Cr. 1052–1058: Rosc. Cr. 461–465: Co. Litt. 257 a, b: 5 Encyc. 404–406.

V. Violent.

FORECLOSURE.—"'A Foreclosure,' said Ld Hardwicke, 'is considered as a new purchase of the land.' 'The Mortgage being foreclosed,' said Sir Wm. Grant, 'the estate becomes absolutely his' (*i.e.* the mtgee's). 'By the Order made in the Foreclosure suit,' said Sir L. Shadwell, 'he (the mtgee) became the absolute owner,'—*Casborne* v. *Scarfe,* 1 Atk. 603; 2 White & Tudor, 6: *Silberschildt* v. *Schott,* 2 V. & B. 49: *Le Gros* v. *Cockerell,* 5 Sim. 384" (per Selborne, C., *Heath* v. *Pugh,* 50 L. J. Q. B. 478; 6 Q. B. D. 345; affd 51 L. J. Q. B. 367; 7 App. Ca. 235). *V.* Decree: Conveyance.

Vh, Coote, ch. 78: Fisher, 476 *et seq*: 5 Encyc. 406–412.

FORECOURT.—The provisions as to "Forecourts," s. 13 (1), are not to be read into s. 14, London Bg Act, 1894 (*London Co. Co.* v. *Aylesbury Dairy Co,* 1898, 1 Q. B. 106; 67 L. J. Q. B. 24; 77 L. T. 440; 61 J. P. 759).

FOREGIFT.—*V.* Fine.

FOREIGN.—"'Forrein' is a word adjectively used, and joyned with divers substantives well worthy to be expressed" (Termes de la

Digitized by Google

Ley), connoting matters outside the proper ambit of the things expressed by such substantives, *e.g.* "Forrein Matter," "Forrein Plea," "Forrein Answer," "Forrein Service" (Ib.).

But now we usually call those things "Foreign" which are not of any part of the REALM (*Commrs of Railways* v. *Hyland*, cited COLONIAL); but sometimes, by an interp clause, "Foreign," means, things *e.g.* Animals, which are not of the UNITED KINGDOM but which may be brought there from outside (s. 59, Diseases of Animals Act, 1894, 57 & 58 V. c. 57).

Foreign *Asset*, quà Probate; *V. Re Ewing*, 50 L. J. P. D. & A. 11: *A-G.* v. *Sudeley*, 1896, 1 Q. B. 354; 65 L. J. Q. B. 281; 74 L. T. 91; 44 W. R. 340: Wms. Exs. 1523 *et seq.*

"Foreign *Bill*"; *V.* INLAND. *Va,* PROMISSORY NOTE.

"Foreign *Bonds*," will not, as a rule, include Colonial Bonds (*Hull* v. *Hill*, 4 Ch. D. 97; 25 W. R. 223). *Vf,* "Foreign *Stock*," inf: SECURITIES.

"Foreign *Corporation*"; Is a French charitable Association of ladies for educational purposes, a Foreign CORPORATION, within R. 8, Ord. 9, R. S. C.? *V. Golding* v. *La Sainte Union*, cited OFFICER.

"Foreign *Country*," quà Post Office (Offences) Act, 1837, 1 V. c. 36, means, "any country, state, or kingdom, not included in the Dominions" of the Crown (s. 47); to the like effect is the def quà 53 & 54 V. c. 37 (s. 16); but quà the Army Act, 1881, the def is, "any place which is not situate in the United Kingdom, a Colony, or India (as above defined), and is not on the HIGH SEAS" (subs. 24, s. 190).

"Foreign *Dominion*"; the Isle of Man is not a "Foreign Dominion of the Crown," within s. 1, 25 & 26 V. c. 20 (*Ex p. Brown*, 33 L. J. Q. B. 193; 5 B. & S. 280).

"Foreign *Funds*"; *V.* "Foreign Stock or Funds," inf: FUNDS.

"Foreign-*going Ship*"; Quà Mer Shipping Act, 1894, "'Foreign-going Ship,' includes every SHIP employed in trading, or going, between some place or places in the UNITED KINGDOM and some place or places situate beyond the following limits, *i.e.* the coasts of the United Kingdom, the Channel Islands, and Isle of Man, and the Continent of Europe between the River Elbe and Brest inclusive" (s. 742). *Cp,* HOME-TRADE SHIP.

"Foreign *Government*"; a Government is none the less a Government because it is a subordinate one; and therefore a power to invest in the Stocks or Funds of a "Foreign Government," would authorise an investment in the bonds or securities of any individual State of the United States, or of any of the separate kingdoms or governments of which the German Empire is composed (*Cadett* v. *Earle*, 5 Ch. D. 710; 46 L. J. Ch. 798. *Va, Ellis* v. *Eden*, 23 Bea. 543; 26 L. J. Ch. 533). *Vf,* "Foreign Stock," inf.

"Foreign *Letter*," quà Post Office (Offences) Act, 1837, means, "a

Digitized by Google

letter transmitted to or from a Foreign Country" (s. 47); *Vf*, "Foreign Country," sup.

"Foreign *Lottery*"; 9 G. 1, c. 19, s. 4, is only against the erection, &c of Foreign Lotteries in the United Kingdom; and 6 & 7 W. 4, c. 66, *semble*, only prohibits an "Advertisement or other Notice" of a Foreign Lottery when it solicits subscriptions; and, at any rate, a mere general statement that there will be such a Lottery is not an Advertisement or Notice thereof within the latter enactment (*Macnee* v. *Persian Investment Corp*, 59 L. J. Ch. 695; 44 Ch. D. 306; 62 L. T. 894; 38 W. R. 596). *V.* LOTTERY.

"Foreign *Merchandize*"; *V.* per Collins, J., *Mansion House Assn* v. *Lond. & S. W. Ry*, 64 L. J. Q. B. 535.

Foreign *Merchant*; *V. Grainger* v. *Gough*, cited CARRY ON.

"Foreign *Newspapers*," quà Post Office (Offences) Act, 1837, means, "newspapers printed and published in a Foreign Country, in the language of that country" (s. 47). *V.* NEWSPAPER.

"Foreign *Parcels*," quà Post Office (Parcels) Act, 1882, 45 & 46 V. c. 74, "means, parcels either posted in the United Kingdom and sent to a place out of the United Kingdom, or posted in a place out of the United Kingdom and sent to a place in the United Kingdom, or in transit through the United Kingdom to a place out of the United Kingdom" (s. 17).

"Foreign *Parts*"; Scotland was not a place "under the dominion of His Majesty in Foreign Parts," within s. 1, 1 W. 4, c. 22 (*Wainwright* v. *Bland*, 3 Dowl. 653).

"Foreign *Possessions*," as used in 5th Case Sch D, s. 100, Income Tax Act, 1842; *V. London Bank of Mexico* v. *Apthorpe*, 1891, 2 Q. B. 378; 60 L. J. Q. B. 653; 65 L. T. 601; 39 W. R. 564: *Bartholomay Co.* v. *Wyatt*, cited CARRY ON: per Ld Davy, *San Paulo Ry* v. *Carter*, 1896, A. C. 31; 65 L. J. Q. B. 161; 73 L. T. 538; 44 W. R. 336; 60 J. P. 452.

"Foreign *Postage*," quà Post Office (Offences) Act, 1837, means, "the duty charged for the conveyance of letters within" a "Foreign Country" as above defined quà this Act (s. 47).

Foreign *Principal*; *V. Watson* v. *Sandie*, cited EXERCISE.

"Foreign *Refined Rape Oil*"; *V. Nichol* v. *Godts*, 23 L. J. Ex. 314; 10 Ex. 191.

"Foreign *Security*"; *V.* s. 82 (1 *b*), Stamp Act, 1891.

"Foreign or Colonial *Share Certificate*"; *V.* s. 82 (2), Stamp Act, 1891.

"Foreign *Ship*," quà Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73, "means, any Ship which is not a BRITISH SHIP" (s. 7).

"Foreign *Spirits*," quà Customs, "means, all Spirits and Strong Waters liable to a Duty of Customs" (32 & 33 V. c. 103, s. 3; 43 & 44 V. c. 24, s. 3).

Digitized by Google

"Foreign *State*"; *V.* Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, s. 30; (quà Slave Trade) 36 & 37 V. c. 59, s. 2, c. 88, s. 2. *V.* NAVAL SERVICE: VESSEL.

"Foreign *Statement*"; *V.* GENERAL AVERAGE AS PER FOREIGN STATEMENT.

"Foreign *Stock* or Funds," means such as are not BRITISH FUNDS; therefore, a bequest of all sums in "any Foreign Stocks or Funds" did not include stock in the old East India Company (*Brown* v. *Brown*, 4 K. & J. 704; 6 W. R. 613; 31 L. T. O. S. 297). *Vf,* "Foreign Bonds," sup: FUNDS.

Foreign *Trade*; *V.* COASTING TRADE: EUROPE: TRADING.

"Foreign *Warrant*," s. 10, Extradition Act, 1870, 33 & 34 V. c. 52; *V. R.* v. *Ganz*, 51 L. J. Q. B. 419.

"Foreign *Wine*"; quà Refreshment Houses Act, 1860, all Liquor sold "as being Foreign Wine, or under the name by which any Foreign Wine is usually designated or known," is, as against the seller, "Foreign Wine" (s. 21); to sell "Best Pale Sherry, British" is within that def, for "Sherry" is a well-known foreign wine, and the addition of "British" does not indicate the contrary to the customer (*Richards* v. *Banks*, 58 L. T. 634; 52 J. P. 23). *V.* WINE: BRITISH WINE.

FOREMAN.—"Foreman," of a Grand Jury, includes any member of the Jury for the time being acting on behalf of the Foreman (s. 3, 19 & 20 V. c. 54).

FORERA.—A headland (Spelm.: Cowel).

FORESAID.—*V.* AFORESAID.

FORESHORE.—"The seashore up to the point of HIGH WATER of medium tides, between spring and neap tides, is called the Foreshore; and is ordinarily and *primâ facie* vested in the Crown, subject to the rights of the Queen's subjects for fishing and navigation only, not only in the sea, but in all tidal navigable rivers, and of passing over the foreshore itself; but it may belong to a subject, either by itself, or as part of a manor. *V.* the cases cited in Wms. on Rights of Common, 265 *et seq*: *A-G.* v. *Burridge*, 10 Price, 350: *A-G.* v. *Parmenter*, 10 Price, 378: *A-G.* v. *Tomline*, 14 Ch. D. 58; 46 L. J. Ch. 654. *Va,* Co. Litt. 261 a, *n*: Woolrych on Waters, 2 ed., 23; Coulson & Forbes on Waters, 12: Chitty Prerog. 207" (Elph. 580): *Blundell* v. *Catterall*, 5 B. & Ald. 268: *Llandudno* v. *Woods*, 1899, 2 Ch. 705; 68 L. J. Ch. 623; 81 L. T. 170; 48 W. R. 43; 63 J. P. 775. As to *A-G.* v. *Tomline*, *V.* per Esher, M. R., and Lopes, L. J., *West Norfolk Manure Co* v. *Archdale*, 16 Q. B. D. 758, 760: *Vh, A-G.* v. *Emerson* and *Ecroyd* v. *Coulthard*, cited SEVERAL FISHERY: and as to the law of Scotland, *V.* per Ld Watson, *Lord Advocate* v. *Wemyss*, 1900, A. C. 66.

Vh, Moore on Foreshore: 5 Encyc. 444–452: BED. *Cp,* SHORE.

Digitized by Google

FOREST. — " 'Forrest,' is a place priviledged by Royall Authority, or by Prescription, for the peaceable abiding and nourishment of the Beasts or Birds of the Forrest, for disport of the King" (Termes de la Ley: *Vf,* Spelm. *Foresta*: Manwood, c. 1, s. 1: 5 Encyc. 452–455).

"A subject may hold a Forest by grant from the Crown (Co. Litt. 233 a); provided that the grant contains a provision that, on request made in Chancery, the grantee and his heirs shall have justices of the forest (4 Inst. 314; *V. Leicester Forest Case,* Cro. Jac. 155).

"By the grant of a forest in a man's own ground, not only the privilege but the land itself passes (Co. Litt. 5 b: Touch. 96)." Elph. 580, *who.*

Cp, Chase: Park: *V.* Disafforest.

FORESTALLER. — *V.* Regrator.

Also "used for stopping of Deer, broke out of the Forest, from returning home again or laying between him and the Forest in the way that he is to return" (Cowel).

Also "forstall" is "to bee quit of amercements and cattels arrested within your land, and the amercements thereof comming" (Termes de la Ley).

FORESTARIUS. — "In ancient authors is taken for a Woodward" (2 Inst. 300, *n*).

FORFEIT. — This word means not only an actual taking away of property on breach of a Condition, but also the doing or suffering a thing which creates a liability to such a deprival (*Re Levy,* 54 L. J. Ch. 968; 30 Ch. D. 119; 53 L. T. 200).

In that case, Kay, J., said: — "The word 'Forfeit,' the noun substantive, is defined in Dr. Johnson's Dictionary to be, 'Something lost by the commission of a crime; something paid for the expiation of the crime; a fine; a mulct.' By the same authority, the verb 'to forfeit' is defined to mean, 'to lose by some breach of condition; to lose by some offence.' He gives certain illustrations, as usual in his dictionary, and this is one: 'A father cannot alien the power he has over his child; he may perhaps to some degree forfeit it, but cannot transfer it. — Locke.' There, forfeit is contrasted with 'lose.' Then 'forfeit,' the participial adjective, is defined to be, 'liable to penal seizure; alienated by a crime; lost either as to the right or possession, by breach of conditions.' Then he gives these fine lines of Shakespeare: —

> All souls that are, were forfeit once;
> And he that might the vantage best have took,
> Found out the remedy.
>
> *Measure for Measure.*

Digitized by Google

And again:—

> Beg that thou may'st have leave to hang thyself:
> And yet, thy wealth being forfeit to the state,
> Thou has not left the value of a cord.
>
> *Merchant of Venice.*

Now clearly the word 'forfeit' does not merely mean that which is actually taken from the man by reason of some breach of condition, but includes also that which becomes *liable* to be so taken."

But "Forfeit" would seem to involve the idea of *permanent* loss or liability thereto. Thus s. 9, 11 G. 4 & 1 W. 4, c. 65 (repealing and re-enacting and extending 9 G. 1, c. 29), provides that an infant, feme covert, or lunatic, shall not "forfeit" Copyholds by non-appearance, &c; but this does not take away the lord's right of seizure *quousque* (*Kensington* v. *Mansell*, 13 Ves. 240: *Doe* d. *Twining* v. *Muscott*, 14 L. J. Ex. 185; 12 M. & W. 832: *Dimes* v. *Grand Junction Canal*, 16 L. J. Q. B. 107; 9 Q. B. 469: *Vf*, *King* v. *Dilliston*, Show. 31, 83; Salk. 386; 3 Mod. 222).

V. FORFEITURE: LIQUIDATED DAMAGES: OFFENCE: CRIMINAL CAUSE: DEPOSIT.

FORFEITED.—"Forfeited Issues"; *V.* ISSUES.

Covenant not to do anything whereby a License "may be forfeited"; *V.* AFFECT.

A PAWN "forfeited" if not duly redeemed, s. 17, 39 & 40 G. 3, c. 99, does not become the absolute property of the Pawnee; it may be redeemed by the Pawnor at any time before it is disposed of (*Walter* v. *Smith*, 5 B. & Ald. 439),—a ruling which, quà a pawn with a Pawnbroker for above 10*s*., is now prescribed by s. 18, 35 & 36 V. c. 93.

Wages "forfeited"; *V.* WAGES.

FORFEITURE.—"The proper signification of 'Forfeiture,' as appears from Cowel's Interpreter and Ducange, is 'a Mulct or Fine,—a punishment for an Offence'; and it is quite clear that it is used in that sense in a Charter where the Justices are empowered to punish delinquents by 'Fines, Ransoms, Amerciaments, and Forfeitures.' The term 'Forfeit' is, indeed, ordinarily applied to the penalty of a bond with a condition, or to an estate held on condition; but the penalty of the bond when it is forfeited, or the estate itself, is never termed a 'Forfeiture,' even in common parlance; and it is, therefore, impossible to suppose that a RECOGNIZANCE with a condition broken could be intended to be described by such a term in a legal instrument. It is very true that in 22 & 23 Car. 2, c. 22, 'forfeiture' is used in the title of the Act as a general term; but there, the context clearly explains the meaning. In the present case the context affords no such aid; and in its proper sense,

Digitized by Google

especially in a Grant from the Crown, it does not apply to a Debt of Record rendered indefeasible by non-compliance with the condition," *e.g.* an Estreated Recognizance (per Parke, B., *R.* v. *Dover*, 4 L. J. Ex. 94; 1 Cr. M. & R. 726). *Cp*, AMERCIAMENT.

"Forfeiture" means, "the loss of all interest" in the property spoken of (2 Bl. Com. 267: *Vf*, Co. Litt. 59 a); and a clause effecting it must be construed strictly (*Fraunces' Case*, 8 Rep. 90 b: *Egerton* v. *Brownlow*, 4 H. L. Ca. 1; 23 L. J. Ch. 348: *Clavering* v. *Ellison*, cited EDUCATION). General words will not pass that which, if passed, would be forfeited (*Re Waley*, 3 Drew. 165; 24 L. J. Ch. 499). *Cp*, SHIFTING CLAUSE.

As to construction of Clause of Forfeiture; *V.* ALIENATION: ATTEMPT: BANKRUPTCY: DEATH: INTERFERE: LEGAL DISABILITY: SHALL: UNTIL: WOULD: *Re Sampson*, 1896, 1 Ch. 630; 65 L. J. Ch. 406; 74 L. T. 246; 44 W. R. 557: *Re Spearman*, 82 L. T. 302. When it is allowed that it has to be construed strictly, that "means but little" (per Hawkins, J., *Horsey* v. *Steiger*, cited LIQUIDATION); it has to be construed "fairly, according to its meaning without regard to forfeiture" (per Cotton, L. J., *Bristol* v. *Westcott*, 12 Ch. D. 461; *Vf*, *Varley* v. *Coppard*, cited ASSIGN: LESSEE).

As to the Forfeiture Clause in a Building Contract; *V.* Hudson, ch. 10, s. 3.

Forfeiture of a Lease; *V.* LEASE: LAWFULLY DEMANDED.

Note. There is no DISCOVERY in aid of Forfeiture (*Mexborough* v. *Whitwood*, 1897, 2 Q. B. 111; 66 L. J. Q. B. 637; 76 L. T. 765; 45 W. R. 564).

As to Relief; *V.* 2 White & Tudor, 250–288: RELIEF.

"Forfeiture," in s. 1, 13 Eliz. c. 5, is not "intended only of a Forfeiture of an obligation, recognizance, or such like, but also of everything which shall by law be forfeit to the King or subject" (*Twyne's Case*, 3 Rep. 82).

"The words 'Forfeiture' and 'Breach of Condition' (in ss. 3 and 4, 3 & 4 W. 4, c. 27) are to be read in their largest sense; and to apply, whether the forfeiture gives a right to an estate under a conditional limitation, or whether it is a true forfeiture at law, and the gift over can only be taken advantage of by the heir or other person entitled in case of a forfeiture" (per Jessel, M. R., *Astley* v. *Essex*, 43 L. J. Ch. 819; L. R. 18 Eq. 290).

When a statute provides punishment by "Forfeiture," that "means Forfeiture to the Crown; except when it is imposed for wrongful detention or dispossession, in which cases the forfeiture goes to the benefit of the party wronged" (Maxwell, 427, citing 1 Inst. 159; 11 Rep. 60).

"Forfeiture" and "ESCHEAT" for Treason, or Felony, or Felo de se (*V.* 4 Bl. Com. 381–388) was abolished by s. 1, Forfeiture Act, 1870, 33 & 34 V. c. 23; but by s. 5 it is provided that "'Forfeiture,' in the

Digitized by Google

construction of this Act, shall not include any fine or penalty imposed on any convict by virtue of his sentence."

Vh, Cowel: Jacob: 5 Encyc. 456.

V. AMERCIAMENT: DEFEASANCE: FORFEIT: PENALTY: CRIME: LAPSE: WAIVER.

FORGE.—To "Forge" an Inl. Rev. STAMP, or one "forged," includes counterfeit (s. 27, 54 & 55 V. c. 38).

FORGER.—"'Forger of false Deeds,' comes of the French word *forger*, which signifies to frame or fashion a thing as the Smith doth his worke upon the Anvill. And it is used in our Law for the fraudulent making and publishing of False Writings to the prejudice of another mans right" (Termes de la Ley).

FORGERY.—"Forgery is making a false document with intent to defraud."

"To make a false Document is—

(*a*) To make a document purporting to be what in fact it is not;

(*b*) To alter a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document;

(*c*) To introduce into a document without authority, whilst it is being drawn up, matter which, if it had been authorized, would have altered the effect of the document;

(*d*) To sign a document—

1. In the name of any person without his authority, whether such name is or is not the same as that of the person signing;
2. In the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing;
3. In a name represented as being the name of a different person from that of the person signing it, and intended to be mistaken for the name of that person;
4. In the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

"But it is *not* making a false Document—

(*a*) To procure the execution of a document by fraud;

(*b*) To omit from a document being drawn up matter which would have altered its effect if introduced, and which might have been introduced, unless the matter omitted qualifies the matter inserted;

Digitized by Google

(c) To sign a document in the name of a person personated by the person who signs it, or in a fictitious name, provided that the effect of the instrument does not depend upon the maker's identity with the person personated, or on the correctness of the name assumed by him" (Steph. Cr. 285, 287, 288, *whv* to p. 291, for cases in illustration, and espy jdgmt of Blackburn, J., *R.* v. *Ritson*, L. R. 1 C. C. R. 203, 204).

Vf, Arch. Cr. 672–736: Rosc. Cr. 466–507: 5 Encyc. 458–466.

FORGETFULNESS. — "Forgetfulness may well amount to NEGLECT" (per Darling, J., *Baster* v. *London & County Printing Works*, 68 L. J. Q. B. 622; 1899, 1 Q. B. 901); and if it be in a matter of importance in a Servant's duty, it will justify the Master in dismissing without notice (*S. C.*). *Cp*, INADVERTENCE: MISTAKE.

FORGIVENESS. — *V.* CONDONATION.

FORM. — *V.* IN ACCORDANCE WITH THE FORM: IN THE FORM: MANNER AND FORM: TENOR: INSTRUMENT: SAME.

"The Form of the PAVEMENT" of a Footpath is not altered by a lowering (under statutory powers) of the street and relaying its pavement in the same form and of the same dimensions as before, but on a different level (*R.* v. *Eastern Counties Ry*, 2 Q. B. 569; 11 L. J. Q. B. 178).

A Notice by a Local Authority to Frontagers to "repair, form, and pave," the Street, is, *semble*, bad, because not sufficiently specifying the works required (*Parkinson* v. *Blackburn*, 33 L. T. O. S. 119).

FORMÂ PAUPERIS. — A person suing or defending "In Formâ Pauperis," pays no Court Fees, and has Counsel and Solicitor assigned him without fee (11 H. 7, c. 12: 3 Bl. Com. 400: R. 25, 26, Ord. 16, R. S. C.); formerly such a Pauper was one who would swear himself not worth £5 (3 Bl. Com. 400), but now he has to prove "that he is not worth £25, his wearing apparel and the subject-matter of the Cause or Matter only excepted" (R. 22, Ord. 16, R. S. C.). *Vh*, R. 22–R. 31, Ord. 16, R. S. C.: Ann. Pr.: DIVES' COSTS.

FORMAL. — Where the sealed copy of a Debtor's Summons stated the debt as £24 instead of £74, but the annexed Particulars of Demand stated the amount correctly, this was held a "Formal *Defect or Irregularity*" within s. 82, Bankry Act, 1869 (*Ex p. Johnson*, 53 L. J. Ch. 309; 25 Ch. D. 112); so was an omission by a petitioning creditor to state in the petition his readiness to give up his security (*Ex p. Vanderlinden, Re Pogose*, 51 L. J. Ch. 760; 20 Ch. D. 289. *Note*: S. 143 is the corresponding section in the Bankry Act, 1883). So, under the latter section, it is only an "Irregularity" to state in a Bankry Notice that

Digitized by Google

jdgmt was obtained against six persons when it was only obtained against four (*Re Low*, 1895, 1 Q. B. 734; 64 L. J. Q. B. 362; 72 L. T. 450; 43 W. R. 405; 59 J. P. 292). *Secus*, of an omission of the plaintiff's name (*Re Howes*, *Ex p. Hughes*, 1892, 2 Q. B. 628; 62 L. J. Q. B. 88; 67 L. T. 213; 40 W. R. 647: *Vf*, In accordance with the jdgmt); and an omission (in a Bankry Petition) to state the intent of a debtor's departure out of England, is of the substance, and not merely "formal" (*Ex p. Coates*, *Re Skelton*, 5 Ch. D. 979).

So, the signature of the Commissioner to a Trader Debtor's Summons (Sch H, Bankry Act, 1849) was an essential part of the document, and its omission from the served copy was fatal (*Ex p. Tindall*, 24 L. J. Bank. 18; 6 D. G. M. & G. 741). *Vf*, *Ex p. Rogers*, 15 Ch. D. 207: *Re Holt*, 11 Ch. D. 168.

An allegation in an Indictment which must be proved as alleged, cannot be called "formal" (*Sill* v. *The Queen*, 1 E. & B. 553; 22 L. J. M. C. 41).

V. Informality: Defect.

"Formal Contract"; *V.* Subject to.

"Formal Points"; *V.* Merits.

FORMALITY.—"Without any further Formality," s. 8, Clergy Discipline Act, 1892, 55 & 56 V. c. 32; *V. R.* v. *Durham*, *Bp*, 1897, 2 Q. B. 414; 66 L. J. Q. B. 576, 826; 77 L. T. 190; 46 W. R. 36; 13 Times Rep. 428.

FORMATION EXPENSES.—Include Promotion Moneys paid to persons as commission for floating a Company (*Arkwright* v. *Newbold*, 50 L. J. Ch. 372; 17 Ch. D. 301).

FORMED.—A Company, Association, or Partnership, is not newly "formed," within s. 4, Comp Act, 1862, when it admits new members, if its continuing identity is practically preserved (*Shaw* v. *Simmons*, 53 L. J. Q. B. 29; 12 Q. B. D. 117).

It has been suggested that "formed" in this section means, "formed in this country" (Buckl. 4).

"Formed for Working"; *V.* Engaged in Working.

V. New Street.

FORMER.—Covenant indemnifying against all "former" Titles and incumbrances; *V. Lovell* v. *Lutterell*, Savile, 74: *Hamington* v. *Rydear*, 1 Leon. 92; 1 And. 162, pl. 208; 10 Rep. 52 a; nom. *Haverington's Case*, Owen, 6. *V.* these cases stated, Platt on Covenants, 332, 333.

"Former Tenant"; Stat. Def., 59 & 60 V. c. 47, s. 47 (7).

FORMING.—A school set back 80 feet from a Street, and in the greater part hidden by houses between it and the street but having a direct private access to the street, is a house "forming" part of a street

Digitized by Google

within s. 105, Metrop Man. Act, 1855 (*London School Board* v. *St. Mary, Islington*, 45 L. J. M. C. 1; 1 Q. B. D. 65). In that case, Cockburn, C. J., said, — "I think that whether a house is 'within' a street, or whether it is 'forming' or 'fronting' a street, is much the same thing."

V. Abut: Fronting: Within: and *Cp*, the section above cited with s. 77, Metrop Man. Act, 1862, where the words are "Bounding and abutting."

FORNICATION. — "Is voluntary sexual intercourse between persons who are not husband and wife. Where one of them is married, such incontinence is usually termed Adultery" (5 Encyc. 466).

FORSTALL. — *V.* Forestaller.

FORSWORN. — "'Forsworn,' is applicable, not only to Perjuries punishable at law, but also to offences of the same description which incur no temporal punishment" (per Denman, C. J., *Tomlinson* v. *Brittlebank*, 4 B. & Ad. 632); but in *Holt* v. *Scholefield* (6 T. R. 691) it was held that to say a person was "forsworn" was not actionable Slander, without showing that it was spoken with reference to some judicial proceeding in which the plt had been sworn. *Vf*, *Stanhope* v. *Blith*, 4 Rep. 15. *Cp*, Perjury.

FORSYTH'S ACT. — The Endowed Schools Act, 1869, 32 & 33 V. c. 56.

FORTHWITH. — Where a Judge has to do a thing "forthwith" after the happening of something else, the word will have a different meaning according as the act to be done is,

1. Ministerial and demandable *ex debito justitiæ*; or
2. Judicial.

If the act comes within the first of these classes the word will mean, "forthwith *upon the application of the party entitled to have the act done*." Thus a successful defendant in an assault summons is entitled, under s. 44, 24 & 25 V. c. 100, to a Certificate of Dismissal on applying for it (*Hancock* v. *Somes*, 1 E. & E. 795; 28 L. J. M. C. 196: *Costar* v. *Hetherington*, 28 L. J. M. C. 198; 7 W. R. 413; over-ruling *R.* v. *Robinson*, 10 L. J. M. C. 9; 12 A. & E. 672).

Where, however, the act to be done is judicial and discretionary, "Forthwith" is synonymous with "Immediately" (*R.* v. *Francis*, Ca. t. Hard. 115: *Grace* v. *Clinch*, 12 L. J. Q. B. 273; 4 Q. B. 606; 3 G. & D. 591: *Chaplin* v. *Levy*, 23 L. J. Ex. 200; 9 Ex. 673: *Hancock* v. *Somes*, sup: *Heden* v. *Atlantic Royal Mail Steam Nav Co*, 29 L. J. Q. B. 191: per Cockburn, C. J., *R.* v. *Berkshire Jus.*, 48 L. J. M. C. 137; 4 Q. B. D. 469; 27 W. R. 798).

V. Immediately.

Digitized by Google

In a *Contract*, and the ordinary transactions of life, "Forthwith" does *not* usually mean "Immediately" (*Roberts* v. *Brett*, 34 L. J. C. P. 241; 11 H. L. Ca. 337; 20 C. B. N. S. 148); but means, "with all reasonable celerity" (per Tindal, C. J., *Burgess* v. *Boetefeur*, 7 M. & G. 494), or, in other words, "as soon as reasonably possible" (*Kenney* v. *Hutchinson*, 6 M. & W. 134: *Hyde* v. *Watts*, 12 Ib. 254; 13 L. J. Ex. 41: *Simpson* v. *Henderson*, Moo. & M. 300). *Vh*, *Re Sullivan*, 15 L. T. 434; 36 L. J. Bank. 1.

"I think the word 'forthwith' is to be construed according to circumstances. A covenant to insure a man's life, for instance, cannot be complied with in a moment. But where an act required to be done 'forthwith,' is one which is capable of being done without any delay, no delay can be permitted" (per Jessel, M. R., *Re Southam*, *Ex p. Lamb*, 51 L. J. Ch. 207; 19 Ch. D. 169; 30 W. R. 126). In that case an Appeal Notice in Bankry was not sent to the country till the next day after the appeal was entered in London, and it was held not to have been sent "forthwith" (*Vth*, *Ex p. Williams*, 26 S. J. 345: *Ex p. Hill*, *Re Darbyshire*, 53 L. J. Ch. 247).

When a Contract for Sale of Goods provides for delivery "forthwith," and for payment within a stated number of days, that means that the delivery is to be within those days and is a Condition Precedent to the liability for payment (*Staunton* v. *Wood*, 15 Jur. 1123).

So, "forthwith" is itself sometimes conditional; as where an Award directed that A. should "forthwith" execute Reconveyances to C. and C. should "forthwith" execute a Release to A.; "forthwith" in the latter case meant, as soon as A. had executed the Reconveyances (*Boyes* v. *Bluck*, 13 C. B. 652).

To "forthwith" notify to the Seller of an ARTICLE an intention to have it analysed, s. 14, Sale of Food and Drugs Act, 1875, does not mean that it is to be done on the instant of the sale; if A. sends B. to buy it and in (say) two minutes afterwards goes himself into the shop and gives the notification, that is "forthwith" (*Somerset* v. *Miller*, 54 J. P. 614: *Vf*, *Stace* v. *Smith*, 45 Ib. 141).

"Forthwith *proceed*," in a Charter-party, means that the Ship shall sail without unreasonable delay (*Hudson* v. *Hill*, 43 L. J. C. P. 273; 30 L. T. 555).

"A *Covenant* 'forthwith' to put premises into REPAIR must receive a reasonable construction, and it is not limited to any specific time; therefore it is for the jury to say, upon the evidence, whether the defendant has done what he reasonably ought in performance of it" (Woodf. 627, citing *Doe* d. *Pitman* v. *Sutton*, 9 C. & P. 706: *Vh*, PUT). So, by a Mandamus to persons to execute works, "the Court does not, by the word 'forthwith,' mean to command them to do everything instantly; but to set-about the works directly and do what they can" (per Patteson, J., *R.* v. *Ouse Commrs*, 3 A. & E. 550).

Digitized by Google

"Forthwith" *replace* articles, comprised in a Bill of Sale, that may be destroyed or deteriorated, means that this should be done with as little delay as possible (per Hannen, P., *Furber* v. *Cobb*, 56 L. J. Q. B. 275; 18 Q. B. D. 494; 56 L. T. 689; 35 W. R. 398).

In an action against an Overseer for not giving a copy of a Rate "upon demand, forthwith," it was held that that meant, within such time as the Jury might think reasonable (*Tennant* v. *Bell*, 16 L. J. M. C. 31; 9 Q. B. 684: *Sv*, *Spenceley* v. *Robinson*, 3 B. & C. 662, in *whc*, *semble*, Abbott, C. J., thought the question was for the Judge). So the proprietor of a Lunatic Asylum is, by s. 72, 8 & 9 V. c. 100, to discharge his patient "forthwith" on the receipt of the Order in that section mentioned; — that is, the proprietor "has no discretion, but would be bound to release the patient 'forthwith' and against the patient's will, — not cruelly, as for instance, if it were raining heavily, but within such a time as a reasonable man would say was practicable" (per Esher, M. R., *Lowe* v. *Fox*, 54 L. J. Q. B. 563; 15 Q. B. D. 667; affd 12 App. Ca. 206).

In a *Notice* to a person charged criminally and out on Bail to appear on pain of forfeiting his Recognizance, "forthwith," means within a reasonable time from the service, and not from the date, of the notice (*R.* v. *Price*, 8 Moore P. C. 203). So, of a payment to be made "forthwith" pursuant to a Recognizance (*R.* v. *Ely Jus.*, 5 E. & B. 496; 25 L. J. M. C. 1; 26 L. T. O. S. 57; 4 W. R. 5).

"Forthwith" give Notice of Recognizances, s. 3, 8 V. c. 10; *V. Ex p. Lowe*, 15 L. J. M. C. 99; 3 Dowl. & L. 737: *V. R.* v. *Price*, sup.

"Capable forthwith"; *V.* CAPABLE.

Where a Consequence is "forthwith" to follow on an event, the word imperatively excludes a time within which something else may be done inconsistent with that consequence. Thus by s. 36, Municipal Corporations Act, 1882, 45 & 46 V. c. 50, a Town Council, on receiving the resignation of a person elected to a corporate office, is "forthwith" to declare that office vacant; and therefore the resignation cannot be withdrawn (*R.* v. *Wigan*, 54 L. J. Q. B. 338; 14 Q. B. D. 908). So, a Notice determining a term, or other state of things, "forthwith," "means 'now,' 'as from this moment,' 'henceforth'" (per Kekewich, J., *Keith* v. *National Telephone Co*, 1894, 2 Ch. 147; 63 L. J. Ch. 376; 70 L. T. 276; 42 W. R. 380).

Vf, *Re Sillence*, 7 Ch. D. 238; 47 L. J. Bank. 87: *Ex p. Donnithorne*, 40 L. T. 660: *Thomas* v. *Nokes*, L. R. 6 Eq. 521; 58 J. P. 672: Benj. 679.

FORTNIGHT. — Semble a "Fortnight's" Notice, means 14 CLEAR days (*Labouchere* v. *Wharncliffe*, 13 Ch. D. 353). *Cp*, WEEK.

"Two Voyages per month, fortnightly," in a Charter-Party, means, that the vessel is to sail at regular intervals of about a fortnight, and not more than two sailings per month (*The Melrose Abbey*, 14 Times Rep. 202).

Digitized by Google

FORTUNE. — In a devise, "Fortune" includes the realty as well as he personalty (*Spearing* v. *Hawkes*, 6 Ir. Ch. Rep. 297: *Baring* v. *Ashburton*, 54 L. T. 464).

V. SUBSTANCE: REASONABLE PORTION.

FORTUNES. — "Pretending or professing to tell fortunes," Vagrancy Act, 1824, s. 4; *V. Penny* v. *Hanson*, cited DECEIVE. *Vf, Monck* v. *Hilton* and cognate cases, cited OTHERWISE: PALMISTRY: PRETEND: ROGUE AND VAGABOND.

Cp, CONJURATION.

FORWARD. — The "Forward Part" of a Vessel 150 feet or upwards in length, Art. 11, Regns for Preventing Collisions at Sea, means, that forward part of her from which the prescribed light will give, to those navigating in the vicinity, good information as to her length; a light fixed just forward of the middle length of the vessel would (possibly) not do; but a light 60 or 70 feet abaft the stem of a vessel 313 feet long will comply with the requirement (*The Philadelphian*, 1900, P. 43, 262; 69 L. J. P. D. & A. 31, 101; 82 L. T. 601; 48 W. R. 514).

FORWARDER. — *V.* CARRIER.

Stat. Def. — 31 & 32 V. c. 33, s. 2.

FORWARDING CO. — "Forwarding Co" and "Co requiring the traffic to be forwarded," s. 11 (1), Regn of Railways Act, 1873, 36 & 37 V. c. 48, "apply to any Co who (being interested in the TRAFFIC of a Ry, in pursuance of their legitimate interest and that of the public) require that it shall be forwarded by a continuous route on just and reasonable terms, as provided by the statute, although the traffic is not under their immediate management" (*Greenock & Wemyss Bay Ry* v. *Caledonian Ry*, 5 Sess. Ca. 4th Ser. 995; 3 Ry & Can Traffic Ca. 145; cited and adopted *Central Wales Ry* v. *G. W. Ry*, 4 Ry & Can Traffic Ca. 113).

Vf, Warwick & Birmingham Canal Nav. v. *Birmingham Canal Nav.*, 3 Ry & Can Traffic Ca. 113: THROUGH TRAFFIC: s. 37 (4), 51 & 52 V. c. 25.

FORWARDS. — "Forwards and Backwards," in a Marine Insrce; *V. Grant* v. *Paxton*, 1 Taunt. 463.

FOSSILS. — "The word 'Fossils' may, in a strict sense, apply to stones dug or quarried. Usually, however, it appears to apply only to metallic minerals" (MacS. 19, citing *Rosse* v. *Wainman*, 14 M. & W. 872, 873; 15 L. J. Ex. 67; affd nom. *Wainman* v. *Rosse*, 2 Ex. 800).

FOTHER. — *V.* GORE.

FOUL. — "Foul Matter"; *V.* FILTHY WATER.

Digitized by Google

FOULDCOURSE.—*V.* Foldcourse.

FOUND.—Mineral "Found" means, "ascertained to lie and be" (*Jowett* v. *Spencer*, 1 Ex. 647; 17 L. J. Ex. 367).

"No sufficient Distress *to be Found* on the demised premises," s. 2, 4 G. 2, c. 28; s. 210, Com. L. Pro. Act, 1852,—Goods are not so "to be found" if they are not so visible that a broker, using reasonable diligence, would be able to distrain them (*Doe* d. *Haverson* v. *Franks*, 2 C. & K. 678); nor if a distress be prevented by the outer door being locked (*Doe* d. *Chippendale* v. *Dyson*, 1 Moo. & M. 77: *Doe* d. *Cox* v. *Roe*, 5 Dowl. & L. 272: *Hammond* v. *Mather*, 3 F. & F. 151).

"Cannot be found"; *V.* Cannot.

A Person is "found" wherever he is actually present, *e.g.* in the phrase "found within the Jurisdiction of any Court of Justice in Her Majesty's Dominions," s. 21, 18 & 19 V. c. 91 (*R.* v. *Lopez* and *R.* v. *Sattler*, 27 L. J. M. C. 48; 6 W. R. 227; 7 Cox C. C. 431).

The difference between "Found" and "*Frequenting*" as used in s. 4, Vagrancy Act, 1824, was pointed out in *R.* v. *Clark* (54 L. J. M. C. 66; nom. *Clark* v. *Reg.*, 14 Q. B. D. 92); where it was decided that a person "found" in a house, &c, for the purpose of committing a felony, could be convicted if only "found" there once; but that the offence of "frequenting" a street, &c, for a like purpose, is not shown to have been committed if the evidence does not show that the person was there more than once. *V.* Frequent: Rogue and Vagabond.

In like manner a person "found" in a suspected Common Gaming House (including, a Betting House),—s. 14, 33 H. 8, c. 9, s. 11; 16 & 17 V. c. 119,—need not be shown to be "haunting, resorting, or playing"; if he is merely there, the magistrate may, under the first of those sections, bind him in recognizances "no more to play, haunt, or exercise" (*Murphy* v. *Arrow*, 1897, 2 Q. B. 527; 66 L. J. Q. B. 865; 77 L. T. 435; 46 W. R. 94).

"Found *committing*,"—*e.g.* in s. 66, 2 & 3 V. c. 47; s. 103, 24 & 25 V. c. 96,—applies to the case of persons who are taken *flagrante delicto* doing the specific act (*Simmons* v. *Millingen*, 15 L. J. C. P. 102; 2 C. B. 524: *Vf*, *Roberts* v. *Orchard*, 33 L. J. Ex. 65; 2 H. & C. 769; 9 L. T. 737: *Griffiths* v. *Taylor*, 46 L. J. C. P. 152; 2 C. P. D. 194: *Downing* v. *Capel*, 36 L. J. M. C. 97; L. R. 2 C. P. 461), or who are taken on "immediate and Fresh Pursuit" after the act (per Tindal, C. J., *Hanway* v. *Boultbee*, 1 Moo. & R. 15). *Cp*, Bloody Hand: Manner: View.

"Found *offending*,"—*e.g.* 5 G. 4, c. 83, ss. 6, 11,—has a similar meaning; so that a Constable cannot, without a Warrant, arrest a man for having neglected to maintain his family (*Horley* v. *Rogers*, 29 L. J. M. C. 140; 24 J. P. 261). "Found *on*" licensed premises after hours, s. 25, 35 & 36 V. c. 94, would, *semble*, receive a similar interpretation.

Digitized by Google

"Found *drunk* on licensed premises," s. 12, 35 & 36 V. c. 94, means to be so found "in places where the public go, or which are open and where the public may enter and consume drink" (per Mellor, J., *Lester* v. *Torrens*, 46 L. J. M. C. 281; 2 Q. B. D. 403); and, therefore, it was there held that an Innkeeper, in his own inn after the same is closed, cannot commit the offence. But, *semble*, the above dictum of Mellor, J., was too wide, though the actual decision in *Lester* v. *Torrens* is correct; and a drunken customer remaining on licensed premises after closing time is within the enactment, though the door has been closed (*R.* v. *Pelly*, 1897, 2 Q. B. 33; 66 L. J. Q. B. 519; 61 J. P. 373): *Semble*, that licensed premises are not properly closed whilst a customer remains therein (*Ib.*).

Article "found *in the Possession* of any person," s. 47 (3), 54 & 55 V. c. 76; *V.* per Hawkins, J., *R.* v. *Dennis*, 63 L. J. M. C. 166; 1894, 2 Q. B. 458; 71 L. T. 436; 58 J. P. 622.

Regimental Equipments "found in the Possession or Keeping of any person," s. 156 (2), Army Act, 1881, 44 & 45 V. c. 58; *V. Laws* v. *Read*, 63 L. J. Q. B. 683.

"Found *to be due*," note (*d*), item 72, Court Fees Order, 1884, construed "found to have been received" (*Re Crawshay*, 57 L. J. Ch. 923; 39 Ch. D. 552; 59 L. T. 598).

"Found to be of UNSOUND MIND," s. 1, 14 & 15 V. c. 81; *V. Re Maltby*, 50 L. J. Q. B. 419; 7 Q. B. D. 18.

"*To Found*," or "*to Establish*" a CHARITY, such as a school, hospital, or chapel, *primâ facie* involves the erection of a building for it; and a bequest for such a purpose is within the Mortmain Acts, as implying the bringing of lands into Mortmain (*Hopkins* v. *Philipps*, 30 L. J. Ch. 671; 3 Giff. 182: *Tatham* v. *Drummond*, 34 L. J. Ch. 1; 2 H. & M. 262; 4 D. G. J. & S. 484: *Re Goldsmid, Mocatta* v. *A-G.*, 34 S. J. 63; W. N. (89) 184. *Sv*, quà "establish," *Hartshorne* v. *Nicholson*, 27 L. J. Ch. 810; 26 Bea. 58: PROVIDE. *Vf*, 1 Jarm. 228, 229, 230). But a bequest "to Found a Charitable *Endowment*" is good (*Salusbury* v. *Denton*, 26 L. J. Ch. 851; 3 K. & J. 529: ENDOW: ERECT); and so is a bequest for "Supporting or Founding" ragged schools in a parish where such a school already exists (*Re Hedgman, Morley* v. *Croxon*, 8 Ch. D. 156: *V.* SUPPORT). *Cp*, NEWLY ESTABLISH.

FOUNDATION.—*V.* FOUNDER: BOY: PRIVATE FOUNDATION.

"Foundation," requiring instruction "according to the Doctrines or Formularies of any PARTICULAR CHURCH," s. 19 (2), Endowed Schools Act, 1869, 32 & 33 V. c. 56, does not comprise Christ's Hospital, London, as being specially attached to the Church of England (*Christ's Hospital* v. *Charity Commrs*, 59 L. J. P. C. 52; 15 App. Ca. 172; 62 L. T. 10; 38 W. R. 758).

Quà London Bg Act, 1894, "'Foundation,' applied to a Wall having

Digitized by Google

footings, means, the solid ground or artificially formed support on which the footings of the wall rest; but in the case of a wall carried by a BRESSUMMER, means such bressummer" (subs. 9, s. 5). *Cp*, BASE.

Quà P. H. Ireland Act, 1878, 41 & 42 V. c. 52, "'Foundations,' shall mean, the space immediately beneath the footings of a wall" (s. 41).

FOUNDED ON.—A Motion is not in any way "founded on" an Affidavit relating merely to procedure,—*e.g.* an affidavit of service,—so as to require copy of such affidavit to be served with notice of motion under R. 4, Ord. 52, R. S. C. (per Pearson, J., *Witham* v. *Witham*, 29 S. J. 707: *Schirges* v. *Schirges*, 30 S. J. 403; W. N. (86) 85). But in *Re Lysaght* (31 S. J. 233), North, J., declined to follow that interpretation.

Action "founded on" Breach of Contract within the Jurisdiction, R. 1 (*e*), Ord. 11, R. S. C.; *V.* Ann. Pr.

Action may be said to be "Founded on CONTRACT," or "Founded on TORT," *V.* s. 5, Co. Co. Act, 1867; s. 116, Co. Co. Act, 1888. In *Bryant* v. *Herbert* (47 L. J. C. P. 670; 3 C. P. D. 389; 26 W. R. 498; 49 L. T. 17) there was a curious conflict of opinion as to whether these are Terms of Art:—Bramwell, L. J., said, "They are plain English words, and are to have the meaning ordinary Englishmen would give them"; whilst Brett, L. J., said, "With the greatest deference to my learned brother, I do not think those words can be called plain English; for they seem to me to be technical terms." "The rule is this;—if the action is in respect of a Cause of Action in order to make out which it is *not* necessary for the plt to rely on, or prove, a Contract, then the action is Founded on Tort; if, on the other hand, the action is one for the successful maintenance of which it is necessary for the plt to rely on, or prove, a contract, then the action is Founded on Contract" (per Smith, L. J., *Turner* v. *Stallibrass*, cited TORT).

FOUNDER.—The "Founder" of an ENDOWMENT is the person or persons who originally created it; and "every accretion to the original subscriptions, which was not an endowment for any new and special purpose, must be taken to be upon the footing of the original foundation" (per Selborne, C., *St. Leonards Trustees* v. *Charity Commrs*, 54 L. J. P. C. 31; 10 App. Ca. 304). Accordingly it was held in that case that mere Subscribers to an endowment subsequent to its origination, are not "Founders" within the Endowed Schools Acts, 1869, 1873 (32 & 33 V. c. 56, s. 19; 36 & 37 V. c. 87, s. 7). *Vf*, as to what is a Foundation, *R.* v. *Runciman*, cited PRIVATE ENDOWMENT.

"Founder," 17 Ric. 2, c. 1, a worker of metals by melting and casting (Termes de la Ley).

FOUNDERSHIP.—*V. A-G.* v. *Brentwood School*, 3 B. & Ad. 73.

Digitized by Google

FOUNDRY. — "Foundries"; *V.* NON-TEXTILE FACTORIES.

FOURTH. — *V.* SEVENTH.

FOWL. — Fowls of the Warren are "of two sorts, viz., *Terrestres* and *Aquatiles. Terrestres* of two sorts, *Silvestres*, and *Campestres*: — *Campestres*, as Partridge, Quaile, Raile, &c; *Silvestres*, as Pheasant, Woodcocke, &c; *Aquatiles*, as Mallard, Herne, &c" (Co. Litt. 233 a): Grouse are not Fowls of the Warren (*Devonshire* v. *Lodge*, 7 B. & C. 36). Beasts of the Warren, *V.* BEASTS: GAME, *Animals*.

"The word 'Fowl' comprehends all birds and poultry" (per Holt, C. J., *Keeble* v. *Hickeringill*, 11 East, 577).

V. WILDFOWL. *Sv*, WILD BIRD.

FOWLING. — *V.* HUNTING.

In *Devonshire* v. *O'Connor* (cited FREEHOLD), Esher, M. R., is thus reported, — "It is said that the word 'Fowling' contains the right of Shooting. It *probably* does" (24 Q. B. D. 478), but in the Law Journal the words are, "It *perhaps* does," . . . "even though the word 'Fowling' does include Shooting, which I am inclined to doubt" (59 L. J. Q. B. 212).

FOX'S ACT. — The Libel Act, 1792, 32 G. 3, c. 60. *Vh*, 5 Encyc. 472.

FRACTION. — Fraction of a Day; *V.* DAY.

FRACTITIUM. — Arable land: 2 Mon. Angl. 873 (Jacob).

FRANCHISE. — "Franchise or Liberty. — A royal Privilege belonging either to the Crown or to a subject by virtue of a grant from the Crown, either express, or implied from long enjoyment; Wms. on Rights of Common, 228" (Elph. 581, *whv*): "An immunity or exemption from ordinary jurisdiction" (Termes de la Ley). *V.* NON-USER.

"'Franchise' and 'LIBERTY' are used as synonymous terms; and their definition is, a Royal Privilege, or a branch of the King's Prerogative, subsisting in the hands of a subject" (2 Bl. Com. 37). Accordingly, a Patent is a "Franchise" within s. 56, Co. Co. Act, 1888 (*R.* v. *Halifax Co. Co.*, 60 L. J. Q. B. 550; 1891, 2 Q. B. 263; 65 L. T. 104; 39 W. R. 545: *whcv* for the authorities treating of the various kinds of Franchise).

A FERRY is a Franchise (per Cockburn, C. J., *R.* v. *Cambrian Ry*, cited HEREDITAMENT).

In such a phrase as "Parliamentary Franchise," as now used, the adjective negatives the idea of its arising from a Royal grant.

Vh, Jacob: 3 Cru. Dig. Title 27: 5 Encyc. 473–490.

In the United States, a Franchise is, a Privilege of a Public Nature conferred by a legislative grant (*State* v. *Weatherly*, 45 Mo. 20).

Digitized by Google

"Franchise *of Weights and Measures*"; Stat. Def., 55 & 56 V. c. 18, s. 1 (5).

"Franchise *Coroner*"; Stat. Def., 50 & 51 V. c. 71, s. 42.

FRANK-ALMOIGN.—"Our old bookes described frankalmoign thus; when lands or tenements were bestowed upon God, (that is) given to such people as are consecrated to the service of God" (Co. Litt. 94 b: *Vf*, Termes de la Ley: 5 Encyc. 491). *Cp*, AUMONE

FRANK-BANK.—Is the same as FREEBENCH.

FRANK-CHASE.—*V.* Termes de la Ley: 5 Encyc. 492.

FRANK-FEE.—Frank-Fee lands, were freeholds exempted from all Services but HOMAGE (Jacob). *Vf*, Cowel.

FRANK-FERME.—"Britton, who describes lands in SOCAGE tenure under the name of *fraunke ferme* (c. 66), tells us that they are 'lands and tenements whereof the nature of the fee is changed by Feoffment *out of Chivalry* for *certain* yearly Services, and in respect whereof neither Homage, Ward, Marriage, nor Relief, can be demanded'" (2 Bl. Com. 80, 81).

FRANK-FOLDAGE.—"Frankfoldage—Faldagium—is the right of the lord of a manor, or other person, to have all the sheep within his manor, or within a certain vill or town or other district, folded at night on his land for the purpose of manuring it; *V.* Wms. on Rights of Common, 274 *et seq*" (Elph. 582, *whv*).
Cp, FALDAGE: FOLDCOURSE.

FRANK-LAW.—"Frank-Law" connoted the rights of a Free-man; in losing which a man lost his right to be a Juryman, or Witness, or to go to the King's Court in person, and was liable to be imprisoned; and his lands goods and chattels might be seized by the King (Termes de la Ley). *Cp*, OUTLAW.

FRANK-MARRIAGE.—A gift in Frank-Marriage, was a special fee taile (Litt. s. 17). "'Free Marriage,' is when a man seised of lands in fee simple, giveth it to another man and to his wife (who is the daughter, sister, or otherwise of kin, to the donor) 'in Free Marriage'; by vertue of which words they have an estate in speciall taile, and shall hold the land of the donor quit of all manner of Services" except Fealty, until the fourth degree, they being in the first degree (Termes de la Ley). "And these words (*in liberum maritagium*) are such Words of Art, and so necessarily required, as they cannot be expressed by words equipollent" (Co. Litt. 21 b). *Vf*, 5 Encyc. 492.

Digitized by Google

FRANK-PLEDGE.—Signified, "a Pledge or Surety for Free-men: for the ancient Custome of Free-men of England, for the preservation of the Publick Peace, was, that every free-born man at 14 years of age (Religious person, Clerks, Knights and their eldest sons excepted) should find Surety for his Truth towards the King and his subjects, or else be kept in prison; whereupon a certain number of Neighbours became customably bound one for another to see each man of their Pledge forthcoming at all times, or to answer the transgression committed by any broken away: So that whosoever offended, it was forthwith inquired in what Pledge he was, and then they of that Pledge either brought him forth within 31 dayes to his Answer, or satisfied for his Offence" (Cowel: *Vf*, Jacob: 5 Encyc. 493). The satisfaction was an AMERCIAMENT. *Vf*, PLEDGE: VIEW.

FRANK-TENEMENT.—*V.* FREEHOLD.

FRANKING OFFICER.—The "Franking Officer" of the Post Office, means, "the person appointed to frank the Official Correspondence of Offices to which the privilege of franking is granted" (s. 47, 1 V. c. 36).

FRASSETUM.—"*Frassetum* signifieth a wood, or ground that is woodie" (Co. Litt. 4 b).

FRAUD.—"'Fraud,' in my opinion, is a term that should be reserved for something dishonest and morally wrong, and much mischief is, I think, done, as well as much pain inflicted, by its use where 'illegality' and 'illegal' are the really appropriate expressions" (per Wills, J., *Ex p. Watson*, 57 L. J. Q. B. 613; 21 Q. B. D. 301; 59 L. T. 401; 36 W. R. 829; 52 J. P. 742: *Vf*, per Cranworth, C., *Boyse* v. *Rossborough*, cited UNDUE INFLUENCE). *Cp*, MALICE.

So, in Pleading, it is frequently unnecessary to use this word,—*e.g.* "an allegation that the deft made to the plt representations on which he intended the plt to act, which representations were untrue and known to the deft to be untrue, is sufficient" (per Thesiger, L. J., *Davy* v. *Garrett*, 7 Ch. D. 489). *Vh*, *Pasley* v. *Freeman*, 3 T. R. 51: *Polehill* v. *Walter*, 3 B. & Ad. 115: *Taylor* v. *Ashton*, 11 M. & W. 415: *Ormrod* v. *Huth*, 14 M. & W. 651: *Doyle* v. *Hort*, 4 L. R. Ir. 668; *Sothlc*, *Byrne* v. *Muzio*, 8 Ib. 396.

"Fraud" must be found in the Further Report of the Official Receiver of a Co, under s. 8 (2) Comp Winding-up Act, 1890, if an Examination is to be directed under the following subsection; not "that the particular word 'fraud' must be used, but that such facts must be found by the Off. Rec. as suggest fraud" against a specified person (per Halsbury, C., *Ex p. Barnes*, 1896, A. C. 146; 65 L. J. Ch. 394; 44 W. R. 433; 74 L. T, 153: *Vf*, *Re Laxon*, 1893, 1 Ch. 210; 62 L. J. Ch. 206). And as to

Digitized by Google

what is a sufficient statement of Fraud in such Further Report, *V. Re Civil, &c Outfitters, Lim.*, 1899, 1 Ch. 215; 68 L. J. Ch. 164; 80 L. T. 241; 47 W. R. 233.

"Fraud," in s. 26 (4, *c*), Patents, Designs, and Trade Marks Act, 1883, 46 & 47 V. c. 57, means something more than mistake or misconception, there must be some intention to commit a fraud on the petitioner, or otherwise to derive an unfair benefit (*Re Avery*, 36 Ch. D. 307; 56 L. J. Ch. 1007; 57 L. T. 506; 36 W. R. 249).

"Fraud, or Unfair Dealing" as used in s. 1, Sales of Reversions Act, 1867, 31 V. c. 4, "does not mean deceit or circumvention; it means an unconscientious use of the power arising out of the circumstances and conditions; and when the relative position of the parties is such as *primâ facie* to raise this presumption, the transaction cannot stand, unless the person claiming the benefit of it is able to repel the presumption by contrary evidence, proving it to have been, in point of fact, fair, just, and reasonable" (per Selborne, C., *Aylesford* v. *Morris*, 42 L. J. Ch. 548; 8 Ch. 484: *Vf, Fry* v. *Lane*, 58 L. J. Ch. 116; 40 Ch. D. 312: *Brenchley* v. *Higgins*, cited PURCHASE).

Taking away or decoying a Child "*by Force or Fraud*," s. 56, 24 & 25 V. c. 100, does not, under the latter term, mean that the fraud must be practised on the child; any fraud whereby the child is taken away or decoyed is within the section (*R.* v. *Bellis*, 62 L. J. M. C. 155; 69 L. T. 26; 57 J. P. 441; overruling dictum of Montagu Smith, J., *R.* v. *Barrett*, 15 Cox C. C. 658).

V. ACTUAL FRAUD: LEGAL FRAUD: CONCEALED FRAUD: DECEIT: BREACH OF TRUST: FAULTS.

On Fraud generally, *V.* Kerr on Fraud and Mistake; 5 Encyc. 494–501.

"Fraud *or Dishonesty*," in a Guarantee Policy, *V. Ravenscroft* v. *Provident Clerks Assn*, 5 Times Rep. 3: — "Loss from Dishonesty," in a Guarantee, *V. Whiteaway* v. *Godard*, 11 Ib. 222.

V. CHARGE OF FRAUD: POWER.

FRAUDS. — Statute of Frauds, 29 Car. 2, c. 3.

FRAUDULENT ASSURANCE. — "Fraudulent Conveyance, Gift, Delivery, or Transfer," s. 4 (*b*), Bankry Act, 1883; — *Vh*, Yate Lee, 16–41: Wms. Bank. 6–19: Robson, 140–161: Baldwin, 92–101. *Vh, Re Moroney*, 21 L. R. Ir. 27.

"Fraudulent or Covinous" Conveyance, within the statutes of Eliz.; *V.* GOOD: VALUABLE: May on Fraudulent Conveyances: 5 Encyc. 504–509.

FRAUDULENT BREACH OF TRUST. — *V.* BREACH OF TRUST.

FRAUDULENT IMITATION. — A "Fraudulent Imitation" of a DESIGN, "must be something more than Imitation. As I understand it,

Digitized by Google

the meaning is, Imitation with Knowledge, — *i.e.* that the man who imitates has seen the first design. It is not unconscious imitation (which is said to be the greatest compliment you can pay to an artist or author), but Conscious Imitation, — the man having the design before him and knowingly and wilfully imitating, and that imitation being not sufficiently original to be protected as a fair imitation " (per Jessel, M. R., *Barran* v. *Lomas*, 28 W. R. 975).

"Colourably imitate"; *V.* Copy.

Cp, Obvious.

FRAUDULENT PREFERENCE. — A Fraudulent Preference "arises where the debtor, in contemplation of bankry, that is, knowing his circumstances to be such as that bankry must be, or will be, the probable result, though it may not be the inevitable result, does, *ex mero motu,* make a payment of money, or a delivery of property, to a Creditor, not in the ordinary course of business, and without any pressure or demand on the part of the Creditor" (per Ld Westbury, *Nunes* v. *Carter*, L. R. 1 P. C. 348; 36 L. J. P. C. 14; 15 W. R. 239. *Vf, Re Vautin,* 1900, 2 Q. B. 325; 69 L. J. Q. B. 703; 82 L. T. 722). *Semble,* the payment or delivery must be to, or in favor of, the Cr as distinguished from a Surety for the Debtor (*Re Warren,* 1900, 2 Q. B. 138; 69 L. J. Q. B. 425; 82 L. T. 502; 48 W. R. 523); but to the contrary is *Re Paine,* cited Creditor: *Vf, Re Blackpool Motor Car Co,* 49 W. R. 124; W. N. (1900) 252.

For the cases hereon, *V.* Yate Lee, 419–432: Wms. Bank. 235–243: Robson, 161–173: Baldwin, 101–109: May on Fraudulent Dispositions, 2 ed., 101–106: Good Faith: Ordinary Course: View.

It is not a Fraudulent Preference to make a payment to revive a statute-barred debt that has not been treated as extinct (*Re Lane, Ex p. Gaze,* 58 L. J. Q. B. 373).

Cp, Undue Preference, at end.

FRAUDULENT PURPOSE. — Taking a *fi. fa.* from a bailiff, under the impression that his authority to execute it depends on its possession, though not Larceny, is taking it "for a Fraudulent Purpose" within s. 96, 24 & 25 V. c. 96 (*R.* v. *Bailey,* 41 L. J. M. C. 61; L. R. 1 C. C. R. 347). *Vf,* Rosc. Cr. 852–855.

FRAUDULENT TRUSTEE. — *V.* Breach of Trust.

FRAUDULENTLY. — *V.* Fraud: Knowingly.

FRAXINETUM. — "A wood of ashes is called *fraxinetum,* and passeth by that name" (Co. Litt. 4 b).

FREE. — *V.* Deduction: Expense: Legacy Duty: Outgoing: Freely. *Cp,* Clear.

Digitized by Google

"This adjective (*liber*) doth distinguish many things in law from others" (Co. Litt. 94 a, *whvf*). So, of "Frank," *e.g.* FRANK-ALMOIGN, and succeeding words.

FREE ALMS. — Grant, by the Sovereign, "In Free Alms for ever"; *V. Re St. Alphage, London Wall*, 59 L. T. 64.

FREE ALONGSIDE. — *V. Perceval* v. *Lawes Manure Co*, W. N. (80) 50.
V. ALONGSIDE.

FREE AND COMMON SOCAGE. — All TENURES "are hereby enacted to be turned into Free and Common SOCAGE, to all intents and purposes," from 24 Feb 1645 (s. 1 (6), 12 Car. 2, c. 24); except the Tenures of FRANK-ALMOIGN and COPYHOLD, and some of the Honorary Services of Grand SERJEANTY (s. 7, Ib.).

FREE AND CONVENIENT WAY. — *V.* WAY.

FREE AND UNQUALIFIED DISCRETION. — *V.* DISCRETION.

FREE AND VOLUNTARY. — *V.* CONFESSION: CONSENT.

FREE BENCH. — *V.* FREEBENCH.

FREE BORD. — *V.* FREEBORD.

FREE CHAPEL. — A Free Chapel is, *semble*, one which is "of the Foundation of the King, exempt from the Ordinary's Jurisdiction" (Termes de la Ley). *V.* PROPRIETARY.

FREE CONVEYANCE. — A stipulation in a contract for the sale of realty that the purchaser shall take a "Free Conveyance," relates only to the expense of the Conveyance; and does not relieve the Vendor from his obligation to show and prove his Title in the ordinary way (*Re Pelly and Jacob*, 80 L. T. 45).

FREE CUSTOMS. — *V.* CUSTOM: WITH ALL LIBERTIES.

FREE FISHERY. — *V.* FISHERY.

FREE FROM AVERAGE. — *V.* AVERAGE: F. P. A.: WARRANTED FREE FROM AVERAGE.

FREE FROM CAPTURE. — *V.* CAPTURE: F. C. S.

FREE FROM DEDUCTIONS. — *V.* DEDUCTION.

FREE FROM INCUMBRANCES. — The sale of an Expectancy "free from Incumbrances," does not throw the Succession Duty on

Digitized by Google

the Vendor (*Re Langham*, 60 L. J. Ch. 110: 39 W. R. 156); so, probably, of a similar sale of a Reversion (*Cooper* v. *Trewby*, 28 Bea. 194).

A purchaser in Ireland of land "free from Incumbrances," is entitled to have redeemed out of the purchase money the future instalments of the Rent-charges that have been substituted for Tithe Rent-charge (*Perrin* v. *Roe*, 25 L. R. Ir. 37).

V. DEDUCTION: INCUMBRANCE: "Beneficial Owner," sub BENEFICIAL: FORMER.

FREE GRAMMAR SCHOOL: FREE SCHOOL.—A GRAMMAR SCHOOL is, strictly, a School for teaching the Learned Languages (*A-G.* v. *Whiteley*, 11 Ves. 241: *Re Berkhampstead School*, L. R. 1 Eq. 102: *Re Campden Charities*, 50 L. J. Ch. 646; 18 Ch. D. 310; 45 L. T. 152), and for Religious Instruction according to the Church of England (*Re Chelmsford School*, 1 K. & J. 543); but "*Writing and Arithmetic* may be well introduced into a scheme for the establishment or better regulation of a 'Free Grammar School.'" And so, *à fortiori*, of a "Free School" (Lewin, 610, and cases there cited: *Vf*, Tudor Char. Trusts, 163).

But, *semble*, "Free School is to be distinguished from Free Grammar School" (*A-G.* v. *Jackson*, 2 Keen, 551). "Free School" has no reference, *per se*, to the class of instruction to be given; it is a flexible term to be construed according to the context and the usage of the school; if the school was founded in or before the 17th century, the presumption is that instruction in the learned languages was intended (*A-G.* v. *Worcester, Bp.*, 9 Hare, 358, 359).

FREE LAND.—"Free Land or Tenement to the VALUE of 40*s.* by the year" to give qualification for a County Vote, 8 Hen. 6, c. 7: *V. Dawson* v. *Robins*, 2 C. P. D. 38; 46 L. J. C. P. 62: *Dodds* v. *Thompson*, 35 L. J. C. P. 97; L. R. 1 C. P. 133; 14 W. R. 476. The criterion of this Value is, not what the land produces at the moment but, what in its existing state it reasonably may be expected to produce (*Astbury* v. *Henderson*, 24 L. J. C. P. 20; 15 C. B. 251).

FREE LIBERTY.—The grant to a person, his heirs and assigns, of "Free Liberty, with servants or otherwise, to come upon lands and there to hawk, hunt, fish, and fowl," is a grant of license of profit, and not of a mere personal license of pleasure; and therefore it authorizes the grantee, his heirs and assigns, to hawk, hunt, &c, by his servants (*Wickham* v. *Hawker*, 7 M. & W. 63; 10 L. J. Ex. 153). *V.* PROFIT À PRENDRE: SERVANTS.

V. LIBERTY OF WORKING.

FREE MARKET.— *V. Lockwood* v. *Wood*, cited TOLL.

Digitized by Google

FREE OF ALL OUTGOINGS. — *V.* OUTGOING: EXPENSE.

FREE OF COMMISSION. — *V. Phillipps* v. *Briard,* 25 L. J. Ex. 233: *Russell* v. *Griffith,* 2 F. & F. 118.

FREE OF DUTY. — *V.* DEDUCTION.

FREE OF EXPENSE AND RISK TO THE SHIP. — *V. Wright* v. *New Zealand Shipping Co,* 4 Ex. D. 165. *Vf,* 5 Encyc. 513.

FREE OF FREIGHT. — *V. Mer. & Exchange Bank* v. *Gladstone,* L. R. 3 Ex. 233; 37 L. J. Ex. 130; 18 L. T. 641: 17 W. R. 11: FREIGHT: Carver, 653–655.

FREE OF GENERAL AVERAGE. — *V.* 1 Maude & P. 449.

FREE OF LEGACY DUTY. — *V.* LEGACY DUTY.

FREE OF PARTICULAR AVERAGE. — *V.* F. P. A., at commencement of this letter.

FREE ON BOARD. — *V.* F. O. B., at commencement of this letter.

FREE PARDON. — "What is the effect of a Free Pardon? It is clear that it extends to far more than merely acquitting of punishment. It is, in fact, a purging of the offence. In 2 Hale P. C. 278, it is stated that the King's pardon 'takes away *pœnam et culpam,*' and in Hawk. P. C. s. 48 it is said that, 'the pardon of a Treason or Felony, even after a Conviction or Attainder, does so far clear the party from the infamy and all other consequences of his crime that he may not only have an action for a scandal in calling him Traitor or FELON after the time of the pardon, but may also be a good witness notwithstanding the attainder or conviction, because the pardon makes him, as it were, a new man and gives him a new capacity and credit'" (per POLLOCK, B., *Hay* v. *Tower Jus.,* cited CONVICTED).

FREE PROFITS. — Synonymous with Net Profits (*Shaw* v. *Galt,* 16 Ir. C. L. Rep. 357). *V.* NET.

FREE PUBLIC HOUSE. — "The expression (in Particulars of Sale), 'Free PUBLIC HOUSE,' is a misdescription when the lease contains a covenant to take beer from the lessor" (Dart, 138, citing *Jones* v. *Edney,* 3 Camp. 285: *Modlen* v. *Snowball,* 31 L. J. Ch. 44; 29 Bea. 641; 4 D. G. F. & J. 143; 5 L. T. 299; 10 W. R. 24: *Vf,* Sug. V. & P. 23).

FREE SCHOOL. — *V.* FREE GRAMMAR SCHOOL.

FREE SERVICES. — Free Services of Ancient TENURES; *V.* 2 Bl. Com. 60–62.

Digitized by Google

FREE USAGES. — *V.* LIBERTY.

FREE USE. — *V.* OCCUPATION: USE AND OCCUPATION.

FREE WARREN. — *V.* WARREN.

FREEBENCH. — Freebench, like DOWER in Freeholds, is the interest which a Wife, after the death of her husband, takes in his COPYHOLDS; but whether she gets any interest and if so how much, depends upon the Custom of the particular Manor of which the property is held. It is, generally, a life interest in a third of such property as the husband was possessed of at the time of his death. *Vh,* Scriven on Copyholds, 7 ed., 69 *et seq*: 2 Watkins on Copyholds, ch. 3: Wms. R. P. 321: Goodeve, 327. Termes de la Ley, *Franke Banke,* says that, a Condition of Freebench is "the wife being married a Virgin," but it would be difficult to refer to any case where proof of that Condition was insisted on; but a Widow's incontinence has been known to forfeit her Freebench, to regain which she has sometimes to go through an ignominious performance (Cowel).

FREEBORD. — "Free Bord," — or Free Border, in modern times frequently written "Freeboard," — "in some places, is a right of claiming a certain quantity of Land beyond or without the Fence, containing about two foot and a half: Mon. Angl. 2 Part, fol 241" (Termes de la Ley). A learned writer has pointed out that the Monasticon Anglicanum only shows that the Free-bord of Brendwood Forest had a width of 2½ feet, which was not inconsistent with a greater width elsewhere; and he defined "Freeboard" "as a certain limited quantity of land, of a width determined by local custom and varying in different places, lying outside the fence of a Manor, Park, Forest, or other Estate; or, sometimes but less accurately, as the mere right of claiming the use of such a width of land." After giving instances (*e.g.* Richmond Park) and speculating on the cause and origin of Freeboards, the same writer says, — "'Freeboard,' is, in fact, rather of the nature of a claim to, and ownership of, Soil than only a mere Right of User; and, in practice, its assurance is effected, not by way of grant or conveyance of an Easement in the land but, by an actual conveyance of the Soil itself" (46 S. J. 118, 119).

"Freeboard" of SHIPS; *V.* s. 438 (3), and s. 443 (2*d*), Mer Shipping Act, 1894, in connection with which *V.* ss. 436–445, Ib.

FREEFOLD. — *V.* FALDA.

FREEHOLD. — "'*Freehold.*' Here (Litt. s. 57) it appeareth that tenant in fee, tenant in taile, and tenant for life, are said to have a frank-tenement, a freehold, so called because it doth distinguish it from termes of yeares, chattels upon incertaine interests, lands in villenage, or cus-

Digitized by Google

tomary or copyhold lands" (Co. Litt. 43 b: Termes de la Ley: Jacob). *Vf*, FREEHOLDER: SOCAGE: CHARTER-LAND.

A devise of the testator's "Freehold Estates" will pass Leases for Lives (*Watkins* v. *Lea*, 6 Ves. 636: *Fitzroy* v. *Howard*, 3 Russ. 225; 7 L. J. O. S. Ch. 16).

An Advowson in GROSS is a freehold (*Cleer* v. *Peacock*, Cro. Eliz. 359: *Re Earnshaw-Wall*, 1894, 3 Ch. 156; 63 L. J. Ch. 836); *secus*, of Common in Gross (*R.* v. *Day*, 3 E. & B. 859).

Blackstone says (2 Com. 104), "Such an estate, *and no other*, as requires *actual possession* of the land is, legally speaking, freehold"; but "an estate of freehold, may, according to our modern ideas, be in Possession, Remainder, or Reversion" (Watkins on Conveyancing, 8 ed., 63, *n*).

Butler (*n* 1, Co. Litt. 266 b) says, "The word *freehold* is now generally used to denote an estate for life, in opposition to an estate of inheritance." In olden times "the word *freehold* always imported the whole estate of the feudatory, but varied as that varied" (Ib.). When more than an estate for life is intended, "it is now more accurate to say, 'Freehold and Inheritance'" (Watkins on Conv. 64, *n*). *V.* INHERITANCE: SEIZED.

The use of the word "Freehold" in connection with land, imports its amplest and most complete enjoyment. For example, if allotments under an Inclosure Act are made as "freehold," "the ownership must carry with it all the incidents which ordinarily attach to a freehold interest, unless, by the special provisions of the Act, some right has been reserved to the Lord which would derogate from the ordinary rights of ownership in the soil"; such a reservation "must be construed most strictly against the party claiming under it"; and, to take one instance, "nothing short of a positive reservation to the Lord of the right of SPORTING over the enclosed lands (if not in express terms, at all events in language necessarily leading to such a conclusion) will suffice to entail on land allotted as 'freehold' a burden of a feudal and onerous character inconsistent with the ownership in fee" (per Cockburn, C. J., *Sowerby* v. *Smith*, 43 L. J. C. P. 293, 296; L. R. 9 C. P. 531, 532, 537; adopted by Esher, M. R., *Devonshire* v. *O'Connor*, 59 L. J. Q. B. 206; 24 Q. B. D. 468. *Vf*, *Greathead* v. *Morley*, 10 L. J. C. P. 246; 3 M. & G. 139: *Bruce* v. *Helliwell*, 29 L. J. Ex. 297; 5 H. & N. 620), — the reservation of Manorial Rights "and all Courts, Perquisites, and Profits of Courts, Rights of Fishery, and Liberty of Hawking, HUNTING, Coursing, Fishing, and FOWLING," is not applicable to Territorial Rights incident to the ownership of the soil, and does not give the right of Shooting over lands allotted as "freehold" (*Sowerby* v. *Smith*, and *Devonshire* v. *O'Connor*, sup, in *whlc Sowerby* v. *Smith* was followed in preference to *Leconfield* v. *Dixon*, 37 L. J. Ex. 33; L. R. 3 Ex. 30). For an example in which the words used did raise the necessary implication that the Right of Shooting was reserved, *V. Graham* v. *Ewart*, cited A.

Digitized by Google

Devise of "my PROPERTY, whether freehold or personal, wheresoever situate," comprises copyholds, "freehold" being construed "real" (*Reeves* v. *Baker*, 23 L. J. Ch. 599; 18 Bea. 372); but a devise of "all my freehold ESTATE AND EFFECTS, wheresoever situate," will not comprise copyholds (*Re Ballard*, 22 W. R. 433).

So, Leaseholds will pass under a devise of "freeholds" where there are no freeholds (1 Jarm. 676); and when "freehold" is shown to be a misdescription it will be rejected (Ib. 785: *V.* FARM). *Vf*, Watson Eq. 1361.

So, of a Share of Proceeds of a sale (*V.* SEIZED).

Vh, *Early* v. *Rathbone*, W. N. (88) 64; 57 L. J. Ch. 652; 58 L. T. 517.

Semble, it is not a misdescription, in Conditions of Sale, to describe CUSTOMARY FREEHOLDS as "Freehold" (*Wadmore* v. *Toller*, 6 Times Rep. 58). But it is a fatal misdescription to describe Copyholds as "Freehold" (*Hart* v. *Swaine*, 7 Ch. D. 42; 47 L. J. Ch. 5; 37 L. T. 376; 26 W. R. 30: but a mere compensation may suffice where the copyhold payments are nominal and fixed, and the minerals and timber are in the copyholder, *Price* v. *Macaulay*, 2 D. G. M. & G. 339; 19 L. T. O. S. 238). So, the vendor cannot enforce a contract which describes as "freehold," land formerly copyhold but enfranchised and in which the mineral rights of the Lord of the Manor are reserved (*Upperton* v. *Nicholson*, 6 Ch. 436; 40 L. J. Ch. 401; 25 L. T. 4; 19 W. R. 733). *V.* COPYHOLD.

So, if property is sold as "Freehold," that means, an unencumbered freehold; and if the stipulated Root of Title shows it to be encumbered with conditions, the vendor will not be protected by the usual Conditions of Sale limiting enquiries into title, or providing against ERROR (*Phillips* v. *Caldcleugh*, L. R. 4 Q. B. 159; 38 L. J. Q. B. 68).

So, if property is sold as "Freehold BUILDING LAND," that means, that the land is building land on which the purchaser can build at any time he thinks proper; subject, it may be, to restrictions about roads, frontage, and the like, but not subject to an obligation to build, within a stated time, houses or other buildings of a stated annual value (*Dougherty* v. *Oates*, 45 S. J. 119).

V. ACTUAL FREEHOLD: CUSTOMARY FREEHOLD.

Quà the Building Societies Acts, the Scotch equivalent for "Freehold *Estate*" is "Heritable Estate" (s. 6, 37 & 38 V. c. 42).

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c 66, "'Freehold *Land*,' means, land the full ownership of which is an estate in FEE SIMPLE" (s. 95); but quà Part 4 of the Act, "'Freehold Registered Land,' includes Leasehold Registered Land which is not of Chattel Tenure" (s. 83).

FREEHOLDER.—"In ancient times by 'Hommes' or 'Men,' Homagers (whom we now call 'Freeholders') were intended; as in grants

that he *and his Men* should be free from toll, 14 H. 6, 12: 12 Ass. 35: 33 E. 3, 88" (1 Co. Litt. by Thomas, 252 *n*).

As to who were Freeholders entitled to elect Knights of the Shire and Coroners, *V. R.* v. *Day*, 3 E. & B. 859.

FREELY. — A devise of property to be "freely" enjoyed, probably means, free from Incumbrances, and (when the devise is for life) free from Impeachment of Waste (*Goodright* d. *Drewry* v. *Barron*, 11 East, 220). But where the testator had by his Will charged the estate, it was held that a devise of it "freely" to be enjoyed, could not mean free from incumbrances and must mean free from all limitations, and therefore that the devise passed the fee (*Loveacres* v. *Blight*, Cowp. 357).

FREEMAN. — Quà Part 10, Mun Corp Act, 1882, "'Freeman,' includes any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835, under the name either of Freemen or of Burgesses" (s. 201).

V. Frank-Law.

FREESTONE. — *V.* Mine.

FREIGHT. — *V.* Affreightment.

"Freight," as used in a policy of Marine Insurance, "imports the benefit derived from the employment of the Ship" (per Ld Tenterden, *Flint* v. *Flemyng*, 1 B. & Ad. 48).

"'Freight' is the value of the use of the ship" (per Day, J., *Gayner* v. *Sunderland*, Cab. & El. 295).

"In my opinion nothing is Freight unless there is involved in it a contract to carry; for Freight is a sum payable in respect of a contract to carry, and if there is no contract to carry, then, although the sum to be paid may be called Freight, it is not in point of law Freight within the rule that the mortgagee is entitled to the accruing freight" (per Mellish, L. J., *Keith* v. *Burrows*, 2 C. P. D. 167; 46 L. J. C. P. 460; affd by H. L. 2 App. Ca. 636; 46 L. J. C. P. 801).

"Freight, according to the dictionaries, includes (1) the Cargo; (2) the actual Transport from one place to another; (3) the Hire of the ship, or part of it, or the charge for the transport of goods therein. *It may by extension include the Passengers*, or even *Passage Money*, as, for instance, upon a question arising upon the now abandoned maxim that 'Freight is the mother of wages,' or upon a question of sale or capture or abandonment, because the Passage Money is equally with the Freight of goods an incident or accessory of the ship. Accordingly, Chancellor Kent (3 Com., 7 ed., 296) states that, 'Freight, in the common acceptation of the term, means the price for the actual transportation of goods by sea from one place to another; but in its more extensive sense it is applied to all rewards or compensation paid for the use of ships, including the trans-

Digitized by Google

portation of passengers.' And he refers to *Giles* v. *The Cynthia* (1 Peters Adm. 206), in which the question arose upon a claim to wages. And in *Mullow* v. *Backer* (5 East, 321) Lawrence, J., said, 'Foreign writers consider Passage-Money the same as Freight'; and Lord Ellenborough added, 'Except for the purpose of lien, it seems the same thing'" (per Willes, J., *Denoon* v. *Home and Col. Assrce,* 41 L. J. C. P. 168; L. R. 7 C. P. 348: *Vf, Devaux* v. *J'Anson,* 5 Bing. N. C. 519; 8 L. J. C. P. 284). But, generally speaking, "Freight" is applicable to Goods only (*Lewis* v. *Marshall,* cited CARGO). *Vh, Sweeting* v. *Darthez,* 23 L. J. C. P. 131; 14 C. B. 538: *Williams* v. *North China Insrce,* 1 C. P. D. 757: Carver, Part 3, ch. 16: 6 Encyc. 1–14.

There is no loss of "Freight," within a Marine Insrce, if, having been earned, the charterers are entitled to, and do, withhold it as a mulct or forfeit (*Inman Co* v. *Bischoff,* 52 L. J. Q. B. 169; 7 App. Ca. 670); *Secus,* if the right to the mulct or forfeiture arises from the happening of one of the perils insured against (*The Alps,* 1893, P. 109; 62 L. J. P. D. & A. 59; 68 L. T. 624; 41 W. R. 527).

In an Undertaking to give Bail for the value of a ship in her damaged condition and her "freight," that means, the whole freight due without deducting the expenses of earning it (*The Gemma,* 14 Times Rep. 444).

Freight payable "in Advance"; *V.* ADVANCE.

Freight payable "as per CHARTER-PARTY"; *V. Smidt* v. *Tiden,* L. R. 9 Q. B. 446; 43 L. J. Q. B. 199; 30 L. T. 891; 22 W. R. 913.

"Looking to him for Freight"; *V.* SANS RECOURS.

V. BACK FREIGHT: DEAD FREIGHT: FREE OF FREIGHT: PAYING FREIGHT: VALUE OF THE SHIP AND FREIGHT: CONDITIONS AS PER CHARTER-PARTY: CHARTERED: Abbott, Part 3, ch. 7.

FREIGHT IN ADVANCE SUBJECT TO INSURANCE.—"This, in a Charter-Party, does not mean that the insurance is to be a Condition Precedent to the recovery of the freight; but merely that the insurance premium is to be deducted from the freight" (1 Maude & P. 365, citing *Jackson* v. *Isaacson,* 3 H. & N. 405; 27 L. J. Ex. 392: *Vh,* per Charles, J., *Smith* v. *Pyman,* 1891, 1 Q. B. 42; revd Ib. 742; and per Manisty, J., *Rodoconachi* v. *Milburn,* 17 Q. B. D. 322, revd 18 Q. B. D. 67; 56 L. J. Q. B. 202).

FREIGHT PAYABLE HERE.—*V. Lidgett* v. *Perrin,* 11 C. B. N. S. 362, stated 1 Maude & P. 365, *n* (*h*).

V. HE OR THEY PAYING FREIGHT: ON PAYMENT OF FREIGHT.

FRENCH BREAD.—"French or Fancy Bread or Rolls," s. 4, 6 & 7 W. 4, c. 37;—"At the time this Act was passed (A. D. 1836), there was Household Bread, which consisted of ordinary loaves and which any poor or ignorant purchaser would expect to get of the right weight; and there was also bread called 'Fancy Bread,' which, according to my recol-

Digitized by Google

lection of that time, was made of a fine quality of flour, and was made in the shape of a long roll, and a person in buying bread of that description would not expect to get the weight so accurately as if he were buying a Household loaf. Then, taking that view of the matter, and seeing that it was more according to the shape of loaf than anything else, the legislature, it seems to me, enacted that bread should be sold by weight, *i.e.* all ordinary bread; and then it was provided that nothing should prevent any baker selling bread 'usually sold' under the denomination of 'French or Fancy Bread or Rolls' without previously weighing the same. My opinion is that that meant such bread as, at the time the legislature passed the Act, was sold under the denomination of 'French or Fancy Bread,' which, I think, as a matter of fact, bore these different *shapes* which have been referred to" (per Blackburn, J., *Aërated Bread Co* v. *Grigg*, 42 L. J. M. C. 119; L. R. 8 Q. B. 355; 37 J. P. 388; 28 L. T. 187; an opinion acquiesced in by the whole Court and therein dissenting from the opinion that it is the exceptional *quality* of the bread which constitutes it "French or Fancy" which had been given by the majority of the Court, Lush & Hayes, JJ., Hannen, J., diss., in *R.* v. *Wood*, 38 L. J. M. C. 144; L. R. 4 Q. B. 599; 33 J. P. 823).

Tinned Loaves made crusty all round but with same ingredients as ordinary bread, except that carbonic acid gas is forced into it, is not "French or Fancy Bread" within the section (*Aërated Bread Co* v. *Grigg*, sup); nor does bread, which is of the ordinary size, shape, and appearance, become "French or Fancy Bread" by being made by a different process or of better materials, *e.g.* by a special yeast the nature of which is a trade secret (*V. V. Bread Co* v. *Stubbs*, 74 L. T. 704; 60 J. P. 424; 18 Cox C. C. 336; 12 Times Rep. 454).

V. By Weight.

FREQUENT: FREQUENTING.—To "frequent" a place is to frequently go there, or to be in the habit of going there, *e.g.* to frequent a public-house. Therefore a conviction cannot be sustained under the Vagrancy Act, 1824, for "frequenting" a street, &c, with intent to commit felony, where the evidence does not show that the person has been there more than once (*R.* v. *Clark*, 54 L. J. M. C. 66; 14 Q. B. D. 93; 52 L. T. 136; 33 W. R. 226; 49 J. P. 246; 1 Times Rep. 109). "He must in fact be seen hanging about the street" (per Grove, J., *Ib.*). *Vh*, *Whickham* v. *Ashe*, 41 S. J. 211.

V. Found: Resort: Rogue and Vagabond.

To "frequent a *Market*," seems to mean the principal market in which the person deals (*Stephens* v. *Derry*, 16 East, 147: *Reeves* v. *Stroud*, 1 Dowl. 399: *Double* v. *Gibbs*, 1 Dowl. 583; 2 L. J. Ex. 87: *Jenks* v. *Taylor*, 5 L. J. Ex. 263; 1 M. & W. 578).

FRESH EVIDENCE.—"Fresh Evidence," *e.g.* s. 7, 58 & 59 V. c. 39, means, evidence of such a kind as would justify the granting of a

Digitized by Google

New Trial, *i.e.* evidence which had not come to the knowledge of the party wishing to call it at the time of the hearing, or which he could not then have called; not evidence which he could have called and did not, although the cause of his not calling it was that his brain and faculties were at that time so far paralysed that he could neither indicate the lines of his defence nor give the names of his witnesses to his solicitor (*Johnson* v. *Johnson*, 1900, P. 19; 69 L. J. P. D. & A. 13; 64 J. P. 72).

Cp, Further Evidence.

FRESH FORCE.—" 'Fresh force (*frisca fortia*)' is a force committed in any Citie or Borough, as by disseisin, abatement, intrusion, or deforcement of any lands or tenements within the said Citie or Borough" (Termes de la Ley).

FRESH PURSUIT.—The Fresh Pursuit which will justify a Constable in arresting without a Warrant, — *e.g.* in cases of Felony or Affray, or where a person is "Found Committing" an Offence, or "Found Offending" (*V.* Found), — must be a continuous pursuit conducted with reasonable diligence (*R.* v. *Howarth*, 1 Moody, 207: *Hanway* v. *Boultbee*, 1 Moo. & R. 15: *R.* v. *Walker*, 23 L. J. M. C. 123; Dears. 358: *R.* v. *Marsden*, 37 L. J. M. C. 80; L. R. 1 C. C. R. 131: *R.* v. *Light*, 27 L. J. M. C. 1; Dears. & B. 332).

Therefore, where an Assault on a Constable has been committed, or an Affray has taken place and finished without fear of renewal, and the constable goes away for assistance and returns in an hour and then arrests; in such a case there has been no Fresh Pursuit (*R.* v. *Walker*, *R.* v. *Marsden*, sup). But if a person is seen committing an offence for which he may be arrested and as soon as possible a constable is sent for, who proceeds to arrest as soon as possible, that is a Fresh Pursuit (*Hanway* v. *Boultbee*, sup); so, where a constable had seen a man assaulting his wife and the man continued to use violent language towards her and then left the house where the assault was committed; held, that the constable was justified in arresting the man after the latter had gone a few yards from the house (*R.* v. *Light*, sup).

Cp, Fresh Suit, which, observe, is not synonymous with Fresh Pursuit. *Va*, Hue and Cry.

FRESH STEP.—An Appearance to a Writ, is a "Fresh Step" within R. S. C., Ord. 70, R. 2 (*Mulckern* v. *Doerks*, 53 L. J. Q. B. 526; 51 L. T. 296, 429; 33 W. R. 14); *Sthc* not followed in *Hunt* v. *Worsfold*, 1896, 2 Ch. 224; 65 L. J. Ch. 548; 74 L. T. 456; 44 W. R. 461: *Va*, *Willmott* v. *Freehold House Co*, 51 L. T. 552.

V. Step.

FRESH SUIT.—" 'Fresh Suit,' is when a man is robbed and the party so robbed followeth the Felon immediately, and takes him with

Digitized by Google

the MANNER, or otherwise, and then bringeth an appeale against him and doth convince him of the felony by verdict, which thing being enquired of for the King, and found, the party robbed shall have restitution of his goods againe.

"Also it may bee said, that the party made Fresh Suit although he take not the theefe presently, but that it be halfe a yeere or a yeere after the robbery done before hee be taken, if so bee that the party robbed doe what lieth in him, by diligent enquiry and search, to take him, yea, although hee be taken by some other body, yet this shall be said Fresh Suit.

"And so Fresh Suit is when the Lord commeth to distreine for rent or service, and the owner of the beasts doth make rescous and driveth them into anothers ground that is not holden of the lord, and the lord followeth presently and taketh them, this is called Fresh Suit. And so in other like cases" (Termes de la Ley).

Cp, FRESH PURSUIT.

FRESH TAXES. — A covenant in a Lease to pay "all Fresh Taxes," would seem, primarily, to mean all new taxes (*Watson* v. *Atkins*, 3 B. & Ald. 647).

FRESH-WATER FISH. — Quà Freshwater Fisheries Act, 1878, 41 & 42 V. c. 39, "'Freshwater Fish,' includes, all kinds of fish (other than Pollan, Trout, and Char) which live in fresh water, except those kinds which migrate to or from the Open Sea" (s. 11); but that "does not include Eels" (s. 1, 49 & 50 V. c. 2). But "an Eel which is bred and living in a river is a 'River Fish'" within a River Bye Law (*Woodhouse* v. *Etheridge*, L. R. 6 C. P. 574).

Quà Freshwater Fisheries Act, 1884, 47 & 48 V. c. 11, "'Freshwater Fish' means any fish living, permanently or temporarily, in fresh water, exclusive of Salmon" (s. 6). *V.* SALMON.

FRIDAY. — *V.* MAN FRIDAY.

FRIEND. — In a contract of sale for "my Friend," the Vendor is not sufficiently described; *V.* PROPRIETOR.

V. FRIENDS AND RELATIONS: NEXT FRIEND: PRIVATE FRIEND.

FRIENDLESS-MAN. — "Was the Saxon word for him that we call an OUTLAW" (Cowel: Termes de la Ley). *Vf*, FRANK-LAW.

FRIENDLY SOCIETY. — The Societies which may be registered under the Friendly Societies Act, 1896, are of 5 kinds: —

1. *Friendly Societies*, *i.e.* "Societies for the purpose of providing by VOLUNTARY SUBSCRIPTIONS of the Members thereof, with or without the aid of Donations, for

Digitized by Google

(*a*) the RELIEF or MAINTENANCE of the Members, their husbands, wives (*V.* WIFE), CHILDREN, fathers, mothers, brothers or sisters, nephews or nieces (*V.* RELATIONS), or wards being orphans, during SICKNESS, or other INFIRMITY (whether bodily or mental), in Old Age (which shall mean, any age after 50), or in Widowhood, or for the Relief or Maintenance of the Orphan Children of Members during minority; or

(*b*) Insuring money to be paid on the Birth of a Member's Child, or on the Death of a Member, or for the Funeral Expenses of the Husband, Wife, or Child, of a member, or of the WIDOW of a deceased member, or (as respects persons of the Jewish Persuasion) for the payment of a sum of money during the period of Confined Mourning; or

(*c*) the Relief or Maintenance of the members when on Travel or Search of Employment, or when in DISTRESSED CIRCUMSTANCES, or in case of Shipwreck, or Loss or Damage of or to BOATS or Nets; or

(*d*) the Endowment of members, or nominees of members, at any age; or

(*e*) the Insurance against FIRE (to any amount not exceeding £15) of the Tools, or Implements of the trade or calling, of the members:

"Provided that a Friendly Society which contracts with any person for the assurance of an Annuity exceeding £50 per annum, or of a Gross Sum exceeding £200, shall not be registered under this Act."

2. *Cattle Insurance Societies, i.e.* "Societies for the purpose of Insurance to any amount against loss of Neat CATTLE, Sheep, Lambs, Swine, HORSES, and other ANIMALS, by death from DISEASE, or otherwise."

3. *Benevolent Societies, i.e.* "Societies for any BENEVOLENT, or CHARITABLE, PURPOSE."

4. *Working-men's Clubs, i.e.* "Societies for purposes of Social Intercourse, Mutual Helpfulness, Mental and Moral Improvement, and Rational RECREATION."

5. *Specially Authorised Societies, i.e.* "Societies for any purpose which the Treasury may authorize as a purpose to which the provisions of this Act, or such of them as are specified in the Authority, ought to be extended; Provided that where any provisions of this Act are so specified, those provisions only shall be so extended." *V.* SPECIALLY.

The above definitions are provided by s. 8 of the above Act, which replaces s. 8, Friendly Societies Act, 1875.

"The Friendly Societies Acts, 1875 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

Vh, Fuller on Friendly Societies: Pratt, Ib.: 6 Encyc. 16–21.

V. PROVIDENT: PUBLIC CHARITY: SOCIETY: TRADE UNION.

Digitized by Google

FRIENDS AND RELATIONS. — A Power to Appoint amongst "Relations *and* Friends," or "Relations *or* Friends," is the same as one to RELATIONS (*Gower* v. *Mainwaring*, 2 Ves. sen. 87, 110: Sug. Pow. 654: *Re Caplin*, 34 L. J. Ch. 578; 2 Dr. & Sm. 527).

"The next and most faithful Friends" to whom Administration is to be granted, 31 Edw. 3, stat. 1, c. 11, means "next-of-blood" (*Hersloe's Case*, 9 Rep. 39 b); and property directed by Will to "REVERT" to "my Friends," will go to the testator's KINDRED, — his heir-at-law quà Realty, or next-of-kin quà Personalty (*Coogan* v. *Hayden*, 4 L. R. Ir. 585). In that case, Dowse, B., citing Schmidt's Shakespeare Lexicon, p. 456, said, "Friends" is sometimes used for "near Relations, particularly parents."

V. FRIEND.

FRIGHT. — *V.* ACCIDENT.

FRIPERER. — "'Friperer' is used, 1 Jac. c. 21, for a kind of BROKER" (Termes de la Ley), "one that scours up and cleanseth old apparel to sell again" (Cowel).

FRISCUS. — "Fresh, uncultivated ground; 2 Mon. Angl. 56" (Jacob).

FRITH. — *V.* FRYTHE.

FRIVOLOUS OR VEXATIOUS. — As to this phrase as used in R. 4, Ord. 25, R. S. C.; *V. Darlow* v. *Scratton*, 29 S. J. 131: *Metropolitan Bank* v. *Pooley*, 10 App. Ca. 210; 54 L. J. Q. B. 449: *Willis* v. *Beauchamp*, 11 P. D. 63: *Burstall* v. *Beyfus*, 26 Ch. D. 35; 32 W. R. 418; 53 L. J. Ch. 565: *Lawrance* v. *Norreys*, 39 Ch. D. 213: *Mittens* v. *Foreman*, 58 L. J. Q. B. 40: *Barrett & Elers* v. *Day*, 59 L. J. Ch. 464; 43 Ch. D. 435: *Reichel* v. *Magrath*, 59 L. J. Q. B. 159; 14 App. Ca. 259: Ann. Pr.

V. EMBARRASS: VEXATIOUS.

FROM. — "From" is much akin to "AFTER"; and when used in reference to the computation of Time, *e.g.* "from" a stated date, *primâ facie* excludes the day of that date (*Howard's Case*, cited DATE: *South Staffordshire Tramways Co* v. *Sickness & Accident Assrce*, 1891, 1 Q. B. 402; 60 L. J. Q. B. 47: to the contrary was *Glassington* v. *Rawlins*, 3 East, 407).

But it "may be inclusive or exclusive according to the context" (per Smith, L. J., *Sidebotham* v. *Holland*, 64 L. J. Q. B. 202; 1895, 1 Q. B. 378, citing *Pugh* v. *Leeds*, 2 Cowp. 714: *Svthlc*, *R.* v. *Gamlingay*, 3 T. R. 513, *whc* was itself criticised in *R.* v. *Knight*, 7 B. & C. 414. *Vf*, *Hatter* v. *Ash*, 1 Raym. Ld, 84, on *whcv*, *Ackland* v. *Lutley*, 1 P. & D. 647; 8 L. J. Q. B. 168: *Wilkinson* v. *Gaston*, 15 L. J. Q. B. 339; 9 Q. B.

Digitized by Google

137: *Va*, note to *Godson* v. *Sanctuary*, 2 L. J. K. B. 23–25). *Vf*, On: Time: Days. *Cp*, From henceforth: To: Until.

So "from" a Place has a like interpretation (*R.* v. *Fisher*, 8 C. & P. 613: *Pim* v. *Curell*, 6 M. & W. 234, cited *Richards* v. *L. B. & S. Ry*, 7 C. B. 851), and "does not, necessarily, import 'next immediately'" (per Littledale, J., *Simpson* v. *Lewthwaite*, 3 B. & Ad. 230). *Vf*, To.

"As from the 31st March next after the passing of this Act," s. 24 (1), (2), Loc Gov Act, 1888; *V. Ex p. West Riding of Yorkshire*, 6 Times Rep. 265.

When an act has to be done "from" or "within" two times, *e.g.* "from 6 to 8 weeks,"—the time for doing it is some period fairly between those times (per Brett, J., *Ashworth* v. *Redford*, 43 L. J. C. P. 58; nom. *Ashforth* v. *Redford*, L. R. 9 C. P. 22).

V. After: At and from: From and after: From the day of the date: Say.

A bequest to a Class "from S. downwards," includes S. (*Lett* v. *Osborne*, 51 L. J. Ch. 910).

"By, from, or under"; *V.* Claiming Under.

FROM AND AFTER.—The expression "From and after the death" is "generally regarded as being equivalent merely to 'Remainder'" (1 Jarm. 816, commenting on *Andrew* v. *Andrew*, 45 L. J. Ch. 232; 1 Ch. D. 410: *Vf*, *Lainson* v. *Lainson*, 5 D. G. M. & G. 754, approved L. R. 11 Ind. App. 1: *Jull* v. *Jacobs*, 3 Ch. D. 703, 713: *Ferguson* v. *Ferguson*, 17 L. R. Ir. 560: 1 Jarm. 806). *Cp*, For want of.

"From and after" does not always mean, immediately after the death of the Tenant for Life; it will sometimes only mean, subject to the life interest (*Re Jobson*, 59 L. J. Ch. 245; 44 Ch. D. 154).

"From and after" death, controlled by context in *Rhodes* v. *Rhodes*, 51 L. J. P. C. 53; 7 App. Ca. 192.

V. Severance.

It is said that under a reversionary lease, which incorrectly recites an existing lease to A., habendum "from and after the *said* lease," the term commences immediately; but that if it were "from and after *the* lease to A.," the term commences on expiration of lease to A. (Elph. 139, *whv*).

V. After: At: At and From: Thenceforth: When.

FROM ANY CAUSE WHATEVER.—As to effect of Condition of Sale giving interest if delay in completion take place "from any cause whatever"; *V.* Any: Dart, 143, 144, 719–723.

FROM HENCEFORTH.—A lease to begin "From henceforth" or "From the making hereof," "shall begin on the day on which it is delivered, for the words of the Indenture are not of any effect till the delivery, and thereby from the making, or from henceforth, take their first effect" (Co. Litt. 46 b). *Vf*, *Llewelyn* v. *Williams*, Cro. Jac. 258:

Digitized by Google

Pope v. *Skinner*, Hob. 72: *Clayton's Case*, 5 Rep. 1 a: *Cornish* v. *Cawsy*, Aleyn, 75: 2 Platt, 55. "The rule, uniformly acted upon from the time of *Clayton's Case* to the present day, is that a DEED or other Writing must be taken to speak from the time of the execution, and not from the date apparent on the face of it. That date is, indeed, to be taken *primâ facie* as the true time of execution; but, as soon as the contrary appears, the apparent date is to be utterly disregarded" (*Browne* v. *Burton*, 17 L. J. Q. B. 49; 5 Dowl. & L. 289). By s. 24, Wills Act, 1837, a TESTAMENT speaks from the death of the testator, unless a CONTRARY INTENTION appears.

Cp, FROM THE DAY OF THE DATE: FROM.

An enactment "'from henceforth,' '*de cætero*,' does not necessarily imply a new law; as may be seen upon the doubts arising on the Statute of Merton, c. 2" (Dwar. 685; *Vf*, Ib. ch. 11).

FROM HIS ABODE. — A coroner's travelling Allowance for every mile he must travel "from" his Place of Abode, s. 1, 25 G. 2, c. 29, does not extend to the miles he travels in returning (*R.* v. *Oxfordshire Jus.*, 2 B. & Ald. 203).

FROM HIS WORK. — A man is not on his way "From his Work," within the meaning of the Rules of a Friendly Society, who after leaving his work goes to a public-house and there stays for 4 hours, and, getting drunk there, meets with an accident on his way home (*Joyce* v. *Northumberland Miners' Society*, 4 Times Rep. 525).

FROM PERFORMANCE. — A covenant by the Assignee of a Lease indemnifying his Assignor "from performance," — as distinguished from the usual one quà "Non-performance," — of the obligations of the lease, means, that he indemnifies against past, as well as future, non-performances (*Gooch* v. *Clutterbuck*, 1899, 2 Q. B. 148; 68 L. J. Q. B. 808; 81 L. T. 9; 47 W. R. 609).

FROM PLACE TO PLACE. — *V.* HAWKER.

FROM THE DAY OF THE DATE. — "'From the Date' and 'From the Day of the Date' are all of one sense, forasmuch as in judgment of law the Date doth include the whole Day of the Date" (*Clayton's Case*, cited FROM HENCEFORTH). *Sv* DATE.

A term limited to commence "from the day of the date," or "from the date" of the instrument, or from a certain day, will be taken to include or exclude that day, according to the context and subject-matter (*Williams* v. *Nash*, 28 L. J. Ch. 886; 28 Bea. 93: *Zimmerman* v. *Digges*, 12 Ir. C. L. Rep. App. i: Elph. 124: 2 Platt, 54–57: Woodf. 159, and cases there cited: *Vh*, Co. Litt. 46 a). *V.* FROM: DATE.

"The general understanding is, that terms for years last during the

Digitized by Google

whole anniversary of the day from which they are granted. Indeed, if this were otherwise, the last day, on which rent is almost uniformly made payable, would be posterior to the lease." (Per Denman, C. J., *Ackland* v. *Lutley*, 9 A. & E. 879; 8 L. J. Q. B. 164; 1 P. & D. 636).

FROM THE DECK.—"Where a cargo was sold 'From the Deck,' it was held to mean that the seller should pay all that was necessary in order to enable the buyer to remove the cargo from the deck" (Benj. 638, citing *Playford* v. *Mercer*, 22 L. T. 41).

FROM TIME TO TIME.—"'From time to time,' means, 'as occasion may arise'" (per Williams, J., *Bryan* v. *Arthur*, 11 A. & E. 117).

"The words 'From time to time' are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and therefore not being able to act again in the same direction." The meaning of the words "From time to time" is, that after once acting, the donee of the power may act again;—and either independently of, or by adding to, or taking from, or reversing altogether, his previous act (per Ld Penzance, *Lawrie* v. *Lees*, 51 L. J. Ch. 214; 7 App. Ca. 19. *Vf*, *Re Sutton Coldfield Grammar School*, 51 L. J. P. C. 8; 7 App. Ca. 91). So, of the power to order costs out of a married woman's property restrained from alienation, s. 2, M. W. P. Act, 1893 (*Hood-Barrs* v. *Cathcart*, 1895, 1 Q. B. 873; 64 L. J. Q. B. 520; 72 L. T. 427; 43 W. R. 560).

Expenses payable "from time to time," s. 81, Ry C. C. Act, 1845; *V*. *Whitehouse* v. *Wolverhampton Ry*, L. R. 5 Ex. 6; 39 L. J. Ex. 1.

Va, *Market Harborough* v. *Kettering*, 42 L. J. M. C. 137; L. R. 8 Q. B. 308: AT ANY TIME.

It seems to be considered that the words "from time to time," or "and so *toties quoties*," added to a covenant for renewal of a lease, creates the right to a perpetual renewal (1 Platt, 712, citing *Furnival* v. *Crew*, 3 Atk. 83; 9 Mod. 446: *Iggulden* v. *May*, 7 East, 242: *Maxwell* v. *Ward*, 11 Price, 3; 13 Ib. 674: *Atkinson* v. *Pilsworth*, 1 Vern. & S. 156. *Sv*, *Baynham* v. *Guy's Hospital*, 3 Ves. 295). *Vf*, RENEWAL.

V. QUAMDIU.

FROM YEAR TO YEAR.—*V*. YEAR TO YEAR.

FRONT MAIN WALL.—"A 'Front Main Wall' is the front main wall in the road" (per Matthew, J., *R*. v. *Ormesby*, 43 W. R. 96); and a Corner House has a "Front Main Wall" to both streets (*Warren* v. *Mustard*, 61 L. J. M. C. 18; 8 Times Rep. 65: *Leyton* v. *Causton*, 9 Times Rep. 180). *Vf*, *A-G*. v. *Edwards*, 1891, 1 Ch. 194; 63 L. T. 639: *Ravensthorpe* v. *Hinchcliffe*, cited SIDE.

Digitized by Google

FRONT OF.—By a local Act power was given of rating to the extent of 1*s.* per yard "of the length *in front of*" buildings. A county prison with its garden and grounds abutted at its entrance, at its back, and at both its sides, on to public ways; held, that "the words 'in front of' mean that part of the gaol which would be frontage if there were doors and windows in it, and therefore that that part of the gaol which abuts on public ways in the front, back, and sides, of the gaol is to be considered liable to be rated" (per Pollock, C. B., *Bedfordshire Jus.* v. *Bedford Improvement Commrs,* 21 L. J. M. C. 227; 7 Ex. 658). *Vf, Governors of Bedford Infirmary* v. *Bedford Improvement Commrs,* 21 L. J. M. C. 229; 7 Ex. 768.

V. FRONTING.

FRONTAGE.—Frontage to the Sea and Rivers,—"Frontage, is where the grounds of any man do join with the brow or front thereof to the SEA, or to Great or Royal STREAMS; and, in case of the Sea or Royal River, the property of the BANKS and grounds adjoining are and belong to the subject whose lands do but and bound thereon; but the Soil of the Sea and Royal Rivers do appertain to the King. But in case of Petty and Mean Rivers and Streams, the Soil of them, as well as the Banks thereof, do appertain to them whose grounds adjoin thereto; so that Frontage and Ownership in base inferior rivers do not differ, but in great streams and the sea they do vary as aforesaid" (Callis, 115).

FRONTING.—Premises "*fronting, adjoining, or abutting*" on a STREET, and as such chargeable with expense of road-making under s. 150, P. H. Act, 1875, need not be absolutely contiguous (*Wakefield* v. *Lee,* 1 Ex. D. 336: *Newport* v. *Graham,* 9 Q. B. D. 183); but must have direct access thereto (*Williams* v. *Wandsworth,* 53 L. J. M. C. 187; 13 Q. B. D. 211: *Lightbound* v. *Higher Bebington,* 54 L. J. M. C. 130; 55 Ib. 94; 14 Q. B. D. 849; 16 Ib. 577).

As to the same phrase in s. 10, 55 & 56 V. c. 57; *V. 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; distinguishing *Wakefield* v. *Mander,* 5 C. P. D. 248.

V. ABUT: ADJOIN; BOUNDING: FRONT OF: FORMING: WITHIN.

Note. When once a Local Authority is satisfied (*V.* SATISFACTION) with a SEWER, whether it has an outfall or not, then s. 150, P. H. Act, 1875, has no further application thereto (*Fulham* v. *Goodwin,* 1 Ex. D. 400: *Bonella* v. *Twickenham,* 57 L. J. M. C. 1; 20 Q. B. D. 63; 58 L. T. 299; 36 W. R. 50; 52 J. P. 356: *Hornsey* v. *Davis,* 1893, 1 Q. B. 756; 62 L. J. Q. B. 427; 68 L. T. 503; 57 J. P. 612); *Secus,* quà everything else in the section (*Barry* v. *Parry,* 1895, 2 Q. B. 110; 72 L. T. 692; 64 L. J. Q. B. 512; 43 W. R. 504; 59 J. P. 421).

FROST.—*V.* DETENTION BY ICE.

Digitized by Google

FROZEN SNAKE. — To write of a person that he is a "Frozen Snake," is Libel, without an explanatory innuendo; for the phrase implies a charge of treacherous ingratitude (*Hoare* v. *Silverlocke*, 12 Q. B. 624; 17 L. J. Q. B. 306).

FRUIT. — "The term 'Fruit,' in legal acceptation, is not confined to the produce of those trees which in popular language are called *fruit* trees, but applies also to the produce of oak, elm, and walnut, trees. In the old books the lessee is stated to have an interest in the trees in respect of the shade for cattle, and the fruit thereof" (per Bayley, J., *Bullen* v. *Denning*, 5 B. & C. 847). In *Liford's Case* (11 Rep. 48 a), it is laid down that the lessee shall have the young of all birds that breed in the trees and the fruits. *Va*, *Berry* v. *Heard*, Cro. Car. 242: Com. Dig. *Biens*, H. Trees: Trees.
V. Food.

FRUSSETUM. — *V.* Frassetum.

FRUSTUM. — "*Frustum* signifieth a parcell" (Co. Litt. 5 b). In the 4th ed. Co. Litt., this word is spelt "Frustrum." So in Cowel it is "*frustrum terræ*, a small piece of land"; but with Spelman it is "frustum."

FRUTECTUM. — "A place where shrubs or tall herbs do grow; 3 Mon. Angl. 22" (Jacob).

FRY. — "Le Frie ou Brood de Salmons, Laumpreis, ou dautre pesson," 13 Ric. 3, c. 19; *V.* Oyster-spat.

FRYTHE. — "*Frythe* is a plaine betweene woods; and so is *lawnd* or *lound*" (Co. Litt. 5 b).

"Frith, or Frydd, (in Wales) a close: *A-G.* v. *Reveley*, printed for private circulation (in Linc. Inn Library)" (Elph. 582).

"Chaucer uses it for a Wood. Camden (in his *Brit.*) for an Arm of the Sea or Great River, and so we frequently use it at this day. Smith (in his *Englands Improvement*) makes it signifie, all Hedgewood, except Thorns. It is a task to reconcile this, when they all disagree with the Saxon, with whom we know *frid*, or *frith*, signifies Peace" (Cowel, *Fryth*).

FUGACIA. — "Signifies a Chase" (Cowel).

FUGITIVE. — Fugitives were, in old time, such as depart out of the Realm without License, and such as were Beyond Sea and returned not upon command; *Vh*, 3 Inst. ch. 84.

FUGITIVE CRIMINAL. — The Extradition Act, 1870, 33 & 34 V. c. 52, s. 26, defines a "Fugitive Criminal" as "any person accused or

Digitized by Google

convicted of an EXTRADITION Crime committed within the jurisdiction of any foreign state, *who is in,* or who is suspected of being in, some part of her Majesty's dominions." The words italicised show that the idea of flight from justice is not necessarily involved; and accordingly, for the purposes of the statute, the phrase "fugitive criminal" includes a person who being in England (and not in any sense fleeing) commits an offence abroad, — *e.g.* a False Pretence by means of sending a letter (*R.* v. *Nillins,* 53 L. J. M. C. 157).

By the above section, "Fugitive Criminal of a Foreign State," means, "a Fugitive Criminal accused or convicted of an Extradition Crime committed within the jurisdiction of that State."

Vh, Clarke on Extradition: 6 Encyc. 23–26.

V. POLITICAL: PRESUMPTION.

FUGITIVE GOODS. — "*Bona Waviata seu Derelicta,* are Goods which are *stollen* and waived by the thief in the flight; and *Bona Fugitivorum,* are the *proper* goods of him who flies for Felony" (*Foxley's Case,* 5 Rep. 109 b). *Cp,* WAIF. *V.* BONA.

FUGITIVE OFFENDER. — *V.* Fugitive Offenders Act, 1881, 44 & 45 V. c. 69: *R.* v. *Hole,* 14 Times Rep. 578: *R.* v. *Spilsbury,* Ib. 579; 79 L. T. 211.

FULFILLING. — *V.* DOING.

FULL. — *V.* IN FULL.

"'In as Full and Ample a manner,' are rather empowering than disabling words" (per Ld Herschell, *Newcastle-upon-Tyne* v. *A-G.,* 1892, A. C. 568; 62 L. J. Q. B. 72).

FULL AGE. — "'*Full Age*' regularly is one and twenty yeares" (Co. Litt. 78 b: *Va,* Litt. s. 104: 1 Bl. Com. 463). *Cp,* ADULT: MAJORITY: MANHOOD: DISCRETION, at end: NONAGE: PERSON.

Quà Parliamentary Franchise; *V. Hargreaves* v. *Hopper,* 45 L. J. C. P. 105; 1 C. P. D. 195.

FULL AGRICULTURAL RENT. — This phrase as used in s. 1, 54 & 55 V. c. 57, means, the full letting value (*Warren* v. *Richardson,* 30 L. R. Ir. 639).

FULL AND ABSOLUTE. — "Full and Absolute power over all my property" given to a Tenant for Life, confers large powers of management, but it does not amount to saying that he is to be WITHOUT IMPEACHMENT OF WASTE (*Pardoe* v. *Pardoe,* 16 Times Rep. 373; 82 L. T. 547).

FULL AND COMPLETE CARGO. — *V.* CARGO.

Digitized by Google

FULL AND FREE LIBERTY.—*V.* Liberty of Working.

FULL ANNUAL VALUE.—"Full Annual Value," means, Annual Value, *i.e.* Net Annual Value, not Gross. Therefore, where a Private Rating Act directs the assessments to be made on the "Full Annual Rent or Value" of the rateable heredits, that means the net annual rent or value (*Rose* v. *Watson*, 1894, 2 Q. B. 90; 63 L. J. M. C. 108; 70 L. T. 906; 42 W. R. 523; 58 J. P. 589). *Cp*, Full Costs.

Quà County Rates Act, 1852, 15 & 16 V. c. 81, "Full and Fair Annual Value," means, "the Net Annual Value of any property as the same is, or may be, required by law to be estimated for the purpose of" the Poor Rate (s. 6). *V.* Annual Value.

"Full Net Annual Value"; *V.* Rack-rent.

FULL APOLOGY.—"Full Apology," s. 2, Libel Act, 1843, 6 & 7 V. c. 96,—"I think the word 'Apology,'—whether it is 'Full Apology' or 'Apology' alone,—means one inserted in such a manner that it may operate as an Apology" (per Pollock, C. B., *Lafone* v. *Smith*, 28 L. J. Ex. 34); "when the statute says a deft may 'insert' an apology, it must mean, *effectually* insert" (per Bramwell, B., *Ib.*): the type and the part of the paper in which the apology appears are most materially to be considered on the question whether a real "Apology" has been made (*S. C.* 28 L. J. Ex. 33; 3 H. & N. 735; 32 L. T. O. S. 77; 7 W. R. 13). It is for the jury to say whether the apology is reasonably sufficient (*Risk Allah Bey* v. *Johnstone*, 18 L. T. 620). *Vf*, Odgers.

FULL COMPENSATION.—"Full Compensation" for "any Damage," s. 308, P. H. Act, 1875, includes Costs reasonably incurred in attending before the Justices and resisting the condemnation of the meat (*Re Bater and Birkenhead*, 1893, 2 Q. B. 77; 62 L. J. M. C. 107; 69 L. T. 220; 41 W. R. 513: *Walshaw* v. *Brighouse*, 1899, 2 Q. B. 286; 68 L. J. Q. B. 828; 81 L. T. 2; 47 W. R. 600). But, quà "Reasonable Compensation," s. 14 (1), Conv & L. P. Act, 1881, *Cp*, *Skinners' Co* v. *Knight*, cited Reasonable. In *Re Bater and Birkenhead*, Esher, M. R., said, "'Any Damage' must include anything which a man suffers by reason of the exercise of the powers of the Act without any fault on his part." But under any head of Damage no more can be recovered than what the law will give under that head; therefore, quà Costs, the party grieved can only recover "the amount which he can induce the Taxing Master to allow him"; and cannot recover the difference between his Taxed Costs and his Actual Expenses, however reasonable and proper the latter may be (*Barnett* v. *Eccles*, 1900, 2 Q. B. 104, 423; 69 L. J. Q. B. 556, 834). *Vh*, *Brierley Hill* v. *Pearsall*, cited Damage.

Cp, Full Costs.

FULL CONFIDENCE.—*V.* Precatory Trust.

Digitized by Google

FULL CONSIDERATION.—"Full and Valuable Consideration," Mortmain Acts, 9 G. 2, c. 36, s. 2, and now 51 & 52 V. c. 42, s. 4 (5); *V.* interpretation, s. 10 (iv), lastly cited Act. *Vh,* Tudor Char. Trusts, 394, 395.

Discharge of a burden on real estate in the event of the same being sold or charged "for a Full or Valuable Consideration"; *V. Redman* v. *Rymer*, 5 Times Rep. 287; 65 L. T. 270.

V. VALUABLE: CONSIDERATION.

FULL COSTS.—"No distinction is known in the law between 'COSTS' and 'Full Costs'" (*Irwine* v. *Reddish*, 5 B. & Ald. 798: *whc* was decided on s. 19, 11 G. 2, c. 19). So, "Full Costs," 17 Car. 2, c. 17, s. 3, means, ordinary costs between Party and Party (*Jamieson* v. *Trevelyan*, 24 L. J. Ex. 74; 10 Ex. 748; wherein, 10 Ex. 750, reference is made by the judges to 4 & 5 W. 4, c. 39, and 4 & 5 V. c. 20, as obviously using the expression in this sense). So, of "Full Costs" in s. 26, Copyright Act, 1842 (*Avery* v. *Wood*, 1891, 3 Ch. 115; 61 L. J. Ch. 75; 65 L. T. 122; 39 W. R. 577: *Sv,* INDEMNITY, at end).

In *Doe* d. *Hyde* v. *Manchester* (12 C. B. 474) "Full Costs and Expenses," s. 126, Lands C. C. Act, 1845, was construed as meaning, Costs as between Solr and Client; but in *Jamieson* v. *Trevelyan* (10 Ex. 750), Martin, B., said, that ruling was "without opposition, and consequently the point cannot be considered as decided by that case."

When the legislature means that "Full Costs" shall be Solr and Client Costs it employs express words to that effect; *V.* s. 18, Patents, &c Act, 1888: INDEMNITY, at end.

"Full Costs," s. 210, Com. L. Pro. Act, 1852; *Vth, Croft* v. *London & County Bank*, 54 L. J. Q. B. 277; 14 Q. B. D. 347.

Cp, FULL COMPENSATION: FULL ANNUAL VALUE.

FULL DISCHARGE.—"Full Discharge" of a prisoner "from custody, without any adjudication," s. 37, 1 & 2 V. c. 110; *V. Basham* v. *Smith*, 22 Bea. 190.

FULL DISCLOSURE.—*V. Fawcett* v. *Whitehouse*, 1 Russ. & My. 132: and per Jessel, M. R., *Dunne* v. *English*, L. R. 18 Eq. 535.

V. DISCLOSE.

FULL ENJOYMENT.—As used in s. 20, Sucn Dy Act, 1853; *V. A-G.* v. *Mander*, 74 L. T. 103; 65 L. J. Q. B. 246; 44 W. R. 413.

FULL FOR VOYAGE.—*V.* IN FULL.

FULL INDEMNITY.—*V.* INDEMNITY, towards end.

FULL INTEREST ADMITTED.—A Marine Policy containing the term "Full Interest Admitted," is void under 19 G. 2, c. 37, s. 1

Digitized by Google

(*Berridge* v. *The Man On Insrce,* 18 Q. B. D. 346). *Cp,* Honour Policy, sub HONOUR.

V. WITHOUT BENEFIT OF SALVAGE.

FULL NOTE.—"Full Notes of Evidence"; *V.* NOTE.

FULL OF ALL DEMANDS.—*V.* IN FULL.

FULL OPPORTUNITY.—*V.* OPPORTUNITY.

FULL RENT.—*V.* FULL ANNUAL VALUE.

FULL SALARIES.—A bequest to employees of "Full Salaries" for a stated period, means, that the salaries are to be calculated free from incidental deductions either by custom of trade or illness, or anything of that sort, but does not exempt the legatee from legacy duty (per North, J., *Re Marcus,* 56 L. J. Ch. 830; 57 L. T. 399; W. N. (87) 168).

V. SALARY.

FULL SATISFACTION.—*V.* SATISFACTION.

FULL VALUE.—The "Full Value" of property, quà an obligation to insure against fire, is, "not the saleable value, but such a sum as would suffice to replace the buildings with others exactly similar" (Redman, 290, 291).

FULL WAGES.—*V.* DISABLE.

FULLEST PRACTICABLE EXTENT.—*V.* WORKABLE.

FULLY ESTATED.—Condition to keep Leaseholds for Lives "fully estated" with lives; *V. Blake* v. *Peters,* 32 L. J. Ch. 200; 1 D. G. J. & S. 345.

FULLY PAID-UP.—The ordinary meaning of a statement on the Certificate of a Co's Shares that they are "fully paid-up" is, that their full face value has been given in money, or money's worth; the phrase is not, ordinarily, to be confined to meaning that the Co itself will make no further claim in respect of them (*Bloomenthal* v. *Ford,* 1897, A. C. 156; 66 L. J. Ch. 253; 76 L. T. 205; 45 W. R. 449).

"It is material to observe the distinction which exists between what are commonly called 'Paid-up Shares' and Shares upon which the whole amount has been paid by instalments; because, the expression 'Fully paid-up Shares' generally applies to cases where, by reason of some concession having been given or some preliminary expenses having been incurred, it is a part of the contract upon the original constitution of the Co that certain persons, without any payment at all, shall be entitled to Fully Paid-up Shares" (per Selwyn, L. J., *Re Peruvian Ry, Crawley's Case,* 4 Ch. 326, 327).

Digitized by Google

FUNDED PROPERTY.—*V.* Irish Funded Property.

FUNDS.—"The Funds," or "Government Funds" or "The Public Funds" (which expressions are synonymous, per Ld Cranworth, *Slingsby* v. *Grainger*, 7 H. L. Ca. 280; 28 L. J. Ch. 617; so, *semble*, of "Funded Property," or "British Funds"), generally means, funded securities guaranteed by the English Government, *i.e.* Consols, Reduced Annuities, Long Annuities, or any other of the English Funds (*Howard* v. *Kay*, 27 L. J. Ch. 448; 6 W. R. 361); but does not include Foreign Bonds guaranteed by England (*Burnie* v. *Getting*, 2 Coll. 324), nor Bank Stock (*Slingsby* v. *Grainger*, 8 D. G. M. & G. 385; 7 H. L. Ca. 273; 28 L. J. Ch. 616), nor East India Stock, under 3 & 4 W. 4, c. 85 (*Brown* v. *Brown*, 4 K. & J. 704), nor even unfunded Exchequer Bills (*Johnson* v. *Digby*, 8 L. J. O. S. Ch. 38); unless there is nothing more appropriate to answer the bequest (*Mangin* v. *Mangin*, 16 Bea. 300). *V.* Consols.

As to Irish Government debentures; *V. Ridge* v. *Newton*, 2 Dr. & War. 239.

"*Foreign* Funds," means, securities for which the faith of a foreign government is directly pledged (*Ellis* v. *Eden*, 23 Bea. 543; 26 L. J. Ch. 533: *Cadett* v. *Earle*, 5 Ch. D. 710; 46 L. J. Ch. 798); but scarcely includes the bonds of an undertaking,—*e.g.* a railway,—which are to be paid off by a sinking fund which is guaranteed by a foreign government (*Re Langdale*, L. R. 10 Eq. 39: *Va*, *Ellis* v. *Eden*, sup). *V.* Foreign.

Vh, 1 Jarm. 770, *n*: Wms. Exs. 1055: Lewin, 340.

A power to *borrow* on the "Funds or Property" of a Co, does not authorize a Charge on future Calls (*Re British Provident Assrce*, 33 L. J. Ch. 535; 4 D. G. J. & S. 407; 12 W. R. 894).

A power to *invest* in the "Funds" of any Incorporated Co, whilst authorizing Debentures, does not authorize the purchase of Preference Shares in a Co (*Harris* v. *Harris*, 29 Bea. 107: *Vthc*, *Murphy* v. *Doyle*, 29 L. R. Ir. 333: *V.* Securities).

"Settled Funds"; *V.* Settled.

V. Provided the funds permit: Government Stock: Public Parochial Funds.

FUNDUS.—"*Quod olim dicebatur fundus nunc manerium dicitur*" (Co. Litt. 5 a). A little further on, in same page, it is said, "anciently *fundus* signified a fearme, and sometime land."

FUNERAL EXPENSES.—What are, and what may be allowed for; *V.* Wms. Exs. 835 *et seq.* Mourning is not a legal Funeral Expense (*Johnson* v. *Baker*, 2 C. & P. 207).

FURLONG.—*V.* Stadium.

A Furlong in length, is 220 Imperial Standard Yards (s. 11, 41 & 42 V. c. 49: *V.* Yard).

Digitized by Google

FURNISH.—*V.* PROVIDE.

Mr. Vaughan (at Bow Street, Dec 1895) held that Window Advertisements to Omnibuses have no relation as to how such vehicles "are to be *furnished or fitted,*" s. 9 (1), 32 & 33 V. c. 115, and, therefore, a Regulation prohibiting such advertisements was *ultra vires* (40 S. J. 93).

"Furnishing and Completing" the Asylum; Stat. Def., 9 & 10 V. c. 84, s. 10.

Note. As to implied agreement of fitness on letting a Furnished House; *V.* KEEP.

FURNISHES THE SUPPLY.—A Water Company "furnishes the supply" of water within s. 62, P. H. Act, 1875, when its mains are laid in such a position as regards a house as will reasonably enable the owner to connect it with the mains (*Southend W. W. Co* v. *Howard,* 53 L. J. Q. B. 354; 13 Q. B. D. 215).

FURNITURE.—"It has been held that the habit of hiring Furniture in Hotels is so notorious that the doctrine (of REPUTED OWNERSHIP) does not apply. It has not yet been declared what is meant by 'Furniture'; but the custom is such that it does not allow any one to think that anything used in the business of the hotel is within the reputed ownership of the hotel-keeper" (per Brett, M. R., *Re Parker, Ex p. Turquand,* 54 L. J. Q. B. 244; 14 Q. B. D. 636).

Generally, a Bequest of "Furniture" means the same as one of 'Household Furniture"; *V.* HOUSEHOLD.

A bequest of "Furniture" may pass PICTURES (*Cremorne* v. *Antrobus,* 5 Russ. 312; 7 L. J. O. S. Ch. 88), or FIXTURES (*V.* HOUSEHOLD); but not a Library of Books (*Bridgman* v. *Dove,* 3 Atk. 202: *So, Ouseley* v. *Anstruther,* and *Hutchinson* v. *Smith,* cited HOUSEHOLD).

"No doubt PLATE may pass under 'Furniture'" (per Stuart, V. C., *Wilkins* v. *Jodrell,* 11 W. R. 588); but if the bequest be of Furniture in a particular house, it will not pass Plate which is sometimes there and sometimes elsewhere, for such a bequest connotes furniture permanently in the house (*S. C.*).

A bequest of a Leasehold Public-house, with its "GOODWILL, and Fixtures, Furniture, and Fittings," will not pass the STOCK IN TRADE (*Re Presley,* 92 Law Times, 391).

V. EFFECTS: FIXED FURNITURE: GOODS AND CHATTELS.

"Furniture and Effects belonging to a PRISON"; Stat. Def., 40 & 41 V. c. 21, s. 56.

"It has been held that *Ballast* is not part of the Furniture of a Merchant SHIP" (1 Maude & P. 53, *n* (*x*), citing Molloy, B. 2, c. 1, s. 8: *Kynter's Case,* 1 Leon. 46). *V.* TACKLE. But *Provisions,* for the use of the crew, are covered by a policy on the ship "and Furniture" (*Brough*

Digitized by Google

v. *Whitmore*, 4 T. R. 206: *Va*, *Hill* v. *Patten*, 8 East, 373); so, of all necessary *Equipment* (*Hoskins* v. *Pickersgill*, 3 Doug. 222), *e.g.* Dunnage, Mats, and Separating Cloths, in a Grain Ship (*Hogarth* v. *Walker*, 1899, 2 Q. B. 401; 68 L. J. Q. B. 888; 48 W. R. 47; affd, 1900, 2 Q. B. 283; 69 L. J. Q. B. 634; 82 L. T. 744; 5 Com. Ca. 292).

FURS. — Hat bodies made partly of the soft parts of rabbit skins and partly of sheep's wool, are not "Furs" within s. 1, Carriers Act, 1830 (*Mayhew* v. *Nelson*, 6 C. & P. 58). *V.* SKIN.

FURTHER. — In *Doe* d. *Wickham* v. *Turner* (2 D. & R. 398), the Will was in the following words, — "I give unto H. W. a messuage or tenement now in the possession of W. *Item*, I give *further* unto my nephew H. W. half part of my garden, and £100 stock in the 4 per cent Bank Annuities; I give, *further*, my yard, stables, cowhouse, and all other outhouses in the said yard, my sister M. W. to have the interest and profits during her natural life"; — and the Court read in the words "to him" after the second "*further*," so that H. W. was held entitled to the yard, &c. *Vh*, 1 Jarm. 490, 491.

"Further or other Valuable *Consideration*," s. 16, 17 & 18 V. c. 83; *V. Re Bolton*, L. R. 5 Ex. 82; 39 L. J. Ex. 51.

"Further *Consideration Money*," in reddendum of a Mining Lease; *V. Barrs* v. *Lea*, 33 L. J. Ch. 437.

"Out of any Further *Moneys*"; *V.* OUT OF.

"To further": A testamentary gift "to further" the teaching of certain doctrines, does not offend against the Mortmain Act (*Re Moseley*, 4 Times Rep. 301).

FURTHER ASSURANCE. — As to Covenant for, *V.* Elph. 493 *et seq*: 6 Encyc. 29–31: *Re Jones*, 1893, 2 Ch. 461; 62 L. J. Ch. 999; 69 L. T. 45.

FURTHER CHARGE. — A Further Charge, is an additional charge given by the original mortgagor (or those standing in his shoes) to the original mtgee (or those standing in his shoes) on the same property as that contained in the original mortgage. Therefore, where a Tenant for Life of settled land mortgaged his life estate to A. and afterwards (by virtue of statutory powers) the Trustees of the Settlement obtained from A. an advance on mortgage of the fee simple of part of the property on the terms that A. should retain out of the advance the money due to him from the Tenant for Life, paying only the balance of the advance to the Trustees; held, that this was not a "Further Charge" for the balance, within R. 10, Sch 1, Part 1, Solrs Rem Ord, and that the Solr was entitled to the Scale Fee under that Sch as on a "LOAN" of the whole amount of the advance to the Trustees (*Aylesford* v. *Poulett*, 1891, 1 Ch. 248; 60 L. J. Ch. 204; 64 L. T. 336; 39 W. R. 241).

Digitized by Google

Further Charge quâ Stamp Duty; *V. Rushbrook* v. *Hood*, 17 L. J. C. P. 58; 5 C. B. 131.
V. CONVEYANCE.

FURTHER CONSIDERATION.—"Further Consideration," s. 9, Partition Act, 1868, is not used technically; it means, subsequent consideration; and the Order thereunder may be made in Chambers (per Cairns, C., *Powell* v. *Powell*, 10 Ch. 130; 44 L. J. Ch. 122: Seton, 1879).

FURTHER ENACTED.—There are no words more appropriate or apposite to connect one section of an Act of Parliament with another than "Be it also further enacted" (per Abbott, J., *Brooke* v. *Clarke*, 1 B. & Ald. 402).

FURTHER EVIDENCE.—"Further Evidence," R. 4, Ord. 58, R. S. C., means, Evidence not used in the Court below (*Re Chennell*, 47 L. J. Ch. 583; 8 Ch. D. 492).
Cp, FRESH EVIDENCE.

FURTHER ORDER.—A Decree directing periodical payments in a certain way "until further order," is final as to the rights of the parties, and temporary only as to the sources and mode of payment (*Peareth* v. *Marriott*, 52 L. J. Ch. 221; 22 Ch. D. 182). *Vf,* UNTIL FURTHER ORDER.

FURTHER PROCEEDINGS.—*V. R.* v. *Brocklehurst*, cited SPECIAL, sub "Special Directions."

FURTHER REPORT.—Further Report by Official Receiver, s. 8 (2), Comp Winding-up Act, 1890; *V.* FRAUD: IF THEY SHALL THINK FIT.

FUSTIAN.—"Fustian-cutting Works"; *V.* NON-TEXTILE FACTORIES.

FUTURE.—Read as "former" (*Pasmore* v. *Huggins*, 25 L. J. Ch. 251; 21 Bea. 103).

As to the value of this word in construing a covenant, in a Marriage Settlement, to settle after-acquired property; *V.* jdgmt of Lindley, L. J., *Re Garnett*, 55 L. J. Ch. 779; 33 Ch. D. 300; 55 L. T. 562: *Re Michell*, 9 Ch. D. 5; 48 L. J. Ch. 50.

"Any *Act*, whether Past or Future"; *V.* PAST.

"Future Act"; Stat. Def., 42 & 43 V. c. 49, s. 49: MUTINY.

"Future *Advances*"; Stat. Def., 54 & 55 V. c. 66, s. 77.

"Future *Cargo*"; *V. Langton* v. *Horton*, 11 L. J. Ch. 299; 1 Hare, 549.

An Agreement to pay an Agent a commission on the sale or letting

Digitized by Google

of goods "at any Future *Date*," is not valid for all time, but only for a reasonable time; and a County Court Judge having held that such an agreement made in Feb 1883 might be determined in Sept 1884, it was held his decision was final, the question being one of fact (*Houghton* v. *Orgar*, 1 Times Rep. 653).

"Future *Debt or Liability*"; *V.* LIABILITY.

Future *Earnings*; *V.* EARNINGS: INCOME.

"Future *Election*"; *V. Oswald* v. *Berwick-upon-Tweed*, 5 H. L. Ca. 856; 25 L. J. Q. B. 383; 4 W. R. 738.

The words "or other future *Estate or Interest*" (s. 3, 3 & 4 W. 4, c. 27), comprehend all executory devises (per Tindal, C. J., *James* v. *Salter*, 3 Bing. N. C. 554). *Vf, Doe* d. *Johnson* v. *Liversedge*, 13 L. J. Ex. 61; 11 M. & W. 517: *Lewis* v. *Rees*, 3 K. & J. 132: *Astley* v. *Essex*, L. R. 18 Eq. 290; 43 L. J. Ch. 817: *Jumpsen* v. *Pitchers*, 13 Sim. 327: *Doe* d. *Corbyn* v. *Bramston*, 3 A. & E. 63: INTEREST.

A covenant to settle all such "Future *Fortune*" as may be acquired or succeeded to, embraces property the title to which was in existence at the date of the covenant, but the enjoyment of which was not acquired till afterwards (*Grafftey* v. *Humpage*, 1 Bea. 46; 8 L. J. Ch. 98).

"Future *Goods*"; *V.* GOODS.

"Past or Future *Husband*"; *V.* HUSBAND.

Resolution of a Co altering "the future *Qualification* of a Director," does not affect existing Directors, whose "Qualification" means that which qualified at the time of their election (*Hamilton's Case*, 8 Ch. 548; 42 L. J. Ch. 465).

"Future *Tenancy*"; Stat. Def., 44 & 45 V. c. 49, s. 57. *V.* TENANCY.

"Certain Future *Time*"; *V.* CERTAIN TIME.

V. PRESENT.

Digitized by Google

GABBERT—GAIN

GABBERT.—"Gabbert," is a Scotch word for LIGHTER; and is not a "SHIP, or Vessel," within s. 2, 26 G. 3, c. 86 (*Hunter* v. *McGown*, 1 Bligh, 573).

GABEL.—"Here note for the better understanding of ancient records, statutes, charters, &c, *gabel*, or *gavell*, *gablum*, *gabellum*, *gabellettum*, *galbellettum*, and *gavillettum*, doe signifie a rent, custome duty, or service, yeelded or done to the king or any other lord" (Co. Litt. 142 a). *Vf*, Termes de la Ley, *Gable*: Cowel: Elph. 582: GALE.

GAGE.—"Signifies a Pawn or PLEDGE" (Cowel, who shows the change of the word into "WAGE").

GAIN.—Business Companies, of more than 20 persons, for "the acquisition of Gain" must be registered (s. 4, Comp Act, 1862). "'Gain,' means exactly Acquisition. Therefore the expression here is 'the acquisition of acquisition.' Gain is something obtained or acquired. It is not limited to pecuniary gain. In fact, we should have to put the word 'pecuniary' to show it. It is not 'gains,' but 'gain' in the singular. Commercial profits, no doubt, if acquired are gain; but I cannot find any word limiting it simply to a commercial profit. I take the word as referring to a Company which is formed to acquire something, as distinguished from a Company formed for spending something and in which the individual members are simply to give something away or to spend something, and not to gain anything" (per Jessel, M. R., *Re Arthur Average Assn*, 44 L. J. Ch. 572; 10 Ch. 546: *Vf*, *Smith* v. *Anderson*, 50 L. J. Ch. 39; 15 Ch. D. 247: *Crowther* v. *Thorley*, 50 L. T. 43: *Re Siddall*, 54 L. J. Ch. 682). A diminution of a loss, is a "Gain" within the meaning of the section (*Re Padstow Assrce*, 51 L. J. Ch. 344; 20 Ch. D. 137). *V.* JOINT STOCK COMPANY.

A person is not EMPLOYED "for the purposes of Gain," s. 47, Elementary Education Act, 1876, "merely because what he does enables some one else to earn money" (per Darling, J., *Mather* v. *Lawrence*, 68 L. J. Q. B. 714; 1899, 1 Q. B. 1000; 80 L. T. 600; 47 W. R. 559; 63 J. P. 455); therefore, there is no such Employment if a father keeps his daughter at home for domestic purposes in order to enable his wife to go out to work (*S. C.*).

V. GAINS: BUSINESS: HIRE: INCOME.

Digitized by Google

"Arable Land (which anciently is called *hyde and gaine*)" (Co. Litt. 85 b).

"Beasts that *gain* his land"; *V.* BEASTS: Termes de la Ley, *Gainage*: Cowel, *Gaynage*.

GAINS.—"Although in the Income Tax Act, 1842 (Sch D and s. 100), 'profits' and 'gains' are really equivalent terms, yet the use of the word 'Gains' in addition to the word 'Profits' furnishes an additional argument for excluding the contention that you are to introduce into the word 'Profits' some ideas connected, not with the nature of the thing but, with the manner and rule of its application. What are the 'Gains' of a trade? If it could be reasonably contended that the word 'Profits' in these (Income Tax) Acts has reference to some advantage which the persons carrying on the concern are to derive from it, it might be said, perhaps, that the same argument might have been raised upon the word 'Gains,' but, to my mind, it is reasonably plain that the 'Gains' of a trade are that which is gained by the trading, for whatever purpose it is used—whether it is gained for the benefit of a community or for the benefit of individuals. Whether the benefit is to be obtained by dividends, or whether it is to be obtained by lightening and diminishing public burdens, it is all the same" (per Selborne, C., *Mersey Docks* v. *Lucas*, 53 L. J. Q. B. 7; 8 App. Ca. 891; 49 L. T. 781; 32 W. R. 34; 48 J. P. 212).

V. INCOME: PROFITS.

GALE.—From GABEL comes "'Gale,' still used for the taking of a mine in the West of England. To *gale* a mine, to acquire the right of working it; and *gale* is the common word in Ireland for a payment of rent, or for the rent due at a certain term; Wedgwood, Dict. Eng. Etym., *Gabel*" (Elph. 582). *Vf,* Wood on Dean Forest, 6, 94: s. 1, Dean Forest Act, 1861, 24 & 25 V. c. xl.

Quà Dean Forest (Mines) Act, 1871, 34 & 35 V. c. 85, "'Galee,' or 'Galees,' shall respectively include all persons holding or having any interest in or under any Gale or Gales" (s. 2).

GALLON.—"The Unit or Standard Measure of Capacity from which all other Measures of Capacity (as well for Liquids as for Dry Goods) shall be derived, shall be the Gallon, containing 10 Imperial Standard Pounds weight of distilled water weighed in air against brass weights, with the water and the air at the temperature of 62° of Fahrenheit's thermometer, and with the barometer at 30 inches" (s. 15, 41 & 42 V. c. 49).

GAMBLER.—To write of a person that he is a "Gambler," without more, is not actionable (*Forbes* v. *King*, cited MAN FRIDAY).

V. PROFESSED GAMBLER.

Digitized by Google

GAME : Animals. — "The word 'Game' is an indefinite word, and seems at various times to have had various meanings; to have at one time included one thing, at one time another; to have had at one time a wider, and at another time a narrower, signification" (per Erle, C. J., *Jeffryes* v. *Evans*, 34 L. J. C. P. 263; 19 C. B. N. S. 264).

Under Night Poaching Act, 1828, 9 G. 4, c. 69 (s. 13), and under the Game Act, 1831, 1 & 2 W. 4, c. 32 (s. 2), "Game" includes, "Hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards"; — a definition which, it will be observed, does not include Rabbits (*Spicer* v. *Barnard*, 28 L. J. M. C. 176; 1 E. & E. 874; 7 W. R. 467; 33 L. T. O. S. 121: *Padwick* v. *King*, 29 L. J. M. C. 42; 7 C. B. N. S. 88).

Under the Poaching Prevention Act, 1862, 25 & 26 V. c. 114, "Game" includes, "Hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, Rabbits, grouse, black or moor game, and eggs of grouse black or moor game" (s. 1).

Quà, and by, subs. 5, s. 5, Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, "'Game,' means, Hares, Rabbits, pheasants, partridges, quails, landrails, grouse, woodcock, snipe, wild-duck, widgeon, and teal."

But, quà Game Trespass Act, 1864, 27 & 28 V. c. 67 (which extends to Ireland only), Rabbits are omitted, the def being, — "'Game,' includes, Hares, pheasants, partridges, grouse, heath or moor game, black game, woodcocks, snipes, quails, landrails, wild-ducks, widgeon, and teal" (s. 2).

Quà the Game Acts for Scotland, "Game," includes, "all the animals enumerated in the Game Acts, or any of them" (40 & 41 V. c. 28, s. 3), which Acts are those enumerated in Sch 1, to that statute, and include the above mentioned Acts, 9 G. 4, c. 69; 1 & 2 W. 4, c. 32; and 25 & 26 V. c. 114.

Rabbits are Ground Game. In Australia they are Vermin; *V.* The Vermin Destruction (Victoria) Act, 1890. *V.* Vermin.

"Game," in the Acts relating to the Sale of Game, means, generally, game killed in the United Kingdom (*Pudney* v. *Eccles*, 1893, 1 Q. B. 52; 62 L. J. M. C. 27; 67 L. T. 713; 41 W. R. 125; 57 J. P. 38).

"Bird of Game" in s. 4, Game Act, 1831, means English Bird of Game (*Guyer* v. *The Queen*, 58 L. J. M. C. 81; 23 Q. B. D. 100; 37 W. R. 586; 60 L. T. 824: *Va*, *Robertson* v. *Johnson*, cited Take); but extends throughout the section to *live* birds (*Loome* v. *Baily*, 30 L. J. M. C. 31; 3 E. & E. 444). *Cp*, Fowl.

V. Entering or Being: Search: Hunting.

Note. As to the property in Game and other animals *feræ naturæ*; *V.* *Sutton* v. *Moody*, 1 Raym. Ld. 250; 12 Mod. 144: *Lonsdale* v. *Rigg*, 26 L. J. Ex. 196; 1 H. & N. 923: *Blades* v. *Higgs*, 34 L. J. C. P. 286, and cases there cited: *Bowlston* v. *Hardy*, cited Nuisance: 2 Bl. Com. 389.

Digitized by Google

GAME: Lawful. — A Foot-race is a "lawful game" (*Batty* v. *Marriott*, 17 L. J. C. P. 215; 5 C. B. 818). So are Billiards (*Parsons* v. *Alexander*, 24 L. J. Q. B. 277; 5 E. & B. 263), Dominoes, Chess, or Draughts (*R.* v. *Ashton*, 22 L. J. M. C. 1; 1 E. & B. 286). So Cards would seem, *per se*, not unlawful (*Patten* v. *Rhymer*, 29 L. J. M. C. 189: *R.* v. *Davies*, cited UNLAWFUL GAMING).

Vh, Jacob, *Gaming*: 6 Encyc. 45–47.

V. GAMING.

Subscriptions or contributions for any plate, prize, or sum of money, to be awarded to the winner "of any lawful game, sport, pastime, or exercise," are legal (*V.* proviso to s. 18, Gaming Act, 1845, 8 & 9 V. c. 109). But a match for so much a side is a wager and not within this proviso (*Diggle* v. *Higgs*, 2 Ex. D. 422: *Trimble* v. *Hill*, 5 App. Ca. 342, overruling *Batty* v. *Marriott*, sup: *Vf*, *Shoolbred* v. *Roberts*, 1899, 2 Q. B. 560; 68 L. J. Q. B. 998; 81 L. T. 522).

V. SUBSCRIPTION: GAMING CONTRACT.

GAME, Sport, Pastime, or Exercise. — Gambling by tossing with coins, if not a "game," is a "pastime or exercise" within s. 17, Gaming Act, 1845 (*R.* v. *O'Connor*, 15 Cox C. C. 3; and as to what is a "Game" within the section, *V. R.* v. *Hudson*, 29 L. J. M. C. 145; Bell C. C. 263).

GAME CERTIFICATE. — Quà Game Act, 1831, Hares Act, 1848 (11 & 12 V. c. 29), and Hares (Scot) Act, 1848 (11 & 12 V. c. 30), "Game Certificate" "shall be construed to mean, a 'License to Kill Game' under the provisions of" the Game Licenses Act, 1860, 23 & 24 V. c. 90 (s. 6, last mentioned Act).

GAME LAWS. — Shooting Game without a License is an offence against the Revenue Laws, and is not an offence against the "Game Laws," within a Condition for Re-entry in a Lease (per Kelly, C. B., *Stevens* v. *Copp*, L. R. 4 Ex. 20; 38 L. J. Ex. 31; 17 W. R. 166; 19 L. T. 454).

GAME OF CHANCE. — Is a Dog Race, or any other Race, a "Game of Chance" within s. 3, 31 & 32 V. c. 52? *V. Hirst* v. *Molesbury*, cited INSTRUMENT OF GAMING. *Vf*, BET. *Cp*, GAMING.

GAMING. — "To game," is to play at any game, whether of skill or chance, for money or money's worth; and the act is not less gaming because the game played is not in itself unlawful (*R.* v. *Ashton*, 22 L. J. M. C. 1; 1 E. & B. 286: *Patten* v. *Rhymer*, 29 L. J. M. C. 189: *Parsons* v. *Alexander*, 24 L. J. Q. B. 277; 5 E. & B. 263: *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; 60 L. T. 265; 53 J. P. 261; 5 Times Rep. 230). In view of the "serious doubts" ex-

Digitized by Google

pressed by Cockburn, C. J., in *Bew* v. *Harston*, sup, the clause in the above definition expressed in the words "whether of skill or chance" cannot be regarded as absolutely settled by authority.

"Other Game or Games whatsoever," s. 1, Gaming Act, 1710, 9 Anne, c. 19, includes Horse-racing (*Goodburn* v. *Marley*, 2 Stra. 1159: *Woolf* v. *Hamilton*, cited ILLEGAL); so, of a FOOT-RACE (*Lynall* v. *Longbotham*, 2 Wils. 36). *Cp*, GAME OF CHANCE.

A TIME BARGAIN on the Stock Exchange was not "Gaming or Wagering," within s. 201, Bankry Act, 1849, though it might be within the Gaming Act, 1845 (*Re Ryder*, 26 L. J. Bank. 69; 1 D. G. & J. 317; 29 L. T. O. S. 336). *Cp*, RASH AND HAZARDOUS.

An Innkeeper is guilty of an offence against his license prohibiting "any Gaming whatsoever," and any licensed person is guilty of suffering "any Gaming" within s. 17, Licensing Act, 1872, if he permits even his private friends to play at cards or other games of chance for money or money's worth, however small the stakes (*Foot* v. *Baker*, 6 Sc. N. R. 301; 5 M. & G. 335; 11 J. P. 444: *Patten* v. *Rhymer*, sup). And convictions against licensed persons for allowing games of skill, — such as ten pins, skittles, skittle-pool, "puff and dart," — to be played for money or money's worth have been supported (*Danford* v. *Taylor*, 20 L. T. 483; 33 J. P. 277, 612: *Luff* v. *Leaper*, 36 J. P. 54, 773: *Dyson* v. *Mason*, sup: *Bew* v. *Harston*, sup).

V. ASSEMBLE: PLACE: SUFFER: UNLAWFUL GAMING: USE: LOTTERY: BET: INSTRUMENT OF GAMING.

GAMING HOUSE. — *V.* COMMON GAMING HOUSE: PLACE.

GAMING CONTRACT. — The Gaming Act, 1845 (8 & 9 V. c. 109, s. 18), which renders null and void, "all contracts or agreements by way of *gaming or wagering*," means, contracts or agreements *for* wagers; and relates only to contracts which are themselves by way of wagering (per Cleasby, B., *Beeston* v. *Beeston*, 45 L. J. Ex. 232; 1 Ex. D. 13). Therefore, an agreement between two persons that one shall make bets for the other, is not a contract "by way of gaming or wagering." And, accordingly, money won and received by a betting agent may be recovered from him by his principal (*Beeston* v. *Beeston*, sup: *Bridger* v. *Savage*, 15 Q. B. D. 363; 54 L. J. Q. B. 464; 53 L. T. 129; 33 W. R. 891; 49 J. P. 725); and (before the Gaming Act, 1892) the agent might recover from his principal all moneys paid in pursuance of a betting agency (*Rosewarne* v. *Billing*, 33 L. J. C. P. 55; 15 C. B. N. S. 316: *Bubb* v. *Yelverton, Ker's Claim*, 19 W. R. 739; 24 L. T. 822: *Bubb* v. *Yelverton, Steel & Nicholl's Claim*, 39 L. J. Ch. 428; L. R. 9 Eq. 471: *Re Lister*, 47 L. J. Bank. 100; 8 Ch. D. 754: *Thacker* v. *Hardy*, 4 Q. B. D. 685; 48 L. J. Q. B. 289). So, prior to the Act of 1892, it was held that, if a person employed another to bet for him in his (the agent's) own name, an authority to pay the bets, if lost, was coupled with the employment;

Digitized by Google

and although *before the bet was made* the employment and authority were both revocable, — the moment the employment was fulfilled by the making of the bet, the authority to pay it, if lost, became irrevocable, and the liability of the principal was consequently irrevocable (per Hawkins, J., *Read* v. *Anderson*, 52 L. J. Q. B. 219; 53 Ib. 532; 13 Q. B. D. 779: *Vth, Lilley* v. *Rankin*, 56 L. J. Q. B. 248: *Cohen* v. *Kittell*, 58 L. J. Q. B. 241; 22 Q. B. D. 680: *Seymour* v. *Bridge*, 54 L. J. Q. B. 347; 14 Q. B. D. 460: *Perry* v. *Barnett*, 54 L. J. Q. B. 351, 446; 15 Q. B. D. 388).

But by the Gaming Act, 1892, 55 & 56 V. c. 9 (which is not retrospective, *Knight* v. *Lee*, 62 L. J. Q. B. 28), it is now enacted that, "any promise, express or implied, to pay any person any sum of money Paid by him under, or in respect of, any contract or agreement rendered null and void by the Act of 8 & 9 V. c. 109, — or to pay any sum of money by way of commission, fee, reward, or otherwise, in respect of any such contract, or of any services in relation thereto, or in connexion therewith, — shall be null and void, and no action shall be brought or maintained to recover any such sum of money." Still, the ruling in *Beeston* v. *Beeston* (sup) remains, and a principal may recover from his agent moneys received by the latter for bets (*De Mattos* v. *Benjamin*, 63 L. J. Q. B. 248; 70 L. T. 560; 42 W. R. 284); but the ruling in *Rosewarne* v. *Billing* (sup) is gone, so that an agent cannot now recover from his principal moneys paid for bets (*Tatam* v. *Reeve*, 1893, 1 Q. B. 44; 62 L. J. Q. B. 30; 67 L. T. 683; 41 W. R. 174; 57 J. P. 118), nor can a partner recover contribution from his copartner towards losses in a betting partnership (*Saffery* v. *Mayer*, 83 L. T. 394).

V. Gaming Act, 1835, 5 & 6 W. 4, c. 41.

Stock Exchange speculations are not within the Act of 1892 unless there is a contract which is, in effect, that only "Differences" shall be paid (*Fuller* v. *Perryman*, 11 Times Rep. 350: *Hirst* v. *Williams*, Ib. 491: *Sv, Egleton* v. *Barclay*, Ib. 174: *Re Gieve*, 1899, 1 Q. B. 794; 68 L. J. Q. B. 509, applying *Universal Stock Exchange* v. *Strachan*, cited Deposit); *secus*, of money advanced to provide a Stake on a Boxing Match, even though advanced to the winner who receives both stakes (*Carney* v. *Plimmer*, 1897, 1 Q. B. 634; 76 L. T. 374; 66 L. J. Q. B. 415; 45 W. R. 385; 61 J. P. 324).

Where on a contract for the Sale of Goods there is a Dispute, *e.g.* as to what price was agreed on, and the parties agree to refer the fact involved in that dispute to A. and the price to be paid is to be too much or too little according as A. may determine that fact, that is a Gaming Contract within the Gaming Act, 1845 (*Rourke* v. *Short*, 5 E. & B. 904; 25 L. J. Q. B. 196).

Art. 1927 of the Civil Code of Lower Canada, which prohibits the recovery of money or other thing "claimed under a Gaming Contract, or Bet," is, substantially, the same as s. 18, Gaming Act, 1845, and

Digitized by Google

therefore the employment of a BROKER to make purchases and sales as a speculation is not within the prohibition when the arrangement is that each transaction is to be completed by payment or delivery (*Forget* v. *Ostigny*, 1895, A. C. 318; 72 L. T. 399; 64 L. J. P. C. 62; 43 W. R. 590).

The offer of a REWARD to any person who uses an advertised specific unsuccessfully, is not a Gaming Contract (*Carlill* v. *Carbolic Smoke Ball Co*, 1893, 1 Q. B. 256; 62 L. J. Q. B. 257; 67 L. T. 837; 41 W. R. 210; 57 J. P. 325).

V. BET: DEPOSIT: EVENT: GAME, *lawful*: TIME BARGAIN: Stutfield on Betting: PLACE.

GANG.—Stat. Def., *V.* AGRICULTURAL: 14 & 15 V. c. 78, s. 46: (Gang Master) 30 & 31 V. c. 130, s. 3.

GAOL.—" 'Gaole,' signifies a Cage for Birds; but, metaphorically, is used for a PRISON. And from thence the Keeper of the prison is called a Gaoler, or Gayler" (Termes de la Ley). *Vf*, Jacob.

Stat. Def.—13 & 14 V. c. 105, s. 9; 52 & 53 V. c. 12, s. 7.—*Ir.* 14 & 15 V. c. 90, s. 18, c. 92, s. 25, c. 93, s. 44; 16 & 17 V. c. 112, s. 80.

The Commission of General *Gaol Delivery* is the power which the Judges of Assize have "to try and deliver every prisoner who shall be in the gaol when they arrive at the Circuit Town" (4 Bl. Com. 270, iii). *Cp*, OYER AND TERMINER.

GAOLER.—*V.* GAOL.

Stat. Def.—28 & 29 V. c. 126, s. 4; 39 & 40 V. c. 36, s. 284.—*Ir.* 20 & 21 V. c. 60, s. 4.

GARBLE.—" 'Garble,' is to sort and chuse the good from the bad, as the Garbling of Bowstaves, 1 Ric. 3, c. 11. And the garbling of Spice is nothing else but to purifie it from the drosse with which it is mixed" (Termes de la Ley). As to the garbling and Garbler of Spices, *V.* 1 Jac. 1, c. 19; 6 Anne, c. 16.

GARD.—*V.* WARD.

GARDEN.—In *R.* v. *Hodges* (Moo. & M. 341), the jury (after being directed by Parke, J.), found that a piece of ground chiefly used to grow grafted seedling pear-trees for sale (though there were also a few currant and raspberry bushes on it, and a crop of potatoes and cabbages had in the preceding summer been grown amongst the pear-trees), was not a "Garden," but was a "Nursery Ground" only, within s. 43, 7 & 8 G. 4, c. 29. *Vf*, *Ex p. Hammond*, 14 L. J. Bank. 14; D. G. 93; 9 Jur. 358.

So a piece of land in the occupation of a Seedsman for the purposes of his business and chiefly planted with trade bulbs, is not a "Garden,"

Digitized by Google

within the definition of "Allotment" in s. 4, Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26 (*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). In that case Collins, J., said,—"A Garden might be defined as, a plot of ground on which fruit, vegetables, and flowers are grown for food or pleasure."

In *Gilbert* v. *Tomison* (4 D. & R. 222) the question was, What is a "Garden," within an Exception (of "Orchards, Gardens, and Highways") to a Custom to get lead ore at Wirksworth, Derbyshire? The jury found that a plot, part planted as a shrubbery within the preceding six years and other part with potatoes quite recently, was a "Garden" within that Exception, and the Court refused to disturb that verdict.

"My freehold Cottage with the Garden"; held, to include a small Orchard, very near but not adjoining and bought subsequently to the cottage with its attached garden of nearly half an acre; as otherwise there would have been an intestacy as regards the orchard (*Heach* v. *Prichard*, W. N. (82) 140). *Cp*, OUTLET.

V. COTTAGE GARDEN: MARKET GARDEN: TILLAGE.

GARDENER.—"Gardener" or "Under-Gardener," *e.g.* in the def of MALE SERVANT in the Revenue Act, 1869, connotes a man skilled in gardening, and not merely a person working in a garden, *e.g.* labourers (*Dillon* v. *Bath*, 81 L. T. 186; 63 J. P. 597). *V.* MARKET GARDENER.

GARNISHEE.—As to what Debts may be attached under a Garnishee Order; *V.* DEBT: BIND.

GARNISHMENT.—Action of; *V.* Termes de la Ley: Cowel: Jacob.

GARTH.—"Signifies a little Backside or Close in the North of England; also a Dam or Wear in a River for the catching of Fish, vulgarly called a FISH-GARTH" (Cowel).

GAS.—Under a Fire Insurance excepting damage by explosion "except explosion *by Gas*," the insurer is not liable for an explosion of Gas created incidentally by the chemicals used in the works of the insured (*Stanley* v. *Western Insrce*, 37 L. J. Ex. 73; L. R. 3 Ex. 71; 17 L. T. 513; 16 W. R. 369). In that case Kelly, C. B., said,—"Strictly and philosophically speaking it is Gas; but so are the component parts of the water of the ocean in their strict philosophical and physical sense. But it appears in this case, and, without any statement to that effect, we know of our own knowledge, that though steam and vapour and substances of that description which find their way into the atmosphere strictly speaking are Gas, they do not pass in ordinary parlance by the name of Gas. Therefore construing the Policy on the principle that these parties expressed themselves in the ordinary language, not only of

Digitized by Google

men of business but even of scientific men when dealing with matters of this description, I think that *the Company were not to be liable for any explosion unless occasioned by Illuminating Gas.*"

V. FIRE: FITTINGS.

"Gas *Company*"; Stat. Def., 23 & 24 V. c. 125, s. 4; 62 & 63 V. c. 19, Sch, s. 18 (6).

"Gas, Water, or Electricity, Company"; Stat. Def., 59 & 60 V. c. 23, s. 10; 60 & 61 V. c. 25, s. 8 (2), c. 27, s. 9 (2).

"Gas *Rate*," quà Gasworks Clauses Act, 1847, 10 & 11 V. c. 15, includes, "any rent, reward, or payment, to be made to the Undertakers for a supply of gas" (s. 3). "Gas *Rent*"; *V.* RENT.

"Gas *Works*"; Stat. Def., 10 & 11 V. c. 15, s. 3; 23 & 24 V. c. 125, s. 4.

GATEWAY. — By a grant of "the exclusive use" of a "Gateway" (with defined dimensions), not merely a right of way, but the right to use the gateway for all lawful purposes passed (*Reilly* v. *Booth*, 44 Ch. D. 12; 62 L. T. 378; 38 W. R. 484). *V.* WAY.

GAVEL-ERTH: GAVEL-RIP. — *V.* BENERTH.

GAVELKIND. — "In the County of Kent, — where lands and tenements are holden in Gavel-kinde, — there, by the Custom and Use out of minde of man, the issues male ought equally to inherit . . . for every son is as great a Gentleman as the eldest son is" (Litt. s. 210: *Vth*, Co. Litt. 140 a). *Vf*, Termes de la Ley: Cowel: Jacob: 2 Bl. Com. 84: Wms. R. P. ch. 5; Challis on Real Property, 14 *et seq*: Robinson on Gavelkind.

GAZETTE. — The "Gazette," means the London Gazette, published under the authority of the English Government (*R.* v. *Holt*, 5 T. R. 439), unless otherwise provided by an interp clause, and then the word is made to mean, quà Scotland, the Edinburgh Gazette, and, quà Ireland, the Dublin Gazette: *V.* 30 & 31 V. c. 127, s. 3; 31 & 32 V. c. 18, s. 2, c. 37, s. 5; 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. — *Scot.* 19 & 20 V. c. 79, s. 4. — *Ir.* 20 & 21 V. c. 60, s. 4.

V. BY AUTHORITY: LONDON GAZETTE.

GAZETTED. — Means, *primâ facie*, published in the London Gazette; *e.g.* s. 168, Bankry Act, 1883: *V.* GAZETTE.

GEARING. — *V. Holmes* v. *Clarke*, 30 L. J. Ex. 135; 31 Ib. 356; 6 H. & N. 349; 7 Ib. 937: MILL: MILL GEARING.

GELD. — *V.* GILD.

Digitized by Google

GELDING. — *V.* HORSE.

GENDER. — In all Acts passed after 1850, "unless the Contrary Intention appears, Words importing the Masculine Gender shall include FEMALES" (s. 1 (1 *a*), Interp Act, 1889).
V. LEGAL INCAPACITY: MAN: SEX: PUER.

GENERAL. — *V.* SPECIFIC: "General Issue," *V.* TRIAL.

GENERAL ACT OF PARLIAMENT. — *V.* PUBLIC ACT OF PARLIAMENT.

GENERAL ANNUAL LICENSING MEETING. — This phrase, quà P. H. Act, 1890, means, in Ireland, "Annual Licensing Quarter Sessions" (subs. 9, s. 12).
V. R. v. *Anglesey Jus.*, cited BEFORE.

GENERAL ASSETS. — Quà Comp Act, 1879, "'the General Assets of the Company,' means, the funds AVAILABLE for payment of the General Creditors as well as the Note-holder" (s. 6).

GENERAL AVERAGE. — "The term 'General AVERAGE' is used indiscriminately, sometimes to denote the kind of loss which gives a claim to General Average Contribution, and sometimes to denote such Contribution itself; in order to prevent confusion it is better to use the term General Average Loss when speaking of the former, and General Average Contribution when speaking of the latter" (2 Arn. 1020: Lowndes, 210,**n* (*p*): Abbott, Part 3, ch. 8: Carver, Part 2, ch. 12: Maude & P. 425 *et seq*).
"The Captain when he determines on the General Average Act, is the agent for all parties interested; the occasion makes him their agent; and if, in doing the Act, he causes direct injury to the property of any one of them, it must be taken that the others, there and then, promise to contribute to make it good" (per Bigham, J., *Anglo-Argentine Agency* v. *Temperley Co*, 1899, 2 Q. B. 403; 68 L. J. Q. B. 900; 81 L. T. 296; 48 W. R. 64; 4 Com. Ca. 281).
V. GENERAL AVERAGE CONTRIBUTION: G. A. LOSS: G. A. SACRIFICE: PARTICULAR AVERAGE: AVERAGE.

GENERAL AVERAGE CONTRIBUTION. — "The object of General Average Contribution is to indemnify the person making the GENERAL AVERAGE SACRIFICE against so much of the loss caused directly thereby as does not fall to his own proportionate share" (per Bowen, L. J., *Svensden* v. *Wallace*, 53 L. J. Q. B. 393; 13 Q. B. D. 84; affd 54 L. J. Q. B. 497; 10 App. Ca. 404). *Vh*, *Steel* v. *Scott*, 59 L. J. P. C. 1; 14 App. Ca. 601: *The Carron Park*, 59 L. J. P. D. & A. 74; 15 P. D. 203: *Milburn* v. *Jamaica Fruit Importing Co*, 1900, 2 Q. B.

Digitized by Google

540; 69 L. J. Q. B. 860; 83 L. T. 321: *McCall* v. *Houlder*, 66 L. J. Q. B. 408; 76 L. T. 469.

For an account working out a G. A. Contribution, *V.* Abbott, 662; Carver, 493–496.

GENERAL AVERAGE LOSS.—"Mr. Arnould, in stating the definition of a General Average Loss, says, — 'A General Average Loss may be defined to be a loss arising out of Extraordinary Sacrifices made, or Extraordinary Expenses incurred, for the *Joint Benefit* of Ship and Cargo'; and for his authority he cites Lawrence, J., in *Birkley* v. *Presgrave*, 1 East, 220" (per Brett, M. R., *Svensden* v. *Wallace*, 13 Q. B. D. 74; 53 L. J. Q. B. 387; affd 10 App. Ca. 404; 54 L. J. Q. B. 497); but "Preservation" was the word used by Lawrence, J., and that is the sense in which "Joint Benefit" is used in the above definition (per Brett, M. R., *S. C.*). Accordingly in the 7th ed. of Arn. 1022 it is said, "A General Average Loss has been authoritatively defined to be, 'a loss arising out of Extraordinary Sacrifices made, or Extraordinary Expenses incurred, for the Preservation of Ship and Cargo'"; but in a note thereto it is said that "it is submitted that a more correct definition, especially in view of modern decisions, is 'a loss consisting in Extraordinary Sacrifices made, or in Expenses incurred through Extraordinary Action taken, for the Preservation of Ship and Cargo.'"

Vh, *Anglo-Argentine Agency* v. *Temperley Co*, cited GENERAL AVERAGE. As to what is Extraordinary Sacrifice, *V.* GENERAL AVERAGE SACRIFICE.

GENERAL AVERAGE PER FOREIGN STATEMENT.—"Policies on Cargoes destined to foreign ports sometimes contain a provision that the underwriter is 'to pay GENERAL AVERAGE as per Foreign Statement if so made up,' or to the like effect. Where this is inserted, the underwriters are bound by a foreign adjustment in accordance with the law in force where it is made, although its effect may be to treat as General Average, what, according to English law, would be Particular Average" (1 Maude & P. 492, *n* (*g*), citing *Harris* v. *Scaramanga*, L. R. 7 C. P. 481; 41 L. J. C. P. 170: *Hendricks* v. *Australasian Insrce*, L. R. 9 C. P. 460; 43 L. J. C. P. 188: *Mavro* v. *Ocean Mar Insrce*, L. R. 9 C. P. 595; 10 Ib. 414; 44 L. J. C. P. 229).

In the lastly cited case, *Mavro* v. *Ocean Mar Insrce*, Cockburn, C. J., said, "In a policy of Marine Insurance 'General Average as per Foreign Statement' appears to be this: the underwriter is only to be liable for a General Average, but what is General Average is to be determined by the law of the foreign place to which the ship is bound."

Vh, *The Mary Thomas*, 1894, P. 108; 63 L. J. P. D. & A. 49; 71 L. T. 104, distinguishing *Dickenson* v. *Jardine*, 37 L. J. C. P. 321; L. R. 3 C. P. 639: *The Brigella*, 1893, P. 189; 62 L. J. P. D. & A. 81; 69 L. T. 834.

Digitized by Google

GENERAL AVERAGE SACRIFICE.—"A General Average Sacrifice is an Extraordinary Sacrifice, voluntarily made in the hour of peril for the common preservation of ship and cargo" (per Bowen, L. J., *Svensden* v. *Wallace,* 53 L. J. Q. B. 393; 13 Q. B. D. 84; affd 54 L. J. Q. B. 497; 10 App. Ca. 404).

As to what is an Extraordinary Sacrifice, *V. The Bona,* 1895, P. 125; 64 L. J. P. D. & A. 62; 71 L. T. 870; 43 W. R. 289, espy jdgmt of Lindley, L. J.: and as to Sacrifice, *V. Shepherd* v. *Kottgen,* 2 C. P. D. 585; 47 L. J. C. P. 67.

There can be no "Sacrifice" when the thing said to be sacrificed is absolutely lost or become valueless: *Vh, Iredale* v. *China Traders Insrce,* 1899, 2 Q. B. 356; 68 L. J. Q. B. 1021; 81 L. T. 231; 48 W. R. 48; affd 1900, 2 Q. B. 515; 69 L. J. Q. B. 783; 83 L. T. 299; 49 W. R. 107.

GENERAL BEQUEST.—*V.* Specific Bequest, sub Specific.

GENERAL CONTRACTORS.—"General Contractors," as one of the Objects of a Company as stated in its Memorandum, will be controlled by the other objects in association with which the phrase is used (*Ashbury Co* v. *Riché,* 44 L. J. Ex. 185: L. R. 7 H. L. 653).

GENERAL COUNCIL.—Quà Dentists Act, 1878, 41 & 42 V. c. 33, "'General Council,' means, the General Council of Medical Education and Registration of the United Kingdom, established under the Medical Act, 1858" (s. 2).

GENERAL COUNTY ACCOUNT.—Stat. Def., Loc Gov Act, 1888, s. 68 (2).

GENERAL COUNTY PURPOSES.—"'General County Purposes,' means, all purposes declared by this or any other Act to be General County Purposes; and all purposes for contributions to which the County Council are for the time being authorized by law to assess the whole area of their Administrative County" (s. 68 (2), Loc Gov Act, 1888). The maintenance of Main Roads remains a "General County Purpose" (ss. 11 (1) and 68, Loc Gov Act, 1888) although the County Council has adopted s. 20, Highways Act, 1878 (*R.* v. *Dolby,* 1892, 2 Q. B. 736; 61 L. J. Q. B. 826; 67 L. T. 619). *Cp,* Special.

GENERAL EXPENSES.—S. 229, P. H. Act, 1875; *V. Lancashire & Yorkshire Ry* v. *Bolton,* 15 App. Ca. 323; 60 L. J. Q. B. 118; 63 L. T. 358; 54 J. P. 532; 5 Times Rep. 610: *Jersey* v. *Uxbridge,* 1891, 3 Ch. 183; 60 L. J. Ch. 833; 64 L. T. 858. *Cp,* "Special Expenses," sub Special.

GENERAL INTEREST.—The mere question as to whether a particular person has committed perjury, or whether otherwise there be a question of individual character, is not "of General or Public Interest"

Digitized by Google

so as to justify an order for costs on the higher scale under s. 5, 45 & 46 V. c. 57 (*R.* v. *City of London Court*, 56 L. J. Q. B. 79; 18 Q. B. D. 105; 55 L. T. 736; 35 W. R. 123). *V.* Public Interest.

GENERAL ISSUE.—Is a Defence which "denies at once the whole declaration, without offering any special matter whereby to evade it" (3 Bl. Com. 305).

GENERAL LIMITS.—"The *General* Limits" of the Metropolitan Streets Act, 1867 (*V.* s. 2, 48 & 49 V. c. 18) are "such parts of the Metropolis as are enclosed in a Circle of which the Centre is Charing Cross, and the Radii are 6 Miles in length as measured in a straight line from Charing Cross"; "The *Special* Limits," being such streets, and portions of streets, as may be declared such (s. 4).

GENERAL LINE OF BUILDINGS.—"General Line of Buildings," "to be decided by the Superintending Architect," s. 75, Metrop Man. Act, 1862; *V. 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: *Newhaven Local Bd* v. *Newhaven School Bd*, 30 Ch. D. 350: *Paddington* v. *Snow*, 30 W. R. 46; 45 L. T. 475: *London Co. Co.* v. *Cross*, 61 L. J. M. C. 160: *Note*, this section replaces s. 143, Metrop Man. Act, 1855, in which the phrase was "*Regular* Line of Buildings," a phrase which did not mean a strict mathematical line, but a substantially regular line (*Tear* v. *Freebody*, 4 C. B. N. S. 228; nom. *Fear* v. *Freebody*, 6 W. R. 520; 31 L. T. O. S. 131); but s. 75, of the Act of 1862, is itself replaced by Part 3, London Bg Act, 1894. *Cp*, Building Line.

The decision of the Superintending Architect is conclusive as to the General Line of Buildings (*Spackman* v. *Plumstead*, 54 L. J. M. C. 81; 10 App. Ca. 229); and, if confirmed on appeal, is operative from its date, notwithstanding the appeal (*Lavy* v. *London Co. Co.*, 64 L. J. M. C. 196, 262: *Vf*, Arise). *Vh*, *Gilbert* v. *Wandsworth*, 5 Times Rep. 31: *Allen* v. *London Co. Co.*, 1895, 2 Q. B. 587; 64 L. J. M. C. 228; 73 L. T. 101; 43 W. R. 674.

GENERAL MANNER.—"Any bequest of personal property described in a General Manner," s. 27, Wills Act, 1837;—A bequest of "all my personal estate," or of general pecuniary legacies, comes within these words (*Hawthorn* v. *Shedden*, 25 L. J. Ch. 833; 3 Sm. & G. 293: *Wilday* v. *Barnett*, L. R. 6 Eq. 193: *Re Wilkinson*, L. R. 8 Eq. 487; 4 Ch. 587: *Sv*, *Hurlstone* v. *Ashton*, 11 Jur. N. S. 725); so, of a gift of Residue (*Re Hartley*, 81 L. T. 804; 48 W. R. 245; 69 L. J. Ch. 79); so, even a direction to pay debts may be within them (*A-G.* v. *Brackenbury*, 32 L. J. Ex. 108; 1 H. & C. 782: *Laing* v. *Cowan*, 24 Bea. 112). *Vf*, 1 Jarm. 683: General Power.

GENERAL MEETING.—Where power is given to the Directors of a Co at a "General Meeting" to do certain acts, "General Meeting"

Digitized by Google

does not import that the acts shall be done by the Meeting, but the Directors are empowered to do the act, provided they exercise the power at a General Meeting (*Wilkins* v. *Roebuck*, 6 W. R. 644).

GENERAL OR QUARTER SESSIONS. — This phrase, 3 & 4 W. & M. c. 11; s. 6, 8 & 9 W. 3, c. 30; s. 4, 17 G. 2, c. 38; s. 14, 5 G. 4, c. 83; means, even in London and Middlesex, the Quarter Sessions only (*R.* v. *London Jus.*, 15 East, 632: *R.* v. *Middlesex Jus.*, 12 L. J. M. C. 134; 4 Q. B. 807).

V. QUARTER SESSIONS.

GENERAL POLICE ACTS. — Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, the "General Police Acts" are those which are specified in Sch 1 of the Act (subs. 12, s. 4). *Vf*, POLICE.

GENERAL POWER. — Unless a CONTRARY INTENTION appears, a general testamentary gift includes property which the testator "may have Power to Appoint *in any manner* he may think proper," — in other words, it includes property over which he has a *General* Power of Appointment (s. 27, Wills Act, 1837). This "applies to Powers which are unlimited in their objects" (Sug. Pow. 307: *V. Airey* v. *Bower*, 56 L. J. Ch. 742; 12 App. Ca. 263: *Boyes* v. *Cook*, 49 L. J. Ch. 350; 14 Ch. D. 53: Farwell, 7). Therefore, a Power to appoint amongst a CLASS, though it be of Children (*Cloves* v. *Awdry*, 12 Bea. 604: *Pidgely* v. *Pidgely*, 1 Coll. 255: *Elliott* v. *Elliott*, 15 Sim. 321; 15 L. J. Ch. 393; *Hawthorn* v. *Shedden*, 25 L. J. Ch. 833; 3 Sm. & G. 293), or a Power from the benefit of taking under which some person is excluded (*Re Byron*, 1891, 3 Ch. 474; nom. *Re Reynolds*, 60 L. J. Ch. 807; 40 W. R. 11), or any other Special Power (*Re Williams*, 58 L. J. Ch. 451; 42 Ch. D. 93), is *not* within the section.

But it has been said that the wide generality of "ANY manner" does not relate "to the *mode* in which the Power is to be exercised" (1 Jarm. 683); but this seems too broadly stated, for though it has been held that if the scope of the Power is general it is not less a General Power within the section because exercisable by Will only (*Hawthorn* v. *Shedden*, sup: *Lefevre* v. *Freeland*, 24 Bea. 403: *Re Powell*, 39 L. J. Ch. 188); yet, on the other hand, if the power prescribes that, in executing it, it is to be "expressly referred to," it is not within the section (*V.* EXPRESSLY REFER). *Vh*, 1 Jarm. 682–688: GENERAL MANNER.

A general gift will not exercise a Power to revoke existing Uses and thereupon to appoint generally (*Pomfret* v. *Perring*, 24 L. J. Ch. 187; 5 D. G. M. & G. 775: *Charles* v. *Burke*, 43 Ch. D. 223, *n*: *Re Brace*, 1891, 2 Ch. 671; 60 L. J. Ch. 505), or a Power to charge property (*Re Wallinger*, 1898, 1 I. R. 139, distinguishing and criticising *Greene* v. *Gordon*, 34 Ch. D. 65; 56 L. J. Ch. 58).

"Power to dispose of as he or she shall think fit," s. 7, 36 G. 3, c. 52,

Digitized by Google

—"General and Absolute Power of Appointment," s. 18, Ib.; *V. Drake* v. *A-G.*, 10 Cl. & F. 257.

As to what words will execute a General Power; *V.* MY: POWER: and quà a Special Power, *V.* SPECIAL: POWER.

GENERAL PURPOSES.—"General Purposes *Rate*," is, probably, the same as "General Rate"; and "means, all Rates which may be made for General Purposes, *i.e.* for purposes in which the great majority of parishioners have a common interest" (per Day, J., *Burrup* v. *Lond. & S. W. Ry*, 64 L. T. 112).

GENERAL RE-VALUATION.—"General Re-Valuation of rateable heredits," s. 65, Loc Gov (Ir) Act, 1898, means (by its subs. 3) "a General Revision under s. 34 of the Valuation (Ir) Act, 1852," 15 & 16 V. c. 63.

GENERAL RULE.—General Poor Law Rule; Stat. Def., 4 & 5 W. 4, c. 76, s. 109; 10 & 11 V. c. 109, s. 15.—*Ir.* 1 & 2 V. c. 56, s. 124.

"General Rules"; Stat. Def., Land Transfer Act, 1875, 38 & 39 V. c. 87, s. 4; Bankry Act, 1883, s. 168; Comp Winding-up Act, 1890, s. 32.—*Ir.* 54 & 55 V. c. 66, s. 95.

GENERAL SEARCH.—*V.* SEARCH.

GENERAL SUPPLY.—Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, "'General Supply,' *means*, the General Supply of ENERGY to Ordinary CONSUMERS; and, *includes*, unless otherwise specially agreed with the Local Authority, the General Supply of Energy to the Public Lamps, where the Local Authority are not themselves the Undertakers; but shall not include the supply of Energy to any one or more Particular Consumers under special agreement" (Sch, s. 1).

GENERAL UTILITY.—A bequést in aid of matters of "General Utility," is not a good CHARITY (*Kendall* v. *Granger*, 11 L. J. Ch. 405; 5 Bea. 300).

GENERAL WORDS.—General Words, in a Conveyance, are not to be construed as merely passing Easements, but must be construed "like any other words with reference to what the words are intended to mean" (per Fry, J., *Willis* v. *Watney*, 51 L. J. Ch. 181: *V.* YARDS). They do not *create* rights, they only *pass* such rights as they comprise as were existing at the date of the conveyance (*Baring* v. *Abingdon*, 1892, 2 Ch. 374; 62 L. J. Ch. 105; 67 L. T. 6; 41 W. R. 22, espy jdgmts of Lindley and Bowen, L.JJ.).

Sometimes the phrase, "General Words" refers to those just mentioned, and sometimes describes a class of things,—*e.g.* "personal estate" (Elph. 186, *n*).

Digitized by Google

As to the effect of express words upon rights conferred by s. 6, Conv & L. P. Act, 1881, and as to excluding or modifying that section; *V. Birmingham Bank* v. *Ross*, 57 L. J. Ch. 601; 38 Ch. D. 295; 59 L. T. 609; 36 W. R. 914: *Broomfield* v. *Williams*, cited CONTRARY INTENTION: *Godwin* v. *Schweppes*, 1902, 1 Ch. 926; 71 L. J. Ch. 438: WAYS.

General Words, in a Contract and especially if in a printed Form, may be controlled by the main object and intent of the contract (per Herschell, C., *Glynn* v. *Margetson*, 1893, A. C. 351; 62 L. J. Q. B. 466).

GENERALITY.—Proviso that a Schedule shall "not abridge or affect the generality of the description hereinbefore contained"; "'Generality,' is different from 'Comprehensiveness.' The Sch is not to restrict the generality of the operative part, but the recital may still control its comprehensiveness" (per Coleridge, J., *Walsh* v. *Trevanion*, 19 L. J. Q. B. 461, cited SET FORTH).

GENERALLY.—"And *generally* do all such acts and things *in relation to* his property . . . as may be reasonably required":—This obligation on a bankrupt (prescribed by s. 24 (2), Bankry Act, 1883), does not require him to submit to a medical examination with a view to an insurance on his life, and thereby the better to realize a contingent reversionary interest belonging to him (*Board of Trade* v. *Block*, 58 L. J. Q. B. 113; 13 App. Ca. 570; 4 Times Rep. 770: *Vf*, CONDUCT). Fry, L. J., when that case (nom. *Re Betts*, 56 L. J. Q. B. 370; 19 Q. B. D. 39) was in the Court of Appeal, said, "The most anxious desire is exhibited by the legislature to prevent its special words limiting the generality of its general words, by its use of the word 'generally,'" and therefore that the bankrupt was bound to submit to the examination; but in the H. L., Halsbury, C., dissented from that view, and said that the examination was not an act "in relation to" the bankrupt's property.

Assignment for Benefit of Creditors "generally," s. 4, Bills of Sale Act, 1878; *V. Hadley* v. *Beedom*, 1895, 1 Q. B. 646; 64 L. J. Q. B. 240; 72 L. T. 493; 43 W. R. 218.

Quà Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57, "'Creditors generally,' includes all Crs who may assent to or take the benefit of a Deed of Arrangement" (s. 19), does not, necessarily, include all the Crs of the Debtor, but rather means, Crs (all or less than all) dealt with as a class collectively and not individually (per Williams, L. J., *Hedges* v. *Preston*, 80 L. T. 847).

"His Creditors generally," s. 4 (*a*), Bankry Act, 1883, means, *all* the Debtor's Crs; therefore, an Assignment by a Partnership of its assets for the benefit of its Trade Crs, is not an Assignment by one of the partners

Digitized by Google

"for the benefit of his Creditors" and is not an Act of Bankry within that subsection, though, probably, it is a "Fraudulent Conveyance" by him within the next subsection (*Re Phillips*, 1900, 2 Q. B. 329; 69 L. J. Q. B. 604; 82 L. T. 691).

GENTLE.—A warranty that a horse is "gentle," does not import that it has received any particular training, but only that it is docile, tractable, and quiet (*Bodurtha* v. *Phelon*, 2 Allen, 348).

GENTLEMAN.—"Gentlemen, be those whom their blood and race doth make noble and knowne." It is the business of "the Prince to honour vertue where he doth finde it, to make gentlemen, esquiers, knights, barons, earles, marquises, and dukes, where he seeth vertue able to beare that honour, or merits and deserves it, and so it hath alwayes bin used among us. But, ordinarily, the King doth only make knights and create barons or higher degrees: for as for gentlemen, they be made good cheape in England. For whosoever studieth the lawes of the realme, who studieth in the Universities, who professeth liberall sciences, and, to be shorte, who can live idly and without manuall labour, and will beare the port, charge, and countenance of a gentleman, he shall be called Master, for that is the title which men give to esquires and other gentlemen, and shall be taken for a gentleman" (Ch. 20, *De Republica Anglorum*, by Sir T. Smyth, D. C. L., published posthumously, 1583). *Vf*, Cowel: Jacob: 6 Encyc. 65.

"According to Sir T. Smyth, this title is applied generally to those who have nothing to do, and can 'live idly'" (per Pollock, C. B., *Allen* v. *Thompson*, 25 L. J. Ex. 250; 1 H. & N. 15; 4 W. R. 506: *Va*, *Spaddacini* v. *Treacy*, 21 L. R. Ir. 553).

Therefore, for the purposes of the Bills of Sale Acts, neither of the following is correctly described as "Gentleman";—

A Clerk in the Audit Office (*Allen* v. *Thompson*, sup),

An Attorney or an Attorney's Clerk (*Tuton* v. *Sanoner*, 27 L. J. Ex. 293; 3 H. & N. 280: *Dryden* v. *Hope*, 9 W. R. 18; 3 L. T. 280; *Brodrick* v. *Scale*, 40 L. J. C. P. 130; L. R. 6 C. P. 98),

A Solicitor's Clerk out of regular employment, but engaged in making out bills for a firm of solicitors (*Beales* v. *Tennant*, 29 L. J. Q. B. 188; 1 L. T. 295),

A Buyer of Silks (*Adams* v. *Graham*, 12 W. R. 282; 9 L. T. 606; 33 L. J. Q. B. 71),

One who solicits orders on commission (*Matthews* v. *Buchanan*, 5 Times Rep. 373).

But each of the following has been held to be correctly described as "Gentleman," quà B. of S. Acts;—

One who has never had an occupation (*Gray* v. *Jones*, 14 C. B. N. S. 743).

Digitized by Google

One who follows the usual pursuits of a country gentleman but is a Sleeping Partner in more than one business concern (*Feast* v. *Robinson*, 63 L. J. Ch. 321; 70 L. T. 168),

A Medical Student who had, for a short time, acted as a surgeon's assistant but for 6 months had been in no business (*Bath* v. *Sutton*, 27 L. J. Ex. 388; nom. *Sutton* v. *Bath*, 3 H. & N. 382),

A Coal Agent who, having been dismissed, was, at the time, out of employ (*Morewood* v. *South Yorkshire Ry*, 28 L. J. Ex. 114; 3 H. & N. 798: *Va*, *London & Westminster Loan Co* v. *Chace*, 31 L. J. C. P. 314; 12 C. B. N. S. 730),

A person who had been, but had ceased to be, a Proctor's Clerk and was occasionally collecting debts, but who lived chiefly on an allowance from his mother (*Smith* v. *Cheese*, 45 L. J. C. P. 156; 1 C. P. D. 60; 33 L. T. 670: *Va*, *Beauchamp* v. *Anderson*, 72 Law Times, 182).

"Gentleman" is an insufficient description of a deponent to the fitness of a new trustee (*Re Orde*, 52 L. J. Ch. 832; 24 Ch. D. 271; 31 W. R. 801: *Re Horwood*, 55 L. T. 373), because such a description gives no evidence of the deponent's ability to speak to such fitness; but for the mere purpose of identification of the deponent it is sufficient (*Re Dodworth*, *Spence* v. *Dodworth*, 60 L. J. Ch. 798; 1891, 1 Ch. 657; 64 L. T. 282; 39 W. R. 362).

"Gentleman," in a description of a transferee of Shares; *V*, *Re Humber Iron Co*, *Williams' Case*, 1 Ch. D. 576: *Re European Bank*, *Masters' Case*, 7 Ch. 292; 41 L. J. Ch. 501

Cp, Esquire.

GEOGRAPHICAL.—A Word "*not* being a Geographical Name," quà Trade-Mark (*V.* Fancy Word), does not connote that no place or places can be found bearing the same name as the word; the general test is, Does the Word, in ordinary parlance, suggest a Geographical Name? Therefore, neither "Monkey," "Magnet," "St. Paul," nor "Magnolia," is, in this connection, a Geographical Name, though each is the name of a place, and "Magnolia" is the name of several places in the United States (*Re Magnolia Metal Co*, 1897, 2 Ch. 371; 66 L. J. Ch. 312, 598; 76 L. T. 672).

But, possibly, "John Bull" is a Geographical Name (*Re Paine*, 61 L. J. Ch. 369).

GET.—To "get" Minerals (or to "get Materials," s. 4, 5 & 6 W. 4, c. 50), is, it seems, synonymous with to "win" them (*Ramsden* v. *Yeates*, 50 L. J. M. C. 135; 6 Q. B. D. 583; 29 W. R. 628; 44 L. T. 612: *Vh*, *Jowett* v. *Spencer*, 17 L. J. Ex. 367; 1 Ex. 647). *V.* Win: Workable.

A power to "get" Minerals, *semble*, involves the power to carry them away; *V.* Dredge.

GET IN.—*V.* Collect.

Digitized by Google

GIBRALTAR.—"To any Port in Spain *this side* Gibraltar," in a Marine Insrce made in England, means any Port on the West Coast of Spain (per Wright, J., *Simon* v. *Sedgwick*, 61 L. J. Q. B. 702; affd 1893, 1 Q. B. 303; 62 L. J. Q. B. 163; 67 L. T. 785; 41 W. R. 163).

GIFT.—"This word (Gift), importing no more than the transferring of the property of a thing from one to another, is of larger extent than a Feoffment, which is always applied to an immoveable thing; for this is often applied to moveable things also" (Touch. 227). *Cp*, FEOFFMENT.

Conveyance by gift, *donatio*, was formerly the apt mode for creating an Entail (Ib. 228, *n* by Hilliard to 6 ed.). For full information on the history of the use and the effect of the word "Give" in Conveyances of Real Property, *V. n* 1, 384 a, Co. Litt. 18 ed., by Hargrave & Butler. But now in Deeds, executed after the 1st Oct 1845, "Give" will not imply any covenant in law in respect of any tenement or hereditament except so far as it may do so by force of some special Act of Parliament (s. 4, 8 & 9 V. c. 106). The late Mr. Joshua Williams stated that he was "not aware of any Act of Parliament by force of which the word 'Give' implies a covenant" (Wms. R. P. 368: *Vf*, Dart, 635: Jacob).

V. GRANT: CONVEYANCE.

A mere parol Gift of PERSONAL CHATTELS must be "accompanied by DELIVERY of possession" (Wms. P. P. 33: *Irons* v. *Smallpiece*, 2 B. & Ald. 551: *Cochrane* v. *Moore*, 59 L. J. Q. B. 377; 25 Q. B. D. 57, espy jdgmts of Fry and Bowen, L. JJ., who examine and trace the proposition and its history with a wealth of learning). In *thlc* Esher, M. R., treated at length of the verbal meaning of "Gift" and said,—"Suppose the proposing donor offers the thing saying, 'I give you this thing—take it,' and the other says 'No; I will not take it now, I will take it to-morrow,'—I think the proposing donor could not, in the meantime, say correctly to a third person, 'I gave this just now to my son, or my friend.' The answer of the third person would (I think rightly) be, 'You cannot say you gave it him just now; you have it now in your hand. All you can say is, That you are *going* to give it to him to-morrow, if then he will take it.' I have come to the conclusion that in ordinary English language and in legal effect, there cannot be a 'Gift' without a giving and taking. The giving and taking are the two contemporaneous, reciprocal, acts which constitute a 'Gift.' They are a necessary part of the proposition that there has been a 'Gift.' They are not evidence to prove that there has been a gift, but facts to be proved to constitute the proposition that there has been a gift."

But though a parol Gift without Delivery is inoperative, such delivery need not always be a Manual Delivery (*Kilpin* v. *Ratley*, 1892, 1 Q. B. 582), and *semble*, there may be a good parol DECLARATION of Trust of Personal Chattels without Delivery (*Cochrane* v. *Moore*, sup), or an

Digitized by Google

Equitable Assignment (*Milroy* v. *Lord*, 31 L. J. Ch. 798; 4 D. G. F. & J. 264: *Re Griffin*, 1899, 1 Ch. 408; 68 L. J. Ch. 220).

Delivery of a thing not capable of immediate manual delivery, may be accomplished by delivering its *indicia*, *e.g.* the Key of a Warehouse (*West* v. *Skip*, 1 Ves. sen. 244: *Ryall* v. *Rowles*, Ib. 362: *Ward* v. *Turner*, 2 Ves. sen. 443), or by endorsing and delivering a Banker's Deposit Receipt (*Re Griffin*, sup), or by marking the thing with the name of the donee (*Stoveld* v. *Hughes*, 14 East, 308: *Vf*, *Chaplin* v. *Rogers*, 1 East, 190): but where a thing is capable of manual delivery, a delivery of part of it is insufficient, *e.g.* delivery of a half of a Bank Note is not a delivery of the Note (*Smith* v. *Mundy*, 29 L. J. Q. B. 172). *Cp*, Donatio Mortis Causâ.

Note: As to the validation of a Gift by the appointment of the Donee as the Exor of the Donor, *V. Strong* v. *Bird*, 43 L. J. Ch. 814; L. R. 18 Eq. 315: *Re Applebee*, 1891, 3 Ch. 422; 60 L. J. Ch. 793: *Re Griffin*, sup.

A direction in a Will that its Trustees are to be paid an Annual Remuneration if they carry on the testator's business, is a "Gift" payable out of the personal estate of the testator within s. 4, 8 & 9 V. c. 76, and as such is a Legacy liable to duty (*Thorley* v. *Massam*, 1891, 2 Ch. 613; 60 L. J. Ch. 537; 39 W. R. 565).

A gift though absolute and immediate is still a "Gift" within s. 38 (2), 44 & 45 V. c. 12 and s. 11, 52 & 53 V. c. 7, and, as such, liable to Account-Stamp Duty, if made within 12 months of the death of the giver (*A-G.* v. *Booth*, 63 L. J. Q. B. 356). As to what is a "Gift" within those enactments, *V. A-G.* v. *Worrall*, 1895, 1 Q. B. 99; 64 L. J. Q. B. 141; 71 L. T. 807; 43 W. R. 118.

GILBERT ACT.— The Clergy Residences Repair Act, 1776, 17 G. 3, c. 53.

GILD.—"'Gild' hath divers significations, as sometimes a Tribute, other times an Amercement, thirdly a Fraternity or Company . . . by the King's license" (Termes de la Ley). *Vf*, Cowel: Jacob, *Geld*, *Guild*.

GILD AND SILVER.—"'Gild' and 'Silver,' as applied to coin, include casing with gold or silver respectively, and washing and colouring by any means whatsoever with any wash or materials capable of producing the appearance of gold or silver respectively" (Steph. Cr. 310, stating s. 1, 24 & 25 V. c. 99).

GIN.—"Gin," sold simply as such, must not be reduced more than 35 degrees under proof (Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30, s. 6); but there is no offence in selling it when reduced below that standard, if the purchaser have notice that it is sold "as diluted spirits. No alcoholic strength guaranteed" (*Gage* v. *Elsey*,

Digitized by Google

52 L. J. M. C. 44; 10 Q. B. D. 518: *Webb* v. *Knight*, 46 L. J. M. C. 264; 2 Q. B. D. 530).

In Mining, "a 'Gin' is a windlass fixed in the ground, and worked *by a horse* for the purpose of drawing materials from the mine" (MacS. 246, *n* 8; *Cp*, WIMSEY).

GIRDLAND. — The Saxon name for YARD-LAND: "the Saxons called it *girdland*, and now the *g* is turned to a *y*" (Co. Litt. 5 a).

GIRL. — A female under 16 years; *V. R.* v. *Prince*, cited KNOWINGLY. So, quà Coal Mines Regn Act, 1887 (s. 75). *Cp*, BOY: CHILD: WOMAN: YOUNG PERSON.

GIVE. — *V.* GIVEN: GIFT: GRANT: DISPOSE OF.

Give Notice; *V.* SERVED: BY POST.

GIVEN. — Goods "*given* in parochial relief," s. 77, 4 & 5 W. 4, c. 76, mean, goods gratuitously supplied for the purpose of parochial relief, though only by way of loan (*Davies* v. *Harvey*, 43 L. J. M. C. 121; L. R. 9 Q. B. 433).

Notice to be "given," may be oral, *V.* SERVED; if by post, *V.* BY POST.

"Given," as a participle, is doubtful in its tense, — it may refer to the past or the future; as in a Guarantee made "in consideration of the Credit given by A. to B.," on which Pollock, C. B., and Martin, B. (diss. Bramwell, B.), decided that there was a good consideration stated, because "given" referred to future credit (*Broom* v. *Batchelor*, 25 L. J. Ex. 299; 1 H. & N. 255). Pollock, C. B., said, — "the word 'given' is indefinite in point of time. It is, no doubt, a perfect participle; but it may mean perfect past, perfect present, or perfect future": and he seems to have thought the latter its *primâ facie* meaning. On the other hand, Bramwell, B., said, "'Given' is a participle, and, *primâ facie*, it must have its primary meaning, namely, 'already given.'" "In consideration of your *giving* Credit," states an effective consideration; for "*giving* Credit," is as applicable to future as to past credit (*Edwards* v. *Jevons*, 8 C. B. 436; 19 L. J. C. P. 50). *V.* ADVANCE: DRAWN: HAVING: MAY BE: SECURE.

GLADSTONE'S ACTS. — The Succession Duty Act, 1853, 16 & 17 V. c. 51:

The Usury Laws Repeal Act, 1854, 17 & 18 V. c. 90:

The Public Revenue and Consolidated Fund Charges Act, 1854, 17 & 18 V. c. 94:

The Compulsory Church Rate Abolition Act, 1868, 31 & 32 V. c. 109:

The Irish Church Act, 1869, 32 & 33 V. c. 42.

Digitized by Google

GLASS. — S. 1, Carriers Act, 1830; *V. Owen* v. *Burnett,* 2 Cr. & M. 353; 4 Tyr. 133: *Bernstein* v. *Baxendale,* cited TRINKETS: *Glover* v. *Lond. & S. W. Ry,* 37 L. J. Q. B. 57; L. R. 3 Q. B. 25.

Sale by the "Glass"; *V.* MEASURE.

Glass-houses; *V. Meux* v. *Cobley,* cited IMPROVEMENT: MARKET.

"Glass Works"; *V.* NON-TEXTILE FACTORIES.

GLEBE. — "We most commonly take it for land belonging to a Parish Church, beside the Tythe" (Cowel). *Vh,* 6 Encyc. 68–78.

Quà Glebe Land Act, 1888, 51 & 52 V. c. 20, "'Glebe Land,' includes any manor, land, or tenement, forming the Endowment, or part of the Endowment, of a BENEFICE" (s. 12).

"Glebe" as used in Gifts for Churches Act, 1803, 43 G. 3, c. 108; *V. Re Randell,* 57 L. J. Ch. 899; 38 Ch. D. 213; 58 L. T. 626; 36 W. R. 543.

Stat. Def. — *Ir.* 33 & 34 V. c. 112, s. 2; 38 & 39 V. c. 42, s. 8. — *Scot.* 29 & 30 V. c. 71, s. 2; 31 & 32 V. c. 96, s. 1; 39 & 40 V. c. 11, s. 2.

GLEBE HOUSE. — Quà Irish Church Act, 1869, 32 & 33 V. c. 42 (*V.* s. 72), and, probably, as of general acceptation, "Glebe House," means, a house of residence belonging to a BENEFICE, using that last word in a very wide sense.

GLYN. — *V.* COMBE.

GOAT. — "Gote," or "Goat," 23 H. 8, c. 5; "Goats, be usual engines erected and built with perculleses and doors of timber, stone, or brick; invented first in Lower Germany and after brought into England and used here by imitation; and experience hath given so great approbation of them as they are now; and that with good reason and cause inducing the same, accounted the most useful instruments for draining the waters out of the land into the sea" (Callis, 91).

GOD. — *V.* ACT OF GOD: CHANCE: SERVICE OF GOD.

GOD-BOTE. — *V.* BOTE.

GOD'S LAW. — The degrees of consanguinity within which marriages are prohibited by "God's Law," as mentioned in 32 H. 8, c. 38, are those enumerated in 25 H. 8, c. 22, and 28 H. 8, c. 7 (*R.* v. *Chadwick,* 17 L. J. M. C. 33; 11 Q. B. 173).

GOD'S MONEY. — *V.* ARGENTUM DEI.

GODLY. — "So far as I am able to discover 'Godly,' and 'Pious,' as applied to Trusts or Uses, had, in early times, much the same significance in Scotland as in England. Their meaning was not limited to

Digitized by Google

objects of a religious or eleemosynary character, but embraced all objects which a well-disposed person might promote from motives of philanthropy," *e.g.* in *Saltoun* v. *Pitsligo* (M. Dict. 9948) it was held by the Court of Session that the repair of a Public Harbour was a "Pious Use," within the Scotch Act of 1685, c. 18 (per Ld Watson, *Income Tax Commrs* v. *Pemsel*, cited CHARITABLE PURPOSE). *Cp*, PIOUS USES.

"Godly, righteous, and sober, life"; *V.* CHURCH.

GODLY LEARNING.—In a Deed made in 1549, a trust for the promotion of "Godly Learning," means that the instruction to be given is to be in conformity with the doctrines of the Protestant Church of England as by law established (*Re Ilminster School*, 2 D. G. & J. 535; nom. *Baker* v. *Lee*, 30 L. J. Ch. 625; 8 H. L. Ca. 495).

"If land or money be given for maintaining '*the Worship of God*' (*A-G.* v. *Pearson*, 3 Mer. 409), or the promotion of '*Godly Learning*' (*Re Ilminster School*, sup), and nothing more is said, the Court will execute the trust in favour of the established form of religion; and dissenters cannot be appointed trustees" (Lewin, 606, citing *Re Stafford Charities*, 25 Bea. 28; 27 L. J. Ch. 381: *Re Ilminster School*, sup: *A-G.* v. *Clifton*, 32 Bea. 596). It was however held in the lastly cited case, that the instruction was open to scholars of every denomination.

GODLY PREACHER.—A bequest to "Godly Preachers of Christ's Holy Gospel," may be explained by parol as indicating its applicability to a religious party by whom that phraseology was used and how they used it, and that the testator was a member of that party (*Shore* v. *Wilson*, 9 Cl. & F. 356; 11 Sim. 592; 7 Jur. 781: *Vf*, *Drummond* v. *A-G. Ireland*, cited PROTESTANT).

GODLY USES.—*V.* GODLY: PIOUS USES.

GOING.—To contract to have the "Going" of so many sheep or cattle, does not involve that they must be pasture fed; it, by itself, means, that the sheep or cattle are to go with the flock or herd of the person to give the "Going"; therefore, the right to it is not a TENEMENT, quà a Pauper Settlement (*R.* v. *Thornham*, 5 L. J. O. S. M. C. 70; 6 B. & C. 733). *Vf*, *R.* v. *Cumberworth Half*, cited KEEPING.

"Going Concern"; *V.* ESSENCE: *County of Gloucester Bank* v. *Rudry*, cited GOODWILL.

GOING TO.—In reference to the phrase of "going to or returning from" certain places and duties, that so frequently recurred in the clause giving exemptions from Turnpike Tolls (s. 32, 3 G. 4, c. 126), it may be useful to call attention to *Harrison* v. *Brough* (6 T. R. 706), where a horse ridden by its owner to *fetch* cattle from pasture, was held not to be within such an exemption, under "Cattle going to or returning from pasture," or "Horses *attending* cattle returning from pasture."

Digitized by Google

GOLD. — "Gold," s. 1, 30 & 31 V. c. 90, does not mean pure gold, but merely what in common parlance is called gold (*Young* v. *Cook*, 47 L. J. M. C. 28; 3 Ex. D. 101).

V. Metal: Mine, last par: Gild and Silver: Plate.

GOOD. — The phrase "*Good* Consideration" is sometimes used as synonymous with "*meritorious* consideration," which is good-for-nothing (Wms. P. P. 67: *Cp*, Good Ship). But in the statutes of Elizabeth, the one (13 Eliz. c. 5) for the protection of Creditors, and the other (27 Eliz. c. 4) for the protection of Purchasers, — "good" means, Valuable consideration (*Twyne's Case*, 3 Rep. 81, 83: *Vf*, *Re Moroney*, 21 L. R. Ir. 54). Yet the quantum of value required by the latter of those statutes is very different from that required by the former. Under 27 Eliz. c. 4, the valuable consideration, if genuine, will not be put into the judicial scales to be weighed as against the property conveyed (*Bassett* v. *Nosworthy*, Finch, 102: *Copis* v. *Middleton*, 2 Mad. 410); and therefore the obligation of the lessee's covenants is a "good" consideration for the assignment of leaseholds so far as the 27 Eliz. is concerned (*Price* v. *Jenkins*, 46 L. J. Ch. 805; 5 Ch. D. 619: *Re Lulham*, 53 L. J. Ch. 928; 32 W. R. 1013; 33 Ib. 788: *Va*, *Schreiber* v. *Dinkel*, 54 L. J. Ch. 241: *Harris* v. *Tubb*, 42 Ch. D. 79). But the doctrine of *Price* v. *Jenkins* does not apply, even as regards the 27 Eliz. if leaseholds be transferred by sub-demise at a merely nominal rent (*Shurmur* v. *Sedgwick*, 53 L. J. Ch. 87; 24 Ch. D. 597); and in no case is it applicable to the 13 Eliz. c. 5, which was passed to prevent creditors being defeated or delayed, and in view of that statute, a consideration, though valuable, will not be "good" if substantially out of proportion to the property conveyed (*Ridler* v. *Ridler*, 52 L. J. Ch. 343; 22 Ch. D. 74: *Green* v. *Paterson*, 32 Ch. D. 104: *Va*, *Twyne's Case*, 3 Rep. 83: May on Fraudulent Dispositions, 2 ed., 257–260). *V.* Valuable. *Note*: — By the Voluntary Conveyances Act, 1893, 56 & 57 V. c. 21, no Voluntary Conveyance, "if, in fact, made Bonâ Fide," is "fraudulent or covinous," within 27 Eliz., "by reason of any subsequent purchase for value."

V. Purchase: Volunteer: Pecuniary Consideration.

"Good or Valuable Consideration given"; *V.* Contract.

The fact that a prominent person, *e.g.* a popular actress, has, by invitation, sat for her Photograph, is not such a "Good and Valuable Consideration" therefor as will, under s. 1, 25 & 26 V. c. 68, deprive the Author of the Photograph of his Copyright therein (*Ellis* v. *Marshall*, 64 L. J. Q. B. 757; 11 Times Rep. 522: *Sv*, *Melville* v. *Mirror of Life Co*, 1895, 2 Ch. 531; 65 L. J. Ch. 41). *V.* For.

A bequest for the "Good" of a place is a valid Charity (*A-G.* v. *Lonsdale*, 1 Sim. 105: *Va*, *A-G.* v. *Webster*, L. R. 20 Eq. 483; 44 L. J. Ch. 766).

GOOD AND SUFFICIENT. — *V.* Sufficient.

Digitized by Google

GOOD BARLEY. — *V.* Barley.

GOOD BEHAVIOUR. — " 'Good abearing,' signifies the exact carriage or behaviour of a Subject to a King and his Liege People, to which men sometimes, for their loose demeanor, are bound: and he that is bound to this is more strictly bound than to the Peace, for the Peace is not broken without an actual Affray, Battery, &c; but this may be forfeited by the number of a man's company or his weapons: Cromp. Just. 119, 120, &c" (Termes de la Ley). *V.* Surety of the Peace. *Cp,* Peace.

GOOD CAUSE. — The " Good Cause " which will enable the Judge to deprive a successful litigant of his costs in an action tried with a jury, or to give costs against him (R. 1, Ord. 65, R. S. C.), involves the idea of misconduct or improper claim on his part in or in relation to the litigation, and whether any such " Good Cause " exists is a question on which an appeal lies (*Jones* v. *Curling*, 53 L. J. Q. B. 373; 13 Q. B. D. 262). But if any " Good Cause " exists, the Court of Appeal will not (probably cannot, *Huxley* v. *West Lond. Extn. Ry*, inf) interfere with the exercise of the Judge's discretion (*Williams* v. *Ward*, 55 L. J. Q. B. 566). Mis-statements, or improper proceedings, inviting the litigation, made or taken by the successful litigant, are such a " Good Cause " (*Sutcliffe* v. *Smith*, 2 Times Rep. 881: *Pool* v. *Lewin*, 1 Ib. 165: *Harnett* v. *Vise*, 5 Ex. D. 307: *Bostock* v. *Ramsey*, cited Pursuance), and so is the making of an extravagant claim (*Huxley* v. *West Lond. Extn. Ry*, 14 App. Ca. 26; 58 L. J. Q. B. 305; 60 L. T. 642: *Roberts* v. *Jones*, 1891, 2 Q. B. 194; 60 L. J. Q. B. 441), or a claim for special damage unproved at the trial, even though such claim was made on expert advice and was not oppressive or vexatious (*Forster* v. *Farquhar*, 1893, 1 Q. B. 564; 62 L. J. Q. B. 296; 68 L. T. 308; 41 W. R. 425), or even an unjustifiable choice of venue, although the deft has made no effort to obtain a change (*Roberts* v. *Jones*, sup), or oppression (*O'Connor* v. *Star Co*, 68 L. T. 146).

A letter " Without Prejudice " cannot be looked at to show such " Good Cause " (*Walker* v. *Wilsher*, cited Without Prejudice).

Vh, Obs of Jessel, M. R., *Cooper* v. *Whittingham*, 49 L. J. Ch. 752; 15 Ch. D. 501: *Pool* v. *Lewin*, sup; and *V.* those cases cited per Brett, M. R., *Felix* v. *Gordon*, 1 Times Rep. 97: *Cooper* v. *Whittingham* was followed in *Upmann* v. *Forester*, 52 L. J. Ch. 946; 24 Ch. D. 231, but distd in *American Tobacco Co.* v. *Guest*, 1892, 1 Ch. 630; 61 L. J. Ch. 242, and both *Cooper* v. *Whittingham* and *Upmann* v. *Forester* dissented from in *Walter* v. *Steinkopff*, 1892, 3 Ch. 489; 61 L. J. Ch. 521; 67 L. T. 184; 40 W. R. 599. *Va, Pearman* v. *Burdett-Coutts*, 3 Times Rep. 719: *Rooke* v. *Czarnikow*, 4 Ib. 669: *Macgregor* v. *Clay*, 4 Ib. 715: *Moore* v. *Gill*, 4 Ib. 738: *Myers* v. *Financial News*,

Digitized by Google

5 Ib. 42: *Beckett* v. *Stiles*, 5 Ib. 88: *Wilts Bank* v. *Hammond*, 5 Ib. 196: *Barnes* v. *Maltby*, 5 Ib. 207: *Wood* v. *Cox*, 5 Ib. 272: *Marriage* v. *Wilson*, 53 J. P. 120.

The corresponding phrase in Ireland is "Special Cause," s. 53, 40 & 41 V. c. 57: *V.* SPECIAL.

"Good Cause" for transferring proceedings in a Co's Winding-up; *V. Re Laxon*, 1892, 3 Ch. 31; 62 L. J. Ch. 79.

An affidavit of plaintiff's belief that he has "a Good Cause *of Action*," R. 4, Ord. 11, R. S. C., means, that he must "make out a Cause of Action in which he would, probably, be successful" (per Esher, M. R., *Strauss* v. *Goldschmid*, 8 Times Rep. 512).

"Good and SUFFICIENT CAUSE" for delay in taking steps to obtain redress under Bengal Regulations; held, to include the Lunacy of the applicant (*Troup* v. *East India Co*, 6 W. R. 373); so, litigation as to the ownership of the Equity of Redemption, was held "Good and Sufficient Cause" why a mtgee should delay proceedings for Foreclosure (*Prannath Roy* v. *Ramrutton Roy*, 8 W. R. 29).

"Just Cause"; *V.* JUST.

V. CAUSE: DUE CAUSE: GOOD REASON: SUFFICIENT CAUSE: SUFFICIENT REASON.

GOOD CHARACTER.—A certificate that an applicant for a license is of "Good Character" is not false (s. 2, 4 & 5 W. 4, c. 85) because he is cohabiting with a woman without being married to her (*Leader* v. *Yell*, 33 L. J. M. C. 231; 16 C. B. N. S. 584). In that case Erle, J., said:—"'Character' must mean the estimation in which a man is held by those who are acquainted with him. You cannot pry into the secrets of a man's conduct; if you could do so, there might be many circumstances which would palliate the cohabitation."

GOOD CONDITION.—The question as to what is "Good Condition" of demised premises, is "to be viewed with regard to the class of tenement to which the demised one belongs" (per Fry, J., *Saner* v. *Bilton*, 47 L. J. Ch. 270; 7 Ch. D. 815; *Vthe*, *Manchester Bonding Warehouse Co* v. *Carr*, cited WEAR AND TEAR). *Vf*, TENANTABLE REPAIR.

GOOD CONSCIENCE.—*V.* EQUITY.

GOOD CONSIDERATION.—*V.* GOOD.

GOOD DISCRETION.—*V.* DISCRETION.

GOOD DRAWER.—*V.* QUIET IN HARNESS.

GOOD FAITH.—Purchaser "in Good Faith," s. 47, Bankry Act, 1883; *V.* PURCHASE.

Digitized by Google

"In Good Faith," s. 92, Bankry Act, 1869, repld s. 48 (2), Bankry Act, 1883, — *i.e.* that a person taking a preference from a bankrupt "must not be conscious himself of an intention to favour one creditor above another" (per Ld Hatherley, *Butcher* v. *Stead*, L. R. 7 H. L. 849; 44 L. J. Bank. 134). *Vh, Re Cheeseborough*, 19 W. R. 973; 25 L. T. 76: FRAUDULENT PREFERENCE.

"In Good Faith," s. 46 (3), Bankry Act, 1883, would seem to mean, innocent of the knowledge, and of the means of knowledge, that there is an adverse bankruptcy (*Lucas* v. *Dicker*, 49 L. J. C. P. 415; 50 Ib. 190; 5 C. P. D. 150; 6 Q. B. D. 84).

"A thing is to be deemed to be done in Good Faith, within the meaning of this Act, where it is in fact done *honestly*, whether it is done negligently or not" (s. 90, Bills of Ex. Act, 1882). "That section is obviously founded on the distinction pointed out in *Jones* v. *Gordon* (47 L. J. Bank. 1; 2 App. Ca. 616; 37 L. T. 477), by Ld Blackburn, between the case of a person who was 'honestly blundering and careless,' and the case of a person who has acted not honestly, that is, not necessarily with the intention to defraud, but not with an honest belief that the transaction was a valid one, and that he was dealing with a good Bill. Ld Blackburn there, with regard to the person on whom the onus of proof lies in such a case, says, — 'If the facts and circumstances are such that the jury, or whoever has to try the case, came to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions because he thought in his own secret mind — I suspect there is something wrong, and if I ask questions and make further enquiry, it will be no longer my suspecting it, but my knowing it, and then I shall not be able to recover, — I think that is dishonesty.' I think that that is the dishonesty to which the Act refers where the word 'honestly' is used" (per Denman, J., *Tatam* v. *Hasler*, 23 Q. B. D. 345; 58 L. J. Q. B. 433).

Quà Sale of Goods Act, 1893, a thing is done "in Good Faith," "when it is, in fact, done honestly, whether it be done negligently or not" (subs. 2, s. 62).

Purchaser "dealing in Good Faith with a Tenant for Life," ss. 45 (3) and 54, S. L. Act, 1882; *V. Mogridge* v. *Clapp*, 1892, 3 Ch. 382; 61 L. J. Ch. 534; 67 L. T. 100; 40 W. R. 663: *Sutherland* v. *Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 946; 69 L. T. 186; 42 W. R. 12.

V. BONÂ FIDE: HOLDER IN DUE COURSE: IMPOSSIBLE.

GOOD GOVERNMENT. — *V.* PEACE: GOVERNMENT.

GOOD JURY. — An Order for a "Good Jury," means that the Jury are to be selected from the Special Jury List, and their fees as Special Jurymen are to be allowed on taxation (*Vickery* v. *L. B. & S. Ry*, 39

Digitized by Google

L. J. C. P. 169; L. R. 5 C. P. 165: *Vines* v. *L. B. & S. Ry*, 39 L. J. Ex. 175; L. R. 5 Ex. 201).

In Lunacy enquiries the practice is to swear 23 jurymen, and that is also called a "Good Jury."

GOOD ORDER. — Where a Bill of Lading states that the goods were shipped "in Good Order and Condition," that is an admission against the Shipowner; and even if it be also stated "Weight, Contents, and Value, unknown" the admission remains that the goods appeared to be in good condition outside (*The Peter der Grosse*, cited CONTENTS UNKNOWN).

GOOD REASON. — The "Good Reason," justifying the refusal of an Order for Sale, — where sale is demanded by the owners of "one Moiety or upwards" in lands subject to a Partition Action, s. 4, Partition Act, 1868, — must be one which forces on the Court the conclusion that a sale would not be for the general (as distinguished from individual) benefit of the parties interested (*Pemberton* v. *Barnes*, 6 Ch. 685; 40 L. J. Ch. 675; 19 W. R. 988; 25 L. T. 577: *Porter* v. *Lopes*, 7 Ch. D. 364; 37 L. T. 824: *Wilkinson* v. *Joberns*, L. R. 16 Eq. 14; 42 L. J. Ch. 663; 21 W. R. 644; 28 L. T. 724: *Roughton* v. *Gibson*, 46 L. J. Ch. 366; 25 W. R. 269; 36 L. T. 93: *Rowe* v. *Gray*, 5 Ch. D. 263; 46 L. J. Ch. 279; 25 W. R. 250: *Langmead* v. *Cockerton*, 25 W. R. 315: *Saxton* v. *Bartley*, 48 L. J. Ch. 519; 27 W. R. 615: *Re Langdale*, Ir. Rep. 5 Eq. 572: *Re Whitwell*, 19 L. R. Ir. 45); and the onus of showing this is on the party who objects to a sale (*Pemberton* v. *Barnes*, sup: *Drinkwater* v. *Ratcliffe*, L. R. 20 Eq. 528; 44 L. J. Ch. 605; 24 W. R. 25; 33 L. T. 417: *Lys* v. *Lys*, L. R. 7 Eq. 126; 17 W. R. 394; 19 L. T. 409: *Wilkinson* v. *Joberns*, sup: per Jessel, M. R., *Porter* v. *Lopes*, sup).

"Good and Sufficient Reason" for Arrest of a Ship; *V.* SUFFICIENT REASON.

"Good and Sufficient Reason" for Lessor withholding assent to Assignment of Lease; *V.* UNREASONABLY.

V. GOOD CAUSE.

GOOD REPAIR. — "Good Repair," means, "such a state of repair as will satisfy a respectable occupant using the premises fairly; but not that state of repair which an owner or tenant might fancy" (per Kindersley, V. C., *Cooke* v. *Cholmondeley*, 4 Drew. 328; 6 W. R. 802). *V.* *Proudfoot* v. *Hart*, cited TENANTABLE REPAIR: *Vf*, PERFECT REPAIR: REPAIR: KEEP.

"Good *and Serviceable Repair*," s. 22, 18 & 19 V. c. 121, does not include a re-construction of a Sewer if inadequately constructed, or deodorizing the sewage to prevent nuisance (*R.* v. *Epsom*, 11 W. R. 593; 8 L. T. 383, on *whcv*, per Coleridge, C. J., *Meader* v. *West Cowes*, 1892, 3 Ch. 27).

Digitized by Google

A direction in a Will that the Tenant for Life is to KEEP the Mansion House, Parks, Grounds, and appurts in "Good *and Substantial Repair, Order, and Condition,*" does not impose on him the obligation to scour and cleanse an ornamental lake in the park near the mansion house which at the testator's death had been allowed to become foul and choked with weed mud and filth (*Dashwood* v. *Magniac*, 1891, 3 Ch. 306).

GOOD RULE. — "Good Rule and Government"; *V.* PEACE.

GOOD SAFETY. — *V.* SAFETY.

GOOD SHIP. — Ld Abinger used to say that the implied warranty, in a Voyage Policy, that a Ship is SEAWORTHY arose out of the word "Good" in the phrase "Good Ship" (per Maule, J., *Small* v. *Gibson*, 20 L. J. Q. B. 153; and per Parke, B., Ib. 156); but the latter learned judge dealt with the saying thus, — "The term 'Good' is a mere common declaratory expression; and it is going very far to say it means, not only that the vessel is tight, staunch, and sufficiently found in stores, &c, but is provided also with a competent master and crew. Further, no trace can be found that we are aware of in any decision of the doctrine which is attributed to Ld Abinger." *Cp*, GOOD.

GOOD TITLE. — "Good Title," in a contract for sale of realty, means, such a title as will be forced on a purchaser in an action for specific performance, and as would be an answer to an action of ejectment by any claimant (*Jeakes* v. *White*, 21 L. J. Ex. 265; 6 Ex. 873). *Cp*, BAD.

GOODS. — *V.* CHATTELS: GOODS AND 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, 1041).

"The House of Lords were never clearer than in *Pratt* v. *Jackson* (2 P. Wms. 302) that the word 'Goods' related only to the testator's HOUSEHOLD Goods and Furniture; and did not extend to goods in the way of his Trade" (per Hardwicke, C., *Crichton* v. *Symes*, 3 Atk. 63); but, relying chiefly on the word "Goods" and there being no other residuary gift, Wood, V. C., held that the whole of the residuary personal estate passed under a bequest of "Household Furniture, Goods, Ready Money, Debts, and Securities" (*Avison* v. *Simpson*, Johns. 43). *Vf*, GOODS AND CHATTELS.

"Goods," includes Debts (*Ford's Case*, 12 Rep. 1: *Ryall* v. *Rowles*, 1 Ves. sen. 362, 363, 367, 369); but to the contrary are *Calye's Case*, 8 Rep. 33 a: *Woolcomb* v. *Woolcomb*, 3 P. Wms. 112: *R.* v. *Powell*, 21 L. J. M. C. 78; 16 Jur 177. *Vf*, GOODS AND CHATTELS: DONATIO MORTIS CAUSÂ.

The jurisdiction given to County Courts (by s. 2, 32 & 33 V. c. 51) to try claims arising "in relation to the Carriage of *Goods* in any Ship" is

Digitized by Google

confined to claims respecting Merchandize, and does not include claims respecting Personal Luggage (*R.* v. *City of London Court*, 53 L. J. Q. B. 28; 12 Q. B. D. 115; 51 L. T. 197).

Though a dog, not being the subject of Larceny at Common Law, is not a "Chattel" within s. 88, 24 & 25 V. c. 96 (*R.* v. *Robinson*, 28 L. J. M. C. 58; Bell C. C. 34); yet a dog is "Goods" within s. 40, 2 & 3 V. c. 71 (*R.* v. *Slade*, 57 L. J. M. C. 120; 21 Q. B. D. 433; 59 L. T. 640; 37 W. R. 141; 52 J. P. 599; 4 Times Rep. 777).

An Insrce on "Goods" is a sufficient description of the subject-matter without mentioning the nature of the Interest therein of the insured (*Crowley* v. *Cohen*, 3 B. & Ad. 485, 486: *Mackenzie* v. *Whitworth*, 45 L. J. Ex. 233; 1 Ex. D. 36).

Quà Bankry Act, 1883, "'Goods,' includes all Chattels Personal" (s. 168). In s. 21 (5), Bankry (Ir) Act, 1872, "Goods" includes Chattels Real (*Re Morris*, 3 L. R. Ir. 451).

Quà Customs Tariff Amendment Act, 1860, 23 & 24 V. c. 22, "Goods," means, "Goods, Wares, and Merchandize, exported in the way of Trade; and shall not apply to small parcels or other articles in respect of which Shipping Bills have not been required under the Customs Laws prior to the passing of this Act" (s. 24).

Quà Factors Act, 1889, 52 & 53 V. c. 45, "'Goods,' shall include Wares and Merchandize" (s. 1): Certificates of Ry Stock are not "Goods" within that Act (*Freeman* v. *Appleyard*, 32 L. J. Ex. 175).

Quà Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, "'Goods,' shall include Wares and Merchandize of every description, and all articles in respect of which Rates or Duties are payable under the Special Act" (s. 3).

Quà Inland Revenue Regulation Act, 1890, 53 & 54 V. c. 21, "'Goods' includes, Commodities and Chattels" (s. 39).

Quà Merchandize Marks Act, 1887, 50 & 51 V. c. 28, "'Goods,' means, anything which is the subject of trade, manufacture, or merchandize" (subs. 1, s. 3).

Quà Merchant Shipping Act, 1894, Part 7, "'Goods,' includes, every description of Wares and Merchandize" (s. 492); Horses and Cattle are "Goods" within the phrase "Tonnage, Timber, Stores, or *other Goods*," s. 85 of that Act (*Richmond Hill S. S. Co* v. *Trinity House*, 1896, 2 Q. B. 134; 65 L. J. Q. B. 405, 561; 75 L. T. 8; 45 W. R. 6: *Vf*, SPACE). *Cp*, GOODS, WARES, AND MERCHANDIZE: STORES. *V.* OWNER.

Quà Naval Prize Act, 1864, 27 & 28 V. c. 25, "'Goods,' includes, all such things as are, by the course of Admiralty and Law of Nations, the subject of adjudication as prize, other than Ships" (s. 2).

Quà Ry C. C. Act, 1845, "'Goods,' shall include Things of every kind conveyed upon the railway" (s. 3).

Quà Sale of Goods Act, 1893, "'Goods' include all Chattels Personal,

Digitized by Google

other than Things in Action and Money; and, in Scotland, all Corporeal Moveables, except Money. The term includes Emblements, Industrial Growing Crops, and Things attached to, or forming part of, the Land which are agreed to be severed before sale or under the contract of sale": —"'FUTURE Goods' mean, Goods *to be* manufactured, or acquired, by the seller after the making of the contract of sale" (subs. 1, s. 62). *Cp*, GOODS, WARES, AND MERCHANDIZE.

V. CHOSE IN ACTION.

In two Acts relating to Ireland, Chattels are declared to be included in "Goods" (14 & 15 V. c. 90, s. 18, c. 93, s. 44).

"Goods or Burden"; *V.* BURDEN.

"Goods of a Debtor"; *V.* DEBTOR: POSSESSION ORDER OR DISPOSITION.

Order for "Delivery of Goods"; *V. R.* v. *Illidge*, cited ORDER, at end.

"Goods Imported from Beyond Seas"; *V.* BEYOND SEAS.

"Goods, Materials, or Provisions"; *V.* USE.

"Goods supplied"; *V.* SUPPLIED.

V. OTHER: PERSONAL GOODS: WOOD GOODS: WORLDLY GOODS.

GOODS AND CHATTELS.—These words are synonymous (Wms. R. P. Intro. Ch.). "The words *bona et catalla*, jointly or separately, in our ancient statutes and law writers, denote Personal Property of every kind, as distinguished from Real" (*Bullock* v. *Dodds*, 2 B. & Ald. 276). *Sv*, *Pratt* v. *Jackson*, and *Crichton* v. *Symes*, cited GOODS.

A *Bequest* of all testator's "GOODS and CHATTELS" "doth pass all his estate, active and passive (except land of inheritance and freehold estates and such things as depend thereon), as Leases for years, Gold, Silver, Plate, Household Stuff, Cattle, Corn, Debts (*V.* inf) and the like; and 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). "By the Canon Law 'Goods' and equally 'Chattels,' taken simply and without qualification, comprise the whole personal estate of every description" (per Leach, M. R., *Kendall* v. *Kendall*, 4 Russ. 370), and either phrase includes Stock in the Public Funds (*Ib.*).

But in such a connection as a bequest of "*Furniture*, goods and chattels," the latter words would pass only such things as are *ejusdem generis* with "Furniture," and would not include jewellery, guns, tricycles, and scientific instruments (*Manton* v. *Tabois*, 54 L. J. Ch. 1008; 30 Ch. D. 92; 33 W. R. 832: *Vf*, *Stuart* v. *Bute*, 11 Ves. 666: *Sv*, OTHER. *Unrestrictedly Comprehensive*), still less a sum of money (*Gibbs* v. *Lawrence*, 30 L. J. Ch. 170: *Vf*, *Lamphier* v. *Despard*, 2 Dr. & War. 59: *Timewell* v. *Perkins*, 2 Atk. 103: *Roberts* v. *Kuffin*, Ib. 113). *Growing Crops*, as between exor and heir, or between the exor and remainder-

Digitized by Google

man, and in most other respects, are looked upon as "Chattels" (Wms. Exs. 620–622; but *Vth* the obs of Brett, J., *Brantom* v. *Griffits*, 45 L. J. C. P. 592: *Va* PERSONAL CHATTELS). *Vf*, as to this phrase in Wills, 1 Jarm. 751 *et seq*: Wms. Exs. 1040.

But on the other hand whilst a *Grant*, by deed *inter vivos*, of all one's "Goods and Chattels" comprises generally speaking such property as would pass by a similar bequest (Touch. 97); yet such a grant does *not* comprise *Leases for Years* (*Portman* v. *Willis*, Cro. Eliz. 386; *Vh*, *Harrison* v. *Blackburn*, 34 L. J. C. P. 109; 17 C. B. N. S. 678, qualifying *Ringer* v. *Cann*, 7 L. J. Ex. 108; 3 M. & W. 343); nor *Choses in Action* (Touch. 98: Add. T. 459: but would this be so, now that Choses in Action are assignable? *V.* Touch., 6 ed., 97, *n*); "nor *Things of Pleasure*, such as hawks, hounds, &c" (Add. T. 459: Touch. 98: Termes de la Ley, *Catals*).

Equally under Deed or Will, "Goods and Chattels" would pass property whether held in severalty or in common (Touch. 98).

Though the Touchstone says that "Debts" pass by a bequest of "Goods and Chattels," and though this is so if there is no controlling context (*Ford's Case*, and *Ryall* v. *Rowles*, cited GOODS), yet it is clear that a bequest of "Goods and Chattels" in a specified place, *e.g.* testator's house, does not include Choses in Action (*Hertford* v. *Lowther*, 7 Bea. 1; 13 L. J. Ch. 41: *Re Robson*, 1891, 2 Ch. 559; 60 L. J. Ch. 851: *Secus*, as to "Property" in a locality, *V.* IN: CONTENTS).

"*Choses in Action* were held to be included in the expression 'Goods and Chattels' in all the Bankruptcy Acts from the time of James I. downwards" (per Lindley, L. J., *Colonial Bank* v. *Whinney*, 55 L. J. Ch. 590, a statement not affected by the reversal in H. L. of the jdgmt in *thc*, 56 Ib. 43; 11 App. Ca. 426; 55 L. T. 362; 34 W. R. 705); but the same expression in 13 Eliz. c. 5, s. 1, did not include Choses in Action (*Dundas* v. *Dutens*, 1 Ves. 196: *Sv*, *Re Baldwin*, inf. *V.* 1 & 2 V. c. 110, s. 12); nor does it include Charters or Evidences relating to Realty or Documents evidencing a Chose in Action (*Calye's Case*, 8 Rep. 33 a: *Chanel* v. *Robotham*, Yelv. 68); nor is the phrase a correct description of such Evidences quà an Indictment (*R.* v. *Powell*, 2 Den. 403; 21 L. J. M. C. 78; 16 Jur. 177). The Copyright in a Newspaper has been held to be within "Goods and Chattels" in a Bankruptcy Act (*Re Baldwin*, *Ex p. Foss*, 27 L. J. Bank. 17); so, of a Trade Mark (*Ex p. Young*, Sebastian, Trade Mark Ca. 537). *V.* CHOSE IN ACTION.

"Money, Goods, or Chattels," R. 1, Ord. 57, R. S. C., authorizing an Interpleader Issue, includes, in "Chattels," Shares in a Co (*Robinson* v. *Jenkins*, 59 L. J. Q. B. 147; 24 Q. B. D. 275; 62 L. T. 439; 38 W. R. 360). So, *semble*, "Goods and Chattels" will, generally, include Shares (*Lawton* v. *Hickman*, 16 L. J. Q. B. 20; 9 Q. B. 563). *Sv*, GOODS OR COMMODITIES: GOODS, WARES, AND MERCHANDIZE. Generally speak-

Digitized by Google

ing, FIXTURES of a Tenant are not "Goods and Chattels" (*Lee* v. *Risdon*, 7 Taunt. 188: *Coombs* v. *Beaumont*, 5 B. & Ad. 72; 2 L. J. K. B. 190: *Vf*, GOODS, WARES, AND MERCHANDIZE).

"Goods and Chattels," 13 Eliz. c. 5, "are words of very extensive signification, and undoubtedly comprise both property tangible, and property which is not tangible" (per Turner, L. J., *Re Baldwin*, 27 L. J. Bank. 22; 2 D. G. & J. 230): *Vh*, *Dundas* v. *Dutens*, sup.

Quà New Parishes Act, 1844, 7 & 8 V. c. 94, "Goods and Chattels" "extend to and comprehend all Personal Estate and Property whatsoever" (s. 7).

"In an Indictment, *Bills of Exchange or Promissory Notes* ought not in strict propriety to be described as 'Chattels.' (*Va*, *R.* v. *Powell*, sup). But for almost all purposes, they are comprehended under the general words 'Goods and Chattels,' or either of them, and as such were forfeitable to the Crown, and may be the subject of reputed ownership or fraudulent transfer" (Byles, 4, and cases there cited). *Vf*, CHATTELS. In *R.* v. *Mead* (4 C. & P. 535) the halves of Bank Notes were held "Goods and Chattels," quà Larceny.

"By the Common Law, no estate of inheritance or freehold is comprehended under these words *bona* or *catalla*" (Co. Litt. 118 b).

In the frequent phrase "Goods, Chattels, and EFFECTS," the last word is the most comprehensive.

V. CHATTELS: GOODS: HOUSEHOLD: OTHER.

GOODS OR COMMODITIES.—Buying and selling "Goods or Commodities," so as to make a man a TRADER, within s. 65, Bankry Act, 1849, did not include dealing in the Shares of Companies (*Re Cleland*, 36 L. J. Bank. 33; 15 W. R. 681; 2 Ch. 466); in *the* Cairns, L. J., said the phrase was very much akin to "GOODS, WARES, AND MERCHANDIZE."

GOODS, WARES, AND MERCHANDIZE.—When the substance of a contract is a chattel or chattels to be sold and delivered by one party to the other, the subject-matter is within "Goods, Wares, and Merchandizes" as used in s. 17, Statute of Frauds, repld, s. 4, Sale of Goods Act, 1893 (*Atkinson* v. *Bell*, 8 B. & C. 277: *Lee* v. *Griffin*, 30 L. J. Q. B. 252; 1 B. & S. 272); and, probably, in all cases the contract is within the exemption from Stamp Duty. Therefore, a contract to supply water (*West Middlesex W. W.* v. *Suwerkrop*, 4 C. & P. 87; Moo. & M. 408), or a properly fitting set of artificial teeth, is within the phrase, for "there can hardly be said to be more skill in fitting teeth than in fitting a pair of breeches" (per Crompton, J., *Lee* v. *Griffin*, sup). But if the substance of the contract be work and labour,—*e.g.* an Artist painting a picture, a Solicitor preparing a deed, or a Printer printing a book, or an Engineer making plans and models for an in-

Digitized by Google

tended patent, — then the subject-matter is not within this phrase (*Clay* v. *Yates*, 25 L. J. Ex. 237; 1 H. & N. 73: *Lee* v. *Griffin*, sup: *Grafton* v. *Armitage*, 15 L. J. C. P. 20; 2 C. B. 336). So, though FIXTURES are not within the phrase (*Hallen* v. *Runder*, 3 L. J. Ex. 260; 1 Cr. M. & R. 266: *Horsfall* v. *Key*, 17 L. J. Ex. 266; 2 Ex. 778: *Lee* v. *Gaskell*, 45 L. J. Q. B. 540; 1 Q. B. D. 700), nor is a contract for supplying and fixing them (*Chanter* v. *Dickenson*, 12 L. J. C. P. 147; 5 M. & G. 253), yet "Timber and Growing Crops are so, because the clear intention being that they shall be severed, they are taken, by a fiction of law, as being actually severed" (per Cockburn, C. J., *Lee* v. *Gaskell*, sup, referring to *Smith* v. *Surman*, 9 B. & C. 561: *Marshall* v. *Green*, 45 L. J. C. P. 153; 1 C. P. D. 35: *Evans* v. *Roberts*, 5 B. & C. 829: *Parker* v. *Staniland*, 11 East, 362: *Mayfield* v. *Wadsley*, 3 B. & C. 357: *Vf*, Rosc. N. P. 312). *A fortiori*, trees felled are within the phrase (*Acraman* v. *Morrice*, 19 L. J. C. P. 57; 8 C. B. 449). *Secus*, of Standing Buildings to be taken down and cleared away by the purchaser (*Lavery* v. *Pursell*, 57 L. J. Ch. 570; 39 Ch. D. 508; 58 L. T. 846; 37 W. R. 163: *Vf*, INTEREST IN LAND). *Note*: s. 7, 9 G. 4, c. 14, extended this phrase, as used in the Statute of Frauds, to Goods, &c, not actually made or ready for delivery at the date of the contract. The phrase had always that extended meaning quà exemption from Stamp Act, because in any view the contract would *relate* to the sale of goods (*V.* RELATING). Quà Sale of Goods Act, 1893, the phrase and its said extended meaning are replaced by the phrases "Goods" and "Future Goods" (*V.* GOODS).

Choses in action are not within this phrase (Benj. Part 2, ch. 2: per Denman, C. J., *Humble* v. *Mitchell*, 9 L. J. Q. B. 30); so, neither Shares in a Joint Stock Co (*Humble* v. *Mitchell*, 9 L. J. Q. B. 29; 11 A. & E. 205: *Tempest* v. *Kilner*, 3 C. B. 251), or in a Canal Co (*Latham* v. *Barber*, 6 T. R. 76), or in a Railway (*Bowlby* v. *Bell*, 16 L. J. C. P. 18; 3 C. B. 284: *Knight* v. *Barber*, inf), or in a Mining Co (*Watson* v. *Spratley*, 24 L. J. Ex. 53; 10 Ex. 222), or in a Ship Adventure (*Leigh* v. *Banner*, 1 Esp. 403) are included therein; nor are the Bonds or Certificates of Foreign Stock (*Heseltine* v. *Siggers*, 18 L. J. Ex. 166; 1 Ex. 856), nor the Certificates of ordinary Stock or Shares (*Freeman* v. *Appleyard*, 32 L. J. Ex. 175).

Shares are not "Goods, Wares, or Merchandize," within the exemption of Agreements from Stamp Duty (*Knight* v. *Barber*, 16 L. J. Ex. 18; 16 M. & W. 66).

But Shares are "GOODS" within the phrase "Goods, Wares, and Merchandize," as used in R. 2, Ord. 50, R. S. C. (*Evans* v. *Davies*, 1893, 2 Ch. 216; 62 L. J. Ch. 661; 68 L. T. 244; 41 W. R. 687); so, of Bonds (*Coddington* v. *Jacksonville Ry*, 39 L. T. 12), or a Foreign Ship (*The Hercules*, 11 P. D. 10; 54 L. T. 273; 34 W. R. 400), or a Horse (*Bartholomew* v. *Freeman*, 3 C. P. D. 316; 38 L. T. 814; 26 W. R. 743).

In a Criminal Statute "Goods, Wares, and Merchandize," does not

Digitized by Google

include either British or Foreign Money (*R.* v. *Howard*, Foster, 79: *R.* v. *Leigh*, 1 Leach, 52), and, *semble*, is confined to "goods exposed for sale" (*R.* v. *Howard*).

As to the phrase as used in the Eau Brink Act, 35 G. 3, c. 77; *V.* *Coulton* v. *Ambler*, 14 L. J. Ex. 10; 13 M. & W. 403.

V. Stone.

GOODWILL.—"'Goodwill' may be taken in the words of Ld Eldon (in *Cruttwell* v. *Lye*, 17 Ves. 335), 'as the probability that the old customers will resort to the old place'" (per Cotton, L. J., *Pearson* v. *Pearson*, 54 L. J. Ch. 41; 27 Ch. D. 145). But, "generally speaking, it means much more than that. Often it happens that the Goodwill is the very sap and life of the business, without which the business would yield little or no fruit" (per Ld Macnaghten, *Trego* v. *Hunt*, inf); "it is the attractive force which brings in custom" (per Ib., *Inl. Rev.* v. *Muller*, 70 L. J. K. B. 680; 1901, A. C. 224).

The "Goodwill" of a business means every affirmative advantage,—as contrasted with negative advantage,—that has been acquired in carrying on the business, whether connected with the premises of the business, or its name or style, and everything connected with or carrying with it the benefit of the business (per Wood, V. C., *Churton* v. *Douglas*, 28 L. J. Ch. 845; Johns. 174; 7 W. R. 365, following *Cruttwell* v. *Lye*, sup: Ld Eldon's Order in *Cook* v. *Collingridge*, Jac. 607; *V.* 27 Bea. 456, *n*: *Kennedy* v. *Lee*, 3 Mer. 441. *Vf*, *Johnson* v. *Helleley*, 34 L. J. Ch. 179; 2 D. G. J. & S. 446: *Shakle* v. *Baker*, 14 Ves. 468). "The Name of a Firm is a very important part of the Goodwill" (per Wood, V. C., *Churton* v. *Douglas*, sup); and therefore the vendor of a goodwill must not carry on business in the name appertaining to such goodwill, nor hold out his new enterprise as the old business (*Ib.*), nor can he object to his purchaser using his (the vendor's) name, if it be the name, or part of the name, of the Firm (*Levy* v. *Walker*, 48 L. J. Ch. 273; 10 Ch. D. 436); but he must not use it in such a way as to hold out that the vendor remains the real owner of the business, nor so as to expose him to any liability (*Thynne* v. *Shove*, 59 L. J. Ch. 509; 45 Ch. D. 577). *Vh*, *Townsend* v. *Jarman*, 1900, 2 Ch. 698; 69 L. J. Ch. 823; 83 L. T. 366; 49 W. R. 158. *Cp*, *Thorneloe* v. *Hill*, inf.

But in the absence of express restriction, the Vendor may, notwithstanding the sale of his "Goodwill," continue to deal with his old customers (*Leggott* v. *Barrett*, 51 L. J. Ch. 90; 15 Ch. D. 306; 28 W. R. 962, over-ruling Jessel, M. R., in *Ginesi* v. *Cooper*, 49 L. J. Ch. 601; 14 Ch. D. 596).

On the other hand, the vendor will not be allowed to *solicit* the custom of the old customers (*Trego* v. *Hunt*, 1896, A. C. 7; 65 L. J. Ch. 1; 73 L. T. 514; 44 W. R. 225, establishing ruling of Romilly, M. R., *Labouchere* v. *Dawson*, 41 L. J. Ch. 427; L. R. 13 Eq. 322; 20 W. R.

Digitized by Google

309, of Jessel, M. R., and Brett, L. J., *Leggott* v. *Barrett*, sup, of Lush and Lindley, L. JJ., *Walker* v. *Mottram*, 51 L. J. Ch. 108; 19 Ch. D. 355; 30 W. R. 165, of Fry, J., *Mogford* v. *Courtenay*, 29 W. R. 864, and of Kay, J., and Lindley, L. J., *Pearson* v. *Pearson*, 54 L. J. Ch. 32; 27 Ch. D. 145; 32 W. R. 1006, and over-ruling the doubts of James, L.J., in *Leggott* v. *Barrett*, sup, and the jdgmts of Baggallay and Cotton, L. JJ., in *Pearson* v. *Pearson*, sup). *Vf*, *Vernon* v. *Hallam*, 56 L. J. Ch. 115; 34 Ch. D. 748: *Gillingham* v. *Beddow*, 1900, 2 Ch. 242; 69 L. J. Ch. 527; 82 L. T. 791.

The sale of a Goodwill by a Trustee in Bankry carries no implied restriction as against the bankrupt (*Walker* v. *Mottram*, sup); but after such a sale the bankrupt must not use the trade-marks of the business sold, or otherwise represent himself as carrying on that same business (*Hudson* v. *Osborne*, 39 L. J. Ch. 79: *Hammond* v. *Malcolm*, 8 Times Rep. 324).

Semble, on a Sale of a Goodwill by the Court on a Partnership Winding-up (the usual condition framed by Turner, L. J., in *Johnson* v. *Helleley*, sup, being adopted), a rule similar to that in *Walker* v. *Mottram* (sup) applies, and each of the partners may carry on business similar to that of the firm, with the same freedom from restriction as if no sale of the Goodwill had been made (per Stirling, J., *Jennings* v. *Jennings*, cited Assets): *Vf*, *Re David and Matthews*, 1899, 1 Ch. 378; 68 L. J. Ch. 185; 80 L. T. 75; 47 W. R. 313.

Where, on a Dissolution of Partnership, one partner buys the "Goodwill," he is entitled to all the rights passing under that word, notwithstanding that the partnership agreement provides that nothing therein contained "shall prevent either partner from starting a similar business after the expiration of the partnership" (*Gillingham* v. *Beddow*, sup).

A purchaser of a Business is not entitled to use the Trade Name where deception would, probably, arise therefrom (*Thorneloe* v. *Hill*, 1894, 1 Ch. 569; 63 L. J. Ch. 331; 70 L. T. 124; 42 W. R. 397).

As to implying the sale of a "Goodwill" without its express mention; *V. Pearson* v. *Pearson*, sup: *Gray* v. *Smith*, cited Withdraw; which cases on this point are examined in *Jennings* v. *Jennings*, cited Assets: *Smith* v. *Hawthorn*, inf.

Valid agreements in Restraint of Trade in connection with a Business, pass with the sale of its Goodwill (*Jacoby* v. *Whitmore*, 49 L. T. 335; 32 W. R. 18), though the word "Goodwill" may not be mentioned (*Smith* v. *Hawthorn*, 76 L. T. 716; 13 Times Rep. 477). *Vf*, *Townsend* v. *Jarman*, sup.

The term "Goodwill" seems inapplicable to a business, — *e.g.* that of a Solicitor, — depending upon personal trust and confidence (*Austen* v. *Boys*, 27 L. J. Ch. 243, 714; 2 D. G. & J. 626; 24 Bea. 598: *Va*, per Jessel, M. R., *Arundell* v. *Bell*, 52 L. J. Ch. 537). And however that may be, clients' papers are not included in the sale of the "Goodwill" of a solicitor's business (*James* v. *James*, 33 S. J. 366).

Digitized by Google

Bequest of "Business and Goodwill," or "Goodwill and Fixtures"; *V.* BUSINESS, towards end.

Bequest of "Plant and Goodwill"; *V.* PLANT.

A Mortgage of heredits does not, generally, pass the Goodwill of the Business there carried on, if it be not expressly assigned (*Cooper* v. *Metrop Bd of Works*, 25 Ch. D. 472; 53 L. J. Ch. 109), not even though the heredits be an Hotel (*Whitley* v. *Challis*, 1892, 1 Ch. 64; 61 L. J. Ch. 307; 65 L. T. 838; 40 W. R. 291: *Re Bennett*, 1899, 1 Ch. 316; 68 L. J. Ch. 104); *Secus*, of a Colliery (*Jefferys* v. *Smith*, 1 Jac. & W. 298, 302: *Campbell* v. *Lloyd's Bank*, 1891, 1 Ch. 136, *n*; 58 L. J. Ch. 424: *County of Gloucester Bank* v. *Rudry*, 1895, 1 Ch. 629; 64 L. J. Ch. 451; 72 L. T. 375; 43 W. R. 486).

When a Lease of premises the possession of which is essential to the business there carried on, *e.g.* an ALEHOUSE, provides that on the expiration of the term such sum "as shall, or can be, procured for the Goodwill" shall be paid to the lessee, "the Value of the Goodwill must be taken to be that sum which, in the judgment of persons accustomed to value such matters, a purchaser would be willing to pay for the custom attached to the premises" at the time of such expiration (per Coleridge, C. J., *Llewellyn* v. *Rutherford*, 44 L. J. C. P. 281; L. R. 10 C. P. 456); what the lessor may then choose to do with the premises has nothing to do with the question, except that it may furnish evidence (*S. C.*).

As to construction of Partnership Articles excluding Goodwill from the Accounts; *V. Steuart* v. *Gladstone*, 47 L. J. Ch. 423; 10 Ch. D. 626; 38 L. T. 557: *Hunter* v. *Dowling*, 1895, 2 Ch. 223; 64 L. J. Ch. 713; 72 L. T. 653; 43 W. R. 619. *Cp*, SUSCEPTIBLE.

"Goodwill of the Business," in connection with which a TRADE-MARK must be assigned, s. 70, 46 & 47 V. c. 57; *V. Re Magnolia Metal Co*, 1897, 2 Ch. 371; 66 L. J. Ch. 312, 598; 76 L. T. 672.

Injury to "Interest for Goodwill"; *V. Ex p. Farlow*, cited INTEREST.

Vh, Allan on Goodwill: Art., 34 S. J. 294: 6 Encyc. 82–85.

V. ET CETERA: PLANT: SHARE: EFFECTS: STOCK-IN-TRADE: BUSINESS: PROPERTY, quà *Stamp Duty*: PROPERTY AND EFFECTS: PROPERTY OTHER THAN LAND.

GORDON'S ACT.—The Court of Session Act, 1868, 31 & 32 V. c. 100.

GORE.—"Gore, Fother, or Pyke.—Parcels in the common fields; 'and they are called so, because they be broad in the one end and a sharp pyke in the other end'" (Elph. 583, and authorities there cited).

GORS: GORT: GUORT.—*V.* GURGES.

GOSCHEN'S ACT.—The Valuation Metropolis Act, 1869, 32 & 33 V. c. 67.

Digitized by Google

GOSPEL. — A bequest "for the spread of the Gospel" is a good CHARITY (*Re Lea*, 56 L. J. Ch. 671; 34 Ch. D. 528).

GOT IN. — *V.* WHEN.

GOTE. — *V.* GOAT.

GOTTEN. — *V.* GET: MINERAL GOTTEN: ACTUAL WEIGHT.

GOVERN. — "Regulate and govern"; *V.* REGULATE.

GOVERNING BODY. — Quà Borough Funds Act, 1872, 35 & 36 V. c. 91; *V.* s. 1: — quà Borough Funds (Ir) Act, 1888, 51 & 52 V. c. 53; *V.* s. 2.

Quà Endowed Schools Acts, 1869 to 1889 (*V.* Sch 2, Short Titles Act, 1896), "'Governing Body,' means, any body corporate, persons or person, who have the right of holding, or any power of government of, or management over, any ENDOWMENT, or (other than as Master) over any ENDOWED SCHOOL, or have any power (other than as Master) of appointing officers, teachers, exhibitioners, or others, either in any Endowed School or with emoluments out of any Endowment" (s. 7, 32 & 33 V. c. 56). Those are "wide terms which, though not strictly grammatical, may include persons who have the right of holding any Endowment dealt with by any particular Scheme. And it may be that in some Foundations there are more bodies than one who, for different purposes of the Act, have to be considered as Governing Bodies" (*Re Christ's Hospital, Appeal C.*, cited EDUCATIONAL ENDOWMENT): — the City Corporation, though legally seized of the estates of Christ's Hospital yet, having no powers of management, is not the Governing Body of the Hospital (*Ib.*). *Vf, Christ's Hospital* v. *Charity Commrs*, cited FOUNDATION.

Quà Endowed Institutions (Scot) Act, 1878, 41 & 42 V. c. 48; *V.* s. 3.

Quà Educational Endowments (Scot) Act, 1882, 45 & 46 V. c. 59; *V.* s. 1.

Quà Educational Endowments (Ir) Act, 1885, 48 & 49 V. c. 78; *V.* s. 1.

Quà Loc Gov (Ir) Act, 1871, 34 & 35 V. c. 109; *V.* s. 3.

Quà City of London Parochial Charities Act, 1883, 46 & 47 V. c. 36; *V.* s. 53.

Quà Public Parks (Ir) Act, 1869, 32 & 33 V. c. 28; *V.* s. 4.

Quà Public Schools Act, 1864, 27 & 28 V. c. 92; *V.* s. 3.

"Governing Body," quà the Oxford Colleges, except Christ Church, means, "the Head and all actual Fellows of the College, being Graduates, and, as regards Christ Church, means, the Dean, Canons, and Senior Students" (40 & 41 V. c. 48, s. 2: *Va* 17 & 18 V. c. 81, s. 48); and means quà Cambridge Colleges, "except Downing College, the Head and all actual Fellows of the College (Bye Fellows excepted) being Graduates, and, as regards Downing College, the Head, Professors, and all

Digitized by Google

actual Fellows thereof (Bye Fellows excepted) being Graduates" (40 & 41 V. c. 48, s. 2).

Quà Universities (Scot) Act, 1889, 52 & 53 V. c. 55, "'Governing Body,' means, a Body constituted on a permanent footing, and charged (by Act of Parliament, Royal Charter, Deed of Endowment and Trust, or otherwise) with the management and administration of any fund devoted to Higher Education" (s. 3).

V. New Governing Body.

GOVERNMENT.—A legacy to "Government" for the public benefit is to be disposed of under the sign manual of the Crown (*Newland* v. *A-G.*, 3 Mer. 684: Wms. Exs. 1010).

"Foreign Government"; *V.* Foreign.

"Care, Government, or Management," of a house, &c; *V.* Keeper.

"Good Government"; *V.* Peace: Regulate.

As to what is a good Bye-Law for the "Government" of the Thames Company of Watermen and Lightermen; *V. Kennaird* v. *Cory,* 47 W. R. 30.

Preference in Insolvency of Debts due to the "Crown or Government"; *V. Fox* v. *Newfoundland Government,* 1898, A. C. 667; 67 L. J. P. C. 77; 78 L. T. 602.

GOVERNMENT ACCOUNTANT.—Stat. Def., 26 & 27 V. c. 116, s. 3.

GOVERNMENT ANNUITIES.—Quà Government Annuities Act, 1873, 36 & 37 V. c. 44, "'Government Annuities,' *means,* Annuities granted, either before or after the passing of this Act, in pursuance of the Acts mentioned in the Schedule to this Act or any of them, or of any Acts repealed by those Acts, or of any other Acts authorizing the Commissioners to grant Annuities for Life or Years; and *includes* Annuities payable by the Commissioners in pursuance of any of the said Acts" (s. 4). *V.* Perpetual Annuity.

"The Government Annuities Acts, 1829 to 1888"; *V.* Sch 2, Short Titles Act, 1896.

GOVERNMENT CLERK.—A Clerk in the Admiralty is properly described as "Government Clerk," quà Bills of Sale Acts (*Grant* v. *Shaw,* 41 L. J. Q. B. 305; L. R. 7 Q. B. 700).

GOVERNMENT FUNDS.—*V.* Funds.

GOVERNMENT OF INDIA.—Quà Indian Advance Act, 1879, 42 & 43 V. c. 45, "'Government of India,' means, one of Her Majesty's Principal Secretaries of State in the Council of India" (s. 5). *Note:*

Digitized by Google

that Act and the East Indian Loan (Annuities) Act, 1879, were repealed by s. 2 (1), Indian Loan Act, 1881, 44 & 45 V. c. 54.

V. BRITISH INDIA.

GOVERNMENT PRINTER.—Quà Documentary Evidence Acts, 1868 and 1882, "Government Printer," means and includes, "the Printer to Her Majesty; and any Printer PURPORTING to be the Printer authorized to Print the Statutes, Ordinances, Acts of State, or other Public Acts, of the Legislature of any British Colony or Possession, or otherwise to be the Government Printer of such Colony or Possession" (s. 5, 31 & 32 V. c. 37); the phrase also includes "any Printer to Her Majesty in Ireland; and any Printer printing in Ireland under the superintendence or authority of Her Majesty's Stationery Office" (s. 4, 45 & 46 V. c. 9).

Quà Army Act, 1881, 44 & 45 V. c. 58, "'Government Printer' means any Printer to Her Majesty; and, in India, any Government Press" (subs. 2, s. 163).

GOVERNMENT SECURITIES.—Where a trust authorizes investments "in the purchase of *Government* or East India Stocks or funds, Exchequer Bills, or any other easily convertible securities," the word "Government" does not necessarily mean the British Government (per Jessel, M. R., *Sykes* v. *Beadon*, 48 L. J. Ch. 530; 11 Ch. D. 170). But a bequest of "Government Stock or Securities," will not include Indian Government, or Colonial, securities (*Re Hamilton*, 34 S. J. 251; 6 Times Rep. 173: *Vf*, *Brown* v. *Brown*, 4 K. & J. 704, cited PARLIAMENTARY STOCK).

"Government Security" does not apply to Exchequer Bills (*Ex p. Chaplin*, 3 Y. & C. 397: *Knott* v. *Cottee*, 16 Bea. 77; 16 Jur. 752: *Vf*, *Matthews* v. *Brise*, 6 Bea. 239; 12 L. J. Ch. 263: s. 7, 36 & 37 V. c. 57); but the contrary was held in *Ex p. S. E. Ry* (9 Jur. 650); and Exchequer Bonds and Bills are sometimes made "Government Securities" by an interp clause (*e.g.* s. 3, 35 & 36 V. c. 44). *Cp*, GOVERNMENT STOCK.

Vh, Lewin, 340: Watson Eq. 1326.

V. FUNDS: FOREIGN: *Cp*, PUBLIC SECURITIES.

GOVERNMENT STOCK.—Quà Savings Banks Acts, 1880 and 1893, "Government Stock," means, 2¾ % Consolidated Stock (1903); 2¾ % Annuities (1905); 2½ % Annuities; Local Loans 3 % Stock; Guaranteed Land Stock (s. 5 (2), 56 & 57 V. c. 69); and that def applies to Investments by a Building Society (s. 16 (2), 57 & 58 V. c. 47).

Cp, GOVERNMENT SECURITIES. *V.* STOCK: PERPETUAL ANNUITY.

GOVERNOR.—*V.* s. 18 (6), Interp Act, 1889.

Prior Stat. Def.—1 & 2 V. c. 9, s. 8, c. 19, s. 29, c. 67, s. 10; 32 &

Digitized by Google

33 V. c. 10, s. 2; 33 & 34 V. c. 52, s. 26, c. 90, s. 30; 35 & 36 V. c. 23, s. 3; 42 & 43 V. c. 33, s. 181; 48 & 49 V. c. 60, s. 1.

"Governor-General"; *V.* 42 & 43 V. c. 33, s. 181.

"Governor in Council"; *V.* 35 & 36 V. c. 19, s. 2.

"Governor of any British Possession"; *V.* 33 & 34 V. c. 14, s. 17.

"Governor of New Zealand"; *V.* 14 & 15 V. c. 86, s. 12.

"Governor of the Province of Canada"; *V.* 3 & 4 V. c. 35, s. 61.

Quà Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43, "Governors" means, the Governors of Queen Anne's Bounty (s. 3).

"Governors" of a Grammar School; *V.* 3 & 4 V. c. 77, s. 25.

Quà Prisons (Scot) Act, 1877, 40 & 41 V. c. 53, "'Governor,' shall *mean*, the Chief Male Officer of a prison" (s. 71); quà the application of 62 & 63 V. c. 11 to Scotland, "Governor" *includes*, any Officer in charge of Police Cells duly declared Legal Prisons (subs. 2, s. 2).

GRACE.—*V.* Days of Grace.

GRAIN.—Quà Part 5, Mer Shipping Act, 1894, "'Grain' means, any Corn, Rice, Paddy, Pulse, Seeds, Nuts or Nut Kernels" (s. 456).

"Other Grain," in a Charter-party, held, on the context and circumstances, to exclude Oats (*Warren* v. *Peabody*, 19 L. J. C. P. 43; 8 C. B. 800).

"Grain for sale"; *V.* For Sale.

A Grain Avoirdupois, is $\frac{1}{7000}$th of an Imperial Standard Pound (s. 14, 41 & 42 V. c. 49).

GRAMMAR SCHOOL.—Quà Grammar Schools Act, 1840, 3 & 4 V. c. 77, "'Grammar School,' shall mean and include, all Endowed Schools (whether of royal or other foundation), founded, endowed, or maintained for the purpose of teaching Latin and Greek, or either of such languages; whether (in the Instrument of foundation or endowment, or in the Statutes or Decree of any Court of Record, or in any Act of Parliament establishing such School, or in any other evidences or documents), such instruction shall be expressly described, or shall be described by the word 'Grammar,' or any other form of expression which is or may be construed as intending Greek or Latin, and whether (by such evidences or documents as aforesaid, or in practice) such instruction be limited exclusively to Greek or Latin, or extended to both such languages, or to any other branch or branches of literature or science in addition to them or either of them; and the words 'Grammar School' shall not include Schools not endowed, but shall mean and include, all Endowed Schools which may be Grammar Schools by reputation, and all other Charitable Institutions and Trusts so far as the same may be for the purpose of providing such instruction as aforesaid" (s. 25).

V. Free Grammar School.

Digitized by Google

GRAND JURY.—In England the Grand Jury is the Jury whose business it is at every Session of the Peace and every Commission of *Oyer* and *Terminer* and General Gaol Delivery (of a County, or a Borough having a separate Commission of the Peace), to enquire, present, do, and execute such things, on the part of the King, as shall be commanded them; and chiefly to find a "TRUE BILL," or "Not a True Bill," on every INDICTMENT brought before them, so that the accused may in the first case, be tried by the Petty Jury for the offence alleged against him, or, in the other case, be discharged (4 Bl. Com. 302–306).

Stat. Def., quà Ireland,—19 & 20 V. c. 63, c. 68, s. 2; 20 & 21 V. c. 16, s. 2; 32 & 33 V. c. 74, s. 6; 33 & 34 V. c. 9, s. 3; 34 & 35 V. c. 114, s. 1; 36 & 37 V. c. 51, s. 2; 39 & 40 V. c. 65, s. 6; 40 & 41 V. c. 49, s. 3, c. 56, s. 7; 41 & 42 V. c. 24, s. 1; 46 & 47 V. c. 42, s. 13; 48 & 49 V. c. 41, s. 17.

"The Grand Juries (Ir) Acts, 1816 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

V. SECRETARY OF GRAND JURY.

GRAND-CHILD.—Notwithstanding the opinion of Lord Northington to the contrary (*Hussey* v. *Berkley*, 2 Eden, 196), it seems now settled that *great* grand-children are not included in the word "grandchildren" (*Orford* v. *Churchill*, 3 V. & B. 59; stated and commented on, Wms. Exs. 959: *Va*, *Arnold* v. *Congreve*, 1 Russ. & My. 209: *Sv*, *Strutt* v. *Finch*, 7 L. J. O. S. Ch. 176). A grand-child *by marriage* is not within the word (*Hussey* v. *Berkley*, sup).

A gift for all testator's "Grandchildren" to be divided equally amongst them at a stated period of distribution, confers a vested interest on all the grandchildren living at the testator's death, or born afterwards before the period of distribution (*Oppenheim* v. *Henry*, 10 Hare, 441).

V. CHILD.

GRAND-DAUGHTER.—Gift to "MY grand-daughter," is explainable by parol to mean a particular grand-daughter (*Jefferies* v. *Michell*, 20 Bea. 15). *Vf*, *Phelan* v. *Slattery*, cited NEPHEW.

GRAND-FATHER.—*V.* FATHER.

GRAND-MOTHER.—*V.* MOTHER: FATHER.

GRANGE.—"By the name of Grange, *Grangia*, a house or edifice, not onely where corne is stored up like as in barnes, but necessary places for husbandry also, as stables for hay and horses, and stables and styes for other cattell, and a *curtilege*, and the close wherein it standeth, shall passe; and it is a French word and signifieth the same as we take it" (Co. Litt. 5a: *V.* Spelm.). "Where land, meadow, and pasture, &c, belonging to such houses are called altogether by the name of a Grange,

Digitized by Google

there perhaps by this word the whole may pass" (Touch. 93). "*V.* *Ognel's Case* (4 Rep. 48 b), where a farm was called Crewelfield Grange. In Lincolnshire and some of the northern counties every solitary farm-house is called a grange: Tomlins' Law Dict." (Elph. 583).

GRANT. — "This word is taken largely, where any thing is granted or passed from one to another. And in this sense it doth comprehend feoffments, bargains and sales, gifts, leases, charges, and the like; for he that doth give, or sell, doth grant also. And thus it is sometimes in writing or by deed, and sometimes it is by word without writing. But the word being taken more strictly and properly, it is the grant, conveyance, or gift, by writing, of such an Incorporeal thing *as lieth in grant, and not in livery,* and cannot be given or granted by word only without deed. Or it is the grant by such persons as cannot pass any thing from them but by deed, as the King, bodies corporate, &c. And this albeit it may be made by other words, yet it is most commonly made by this word (grant) as being most proper to this purpose" (Touch. 228). As regards that part of the above definition which is italicised, it is to be observed that, since the 1st Oct 1845, all Corporeal hereditaments (as well as those Incorporeal) "lie in grant as well as in livery" (s. 2, 8 & 9 V. c. 106).

S. 49, Conv & L. P. Act, 1881, contains the following clause; — "The word 'Grant' is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal."

For the history of the use and effect of the words "Grant" and "Give," in Conveyances; *V.* Co. Litt., 18 ed., 384 a, note by Butler: *Clarke* v. *Samson,* 1 Ves. sen. 100: *Baber* v. *Harris,* 9 A. & E. 532; 8 L. J. Q. B. 153: *Va,* Lewin, 505. But now in Deeds executed after the 1st Oct 1845, "Grant" will not imply any covenant in law in respect of any tenement or hereditament except so far as it may do so by force of some special Act of Parliament (s. 4, 8 & 9 V. c. 106) — *e.g.* in Conveyances *by* Companies under Lands C. C. Act, 1845 (s. 132, 8 & 9 V. c. 18); or in Conveyances *to* the Governors of QUEEN ANNE'S BOUNTY (s. 22, 1 & 2 V. c. 20); or the words "grant, bargain and sell," in a Bargain and Sale registered under the Registry Acts for Yorkshire (6 Anne, c. 35, ss. 30, 34; 8 G. 2, c. 6, s. 35; replaced as on and from 1 Jan 1885, by 47 & 48 V. c. 54). *Vh, Baynes* v. *Lloyd,* cited DEMISE: *Vf,* Jacob: 6 Encyc. 88, 89.

V. CONVEYANCE: GIFT.

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

Covenant to grant a Lease; *V.* LET.

Not "to grant away, assign or let, charge or dispose of," in a Covenant in Lease; *V. Croft* v. *Lumley,* 25 L. J. Q. B. 73, 223; 27 Ib. 321; 6 H. L. Ca. 672.

As to the distinction between "Grant" and "License," *V. Holford* v.

Digitized by Google

Bailey, 18 L. J. Q. B. 109; 13 Q. B. 426: *Heap* v. *Hartley*, cited PROPERTY: *Fitzgerald* v. *Firbank*, 1897, 2 Ch. 96; 66 L. J. Ch. 529; 76 L. T. 584.

GRANTED.—"Granted by Parliament"; *V.* TALLAGE.

GRANTEE.—Stat. Def., *Scot.* 31 & 32 V. c. 101, s. 3.—*Ir.* 54 & 55 V. c. 57, s. 3.

GRANTOR.—Stat. Def., *Scot.* 31 & 32 V. c. 101, s. 3.—*Ir.* 13 & 14 V. c. 72, s. 64; 18 & 19 V. c. 39, s. 1; 44 & 45 V. c. 65, s. 1; 54 & 55 V. c. 57, s. 3.

"Grantor" of an Annuity, s. 8, 17 G. 3, c. 26; *V. Darwin* v. *Lincoln*, 5 B. & Ald. 444.

"Grantor," in Bills of Sale Act, 1882, is not complied with by a Bill of Sale by two or more separate Grantors of goods, some owned by one and some by the other or others, and such a Bill of Sale is void (*Saunders* v. *White*, 17 Times Rep. 72; 1901, 1 Q. B. 70; 70 L. J. Q. B. 34; 83 L. T. 712; 49 W. R. 127).

GRASSUM.—A Scotch word for a Fine taken upon granting a Lease (*Re Queensberry Leases*, 1 Bligh, 339).

GRATING.—Quà Salmon Fishery Act, 1873, 36 & 37 V. c. 71, "'Grating,' shall mean and include, any DEVICE approved by the Secretary of State for preventing the passage of fish through any channel" (s. 4).

GRATIS.—An Appearance "gratis," is one made before service of the writ (*Fell* v. *Christ's Coll.*, 2 Bro. C. C. 279). *V.* REJOINING GRATIS.

GRATUITOUS.—A Gratuitous BAILMENT of goods is where "the Bailee is to have the use and enjoyment of the subject-matter of the Bailment for his own benefit and advantage, without payment of hire or reward to the Bailor" (Add. C. 724). *Vh*, *Coggs* v. *Bernard*, 2 Raym. Ld, 916; 1 Sm. L. C. 201: Paine on Bailments.

Quà the Trusts (Scot) Acts, 1861, 1863, and 1867, "'Gratuitous TRUSTEES,' shall mean and include, all trustees who are not entitled, as such, to remuneration for their services in addition to any benefit they may be entitled to under the Trust, or who hold the office *ex officio*; and shall extend to and include all trustees, whether original or assumed, who are entitled to receive any legacy or annuity or bequest under the Trust" (s. 1, 30 & 31 V. c. 97).

GRATUITY.—*V.* HANDSOME GRATUITY.

Gratuity or Retired Pay is "Income" (*Re Ward*, cited INCOME).

GRAVA.—"*Grava* signifieth a little wood, in old deeds, and *hirst* or *hurst* a wood; and so doth *holt* and *shawe*" (Co. Litt. 4 b): "Shawe" is "now generally applied to Underwood" (Jacob, *Shaw*).

Digitized by Google

GRAVELLING.—Quà Salmon Fisheries Acts, "'Jenkin' and 'Gravelling,' are deemed to be Salmon" (s. 19, 26 & 27 V. c. 114).

GRAVEYARD.—Quà Burial Laws Amendment Act, 1880, 43 & 44 V. c. 41; *V.* s. 1.

GREAT BRITAIN.—"Great Britain" is the United Kingdoms of ENGLAND and Scotland (5 Anne, c. 8, Art. 1). *Cp,* UNITED KINGDOM.

A bequest for "the benefit and advantage of my beloved country, Great Britain," is a good CHARITY (*Nightingale* v. *Goulbourn,* 16 L. J. Ch. 270; 17 Ib. 296; 5 Hare, 484; 2 Phil. 594).

"Law of Great Britain"; *V.* BRITISH LAW.

GREAT CAUTION.—*V.* CAUTION.

GREAT MEN.—The exemption from Tithes of "Great Men or Noble Men," 31 H. 8, c. 12, s. 16, did not comprise an Ecclesiastical Magnate, *e.g.* a Dean; for "Great Men" there, being in association with "Noblemen," comprise only Great Men of a "noble" kind (*Warden of St. Paul's* v. *The Dean,* 4 Price, 65).

GREAT SEAL.—The "Great Seal" means, the Great Seal of the UNITED KINGDOM: *V.* 11 & 12 V. c. 94, s. 46; 12 & 13 V. c. 109, s. 50; 40 & 41 V. c. 41, s. 7.

GREAT TITHES.—*V.* TITHES.

GREATER.—*V.* THREE TIMES GREATER.

GREE.—SATISFACTION for an offence (Termes de la Ley, citing 1 Ric. 2, c. 15). *Va,* ACCORD.

GREEN HEWE.—A synonym for VERT (Termes de la Ley).

GREEN-HOUSE.—*V.* MARKET: BUILDING: *Meux* v. *Cobley,* cited IMPROVEMENT.

GREEN TEA.—*V. Roberts* v. *Egerton,* 43 L. J. M. C. 135; L. R. 9 Q. B. 494.

GREENWICH HOSPITAL.—"The Greenwich Hospital Acts, 1865 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

GREENWICH MEAN TIME.—*V.* TIME.

GREY'S ACT.—The Public House Closing Act, 1864, 27 & 28 V. c. 64.

GREYHOUND.—A Hound is not a Greyhound quà s. 2, 22 & 23 Car. 2, c. 25 (*Grant* v. *Hulton,* 1 B. & Ald. 134), or s. 4, 5 Anne, c. 14

Digitized by Google

(*Hooker* v. *Wilks*, 2 Stra. 1126), nor is an Italian Greyhound kept by a lady for her amusement within the section (per Buller, J., *Briarly* v. *Athorpe*, 5 B. & Ald. 321, *n*). *Cp*, SETTING DOG.

GRIEVANCE.—*V.* ANNOYANCE.

GRIEVED.—*V.* AGGRIEVED.

GRIEVOUS BODILY HARM.—This harm does not connote "that it should be either permanent or dangerous; if it be such as seriously to interfere with comfort or health it is sufficient" (per Willes, J., *R.* v. *Ashman*, 1 F. & F. 88, *whv*). Thus, to cut a girl's private part so as to enlarge it for the time, is to do her "grievous bodily harm," though the hymen is not injured, the incision is not deep, and the wound eventually is not dangerous (*R.* v. *Cox*, Russ. & Ry. 362). Where the INTENT is charged "it is not necessary that such harm should have been actually done" (*R.* v. *Ashman*, sup). *Cp*, INFLICT.

GROCER.—"Grocers were merchants that engrossed all merchandize vendible (*V.* INGROSSER); but now it is a particular and well-known trade" (Cowel).

As to what is carrying on the business of a "Grocer," *V. Fitz* v. *Iles*, cited COFFEE.

Grocer's Assistant; *V.* MANUAL LABOUR.

GROG.—S. 4, Finance Act, 1898, describes and prohibits "grogging" casks which have contained Spirits.

GROGAN'S ACT.—The Marriage Law (Ir) Amendment Act, 1863, 26 & 27 V. c. 27.

GRONNA.—"A deep pit or bituminous place where turfs are dug to burn; 1 Mon. Angl. 243" (Jacob).

GROSS.—"Gross *Value* is different from 'Value.' It is, though a convenient, an inaccurate expression, like 'gross profits.' The difference between what a thing costs and the larger sum it sells for is not profit, if the buying and selling are attended with expense to the trader. Value is net value" (per Ld Bramwell, *Dobbs* v. *Grand Junc. W. W. Co*, 53 L. J. Q. B. 52; 9 App. Ca. 49).

In an Act authorising a Waterworks Company to levy rates on "the *Gross sum assessed to the Poor Rate* of the premises" they supply, that means, the gross estimated rental, and not the rateable value (*Bristol W. W. Co* v. *Uren*, 54 L. J. M. C. 97; 15 Q. B. D. 637).

"The Gross *Estimated Rental*" for the purpose of the Sch to Union Assessment Committee Act, 1862, 25 & 26 V. c. 103, is "the rent at which the hereditament might reasonably be expected to let from year

Digitized by Google

to year, free of all usual tenant's rates and taxes, and tithe commutation rent charge, if any" (s. 15); a def which is applied to "Gross *Value*," quà Rating Act, 1874 (s. 15). The amount as it appears in the Rate Book and Valuation List is final (*Horton* v. *Walsall*, 1898, 2 Q. B. 237; 67 L. J. Q. B. 804; 78 L. T. 684; 46 W. R. 607; 62 J. P. 437).

"The Gross *Value*," for the purpose of the Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, means, "the annual rent which a tenant might reasonably be expected (taking one year with another) to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rent-charge (if any), and if the landlord undertook to bear the costs of the repairs and insurance, and the other expenses (if any) necessary to maintain the hereditament in a state to command that rent" (s. 4). As to the application of this section to a School Board school; *V. R.* v. *London School Board*, 55 L. J. M. C. 169; 17 Q. B. D. 738; 55 L. T. 384; 34 W. R. 583; 50 J. P. 419: *Pullen* v. *St. Saviour*, 1900, 1 Q. B. 138; 69 L. J. Q. B. 139; 81 L. T. 583; 48 W. R. 186. *Cp*, "Rateable Value," sub ANNUAL VALUE.

V. FULL ANNUAL VALUE.

A thing or right "*In Gross*," is one that is independent of anything else: *e.g.* a Lord in Gross, as is the King in respect of his Crown (Cowel), a Sum of Money in Gross, as distinct from a Rent (Touch. 80), or a COMMON in Gross, as distinct from a Common Appendant or Appurtenant (2 Bl. Com. 34), or an ADVOWSON in Gross, as distinct from one annexed to a Manor (2 Bl. Com. 22), or a Villein in Gross "which belongs to the person of the Lord; and belongeth not to any Mannor, lands &c," as a Villein Regardant did (Litt. s. 181: Co. Litt. 120 a, 120 b: 2 Bl. Com. 92, 93). A Power "is Appendant when the estate created by its exercise over-reaches and affects the estate and interest of the Donee of the Power. It is in Gross when the estate so created is beyond, and does not affect, the estate or interest of such Donee" (Farwell, 9). *Cp*, APPENDANT. *V.* FISHERY: INCORPOREAL HEREDIT.

"Gross NEGLIGENCE," — "sometimes called 'Wilful Blindness'" (*Henderson* v. *Comptoir D'Escompte*, 42 L. J. P. C. 64), — "is the same thing as 'Negligence,' with the addition of a vituperative epithet" (per Rolfe, B., *Wilson* v. *Brett*, 11 M. & W. 115, 116; cited with approval by Willes, J., *Grill* v. *General Iron Screw Colliery Co*, 35 L. J. C. P. 330; L. R. 1 C. P. 600; affd 37 L. J. C. P. 205; L. R. 3 C. P. 476). Referring to this phrase, Erle, C. J., said (35 L. J. C. P. 324, 325), "I advisedly abstained from using a word to which I can attach no definite meaning; and no one, as far as I know, ever was able to do so." But in *Lord* v. *Mid. Ry* (L. R. 2 C. P. 344) Willes, J., said, — "*Any* negligence is gross in one who undertakes a *duty* and fails to perform it. The term 'Gross Negligence' is applied to the case of a GRATUITOUS Bailee who is not liable unless he fails to exercise the degree of skill which *he* possesses." As to duty, *V. Le Lievre* v. *Gould*, 1893, 1 Q. B. 491.

Digitized by Google

So, as regards the negligence, apart from FRAUD, for which Directors of a Co will be answerable, Lindley, M. R., said, "It must be, in a business sense, Culpable or Gross" (*Lagunas Co* v. *Lagunas Syndicate*, 1899, 2 Ch. 392; 68 L. J. Ch. 707), apparently using "Gross" as a convertible term for "Culpable." "Their negligence must be not the omission to take all possible care; it must be much more blameable than that; it must be, in a business sense, Culpable or Gross. We do not know how better to describe it. Some useful observations justifying the expression 'Gross Negligence' will be found in Ld Chelmsford's jdgmt in *Giblin* v. *McMullen*, L. R. 2 P. C. 336, 337; 38 L. J. P. C. 28" (per Lindley, M. R., *Re National Bank of Wales*, 1899, 2 Ch. 672; 68 L. J. Ch. 652).

Vf, *McCawley* v. *Furness Ry*, 42 L. J. Q. B. 4; L. R. 8 Q. B. 57: 1 Sm. L. C. 223: *Petrie* v. *S. S. Rostrevor*, 1898, 2 I. R. 556.

If a Judge uses the expression as a material matter in his summing-up to a jury, it will be Mis-direction if he does not explain it (*Cashill* v. *Wright*, 6 E. & B. 891).

"Gross Negligence" is used in s. 2, Libel Act, 1843, 6 & 7 V. c. 96; but, apparently, there is no reported English decision as to what is such negligence in the conduct of a Newspaper. "In America it has been decided that the jury may take into consideration the hurry necessarily incident to the preparation and publication of a Daily Newspaper, as where an article is brought in at the last moment before going to press (*Scripps* v. *Reilly*, 38 Mich. 10); but that the excitement of an Election is no mitigation (*Rearick* v. *Wilcox*, 81 Ill. 77)": Odgers, 370.

"Gross or Culpable Negligence" by a purchaser of Realty; *V.* per Cranworth, C., *Ware* v. *Egmont*, 4 D. G. M. & G. 473, 474; 24 L. J. Ch. 361: *Vh*, per Lindley, L. J., *Bailey* v. *Barnes*, 1894, 1 Ch. 35; 63 L. J. Ch. 73; 69 L. T. 542; 42 W. R. 66: *Vf*, OUGHT.

Gross *Profits*; *V.* NET PROFITS.

"Gross *Tonnage*" of Ships; *V. Burrell* v. *Simpson*, 4 Sess. Ca. 4th Ser. 177: *The Franconia*, 3 P. D. 164: *The Umbilo*, 1891, P. 118; 60 L. J. P. D. & A. 7, on *whcv*, *The Zanzibar*, 1892, P. 233; 61 L. J. P. D. & A. 81: *The Pilgrim*, 1895, P. 117; 64 L. J. P. D. & A. 78: *The Petrel*, 62 L. J. P. D. & A. 92; 1893, P. 320. *Vf*, REGISTER.

V. INDECENCY.

GROUND.—*V.* PLEASURE: SEA-GROUNDS: WASTE GROUND.

"Same Ground"; *V.* SAME.

"Equitable grounds"; *V.* EQUITABLE.

"Special Grounds"; *V.* SPECIAL.

V. GROUNDED UPON.

GROUND GAME.—Quà Ground Game Act, 1880, "'Ground Game,' means, hares and rabbits" (s. 8).

Vh, 6 Encyc. 96–98. *Cp*, GAME. *V.* OCCUPIER: VOID, towards end.

Digitized by Google

GROUND RENT.—"By the expression 'Ground Rent,' if unexplained, is to be understood a rent less than the RACK-RENT of the premises: its proper meaning is the rent at which land is let for the purpose of improvement by building (*Stewart* v. *Alliston*, 1 Mer. 26: *Sv*, *Bartlett* v. *Salmon*, 6 D. G. M. & G. 33; 26 L. T. O. S. 82; 4 W. R. 32; and *Vf*, *Lecoy* v. *Mogford*, 2 Jur. N. S. 1084; 4 W. R. 805): but the expression is very carelessly used" (Dart, 138: *V.* Sug. V. & P. 28, 29: *Evans* v. *Robins*, 1 H. & C. 302; 2 Ib. 410; 31 L. J. Ex. 465; 33 Ib. 68; 6 L. T. 897: 10 W. R. 776: *Langford* v. *Selmes*, 3 K. & J. 220). *V.* SECURED.

By a Devise of "Ground Rent," "not only the rent, but the reversion will pass" (1 Jarm. 797).

By a devise of "*Copyhold* Ground Rent," a copyhold estate held to pass (*Walker* v. *Shore*, 19 Ves. 387).

By a bequest of "*Leasehold* Ground Rent," not only the reserved rent, but also the reversionary leasehold interest, held to pass (*Kaye* v. *Laxon*, 1 Bro. C. C. 76).

As to investment by Trustees in Ground Rents; *V. Vickery* v. *Evans*, 3 N. R. 286: Lewin, 571, 574, 575.

Cp, RENT CHARGE.

GROUND STOREY.—*V.* STOREY.

GROUNDED UPON.—*V.* CONTRACT: FOUNDED ON.

GROUP.—Quà Taxes Management Act, 1880, 43 & 44 V. c. 19, "'Group,' means, any parishes united or grouped for the purposes of the collection of the Duties and the Land Tax" (s. 5).

GROWING.—*V.* PRESENT TENSE.

Growing *Crops*; *V.* PERSONAL CHATTELS: 6 Encyc. 98–106. In a contract for sale of an estate "including the Hay, Growing Crops, and Timber"; held, that that meant such of those things as were in existence at the time fixed for COMPLETION of the contract; and, if such time be extended by mutual agreement, then those in existencr at such extended time (*Webster* v. *Donaldson*, 13 W. R. 515; 12 L. T. 69).

GUARANTEE.—"A Guarantee is a collateral engagement to answer for the DEBT, DEFAULT, OR MISCARRIAGE, of another person" (De Colyar on Guarantees: *Vf*, 6 Encyc. 106–112: ANOTHER). It has been said that "A Guarantee is a promise to another quà Creditor to secure the payment of a debt payable *to* him; whereas an INDEMNITY is a promise to another quà Debtor to secure the re-payment of a debt payable *by* him" (38 S. J. 577). *Vh*, *Dane* v. *Mortgage Insrce*, 1894, 1 Q. B. 55; 63 L. J.

Digitized by Google

Q. B. 144: *Harburg Co.* v. *Martin*, 71 L. J. K. B. 529; 1902, 1 K. B. 778.

V. CONTINUING GUARANTEE: ADVANCE: FORBEAR: GIVEN: RECEIVED, at end. *Cp*, INSURANCE. *Va*, HESITATE: COLLIERY GUARANTEE.

"I guarantee my estates at C. for the payment of the above legacies"; *V. Willox* v. *Rhodes*, 2 Russ. 452.

GUARANTEED.—This word in a Charter Party "has no technical meaning. It is no more than 'I have promised'; and means probably that the ship shall be ready"—(or whatever be the thing guaranteed),—"provided she be not prevented by the excepted perils" (per Willes, J., *Barker* v. *M'Andrew*, 34 L. J. C. P. 194; 18 C. B. N. S. 759; cited with approval by Esher, M. R., *Nottebohm* v. *Richter*, 56 L. J. Q. B. 33; 18 Q. B. D. 66; 35 W. R. 300).

"Guaranteed *Company*," quà Indian Guaranteed Railways Act, 1879, 42 & 43 V. c. 41, means, either of the following,—Gt Indian Peninsular Ry; Madras Ry; Bombay, Baroda, & Central India Ry; Scinde, Punjaub, & Delhi Ry; Eastern Bengal Ry; South Indian Ry; Oude & Rohilcund Ry; "and any Ry Co which for the time being constructs, maintains, or works, a Railway under any guarantee from, or arrangement with, the Secretary of State for India in Council" (s. 1).

"Guaranteed *Rate of Interest*" to Preference Shareholders in a Building Socy; *V. Re Reliance Bg Socy*, 61 L. J. Ch. 453.

"Registration guaranteed"; *V.* REGISTRATION.

"Guaranteed" as a Trade Name; *V. Symington* v. *Footman*, W. N. (87) 70; 56 L. T. 696.

GUARDIAN.—"Guardian," when standing alone, generally means "Guardian of the Person. An Infant may have several Guardians: he may have a Guardian of the Person, or a Guardian in Socage, or in Gavel kind, or, if he has a Copyhold estate, a Guardian according to the Custom of the Manor"; but, generally, the word means, Guardian of the Person (per Jessel, M. R., *Rimington* v. *Hartley*, 14 Ch. D. 632): in s. 6, Partition Act, 1876, 39 & 40 V. c. 17, it means, the Guardian *ad litem* (*Ib.*).

As to Guardian *ad litem*; *V.* R. 18 and 19, Ord. 16, R. S. C., on *whv* Ann. Pr.

Guardian for Nurture; *V.* NURTURE.

V. WARD.

Quà Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82, "Guardian," includes, "Tutors, and Curators of pupils or minors or of persons labouring under incapacity or disability; and Factors loco tutoris, and Factors loco absentis" (s. 9).

Quà Summary Jurisdiction of Justices, "Guardian," includes, any person who (in the opinion of the Court) "has for the time being the charge of, or control over," the Child (42 & 43 V. c. 49, s. 49; 47 & 48 V. c. 19, s. 9).

Digitized by Google

GUARDIANS.—"Board of Guardians"; *V.* s. 16 (1), (3), Interp Act, 1889.

Prior Stat. Def.—9 & 10 V. c. 96, s. 17; 35 & 36 V. c. 79, s. 60; 36 & 37 V. c. 86, s. 27; 37 & 38 V. c. 88, s. 48; 38 & 39 V. c. 55, s. 4.—*Ir.* 43 & 44 V. c. 13, s. 38; 52 & 53 V. c. 56, s. 9.

Subsequent Stat. Def.—53 & 54 V. c. 5, s. 341; 59 & 60 V. c. 50, s. 19.

"Overseers or Guardians" of the Parish, ss. 46 and 109, 4 & 5 W. 4, c. 76; *V. R.* v. *St. Pancras*, E. B. & E. 583: *R.* v. *St. George, Hanover Sq.*, 13 Q. B. 642; 18 L. J. M. C. 160.

Vh, Glen's Poor Law: 6 Encyc. 114–123.

GUEST.—An innkeeper's "Guest" is a TRAVELLER, passenger, wayfarer, or such like person, who, by himself, or his beast, has been, however temporarily, accepted to, and remains under, hospitality within an INN or its CURTILAGE (*Calye's Case*, 1 Sm. L. C. 141, and cases there collected: *Bennett* v. *Mellor*, 5 T. R. 273: *Yorke* v. *Grenaugh*, 2 Raym. Ld. 866: *Medawar* v. *Grand Hotel Co*, 1891, 2 Q. B. 11; 60 L. J. Q. B. 209: *Orchard* v. *Bush*, 1898, 2 Q. B. 284; 78 L. T. 557; 67 L. J. Q. B. 650; 46 W. R. 527: Add. C. 684: *Sv*, *Strauss* v. *County Hotel Co*, 53 L. J. Q. B. 25; 12 Q. B. D. 27: *Manning* v. *Wells*, 9 Humph. 748). When he has stayed sufficiently long to obtain the necessary food and lodging for his journey he loses the character and peculiar privileges of a Guest, *e.g.* the right to demand refreshment; and, *semble*, the Innkeeper's Lien also ceases (*Burgess* v. *Clements*, 4 M. & S. 306: *Lamond* v. *Richard*, 1897, 1 Q. B. 541; 66 L. J. Q. B. 315; 76 L. T. 141. *Cp*, BOARDER: LODGER).

"From the point of view of authority, I do not think that there is much to be said for the proposition that 'Guest' is limited to 'Wayfarer.' It is true that in old times Guests were most frequently Wayfarers, but the liability of the Innkeeper arises whenever he receives a person *causâ hospitandi* or *hospitii*" (per Wills, J., *Orchard* v. *Bush*, sup). But that dictum was *obiter*, for the plt was held to be a Wayfarer, and the dictum itself seems inconsistent with *Burgess* v. *Clements* and *Lamond* v. *Richard*, sup, and with *R.* v. *Rymer* and *R.* v. *Luellin*, cited TRAVELLER; *Sv*, *Parker* v. *Flint*, cited LODGER, towards end.

GUEST-TAKER.—An Agistor; *V.* AGIST.

GUILD.—*V.* GILD.

GUILDHALL.—Quà London Bg Act, 1894, "Guildhall," "means, the land, offices, courts, and buildings commonly called The Guildhall, and the offices, courts, and buildings adjoining or appurtenant thereto, which now are used by, or may hereafter be erected for the use of, the Corporation or of any Committee, Commission, or Society, appointed by them" (subs. 45, s. 5).

Digitized by Google

GUILTY. — "Plead Guilty"; *V.* TRUTH.
Guilty Mind: *V.* KNOWINGLY: MENS REA.

GULE. — Gule of August, *i.e.* the 1st of August (Termes de la Ley: Cowel).

GUN. — For the purposes of the Gun License Act, 1870, 33 & 34 V. c. 57, "Gun," includes, a Firearm of any description, and an Air-gun or any other kind of gun from which any shot, bullet, or other missile, can be discharged (s. 2). A small Toy Pistol is a "Firearm" within this definition (*Campbell* v. *Hadley,* 40 J. P. 756).
V. ATTEMPT: ACCESSORY.

GUNPOWDER. — Quà Peace Preservation (Ir) Act, 1870, 33 & 34 V. c. 9, "Gunpowder" includes, "Gun Cotton, and any other EXPLOSIVE Matter used for the discharge of Firearms" (s. 3).

GURGES. — "*Gurges,* a deepe pit of water, a gors or gulfe, consisteth of water and land; and therefore by the grant thereof by that name the soile doth passe . . . In Domesday it is called *guort, gort,* and *gors* plurally: as for example, *de 3 gorz mille anguillæ*" (Co. Litt. 5 b: *Vf,* Termes de la Ley, *Gors*). "By the name of *Stagnum* a pool, or *Gurges* a gulf, the water, land, and fish in the water, will pass" (Touch. 95). *V.* POOL.

This word is also used for "WEIR" (Spelm. Gloss. *Gors*); and *V.* "Gurgites," "Gors," and "Wears" discussed by Willes, J., *Malcomson* v. *O'Dea,* 10 H. L. Ca. 619. *Vf,* Elph. 583: KIDEL.

GURNEY. — *V.* RUSSELL GURNEY'S ACTS.

GUT. — "Gut," in its ordinary signification, connotes "a portion of the animal form as a necessary part of its constitution" (per Ridley, J., *London Co. Co.* v. *Hirsch,* 81 L. T. 449; 63 J. P. 822); therefore, manufactured Sausage Casings are no longer "guts"; and the business of sorting, re-packing, and supplying them to sausage makers is not within an Order declaring as "OFFENSIVE" the business of a "Gut Scraper, *i.e.* any business in which gut is cleansed, scraped, or dealt with, otherwise than for the manufacture of catgut" (*S. C.*).

GUTTER. — *V.* DRAIN.

As used in 23 H. 8, c. 5, "a Gutter is of a less size and of a narrower passage and current, than a SEWER is; and, as I take it, a Gutter is the diminutive of a sewer: and the difference between them is, That a Sewer is a common public stream, and a Gutter is a straight private running water; and the use of a Sewer is common, and of a Gutter peculiar" (Callis, 80).

Digitized by Google

HABEAS CORPUS—HABITUAL

HABEAS CORPUS.—"'Habeas corpus,' is a writ the which a man indited of any trespasse before Justices of the Peace, or in a Court of any Franchise, and upon his apprehension being laid in prison for the same, may have out of the King's Bench thereby to remove himselfe thither at his own costs and to answer the cause there; F. N. B. fol. 250" (Termes de la Ley).

The Habeas Corpus Act, 1679, 31 Car. 2, c. 2.

Vh, Jacob: 6 Encyc. 129–147: Short & Mellor's Crown Office Practice.

HABENDUM.—The office of the PREMISES (in a Deed) is to express the names of the parties &c; "the office of the Habendum is to limit the estate, so that the generall implication of the estate which by construction of law passeth in the Premisses is by the Habendum controlled and qualified" (Termes de la Ley). *Vf,* 2 Bl. Com. 298: Wms. R. P. ch. 9.

"When a man limits a thing before the Habendum, and afterwards says, *habendum* for Years, or for Life, or in Fee, and does not name the thing in the Habendum, it shall be referred to the thing mentioned before the Habendum, and it is not necessary to repeat the thing again in the Habendum" (*Wrotesley* v. *Adams,* Plowd. 196). *V.* HAVE AND TO HOLD.

The Habendum of a Lease only marks the duration of the lessee's Interest; its operation as a Grant is merely prospective (per Eyre, C. J., *Wyburd* v. *Tuck,* 1 B. & P. 464); therefore, the Lessee is only liable on his covenants from the execution of the Lease, though its habendum states the commencement of the term as from a previous DATE (*Shaw* v. *Kay,* 17 L. J. Ex. 17; 1 Ex. 412). *Cp,* LAST PAST.

HABIT.—*V.* IMMORAL.

HABITABLE.—Quà London Bg Act, 1894, "'Habitable,' applied to a Room, means, a Room constructed or adapted to be INHABITED" (subs. 38, s. 5).

"Fit for Habitation"; *V.* FIT.

Habitable Repair. *V.* REPAIR.

HABITUAL.—Habitual *Criminal*; *V.* 6 Encyc. 147, 148.

Quà Habitual Drunkards Act, 1879, 42 & 43 V. c. 19, "'Habitual *Drunkard,*' means, a person who (not being amenable to any jurisdiction in Lunacy) is notwithstanding—by reason of habitual intemperate

Digitized by Google

drinking of Intoxicating Liquor — at times dangerous to himself or herself or to others, or incapable of managing himself or herself and his or her affairs" (subs. 3 (3 *b*), s. 3). *Vh*, Inebriates Acts, 1898, 1899. To allege of a person that he is an Habitual Drunkard is not SLANDER per se (*Alexander* v. *Jenkins*, 1892, 1 Q. B. 797; 61 L. J. Q. B. 634).

Habitual *Trade*; *V. Odwell* v. *Willesden*, cited NEW BUILDING.

HÂC RE. — *V.* IN HÂC RE.

HACKNEY CARRIAGE. — "I think that a Hackney Carriage is a Carriage exposed for HIRE to the public, whether standing in the public street, or exposed for public use in a private gateway. The test is whether the Carriage is held out for the general accommodation of the public" (per Lush, J., *Bateson* v. *Oddy*, 43 L. J. M. C. 131; 30 L. T. 712; 22 W. R. 703). *Vh*, *Skinner* v. *Usher*, 41 L. J. M. C. 158; L. R. 7 Q. B. 423: *Case* v. *Storey*, L. R. 4 Ex. 319; 38 L. J. M. C. 113.

Quà Customs and Inl. Rev. Act, 1888, 51 & 52 V. c. 8, "'Hackney Carriage,' *means*, any CARRIAGE standing or plying for HIRE; and *includes*, any Carriage let for hire by a coachmaker, or other person, whose trade or business it is to sell carriages or to let carriages for hire; provided that such carriage is not let for a period amounting to 3 months or more" (subs. 3, s. 4). A Public Omnibus is within that def, and liable only to the lower duty of 15*s*. (*Hickman* v. *Birch*, 59 L. J. M. C. 22; 24 Q. B. D. 172; 6 Times Rep. 104). *Vf*, OMNIBUS.

Quà Metropolitan Public Carriage Act, 1869, 32 & 33 V. c. 115, "Hackney Carriage" means, "any Carriage for the conveyance of PASSENGERS which plies for Hire within the limits of this Act, and is not a STAGE CARRIAGE" (s. 4): *Vf*, 1 & 2 W. 4, c. 22, s. 4; 6 & 7 V. c. 86, s. 2. *Cp*, CAB.

Quà Town Police Clauses Act, 1847, 10 & 11 V. c. 89, ss. 37, 40–52, 54, 58, and 60–67, "Hackney Carriage," "Hackney Coach," and "CARRIAGE," include every OMNIBUS (s. 4, 52 & 53 V. c. 14); but, observe, that though by s. 38 of the T. P. C. Act "every WHEELED CARRIAGE, whatever may be its form or construction" may be a Hackney Carriage, quà the Act, yet it must be one "used in standing or plying for hire *in any Street*"; and *vth*, *Curtis* v. *Embery* and *Jones* v. *Short*, cited STREET.

Quà the Dublin Carriage Acts, 1853 and 1854, "Hackney Carriage," includes, "every carriage constructed with less than four wheels used for Passengers (except a Stage Carriage, or any carriage known as Hansom's Patent Safety Cab) which shall be used for the purpose of standing or plying for Hire in any Street or Road, or any place within the limits of" the Act of 1853 (17 & 18 V. c. 45, s. 10). *Cp*, CAB: JOB.

"Hackney Carriage plying for hire"; *V.* PLY.

HAD. — "Had" sometimes means "obtained," *e.g.* "afore Execution had"; *V.* EXECUTION.

Digitized by Google

HAD-BOTE. — *V.* BOTE.

HADE. — A Hade of land was 10 Ridges (Cowel). *V.* SELION.

HADFIELD'S ACT. — The Judgments Act, 1864, 27 & 28 V. c. 112.

HÆRES INSTITUTUS. — *V.* EXECUTOR.

HÆRES TESTAMENTARIUS. — *V.* UNIVERS_L HEIR.

HÆRETICO. — *V.* HERETICO COMBURENDO.

HAGA. — "In Domesday, a house in a city or burrough is called *haga*; other houses are called there, *mansiones*, *mansura*, and *domus*; and in an ancient plea concerning Feversham in Kent, *hawes* are interpreted to signifie *mansiones*. In Normans French it is called *mesiul* or *mesuil*" (Co. Litt. 5 b).

HAIA. — A Park (4 Inst. 294; Spelm.); also, a Net for catching coneys (Ib.); also, a Hedge (Cowel). *Cp*, HAY.

HALF A YEAR. — A "Half a year" is not the same as "Six months" (*V.* SIX MONTHS), but means half the days of a year. "'Half a yeare' containeth 182 dayes; for the odde houres, in legall computation, are rejected" (Co. Litt. 135 b: *Va*, Redman, 441, *whv* as to reckoning a half year for a Notice to Quit). But in Woodf. (374), a half-year is stated to be 183 days.

V. BY LAW: HALF-YEARLY: *Cp*, QUARTER OF A YEAR.

HALF-BLOOD. — "'Halfe bloud,' is when a man marrieth a wife and hath issue by her, a sonne or daughter, and the wife dyeth, and then he taketh another woman and hath by her also a son or daughter: Now these two sons are, after a sort, Brothers, or, as they are termed, halfe brothers or brothers of the halfe bloud. In the same manner it is if a woman have divers issues by divers husbands who are called brothers by one mother" (Termes de la Ley, *Demy Sanke*). *V.* BROTHER.

Cp, Whole Blood, sub WHOLE: BLOOD.

HALF-YEARLY. — Where a Leasing Power provided that the rents should be reserved by "Half-yearly" payments, it was held that this required a division of the rent into, as nearly as may be, two *equal* half-yearly payments; and that, therefore, a Lease reserving rent at the Feast of St. Philip and St. James (1 May), and St. Michael (29 Sept), was not valid (*Doe* d. *Harries* v. *Morse*, 3 L. J. Ex. 70; 4 Tyr. 185; 2 Cr. & M. 247; cited in the jdgmt *Doe* d. *Douglas* v. *Lock*, 4 L. J. K. B. 118).

V. HALF A YEAR: YEARLY: QUARTERLY.

Digitized by Google

HALL. — "Hall or Office" liable to House Duty under Sch B, R. 5, House Tax Act, 1808, 48 G. 3, c. 55; — "A LIBRARY is a perfectly well-known thing and is essentially different from a Hall, which is generally a place that is used for some business purposes connected with the general objects of the Society, Company, or Corporation, which possesses it; whereas a Library is a place devoted to books, reading, and study. I cannot help thinking that if anybody were asked to describe the buildings constituting either the buildings of the Middle Temple or of Lincoln's Inn or of any College or University, he would say that they consisted (amongst other things) of Lecture Rooms, a Hall, and a Library; and I do not think that any person would describe a building which contained a Library without the specific use of the expression" (per Wills, J., *Styles* v. *Middle Temple*, 68 L. J. Q. B. 161). In that case it was held that the Middle Temple Hall was liable to the Duty; but that its Library was not, it not being a "Hall or Office" (*S. C.* affd 68 L. J. Q. B. 1046; 81 L. T. 426; 48 W. R. 164; 63 J. P. 725). The Assembly Hall and College of the Free Church of Scotland, are "Halls or Offices," and dutiable (*Scotland Free Church* v. *Bain*, W. N. (97) 138; 24 Rettie, 492; 3 Tax Cases, 530).

Quà Oxford University Act, 1854, 17 & 18 V. c. 81, "Hall," means, "all Halls, other than Affiliated Halls or such Private Halls as are authorized by this Act" (s. 48); quà Universities of Oxford and Cambridge Act, 1877, 40 & 41 V. c. 48, "'Hall,' means, one of the following Halls, namely, — St. Mary Hall, St. Edmund Hall, St. Alban Hall, New Inn Hall, in the University of Oxford" (s. 2).

HALYMOTE. — *V.* Elph. 584.

HAM. — "Properly a house; 4 Inst. 294: a VILL; a piece of ground shaped like the ham of the leg; Spelm." (Elph. 584, *whv*). *Va*, CROFT.

HAMLET. — Hamlet is "in common acceptation used for a VILL (per Kenyon, C. J., *King* v. *Morris*, 4 T. R. 552). Spelman (Gloss., *Hamel*) and Holt, C. J. (*Anon.*, 12 Mod. 546, pl. 912), consider it to be *a part* of a Vill. The distinction seems to be that a Vill has a constable and a Hamlet has none (*R.* v. *Hewson*, 12 Mod. 180: nom. *Chorley's Case*, Holt, 153; 1 Salk. 175: *R.* v. *Horton*, 1 T. R. 374, 376)" (Elph. 584). *V.* TOWNSHIP.

HAMMER PRICE. — The "Hammer Price," is the price officially fixed by the Official Assignee of the Stock Exchange for the artificial settlement of a Defaulter's dealings with his fellow members: *Vh*, *Tompkins* v. *Saffery*, cited ASSETS: *Beckhuson* v. *Hamblet*, 1900, 2 Q. B. 18.

HAND. — *V.* HIS HAND: IN HAND: UNDER HAND: SECOND HAND.

Digitized by Google

HANDICRAFT.—Quà Workshop Regulation Act, 1867, 30 & 31 V. c. 146, "'Handicraft' shall mean, any Manual Labour exercised by way of Trade or for purposes of Gain in or incidental to the making any Article or part of an Article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale, any Article" (s. 4). Making straw plait, by a child under the age of 8 years and who is being taught such plaiting, is a "Handicraft" within this definition (*Beadon* v. *Parrott*, 40 L. J. M. C. 200; L. R. 6 Q. B. 718). *Cp*, HANDICRAFTSMAN.

V. MANUAL LABOUR: PERSONAL LABOUR.

HANDICRAFTSMAN.—Is a skilled Workman (per Brett, L. J., *Morgan* v. *London Gen. Omnibus Co*, 53 L. J. Q. B. 352; 13 Q. B. D. 832) and generally speaking is, probably, much the same as an ARTIFICER. Yet a Hairdresser is a Handicraftsman (per Palles, C. B., *R.* v. *Louth Jus.*, cited LABOUR: *Va*, *Phillips* v. *Innes*, cited HOLIDAY); but is not an Artificer (*Palmer* v. *Snow*, cited ARTIFICER). *Cp*, HANDICRAFT: LABOURER.

No "Common Baker, Brewer, Surgeon, or Scrivener, shall be interpreted or expounded, Handicraftsmen" (22 H. 8, c. 13). *Cp*, ART.

HAND-MADE.—*V.* *Kirshenboim* v. *Salmon*, cited FALSE TRADE DESCRIPTION.

HANDSALE.—This is a synonym for EARNEST (2 Bl. Com. 448); generally, now written and spoken as "handsel," or "hansel."

HANDSOME GRATUITY.—A request by a testator that a "handsome gratuity" should be given his executor, is void for uncertainty (*Jubber* v. *Jubber*, 9 Sim. 503).

But a promise to make a "Handsome Present" for services rendered, is evidence on which the promisee may recover reasonable recompense for those services (*Jewry* v. *Busk*, 5 Taunt. 302).

HANG ABOUT.—*V.* FREQUENT.

HAPPEN.—"If it happen"; *V.* IF.

HARBOUR.—To "harbour,"—*e.g.* thieves, ss. 10, 11, Prevention of Crimes Act, 1871, 34 & 35 V. c. 112,—means, to give persons shelter, or to permit them to congregate, even though it be only to take part in a "friendly lead" for the purpose of raising a legitimate subscription (*Marshall* v. *Fox*, L. R. 6 Q. B. 370; 19 W. R. 1108; 24 L. T. 751). An Innkeeper would, probably, be said to "harbour" a thief by permitting him to participate in a "free-and-easy."

Cp, ASSEMBLE.

"A Harbour, in its ordinary sense, is a place to shelter ships from

Digitized by Google

the violence of the sea, and where ships are brought for commercial purposes to load and unload goods. The quays are a necessary part of a Harbour" (per Esher, M. R., *R.* v. *Hannam*, 2 Times Rep. 234). *Vh*, 6 Encyc. 152-158. *Cp*, HAVEN.

Semble, that "Harbour" may, contextually, be synonymous with "PORT" (*R.* v. *Hull Dock Co*, 7 Q. B. 2; 14 L. J. M. C. 114, on *whcv*, *R.* v. *Berwick*, 16 Q. B. D. 493; 55 L. J. M. C. 84).

Quà Mer Shipping Act, 1894, "'Harbour,' includes, Harbours properly so called, whether natural or artificial, Estuaries, Navigable Rivers, Piers, Jetties, and other Works, in or at which SHIPS can obtain shelter, or ship and unship goods or passengers" (s. 742), a def identical with that in s. 2, 24 & 25 V. c. 47, and adopted for, and by, s. 104, Factory and Workshop Act, 1901.

Quà Burgh Harbours (Scot) Act, 1853, 16 & 17 V. c. 93, "Harbour," *means*, the harbour of any Royal Burgh (*V.* BURGH) possessing a harbour which is not under the regulations of any Local Act; and *includes*, "the whole limits assigned to such harbour by the charter of such burgh, or by any law, statute, or usage, and all docks, piers, quays, yards, works, buildings, creeks, and anchorages, within such limits" (s. 2).

Other Stat. Def.—10 & 11 V. c. 27, s. 2; 34 & 35 V. c. 105, s. 2.

V. PUBLIC HARBOUR: DIFFERENTIAL DUES: IMPORTED.

"Harbour *Authority*," quà Mer Shipping Act, 1894, "includes, all persons, or bodies of persons corporate or unincorporate, being proprietors of, or intrusted with the duty or invested with the power of, constructing, improving, managing, regulating, maintaining, or lighting, a harbour" (s. 742), a def resembling, but a little wider than that in, s. 2, 24 & 25 V. c. 47.

Other Stat. Def.—34 & 35 V. c. 105, s. 2; Explosives Act, 1875, 38 & 39 V. c. 17, s. 108; Shannon Act, 1885, 48 & 49 V. c. 41, s. 17; Sea Fisheries Regn Act, 1888, 51 & 52 V. c. 54, s. 14; Forged Transfers Act, 1891, 54 & 55 V. c. 43, s. 4 (2).

"Harbour *Board*," quà Ry and Canal Traffic Act, 1888, 51 & 52 V. c. 25, "means, any persons who are (otherwise than for private profit) intrusted with the duty, or invested with the power, of constructing, improving, managing, regulating, and maintaining, a harbour, whether natural or artificial, or any dock" (s. 55).

"Harbour *Master*"; Stat. Def., 10 & 11 V. c. 27, s. 2.

"Port" or "Harbour" *Policy*; *V. Hunting* v. *Boulton*, 1 Com. Ca. 120.

HARD.—Hard Bargain; *V. Middleton* v. *Brown*, 47 L. J. Ch. 411.

Hard Labour; *V.* s. 19, 28 & 29 V. c. 126; RIGOROUS.

Wall of "Hard and Incombustible" material; *V.* WALL.

"Hard *Pinch*," of metals so as to make them cohere, in a Patent Specification; *V. Betts* v. *Menzies*, 30 L. J. Q. B. 81; 31 Ib. 233; 10 H. L. Ca. 117.

Digitized by Google

Lord HARDWICKE'S ACT.—26 G. 2, c. 33, repealed by the Marriage Act, 1823, 4 G. 4, c. 76.

Gathorne HARDY'S ACTS.—Metropolitan Poor Act, 1867, 30 & 31 V. c. 6; amended by 31 & 32 V. c. 122:

Metropolitan Streets Act, 1867, 30 & 31 V. c. 134; amended by 31 & 32 V. c. 5:

Capital Punishment Amendment Act, 1868, 31 & 32 V. c. 24; amended by 31 & 32 V. c. 95, s. 19.

HARM.—*V.* INFLICT: INJURE.

HARMONIZE.—*V.* CORRESPOND.

HARTER.—The Harter Act, is the Act of Congress, U. S. A. of 13 Feb 1893: *Vh,* MANAGEMENT.

HAS.—*V.* HATH: HAVE.

HAS BEEN.—"Hath been," construed as "is," in the sense of indicating a continuous fact (*Ex p. Kinning,* 16 L. J. Q. B. 257; 10 Q. B. 730).

The provision in s. 23, Bankry Act, 1890, which, quà dividend, limits interest to not exceeding 5 per cent per ann. "where a debt *has been* proved," is not sufficient to give the section a RETROSPECTIVE operation (*Re Athlumney,* 1898, 2 Q. B. 547; 67 L. J. Q. B. 935; 79 L. T. 303; 47 W. R. 144, *whcv* for cases on the retrospective operation of statutes). In *thc* and referring to "has been," Wright, J., said, "in former times draftsmen would have used the words, 'where a debt SHALL HAVE BEEN proved'; but in modern Acts, the past tense is frequently used where no retrospective operation can be intended." *Vf,* IS: HAVE BEEN.

HATH.—The Bedford Level Act, 15 Car. 2, c. 17, s. 15, provides that none shall be qualified as Governor or Bailiff that "hath" not 400 acres, or more, in the Level; held, that a mere legal estate qualifies (*Childers* v. *Childers,* 26 L. J. Ch. 743; 1 D. G. & J. 482; 3 Jur. N. S. 1277). In *thc* Knight Bruce, L. J., said,—"'Hath' must be taken as equivalent to the French word 'ait' in old statutes, *e.g.* 2 H. 5, c. 3, and 8 H. 6, c. 7."

Gift to the Children which A. "hath, or shall have"; *V. Gooch* v. *Gooch,* 14 Bea. 565; 3 D. G. M. & G. 366; 21 L. J. Ch. 238; 22 Ib. 1089: TO BE BORN.

Hath been; *V.* HAS BEEN: HAVE BEEN.

HAT WORKS.—*V.* NON-TEXTILE FACTORIES.

HAULAGE.—"Main Haulage Road"; *V.* MAIN ROAD.

Digitized by Google

HAULM. — *V.* Straw.

HAUNT. — *V. Murphy* v. *Arrow*, cited Found.

HAVE. — A devise to children "who have Issue," means who have Issue when the Will takes effect (*Doe* d. *Burton* v. *White*, 18 L. J. Ex. 59; 2 Ex. 797).

A devise of "the lands which *I have*," speaks from the death, and not the date of the Will, and therefore includes lands acquired after the Will (*Doe* d. *York* v. *Walker*, 12 M. & W. 591); and on the balance of the authorities (and, *semble*, of good sense), that larger interpretation would not be narrowed to the date of the Will, if the phrase were "the lands which I *now* have" (*Castle* v. *Fox*, L. R. 11 Eq. 542; 40 L. J. Ch. 302: *Miles* v. *Miles*, 35 Bea. 192; 35 L. J. Ch. 315; L. R. 1 Eq. 462: *Cox* v. *Bennett*, L. R. 6 Eq. 422: *Wedgwood* v. *Denton*, 40 L. J. Ch. 526; L. R. 12 Eq. 290: *Saxton* v. *Saxton*, 13 Ch. D. 359; 49 L. J. Ch. 128: *Backwell* v. *Child*, 1 Amb. 260: *Struthers* v. *Struthers*, 5 W. R. 809: *Re Russell*, 51 L. J. Ch. 401; 19 Ch. D. 432? *Sv*, per contra, *Cole* v. *Scott*, 19 L. J. Ch. 63; 1 M. & G. 518: *Emuss* v. *Smith*, 2 D. G. & S. 722). *Vf*, Now: *Cp*, My.

If donee in fee shall die and "*shall not have*" disposed of the property, then over; means, that the Disposition must be accomplished in his lifetime, and cannot be by Will; because "shall not have" means "shall not *already* have" (*Doe* d. *Stevenson* v. *Glover*, 1 C. B. 461, *n*; *Va*, Dispose of).

V. Hath: Having.

HAVE ADJUDGED. — A statement in a Justice's Order that "we have adjudged," means, "we do now adjudge" (*R.* v. *Moulden* or *Maulden*, 6 L. J. O. S. M. C. 76; 8 B. & C. 78: *R.* v. *St. Nicholas, Leicester*, 4 L. J. M. C. 97; 3 A. & E. 79; 4 N. & M. 624).

To HAVE AND TO HOLD. — These words (since Conv & L. P. Act, 1881, generally shortened to "To hold") which, as is well known, are the commencement of the Habendum in a Conveyance, mean, "*to have* an estate of inheritance and *to hold* the same of some superior lord" (Co. Litt. 6 a).

V. Hold.

HAVE BEEN. — This phrase will frequently mean, immediately prior to a specified time. Thus, Exhibitioners were to be elected from boys "who shall have been" or "who have been" three years at W. School; held, that only those boys were eligible who had been three years at the School at the time of, and immediately preceding, the election (*Re Storie*, 2 D. G. F. & J. 529, 539; 30 L. J. Ch. 193; 9 W. R. 323; 3 L. T. 638).

V. Shall have been: Has been.

Digitized by Google

HAVE HAD. — "Have had a child"; *V.* Born.

HAVE OBTAINED. — Construed "shall have obtained" (*Benjamin* v. *Belcher*, 9 L. J. Q. B. 153; 11 A. & E. 367).

HAVE OR CONVEY. — "Have in his possession or Convey anything suspected of being stolen or unlawfully obtained," s. 24, 2 & 3 V. c. 71; — "Have" here is read as *ejusdem generis* with "convey," and therefore the phrase does not apply to the possession of a building, but is confined to the class of offences contemplated by s. 66, 2 & 3 V. c. 47 (*Hadley* v. *Perks*, 35 L. J. M. C. 177; L. R. 1 Q. B. 444; 7 B. & S. 375: *V.* Keep).

HAVE OR KEEP. — *V.* Keep.

HAVEN. — "A Haven is a place of a large receipt and safe riding of Ships, so situate and secured by the land circumjacent that the vessels thereby ride and anchor safely and are protected by the adjacent land from dangerous or violent winds; as Milford Haven, Plymouth Haven, and the like" (Hale, *De Portibus Maris*, ch. 2). *Cp*, Harbour: Road.

For the diversity between Creek, Haven, and Port, *V.* Callis, 58.

HAVING. — "Every person having *Manors*," &c, may make Wills, 34 H. 8, c. 5; "This word 'having' imports two things, *sc.* Ownership and Time of Ownership; for he ought to have the land at the time of the making of his Will, and the statute gives such person *having*, &c" the authority thereby conferred (*Butler & Baker's Case*, 3 Rep. 30 a). *V.* Have: Present tense.

"In consideration of your *having agreed*," *e.g.* to stay an action, states an Effective Consideration; for it imports a continuing act (*Tanner* v. *Moore*, 9 Q. B. 1; 15 L. J. Q. B. 391); so, if the phrase be "Having *resigned*" an Office (*Steele* v. *Hoe*, 14 Q. B. 431; 19 L. J. Q. B. 89), or "having *released*" A. (*Butcher* v. *Steuart*, 11 M. & W. 857; 12 L. J. Ex. 391). *Cp*, Given: Advance: Received: Secure.

"Having erected or improved"; *V.* Erected.

"Having *first* duly *paid* the said rent and performing" the lessee's covenants, — in a clause enabling a lessee to determine by notice, — means that the only Conditions Precedent are "that at the time of giving the notice there should be no arrear of rent, and that at some time or other (but without saying when) the lessee's covenants should be performed" (per Channell, J., *Seaward* v. *Drew*, 67 L. J. Q. B. 325: *Vf*, *Grey* v. *Friar*, 20 L. J. Ex. 365; 5 Ex. 597, on *whlc* the H. L. was equally divided and so decision affd, 4 H. L. Ca. 565).

"Having *in his Possession*," s. 15 (7), Friendly Soc. Act, 1875; *V.* *Re Miller*, cited Possession.

The words "Die without having *Issue*" are equivalent to Die with-

Digitized by Google

out Issue (*Lee's Case*, 1 Leon. 385: *Cole* v. *Goble*, 22 L. J. C. P. 148; 13 C. B. 445: *Eastwood* v. *Lockwood*, 36 L. J. Ch. 573; L. R. 3 Eq. 487). *Cp*, Leaving.

Court "having *Jurisdiction* under this Act to wind-up the Co," s. 32 (2), 53 & 54 V. c. 63; *V. Re Mining Shares Co*, 1893, 2 Ch. 660; 62 L. J. Ch. 434; 68 L. T. 578; 41 W. R. 376.

"Having *or Conveying*"; *V.* Have or Convey.

"Having *or Holding*" lands, s. 4, Land Tax Act, 1797; *V. Ward* v. *Const*, 10 B. & C. 647.

"Having *or Taking*" Bote for repair; *V.* Being.

"Having regard"; *V.* Regard.

HAWES. — *V.* Haga.

HAWGH or HOWGH. — *V.* Combe.

HAWK: HAWKER. — "'Hawkers' be a sort of deceitful fellows that go from place to place buying and selling brass, pewter, and other merchandize, that ought to be uttered in Open Market" (Cowel, cited *Morrill* v. *State*, 38 Wis. 437).

A person who goes from the town in which he resides and takes a room at another town and there sells goods which are brought direct from the town of his residence, was a "Hawker, Pedlar, Petty Chapman, or other trading person going from town to town" within s. 6, 50 G. 3, c. 41 (*Manson* v. *Hope*, 31 L. J. M. C. 191; 2 B. & S. 498: *Vf*, Trading Person).

But 50 G. 3, c. 41 and the other Acts relating to Hawkers are now consolidated and repealed by the Hawkers Act, 1888, 51 & 52 V. c. 33, which, by s. 2, provides that "'Hawker' *means*, any person who travels with a horse or other beast bearing or drawing burden, and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods, wares, or merchandize, or exposing samples or patterns of any goods, wares, or merchandize to be afterwards delivered; and *includes*, any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares, or merchandize in or at any house, shop, room, booth, stall, or other place whatever, hired or used by him for that purpose."

Semble, a single act of selling does not make a Hawker (*R.* v. *Little*, 1 Burr. 609); *secus*, of habitually selling, as distinguished from merely delivering goods previously ordered (*O'Dea* v. *Crowhurst*, 68 L. J. Q. B. 655; 80 L. T. 491; 63 J. P. 424).

Quà Petroleum (Hawkers) Act, 1881, 44 & 45 V. c. 67, a person is deemed "to hawk Petroleum if, by himself or his servants, he goes about carrying petroleum to sell,—whether going from town to town or to other men's houses, or selling it in the streets of the place of his resi-

Digitized by Google

dence or otherwise, and whether with or without any horse or other beast bearing or drawing burden" (s. 6).

Quà Public Houses Acts Amendment (Scot) Act, 1862, 25 & 26 V. c. 35, "'Hawking' shall mean and include, TRAFFICKING in or about the streets, highways, or other places, or in or from any boat or other vessel upon the water" (s. 37).

"Carry to sell"; *V.* CARRY.

Vh, Termes de la Ley, *Haukers*: 6 Encyc. 158–161.

V. LICENSED HAWKER: PEDLAR: MAKER.

HAWKING. — *V.* HUNTING.

HAY. — "A hedge or inclosure; also, a net to take Game" (Jacob). *Cp*, HAIA.

HAY-BOTE. — *V.* BOTE.

HAZARDOUS. — *V.* RASH AND HAZARDOUS.

HE OR THEY PAYING FREIGHT. — "It is now well settled that the usual clause in Bills of Lading engaging the Master to deliver goods to the consignees or assignees '*he or they paying freight*' is introduced for the benefit of the Master only, and does not cast upon him the duty of obtaining at his peril the freight from the consignees at the time of the delivery" (1 Maude & P. 386, 387, citing *Weguelin* v. *Cellier*, L. R. 6 H. L. 286; 42 L. J. Ch. 758). *Vf* PAYING.

HEAD. — How a trust for settling estates is to be executed where the testator says that his object is "to have a *Head to the Family*"; *V. Woolmore* v. *Burrows*, cited STRICT ENTAIL.

"Head and other *Constables*"; Stat. Def., Constabulary (Ir) Act, 1866, 29 & 30 V. c. 103, s. 1; 37 & 38 V. c. 80, s. 1.

"Head *Manager*" of a Mine; Stat. Def., 6 & 7 W. 4, c. 106, s. 44.

Head *Office*; *V.* PRINCIPAL OFFICE.

Head *Officer*; *V.* OFFICER: CHIEF.

HEADING. — A word only cannot be registered as a TRADE-MARK on the ground of being a "Heading" within s. 64, 46 & 47 V. c. 57, repld s. 10, 51 & 52 V. c. 50 (*Re Leonard and Ellis*, 26 Ch. D. 288; 53 L. J. Ch. 603; 32 W. R. 530).

V. BRAND.

HEADLAM'S ACTS. — The Trustee Act, 1850, 13 & 14 V. c. 60: The Trustee Act, 1852, 15 & 16 V. c. 55.

HEALER. — "He is a Healer of Felons," meaning a Concealer of Felons, is Slander (*Pridham* v. *Tucker*, Yelv. 153).

Digitized by Google

HEALTH. — That is Injurious to Health which makes sick people worse, — *e.g.* an offensive smell (*Malton Local Bd* v. *Malton Manure Co*, 49 L. J. M. C. 90; 4 Ex. D. 302).

"Injury to its health"; *V.* INJURY.

A Warranty, quà a Life Policy, that the assured is "in Health," or "in Good Health," "can never mean that he has not the seeds of disorder: we are all born with the seeds of mortality in us. A man subject to the gout is a Life capable of being insured if he has no sickness at the time to make it an unequal contract" (per Mansfield, C. J., *Willis* v. *Poole*, Park, 935); the only question on such a Warranty is, Was the insured "in a reasonable good state of health and such a life as ought to be insured on common terms?" (per Mansfield, C. J., *Ross* v. *Bradshaw*, Park, 934); in *thlc* the insured at the time of the Warranty had received a wound in his loins which occasioned a partial relaxation or palsy preventing him from retaining his urine or fæces, but which wound did not cause the death; and, on the ruling just stated, the jury found he was then in "Good Health." *Vf, Morrison* v. *Muspratt*, 4 Bing. 60.

V. PUBLIC HEALTH.

HEAPED MEASURE. — *V.* BUSHEL.

HEAR: HEARING. — To "hear" a cause or matter means, to hear and determine it. And "unless there be something which by natural intendment, or otherwise, would cut down the meaning, I apprehend there can be no doubt that the legislature, when they direct a particular cause to be heard in a particular Court, mean that it is to be heard and finally disposed of there. And further, when they say that it is to be heard — (meaning, heard and finally disposed of) — in a particular Court, they mean, unless there is something in the context which either by natural interpretation or by necessary implication would cut it down, that in all matters which are not provided for that Court is to follow its ordinary procedure" (per Ld Blackburn, *Re Green*, 51 L. J. Q. B. 44); or, as Selborne, C., put it in the same case, "hearing" includes not only its necessary antecedents, but also its necessary or proper consequences (Ib. 40; nom. *Green* v. *Penzance*, 6 App. Ca. 657). *Vf, R.* v. *Canterbury, Archbp*, 1 E. & E. 545; 28 L. J. Q. B. 154; 7 W. R. 212.

But sometimes to "hear" is not quite the same as to "hear and determine" (per Denman, C. J., *R.* v. *Warwickshire Jus.*, 4 L. J. M. C. 62; 4 N. & M. 370; 2 A. & E. 768).

"Hear and determine"; *V.* Termes de la Ley, *Oyer and Terminer*: *Ex p. Gorman*, 1894, A. C. 23; 63 L. J. M. C. 84; 70 L. T. 46; 58 J. P. 316: OYER AND TERMINER.

When power is given "to hear and determine" an Offence, the condition is implied that the accused be first cited by summons, and have an opportunity of defence (Dwar. 671, 672).

Digitized by Google

When two or more are to "hear and determine," they must sit together, not separately (Burn's Justice, Introd. xxiv, cited Dwar. 670).

Under s. 6, Sum Jur Act, 1857, 20 & 21 V. c. 43, the Court has to "hear and determine the question or questions *of law* arising" on the case stated; therefore, it will take cognizance of such a question though the same was not made at the hearing; *secus*, of a matter *of fact* (*Knight* v. *Halliwell*, 43 L. J. Q. B. 137; L. R. 9 Q. B. 412; 30 L. T. 359; 22 W. R. 689).

Vf, on "hear and determine," *R.* v. *Sykes*, 45 L. J. M. C. 39; 1 Q. B. D. 52; 24 W. R. 141; 33 L. T. 566.

"Hearing of any Motion or Summons," s. 46, Com. L. Pro. Act, 1854, included an application for a Rule *nisi* (*Morgan* v. *Alexander*, 44 L. J. C. P. 167; L. R. 10 C. P. 184, distinguishing *Thomas* v *Stutterheim*, 5 W. R. 6).

There is a "Hearing" of a Summons before Justices, *e.g.* s. 27, 9 G. 4, c. 31, if the defendant attends on the return day and claims and obtains its dismissal, the complainant having withdrawn complaint and not appearing (*Bradshaw* v. *Vaughton*, 30 L. J. C. P. 93; 9 C. B. N. S. 103; 25 J. P. 102; 9 W. R. 120; 3 L. T. 373: *Tunnicliffe* v. *Tedd*, 17 L. J. M. C. 67; 5 C. B. 553; 12 J. P. 249: *R.* v. *Stamper*, 10 L. J. M. C. 73; 1 Q. B. 119). To avoid the rule in these cases quà the effect of a Certificate of Dismissal in a case of Assault or Battery, the Hearing must now be "upon the Merits" (s. 44, 24 & 25 V. c. 100).

V. Day of Hearing: Trial: Himself.

HEARD AND FINALLY DETERMINED.—A provision that certain matters shall be "heard and finally determined" by an Inferior Court, does not oust the supervision of the High Court (*R.* v. *Plowright*, 3 Mod. 95; 2 Hawk. P. C. c. 27, s. 23, cited Maxwell, 153). *Vf*, Hear.

HEARD OF.—The presumption of Death of a person who has "never been heard of" for 7 years; *V. Prudential Assrce* v. *Edmonds*, 2 App. Ca. 487: *Randle* v. *Lory*, 6 A. & E. 223. *V.* Presumption.

HEARSAY.—"In its legal sense 'Hearsay' Evidence is all Evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person" (Taylor on Evidence, 9 ed., 368).

Sometimes it is said "Hearsay is not Evidence"; but see this maxim examined, s. 495, Best on Evidence.

Vh, Rosc. N. P. 44 *et seq.*

HEDGE-BOTE.—*V.* Bote.

HEIGHT.—Quà London Bg Act, 1894, "'Height,' in relation to any Building, means, the measurement taken *from* the Level of the

Digitized by Google

Footway (if any) immediately in front of the centre of the face of the building, or (where there is no such Footway) from the Level of the Ground before excavation, *to* the Level of the Top of the Parapet, or (where there is no Parapet) to the Level of the Top of the External Wall, or (in the case of Gabled Buildings) to the Base of the Gable" (subs. 21, s. 5).

"Building which exceeds 30 feet in Height," s. 7 (1), Workmen's Comp Act, 1897, means, one which for the time being exceeds that height, not one in course of building which, when complete, will do so (*Billings* v. *Holloway*, 1899, 1 Q. B. 70; 68 L. J. Q. B. 16; 79 L. T. 396; 47 W. R. 105); the measurement must be taken to the ridge of the roof (*Hoddinott* v. *Newton*, 1899, 1 Q. B. 1018; 68 L. J. Q. B. 495; 80 L. T. 558; 47 W. R. 499; revd on another point, *V.* Constructed). *Vf, Rixsom* v. *Pritchard*, 1900, 1 Q. B. 800; 69 L. J. Q. B. 494; 82 L. T. 186: *Knight* v. *Cubitt*, 71 L. J. K. B. 65; 1902, 1 K. B. 31: Machinery: Scaffolding.

HEIR: HEIRS.—The word "heir" means the person born or begotten in wedlock (*V.* Child), of human shape, in allegiance to the Crown, and who, according to the English Canons of Descent, is entitled to the undevised freehold estates of inheritance in England of a deceased person (Co. Litt. 7 b–8 b: 2 Bl. Com. 246–251). "A man cannot at his decease have more than one heir, for although several females may be Co-Heiresses yet they are in point of law only one Heir" (per Lindley, L. J., *Evans* v. *Evans*, 1892, 2 Ch. 173; 61 L. J. Ch. 456; 67 L. T. 152; 40 W. R. 465).

For the Canons of Descent relating to persons dying before 1 Jan 1834, *V.* 2 Bl. Com. ch. 14; and relating to persons dying since that date, *V.* Inheritance Act, 1833, 3 & 4 W. 4, c. 106, and Wms. R. P. ch. 4. The tenures by Gavelkind (Litt. s. 210: Co. Litt. 140 a: 2 Bl. Com. 84: Wms. R. P. 105) and Borough English (Litt. s. 211; Co. Litt. 140 b; 2 Bl. Com. 83; Wms. R. P. 107) are exceptions as regards the descent of freehold estates. Copyhold estates descend to the person who is heir according to the Custom of the particular manor (Litt. ss. 73, 77: 2 Bl. Com. 97: Wms. R. P. 303).

So if, by Will, a person be appointed or recognized as "heir" to the testator, that will amount to a devise in fee of testator's undisposed of realty; *V.* Acknowledge.

Where a devise is made of property held in Gavelkind or according to Borough English, or of Copyholds, to A. for life, with remainder to the "Heir Male" of A. (*Thorp* v. *Owen*, 2 Sm. & G. 90), or to the "Right Heirs" of A. (when words of Purchase), or to the "heirs" of A. (by words of Purchase), or "Lawful Representatives" (*Mallinson* v. *Liddle*, 39 L. J. Ch. 426), the heir at Common Law will take (*Re Garland*, 47 L. J. Ch. 711; 9 Ch. D. 213: *Sladen* v. *Sladen*, 31 L. J. Ch.

Digitized by Google

775; 2 J. & H. 369: Co. Litt. 10 a, and Hargrave's *n* 4 thereon: *Va*, MALE: *De Beauvoir* v. *De Beauvoir*, 15 Sim. 163; 15 L. J. Ch. 305; 3 H. L. Ca. 524: 2 Jarm. 78: Lewin, 1007: Watson Eq. 1373). But if the phrase "heirs" be one of Limitation, then the heir according to the peculiar tenure will take (Co. Litt. 10 a, and Hargrave's *n* 3 thereon: Co. Litt. 27 a: *Doe* d. *Eustace* v. *Easley*, 4 L. J. Ex. 87; 1 Cr. M. & R. 823).

V. HEIRS AND ASSIGNS: LAWFUL HEIRS: NEXT HEIR.

"Heirs" is, *primâ facie*, a word of Limitation, so that a devise or conveyance of realty to "A. and his heirs" merely limits or defines the estate that is taken by A., but gives no indefeasible interest to his heirs (Wms. R. P. 120: Watson Eq. 199, 1371 *et seq*). The rule (which is a rule of Law and not a mere rule of Construction, *Van Grutten* v. *Foxwell*, inf), namely, the well-known *Rule in Shelley's Case* (1 Rep. 94; for a defence of which, *V.* jdgmt of Earl Cairns, *Bowen* v. *Lewis*, 54 L. J. Q. B. 63, 64; 9 App. Ca. 890: it has been and is adhered to for its "good practical results," per Lindley, L. J., *Evans* v. *Evans*, sup), is probably the most conspicuous example of the application of this principle, laying down, as it does, the proposition that when A. takes an estate of freehold, and, by the same document, an estate is limited, either mediately or immediately, to his heirs in fee or in tail, the word "heirs" merely limits the estate of A., which he can dispose of, by the appointed means, to the exclusion of his heirs, who can only take as heirs in the event of A. making no effectual disposition of the property (Wms. R. P. 211, 215). But the first estate of freehold must be of the same quality as the limitation, *i.e.* both must be legal or both equitable; otherwise *Shelley's Case* will not apply (per Turner, L. J., *Re Wynch*, 23 L. J. Ch. 930; 5 D. G. M. & G. 188; and *V.* obs of Cranworth, C., therein): and in a Will (even where the first estate and the limitation are alike in quality) the context may control "heirs" to be read as a word of purchase, and then *Shelley's Case* would not apply (*White* v. *Collins*, inf: *Jordan* v. *Adams*, 29 L. J. C. P. 180; 30 Ib. 161; 6 C. B. N. S. 748; 9 Ib. 483; 9 W. R. 593: *Pedder* v. *Hunt*, 56 L. J. Q. B. 212; 18 Q. B. D. 565; 56 L. T. 687; 35 W. R. 371). For a collection and statement of cases in which the Rule in *Shelley's Case* has been applied, *V.* jdgmt of Lindley, L. J., *Evans* v. *Evans*, sup, and for its origin and history, *V.* jdgmt of Ld Macnaghten, *Van Grutten* v. *Foxwell*, 1897, A. C. 658; 66 L. J. Q. B. 745; 77 L. T. 170; 46 W. R. 426; *vthlc*, *Foxwell* v. *Van Grutten*, 78 L. T. 231; 79 Ib. 617; 82 Ib. 272; 48 W. R. 653. For a statement of the Rule, *V.* Goodeve, 237 *et seq*, and for an elaborate discussion of it, *V.* 4 Cru. Dig. 304–328; 6 Ib. 275–325: Jarm. ch. 36: Watson Eq. 217–221: Elph. 238, 242–246: 37 S. J. 96, 113, 129.

"There is no case which establishes that you may not apply the Rule in *Shelley's Case* to a *gift of Personalty*" (per Bacon, V. C., *Comfort* v. *Brown*, 48 L. J. Ch. 318; 10 Ch. D. 146: *Sv*, *Crawford* v. *Trotter*,

Digitized by Google

4 Mad. 361). In *Comfort* v. *Brown* a blended gift of freeholds and leaseholds was made to A. for life, with remainders (which failed), and on their failure to "the Right Heirs of A. for ever," and it was held that A. took an absolute interest in the leaseholds as well as the freeholds. *Vf*, EXECUTORS.

When the words are to "A. and his heir" (in the singular number), the heir would probably take by Purchase as *persona designata*, and that construction would be conclusively established if the words were followed by a limitation to the heirs of the heir (*Gwynne* v. *Muddock*, 14 Ves. 488: *Tetlow* v. *Ashton*, 20 L. J. Ch. 53: *Greaves* v. *Simpson*, 33 L. J. Ch. 641; 10 L. T. O. S. 448). So, of a devise to A. for life, remainder "to the use of such *person or persons* as at the decease of A. shall be his heir or heirs-at-law and of the heirs and assigns of such person or persons" (*Evans* v. *Evans*, sup): *Vf*, *Re Bishop and Richardson*, inf.

But "according to many authorities 'heir' may be *nomen collectivum* as well in a Deed as a Will, and operate in both in the same manner as 'heirs' in the plural number: *V.* 2 Rol. Ab. 253; 1 Ib. 832, K. pl. 1, 2: Godb. 155: Jo. T. 111: Cro. Eliz. 313: Robins, Gavelkind, 95, 96: Burr. Part 4, v. 1, p. 38: Vin. Ab. *Devise*, U. a. pl. 13 and *Parols*, H." (Hargrave's *n* 45 to Co. Litt. 8 b: *V. Blackburn* v. *Staples*, 2 V. & B. 371: *Britton* v. *Twining*, 3 Mer. 176: *Chambers* v. *Taylor*, 6 L. J. Ch. 193; 2 My. & C. 376). But, probably, such a construction is a difficult one in a Deed; *V.* inf.

A gift in Remainder to an "heir" as *persona designata* will, as a rule, be a vested interest in the person answering the description at the testator's death (*Doe* d. *Pilkington* v. *Spratt*, 5 B. & Ad. 731), or as soon as there is such a person (*Danvers* v. *Clarendon*, 1 Vern. 35: *Vf* 2 Jarm. 87). For a context controlling this rule, *V. Phillips* v. *Deakin*, 1 M. & S. 744: *Doe* v. *Frost*, 3 B. & Ald. 546.

Vf as to words under which the "heir" would take as Purchaser, 2 Jarm. ch. 28: HEIRS AND ASSIGNS:—and where used in a Will as a word of Limitation, *White* v. *Collins*, 1 Com. 289: *Fuller* v. *Chamier*, 35 L. J. Ch. 772; L. R. 2 Eq. 682. *Va*, as to the use of "heir" (in the singular), Watson Eq. 200, 208: Elph. 252, 253: 37 S. J. 129.

A *Grant* to A. "and his heir," in the singular number, gives only a life estate to A., and the heir takes nothing (Co. Litt. 8 b, 22 a: Touch. 106). *Sv*, sup: SOLE HEIR.

As to the construction of a *Power* to a person's "heirs"; *V.* Lewin, 715.

A Devise of realty to *Trustees* and their "heirs" gives them the LEGAL ESTATE, "unless something is found on the face of the Will which cuts that estate down in some determinate event" (per Stirling, J., *Re Townsend*, 1895, 1 Ch. 716; 64 L. J. Ch. 336; 72 L. T. 321; 43 W. R. 392, citing *Doe* d. *Davies* v. *Davies*, 10 L. J. Q. B. 169; 1 Q. B. 430: *Poad*

Digitized by Google

v. *Watson*, 6 E. & B. 606: *Collier* v. *Walters*, 43 L. J. Ch. 216; L. R. 17 Eq. 252).

When the word "heirs" is found in conjunction with words of procreation, defining the class of heirs, — *e.g.* "to A. and the HEIRS OF HIS BODY," — this will create an ENTAIL in the person whose heirs are referred to (Litt. ss. 14–34, and Coke thereon; 2 Bl. Com. 113–115: *Vh, Roe* v. *Avis*, 4 T. R. 605: *Sv, North* v. *Martin*, 6 Sim. 266). In *Deeds* (prior to the Conv & L. P. Act, 1881) there could be no entail unless there were a designation of the body or bodies out of whom the heirs were to issue (Litt. s. 31; 2 Bl. Com. 115); but by s. 51 of that Act it will be sufficient, in Deeds executed after 31st Dec 1881, to create an entail to use the words "in tail," "in tail male," or "in tail female," as the case may be. In *Wills*, those phrases would, probably, have always effected their apparent purpose. Generally, words of procreation were never absolutely necessary, the intention of the testator being regarded, though technical words were absent: thus, a devise "to A. and his heirs male," or to "A. and his heirs LAWFULLY BEGOTTEN," would, as they now will, create an entail (Co. Litt. 27 a: 2 Bl. Com. 115: for a collection of cases hereon, *V.* 2 Jarm. ch. 35–40: Watson Eq. 207, 1371 *et seq*: *Va, Nanfan* v. *Legh*, 7 Taunt. 85: *Webb* v. *Hearing*, Cro. Jac. 415: *Mortimer* v. *Hartley*, 20 L. J. Ex. 132). So "the rule is established that if a testator does express an intention that A. shall have the estate for life, and on the failure of the heirs of the body of A., the estate shall go over, the effect is that an estate tail is given to A. by necessary implication, as otherwise all the subsequent limitations would be too remote" (per Ld Blackburn, *Bowen* v. *Lewis*, 54 L. J. Q. B. 69; 9 App. Ca. 917, citing *Roddy* v. *Fitzgerald*, 6 H. L. Ca. 823: *V. Jesson* v. *Wright*, 2 Bligh, 1: *Doe* v. *Gallini*, 3 L. J. K. B. 71; 5 B. & Ad. 621: *Doe* d. *Atkinson* v. *Featherstone*, 1 B. & Ad. 944; 9 L. J. O. S. K. B. 163). *Vf*, TAIL.

"Heirs," standing alone, may be construed "Heirs of the body" where the necessity of the case so requires (*Doe* d. *Littledale* v. *Smeddle*, 2 B. & Ald. 126: *Re Smith*, 27 L. R. Ir. 121: *Hennessy* v. *Bray*, 11 W. R. 1053).

As to the sometimes difficult question, whether the person forming the stock of an Entail is to take an Estate for Life, or In Tail; *V. Chamberlayn* v. *Chamberlayn*, 6 E. & B. 625; 25 L. J. Q. B. 187, 357; 27 L. T. O. S. 238: *Towns* v. *Wentworth*, 11 Moore P. C. 526; 31 L. T. O. S. 274: *Jordan* v. *Adams*, 29 L. J. C. P. 180; 30 Ib. 161; 6 C. B. N. S. 748; 9 Ib. 483; 9 W. R. 593: *Jenkins* v. *Clinton*, 26 Bea. 108; nom. *Jenkins* v. *Hughes*, 30 L. J. Ch. 870.

Contextually, especially in a Will, "heirs," or "heirs of the body," may mean CHILDREN, and then they will be words of purchase notwithstanding that the parent takes a prior estate of freehold (Elph. 256, and cases there cited: *Vf, Lowe* v. *Davies*, 2 Raym. Ld, 1561: *Goodtitle* v.

Digitized by Google

Herring, 1 East, 264: *Fetherston* v. *Fetherston*, 3 Cl. & F. 67: *Waller* v. *Snow*, Palm. 359: *Jordan* v. *Adams*, sup). *V.* inf, as to Personalty.

Of course, the word "heirs" is used inappropriately as indicating the successors to Personal Estate, and when so used — when used as a word of substitution — it means, Next of Kin according to the Statute of Distribution (*Doody* v. *Higgins*, 2 K. & J. 729; 25 L. J. Ch. 773; 27 L. T. O. S. 281: *Low* v. *Smith*, 25 L. J. Ch. 503; 2 Jur. N. S. 344: *Re Gamboa*, 4 K. & J. 756: *Neilson* v. *Monro*, 27 W. R. 936: *Re Newton*, 37 L. J. Ch. 23; L. R. 4 Eq. 171: *Finlason* v. *Tatlock*, 39 L. J. Ch. 422; L. R. 9 Eq. 258: *Stannard* v. *Burt*, 52 L. J. Ch. 355). But, like the use of the word "heir" as regards realty (*Greaves* v. *Simpson*, sup), so "heir," or "heirs," as regards personalty, may be used as a designation; and then the person answering the designation will take. Thus, where there was a bequest in remainder of personalty coupled with a devise of freehold, copyhold, and leasehold, property, and the personalty with the rest was to go to testator's "own right heirs for ever" (*De Beauvoir* v. *De Beauvoir*, 15 L. J. Ch. 305; 15 Sim. 163; 3 H. L. Ca. 524), or "to the heir-at-law of my family" (*Tetlow* v. *Ashton*, 20 L. J. Ch. 53), or in the case of a bequest of personalty in remainder to testator's "next heir-at-law" (*Southgate* v. *Clinch*, 27 L. J. Ch. 651; 31 L. T. O. S. 263), or to be equally divided between the "heirs" of three specified persons (*Re Rootes*, 29 L. J. Ch. 868; 1 Dr. & Sm. 228), or to go to the "lawful heir or heirs" of the tenant for life (*Smith* v. *Butcher*, 48 L. J. Ch. 136; 10 Ch. D. 113), or, *à fortiori*, to A. and at his decease "to his eldest son or heir-at-law" (*Re Bishop and Richardson*, 1899, 1 I. R. 71), — in all these cases the heir-at-law took as *persona designata*, whilst in *Mounsey* v. *Blamire* (4 Russ. 384) three co-heirs took, as joint tenants, a gift of personalty made by the testatrix "to my heir": *Sv*, *Re Russell*, 53 L. J. Ch. 400. In *Atkinson* v. *L'Estrange* (15 L. R. Ir. 340) the words were to "M. for the term of her life, and to her heirs after her," and that was held an absolute bequest to M. *Vf*, Wms. Exs. 970: Watson Eq. 1373.

On this principle (when it applies) of the heir taking as a person designated, a bequest of Personalty "to A. *and his heirs*" will not lapse by the death of A. in testator's lifetime (Wms. Exs. 1074, 1075: *Gittings* v. *M'Dermott*, 2 My. & K. 69; 2 L. J. Ch. 212); but, *semble*, this would be otherwise as regards a devise of Realty (*Doe* d. *Turner* v. *Kett*, 4 T. R. 601).

In *Roberts* v. *Edwards* (12 W. R. 33; 33 L. J. Ch. 369; 33 Bea. 259), "heirs," in a bequest of personalty, was read as "Children": *V.* sup, as to Realty: *Vf*, *Bull* v. *Comberbach*, 25 Bea. 540: *Crawford* v. *Trotter*, 4 Mad. 362: *Sv*, *Smith* v. *Butcher*, sup.

"Heir under this my Will," construed as the Residuary Legatee (*Rose* v. *Rose*, 17 Ves. 347). *V. Thomason* v. *Moses*, 5 Bea. 77.

In *Re Walton* (25 L. J. Ch. 569; 8 D. G. M. & G. 173), where there

Digitized by Google

was a gift in remainder of personalty to children "or their heirs or assigns," the latter words were rejected as surplusage; but in *Wingfield* v. *Wingfield* (47 L. J. Ch. 768; 9 Ch. D. 658), a *mixed gift* of real and personal property in remainder to "brothers and sisters then living *or their heirs*" was read distributively, so as to mean heirs-at-law as regards the realty, and statutory next of kin (including widows) as regards the personalty — a construction which was followed in *Keay* v. *Boulton* (54 L. J. Ch. 48; 25 Ch. D. 212).

In *Powell* v. *Boggis* (14 W. R. 670), it was held that the Will used the word "heirs" once in its proper sense, twice as meaning Next-of-kin, twice as Exors and Admors, and once as Trustees. *Cp*, *Carter* v. *Bentall*, cited Issue.

A bequest of personalty in terms which, if applied to real estate, would create an Entail, vests the property absolutely in the first taker (Wms. Exs. 966, and cases there cited: Elph. 260: *Va*, *Re Barker*, 52 L. J. Ch. 565: *Re Lowman*, 1895, 2 Ch. 348; 64 L. J. Ch. 567), even though the bequest be directed to have operation "So far as the rules of law will permit" (*Scarsdale* v. *Curzon*, 29 L. J. Ch. 249; 1 J. & H. 40).

In like manner, if "heirs" be used in connection with a legacy as merely a word of Limitation, the legatee takes an absolute interest (*Re Russell*, 53 L. J. Ch. 400).

As to a Limitation in Marriage Articles of chattels to "the heirs of the body"; *V.* Lewin, 124.

A limitation of an estate Pur autre vie to A. and his "heirs," designates the Heir, and not the Personal Representatives, of A. as the "Special Occupant" (*Wall* v. *Byrne*, and *King* v. *King*, cited Special).

As to when there is a Resulting Trust to the Heir; *V.* 1 Jarm. ch. 18. *Vh*, Chitty Eq. Ind. 7696.

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "Heir" and "Heirs" are elaborately defined by its s. 89.

Quà the Law of Entail in Scotland, "Heir," "Heir of Entail," and "Heir Apparent" are defined by s. 52, Entail Amendment Act, 1848, 11 & 12 V. c. 36: *Vf*, as to "Heir of Entail," 16 & 17 V. c. 94, s. 25; 31 & 32 V. c. 84, s. 2; 38 & 39 V. c. 61, s. 3.

The "Heirs" of a Licensed Person, in the proviso to s. 3, 35 & 36 V. c. 94, means, his Heir-at-law, even though he be a minor (*Rose* v. *Frogley*, 69 L. T. 346; 62 L. J. M. C. 181; 57 J. P. 376).

V. Heirs of the Body: Next of Kin: Fee Simple: Parceners: Astrarius: Natural Heirs: Universal Heir.

HEIR APPARENT. — An Heir Apparent, is he who if he survives his Ancestor *must* succeed: an Heir Presumptive, is he who is heir if the Ancestor dies immediately, but who will be ousted by the birth (in the lifetime of the Ancestor) and the continuance in life of one with a nearer title (*Anon.*, Lofft, 273). *V.* Heir, towards end.

Digitized by Google

HEIR-AT-LAW. — *V.* Heir.

HEIR MALE: HEIR FEMALE. — *V.* Male: Female: Heir: First Heir Male: Right Heir Male.

HEIRS AND ASSIGNS. — The addition of "and assigns" to "heirs" in a Limitation of the Fee has now no conveyancing value, — "heirs" alone gives the fee (Wms. R. P. 121, 58: *Vf,* Fee Simple: *Re Walton,* 25 L. J. Ch. 569; 8 D. G. M. & G. 173). So in ***Milman*** v. *Lane* (16 Times Rep. 568) Lawrence, J., held that in a devise to the "heirs and assigns" of a named person who took no particular freehold estate, "assigns" had no conveyancing value, and that the heir of the named person took as *persona designata.*

But "at an early period of our legal history a Feoffment or Conveyance to 'a man and his heirs,' only gave the right of enjoyment to a man and his heirs in succession with no power of alienation. The subject is clearly explained in *Burgess* v. *Wheate* (1 Bl. W. 123). After showing the original effect of a Conveyance to a man 'and his heirs' the M.R. proceeds, — 'The next step in favour of the tenant was to alien without license, for which purpose a larger grant was necessary, viz., to ***his heirs and assigns.***' And he afterwards shows how the complete power of alienation was acquired, if a man had his estate limited to him 'and his heirs'" (*Brookman* v. *Smith,* L. R. 7 Ex. 271; 40 L. J. Ex. 170).

And even yet "and assigns," in the phrase "heirs and assigns," will sometimes give a general Power of Appointment (*Tapner* v. *Merlott,* Willes, 177: *A-G.* v. *Vigor,* 8 Ves. 256: *Quested* v. *Michell,* 24 L. J. Ch. 722). In *thlc* there was a testamentary direction to pay the rents and profits of realty and personalty to A. for life, and after her decease the testator gave the realty and personalty "unto the heirs exors admors and assigns of A., according to the several natures and qualities thereof"; held, that A. took an absolute interest in the Personalty, and, as to the Realty, that she had a general Power of Appointment, and, in default of appointment, her heir would take by purchase at her decease: *Svthc, Brookman* v. *Smith,* sup.

The Personal Representatives of a Trustee or Mortgagee dying after 31st Dec 1881, "shall be deemed in law his Heirs and Assigns, within the meaning of all Trusts and Powers" (s. 30, Conv & L. P. Act, 1881); but that section is not applicable to Copyholds (s. 45, 50 & 51 V. c. 73).

"Heirs and Assigns," *semble,* is too weak a context to confine to Realty a general gift which would include personalty (*Robinson* v. *Webb,* 17 Bea. 260).

A gift of Personalty to A. "Or his heirs or assigns"; held, an absolute gift to A. (*Re Walton,* 4 W. R. 416).

"Heirs and Assignees," in a Scotch instrument; *V. M'Onie* v. *Whyte,* 15 App. Ca. 156.

Digitized by Google

Covenant with a Yearly Tenant "his heirs and assigns," giving him Right of Way; *V. Rymer* v. *McIlroy*, 1897, 1 Ch. 528; 66 L. J. Ch. 336; 76 L. T. 115; 45 W. R. 411.

A reservation in a Lease to a Lessor, "his heirs and assigns," attaches, as a general rule, to the reversion, so that whoever is entitled, for the time being, to the reversion, is also entitled to the reservation (*Greenaway* v *Hart*, 14 C. B. 340; 23 L. J. C. P. 115; 2 W. R. 702; 23 L. T. O. S. 174: *Dynevor* v. *Tennant*, 57 L. J. Ch. 1078; 13 App. Ca. 279; 59 L. T. 5).

V. Assigns.

HEIRS, EXORS, ADMORS, AND ASSIGNS.—This phrase means all persons claiming or to claim under the person to whom it refers whether by Deed, Will, or otherwise: *Vh*, per Hatherley, C., *Pride* v. *Bubb*, 41 L. J. Ch. 109; 7 Ch. 64.

"Such heirs exors or admors to be ascertained" in a stated way; held, not to be words of Limitation but, to be words of Gift to an artificial Class to be ascertained in a particular way (*Re Hall*, W. N. (93) 24).

HEIRS IN MOBILIBUS.—*V.* Next of Kin, at end.

HEIRS OF THE BODY.—*V.* Heir.

"'Heirs of the body' and 'Issue' are far from being synonymous expressions. The former are properly words of Limitation, whereas the latter term is, in its primary sense, a word of Purchase. In several cases the Court appears to have ordered a strict settlement from the use of the term 'Issue,' where had the expression been 'Heirs of the body,' the estate would probably have been construed an estate tail" (Lewin, 129, and cases there cited).

In *Doe* d. *Strong* v. *Goff* (11 East, 668), *Gretton* v. *Haward* (6 Taunt. 94), *Right* v. *Creber* (5 B. & C. 866; 4 L. J. O. S. K. B. 324), and *Gummoe* v. *Howes* (23 Bea. 184; 26 L. J. Ch. 323; 5 W. R. 219; 28 L. T. O. S. 351) "heirs of the body" was, by a context, construed Children; and in *Jordan* v. *Adams* (29 L. J. C. P. 180; 30 Ib. 161; 6 C. B. N. S. 748; 9 Ib. 483; 9 W. R. 593), "heirs male of his body" was, by a context, construed Sons. In gifts of Personalty, "heirs of the body" will easily, if not generally, mean Children (*Symers* v. *Jobson*, 16 Sim. 267: *Pattenden* v. *Hobson*, 22 L. J. Ch. 697; 1 W. R. 282; 21 L. T. O. S. 84).

V. Issue: Natural Heirs: On.

"If in *Marriage Articles* the real estate of the husband or the wife be limited to the *heirs of the body*, or the *issue*, of the contracting parties or either of them, or to the heirs of the body, or issue and their heirs, so that 'heirs of the body' or 'issue,' if taken in their ordinary legal sense, would enable one or other of the parents to defeat the provision intended for the children, these words will then be construed in equity

Digitized by Google

to mean 'first and other sons'; and the settlement will be made upon them successively in tail as purchasers" (Lewin, 122, and cases there cited).

HEIRLOOM. — "In some places chattels as Heire-loomes (as the best bed, table, pot, pan, cart, and other dead chattels moveable) may go to the heire" (Co. Litt. 18 b). "'Heireloome,' is any peece of household stuffe which, by the custome of some countries, having belonged to a house for certaine descents, goes with the house, after the death of the owner, unto the Heire, and not to the Executors" (Termes de la Ley).

"Heir-looms, are such goods and personal chattels as shall go, by special Custom, to the heir along with the inheritance, and not to the executor or administrator of the last proprietor. The termination 'loom' is of Saxon origin, in which language it signifies a limb or member; so that Heir-loom is nothing else but a limb or member of the inheritance" (Wms. Exs. 633 *et seq*); but as to this derivation, *V.* per Ld Cranworth, *Byng* v. *Byng*, inf: *Vh*, 6 Encyc. 169.

There is another class of legal Heir-looms, — things which "savour of the inheritance," *e.g.* "Title Deeds, and the Chest where they are usually kept; the Patent creating a Dignity; the Garter and Collar of a Knight; an Ancient Horn whence the tenure is by Cornage, as in the case of the Pusey Horn; and the Ancient Jewels of the Crown" (per Chitty, L. J., *Hill* v. *Hill*, 1897, 1 Q. B. 483; 66 L. J. Q. B. 336).

The popular and familiar sense of the word "Heir-looms" is "things directed to descend by way of inheritance" (per Westbury, C., *Byng* v. *Byng*, 31 L. J. Ch. 472; 10 H. L. Ca. 183: *Va*, per Ld Cranworth, *S. C.*). But "if A. gives a chattel to B. and merely says that B. is to have it as an Heir-loom, no force (in the absence of any contract or special circumstances) can be attributed to the word 'Heir-loom'" (per Chitty, L. J., *Hill* v. *Hill*, sup, citing *Shelley* v. *Shelley*, 37 L. J. Ch. 357; L. R. 6 Eq. 540: *Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538). *Vh*, Watson Eq. 255: Wms. P. P. 12: Art. 8 S. J. 282: *Scarsdale* v. *Curzon*, 29 L. J. Ch. 249; 1 J. & H. 40.

For remarks on this word and as to its use in aiding the construction, and also for Forms of devising and settling Heir-looms; *V. Hill* v. *Hill*, sup: *Re Angerstein*, 1895, 2 Ch. 883; 65 L. J. Ch. 57; 73 L. T. 500; 44 W. R. 152: Actual: Actual Freehold.

As to Land purchased by proceeds of Sale of Heir-looms; *V. Marlborough* v. *Majoribanks*, 55 L. J. Ch. 339; 32 Ch. D. 1: *Marlborough* v. *Queen Anne's Bounty*, 1897, 1 Ch. 712; 66 L. J. Ch. 323; 76 L. T. 388; 45 W. R. 426.

As to Sale of Heir-looms by Tenant for Life; *V.* s. 37, S. L. Act, 1882, on *whv*, *Re Radnor*, 59 L. J. Ch. 782; 45 Ch. D. 402: *Re Hope*, 1899, 2 Ch. 679; 68 L. J. Ch. 625.

Digitized by Google

HELD.—"Held *or Enjoyed* therewith"; *V. Williams* v. *Phillips*, 51 L. J. Q. B. 102; 8 Q. B. D. 437: *Roe* v. *Siddons*, 22 Q. B. D. 224: *Baring* v. *Abingdon*, 1892, 2 Ch. 374; 62 L. J. Ch. 105; 67 L. T. 6; 41 W. R. 22.

"Usually held and enjoyed"; *V. Brown* v. *Alabaster*, 57 L. J. Ch. 260; 37 Ch. D. 490.

V. Belonging: Common: Enjoyed.

Action on the Case for Use and Occupation of "lands, tenements, or heredits, held *or occupied*," s. 14, Distress for Rent Act, 1737, 11 G. 2, c. 19; *V. Smallwood* v. *Sheppards*, 1895, 2 Q. B. 627; 64 L. J. Q. B. 727; 73 L. T. 219; 44 W. R. 44.

In the Pauper Settlement Act of 59 G. 3, c. 50, house or building "held," is used as distinguished from land "occupied"; *Vh*, *R.* v. *Stow Bardolph*, 1 B. & Ad. 222: *R.* v. *North Collingham*, 1 B. & C. 578: *R.* v. *Tonbridge*, 6 Ib. 88: *R.* v. *Great Bolton*, 8 Ib. 71: *R.* v. *Wainfleet*, Ib. 227.

Share "held" in a Co, s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900, means "originally held"; therefore, a *bonâ fide* purchaser for value (without notice) of fully paid-up shares in a Co was not liable to Calls on the ground that the shares were issued gratis, or were not paid for in cash, and that no contract for their issue had been filed (*Burkinshaw* v. *Nicolls*, 3 App. Ca. 1004; 48 L. J. Ch. 179).

"The true meaning of the word 'held,'—shares held,—in s. 40, Comp Act, 1867, is simply that the contributory has had his name upon the register as the holder of the shares for the period in question" (per Chitty, J., *Re Wala Wynaad Mining Co*, 52 L. J. Ch. 88; 30 W. R. 915).

Allotments in a Land Socy "held" by the Trustees; *V.* Allotment.

Securities are not "held" by a testator's Bank for him if not deposited by him, and the Bank holds no document of title relating thereto and only have a Power of Attorney to receive dividends and sell the securities (*Re Maitland*, 74 L. T. 274).

"Held out, or recommended"; *V.* Hold out.

HELD BURGAGE.—*V.* Burgage.

HENCEFORTH.—*V.* From henceforth.

HER.—"Her Share"; *V. Laver* v. *Fielder*, cited Share.
V. His: Majesty.

HERBAGE.—If a man grant "vesturam terræ," "the land itselfe shall not passe, because he hath a particular right in the land: for thereby he shall not have the houses, timber trees, mines, and other reall things, parcell of the inheritance, but he shall have the vesture of the land, (that is) the corne, grasse, underwood, swepage, and the like, and

Digitized by Google

he shall have an action of trespasse *quare clausum fregit.* The same law, if a man grant *herbagium terræ,* he hath a like particular right in the land, and shall have an action *quare clausum fregit;* but by grant thereof and liverie made, the soile shall not passe, as is aforesaid" (Co. Litt. 4 b, *Vth* Hargrave's note; *Va, Coverdale* v. *Charlton,* 4 Q. B. D. 113, 122: Elph. 585: *Cp,* PASTURES). *V.* Cowel: Jacob.

"Spelman (*Herbagium*) restricts *vestura terræ* to that which is taken by the mouth of animals; but '*Sweepage,*' in the passage cited from Co. Litt., appears to mean 'by mowing'" (Elph. 586).

V. COMMON: PASTURAGE: PANNAGE.

HEREAFTER. — A divesting clause if the donee shall "hereafter" BECOME Bankrupt, &c, seems to mean simply, "being Bankrupt," &c; in such a case it is immaterial whether the bankry, &c, has happened before or shall have happened after the making of the instrument (*Manning* v. *Chambers,* 1 D. G. & S. 282; 16 L. J. Ch. 245: *Seymour* v. *Lucas,* 1 Dr. & Sm. 177; 29 L. J. Ch. 843: *Trappes* v. *Meredith,* 41 L. J. Ch. 237; 7 Ch. 248). *V.* SHALL.

V. TO BE BORN.

"Hereafter *to be built*"; Stat. Def., 7 & 8 V. c. 84, s. 2.

Where a testator gives all moneys which shall "hereafter *be paid*" by a Ry in respect of land taken by it, and, subject thereto, devises the land to A. for life, remainder in fee to A.'s children, "hereafter" is restricted to the interval between the date of the Will and the date of the Death of the testator (*Page* v. *Mid. Ry,* 95 Law Times, 252, affd on this point, 1894, 1 Ch. 11; 63 L. J. Ch. 126).

HEREAFTER BORROW. — The power given, s. 3, 12 & 13 V. c. 87, to Turnpike Commrs of setting apart a sinking fund to pay off moneys they should "hereafter borrow," relates to further moneys borrowed for some fresh purpose, and not to moneys borrowed at a cheaper rate to supply the place of a prior loan (*Chatham* v. *Rochester Commrs,* 35 L. J. M. C. 81; L. R. 1 Q. B. 24).

HEREAFTER VALUED AND DECLARED. — In a Marine Insurance, "The meaning of to be 'hereafter valued and declared' is, that if the insured has several adventures, all (within the description in the policy) out, he may select at his pleasure which is to be protected by the policy, and on his giving notice of such a selection to the insurers, the policy is as if it had named that ADVENTURE from the beginning" (per Ld Blackburn, *Inglis* v. *Stock,* 10 App. Ca. 269; 54 L. J. Q. B. 586).

HEREBY. — *V.* HEREIN.

HEREBY AGREED AND DECLARED. — *V.* AGREED AND DECLARED.

HEREBY AUTHORIZED. — *V.* AUTHORIZED.

Digitized by Google

HEREBY GRANTED. — Agreement to pay royalties on all rifles manufactured "under the powers hereby granted"; held, that there was a latent ambiguity explainable by parol (*Roden* v. *London Small Arms Co*, 46 L. J. Q. B. 213; 25 W. R. 269; 35 L. T. 505).

HEREBY SETTLED. — *V. Leman* v. *Saffery*, W. N. (72) 26.

HEREDITAMENT. — "The word 'Hereditament' is of as large extent as any word, for whatsoever may be inherited, be it CORPOREAL or INCORPOREAL, real, personal, or mixt, is an hereditament" (Touch. 91; — a definition almost verbally copied from Co. Litt. 6 a. *Vf*, Co. Litt. 16 a, 383 a, b). "'Hereditament' is defined in the text-books of authority (*e.g.* Termes de la Ley) to signify all such things, whether corporeal or incorporeal, which a man may have to him and his heirs by way of inheritance, and which, if they be not otherwise bequeathed, come to him who is next of blood, and not to exors or admors as chattels do" (per Wilde, C. J., *Lloyd* v. *Jones*, 17 L. J. C. P. 206; 6 C. B. 81). "The most comprehensive words of description applicable to Real Estate are *Tenements* and *Hereditaments*; as they include every species of realty, as well corporeal as incorporeal" (1 Jarm. 777), *e.g.* an Advowson (*Westfaling* v. *Westfaling*, 3 Atk. 460: *Crompton* v. *Jarratt*, 54 L. J. Ch. 1109: 30 Ch. D. 298: *Vf*, AT). *Vh*, Wms. R. P. 5, 12: Watson Eq. 193.

This large meaning, however, may be cut down by a context. And in the present state of the authorities it is a question whether "Hereditament," in the definition of "LANDS" as prescribed by s. 3, Lands C. C. Act, 1845, is or is not confined to a Corporeal hereditament. That definition says that, for the purposes of that Act, "Lands" shall extend to "Messuages, Lands, Tenements, and Hereditaments, *of any tenure.*" Leaning on the three latter words Cranworth, C., in *Pinchin* v. *Lond. & Blackwall Ry* (24 L. J. Ch. 417; 5 D. G. M. & G. 851; 1 K. & J. 34) said, "Looking at the whole context, the conclusion to which I have come is, that a 'hereditament' there means a corporeal hereditament: a hereditament which may be the subject of tenure," which a Right of Way, or other EASEMENT not actually attached to land or buildings to be purchased, — *e.g.* a right of Common in Gross — cannot be. But in *G. W. Ry* v. *Swindon & Cheltenham Ry* (53 L. J. Ch. 1075; 9 App. Ca. 787), Ld Bramwell ("with profound respect for that most learned, able, and accurate, lawyer," Ld Cranworth) was of a directly opposite opinion; whilst, in the same case, Ld Fitzgerald, though not apparently with much energy, adhered to the doctrine of *Pinchin* v. *Lond. & Blackwall Ry*; whereas Ld Watson took a middle course, and whilst agreeing generally with Ld Bramwell, observed (53 L. J. Ch. 1083) that the word is "in many of the leading clauses of the Act of 1845, limited, by reason of the context, to corporeal hereditaments." It

Digitized by Google

should be added that the actual decision in the *G. W. Ry* v. *Swindon & Cheltenham Ry* scarcely proceeded on the exact meaning of "Hereditament." *Vh, R.* v. *Cambrian Ry,* L. R. 6 Q. B. 422; 40 L. J. Q. B. 169, in *whc* it was held that a FERRY is a hereditament within this definition of "Lands"; and though that case was over-ruled by *Hopkins* v. *G. N. Ry* (cited INJURIOUSLY AFFECTED) yet, as pointed out by Ld Watson (*G. W. Ry* v. *Swindon, &c Ry,* sup), that over-ruling was on a point other than that of this def.

An Easement authorized by the Special Act, *e.g.* a right to tunnel, is a "hereditament," quà ss. 84, 85, Lands C. C. Act, 1845 (*Hill* v. *Mid. Ry,* 51 L. J. Ch. 774; 30 W. R. 774).

"Buildings, LANDS, and Hereditaments" which the quasi corporation of Churchwardens and Overseers may hold and deal with (s. 17, 59 G. 3, c. 12), does not include Copyholds, because, as it seems, that would be to forfeit manorial dues and fees, a deprival not contemplated by the statute (*A-G.* v. *Lewin,* 8 Sim. 370: *Re Paddington Charities,* Ib. 629; 7 L. J. Ch. 44: *A-G.* v. *Anon.,* cited 2 Y. & C. Ex. 352, *n*).

Market Tolls are not rateable under a power to rate "land, house, shop, warehouse, or OTHER building, tenement, or hereditament" (*Colebrooke* v. *Tickell,* 5 L. J. K. B. 180; 4 A. & E. 916; 6 N. & M. 483); but where a similar collocation was followed by "meadow and pasture ground excepted," it was held that a Gas Company was rateable as occupiers of the land in which its pipes were placed (*R.* v. *Shrewsbury Gas Co,* 1 L. J. M. C. 18; 3 B. & Ad. 216); so of Tithes under 6 & 7 W. 4, c. 96 (*R.* v. *Capell,* 9 L. J. M. C. 65; 12 A. & E. 382).

On the other hand, "Hereditament" may include Leaseholds, and also matters not involving an Interest in Land. Thus in s. 56, Co. Co. Act, 1888 (which restricts the jurisdiction of the Co. Co.), "Hereditament" is used, "not to describe the quantum of interest, but the thing itself which is the subject-matter of the interest" (per Bowen, L. J.), and leaseholds are within the restriction (*Tomkins* v. *Jones,* 58 L. J. Q. B. 222; 22 Q. B. D. 599; 37 W. R. 328; 60 L. T. 939; 5 Times Rep. 302: *Vf, Chew* v. *Holroyd,* 22 L. J. Ex. 95; 8 Ex. 249: *Moore* v. *Denn,* 2 B. & P. 251). So, an OFFICE for Life, *e.g.* a Parish Clerkship, is a "heredit" within that section (*Stephenson* v. *Raine,* 23 L. J. Q. B. 62; 2 E. & B. 744); *secus,* of a CUSTOM (*Lloyd* v. *Jones,* sup: *Davis* v. *Walton,* 22 L. J. Ex. 25; 8 Ex. 153), or of RATES (*Baddeley* v. *Denton,* 19 L. J. Ex. 44; 4 Ex. 508: *Gwynne* v. *Knight,* 17 L. J. Ex. 168; 1 Ex. 802: *Sv, R.* v. *Harden,* 22 L. J. Q. B. 299; 2 E. & B. 188). *Vf,* CORPOREAL: TITLE.

So, an Agreement for a Lease "of your Iron Ore at Newton," was held more than a License to take the ore, and that the agreement created a right which was a "hereditament," within s. 14, 11 G. 2, c. 19 (*Jones* v. *Reynolds,* 4 A. & E. 805; 6 N. & M. 441).

So, though "Lands, Tenements, or Hereditaments," s. 7, Statute of

Digitized by Google

Frauds, does not comprise Personal Chattels (*Bayley* v. *Boulcott*, 4 Russ. 345), yet Chattels Real are comprised in the phrase (*Forster* v. *Hale*, 3 Ves. 696), and so are copyholds (*Withers* v. *Withers*, Amb. 151).

So, "all other ESTATES and Heredits," in a direction to re-settle, has been held to include Trust Funds directed to be invested in land (*Basset* v. *St. Levan*, 43 W. R. 165; 71 L. T. 718).

"Hereditaments" in the phrase "Lands, Tenements, or Heredits," s. 4, Land Tax Act, 1797, 38 G. 3, c. 5, does not include a mere EASEMENT such as a Water Co's Mains (*Chelsea W. W. Co* v. *Bowley*, 17 Q. B. 358; 20 L. J. Q. B. 520: *Va*, *Southport* v. *Ormskirk*, cited EASEMENT); *secus*, of the arched Tunnel of the Metrop Ry running under public roadways (*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: *Vf*, *Holywell* v. *Halkyn Drainage Co*, 1895, A. C. 117; 64 L. J. M. C. 113; 71 L. T. 818; 59 J. P. 566).

"Hereditament" in Mortmain Act; *V.* INTEREST IN LAND.

"Hereditament," s. 4, Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67; *V. R.* v. *St. George's*, 41 L. J. M. C. 30; L. R. 7 Q. B. 90.

Stat. Def. — 32 & 33 V. c. 67, s. 4. — *Ir.* 2 & 3 V. c. 61, s. 74.

Quà Rep People Act, 1884, 48 & 49 V. c. 3, "hereditament," in Scotland, includes "Lands and Heritages" (s. 11).

V. CORPOREAL: INCORPOREAL HEREDITAMENT: TENEMENT.

Prior to the Wills Act, 1837, a devise of "Hereditaments" without words of limitation, carried only an estate for life (2 Jarm. 284).

A VILLEIN was a heredit (Termes de la Ley, *Joynture*).

Heredits "in" a place; *V. Crompton* v. *Jarratt*, sup: IN.

HEREIN: HEREINAFTER. — "A direction in a Will that the legacy duty on the legacies '*herein*' given shall be paid out of the estate, does not extend to legacies given by CODICIL, even though the Codicil is directed to be taken as part of the Will (*Early* v. *Benbow*, 2 Coll. 355: *Va*, as to 'herein,' *Radburn* v. *Jervis*, 3 Bea. 450: *Fuller* v. *Hooper*, 2 Ves. sen. 242: *Jauncey* v. *A-G.*, 3 Giff. 308; 10 W. R. 129; 5 L. T. 374). *Secus*, where legacies generally are given duty free (*Byne* v. *Currey*, 3 L. J. Ex. 177; 2 Cr. & M. 603; 4 Tyr. 478: *Va*, *Williams* v. *Hughes*, 27 L. J. Ch. 218; 24 Bea. 474)." 1 Jarm. 187. *Vf*, *Re Sealey*, 85 L. T. 451, discussing *Early* v. *Benbow* and *Byne* v. *Currey*, sup.

"Where a testator, by his Will, charges his lands with the payment of the legacies '*hereinafter*' bequeathed, the charge does not extend to legacies bequeathed by a Codicil" (1 Jarm. 95; *Vf*, Ib. 90, 186: *Bonner* v. *Bonner*, 13 Ves. 379: *Henwood* v. *Overend*, Ib. 383, *n*: *Edmunds* v. *Low*, 26 L. J. Ch. 432; 3 K. & J. 318; 5 W. R. 444).

Indeed, and speaking generally, "herein," "hereby," "by this my Will," and "hereinafter," are synonyms confining the matter spoken

Digitized by Google

of to the Will (*Henwood* v. *Overend*, sup: *Gillooly* v. *Plunkett*, 9 L. R. Ir. 324).

V. PART.

"My Executors herein named"; *V.* EXECUTORS.

A clause of Forfeiture in a Lease if any of the covenants "hereinafter *contained*" are broken, will be confined to the covenants subsequent to the clause; and if there be none, the clause will be inoperative and "hereinafter" will not be rejected, for the error might have been in the omission of subsequent covenants which it was intended to insert (*Doe* d. *Spencer* v. *Godwin*, 4 M. & S. 265).

"Such Trusts as are hereinafter *declared*"; *V. Hindle* v. *Taylor*, 5 D. G. M. & G. 577.

HEREINBEFORE. — "Hereinbefore *contained*," in a statute, may be limited to the clause in which it occurs, *e.g.* as used in s. 23, 30 & 31 V. c. 127 (*Re Cambrian Ry*, 3 Ch. 278; 37 L. J. Ch. 409; 16 W. R. 346; 17 L. T. 530).

Provisions "as are hereinbefore *declared*"; *V. Hanbury* v. *Tyrrell*, 21 Bea. 322.

"Not hereinbefore *disposed of*"; *V. Johns* v. *Wilson*, 1900, 1 I. R. 342.

"Hereinbefore *mentioned*," in a pleading; *V. R.* v. *Waverton*, 17 Q. B. 562; 21 L. J. M. C. 7: — in s. 5, 2 & 3 W. 4, c. 71; *V. Pye* v. *Mumford*, 11 Q. B. 668-670, 672, 677.

"Hereinbefore *named*"; *V.* NAMED.

HERESY. — "Heresy, consists not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed; being defined by Sir Matthew Hale (Hale P. C. 384), '*sententia rerum divinarum humano sensu excogitata, palam docta et pertinaciter defensa*'" (4 Bl. Com. 44, 45). *Vf*, HERETIC.

HERETIC. — A Heretic is a person convicted of HERESY: — "By the antient Laws Ecclesiastical of this Realm, no man could be convicted of Heresy (being High Treason against the Almighty) but by the Archbishop and all the Clergy of that Province, and after abjured thereupon, and after that newly convicted and condemned by the clergy of that Province in their General Council of Convocation. But 2 H. 4, c. 15, doth give the Bishop, in his Diocese, power to condemn an Heretick" (*Caudrey's Case*, 5 Rep. xxii b, xxiii a).

Of course, "High Treason against the Almighty" was in old time even in England, as it still is in many lands and with some persons, a very flexible term, embracing *e.g.* CONJURATION and its cognate offences; but the present Ecclesiastical offence of Heresy is, probably, well defined as, — "A False Opinion repugnant to some point of Doctrine clearly revealed in Scripture, and either absolutely essential to the Christian

Digitized by Google

Faith, or, at least, of most high importance" (Jacob, citing 1 Hawk. P. C. 2, s. 1: *Vf*, Phil. Ecc. Law, 842: Odgers, 472). *Vh*, 6 Encyc. 176, 177. *Cp*, BLASPHEMY.

To call a person a "Heretic" is not actionable Slander unless there be special damage (*Davis* v. *Gardiner*, 4 Rep. 16, 17).

HERETICO COMBURENDO.—This was the Common Law writ to burn a HERETIC (Termes de la Ley); but many doubt as to its being a writ at Common Law. *V.* 2 L. Q. Rev. 153.

Before 2 H. 4, c. 15, a Heretic "could not be committed to the Secular Power to be burnt until he had once abjured and was again relapsed to that, or some other heresy" (*Caudrey's Case*, 5 Rep. xxiii a). It was doubtful in Hilary Term, 9 Jac. 1, whether this writ could be issued; but in that "very Term the Attorney and Solicitor consulted with me (Coke) if at this day, upon Conviction of an Heretick before the Ordinary, this writ lieth, and it seems to me clearly that it doth not"; and so it was resolved by Fleming, C. J., Tanfield, C. B., and Williams and Crook, JJ. (12 Rep. 93).

Note:—This writ with all process thereon was abolished by 29 Car. 2, c. 9, but so as not to take away or abridge the power of the Ecclesiastical Court to punish "Atheism, BLASPHEMY, HERESY, or SCHISM, and other Damnable Doctrines and Opinions, by EXCOMMUNICATION, DEPRIVATION, Degradation, and other ECCLESIASTICAL CENSURES not extending to Death."

HERETOFORE.—"Now or heretofore held or enjoyed"; *V. Roe* v. *Siddons*, 22 Q. B. D. 224.

HERIOT.—Heriot is by Tenure (which is Heriot Service) or by Custom; in either case, it is the right which the Lord of a Manor has, on the death of a Customary Freeholder or Copyholder solely seized in fee, to the best beast or other chattel of such freeholder or copyholder wherever it can be found, and for eloigning which the Lord may maintain an action (*Western* v. *Bailey*, 1896, 2 Q. B. 234; 1897, 1 Q. B. 86; 65 L. J. Q. B. 641; 66 Ib. 48).

"This dutie to the lord is very autient; for in the laws before the Conquest it is said, *sive quis incuriâ, sive morte repentinâ, fuerit intestat' mortuus, dominus tamen nullam rerum suarum partem* (*præter eam quæ jure debetur herioti nomine*) *sibi assumito.* In the Saxon tongue it is called *heregeat*, as much to say (as I take it) as the lord's beste; for *here* is, lord, and *geat* is beste" (Co. Litt. 185 b), *Sv*, as to this derivation, per Aland, J., *Edwards* v. *Moseley*, Willes, 194.

V. Termes de la Ley, *Hariot*: Wms. R. P. 304: 6 Encyc. 178–180.

As to the use of "Heriots" in 3 & 4 W. 4, c. 27; *V.* Sug. Real Property Statutes, 2 ed., 17, 18: *Owen* v. *De Beauvoir*, 16 M. & W. 547, 566.

Digitized by Google

Quà Copyhold Act, 1894, 57 & 58 V. c. 46, "'Heriot,' includes a money payment in lieu of a Heriot" (s. 94).

Cp, MORTUARY.

HERITABLE.—"Heritable *Estate*," is the Scotch equivalent for "Freehold Estate"; *V.* FREEHOLD, at end.

"Heritable *Security*," in Scotland; Stat. Def., Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3; 56 & 57 V. c. 39, s. 44 (6); Heritable Securities (Scot) Act, 1894, 57 & 58 V. c. 44, s. 18. *V.* SECURITY.

"Heritable and Personal Security"; *V. Knox* v. *Mackinnon*, 13 App. Ca. 753.

HERITAGE.—*V.* HEREDITAMENT, towards end.

HÉRITIER.—"Héritier," "Autres Héritiers" in the Civil Code of Lower Canada; *V. Herse* v. *Dufaux*, 42 L. J. P. C. 1; L. R. 4 P. C. 468, *whv* for an exposition of that Civil Code, quà Gifts, as compared with the old law of France and the Code Napoléon.

HERITOR.—"Heritor," in Scotland, means the OWNER or PROPRIETOR of land or heritage, *e.g.* in the Scotch Act of 1663 which makes "the Heritors of the paroche" rateable for the repair of the Manse,—within which enactment a Corporation is a "Heritor," quà its water-works conduit which goes underneath lands and which conduit is held under grants of perpetual way-leave made by the owners of the land underneath which the conduit goes (*Glasgow* v. *M'Ewan*, 1900, A. C. 91). In *the* Halsbury, C., after observing on the affinity of "Heritor" with "Proprietor," defined the latter word as the "person who is entitled to exclude everybody else, and who is himself entitled to possess and enjoy a thing."

Stat. Def.—17 & 18 V. c. 80, s. 76; 29 & 30 V. c. 71, s. 2; 31 & 32 V. c. 96, s. 1; 37 & 38 V. c. 82, s. 9: VALUED.

HERMAPHRODITE.—"To call a Dancing Mistress 'an Hermaphrodite' is not actionable; for girls are taught dancing by men as often as by women" (Odgers, 75, citing *Wetherhead* v. *Armitage*, 2 Lev. 233; 3 Salk. 328); "*secus*, in America" (Ib., citing *Malone* v. *Stewart*, 15 Ohio, 319).

HERMIT.—*V.* RECLUSE.

HERNIA.—*V. Fitton* v. *Accidental Death Insrce*, cited ARISING.

HERRING.—"The Herring Fisheries (Scot) Acts, 1821 to 1890"; *V.* Sch. 2, Short Titles Act, 1896.

V. OFFICER.

HESITATE.—"A man when he says, *e.g.* in a Co Prospectus, 'I do not hesitate to guarantee,' means to say, 'I represent'" (per Coleridge, J., *Gerhard* v. *Bates*, 2 E. & B. 482). *V.* REPRESENT.

Digitized by Google

HIDE: HYDE.—"One plow-land, *carucata terræ*, or a hide of land *hida terræ* (which is all one), is not of any certain content, but as much as a plough can by course of husbandry plough in a yeare. And therewith agreeth *Lambard verbo Hide*. And a plow-land may containe a messuage, wood, meadow, and pasture, because that by them the plowmen and the cattell belonging to the plow are maintained" (Co. Litt. 69 a; *Va* Ib. 5 a, 86 b: *Vf*, Termes de la Ley, *Hidage*: Elph. 587). *V.* KNIGHT'S FEE: PLOW-LAND: CARUCATA.

A Hide, speaking generally, would seem to be four times as much as an OXGANGE, because the latter is as much as an ox can till, and a JUGUM (or half a plow-land) as much as two oxen can till.

"Hyde and Gaine"; *V.* GAIN.

V. SKIN.

HIDELL.—"'Hidell,' 1 H. 7, c. 6, seemeth to signifie, a place of Protection, as a Sanctuary" (Cowel).

HIGH AND LOW WATER-MARK.—The space between "high and low water-mark" means medium high and low water-mark, *i.e.* half way between the spring tide and neap tide high and low water-marks respectively (*Webber* v. *Richards*, 10 L. J. Q. B. 203; 1 G. & D. 114).

V. HIGH WATER.

HIGH CONSTABLE.—*V.* CONSTABLE.

HIGH COURT.—*V.* s. 13 (3), Interp Act, 1889. Observe, that that def relates only to England and Ireland. *Cp*, COURT: SUPERIOR COURT: SUPREME COURT: INFERIOR COURT.

"High Court," s. 95, Bankry Act, 1883, means the Bankry Court (*Re Evans*, cited CONTEXT).

Quà Inl. Rev. Regn Act, 1890, 53 & 54 V. c. 21, "'High Court,' means, as respects Scotland, the Court of Session, sitting as the Court of Exchequer" (s. 39); but quà 55 & 56 V. c. 27, "High Court," means, "the Court of Session in either Division thereof" (s. 3).

"High Court *of Admiralty*"; Stat. Def., 27 & 28 V. c. 24, s. 2, c. 25, s. 2.—*Ir.* 40 & 41 V. c. 57, s. 3. *Vf*, COURT.

"High Court *of Justice*"; *Scot.* 39 & 40 V. c. 75, s. 21.—*Ir.* Ib. s. 22.

"High Court *of Justiciary*," quà Criminal Procedure (Scot) Act, 1887, 50 & 51 V. c. 35, includes, "any Court held by the Lords Commissioners of Justiciary, or any of them" (s. 1), and "Lord Commissioner of Justiciary," includes, "Lord Justice General and Lord Justice Clerk" (Ib.).

HIGH JUDICIAL OFFICE.—Quà the Appellate Jurisdiction, "High Judicial Office," means either of the following,—"the Office of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial Committee of the Privy Council, or of Judge of" a SUPERIOR

Digitized by Google

COURT of Great Britain or Ireland (s. 25, 39 & 40 V. c. 59); and includes "the Office of a Lord of Appeal in Ordinary, and the Office of a Member of the Judicial Committee of the Privy Council" (s. 5, 50 & 51 V. c. 70).

HIGH SEAS.—"The expression 'High Seas,' when used with reference to the jurisdiction of the Court of Admiralty, included all oceans, seas, bays, channels, rivers, creeks, and waters below low water-mark, and where great ships could go, with the exception only of such parts of such oceans, &c as were within the body of some county (28 H. 8, c. 15: 4 Inst. 134: Com. Dig. Adm. E, 1, 7, and 14: *R.* v. *Anderson*, 38 L. J. M. C. 12; L. R. 1 C. C. R. 161: *R.* v. *Carr*, 52 L. J. M. C. 12; 10 Q. B. D. 76). A foreign or colonial port, if it was part of the High Seas in the above sense, *e.g.* Alexandria and Algiers, would be as much within the jurisdiction of the Admiralty as any other part of the High Seas. The jurisdiction, however, is necessarily limited in its application. It can only be exercised over persons or ships when they come to this country. An artificial Basin or Dock excavated out of land but into which water from the high seas could be made to flow, would not be in any sense part of the High Seas, whether such basin or dock was in this country or in any other" (per Lindley, L. J., *The Mecca*, 1895, P. 95; 64 L. J. P. D. & A. 44; 71 L. T. 711; 43 W. R. 209). Though that case shows that the Admiralty jurisdiction has been widened (*V.* "Any Ship," sub SHIP), yet the above def of "High Seas" remains as of general acceptation quà that jurisdiction.

Vh, *Constable's Case*, 5 Rep. 105 b: *R.* v. *Bruce*, Russ. & Ry. 242: *R.* v. *Allen*, 1 Moody, 494: *R.* v. *Cunningham*, Bell C. C. 72: SEA.

HIGH TREASON.—"Every one commits High Treason who forms and displays by any overt act, or by publishing any printing or writing, an intention to kill or destroy the QUEEN, or to do her any bodily harm, tending to death or destruction, maim or wounding, imprisonment or restraint" (Steph. Cr. 40). So also to LEVY WAR against the Queen or ADHERING TO THE QUEEN'S ENEMIES is High Treason; so, of LAESAE MAJESTATIS. *Vf*, TREASON: Steph. Cr. 40–44: Arch. Cr. 883–900: Cowel, *Treason*: Jacob, *Treason*: 12 Encyc. 254–264: 4 Bl. Com. ch. 6.

HERESY is "High Treason against the Almighty" (*Caudrey's Case*, cited HERETIC).

HIGH WATER.—High Water, is the line marked by the periodical Flow of the Tide, excluding the advance of waters above that line by winds or storms or freshets or floods; Low Water, is the furthest receding point of Ebb Tide (*Howard* v. *Ingersoll*, 13 Howard, 423, 417). *V.* SHORE.

High *Water-Mark*, in a Colonial Proclamation delimitating a TOWN; *V. Smart* v. *Suva*, 1893, A. C. 301; 62 L. J. P. C. 88; 68 L. T. 774.

V. HIGH AND LOW WATER-MARK.

Digitized by Google

HIGHEST.—If property is to be sold by auction to the "Highest *Bidder*," without more, and whether WITHOUT RESERVE or not, that means that there shall be no puffing, and the presence of a single puffer is evidence of fraud that will vitiate the sale (*Green* v. *Baverstock*, 32 L. J. C. P. 181; 14 C. B. N. S. 204). *V.* RESERVED BIDDING.

"Highest *Net Money Tender*"; *V.* TENDER.

"Highest Price;" *V.* LOWEST PRICE.

V. WARRANTED HIGHEST RATE.

HIGHLANDS.—Quà Loc Gov (Scot) Act, 1889, the "Highlands and Islands of Scotland," means, "the counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney, and Zetland" (s. 105); so, quà Probate Duties (51 & 52 V. c. 60, s. 5).

HIGHWAY.—"The common definition of a Highway that is given in all the text-books of authority is that, it is a Way, leading from one Market-town or Inhabited Place to another Inhabited Place, which is common to all the Queen's subjects" (per Coleridge, C. J., *Bailey* v. *Jamieson*, 1 C. P. D. 332).

But if the DEDICATION to the PUBLIC is clear, a thoroughfare is not essential to a Highway, *e.g.* a Cul de Sac may be a highway (per Kenyon, C. J., *Rugby Trustees* v. *Merryweather*, 11 East, 376, *n*; *Svthc* per Mansfield, C. J., *Woodyear* v. *Hadden*, 5 Taunt. 142: per Abbott, C. J. and Best, J., *Wood* v. *Veal*, 5 B. & Ald. 454: but the *Rugby Case* was vindicated in *Bateman* v. *Bluck*, 21 L. J. Q. B. 406; 18 Q. B. 870: *Va*, *Young* v. *Cuthbertson*, 1 Macq. 455: *Souch* v. *East London Ry*, 42 L. J. Ch. 477; L. R. 16 Eq. 108: Glen on Highways, Bk. 1, ch. 1, s. 1). Still, if the access to both ends of a road becomes impossible, it thereby loses its character of a Highway (*Bailey* v. *Jamieson*, sup).

There may be a Highway without the parish being bound to repair it (*Roberts* v. *Hunt*, 15 Q. B. 17: *Fawcett* v. *York & N. Mid. Ry*, 16 Q. B. 614, *n*).

V. PUBLIC HIGHWAY: THOROUGHFARE.

Vh, Pratt on Highways: Jacob: 6 Encyc. 184–203.

"In the case of an ordinary Highway, although it may be of a varying and unequal width running between fences one on each side, the right of passage or way (*primâ facie* and unless there be evidence to the contrary) extends to the whole space between the fences; and the Public are entitled to the use of the entire of it as the highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot-passengers" (per Martin, B., and approved per Cur. *R.* v. *United Kingdom Telegraph Co*, 31 L. J. M. C. 166; 6 L. T. 378: *Vf*, *R.* v. *Wright*, 3 B. & Ad. 681: *Williams* v. *Wilcox*, 7 L. J. Q. B. 229; 8 A. & E. 314: *Locke-King* v. *Woking*, 77 L. T. 790; 62 J. P. 167); but this presumption may be rebutted by evidence

Digitized by Google

(*Neeld* v. *Hendon*, 81 L. T. 405; 63 J. P. 724). *V.* ROADSIDE WASTE. *Cp*, MAIN ROAD.

"Highway," s. 5, Highway Act, 1835; *V. R.* v. *Chart*, 39 L. J. M. C. 137; L. R. 1 C. C. R. 237:—ss. 84, 85, Ib.; *V. R.* v. *Surrey Jus.*, 1892, 1 Q. B. 867; 61 L. J. M. C. 153; 66 L. T. 578; 40 W. R. 500; 56 J. P. 695.

"*Highway repairable by the inhabitants at large*," s. 150, P. H. Act, 1875; *V. Baird* v. *Tunbridge Wells*, 1896, A. C. 434; 64 L. J. Q. B. 145; 65 Ib. 451: *Austerberry* v. *Oldham*, 55 L. J. Ch. 633; 29 Ch. D. 750; 53 L. T. 543; 33 W. R. 807; 49 J. P. 532: *Gibson* v. *Preston*, L. R. 5 Q. B. 218; 10 B. & S. 942; 39 L. J. Q. B. 131: *Hirst* v. *Halifax*, L. R. 6 Q. B. 181; 40 L. J. M. C. 43.

"Street not being a Highway," s. 69, P. H. Act, 1848, held not to include a piece of ground dedicated, by user, as a public road (*Healey* v. *Batley*, 44 L. J. Ch. 642; L. R. 19 Eq. 375).

V. STREET, towards end: TURNPIKE ROAD: SURVEYOR: WAY.

Stat. Def.—14 & 15 V. c. 16, s. 19; 34 & 35 V. c. 56, s. 5; 54 & 55 V. c. 63, s. 6.—*Scot.* 41 & 42 V. c. 51, s. 3, c. 58, s. 9; 54 & 55 V. c. 32, s. 7.

As to the Soil in, and Trespass on, and Reasonable Use of, Highways; *V. Harrison* v. *Rutland*, 1893, 1 Q. B. 142; 62 L. J. Q. B. 117; 68 L. T. 35; 41 W. R. 332; 57 J. P. 278, and cases there cited: *Luscombe* v. *G. W. Ry*, cited OCCUPIER: *Hickman* v. *Maisey*, 1900, 1 Q. B. 752; 69 L. J. Q. B. 511; 82 L. T. 321; 48 W. R. 385: *A-G.* v. *Brighton Supply Assn*, 1900, 1 Ch. 276: 69 L. J. Ch. 204; 81 L. T. 762; 48 W. R. 314. *Cp*, NUISANCE: OBSTRUCT.

As to the vesting of the Soil of Highways in Local Authorities; *V.* VEST: ROADSIDE WASTE.

"Passing upon" a Highway; *V.* PASSING.

V. EXTRAORDINARY TRAFFIC: LOP.

"The Highway Acts, 1835 to 1885"; *V.* Sch 2, Short Titles Act, 1896.

"Highway AREA"; Stat. Def., Loc Gov Act, 1888, s. 100.

"Highway *Audit*"; Stat. Def., 45 & 46 V. c. 27, s. 10.

"Highway *Authority*"; Stat. Def., Highways and Locomotives (Amendment) Act, 1878, 41 & 42 V. c. 77, s. 38 (on *whv*, *R.* v. *Norfolk Co. Co.*, 60 L. J. Q. B. 379); 44 & 45 V. c. 14, s. 6; 45 & 46 V. c. 27, s. 10, c. 52, s. 8; Loc Gov Act, 1888, s. 100. As used in s. 25, Loc Gov Act, 1894, *V. Re Isle of Wight Commrs*, 59 J. P. 438: *Re Marshland Smeeth Commrs*, 65 L. J. Q. B. 185; 73 L. T. 536; 59 J. P. 824.

"Highway *Board*"; Stat. Def., Highway Act, 1862, 25 & 26 V. c. 61, s. 3; 41 & 42 V. c. 77, s. 38.

"Highway *District*"; *V.* DISTRICT.

Highway "*Improvements*"; Stat. Def., 27 & 28 V. c. 101, s. 48.

Digitized by Google

"Highway *Parish*"; Stat. Def., 27 & 28 V. c. 101, s. 3; 41 & 42 V. c. 77, s. 38; 45 & 46 V. c. 27, s. 10.

"Highway *Rate*"; Stat. Def., 27 & 28 V. c. 101, s. 3; 45 & 46 V. c. 27, s. 10.

HIMSELF.—When a person "himself" has to do a thing he cannot do it by an agent (*Monks* v. *Jackson*, 46 L. J. C. P. 162; 1 C. P. D. 683). So where (by s. 38 (1), 46 & 47 V. c. 51) power is given to a person, reported guilty of electoral malpractices, of being heard, "by Himself," before the Court enquiring into the Municipal Election at which such malpractices are alleged to have taken place, he cannot appear by Counsel or Solicitor (*Hereford Case, R.* v. *Jones*, 23 Q. B. D. 29; 37 W. R. 508; 5 Times Rep. 411). But, in the absence of words requiring a right to be exercised personally, the general rule is that an agent may be appointed to do it (*Jackson* v. *Napper*, 56 L. J. Ch. 406; 35 Ch. D. 162). *Cp*, *R.* v. *St. Mary Abbotts*, cited COURT.

V. DONE BY: HIS HAND: OWN CONSENT: SIGNED.

HINDE PALMER'S ACT.—Administration of Estates Act, 1869, 32 & 33 V. c. 46.

HINDER.—A contest between rival claimants to Tithes, is not a "DIFFERENCE" whereby the making an Award under the Tithe Act, 1836, is "hindered" within s. 45 (*Shepherd* v. *Londonderry*, 21 L. J. Q. B. 204; 18 Q. B. 145).

HINDRANCE.—*V.* UNAVOIDABLE.

HIRE.—Is it acting "for hire" within s. 11, 6 & 7 V. c. 68, to represent a Stage Play at an evening party, the actor being, of course, paid by the host and not by the spectators? It would seem not (s. 16). In *Fredericks* v. *Payne* (32 L. J. M. C. 16), Bramwell, B., said, "The acting was 'for hire' whether payment was made at the door or any other place."

Rowing on Thames for "Hire or Gain," Thames Waterman's Act, 1859, 22 & 23 V. c. cxxxiii., means, for the purpose of obtaining a direct reward for rowing (*Showell* v. *Skittrell*, 6 Times Rep. 120; nom. *Skittrell* v. *Showell*, 59 L. J. M. C. 26; 61 L. T. 874; 54 J. P. 325: *Tadhunter* v. *Buckley*, 7 L. T. 273). *Vh*, *R.* v. *Tibble*, 4 E. & B. 888.

"Ply for Hire"; *V.* PLY.

"Hire" does not, necessarily, mean, a stipulated reward; therefore a HACKNEY CARRIAGE, *e.g.* an Omnibus, plies for hire within s. 45, Town Police Clauses Act, 1847, if it carries a Notice saying it is placed at the disposal of the public free of charge, but that voluntary contributions to support it will be welcomed (*Cocks* v. *Mayner*, 70 L. T. 403; 58 J. P. 104; 17 Cox C. C. 745).

Digitized by Google

"In relation to the Use or Hire of any Ship"; *V.* SHIP.
"Hire earned"; *V.* EARNED.
Employment for HIRE; *V.* EMPLOYMENT.

HIRE-PURCHASE.—Hire-Purchase Agreement; *V.* BUY: 6 Encyc. 206–212.

HIRST, or HURST.—*V.* GRAVA.

HIS.—"If a man be seized of land in fee simple, or for life, and have an estate in it for years, by statute merchant, a staple, eligit, or the like; and he grant all *his* estate, or all *his* right, or all *his* title, or all *his* interest of and in the land; by this grant all his estate, and as much as he is able to grant, doth pass" (Touch. 98: *Vh*, per St. Leonards, C., *Drew* v. *Norbury*, 3 J. & La T. 284; 9 Ir. Eq. 171, 524); but when a person has a beneficial interest and also one as a trustee, it is a question of construction as to whether he means to pass both interests, or only one and which one (*Stronge* v. *Hawkes*, 4 D. G. M. & G. 186: *Rooper* v. *Harrison*, 2 K. & J. 112: *Vh* Elph. 205–209).

"When A. demises to B. for the term of *his* life, the word 'his' would, in ordinary construction, apply to B. as the last antecedent. But instances perpetually occur where that word is used, and does not refer to the last party named" (per Taunton, J., *Doe* d. *Pritchard* v. *Dodd*, 5 B. & Ad. 693).

V. HER: MAJESTY.

HIS CREDITORS.—"His Creditors generally"; *V.* GENERALLY, at end.

HIS FARE.—"Without having previously paid His Fare," s. 103, 8 V. c. 20; "His Fare" here means the fare by the train, and for the class of carriage, in which the passenger travels; therefore a traveller wrongfully travelling 2nd Class with a 3rd Class Ticket has not paid "his fare," though he has paid "a fare" (*Gillingham* v. *Walker*, 29 W. R. 896; 44 L. T. 715; 45 J. P. 470: *Vh*, *Langdon* v. *Howells*, 48 L. J. M. C. 133; 4 Q. B. D. 337; 27 W. R. 657; 43 J. P. 717).

V. FARE.

HIS HAND.—A letter written by a bankruptcy trustee's solicitor in his own name disclaiming a Lease; held, not a due Disclaimer by the trustee, under s. 23, Bankry Act, 1869, because it was not a "Writing under his (*i.e.* the Trustee's) hand" (*Wilson* v. *Wallani*, 49 L. J. Ex. 437; 5 Ex. D. 155). *V.* HIMSELF.

HIS INTEREST.—*V.* DECLARE.

HIS LICENSE.—*V.* *Price* v. *James*, cited LICENSED PERSON.

Digitized by Google

HIS PROPERTY. — *V.* Property.

HIS WIFE. — *V. Re Hancock*, cited Wife; from *whc* it may, probably, be stated that where a Settlement gives a man (who is then married) a Power to appoint to "his Wife," that will, generally, mean "his then Wife."

HLOTH-BOTE. — *V.* Bote.

HOARDING. — The definition in Webster that a "Hoarding" is "a fence inclosing a house and materials *while buildings are at work*," is incomplete; and it is inaccurate if it is to be understood as, necessarily, meaning something of a mere temporary character; accordingly the claim in an action by a Reversioner for obstructing Ancient Lights is well laid by alleging that the obstruction was caused by a "Hoarding" (*Metropolitan Assn* v. *Petch*, 5 C. B. N. S. 509, where the reporter instances a "hoarding" which the Socy of the Inner Temple kept up for more than 20 years for the express purpose of preventing the acquisition of a Right to Light). *Vf*, Building: Permit.

HOBHOUSE'S ACT. — The Vestries Act, 1831, 1 & 2 W. 4, c. 60.

HOCUSSED. — *V. Broome* v. *Gosden*, 1 C. B. 728, cited *O'Brien* v. *Salisbury*, 6 Times Rep. 137.

HOGARTH'S ACTS. — The Engraving Copyright Act, 1734, Ib. 1766, 8 G. 2, c. 13; 7 G. 3, c. 38.

HOGHENHINE. — "Is hee who commeth guest-wise to a house and there lyeth the third night, after which time he is accounted one of his Family in whose house he lyeth; — and if he offend the King's Peace his host must be answerable for him" (Termes de la Ley). *Cp*, Inmate.

HOLD. — Hold a Contract; *V. Royse* v. *Birley*, cited Public Service.

A written authority from an Execution Debtor to A. "to hold" Possession of Goods (then held by the Sheriff, but who had been paid out by A.) and to sell them and retain out of the proceeds the money A. had paid, &c (followed by an arrangement for the Sheriff's bailiff to continue in possession for A.), is equivalent to giving A. a Pledge, and is not a Bill of Sale, either as a License to take Possession or otherwise (*Mills* v. *Charlesworth*, cited Bill of Sale). *Vf*, Transfer: *Sv*, License.

To drive Animals about in search of purchasers is not to "hold" a Sale of them, within a Prohibitive Order under Diseases of Animals Act, 1894 (*McLean* v. *Monk*, 77 L. T. 663; 62 J. P. 180).

V. Purchase.

"Holding" compared with "Occupation"; *V.* Holding.

Digitized by Google

HOLD OUT.—Will not "hold himself out, nor seek to induce others to believe"; *V. Wolmerhausen* v. *O'Connor*, 36 L. T. 921.

Medicines "held out or recommended to the PUBLIC" as nostrums, 52 G. 3, c. 150; *V. Smith* v. *Mason*, cited PUBLIC NOTICE.

"Every one who, by words spoken or written or by conduct, represents himself, or who KNOWINGLY suffers himself to be represented, as a Partner in a particular Firm," *holds himself out* as a Partner, and "is liable as a Partner to any one who has, on the faith of any such representation, given credit to the Firm,—whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made" (s. 14 (1), Partnership Act, 1890: *Vh*, Lindley P. Bk. 1, ch. 2, s. 6).

Quà Principal and Agent, it is submitted that, Every one who, by words spoken or written or by conduct, represents that another person is his Agent, or who knowingly suffers that other to represent himself as his Agent, *holds out* that other as his Agent, and is responsible for the acts of that other as his Agent, if such acts be within the ordinary scope of such an Agent's employ: *Vh, Sandeman* v. *Scurr*, 36 L. J. Q. B. 63; L. R. 2 Q. B. 86: *Scheibler* v. *Gilchrest*, 60 L. J. Q. B. 605; 62 Ib. 201; 1891, 2 Q. B. 310; 1893, A. C. 8; 68 L. T. 1: *Brazier* v. *Camp*, 63 L. J. Q. B. 257: *Spooner* v. *Browning*, 1898, 1 Q. B. 528; 67 L. J. Q. B. 339; 78 L. T. 98; 46 W. R. 369.

HOLD OVER.—*V.* WILFULLY HOLD OVER.

HOLDER.—*V.* HELD: IN HIS OWN RIGHT: ORIGINAL HOLDER.

"'Holder,' of a Bill or Note, means, the Payee or Indorsee of it," "who is in possession of it, or the bearer thereof" (s. 2, Bills of Ex. Act, 1882, on *whv*, *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); and every Holder of a Bill or Note "is *primâ facie* deemed to be a HOLDER IN DUE COURSE" (s. 30 (2), Ib.). As to the rights of the Holder, *V.* s. 38, Ib.

"Holder of Lease;" *V.* LESSEE.

HOLDER FOR VALUE.—"Every Indorsee of a Bill has his own title, and that of each intermediate party; and if he or any of such parties gave value for the bill, without fraud, he is a Holder for Value" (per Abinger, C. B., *Isaac* v. *Farrer*, 1 M. & W. 69; 5 L. J. Ex. 96). *V.* BONÂ FIDE.

The phrase "Bonâ Fide Holder for Value, without Notice," quà Bills and Notes, is now superseded by the phrase HOLDER IN DUE COURSE.

HOLDER FOR THE TIME BEING.—"The words 'Holder for the time being,'—in a Debenture,—are, in my opinion, identical with

Digitized by Google

the words 'to Bearer'" (per Malins, V. C., *Re Marseilles Imperial Land Co*, 40 L. J. Ch. 96; L. R. 11 Eq. 493, 494).

V. BEARER: NEGOTIABLE.

HOLDER IN DUE COURSE.—"(1) A Holder in Due Course (of a Bill of Ex.), is a HOLDER who has taken a Bill, complete and regular on the face of it, under the following conditions, namely;

"(*a*) That he became the Holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

"(*b*) That he took the Bill in Good Faith and for VALUE, and that at the time the Bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

"(2) In particular the title of a person who negotiates a Bill is 'defective' within the meaning of this Act, when he obtained the Bill, or the Acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

"(3) A Holder (whether for Value or not) who derives his title to a Bill through a Holder in Due Course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that Holder in Due Course as regards the Acceptor and all parties to the Bill prior to that Holder"

(s. 29, Bills of Ex. Act, 1882): and so of a Promissory Note (s. 89, Ib.). *V. Lewis* v. *Clay*, 67 L. J. Q. B. 224; 77 L. T. 653; 46 W. R. 319. A Banker is a Holder in Due Course when he credits the amount to the account of his customer who draws upon it (*National Bank* v. *Silke*, 1891, 1 Q. B. 435; 60 L. J. Q. B. 199; 63 L. T. 787; 39 W. R. 361).

Vf, as to presumption of VALUE and GOOD FAITH, s. 30, Ib.; and as to subs. 2 of that section, *V. Tatam* v. *Hasler*, 58 L. J. Q. B. 432; 23 Q. B. D. 345; *Clutton* v. *Attenborough*, 1897, A. C. 90; 66 L. J. Q. B. 221; 75 L. T. 556; 45 W. R. 276.

V. IN HIS OWN RIGHT: PURCHASER.

HOLDING.—Where Articles of a Company gave a power to demand a poll to "Shareholders qualified to vote and *holding* in the aggregate" a stated number of shares; held, that "themselves" must be read in before "holding," so that the required number could not be made up by proxies (*R.* v. *Government Stock Investment Co*, 47 L. J. Q. B. 478; 3 Q. B. D. 442).

V. IN HIS OWN RIGHT.

"Having or holding" lands; *V.* HAVING.

"Residence and Holding"; *V.* RESIDE.

Quà Agricultural Holdings (England) Act, 1883, "'Holding,' means

Digitized by Google

any parcel of LAND held by a Tenant" (s. 61), such Holding being "either wholly AGRICULTURAL or wholly Pastoral, or in part Agricultural and as to the residue Pastoral, or in whole or in part cultivated as a MARKET GARDEN" (s. 54). *V.* AGIST: LANDLORD: *Vh, Cooper* v. *Pearse*, cited GARDEN. *Cp,* TENEMENT.

By ss. 42 and 35, Agricultural Holdings (Scot) Act, 1883, a def similar to the preceding is provided for Scotland: *Va,* s. 34, Crofters Holdings (Scot) Act, 1886, 49 & 50 V. c. 29.

Quà Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26, "'Holding,' means, an ALLOTMENT, or COTTAGE GARDEN" (s. 4), an "Allotment" being "any parcel of land, of not more than 2 acres in extent, held by a Tenant under a Landlord, and cultivated as a GARDEN or as a FARM, or partly as a Garden and partly as a Farm" (Ib.).

"Holding," quà the Land Laws for Ireland; *V.* ss. 57 and 58, Land Law (Ir) Act, 1881, as slightly enlarged by s. 48 (2), Land Law (Ir) Act, 1896; on *whv, Ex p. Hutchinson,* 12 L. R. Ir. 79.

Other Stat. Def. — *Ir.* 33 & 34 V. c. 46, s. 71; 39 & 40 V. c. 63, s. 5; 50 & 51 V. c. 33, s. 8 (11).

The lessee of an undivided SHARE of land, is not the occupier of a "Holding" within the Redemption of Rent (Ir) Act, 1891, 54 & 55 V. c. 57 (*Re Cummins and St. Leger,* 1896, 2 I. R. 603).

"There is a material difference between a Holding and an OCCUPATION. A person may hold, though he does not occupy. A Tenant is a person who holds of another; he does not, necessarily, occupy" (per Littledale, J., *R.* v. *Ditcheat,* cited TENANT).

Holding a SALE; *V.* HOLD.

HOLDING OUT. — *V.* HOLD OUT.

HOLDING OVER. — *V.* WILFULLY HOLD OVER.

HOLIDAY. — By a Charter-Party, a vessel was "to be loaded in L. in 14 days, and to be discharged, weather permitting, at not less than 25 tons per working day (holidays excepted)"; held, that though "holidays" are not included in "WORKING DAY," yet that the exception related only to the discharge as its last antecedent, and that the loading was to be done in 14 days including Sundays (*Niemann* v. *Moss,* 29 L. J. Q. B. 206). *Semble,* that is a "Holiday or Fête Day," within a Demurrage Clause, which is recognised as such in the district to which the clause relates, *e.g.* the National Eisteddfod in Wales (*Denniston* v. *Zimmermann,* 98 Law Times, 181; 11 Times Rep. 113).

Generally, "Holiday" does not include SUNDAY (*Phillips* v. *Innes,* 4 Cl. & F. 234), in *whc* a Scotch barber's Apprentice Indenture provided that the Apprentice should not absent himself from his master's business "on Holiday or Week-day," and the H. L. decided that Sunday is not

Digitized by Google

a "Holiday," but that, if it were, the words of the Indenture did not oblige the apprentice to shave his master's customers on a Sunday, because that is "an act of HANDICRAFT" prohibited by the Sunday Acts from being done on a Sunday, and is not a "Work of NECESSITY or MERCY or CHARITY."

V. BANK HOLIDAYS.

HOLME. — "*Holme*, or *hulmus*, signifieth an isle or fenny ground" (Co. Litt. 5 a).

HOLT. — *V.* GRAVA.

HOLY COMMUNION. — *V.* CHURCH: COMMUNION.

HOLY ORDERS. — *V.* CLERGYMAN.

HOMAGE. — Homage is (1) Homage by *Ligeance*, which is inherent and inseparable from every subject; (2) Homage *by reason of Tenure*, which latter "is defined to bee a Service which shall be made in such manner, that is to say, The Tenant in fee simple or fee taile that holdeth by Homage shall kneele upon both his knees ungirded, and the Lord shall sit and hold the hands of his Tenant between his hands and the Tenant shall say, — 'I become your Man from this day forward of Life and Member and of Earthly Honour, and to you shall be faithfull and true, and shall beare to you faith for the lands that I claime to hold of you, saving that faith that I hold to our Lord the King'; and then the Lord, so sitting, shall kisse him" (Termes de la Ley). *Vh*, Co. Litt. Bk. 2, ch. 1: Cowel: Jacob: 1 Bl. Com. 367, 368; 2 Ib. 53, 54, *n*: *Cp*, FEALTY: KNEELING.

Homage *Auncestrel*; *V.* Termes de la Ley: Cowel.

Homage *Jury*, often now called "the Homage," are Copyholders at a Court Baron of a Manor who enquire and make presentments of defaults and deaths of Copyholders, Admittances, Surrenders, &c. The consent of the Homage, means that of the majority (*Wentworth* v. *Clay*, Finch, 263: *Ramsey* v. *Cruddas*, 1893, 1 Q. B. 228; 62 L. J. Q. B. 269; 68 L. T. 364; 57 J. P. 406). *Note.* Since 31st Dec 1841 presentment by the Homage has not been essential to the validity of an Admission (s. 90, 4 & 5 V. c. 35; s. 84, Copyhold Act, 1894, 57 & 58 V. c. 46).

HOMAGER. — *V.* FREEHOLDER.

HOME. — *V.* AT HOME.

Quà Ry and Canal Traffic Act, 1888, "'Home,' in relation to MERCHANDISE, includes the UNITED KINGDOM, the CHANNEL ISLANDS, and the Isle of Man" (s. 55).

A "*Passage* Home," s. 186 (*c, d*) Mer Shipping Act, 1894, means, to provide the Seaman "with a passage to the Port from which he originally

Digitized by Google

shipped, or to some other Port in the United Kingdom to which he agrees to go, and includes an obligation to provide him with reasonable maintenance during the passage" (per Esher, M. R., *Edwards* v. *Steel*, 1897, 2 Q. B. 327; 66 L. J. Q. B. 690; 77 L. T. 297; 2 Com. Ca. 272: *Vf*, *Purves* v. *Straits of Dover S. S. Co*, 1899, 2 Q. B. 217; 81 L. T. 35; 68 L. J. Q. B. 925; 47 W. R. 630; 4 Com. Ca. 274).

A bequest to a Wife, though to be paid to her soon after the testator's decease and "to provide a *Suitable* Home," has no priority over other legacies if the estate be insufficient to pay all (*Re Schweder*, cited IMMEDIATELY, at end).

HOME FARM.—A HOLDING of which the Landlord desires to resume the occupation "as a Home Farm in connexion with his Residence, or for the purpose of providing a Residence for some member of his family," s. 21, Land Law (Ir) Act, 1881 (*Va* subs. 2, s. 58); *V. Re Hamilton and Sharpe*, 20 L. R. Ir. 224.

Quà Labourers (Ir) Act, 1886, 49 & 50 V. c. 59; *V.* s. 6.

HOMESOKEN.—To be quit of Amerciaments (Termes de la Ley).

HOME-STALL.—A Mansion-house (Jacob).

HOME-TRADE SHIP.—Quà Mer Shipping Act, 1894, "'Home-Trade Ship,' includes, every SHIP employed in trading or going within the following limits, *i.e.* the UNITED KINGDOM, the CHANNEL ISLANDS, and the Isle of Man, and the Continent of Europe between the River Elbe and Brest inclusive" (s. 742). *Cp*, "Foreign-going Ship," sub FOREIGN.

By the same section "'Home-Trade *Passenger* Ship,' means, every Home-trade Ship employed in carrying passengers." *V.* PASSENGER SHIP.

HOMICIDE.—"Homicide, as it is legally taken, is when one is slaine with a man's will, but not with malice prepensed" (Co. Litt. 287 b: *Vf*, Termes de la Ley).

"Homicide is the killing of a human being by a human being. A child becomes a human being within the meaning of this definition, when it has completely proceeded in a living state from the body of its mother, whether it has or has not breathed, and whether the navel string has or has not been divided; and the killing of such a child is homicide, whether it is killed by injuries inflicted before, during, or after, birth. A living child in its mother's womb, or a child in the act of birth, even though such child may have breathed, is not a human being within the meaning of this definition, and the killing of such a child is not homicide" (Steph. Cr. 151: *Vf*, Ib. ch. 23). *V.* KILL: MANSLAUGHTER. *Cp*, CHANCE-MEDLEY: EXCUSABLE: JUSTIFIABLE: MURDER.

Vh, Arch. Cr. 749: Rosc. Cr. 543: Jacob: 6 Encyc. 216–218.

Digitized by Google

HONEST.—Honest Earnings; *V.* EARNINGS.

"Honest Persons," for trustees, in a charitable trust deed made in 1549; *V. Baker* v. *Lee,* 30 L. J. Ch. 625; 8 H. L. Ca. 495.

"Honesty"; *V.* GOOD FAITH: IMPOSSIBLE.

"Honestly and Reasonably," s. 3, Judicial Trustees Act, 1896; *V.* REASONABLY.

HONOUR.—"By the name of an Honor which a subject may have, divers mannors and lands may passe" (Co. Litt. 5 a: *Vf,* Termes de la Ley: Touch. 92: Cowel: Jacob: Elph. 558).

"*Acceptance* for Honour, supra protest"; *V.* ss. 65, 66, 67, Bills of Ex. Act, 1882.

"*Payment* for Honour, supra protest"; *V.* s. 68, Ib.

"When a man writes, 'I promise to pay the above as a DEBT of Honour,' he does not mean to admit that it is a debt which may be enforced against him at law" (per Brett, J., *Maccord* v. *Osborne,* cited RATIFICATION).

An "Honour," or P. P. I., Policy is one in which it is stipulated that the Policy itself shall be sufficient Proof of INTEREST; *Vh, Roddick* v. *Indemnity Insrce,* cited UNINSURED: *Gedge* v. *Royal Ex. Assrce,* 1900, 2 Q. B. 214; 69 L. J. Q. B. 506; 82 L. T. 463; *Vthlc* for comment on Note to *Buchanan* v. *Faber,* 4 Com. Ca. 227. *Cp,* FULL INTEREST ADMITTED.

Title of Honour; *V.* DIGNITY: *Cowley* v. *Cowley,* 1900, P. 118; 83 L. T. 218.

HONOURED.—In a guarantee of a Promissory Note if it be not "duly honoured and paid," "'duly honoured,' means no more than duly paid when due. 'Honoured' means, payment at maturity" (per Parke, B., *Walton* v. *Maskell,* 14 L. J. Ex. 56; nom. *Walton* v. *Mascall,* 13 M. & W. 457). *Cp,* DISHONOURED.

HOO.—*V.* HOWE.

HOPCOMBE.—"Signifies a Valley in Domesday Book" (Cowel): *Cp,* COMBE.

HOPE.—*V.* PRECATORY TRUST: EARNEST: COMBE.

"No Hope of Recovery," to render a Dying Declaration admissible in evidence, means, that "there must be an expectation of impending and almost immediate death from the causes then operating," with "no hope whatever" in the mind of the Declarant that he will recover: if the Declarant states he has no hope "at present," the declaration is inadmissible (*R.* v. *Jenkins,* L. R. 1 C. C. R. 187; 38 L. J. M. C. 82, espy jdgmt of Byles, J.).

"I am in hopes I shall be able"; *V. Smith* v. *Thorne,* cited ABLE.

Digitized by Google

HORIZONTAL. — "Horizontal Line"; *V.* s. 41, London Bg Act, 1894.

HORNE-TOOKE'S ACT. — 41 G. 3, c. 63, for removing doubts as to eligibility of Persons in Holy Orders to sit in the House of Commons.

HORSE. — "Horse, Gelding, or Mare," s. 10, 1 Edw. 6, c. 12, 2 & 3 Edw. 6, c. 33, included Foals and Fillies (*R.* v. *Welland*, Russ. & Ry. 494); but a prisoner convicted of stealing a Colt did not lose his Clergy under these statutes, because "Colts" are not mentioned therein *eo nomine* (*R.* v. *Beaney*, Ib. 416).

Quà Metropolitan Market Act, 1851, 14 & 15 V. c. 61, "Horse" includes "Mare, Ass, and Mule" (s. 44).

Quà the Revenue Act, 1869, 32 & 33 V. c. 14, and by its s. 19 (8), "'Horse' means and includes, a Horse or Pony of any sex or description or age, except a Foal, Colt, or Filly, which shall never have been used for any purpose of draught or riding: . . . 'Mule,' includes only such mule as shall have been at any time used for any purpose of draught or riding." For Exemptions from License, *V.* s. 19 (12).

Quà Army Act, 1881, "'Horse,' includes a Mule"; and "applies to any Beast of whatever description used for burden or draught, or for carrying persons, in like manner as if such beast were included in the expression 'Horse'" (subs. 40, s. 190).

Quà Sum Jur (Ir) Act, 1851, "'Horse,' shall include any other animal of any kind commonly used or employed in drawing any kind of Carriage" (s. 25).

Other Stat. Def. — 1 & 2 V. c. 79, s. 1; 6 & 7 V. c. 86, s. 2; 7 & 8 V. c. 87, s. 10. — *Ir.* 16 & 17 V. c. 112, s. 80.

V. Job: Plant: Sound.

HORSE CAUSEWAY. — *V.* Causeway.

HORSE DEALER. — Quà Revenue Act, 1869, "Horse Dealer," means and includes, "only such persons as shall buy and sell horses as a Trade, Occupation, and Means of Livelihood" (s. 13, 35 & 36 V. c. 20). *Vth*, *Allen* v. *Sharp*, 17 L. J. Ex. 209; 2 Ex. 352.

HORSE FLESH. — Quà 52 & 53 V. c. 11, "'Horse Flesh,' shall *include*, the flesh of asses and mules; and shall *mean*, horse flesh, cooked or uncooked, alone or accompanied by or mixed with any other substance" (s. 7).

HORSE RACE. — Quà Racecourses Licensing Act, 1879, 42 & 43 V. c. 18, "Horse Race," means, "any Race in which any horse, mare, or gelding, shall run, or be made to run, in competition with any other horse, mare, or gelding, or against Time, — for any Prize of what nature or kind soever, or for any Bet or Wager made or to be made in respect of

Digitized by Google

any such horse, mare, or gelding, or the riders thereof, *and* at which more than 20 persons shall be present" (s. 1).

V. Event: Foot Race: Literary: Lottery: Race.

HORSE STEALER.—To accuse a person of being a "Horse Stealer" is to impute that he has been guilty of feloniously stealing a horse (*Mountney* v. *Watton*, 2 B. & Ad. 673).

HORSE-WAY.—*V.* Bridle-Path: Causeway: Way.

HOSIER.—"A Draper sells materials, while a Hosier sells articles for wear" (per Channell, J., *Bailey* v. *Skinner*, cited Carry on).

HOSPITAL.—"There is no manner of difference between a College and an Hospital, except only in degree; an Hospital is for those that are poor and mean and low and sickly; a College is for another sort of indigent persons; but it hath another intent,—to study in and breed up persons in the world that have not otherwise to live" (per Holt, C. J., *Philips* v. *Bury*, 2 T. R. 353).

A "Hospital" is an eleemosynary institution and, strictly speaking, there is no legal Hospital unless it be incorporated, and the persons benefited are themselves the corporation (*Sutton's Hospital*, 10 Rep. 31 a); "and of these Hospitals some bee Eligible, some Donative, and some Presentable" (Co. Litt. 342 a). *Vf*, Phil. Ecc. Law, Part 8, ch. 3.

But referring to this definition the Court of Ex. in *Colchester* v. *Kewney*, (35 L. J. Ex. 206) said,—"It seems rather more reasonable to hold that the word (in the exemption from Land Tax in s. 25, 38 G. 3, c. 5) is used in a popular sense only; and that any institution which, though not in a strictly legal, might in a popular, sense be called a Hospital, might claim exemption. But some doubts arise whether even upon this view this Institution (the Wandsworth Royal Victoria Patriotic Asylum) would be a 'Hospital,' by which word we understand, rather an Institution for the relief of the sick or aged than for the maintenance and education of children." *V.* that jdgmt affirmed, 36 L. J. Ex. 172; L. R. 2 Ex. 253; 16 L. T. 463: *Vh*, 14 Eliz. c. 14, cited inf.

"'Hospital' is a word of wider and more variable meaning than Dispensary, and, primarily, signifies a place built for the reception of the sick, or the support of the aged or infirm, poor. It has been used in Great Britain, in some instances, to denote an Institution in which poor *children* are fed and educated. But that is not the ordinary meaning of the word" (per Ld Watson, *Dilworth* v. *Commrs of Stamps*, 1899, A. C. 107; 68 L. J. P. C. 4). *Vf*, *Moses* v. *Marsland*, 70 L. J. Q. B. 261; 1901, 1 Q. B. 668.

"I apprehend that even a Hospital would not be the less entitled to exemption under this Act (Income Tax Act, 1842, s. 60, Sch A, No. VI) because, in order to diminish its expense, certain fees were taken

Digitized by Google

from certain richer patients who might choose to obtain the benefit of the Hospital for payment. As to '*Almshouse*,' there, it would be impossible to suppose a case in which anybody except poor almsmen or almswomen would take the benefit of such an institution" (per Denman, J., *Blake and London Corp*, 56 L. J. Q. B. 152; 18 Q. B. D. 437; 35 W. R. 212; 51 J. P. 71: affd 56 L. J. Q. B. 424; 19 Q. B. D. 79; 35 W. R. 791). A wholly self-supporting Lunatic Asylum, though founded by subscription, is not within this exemption as a "Hospital" (*Needham* v. *Bowers*, 21 Q. B. D. 436); but when the support of such an Asylum is chiefly eleemosynary, then it is a "Hospital" within this exemption, and also within the exemption from Inhabited House Duty (Case 4, Sch B, 48 G. 3, c. 55; s. 2, 14 & 15 V. c. 36), although it may have some paying Patients (*Cawse* v. *Nottingham Lunatic Asylum*, 1891, 1 Q. B. 585; 60 L. J. Q. B. 485; 65 L. T. 155; 39 W. R. 461; 55 J. P. 582).

V. Charity School: Public School: Noxious: Nuisance.

In *Colchester* v. *Kewney* (sup), it was held that no Hospital is, under s. 25, 38 G. 3, c. 5, exempt from Land Tax unless founded before 38 G. 3, c. 60.

"Hospital," s. 3, 13 Eliz. c. 10, means, "Hospitals, Maison Dieus, Bead-Houses, and other houses ordained for the sustentation or relief of the poor" (14 Eliz. c. 14): *Vth, Magdalen College Case*, 11 Rep. 66 b; 1 Rolle, 151: *Southwell* v. *Lincoln, Bp.*, 1 Mod. 204; 2 Ib. 56: *Moore* v. *Clench*, 45 L. J. Ch. 80; 1 Ch. D. 447: *Magdalen Hosp.* v. *Knotts*, 48 L. J. Ch. 579; 4 App. Ca. 324; 27 W. R. 602; 40 L. T. 466.

Other Stat. Def.—P. H. London Act, 1891, s. 141; Idiots Act, 1886, 49 & 50 V. c. 25, s. 17; Lunacy Act, 1890, s. 341.

"Hospitals, Houses, and Places, . . . for the Public Reception of Pregnant Women, and supported by Charitable Contributions, or otherwise," s. 3, 13 G. 3, c. 82, does not include a Room in a Parish Workhouse appropriated for the reception of pregnant women resident within the parish (*R.* v. *Manchester*, 4 B. & Ald. 504).

"Hospitals of London"; *V.* London.

A gift to the "Hospital" of a district by a name non-existent in the district, will go to the General Hospital, as distinguished from the Special Hospitals, of that district (*Re Alchin*, L. R. 14 Eq. 230).

V. Patient: Public Hospital: Jacob: 6 Encyc. 233–235.

HOSPITALITY.—A gift for "Hospitality Or Charity," is void for uncertainty (*Re Hewitt*, 53 L. J. Ch. 132: *Re Jarman*, 47 L. J. Ch. 675; 8 Ch. D. 584).

HOSTEL.—*V.* Inn: Hotel.

HOSTILITIES.—*V.* War.

"Consequences of Hostilities"; *V.* Consequences.

Digitized by Google

HOTCHPOT. — "This word is, in English, a pudding; for in this pudding is not commonly put one thing alone, but one thing with other things together" (Litt. s. 267). "*Hutspot*, or *Hotspot*, is an old Saxon word, and signifieth so much as Littleton here speaks. And the French use *hotchpot* for a commixion of divers things together. It signifieth here metaphorically *in partem positio*. In English we use to say *hodgepodge*, in Latine *farrago* or *miscellaneum*" (Co. Litt. 177 a). *Vf*, Termes de la Ley: 2 Bl. Com. 190, 517: Wms. Exs. 1369 *et seq*: and as to effect and construction of a Hotchpot Clause, *V. Auster* v. *Powell*, 1 D. G. J. & S. 99; 8 L. T. 73: *Fox* v. *Fox*, 40 L. J. Ch. 182; L. R. 11 Eq. 142: *Re Whitehouse*, 37 Ch. D. 683; 57 L. J. Ch. 161; 57 L. T. 761; 36 W. R. 181: *Re Cosier, Wheeler* v. *Humphreys*, cited SATISFACTION, at end: *Re Bristol*, 1897, 1 Ch. 946; 66 L. J. Ch. 446; 76 L. T. 757; 45 W. R. 552: *Re Lambert*, 1897, 2 Ch. 169; 66 L. J. Ch. 624; 76 L. T. 752; 45 W. R. 661: Vaizey, 1220: 6 Encyc. 235–237.

In a Settlement pursuant to Articles, a Hotchpot Clause will not be inserted unless it be expressly directed (*Lees* v. *Lees*, Ir. Rep. 5 Eq. 549: *Svthc, Miller* v. *Gulson*, 13 L. R. Ir. 408).

V. ADVANCEMENT: COLLATION.

HOTEL. — "Hotel" is not to be confounded with the old word "Hostel" which is a synonym for INN.

An "Hotel" is a place where lodgings are let and where provisions are, to some extent, supplied (*Smith* v. *Scott*, 1 L. J. C. P. 143; 9 Bing. 14: *Gibson* v. *King*, 12 L. J. Ex. 9; 10 M. & W. 667: per Ld Brougham, *King* v. *Simmonds*, 1 H. L. Ca. 773); that the lodgings are let to invalids, makes no difference (*Re Jones, Ex p. Thorne*, 45 L. J. Bank. 158; 3 Ch. D. 457). These were decisions on "Keepers of Hotels" in the late Bankry definition of "Trader." In *Smith* v. *Scott*, Tindal, C. J., said, — "It is clear that the word 'Hotel' is not used in the sense of the old word 'Hostel,' for that means what is now termed an 'Inn'; and as the word 'Inn' immediately precedes, it could scarcely have been intended to designate the same thing by both. The modern word is introduced from the French, and rather implies a house to which people resort for lodgings, than for the sort of entertainment procured only at an Inn." In that case a Lodging-house Keeper who procured and supplied, at a small profit, provisions for her lodgers, — such provisions being kept separately for the individuals for whom they were respectively procured, — was the keeper of an "Hotel"; and in *Gibson* v. *King* (sup) it was held that a Boarding-house was, *à fortiori*, an "Hotel" within the definition. In *Devonshire* v. *Simmons* (39 S. J. 60), "Hotel" was contrasted with "PUBLIC HOUSE."

In America "Hotel" has been held to be a synonym for INN (*Cromwell* v. *Stephens*, 2 Daly, 15).

"I agree that the words 'Hotel' and 'Tavern' are undergoing a

Digitized by Google

change in their meaning, there being Temperance Hotels and Temperance Taverns, as well as houses for the sale of exciseable liquors" (per Chitty, L. J., *Webb* v. *Fagotti*, 79 L. T. 684). *V. Thompson* v. *Lacy*, cited INN: PRIVATE HOTEL.

V. GOODWILL.

HOUR. — In relation to the hour up to which a vendor can make a valid delivery on the last day fixed by the contract; *V. Startup* v. *Macdonald*, 6 M. & G. 593; 12 L. J. Ex. 477; *Va*, REASONABLE HOUR.

Demurrage, or Despatch Money, at so much "per hour"; *V. Laing* v. *Holloway*, cited DESPATCH.

V. AFTERNOON.

HOUSE. — "'*House*,' *Mese*, or *Maison* called in legall Latine *Messuagium*, containeth (as hath beene said) the buildings, curtelage, orchard, and garden" (Co. Litt. 56 a, 56 b; in the margin it is added "Six acres of land may be parcell of a house"). "'*Domus est nomen collectivum*, and contains many buildings, as barns, stables, &c" (*Hore* v. *Briddleworth*, 4 Leon. 15, 16).

"By the grant of a MESSUAGE, or house, *mesuagium*, the orchard, garden, and curtilage doe passe; and so an acre or more may passe by the name of a house" (Co. Litt. 5 b). To this passage Mr. Hargrave has the following Note (1); "*Contra* as to the garden, Keilw. 57. Mo. 24. Dal. in N. Bendl. 29. But see acc. *post*, 56 a and b. Plowd. 171. 2 Co. 32. 2 Saund. 401. S. P. adj. acc. in case of a devise. 3 Leon. 214, and Cro. Eliz. 89. See acc. 2 Cha. Cas. 27. See further, Litt. Rep. 6, where the Court held that the devise of a messuage was not sufficient to pass two acres four miles distant from the messuage, though occupied with it. In Keilw. 57, a difference is taken between *messuage* and *domus*; and it is there said that *messuage* extends to the *curtilage*, though not to the *garden*, but that *domus* only comprehends buildings. Also in some of the cases cited, particularly that from Plowden, the grant was of a *messuage* with the *appurtenances*; on which *latter* word some stress seems to have been laid": *Vth*, Elph. 588. *Sv*, MESSUAGE for authorities, in addition to Co. Litt. sup, that that word and "House" are synonymous, and that the distinction between them (which distinction seems to have been started by Frowike, C. J., Keilw. 57, pl. 7; *Va*, *Thomas* v. *Lane*, 2 Cha. Cas. 26) is not to be relied on. *Cp*, MANSE: *Vf*, PREMISES.

For cases as to what is included in "House," quà s. 92, Lands C. C. Act, 1845, *V.* inf.

"By the grant of a House the Estovers appendant thereunto will pass" (Touch. 89), also "the doors, windows, locks, and keys do pass as parcel of it, albeit at the time of the grant they be actually severed from the house," also "the ground whereon it doth stand doth pass" (Ib. 90). *Vf*, Woodf. 148.

Digitized by Google

A devise of "Freehold House and PROPERTY situate in" A., will not pass building materials and scaffolding temporarily on the ground near the house (*Conway* v. *Vernon*, 2 Giff. 277).

For the cases as to what will pass on a Devise of "House"; *V.* 1 Jarm. 779–782.

"A hundred years ago there was not much difficulty in saying what was a 'House,' but builders and architects have so altered the construction of houses, and the habits of people have so altered in relation to them, that 'house' has acquired an artificial meaning and the word is no longer the expression of a simple idea. To ascertain its meaning one must understand the subject-matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute" (per Halsbury, C., *Grant* v. *Langston*, 1900, A. C. 390; 69 L. J. P. C. 68). "Formerly, houses were built so that each house occupied a separate site, but in modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys; but for all legal and ordinary purposes they are separate houses. Each is separately let and separately occupied, and has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground, as in the case of ordinary houses" (per Jessel, M. R., *Yorkshire Insrce* v. *Clayton*, 8 Q. B. D. 424; 51 L. J. Q. B. 84; cited with approval by Halsbury, C., and Ld Brampton, in *Grant* v. *Langston*, sup).

It may, therefore, be said that, generally, a "House" is a structure of a permanent character (1 Hale P. C. 557), structurally severed (*Sv*, SEPARATE OCCUPATION) from other tenements (and usually, *but not necessarily*, under its own separate roof) that is used, or may be used, for the habitation of man, and of which the holding (as distinct from Lodgings) is independent (*Evans and Finch's Case*, Cro. Car. 473; Jo. W. 394: *Yorkshire Insrce* v. *Clayton*, 8 Q. B. D. 421; 51 L. J. Q. B. 82: *Chapman* v. *Royal Bank of Scotland*, 50 L. J. Q. B. 670; 7 Q. B. D. 136: *R.* v. *Usworth*, 5 L. J. M. C. 139; 5 A. & E. 261; 6 N. & M. 811: *Cook* v. *Humber*, 31 L. J. C. P. 73; 11 C. B. N. S. 41, with *whlc* compare, *Wilson* v. *Roberts*, 31 L. J. C. P. 78; 11 C. B. N. S. 50, *Henrette* v. *Booth*, 33 L. J. C. P. 61; 15 C. B. N. S. 500, and *Cuthbertson* v. *Butterworth*, 38 L. J. C. P. 98; L. R. 4 C. P. 523: *Nunn* v. *Denton*, 14 L. J. C. P. 43; 7 M. & G. 66; 1 Lutw. 178: *Daniel* v. *Coulsting*, 14 L. J. C. P. 70; 7 M. & G. 122; 1 Lutw. 230: *Monks* v. *Dykes*, 8 L. J. Ex. 73; 4 M. & W. 567: *Vf*, MANSION. *Sv*, *Kimber* v. *Admans*, p. 896, inf). It is not necessary that a "House," if adapted for residential purposes, should be actually dwelt in (*Daniel* v. *Coulsting*, sup). It is true that in *Surman* v. *Darley* (14 L. J. M. C. 145; 14 M. & W. 181) Pollock, C. B., in commencing his judgment said, — "We all think that the term 'houses' *primâ facie* means, dwelling-houses"; but there the phrase to be construed was, "houses of the *inhabitants*" (in a Rating Act applicable to a particular

Digitized by Google

district), and it was held that Covent Garden Theatre was not such a "house." But, besides that the word "houses" was there coloured by its context "inhabitants," it could scarcely be contended that the Theatre had ever been adapted for residential purposes, so that the proposition above stated on the authority of *Daniel* v. *Coulsting*, that a "house," as such, need not be actually dwelt in, would seem unimpeached.

Notwithstanding the language used by Grove, J., in *Caiger* v. *St. Mary, Islington* (50 L. J. M. C. 63), it would seem that the decisions which have been pronounced on "Houses" as used in s. 105, Metrop Man. Act, 1855, are in accordance with the principle just stated; for a Church consecrated according to the rites of the Established Church (as it never can be legally used as a habitation) is *not* a "house" thereunder (*Angell* v. *Paddington*, 37 L. J. M. C. 171; L. R. 3 Q. B. 714; 9 B. & S. 496, *Vthc* per Mathew, J., *St. Mary, Islington* v. *Cobbett*, 1895, 1 Q. B. 373: *G. E. Ry* v. *Hackney*, 52 L. J. M. C. 105; 8 App. Ca. 687: *Sv*, inf); but a Dissenting Chapel, merely registered as a place of worship, without any dedication in perpetuity, and over the vestry of which are rooms forming the residence of the care-taker and his family, *is* such a "house" (*Caiger* v. *St. Mary, Islington*, 50 L. J. M. C. 59: *Wright* v. *Ingle*, 55 L. J. M. C. 17; 16 Q. B. D. 379; 54 L. T. 511; 34 W. R. 220; 50 J. P. 436; 2 Times Rep. 143). *Cp*, *Hornsey* v. *Brewis*, cited OWNER.

Though a Consecrated Church is not a "House" within the section just cited, yet it is a "House" quà a BUILDING LINE which a Local Authority has a right to prescribe (*Folkestone* v. *Woodward*, L. R. 15 Eq. 159).

Quà P. H. Act, 1875, "'House,' includes, SCHOOLS, also FACTORIES and other Buildings in which more than 20 persons are employed at one time" (s. 4). But that def is inconsistent with the context to "House Refuse" as used in s. 42, which does not comprise REFUSE of a business (*London and Provincial Laundry* v. *Willesden*, 1892, 2 Q. B. 271; 67 L. T. 499; 40 W. R. 557; 56 J. P. 696).

Quà P. H. Ireland Act, 1878, "'House,' includes, Schools, and also Factories and other Buildings in which persons are employed, whatever their number may be" (s. 2).

Quà P. H. London Act, 1891, "'House,' includes, Schools, also Factories and other Buildings in which persons are employed" (s. 141); a BUILDING used, by day, for religious exercises and, by night, as a refuge for the destitute, but which contains sleeping accommodation, is a "House" within s. 2 (1 *e*) of that Act (*R.* v. *Mead*, 64 L. J. M. C. 169; 11 Times Rep. 242: *R.* v. *Slade*, 65 L. J. M. C. 108; 74 L. T. 656; 60 J. P. 358).

Quà P. H. Scotland Act, 1897, "'House,' *means*, a Dwelling-house; and *includes*, Schools, also Factories and other Buildings in which persons are employed" (s. 3).

Cp, COMMON LODGING HOUSE: "School House," sub SCHOOL.

"House," s. 92, Lands C. C. Act, 1845, "comprises all that would pass

Digitized by Google

by a Grant of a house" (per Wood, V.C., *St. Thomas' Hospital* v. *Charing Cross Ry*, 1 J. & H. 404); therefore, the word "House" there, comprises not only the curtilage, but also the garden or paddock and all that is necessary to the enjoyment of the *house* (*V.* sup), —as distinct from what is merely a place of PLEASURE, or subsidiary to the personal use and enjoyment of a particular *occupier*, — whether attached to the main building or not, even though purchased subsequently to the erection of the main building (Dart, 245: *Steele* v. *Mid. Ry*, 1 Ch. 275: *Low* v. *Staines Reservoirs Committee*, 64 J. P. 212: *St. Thomas' Hospital* v. *Charing Cross Ry*, 30 L. J. Ch. 395; 1 J. & H. 400; 4 L. T. 13; 9 W. R. 411: *Marson* v. *L. C. & D. Ry*, 37 L. J. Ch. 483; L. R. 6 Eq. 101; L. R. 7 Eq. 546; 18 L. T. 317), but though the Court of Appeal held that two tenements, though internally inter-communicated, are two "Houses" (*Harvie* v. *S. Devon Ry*, W. N. (74) 195, 218; 32 L. T. 1), yet, in a subsequent case Bacon, V. C., took an opposite view (*Siegenberg* v. *Metrop District Ry*, 49 L. T. 554; 32 W. R. 333). For the other cases hereon, and as to what is "Part of a House" within the section; *V. Grosvenor* v. *Hampstead Junction Ry*, 26 L. J. Ch. 731; 1 D. G. & J. 446; 5 W. R. 812: *Cole* v. *West London, &c Ry*, 28 L. J. Ch. 767; *Richards* v. *Swansea Improvement Co*, 9 Ch. D. 425; 38 L. T. 833; 26 W. R. 764: *King* v. *Wycombe Ry*, 29 L. J. Ch. 462; 28 Bea. 104: *Kerford* v. *Seacombe Ry*, 36 W. R. 431; 57 L. J. Ch. 270; 58 L. T. 445; 4 Times Rep. 228: *Littler* v. *Rhyl Commrs*, W. N. (78) 219: *Treadwell* v. *Lond. & S. W. Ry*, W. N. (84) 233: *Allhusen* v. *Ealing & S. Harrow Ry*, 78 L. T. 396; 46 W. R. 483: *Barnes* v. *Southsea Ry*, 27 Ch. D. 536: *Fergusson* v. *L. B. & S. Ry*, cited PLEASURE: Lloyd on Compensation, 6 ed., 25–31: Woolf & Middleton, Ib. 204–207: Browne & Allan, Ib. 239–242: Cripps, Ib., 4 ed., 32–36: 1 Jarm. 778, 779, *n* (*o*): Dart, 245–247: Seton, 2414, 2415. *Cp*, MANUFACTORY: *Vf*, PART.

A Workhouse is a "House" within W. W. C. Act, 1847, 10 V. c. 17 (*Liskeard Union* v. *Liskeard W. W. Co*, 7 Q. B. D. 505). *V.* PUBLIC PURPOSES.

"House," in House Tax Act, 1808, 48 G. 3, c. 55; *V. A-G.* v. *Westminster Chambers Assn*, 45 L. J. Ex. 886; 1 Ex. D. 469: But the reasoning of Jessel, M. R., in *the* was "unsatisfactory" (per Halsbury, C., *Grant* v. *Langston*, 1900, A. C. 383; 69 L. J. P. C. 66; 82 L. T. 629; 64 J. P. 644), and s. 13, 41 V. c. 15, was passed to remedy the hardship of that ruling (per Lds Brampton and Macnaghten, *Ib.*); and by subs. 2 of s. 13 (the evolution of which subs. is traced by Ld Macnaghten) a "House or Tenement" escapes the tax and is "occupied SOLELY" for Trade, &c, if it forms one floor of a building which floor is exclusively so used, and has no internal communication with the rest of the building, and has a separate entrance to it from the street (*S. C.*). *Vf*, DWELLING-HOUSE: DIVIDE: SERVANT.

Other Stat. Def. — Beerhouse Act, 1830, s. 32; Ecclesiastical Leasing

Digitized by Google

Act, 1842, 5 & 6 V. c. 108, s. 31; Births & Deaths Registration Act, 1874, 37 & 38 V. c. 88, s. 48 (so, for Ireland, 43 & 44 V. c. 13, s. 38); 53 & 54 V. c. 59, s. 11. — *Scot.* Lunacy (Scot) Act, 1857, 20 & 21 V. c. 71, s. 3; Removal Terms (Burghs) Scotland Act, 1886, 49 & 50 V. c. 50, s. 3; Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, s. 4 (13). —*Ir.* 7 & 8 V. c. 106, s. 156.

A Covenant restricting the number of houses to be erected on a stated piece of land, "House," with no controlling context, has been held to mean, the whole physical erection or amalgamated building (*semble*, under its own roof) usually called a "House" without any reference to its interior arrangement; therefore, a building containing Residential Flats is only *one* "House," within such a covenant (*Kimber* v. *Admans*, 1900, 1 Ch. 412; 69 L. J. Ch. 296; 82 L. T. 136; 48 W. R. 322: but *cp Evans and Finch's Case*, &c, sup). But where the covenant is that "no more than one messuage or dwelling-house, *with suitable out-houses and stabling* (if any) in connection therewith shall be erected, and that such messuage shall be adapted for, and used as, A private residence only, and that no trade or business shall be carried on in or upon that plot," a building containing Residential Flats is a breach of such a covenant (*Rogers* v. *Hosegood*, 1900, 2 Ch. 388; 69 L. J. Ch. 652; 83 L. T. 186; 48 W. R. 659). No doubt, in *thlc* there was a context sufficient to distinguish it from *Kimber* v. *Admans*, but the ground for his decision in *Rogers* v. *Hosegood* was stated by Farwell, J., as follows, — "In my opinion, a Block of Flats such as is proposed is *not one messuage, but several*. I cannot see any substantial difference, for the purposes of a covenant of this nature, between a Terrace of adjoining residences separated from one another vertically, and a Pile of Residences separated from one another horizontally" (69 L. J. Ch. 62, 63; 1900, 2 Ch. 393). The conclusion so arrived at was accepted by the Court of Appeal without hesitation; but it seems difficult to reconcile it with *Kimber* v. *Admans*: *Va*, what Jessel, M. R., said in *Yorkshire Insrce* v. *Clayton*, p. 893, ante, in support of *Rogers* v. *Hosegood*.

Two houses with a common yard, water-closet, and ash-pit, are not one "house" for the purpose of Value in a covenant contained in a building lease (*Snow* v. *Whitehead*, 53 L. J. Ch. 885; 27 Ch. D. 588).

Trade Fixtures, though covenanted to be left, are not, — (but, *semble*, ordinary tenant's fixtures are), — within the phrase "*house or other buildings*" in s. 83, 14 G. 3, c. 78 (*Ex p. Gorely*, 34 L. J. Bank. 1).

"Part of a house" is now a "House," &c, for the purposes of the Rep People Act, 1832, and the Mun Corp Acts, if "separately occupied for the purpose of any trade, business, or profession" (s. 5, 41 & 42 V. c. 26). *Vth*, *Thompson* v. *Ward*, *Ellis* v. *Burch*, L. R. 6 C. P. 327: *Va*, Separate Occupation.

"House on Either Side"; *V. Warren* v. *Mustard*, cited Side.

"House not theretofore kept as an Inn," s. 10, Alehouse Act, 1828;

Digitized by Google

it is a question of fact for the Justices whether alterations have made a new house (*R.* v. *Smith*, 15 L. T. 178).

"House *of Correction*"; Stat. Def., Cruelty to Animals Act, 1849, 12 & 13 V. c. 92, s. 29.

"House or PLACE"; Stat. Def., Spirits (Ir) Act, 1854, 17 & 18 V. c. 89, s. 12.

"House, *Shop, or Building*"; Stat. Def., 49 & 50 V. c. 38, s. 9.

V. DWELLING-HOUSE: MANSION: NEW HOUSE: PRIVATE DWELLING-HOUSE: THE: WAREHOUSE.

"House," as a word of Limitation or Substitution, "is considered as synonymous" with FAMILY (2 Jarm. 91).

A devise to A. and his "House" passed the Fee, even before the Wills Act, 1837, s. 28 (*Chapman's Case*, Dyer, 333 b: *Wright* v. *Atkyns*, 17 Ves. 261).

Contents of house; *V.* CONTENTS.

Official House: *V.* OFFICIAL.

HOUSE BOAT.—Quà Thames Conservancy Act, 1894, "'House Boat,' includes, any PLEASURE Boat on the Thames above Teddington Lock which is not a STEAM LAUNCH, and which is decked or otherwise structurally covered in, and which is, or is capable of being, used as a place of habitation (whether by day and night, or the one or the other), or as a place for accommodating or receiving persons for purposes of shelter recreation entertainment or refreshment, or of witnessing regattas or other events, or as club premises, or as offices, or as a kitchen, pantry, or store place" (s. 3).

V. BOAT.

HOUSE BOTE.—*V.* BOTE.

HOUSE OF COMMONS.—"The House of Commons (Disqualifications) Acts, 1715 to 1821"; *V.* Sch 2, Short Titles Act, 1896.

HOUSE REFUSE.—*V.* REFUSE.

HOUSEBREAKING.—Is the same offence as BURGLARY, with the distinction that it is not done at NIGHT.

HOUSEHOLD.—This word is frequently used in bequests as a qualifying adjective: *e.g.* "household,"—*Furniture*; *Goods*; *Stuff*; *Effects*; *Property*.

Of these Household *Furniture*, and Household *Goods* (1 Jarm. 757, *n*), and Household *Stuff* (Touch. 447) are synonyms. Either phrase will include all personal chattels that may contribute to the use or convenience of the householder or the ornament of the house, such as Plate (*Nicholls* v. *Osborne*, 2 P. Wms. 419: *Sv, Jesson* v. *Essington*, Pre. Ch. 207), Linen,

Digitized by Google

China (both useful and ornamental), and PICTURES, also Prize Medals, Coins, or Trinkets, if framed and hung or otherwise disposed for household ornament (Wms. Exs. 1048, 1049: 1 Jarm. 757, *n*: Touch. 447: *Cremorne* v. *Antrobus*, 5 Russ. 312; 7 L. J. O. S. Ch. 88: *Field* v. *Peckett*, 30 L. J. Ch. 813; 29 Bea. 573: *Re Londesborough*, 50 L. J. Ch. 9); or the Clock of the house, if not a fixture (*Slanning* v. *Style*, 3 P. Wms. 336); but qy as to a Bust (*Willis* v. *Curtois*, 1 Bea. 195).

But the Touch-Stone lays it down (p. 447) that a bequest of Household *Stuff* will *not* comprise "Apparel, Books, Weapons, Tools for Artificers, Cattle, Victuals, Corn, Plow-geere, and the like"; a restriction equally applicable to Household "Goods" or "Furniture" (*Slanning* v. *Style*, 3 P. Wms. 334: *Bridgman* v. *Dove*, 3 Atk. 202: *Kelly* v. *Powlet*, Ambl. 611: *Porter* v. *Tournay*, inf). But in *Ouseley* v. *Anstruther* (10 Bea. 462), and *Hutchinson* v. *Smith* (11 W. R. 417: *Svthc*, *Porter* v. *Tournay*, cited LIVE AND DEAD STOCK), Books, and (in *Hutchinson* v. *Smith*) Consumable Stores (Wines) passed by force of the general intention of the Will although there was no more appropriate word to carry them than "Furniture." On the other hand, in *Manton* v. *Tabois* (54 L. J. Ch. 1008; 30 Ch. D. 92), a bequest of "Furniture, *Goods and Chattels*" was held not to include Jewellery, Guns, Pistols, Tricycles, or Scientific Instruments. *V.* GOODS AND CHATTELS.

In *Peto* v. *Grissell* (5 L. J. Ch. 286) and *Paton* v. *Sheppard* (10 Sim. 186), Shadwell, V. C., held that Tenant's Fixtures in a leasehold house passed as "Household Furniture": but Jessel, M. R., refused to follow that ruling (*Finney* v. *Grice*, 48 L. J. Ch. 247; 10 Ch. D. 13; followed in *Re Seton-Smith*, 71 L. J. Ch. 386).

"Household *Effects*" (V. EFFECTS) will comprise all that Household "Furniture," "Goods," or "Stuff," would carry; and it will also comprise Books and Consumable Stores, *e.g.* Wine (*Re Bourne*, 58 L. T. 537), and also Weapons if kept for domestic defence (*Cole* v. *Fitzgerald*, 1 Sim. & St. 189; 3 Russ. 301); in other words, "articles adapted for the use or ornament of the house" (*Tempest* v. *Tempest*, inf). By *Cole* v. *Fitzgerald* it was also determined that the term "Household Effects" included a pair of pistols, lathes and apparatus for turning, with a quantity of ivory, mahogany, &c, a sawing machine, a vice and anvil, a copying-machine, an organ, wines and liquors, about 100 volumes of general books, and a hay-stack if retained exclusively for home consumption (*Va*, *Re Labron*, inf); but that it did not include a pony or a cow, or some fowling-pieces that apparently were not used for domestic defence. Whether the V. C. decided that a parrot was included, is a matter of dispute between the reporters (*V.* note, 3 Russ. 301). In *Re Labron*, Kay, J., decided that a bequest of "Household Effects" would carry hay-ricks, chicken and sheep-troughs, store pigs, poultry, and carriages that were on the grounds (40 acres in extent) appertaining to the

Digitized by Google

dwelling-house of the testator (29 S. J. 147); but not a horse, cows, or sheep (*Ib.*, on a second application, 1 Times Rep. 248). In *Watson* v. *Arundel* (cited EFFECTS) a horse, carriage, car, and a quantity of hay and farm produce, passed under a gift of "plate, house linen, furniture, and *all other effects*, in my house at the time of my death." But in *Re Hammersley* (81 L. T. 150) Stirling, J., held that jewellery did not pass under a gift of "household furniture, books, pictures, paintings, engravings, plate, linen, china, and other effects."

Articles of a "household" nature will pass under that description, although they may never have been used by the testator, nor even kept in his house (*Pellew* v. *Horsford*, 25 L. J. Ch. 352).

Neither of the terms referred to in the first par of this definition will include Articles of Trade (*Pratt* v. *Jackson*, 2 P. Wms. 302: *Le Farrant* v. *Spencer*, 1 Ves. sen. 97: *V.* note, 24 L. J. Ch. 526: Wms. Exs. 1049: *Sv*, *Manning* v. *Purcell*, 24 L. J. Ch. 522: 2 Sm. & G. 284 (as to which three cases, *V. Re Seton-Smith*, sup): *Fitzgerald* v. *Field*, 1 Russ. 427); nor Farming Stock (*Stone* v. *Parker*, 29 L. J. Ch. 874; 1 Dr. & Sm. 212); nor Articles exclusively of Personal Ornament (*Tempest* v. *Tempest*, 2 K. & J. 635). *V.* IN OR ABOUT.

Having regard to the facts and circumstances of the case, Romer, J., held that neither a Consecrated Altar Stone, nor Sacred Relics in a glass case, in a Roman Catholic Chapel in a Mansion, passed under a bequest of "furniture and articles of Household Use or Ornament" (*Petre* v. *Ferrers*, 61 L. J. Ch. 426; 65 L. T. 568: *Cp*, FIXTURES). A collection of Orchids (espy if in a house outside the curtilage of testator's dwelling-house) is not, *per se*, "articles of Household or DOMESTIC Use or Ornament"; but such of the plants as have been used for the ornamentation of the dwelling-house will pass as "articles of Household or Domestic Ornament" (*Re Owen*, 78 L. T. 643).

Household *Bread*; *V.* FRENCH BREAD.

"Household *Property*," held to include Leaseholds (*Harris* v. *Darley*, W. N. (73) 137).

"Household *Qualification*"; Stat. Def., Rep People Act, 1884, s. 7 (1, 4).

Household *Servant*, is synonymous with DOMESTIC SERVANT; therefore, a bequest to "household servants" will not include a coachman or grooms who are not indoor servants and do not board in the testator's house (*Re Drax*, 57 L. T. 475, following *Ogle* v. *Morgan*, cited SERVANT).

HOUSEHOLDER.—"Householder" (*e.g.* in s. 8, 26 G. 3, c. 38), though it be not of so strict a sense as "Housekeeper," will not include a lodger or temporary inmate, but it will include a partner daily resorting to his firm's counting-house in the place referred to, the dwelling-part of which counting-house is occupied by a servant of the firm (*R.* v.

Digitized by Google

Hall, 1 B. & C. 123; 1 L. J. O. S. K. B. 20: *R.* v. *Poynder*, 1 B. & C. 178; 2 D. & R. 258). *Cp*, INHABITANT.

Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, "'Householder' shall mean, a male occupier of a dwelling-house, or of any lands, tenements, or hereditaments (within the prescribed boundaries of the Town), rated to the relief of the poor in respect thereof" (s. 1).

Other Stat. Def. — *Scot.* 30 & 31 V. c. 37, s. 2; 50 & 51 V. c. 42, s. 2; 55 & 56 V. c. 55, s. 4.

"Substantial Householder"; *V.* SUBSTANTIAL.

HOUSEKEEPER. — *V.* HOUSEHOLDER.

HOUSELLAGE. — "A TOLL for the use or liberty of warehouse room" (Hale, *De Portibus Maris*, ch. 6).

HOVEL. — *V.* SHED.

HOWE. — "*Howe, hoo, knol, law, pen, and cope*, signifyeth a hill" (Co. Litt. 5 b). *Vf*, LAW or LAWE.

HOWEVER. — "For 30 days in port after arrival, however EMPLOYED"; *V. Crocker* v. *Gen. Insrce of Trieste*, 2 Com. Ca. 233; 3 Ib. 22.

HUE AND CRY. — "'Hue and Cry' is a pursuit of one having committed FELONY by the high way; for if the party robbed, or any in the company of one that was murdered or robbed, commeth to the Constable of the next Towne and willeth him to raise Hue and Cry, or to make pursuit after the offender, describing the party and shewing as neere as he can which way he is gone, the Constable ought forthwith to call upon the Parish for aide in seeking the Felon, and if hee be not found there, then to give warning to the next Constable, and hee to the next to him, untill the offender bee apprehended, or, at the least, untill he be so pursued to the sea-side. Of this see Bracton, lib. 3, tract. 2, cap. 5; Smith, De Repub. Angl. lib. 2, cap. 20; and the Statute of Winchester, made anno 13 E. 1, and the Statute of 28 E. 3, c. 11, and 27 Eliz. c. 13" (Termes de la Ley). Hue and Cry "is the old Common Law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another" (4 Bl. Com. 293): *Cp*, FRESH PURSUIT.

Hereon and for the statutes regulating Hue and Cry and making the Inhabitants of the Hundred responsible, &c, *V.* Jacob. Those statutes were repealed by 7 & 8 G. 4, c. 27; but the Common Law right to raise Hue and Cry remains; for the enactment of 3 Edw. 1, c. 9, "that all generally be ready and apparelled at the commandment and summons of the Sheriffs, and at the Cry of the Country, to sue and arrest Felons" is re-enacted by s. 8 (1), Sheriffs Act, 1887, 50 & 51 V. c. 55, which imposes "*a* Fine" on those convicted of being in default in answering

Digitized by Google

the summons, whilst s. 28, Criminal Law Act, 1826, 7 G. 4, c. 64, enables the Court to order compensation to those who have been active in the apprehension of the persons charged with either of the offences therein enumerated.

Vf, 6 Encyc. 252, 253, and the authorities there referred to: 1 Select Pleas of the Crown, by Selden Soc. p. 69.

HULMUS.—*V.* Holme.

HULL.—A Marine Policy on "Hull and Machinery," does not include Outfit (*Roddick* v. *Indemnity Insrce*, 1895, 2 Q. B. 380; 64 L. J. Q. B. 733; 72 L. T. 860), nor Expenses incurred in discharging Cargo which has become worthless through the consequences of a collision (*Field S. S. Co* v. *Burr*, 1898, 1 Q. B. 821; 67 L. J. Q. B. 528; 78 L. T. 293; 46 W. R. 490). "Where the insurance is upon the Hull Materials and Machinery, it is essential, before any claim at all can be made against the Underwriters, either that the Shipowner should be deprived of his ship or of the use of her, or that physical damage should happen to her, by the direct action of one of the perils insured against. . . . Even when the ship suffers such actual physical damage, the Underwriter's liability is to be limited to what may reasonably be regarded as the cost of making good the particular damage in question, — consequential damage which the Shipowner may suffer, the Underwriter is not responsible for" (per Bigham, J., *Ib.*, citing *Robertson* v. *Ewer*, 1 T. R. 127: *De Vaux* v. *Salvador*, 5 L. J. K. B. 134; 4 A. & E. 420: *Field* v. *Burr*, affd 1899, 1 Q. B. 579; 68 L. J. Q. B. 426; 80 L. T. 445; 47 W. R. 341).

HUMAN.—Human *Being*; *V.* Homicide.
Human *Life*; *V.* Policy.

HUMANE AND CHARITABLE PURPOSES.—A testator bequeathed £1000 to a lunatic asylum thereafter to be instituted, "for the humane and charitable purposes of that institution." An asylum afterwards built under statutory compulsory powers, and maintained by compulsory rates, was held not entitled to the bequest (*Lechmere* v. *Curtler*, 24 L. J. Ch. 647; 3 Eq. Rep. 938).

HUNDRED.—"'Hundred' is a part of a Shire properly so called, because it contained 10 Tythings, either because at first there were a hundred Families in each Hundred, or else found the King a hundred able Men for his wars" (Cowel). *Vf*, Termes de la Ley: 1 Bl. Com. 115: Jacob: 6 Encyc. 253: Tithing.

Stat. Def. — County Rates Act, 1852, 15 & 16 V. c. 81, s. 52.

"A grant of the Hundred by a subject passes only the franchises, and

Digitized by Google

not his lands within the Hundred: per King, C., *Bays* v. *Bird*, 2 P. Wms. 400" (Elph. 589; *whv*).

"Hundred or Tithing"; *V. R.* v. *Milland*, 1 Burr. 577.

V. Cwt.

Per HUNDRED.—Evidence of usage is admissible to show that "per Hundred" in a contract means some other figure than 100;—*e.g.* six score (*Smith* v. *Wilson*, 1 L. J. K. B. 194; 3 B. & Ad. 728). *V.* Per Cwt.

HUNTING.—The grant or reservation of "Hunting, Shooting, Fishing, and Sporting," includes all things generally hunted, shot, fished, or sported after, in contradistinction to small birds and things of a similar character, *e.g.* rats and sparrows (per Willes, J., *Jeffryes* v. *Evans*, 34 L. J. C. P. 261; 19 C. B. N. S. 265, 266: *Va*, *Graham* v. *Ewart*, 25 L. J. Ex. 48). *Jeffryes* v. *Evans* decided that rabbits would be included in such a reservation. It also decided that a covenant for Quiet Enjoyment, in such a grant or reservation, does not imply any undertaking restricting the ordinary use of the land: *Va*, *Gearns* v. *Baker*, 44 L. J. Ch. 334; 10 Ch. 355. But a grant or reservation as to Hares and Rabbits is now subject to the Ground Game Act, 1880, 43 & 44 V. c. 47; and as to Informations (apart from that Act) against a tenant for killing rabbits contrary to such a reservation, *V. Spicer* v. *Barnard*, 28 L. J. M. C. 176; 1 E. & E. 874; 7 W. R. 467; 33 L. T. O. S. 121: *Padwick* v. *King*, 29 L. J. M. C. 42; 7 C. B. N. S. 88: *Pryce* v. *Davies*, 35 J. P. 374. *V.* Ground Game.

Vf, *Sowerby* v. *Smith*, and cognate cases, cited Freehold.

The *Grant* of A right to sport, without more, would probably be held not to exclude the grantor (*Bloomfield* v. *Johnston*, Ir. Rep. 8 C. L. 68); *secus*, of a reservation of The right (*Paget* v. *Milles*, 3 Doug. 43).

"The liberty of Fowling has been decided to be a profit à prendre, and may be prescribed for as such (*Davies' Case*, 3 Mod. 246). The liberty to Hawk is one species of *aucupium* (Manwood, c. 18, s. 10, p. 107), the taking of birds by hawks, and seems to follow the same rule. The liberty of Fishing appears to be of the same nature; it implies, that the person who takes the fish, takes for his own benefit; it is Common of Fishing. The liberty of Hunting is open to more question, as that does not of itself import the right to the animal when taken; and if it were a license given to one individual either on one occasion, or for a time, or for his life, it would amount only to a mere personal license of pleasure, to be exercised by the individual licensed" (per Parke, B., *Wickham* v. *Hawker*, 10 L. J. Ex. 159, 160; 7 M. & W. 72); but even in the latter case if the grant were to the grantee "his heirs *and assigns*," or to be exercised by him or his "servants," it would be a profit à prendre (Ib.). *V.* Free Liberty: Profit À Prendre: Servants.

Digitized by Google

HURST. — *V.* Grava.

HURT. — *V.* Ingeniously affected: Service of the Ship.

HUSBAND. — A gift to A. (a woman) for life, remainder, "in trust for any husband with whom she may intermarry, if he shall survive her"; held, that a man whom A. had married but from whom she had been divorced and who survived her, was entitled as A.'s "Husband," although he had married again before her death (*Re Bullmore*, 52 L. J. Ch. 456; 22 Ch. D. 619). But in *Hitchins* v. *Morrieson* (40 Ch. D. 32; 37 W. R. 91), Kay, J., said he should certainly have decided *Re Bullmore* otherwise, and refused to follow and apply it to a similar bequest in which however the word was "Wife" instead of "Husband." *V.* Wife.

A gift to an unmarried woman for life, remainder to her Husband in fee, gives a vested remainder in fee to her *first* husband (*Radford* v. *Willis*, 41 L. J. Ch. 19; 7 Ch. 7).

"Husband," may, by a context, include a reputed husband (*V.* per Ld Cairns, *Hill* v. *Crook*, 42 L. J. Ch. 716; L. R. 6 H. L. 285: per Halsbury, C., *Re Jodrell*, 59 L. J. Ch. 542, affd H. L. nom. *Seale-Hayne* v. *Jodrell*, 1891, A. C. 304; 61 L. J. Ch. 70; 65 L. T. 57: *Vf*, Wife: Relations).

A gift to the children of A., "whether by her present or any future husband"; held, not to exclude a child of A. by a *former* husband, the words quoted being rejected as surplusage (*Re Pickup*, 30 L. J. Ch. 278: 9 W. R. 251; 4 L. T. 85).

Vh, Roper on Husband and Wife: Thicknesse, Ib.: Macqueen, Ib.: Crawley, Ib.: Eversley on Domestic Relations: 1 White & Tudor, 535–729.

V. Baron: Cohabitation: Marriage: Widow: Next of Kin: Ship's Husband: Joint Tenancy.

HUSBANDRY. — *V.* Custom of the Country: Servant in Husbandry: Trade: Implement of Husbandry.

In the phrase "According to the best rules of Husbandry practised in the neighbourhood," — "'Husbandry,' is equally applicable to a Market Garden as to a Farm arable or pasture" (per Kekewich, J., *Meux* v. *Cobley*, 1892, 2 Ch. 261).

HUTSPOT. — *V.* Hotchpot.

HYDE. — *V.* Hide.

HYDEGILD. — "Is the price or ransom to be paid for the saving of his skin from being beaten" (Termes de la Ley).

HYDRANT. — *V.* Plug.

Digitized by Google

HYPOCRITE.—To write of a person that he is a Hypocrite is a Libel, and needs no innuendo (*Thorley* v. *Kerry*, 4 Taunt. 355).

HYPOTHECATION.—*V.* PLEDGE.

HYPOTHETICAL.—"Hypothetical Tenant" is a phrase employed to denote a possible tenant of property which is, ordinarily, not let and is in the hands of its Owner, its ANNUAL VALUE (for rating purposes) being the rent which such a possible tenant may be reasonably considered as willing to pay: *Vh. London Co. Co.* v. *Erith*, and cognate cases, cited BENEFICIAL.

HYTH.—"A Port or little Haven to lade or unlade Wares at" (Cowel).

Digitized by Google

I ENGAGE—ICE-BOUND

I ENGAGE.—"I engage to pay"; *V.* I PROMISE.

I HAVE.—*V.* HAVE: NOW.

I. O. U.—*V.* p. 1009, *post.*

I PROMISE.—"Where a note runs 'I promise to pay,' and is signed by two or more persons, it is deemed to be their joint and several Note" (s. 85 (2), Bills of Ex. Act, 1882, codifying *March* v. *Ward*, Peake, 177: *Cp*, per Wightman, J., *R.* v. *Silkstone*, cited ME).

But if it runs "I promise to pay" and is signed by one for himself and others, it is his and their joint Note (*Ex p. Buckley*, 14 M. & W. 469; 14 L. J. Ex. 341; over-ruling *Hall* v. *Smith*, 1 B. & C. 407). Probably, *Shipton* v. *Thornton* (9 A. & E. 314; 8 L. J. Q. B. 73, in *whc* "I hereby *engage* to pay," signed by one of two partners but with the style of the firm, was held evidence of a several contract by the actual signatory) is explainable on the ground that the decision was against a very technical stamp objection.

I REQUEST.—*V.* REQUEST.

I WILL BE READY.—*V.* READY.

I WILL SEE YOU PAID.—These words amount, *primâ facie*, to an original and independent agreement to pay, as distinguished from a GUARANTEE for payment (*Birkmyr* v. *Darnell*, 1 Salk. 27; 1 Sm. L. C. 335: per Tenterden, C. J., *Oldfield* v. *Lowe*, 9 B. & C. 77: *Lakeman* v. *Mountstephen*, 43 L. J. Q. B. 188; L. R. 7 H. L. 17). *V.* ANOTHER: DEBT, DEFAULT, OR MISCARRIAGE.

V. ATTENDED TO.

IBBETSON'S ACTS.—The Wine and Beerhouse Act, 1869, 32 & 33 V. c. 27:

The Wine and Beerhouse Act Amendment Act, 1870, 33 & 34 V. c. 29.

ICE.—*V.* DETENTION BY ICE.

ICE-BOUND.—A ship is "Ice-bound" when "the ice is so round the ship that she cannot move away because of the ice. I do not think that it, necessarily, means that the ship cannot move at all. But it means that she cannot move so as to get out of the ice" (per Esher,

Digitized by Google

M. R., *Sunderland S. S. Co* v. *North of England Insrce*, 14 The Reports, 198; 1 Times Rep. 106).

Cp, "Open Water," sub OPEN. *V.* FIRST OPEN WATER.

IDENTICAL. — *V.* CORRESPOND.

IDIOT. — "'Ideot,' is he that is a foole naturall from his birth, and knoweth not how to account or number twenty pence, or cannot name his father or mother, nor of what age himselfe is, or such like easie and common matters; so that it appeareth hee hath no manner of understanding, of reason, or government of himselfe, what is for his profit or disprofit, &c" (Termes de la Ley).

Vh, *Beverley's Case*, 4 Rep. 124: *Crosswell* v. *People*, 13 Mich. 435: Cowel, *Ideot*: 1 Bl. Com. 302; 4 Ib. 24: Jacob: Wood Renton on Lunacy: Pope, Ib.: Archbold, Ib.: 6 Encyc. 295, 296.

Quà Idiots Act, 1886, 49 & 50 V. c. 25, "'Idiots,' or 'Imbeciles' do not include Lunatics" (s. 17).

Cp, LUNATIC: UNSOUND MIND.

IDLE AND DISORDERLY PERSON. — For the catalogue of those who come within this phrase, *V.* s. 3, Vagrancy Act, 1824, 5 G. 4, c. 83, enlarged by s. 7, 34 & 35 V. c. 108: Steph. Cr. 129. *Cp*, ROGUE AND VAGABOND.

The phrase includes able-bodied men who can work but will not because they are on strike, and so become indigent; but not their wives and children (*A-G.* v. *Merthyr Tydfil*, 1900, 1 Ch. 516; 69 L. J. Ch. 299; 82 L. T. 662; 48 W. R. 403; 64 J. P. 276). But however idle a person is he is not within this Act unless he is able and will not maintain himself; and it is immaterial that his inability is brought about by his own act, *e.g.* drinking to excess and thereby bringing on delirium tremens (*St. Saviour* v. *Burbridge*, 1900, 2 Q. B. 695; 69 L. J. Q. B. 886; 83 L. T. 317; 64 J. P. 725: 48 W. R. 685).

IDONEUS. — *V.* FIT.

IF. — "If he should die," construed as "When he should die," and not as importing a Contingency but as giving a Remainder after the death (*Smart* v. *Clark*, 3 Russ. 365; 5 L. J. O. S. Ch. 111; following *Billings* v. *Sandom*, 1 Bro. C. C. 393, 394, where the words were "In case of her demise"). *V.* WHEN: WHENEVER.

The four phrases apt for attaching a CONDITION to an estate are, *sub conditione* (On Condition); *proviso semper* (PROVIDED ALWAYS); *ita quoad* (So that); and *si contingat* (If it happen): each of the first three, of itself, operates as a Condition, but the last is "nought worth to such a Condition" unless it be followed by words of cesser or right of re-entry (Litt. ss. 328–331: *Vf*, Touch. 121–123: *Doe* d. *Henniker* v. *Watt*, 8 B. & C. 308).

Digitized by Google

"If" is sometimes qualificative; as, when a Lease is made for years "if" A. shall live so long (Touch. 123).

"If," in a stipulation, will generally create a Condition Precedent (*Bromfield* v. *Crowder*, 1 B. & P. N. S. 313, 326: *Festing* v. *Allen*, 12 M. & W. 289: *Duffield* v. *Duffield*, 3 Bligh, N. S. 260, 331). *Vh*, STIPULATED, at end.

"If" may create a Reservation; *e.g.* of Mines and minerals in an Inclosure Act, under these words, "*If* the lord shall enter on any inclosure for the purpose of getting any Coals or other Minerals" (*Micklethwait* v. *Winter*, 20 L. J. Ex. 313; 6 Ex. 644).

IF ALIVE. — A devise to A. for life, and, should B. survive A., to B. for life, and at B.'s death to C. "if alive"; means, if C. is "alive to enjoy," *i.e.* C., in order to take, must be alive at the death of the survivor of A. and B. (*Re Dundalk and Enniskillen Ry*, 1898, 1 I. R. 219).

IF AND WHENEVER. — *V.* WHENEVER.

IF ANY. — "If any," in a Pleading, is inconsistent with an Admission (*Scadding* v. *Eyles*, 9 Q. B. 860, 862).

IF FROM ANY CAUSE. — *V.* ANY.

IF IT HAPPEN. — *V.* IF.

IF MORE THAN ONE. — Devise to five in fee to be equally divided between them "if more than one"; — "I cannot strike out the words 'if more than one,' but I cannot read them as words of survivorship. I read them as if the testator had introduced the words 'if they should be more than one, I direct an equal division,' or 'I give to my five great-nieces if in existence at my death, and, to provide against intestacy, there shall be a division between those who survive me, if more than one'" (per Romilly, M. R., *Sanders* v. *Ashford*, 28 Bea. 613).

IF NECESSARY. — A defendant, under terms to take "Short Notice of Trial, if necessary," is not entitled to full notice, if the plaintiff, using reasonable diligence, is unable to give it (*Drake* v. *Pickford*, 15 M. & W. 607; 15 L. J. Ex. 346: *Pretty* v. *Nauscawen*, 43 L. J. Ex. 3; L. R. 9 Ex. 42).

V. NECESSARY.

IF POSSIBLE. — *V.* POSSIBLE.

IF REQUIRED. — *V.* ADVANCE: REQUIRED.

IF SUFFICIENT WATER. — *V.* SUFFICIENT WATER.

Digitized by Google

IF THEY SHALL THINK FIT. — *V. R.* v. *Boteler*, 33 L. J. M. C. 101; 4 B. & S. 959: *R.* v. *Adamson*, 45 L. J. M. C. 46; 1 Q. B. D. 201: Maxwell, 149, 150.

The Further Report of FRAUD by the Official Receiver of a Co "if he thinks fit," s. 8 (2), Comp Winding-up Act, 1890, means, "if he arrives at a judicial conclusion in his own mind, that such facts are before him and in proof" (per Halsbury, C., *Ex p. Barnes*, 1896, A. C. 146; 65 L. J. Ch. 394; 74 L. T. 153; 44 W. R. 433).

Generally, where a power has to be exercised if the donee of the power "shall think fit," it is for him to determine whether the occasion has arisen for the exercise of the power; and, in the absence of *mala fides*, his determination is final (*Ex p. Ramshay*, 18 Q. B. 193; 21 L. J. Q. B. 240).

The power to a Taxing Master to increase or diminish allowances of Sch 2, Solrs Rem Ord, "if, for any special reasons, he shall think fit," does not require him to state his reasons until he formally answers objections (*Re Mahon*, 1893, 1 Ch. 507; 62 L. J. Ch. 448; 68 L. T. 189; 41 W. R. 257: *Vf*, EXTRAORDINARY).

In such a phrase as "may, *if they shall see fit*" the words italicised seem surplusage (*Julius* v. *Oxford, Bp*, 5 App. Ca. 228: *Sv*, *Twickenham* v. *Munton*, 1899, 2 Ch. 603; 68 L. J. Ch. 601; 81 L. T. 136; 47 W. R. 660).

V. MAY: DISCRETION: THINK FIT.

IGNORAMUS. — *V.* TRUE BILL.

IGNORANCE. — "Ignorance of Title," preamble 12 & 13 V. c. 26; *V. Sutherland* v. *Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 953.

ILL. — The power (s. 17, 11 & 12 V. c. 42) to read a deposition if the deponent is "so ill as not to be able to travel," may arise when the Illness is from pregnancy (*R.* v. *Wellings*, 47 L. J. M. C. 100; 3 Q. B. D. 426: *Cp* SICKNESS), or paralysis of speech (*R.* v. *Cockburn*, 26 L. J. M. C. 136; Dears. & B. 203); but not in a case of mere nervousness at the thought of appearing in court (*R.* v. *Farrell*, L. R. 2 C. C. R. 116; 43 L. J. M. C. 94; 38 J. P. 390), or absence abroad (*R.* v. *Austin*, 25 L. J. M. C. 48; Dears. 612). *Vh*, *R.* v. *Stephenson*, 31 L. J. M. C. 147; L. & C. 165.

V. DISEASE: ILLNESS.

ILLEGAL. — "Illegal" has, in a statute, a meaning very near to, but not the same as, VOID; and where a thing is only "illegal" quà A., it is inoperative as against him and yet may be binding on B. (per Alderson, B., *Job* v. *Lamb*, 11 Ex. 542). On the other hand, a thing, *e.g.* a Wager, may be "null and void," s. 18, 8 & 9 V. c. 109, in the sense of being irrecoverable, without being "illegal" in the sense of being punish-

Digitized by Google

able or forbidden (per Lush, J., *Haigh* v. *Sheffield*, 44 L. J. M. C. 17; L. R. 10 Q. B. 102, cited by Smith, L. J., *Strachan* v. *Universal Stock Exchange, No. 2*, 1895, 2 Q. B. 697; 65 L. J. Q. B. 183: *Vf*, per Bowen, L. J., *Bridger* v. *Savage*, cited GAMING CONTRACT). So, a Bill or Note given for a BET on a horse-race, is void and irrecoverable (except in the hands of a HOLDER IN DUE COURSE), because by s. 1, 5 & 6 W. 4, c. 41, it is to be deemed to have been taken for an Illegal consideration (*Woolf* v. *Hamilton*, 1898, 2 Q. B. 337; 67 L. J. Q. B. 917; 79 L. T. 49; 47 W. R. 70). *Cp*, UNLAWFUL: UNLAWUL GAMING.

V. EXCESSIVE.

ILLEGAL DEALING.— *V.* DEALING.

ILLEGAL PAYMENT.—(*a*) At Parliamentary Elections; *V.* Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, ss. 13–21:

(*b*) At Municipal Elections; *V.* Municipal Elections (C. & I. P.) Act, 1884, 47 & 48 V. c. 70, ss. 9–18.

Vh, Leigh & Le Marchant, ch. 3: Mattinson & Macaskie, ch. 2: 2 Rogers, ch. 13.

"Illegal Payment," s. 247 (7), P. H. Act, 1875, *semble*, does not include a merely wrong method of accounting (*R.* v. *Dolby*, 1892, 2 Q. B. 301; 61 L. J. Q. B. 809; 67 L. T. 296; 56 J. P. 599).

ILLEGAL PRACTICES.—(*a*) At Parliamentary Elections; *V.* Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, ss. 7–12:

(*b*) At Municipal Elections; *V.* Municipal Elections (C. & I. P.) Act, 1884, 47 & 48 V. c. 70, ss. 4–8.

Vh, Leigh & Le Marchant, ch. 2: Mattinson & Macaskie, ch. 2: 2 Rogers, ch. 13: 6 Encyc. 297–313.

ILLEGALITY.—*V.* ULTRA VIRES.

ILLEGALLY.—"Illegally *dealing*"; *V.* DEALING.

Coin "illegally dealt with"; Stat. Def., 54 & 55 V. c. 72, s. 1 (2).

"Illegally *divert*" water in a Water Act; *V.* *Bradford* v. *Pickles*, 1895, A. C. 587; 64 L. J. Ch. 101, 759; 73 L. T. 353; 44 W. R. 190; 60 J. P. 3.

ILLEGITIMATE CHILD.— *V.* BASTARD: CHILD: NATURAL CHILDREN. *Cp*, RELATIONS.

ILLNESS.—An insurance against "any CLAIM or Demand" for which the insurer may become liable and may be required to pay in respect of the "Illness of any person," does not cover expenses properly incurred by the insurer in obtaining substitutes for a crew disabled by

Digitized by Google

illness, or similar expenses consequent upon such illness (*Rogers* v. *British Ship Owners' Assn*, 1 Com. Ca. 414).

V. ILL: SICKNESS.

ILL-TREAT. — *V.* CRUELTY *to Animals.*

ILLUMINATING POWER.— *V.* CANNEL.

ILLUSORY. — *V.* FICTITIOUS.

IMBARGO. — *V.* EMBARGO.

IMBECILE. — *V.* IDIOT.

IMITATE. — *V.* COPY: EXACT: REPRODUCTION.

"Fraudulent or Obvious Imitation" of a NEW DESIGN; *V.* OBVIOUS.

IMMEDIATE APPROACH. — "Immediate Approach" to a Railway Bridge; *V. Waterford Ry* v. *Kearney*, 12 Ir. C. L. Rep. 224: *Fosberry* v. *Waterford Ry*, 13 Ir. C. L. Rep. 494: *Lond. & N. W. Ry* v. *Skerton*, 33 L. J. M. C. 158; 5 B. & S. 559.

IMMEDIATE ARREST. — *V. R.* v. *Curran*, 3 C. & P. 397: *Hanway* v. *Boultbee*, 1 Moo. & R. 15: IMMEDIATELY: FRESH PURSUIT.

IMMEDIATE EXPECTANCY. — *V.* ENTITLED IN IM. EXP.

IMMEDIATE POSSESSION. — In an Agreement for a Lease, the words, "Immediate Possession if required," do not fix the commencement of the term; and if it be not otherwise fixed there is no contract (*Rock Portland Cement Co* v. *Wilson*, 52 L. Ch. 214).

In a V. & P. contract to give "Immediate Possession," that means, actual occupation (*N. Staffordshire Ry* v. *Lawton*, 3 N. R. 31).

V. POSSESSION.

IMMEDIATE REVERSION. — It is submitted that this phrase, — *e.g.* in s. 7, 1 & 2 V. c. 74, cited LANDLORD, — means that REVERSION which will become an estate in Possession immediately on the DETERMINATION of the existing term, estate, or interest, in Possession.

IMMEDIATE USE OR ENJOYMENT. — "'OCCUPIER,' shall include every person in the Immediate Use or Enjoyment of any hereditaments rateable under this Act, whether corporeal or incorporeal," 1 & 2 V. c. 56, s. 124; *V. Callan* v. *Armstrong*, 16 L. R. Ir. 33: *Middleton* v. *M'Donnell*, 1896, 2 I. R. 228.

IMMEDIATELY. — "The word 'Immediately,' although in strictness it excludes all mean Times, yet to make good the Deeds and Intents of Parties it shall be construed such convenient Time as is reasonably requisite for doing the Thing" (*Pybus* v. *Mitford*, 2 Lev. 77). "The Court

Digitized by Google

cannot say it absolutely excludes all *mesne* acts" (*R.* v. *Francis*, Ca. t. Hard. 115; Cunningham, 275): but "Immediately" implies that the act to be done should be done with all Convenient Speed (per Rolfe, B., *Thompson* v. *Gibson*, 10 L. J. Ex. 243; 8 M. & W. 281).

Thus, as regards a Judge's Certificate which any particular statute says shall be given "immediately," that "does not mean ten minutes, or a quarter or half an hour; but such a lapse of time as excludes the possibility of other business intervening to alter the impression made on the judge's mind" (per Abinger, C. B., *Ib.*). *V.* as to granting Judge's Certificates "immediately," under the various statutes: (Costs) *Thompson* v. *Gibson*, sup: *Gillett* v. *Green*, 10 L. J. Ex. 124; 7 M. & W. 347: *Spain* v. *Cadell*, 10 L. J. Ex. 313; 8 M. & W. 131: *Page* v. *Pearce*, 10 L. J. Ex. 434; 8 M. & W. 677: *Shuttleworth* v. *Cocker*, 10 L. J. C. P. 1; 2 Sc. N. R. 47: *Nelmes* v. *Hedges*, 2 Dowl. N. S. 350: *Grace* v. *Clinch*, 12 L. J. Q. B. 273; 4 Q. B. 606: *Jones* v. *Williams*, 14 L. J. Ex. 76; 13 M. & W. 420: *Forsdike* v. *Stone*, 37 L. J. C. P. 301; L. R. 3 C. P. 607: (Special Jury) *Christie* v. *Richardson*, 12 L. J. Ex. 86; 10 M. & W. 688: *Leech* v. *Lamb*, 25 L. J. Ex. 17; 11 Ex. 437; 4 W. R. 99; 26 L. T. O. S. 107: *Skipper* v. *Skipper*, 29 L. J. P. M. & A. 133: *Webster* v. *Appleton*, 62 L. T. 704.

"Immediately" and "Forthwith" are quite unelastic in the Irish R. 19, Ord. 59, which requires the application for special leave to appeal to be made "immediately" after judgment, and which requires the applicant "forthwith" to hand in a written requisition stating grounds of appeal (*Re Hinde*, 27 L. R. Ir. 428).

V. Directly: Forthwith: Possible.

So, where a statute requires anything to be done "Immediately," that is the same thing as "Forthwith"; and implies "speedy and prompt action and an omission of all delay; in other words, that the thing to be done should be done as quickly as is reasonably possible" (per Cockburn, C. J., *R.* v. *Berkshire Jus.*, 48 L. J. M. C. 137; 4 Q. B. D. 469: *Va*, *R.* v. *Aston*, 19 L. J. M. C. 236; 1 L. M. & P. 491). So, where on an Appeal to Quarter Sessions recognizances are required to be entered into "Immediately" after notice of appeal, that raises a question of fact which the Sessions are to determine having regard to all the circumstances of each case; and if they, fairly exercising their judgment, say that a lapse of a week is *not* too long (*Re Blues*, 5 E. & B. 291), or that one of four days *is* too long, their determination is final (*R.* v. *Berkshire Jus.*, sup). But where a statute empowers Justices to commit if fine and costs are not paid "Immediately after Conviction, or within such period as the Justices shall, at the time of Conviction, appoint," the Justices may commit if the money be not paid that very instant, for it is the same as if they said they would give no time (*Arnold* v. *Dimsdale*, 2 E. & B. 580; 1 W. R. 430).

"May be *immediately apprehended* without a Warrant and *forthwith*

Digitized by Google

taken" before a Justice, s. 103, 24 & 25 V. c. 96; Whether this power is properly exercised, is a question for the jury, who should give effect to "Immediately" and "Forthwith" according to the principle of *R.* v. *Berkshire Jus* (*Griffiths* v. *Taylor, Thatcher* v. *Taylor*, 46 L. J. C. P. 152; 2 C. P. D. 194).

Similarly, where a power to seize goods is given by a Bill of Sale if the grantor does not "immediately" upon Demand make a prescribed payment, that means that the payment is to be made within a reasonably quick and prompt time after the demand, of which the jury are to judge having regard to the circumstances of the time and place of making the demand, including time to enquire into the authority of the person making the demand if it be not made by the creditor himself (*Toms* v. *Wilson*, 32 L. J. Q. B. 33, 382; 4 B. & S. 455; 11 W. R. 117; 7 L. T. 421: *Brighty* v. *Norton*, 32 L. J. Q. B. 38; 3 B. & S. 305; 11 W. R. 167: *Massey* v. *Sladen*, 38 L. J. Ex. 34; L. R. 4 Ex. 13: *Svthc* distd *Wharlton* v. *Kirkwood*, 29 L. T. 644; 22 W. R. 93). *Cp*, INSTANTLY.

A similar rule would apply where a person is to perform an act "immediately" after an Award (18 Edw. 4, 22, cited *Butler & Baker's Case*, 3 Rep. 28 b, 34: *Hoggins* v. *Gordon*, 3 Q. B. 466), or "immediately" pursuant to a Contract (*Alexiadi* v. *Robinson*, 2 F. & F. 679).

Where a Consequence or Conclusion of Law is to follow "immediately after" an Event, that means, the next moment after (*Eager* v. *Furnivall*, 17 Ch. D. 120: *Vf, R.* v. *Wigan*, cited FORTHWITH).

A bequest to a Wife though to be paid to her "immediately" after the testator's decease, has no priority over other legacies, if the estate be insufficient to satisfy all (*Blower* v. *Morret*, 2 Ves. sen. 420, *whc* followed by Chitty, J., *Re Schweder*, 1891, 3 Ch. 44; 60 L. J. Ch. 656; 65 L. T. 64; 39 W. R. 588, who rejected the decision of Malins, V. C. *Re Hardy*, 50 L. J. Ch. 241; 17 Ch. D. 798). *Cp, Re Schweder*, cited HOME.

Limitations "from and immediately after" a Life Estate; *V.* FROM AND AFTER.

V. ON DEMAND: REASONABLE: PROCEED IMMEDIATELY: OPPOSITE.

IMMEDIATELY ADJOINING LAND. — *V.* ADJOINING OWNER

IMMEDIATELY CONNECTED. — "Works immediately CONNECTED WITH" the main building of the Crystal Palace, s. 21, Crystal Palace Act, 1881, — connotes the works connected with that structure, not those connected with the Objects of the Crystal Palace Co; a Polo Stable, a quarter of a mile from the main building, is not "immediately connected with" it (*Crystal Palace Co* v. *London Co. Co.*, 16 Times Rep. 184).

IMMEMORIAL. — *V.* TIME OUT OF MIND: MEMORY: PRESCRIPTION.

Digitized by Google

IMMORAL.—Quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, "'Immoral ACT,' 'Immoral CONDUCT,' and 'Immoral *Habit,*' shall include such acts, conduct, and habits, as are proscribed by the 75th and 109th Canons issued by the Convocation of the Province of Canterbury in 1603" (s. 12). Those Canons are summed up in the 109th as "Uncleanness and Wickedness of Life," and confirm the conclusion that neither SIMONY, nor a False Declaration against Simony, is "Immoral" within the Act. That word, as there used, is directed against "Offences which do not depend on disputable points of law, or on matters so highly controversial as doctrine and ritual, but which in the consensus of general opinion are acts of personal immorality, such as various forms of vice or dishonesty, or other like conduct of evil example generally, and especially so if committed by a person invested with sacred functions" (per Halsbury, C, in delivering jdgmt of the Court in *Beneficed Clerk* v. *Lee*, 1897, A. C. 226; 66 L. J. P. C. 8; 75 L. T. 461; 13 Times Rep. 125).

Immoral Home; *V. Re G.*, cited MAINTENANCE.

IMMOVEABLES.—A devise of all testator's "Immoveables" passes leases, rents, grass, and the like; but not debts (Touch. 447). *V.* MOVEABLES.

IMPANEL.—*V.* PANEL.

IMPARTIALITY.—"Difficult" for trustee in bankry "to act with impartiality," s. 21 (2), Bankry Act, 1883; *V. Re Lamb*, 1894, 2 Q. B. 805; 64 L. J. Q. B. 71; 71 L. T. 312: *Re Mardon*, 1896, 1 Q. B. 140; 65 L. J. Q. B. 111; 73 L. T. 480; 44 W. R. 111.

IMPEACHABLE.—A Tenant for Life is not "Impeachable for WASTE in respect of Minerals," s. 11, S. L. Act, 1882, if he is entitled to work the Mines, whether that power arises from the express terms of the Settlement or only from the fact that the Mines are OPEN (*Re Chaytor*, 1900, 2 Ch. 804; 69 L. J. Ch. 837; 49 W. R. 125).

V. IMPEACHMENT.

IMPEACHED.—"Impeached, affected, or incumbered, in title, estate, or otherwise howsoever"; *V. Clifford* v. *Hoare*, 43 L. J. C. P. 225; L. R. 9 C. P. 362: AFFECT: IMPEACHMENT.

IMPEACHMENT.—There is no necessity to confine "Impeachment" to an impeaching of Title; "anything that operates as a hindrance, let, impediment, or obstruction, to the making of the profits out of which, *e.g.* an Annuity is to arise, is an Impeachment" of the Annuity, within a clause that nothing is to be done whereby the Annuity may be "impeached or become void" (*Pitt* v. *Williams*, 5 A. & E. 885).

Digitized by Google

"Impeachment of Waste," is the liability on a Termor, Life Tenant, or other Qualified Owner, for WASTE.

V. IMPEACHABLE: WITHOUT IMPEACHMENT OF WASTE.

IMPENDING. — A legal proceeding is "impending" when a recourse to it is pressingly necessary in order to ascertain a right or a status (*Grimston* v. *Turner*, 18 W. R. 724).

V. PENDING.

"Impending *Danger*," Board of Trade Regulations for Steam Trams (No. 3); *V. Jolly* v. *North Staffordshire Tramway Co*, Times, 27 July 1887: *Downing* v. *Birmingham & Mid. Trams*, 5 Times Rep. 40.

IMPERCEPTIBLE. — Land not suddenly Derelict but formed by Alluvion of the Sea, — *i.e.* by Imperceptible Degrees, — belongs to the owners of the adjoining lands, and not to the Crown (*Gifford* v. *Yarborough*, 5 Bing. 163). What are "Imperceptible Degrees" within that rule is shown by the following obs of Best, C. J., in the case cited, — "Unless trodden by cattle, many years must elapse before lands formed by Alluvion would be hard enough or sufficiently wide to be used beneficially by any one but the owner of the lands adjoining. As soon as Alluvion Lands arise above the water the cattle from the adjoining lands will give them consistency by treading on them, and prepare them for grass or agriculture by the manure which they will drop on them. When they are but a yard wide the owner of the adjoining lands may render them productive. Thus lands which are of no use to the King will be useful to the owner of the adjoining lands; and he will acquire a title to them on the same principle that all titles to lands have been acquired by individuals, viz. by Occupation and Improvement." When that case was in the Q. B. Abbott, C. J., delivering the jdgmt of the Court, said, — "'Imperceptible,' must be understood as expressive only of the manner of the accretion, and as meaning imperceptible *in its progress*, not imperceptible after a long lapse of time" (*R.* v. *Yarborough*, 3 B. & C. 107: *Svth*, *A-G.* v. *Chambers*, 4 D. G. & J. 70, 71).

In *Re Hull & Selby Ry* (5 M. & W. 332; 8 L. J. Ex. 260), Abinger, C. B., seems to have thought that that is "imperceptible" "which cannot be ascertained from day to day." Probably, however, the learned judge did not mean those words in their strict literalness; and where the evidence is that the recession of the Sea could be plainly perceived from time to time as it went on, then it cannot be said to have been "imperceptible," and the accretions will belong to the Crown (*A-G.* v. *Reeve*, 1 Times Rep. 675). *Vh*, INCREASE: 2 Bl. Com. 262. *Cp*, *Hindson* v. *Ashby*, cited SEVERAL FISHERY.

IMPERFECT. — An "Imperfect or Erroneous" Valuation, within s. 11, Copyhold Act, 1887, 50 & 51 V. c. 73, includes a case where the

Digitized by Google

valuation is too low; "Erroneous" is not confined to a valuation "erroneous in principle" (*R.* v. *Land Commrs,* 23 Q. B. D. 59; 58 L. J. Q. B. 313; 5 Times Rep. 445).

IMPERFECTIONS. — *V.* FAULTS.

IMPERIAL. — Quà (and by) s. 2, Pensicns (Colonial Service) Act, 1887, 50 & 51 V. c. 13, employment in an "Imperial civil capacity," "means the Permanent Civil Service of the State, and also the administration of the government of a Colony, within the meaning of the Colonial Governors (Pensions) Act, 1865."

IMPERIL. — Where a man, acting for a married woman with whom he was living, took a Lease of a Public-house and agreed with the landlord that he would do nothing whereby the License might be "imperilled," and handed the Lease and endorsed the License to the woman who carried on the business, and afterwards, having quarrelled with the woman, the man left her with an intention to abandon the premises and did not return, and the woman continued to carry on the business; held, that, only 3 days having elapsed since the man left, he had not then done anything to "imperil" the License so as to justify the landlord to re-enter under a clause of forfeiture: — had the landlord allowed time to elapse sufficient to enable the woman to obtain a transfer of the license, and she had neglected to do so, possibly the result would have been different (*Moore* v. *Robinson,* 48 L. J. Q. B. 156). *V.* DANGER: AFFECT.

IMPERSONATE. — *V.* PERSONATE.

IMPLEMENT. — "Implements," are "things of necessary use in any trade or mystery which are implyed in the practice of the said trade, or without which the worke cannot be accomplisht. And so also for furniture of household with which the house is filled" (Termes de la Ley, adopted in *Coolidge* v. *Choate,* 11 Met. 82).
V. MATERIALS: MACHINE.

IMPLEMENT OF HOUSE BREAKING. — Common door-keys, or a pair of pincers, may be such Implements within s. 58, 24 & 25 V. c. 96 (*R.* v. *Oldham,* 21 L. J. M. C. 134; 2 Den. 472).

IMPLEMENT OF HUSBANDRY. — "'Implements of Husbandry,' in 3 G. 4, c. 126, s. 32, shall be deemed to include Threshing Machines" (s. 4, 14 & 15 V. c. 38); and a Steam Engine used for working a Threshing Machine (*semble,* or any other Implement of Husbandry) is part of the Machine, and within the exemption from Turnpike Toll, though unconnected with the machine at the time of passing through the Toll-gate, and though capable of being used for other purposes (*R.* v. *Matty,* 27 L. J. M. C. 59; 8 E. & B. 712).
V. FARMING STOCK: HUSBANDRY.

Digitized by Google

IMPLICATION.—*V.* By Law.

For the rules as to the construction of Gifts by Implication; *V. Kinsella* v. *Caffrey*, 11 Ir. Ch. Rep. 154, 162: *Re Rawlins*, 59 L. J. Ch. 599; 45 Ch. D. 299: *Re Springfield*, 1894, 3 Ch. 603.

"Necessary Implication"; *V.* Necessary.

In *West Derby* v. *Metrop Life Assrce* (cited Enable), Ld Davey spoke of the appellant's argument as amounting to "the old, and apparently ineradicable, fallacy of importing into an enactment, which is expressed in clear and apparently unambiguous language, something which is not contained in it by what is called Implication, from the language of a proviso which may or may not have a meaning of its own."

IMPLIED.—Contract with an Employer "express or implied" (*V.* Workman) "are very wide words, and would, in my judgment, include all cases of men engaged by any agent for the purpose of the employer, and men known by the employer or his agent to be working and allowed to go on working in expectation of wages from the employer" (per Rigby, L. J., *Marrow* v. *Flimby Co*, cited Employer).

"There shall not be implied in this Lease any covenant or provision"; *V. Eccles* v. *Mills*, 1898, App. Ca. 360.

As to when a qualifying Term or Condition is implied; *V. Taylor* v. *Caldwell*, cited Impossible: per Brett, J., *Daniels* v. *Harris*, L. R. 10 C. P. 8; 44 L. J. C. P. 5: *Thorn* v. *Mayor of London*, L. R. 10 Ex. 123; 44 L. J. Ex. 70.

Implied Trusts; *V.* Express.

IMPORT FOR SALE.—As to "importing for sale" a printed book contrary to s. 17, Copyright Act, 1842; *V. Cooper* v. *Whittingham*, 49 L. J. Ch. 752; 15 Ch. D. 501: *Vthc*, for the distinction drawn by Jessel, M. R., between "import for sale" and "*knowingly* sell, publish, or expose to sale" as provided in the section cited: *Vf*, Watson Eq. 127.

IMPORTED.—The 48 G. 3, c. civ, s. 33, imposed a duty on all goods "imported into or exported from Berwick Harbour." The harbour extended from Berwick Bridge down the Tweed to the sea, but not above the Bridge. Goods were brought up the river in a sea-going vessel, which, having first used the Harbour Commissioners' rings and posts in order to moor the vessel while lowering the masts, passed through Berwick Bridge and unloaded her cargo about 200 yards above the Bridge and beyond the limits of the Harbour; held, that these Goods were not "imported into" the Harbour, and as such liable to duty (*Wilson* v. *Robertson*, 24 L. J. Q. B. 185; 4 E. & B. 923). *Vf, Mersey Docks* v. *Twigge*, cited Beyond Seas.

Goods are "imported into Canada," s. 4, Canada Customs Tariff Act, 1894, "when the goods are landed and delivered to the importer or to his

Digitized by Google

order, — or when they are taken out of warehouse if, instead of being delivered, they have been placed in bond"; and, as a result, this must be at the Port of Discharge (*Canada Sugar Co* v. *The Queen*, 1898, A. C. 735; 67 L. J. P. C. 126; 79 L. T. 146, in *whc* was considered the def of "Importation" in s. 150, Customs (Canada) Act, 1886, as amended by s. 12, 52 V. c. 14).

"Cause to be imported"; *V.* IMPORTER.

V. EXPORTED.

IMPORTER. — "Importer," in any Act relating to the Customs is "to apply to and include any Owner or other person for the time being possessed of, or beneficially interested in, any goods imported into the UNITED KINGDOM, from the time of the importation thereof until they shall, on payment of the duties thereon or otherwise, be duly delivered or discharged from the custody or control of the Customs" (s. 8, 22 & 23 V. c. 37); that def is not to be amplified by reading into it the phrase in s. 6, "cause to be imported," a phrase which is only applicable to a person who has ordered the goods, or who in fact has otherwise caused them to be imported; nor, on the other hand, does "cause to be imported" connote the same as "Importer" as so defined (*Budenberg* v. *Roberts*, L. R. 1 C. P. 575; 35 L. J. M. C. 235; 14 W. R. 992). The above def is replaced by s. 284, 39 & 40 V. c. 36, which enacts that "'Importer,' shall mean, include, and apply to, any Owner or other person for the time possessed of, or beneficially interested in, any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the Officers of Customs."

Quà Sale of Food and Drugs Acts, "Importer" includes "any person who (whether as Owner, Consignor or Consignee, Agent or Broker) is in possession of, or in anywise entitled to the custody or control of, the article" (s. 1 (2), 62 & 63 V. c. 51).

IMPORTUNITY. — "Importunity" (to invalidate a Will), "in its correct legal acceptation, must be in such a degree as to take away from the testator free agency; it must be such importunity as he is too weak to resist; such as will render the act no longer the act of the deceased; not the free act of a capable testator" (Wms. Exs. 39, citing *Kindleside* v. *Harrison*, 2 Phil. Ecc. 551, 552). *Cp,* UNDUE INFLUENCE.

IMPOSE. — *V.* DECEIVE.

IMPOSED. — As used in a covenant to pay Rates, &c, "imposed" means, imposed by compulsion; therefore, where a lessor covenanted to pay the rates, taxes, and impositions, which might be "imposed" on the demised premises, it was held that he was not liable to the WATER RATE (*Badcock* v. *Hunt*, 58 L. J. Q. B. 134; 22 Q. B. D. 145). *Cp,* ASSESSED.

V. CHARGED: IMPOSITION: RATE: RATED OR ASSESSED.

Digitized by Google

IMPOSITION. — "Impositions," in the collocation in a lessee's covenant to pay "Taxes, Rates, Assessments, and Impositions," was held to mean, Impositions of a nature similar to that of Taxes, Rates, and Assessments, and that the word 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: *Sv*, *Foulger* v. *Arding*, 1902, 1 K. B. 700; 71 L. J. K. B. 499, where "Impositions" seems to have been regarded as a Word of Indemnity in the landlord's favour). In the argument of *Crosse* v. *Raw* (43 L. J. Ex. 145) counsel said that "Impositions" was as extensive a word as "OUTGOINGS"; but that is not borne out by *Tidswell* v. *Whitworth*. *Vf*, *Arding* v. *Economic Printing Co* and *Gloster* v. *Murphy*, cited TAXES.

V. ASSESSMENT: BURDEN: IMPOSED: IMPOST: DEDUCTION: DUTIES: OUTGOING: RATES: TAXES.

IMPOSSIBLE. — *V.* IMPRACTICABLE: POSSIBLE.

"It is said we cannot define 'Impossibility' of discharging duties. Certainly not. Any definition would be either so wide as to be nugatory, or too narrow to fit the ever varying events of human life. Neither can we define other terms applicable to human conduct, — such as, 'Honesty,' or 'GOOD FAITH,' or 'MALICE,' or, to come nearer to the present case (Judicial Separation) 'DANGER,' 'Reasonable Apprehension,' 'CRUELTY' itself. Such rudimentary terms elude *à priori* definition; they can be illustrated but not defined; they must be applied to the circumstances of each case by the judge of fact which in this case is a Jury directed by a Judge and controlled, if erring in principle, by the Court above" (per Ld Hobhouse, *Russell* v. *Russell*, 1897, A. C. 436; 66 L. J. P. D. & A. 134).

As to what is an Impossibility of carrying on the Business of a Co, so as to make it "JUST and Equitable" that the Co should be wound up; *V.* per Kekewich, J., *Re Bristol Joint Stock Bank*, 59 L. J. Ch. 724; 44 Ch. D. 711.

Impossibility of performing a Contract "is, in general, no answer to an action for damages for non-performance. If the thing to be done is notoriously physically impossible and was known to be so by both parties at the time of the making of the contract, the contract will be a void contract, unless the promisor has taken upon himself to warrant that it is possible" (Add. C. 132, citing per Willes, J., *Clifford* v. *Watts*, L. R. 5 C. P. 585; 40 L. J. C. P. 42, 43: *Hills* v. *Sughrue*, 15 M. & W. 253: *Jones* v. *St. John's College*, L. R. 6 Q. B. 124; 40 L. J. Q. B. 80). *Vf*, per Blackburn, J., *Taylor* v. *Caldwell*, 32 L. J. Q. B. 166; 3 B. & S. 833, cited by Lindley, L. J., *Turner* v. *Goldsmith*, 1891, 1 Q. B. 544; 60 L. J. Q. B. 247: *Ashmore* v. *Cox*, 1899, 1 Q. B. 436; 68 L. J. Q. B. 72; 4 Com. Ca. 48: *Nickoll* v. *Ashton*, 1900, 2 Q. B. 298; 69 L. J. Q. B. 640; 82 L. T. 761: *Appleby* v. *Myers*, 36 L. J. C. P. 331; L. R. 2 C. P. 651: *Thornborow* v. *Whitacre*, 2 Raym. Ld. 1164.

Digitized by Google

IMPOST. — "'Impost' is taken for the taxes that is payed the King for any merchandize brought in into any haven from places beyond the seas" (Termes de la Ley, adopted in *Brown* v. *Maryland*, 12 Wheaton, 437).

V. IMPOSITION.

IMPOTENT. — *V.* SICK.

IMPOUND. — To "impound or otherwise secure" a Distress, 11 G. 2, c. 12, implies its being put in an enclosed place (per Tindal, C. J., *Thomas* v. *Harries*, 1 M. & G. 702; 9 L. J. C. P. 308; 1 Sc. N. R. 524). *V.* SECURE: POUND.

A document is impounded when it is ordered by a Court to be kept in the custody of its officer.

IMPOUND OR CONFINE. — The penalty provided by 12 & 13 V. c. 92, s. 5, on "EVERY person who shall impound or confine" animals and then fail to supply them with proper food and water, applies to the person at whose instance they are detained, and does not extend to the pound-keeper who, in keeping the animals, only does what he is obliged to do (*Dargan* v. *Davies*, 46 L. J. M. C. 122; 2 Q. B. D. 118; 41 J. P. 468). *Vh,* 17 & 18 V. c. 60: Overt Pound, sub OPEN.

IMPRACTICABLE. — "In matters of business a thing is said to be IMPOSSIBLE when it is not practicable; and a thing is Impracticable when it can only be done at an excessive or unreasonable cost. A man may be said to have lost a shilling when he has dropped it into deep water; though it might be possible, by some very expensive contrivance, to recover it. So, if a ship sustains such extensive damage that it would not be reasonably practicable to repair her, — seeing that the expense of repairs would be such that no man of common sense would incur the outlay, — the ship is said to be totally lost" (per Maule, J., *Moss* v. *Smith*, 9 C. B. 103; 19 L. J. C. P. 228, cited with approval by Ld Blackburn, *Shepherd* v. *Henderson*, 7 App. Ca. 69, 70, and by Brett, L. J., *Nelson* v. *Dahl*, cited PERMANENT: *Vf,* per Alderson, B., *Benson* v. *Chapman*, 2 H. L. Ca. 696).

V. INEVITABLE, at end: NECESSITY: POSSIBLE: TOTAL LOSS.

IMPRIMIS. — *V.* IN THE FIRST PLACE.

IMPRISONMENT. — "'Imprisonment' is no other thing but the restraint of a mans liberty, whether it bee in the open field, or in the stocks, or cage in the streets, or in a mans owne house, as well as in the common Gaole; and in all these places the party so restrained is said to be a Prisoner so long as he hath not his liberty freely to goe at all times to all places whither he will, without baile or mainprise or otherwise" (Termes de la Ley). *Vf, R.* v. *Pelham*, 8 Q. B. 963: PRISON.

Digitized by Google

When a statute provides punishment by "Commitment" or "Imprisonment" without stating its commencement, it commences immediately (*Foggassas' Case, Bonham's Case,* Plowd. 17 a, and 8 Rep. 119; *Cp,* 11 & 12 V. c. 43, s. 25); but if there be no limit to its duration, the prisoner must remain at the discretion of the Court (Dwar. 674, citing Dalt. 410).

V. FALSE IMPRISONMENT: ATTACHMENT FOR DEBT: SENTENCE.

Note. As to power to suspend Order for Imprisonment under Debtors Act, 1869, *V. Stonor* v. *Fowle,* 13 App. Ca. 20; 57 L. J. Q. B. 387; 58 L. T. 1; 36 W. R. 742; 52 J. P. 228, *whcv* for Ld Bramwell's obs as to inutility of short committals.

IMPROPER.—"'Improper' really means 'WRONGFUL,'—that is otherwise than by INEVITABLE accident" (per Brett, M. R., *The Warkworth,* 53 L. J. P. D. & A. 66).

An Auctioneer's neglect to ascertain the Reserve Price before commencing a sale, is not such "Improper *Conduct* in the Management of the Sale," s. 7, 30 & 31 V. c. 48, as would authorize the Court to open the biddings (*Brown* v. *Oakshott,* 38 L. J. Ch. 717).

"Improper" person to be a Member of a Club or Society, cannot be extended by an innuendo to mean a swindler and a sharper; for "there may be numerous reasons why a person may not be fit to become a Member, even though he be not a swindler or sharper" (*Goldstein* v. *Foss,* 2 Y. & J. 155).

Unnecessary or Improper *Party*; *V.* NECESSARY.

"Improper, vexatious, or unnecessary," *Proceeding,* R. 27 (20), Ord. 65, R. S. C.; *V. Garrard* v. *Edge,* 59 L. J. Ch. 379; 44 Ch. D. 224; 62 L. T. 510; 38 W. R. 455.

Improper *Stowage*; *V. Canada Shipping Co* v. *British Shipowners Assn,* cited IMPROPER NAVIGATION.

IMPROPER NAVIGATION.—"'Improper Navigation,' within the meaning of this deed (one between Owners for their mutual indemnity), is something improperly done with the ship or part of the ship in the course of the voyage . . . an omission properly to navigate the ship" (per Willes, J., *Good* v. *London Steamship Owners Assn,* L. R. 6 C. P. 569); accordingly, it was there held that damage to cargo from water, caused by the bilge-cock and sea-cock being negligently left open, was damage from "Improper Navigation."

"Improper Navigation," s. 54 (4), Mer Shipping Act Amendment Act, 1862, may result as well from structural defect in the vessel or from its gear being out of order, as from the negligence of those on board (*The Warkworth,* 53 L. J. P. D. & A. 4, 65; 9 P. D. 20, 145: *Carmichael* v. *Liverpool Sailing-Ship Assn,* 56 L. J. Q. B. 208, 428; 19 Q. B. D. 242; 57 L. T. 550; 35 W. R. 793; 3 Times Rep. 636).

Digitized by Google

But neither in a document *inter partes*, nor in the statute cited, does damage to cargo, caused by its being placed in a badly cleansed hold, arise from "Improper Navigation"; such damage arises rather from "Improper Stowage" (*Canada Shipping Co* v. *British Shipowners Assn*, 23 Q. B. D. 342; 58 L. J. Q. B. 462; 61 L. T. 312; 38 W. R. 87; 6 Asp. 422; 5 Times Rep. 700).

V. NAVIGATION.

IMPROPRIATION.—*V.* Phil. Ecc. Law, 219: *Cp*, APPROPRIATION.

IMPROVE.—"Utmost endeavours to improve," 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: UTMOST.

"Having improved" Buildings: *V.* ERECTED.

A Lease by which the lessee undertakes "to do NECESSARY Repairs," is within a Power authorizing a lease to any one who agrees "to improve *or* repair" the premises (*Truscott* v. *Diamond Rock-Boring Co*, 51 L. J. Ch. 259; 20 Ch. D. 251). *V.* REPAIR.

"Improve" a MARKET; *V. A-G.* v. *Cambridge*, L. R. 6 H. L. 303; 22 W. R. 37.

"Improved RENT," s. 41, 14 G. 3, c. 78; *V. Beardmore* v. *Fox*, 8 T. R. 214: *Lambe* v. *Hemans*, 2 B. & Ald. 467.

Barren Heath or Waste Ground is not "improved and converted into Arable-Ground, or Meadow," s. 5, 2 & 3 Edw. 6, c. 13, by merely turning cattle thereon; the phrase connotes some act of cultivation (*Ross* v. *Smith*, 1 B. & Ad. 907).

IMPROVEMENT.—A covenant in a Lease to deliver up the premises at the end of the term with all "Improvements," does not, *semble*, include *Trade* FIXTURES (*Cosby* v. *Shaw*, 23 L. R. Ir. 181); but in 1832, the Common Pleas in England held that such a covenant, in the Lease of a Water-Mill, included a pair of new mill-stones set up by the lessee, although the Custom of the Country authorized him to remove them (*Martyr* v. *Bradley*, 9 Bing. 24; 1 L. J. C. P. 147). *Cp*, ERECTION. *Vf*, WINDOW.

A Lease which expressly or impliedly empowers the making of "Improvements," probably, justifies the conversion of the premises from a useless store-house into useful dwelling-houses, especially if the term be a long one and the external walls be not interfered with (*Doherty* v. *Allman*, 3 App. Ca. 709; 39 L. T. 129; 26 W. R. 513: *Vf*, WASTE). If such a conversion were made without objection, it is submitted, it would have to be given up by the lessee under an obligation to deliver up with all "Improvements."

"Improvements capable of removal *without injury to the land itself*," in a proviso enabling a lessee to remove them, embraces improvements affixed to the soil which can be removed without substantial injury to the

Digitized by Google

land; the proviso justifies the removal of brick improvement buildings down to their foundations (*London & S. African Exploration Co* v. *De Beers*, 1895, A. C. 451; 64 L. J. P. C. 123; 72 L. T. 609).

The legislation giving *Compensation to Tenants* for "Improvements" received its first definition from the Landed Property (Ir) Improvement Act, 1860, 23 & 24 V. c. 153, — s. 37 of which contains a list of such "Improvements"; *Vf*, Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46, s. 70; Land Law (Ir) Act, 1881, 44 & 45 V. c. 49; Land Law (Ir) Act, 1896, 59 & 60 V. c. 47. Larger lists of such "Improvements" are given in the Schedules to Agricultural Holdings (England) Act, 1883, and Agricultural Holdings (Scotland) Act, 1883. *Va*, Crofters Holdings (Scotland) Act, 1886, 49 & 50 V. c. 29; Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26; Tenants Compensation Act, 1890, 53 & 54 V. c. 57; Market Gardeners Compensation Act, 1895, 58 & 59 V. c. 27. *V.* PERMANENT.

Semble, for a Lessee to convert part of an Arable Farm (in the neighbourhood of London, or other large town) into a MARKET GARDEN and thereon to erect glass-houses for the cultivation of tomatoes, mushrooms, grapes, and such like, is to effect an "Improvement," within the Agricultural Holdings (England) Act, 1883, for which, if done with the landlord's consent, the lessee may claim compensation under that Act (per Kekewich, J., *Meux* v. *Cobley*, 1892, 2 Ch. 253; 61 L. J. Ch. 452, 453).

The legislation for the *Improvement of Land by Owners of Limited Interests* received its first definition from the Landed Property (Ir) Improvement Act, 1860 (sup) — by s. 11 of which a variety of things were enumerated as "Improvements." A considerable amplification of that list was (by its s. 9) adopted for the Improvement of Land Act, 1864, 27 & 28 V. c. 114, which list is now extended so as to comprise all the "Improvements" authorized by the S. L. Acts (s. 30, S. L. Act, 1882).

The list in the Act of 1864, but somewhat amplified, was adopted for the law of Entail in Scotland, as authorized "Improvements" (s. 3, 38 & 39 V. c. 61).

It was adopted, but still further amplified, as the "Improvements" authorized quà Settled Land in England by s. 25, S. L. Act, 1882, which again is enlarged by s. 13, S. L. Act, 1890: *Vth*, ADDITION: BUILDING: FARM HOUSE: INCLOSE: LET: REBUILDING: RENTAL. This code was intended to embrace "Improvements which are calculated to render the Settled Land more remunerative" (per Lopes, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23); but do *not* include the ordinary incidents of occupation, *e.g.* House Sanitation (*Re Tucker*, 1895, 2 Ch. 468; 64 L. J. Ch. 513: *Sv*, s. 25 (xviii) S. L. Act, 1882), unless of a structural character (*Re Thomas*, 1900, 1 Ch. 319; 69 L. J. Ch. 198). Re-roofing farm buildings with galvanized iron in place of thatch, is an "Improvement" within subs. xx, s. 25 (*Re Verney*, cited REDEEM).

Note. The Court cannot make a Prospective Order under the S. L.

Digitized by Google

Acts (*Re Millard*, 1893, 3 Ch. 116; 62 L. J. Ch. 761); but when a Tenant for Life has done "Improvements," duly sanctioned (*Re Hotchkins*, 56 L. J. Ch. 445; 35 Ch. D. 41; 35 W. R. 463), the Trustees may pay for them out of Capital Money subsequently coming to their hands, subject to the proper certificate being obtained (*Re Norfolk*, 1900, 1 Ch. 461; 69 L. J. Ch. 236; 82 L. T. 613; 48 W. R. 328). Improvements executed before Scheme approved, s. 15, S. L. Act, 1890; *V. Re Dalison*, 1892, 3 Ch. 522; 61 L. J. Ch. 712: *Re Bristol*, 1893, 3 Ch. 161; 62 L. J. Ch. 901; 69 L. T. 304; 42 W. R. 46.

A direction to trustees of realty to pay the Surplus of the Rents after deducting cost of Taxes, Repairs, "Improvements," &c, does not justify an expenditure on New Buildings not shown to be required to enhance the rents, or keep old tenants (*Walpole* v. *Boughton*, 12 Bea. 622).

"Facilities for Improvement"; *V.* Facilities.

"Improvements," in the Specification of a Patent; *V. De Rosne* v. *Fairrie*, 5 Tyr. 393; 2 Cr. M. & R. 476; 1 Carp. 664, 689.

"Improvement *Act*"; Stat. Def., 14 & 15 V. c. 28, s. 2; 18 & 19 V. c. 121, s. 2.

"Improvement *Act District*"; *V.* District.

"Improvement Area"; *V.* Abut.

"Improvement Company"; Stat. Def., Improvement of Land Act, 1899, 62 & 63 V. c. 46, s. 7.

Highway "Improvements"; Stat. Def., 27 & 28 V. c. 101, s. 48.

"Improvement Rates"; Stat. Def., 14 & 15 V. c. 34, s. 3; 18 & 19 V. c. 70, s. 3.

V. Permanent: Private Improvement: Public Benefit.

IMPURE.—*V.* Pure.

IN.—"If one grant all his goods *in* such a place; by this grant nothing doth pass but the goods that are in such a place at the time of the grant, and not any other goods that shall be there afterwards" (Touch. 98).

A legacy of the goods, or of certain classes of goods, "in" a house or other place, will comprise all the goods of the kind indicated the usual locality of which is in such house or other place, though they may at the time be actually somewhere else, if they have only been removed from their usual locality for a temporary purpose, *e.g.* at testator's banker's for safe custody (*Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538: Wms. Exs. 1190). But in *Heseltine* v. *Heseltine* (3 Mad. 276) it was held that a gift of "the chattels *in* my house at Doctors' Commons" did not pass the furniture in testator's house in Bedford Square, where he subsequently removed, though they were in his house at Doctors' Commons at the date of his Will. *Vf, Spencer* v. *Spencer*, 21 Bea. 548: Contents.

A bequest of all testator's property "in" a particular country, county,

Digitized by Google

or other locality, will include all the *Debts* due to him from persons resident in such locality (*Nisbet* v. *Murray*, 5 Ves. 149: *Tyrone* v. *Waterford*, 29 L. J. Ch. 486; 1 D. G. F. & J. 613: *Arnold* v. *Arnold*, 4 L. J. Ch. 123; 2 My. & K. 365: *Horsfield* v. *Ashton*, 2 Jur. N. S. 193, 355: *Guthrie* v. *Walrond*, 52 L. J. Ch. 165; 22 Ch. D. 573: *Cp*, *Jones* v. *Sefton*, cited IN OR ABOUT). *Vf*, CONTENTS: LOCALLY SITUATE.

So, a Debt due from a person resident in a Foreign Country, is, quà its Assignment, to be regulated by the law of that country (*Re Maudslay*, 1900, 1 Ch. 602; 69 L. J. Ch. 347; 82 L. T. 378; 48 W. R. 568).

Shares in a Co are "LOCALLY SITUATE" where the Head Office is (*A-G.* v. *Higgins*, 26 L. J. Ex. 403: 2 H. & N. 339); a SPECIALTY, quà Probate Duty, is where it is found at the death (*Commrs of Stamps* v. *Hope*, 1891, A. C. 476; 60 L. J. P. C. 44; 65 L. T. 268).

An ADVOWSON is not properly described as being situate "in," or "at," a place, and it will not, *primâ facie*, pass under such general words as "heredits situate in" a particular place; though if the grantor or testator had no other hereditament in that place, it might pass, and so, if the context favoured its inclusion (*Crompton* v. *Jarratt*, 54 L. J. Ch. 1109; 30 Ch. D. 298, and cases there cited: *Re Hodgson*, 1898, 2 Ch. 545; 67 L. J. Ch. 591; 47 W. R. 44; 79 L. T. 345).

So, *Money to be laid out in Land*, and therefore to be treated as realty, cannot, as a general rule, be predicated as being in any particular locality, even though the money arises from the sale of land in England (*Re Cleveland*, 1893, 3 Ch. 244; 62 L. J. Ch. 955).

As to what passes under a general description of property "in" or "at" a place; *V. Crompton* v. *Jarratt*, sup: *Rooke* v. *Kensington*, 2 K. & J. 753; 25 L. J. Ch. 795: *Early* v. *Rathbone*, 57 L. J. Ch. 652; 58 L. T. 517: AT. In *Brooke* v. *Turner* (7 Sim. 671; 5 L. J. Ch. 175) Shadwell, V. C., held, that "Property" "in" testatrix's dwelling-house, included Guineas and Sovereigns and Bank of England Notes; but not Country Bank Notes, or Promissory Notes, or Mtge Securities. So, in *Rhodes* v. *Rhodes* (22 W. R. 835) Jessel, M. R., held, that a gift of freehold houses in the City of London "and all and every other my ESTATE AND EFFECTS in the City of London," did not pass a Balance at a City Bank.

In *Doe* d. *Humphreys* v. *Roberts* (5 B. & Ald. 407), there was a devise of all testator's messuage or dwelling-house in High Street in the town of H., and all and every his buildings and hereditaments "*in*" *the same Street*; the testator had only one house in High Street, but behind it he had two cottages fronting Bakehouse Lane; there was no thoroughfare through that lane, the only entrance into it being from the High Street: held, that the two cottages passed under the Will, and Holroyd, J., said, "The only way to these cottages was through the High Street, and there was no thoroughfare through Bakehouse Lane. If there had been an opening from the High Street to these cottages alone, they would clearly

Digitized by Google

be 'in' the street, and I can see no difference from the circumstance of there being other houses in the court." *V.* WITHIN: NEAR.

A house may be "in" more than one Street, quà s. 75, Metrop Man. Act, 1862, s. 3, 51 & 52 V. c. 52, and such like enactments (per Herschell, C., *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: *Vf, A-G.* v. *Edwards*, 1891, 1 Ch. 194; 63 L. T. 639); — it is always a question of fact (*Warren* v. *Mustard*, 61 L. J. M. C. 18; 66 L. T. 26; 56 J. P. 502). *Vf*, SIDE.

A power to a Local Authority to ERECT Conveniences "in" a Street (the power being unaccompanied by any statutory vesting of the street, *V.* VEST), does not sanction the construction of the Conveniences under the surface of the street (*Tunbridge Wells* v. *Baird*, cited PUBLIC PLACE).

As to the locality of a BUSINESS; *V.* CARRY ON: LOCALLY SITUATE.

CONTRACT "made in England or Ireland," s. 59, Stamp Act, 1891; *V. Muller* v. *Inl. Rev.*, cited MADE.

"*In his Trade or Business*" (s. 44 (iii), Bankry Act, 1883), "means, not necessarily visibly in his trade or business but, acquired for the purposes of the business and used for those purposes" (per Lindley, L. J., *Colonial Bank* v. *Whinney*, 55 L. J. Ch. 591; 30 Ch. D. 261; *thc* revd by H. L. on another point, 56 L. J. Ch. 43; 11 App. Ca. 426; 55 L. T. 362; 34 W. R. 705. *Vf, Re Jenkinson*, 54 L. J. Q. B. 601; 15 Q. B. D. 441).

FIXTURES, &c, "used in" premises; *V.* USED.

A contract for goods, to be paid for "in," or "within," a *stated period*, gives the buyer the right to call for delivery at any reasonable time within that period without tendering the price, which is only payable at the expiration of the period (*Spartali* v. *Benecke*, 19 L. J. C. P. 293; 10 C. B. 212: *Vh.* Blackb. 226).

IN ACCORDANCE WITH THE FORM. — A BILL OF SALE whenever given as Security for Money, must be "in Accordance with the Form" prescribed in the Sch to Bills of S. Act, 1882 (*V.* s. 9). In *Re Barber, Ex p. Stanford* (55 L. J. Q. B. 344; 17 Q. B. D. 269; 54 L. T. 894; 34 W. R. 507), it was pointed out in the jdgmt of Esher, M. R., and Cotton, Lindley, Bowen, and Lopes, L. JJ., that the words of that section did not say that a Bill of Sale was to be "*in* the Form" prescribed, but "*in Accordance with* the Form"; and it was added, "the distinction can scarcely be accidental": the phrase means "*substantially* in Accordance with the Form" (per Day, J., *Consolidated Credit Corp* v. *Gosney*, 55 L. J. Q. B. 62; 16 Q. B. D. 24; 54 L. T. 21; 34 W. R. 106).

But still the requirement that a document must be "in Accordance with the Form" prescribed is one of stringent obligation; as those who did not pay due heed to it have found to their cost. *Vh. Davis* v. *Burton*, 11 Q. B. D. 537; 52 L. J. Q. B. 636; 32 W. R. 413:

Digitized by Google

Myers v. *Elliott*, 16 Q. B. D. 526; 55 L. J. Q. B. 233; 54 L. T. 552; 34 W. R. 339: *Liverpool Investment Socy* v. *Richardson*, 55 L. J. Q. B. 455 *n*; 2 Times Rep. 602, *svthlc*, *Re Cleaver*, 55 L. J. Q. B. 455: *Melville* v. *Stringer*, 53 L. J. Q. B. 482; 13 Q. B. D. 392; 50 L. T. 774; 32 W. R. 890: *Hetherington* v. *Groome*, 53 L. J. Q. B. 576; 13 Q. B. D. 789; 51 L. T. 412; 33 W. R. 103: *Sibley* v. *Higgs*, 54 L. J. Q. B. 525; 15 Q. B. D. 619; 33 W. R. 748: *Parsons* v. *Hargreaves*, 55 L. J. Q. B. 408; 17 Q. B. D. 336; 34 W. R. 717: *Calvert* v. *Thomas*, 56 L. J. Q. B. 470; 19 Q. B. D. 204; 57 L. T. 441; 35 W. R. 616: *Macey* v. *Gilbert*, 57 L. J. Q. B. 461: *Kelly* v. *Kellond*, or, *Thomas* v. *Kelly*, 58 L. J. Q. B. 66; 13 App. Ca. 506: *Cp* with *thlc*, *Re Burdett*, 57 L. J. Q. B. 263; 20 Q. B. D. 310, and *Cochrane* v. *Entwisle*, 59 L. J. Q. B. 418; 25 Q. B. D. 116. *Vf*, *Blankenstein* v. *Robertson*, 59 L. J. Q. B. 315; 24 Q. B. D. 543; 6 Times Rep. 178: *Altree* v. *Altree*, 1898, 2 Q. B. 267; 67 L. J. Q. B. 882; 47 W. R. 60; 78 L. T. 794, *vthlc* Of: *Rimmer* v. *Brereton*, 41 S. J. 510: *Re Bullock*, 1899, 2 Q. B. 517; 68 L. J. Q. B. 953; 81 L. T. 268; 48 W. R. 46: *Davies* v. *Jenkins*, cited Specific: Grantor: Stipulated: Void: Reed, 167–185.

The obligation of the phrase is so exigent that if a transaction by way of Security on chattels cannot, from its nature, be made "in Accordance with the Form," it cannot be made at all (*Re Townsend*, *Ex p. Parsons*, 55 L. J. Q. B. 137; 16 Q. B. D. 532; 53 L. T. 897; 34 W. R. 329: *Hughes* v. *Little*, 56 L. J. Q. B. 96; 18 Q. B. D. 32; 55 L. T. 476; 35 W. R. 36).

V. In the Form: Tenor.

IN ACCORDANCE WITH THE JUDGMENT. — A Bankry Notice "in accordance with the terms of the jdgmt," s. 4 (*g*), Bankry Act, 1883, must strictly follow the jdgmt on which it is founded; therefore, where plaintiffs sued and took jdgmt without disclosing their representative character, and the Bankry Notice added that they were "Trustees of St. John's Hospital, Northampton"; held, that the Notice was bad (*Re Howes*, *Ex p. Hughes*, 1892, 2 Q. B. 628; 62 L. J. Q. B. 88; 67 L. T. 213; 40 W. R. 647): *V.* Formal.

IN ACCORDANCE WITH THE PLAN. — Premises provisionally licensed under s. 22, Licensing Act, 1874, have to be constructed "in accordance with" the plans submitted to the Justices when the provisional license was obtained; that means, "in substantial accordance" (per Mathew, J., *R.* v. *London Jus.*, 59 L. J. M. C. 71; 24 Q. B. D. 341).

IN ADDITION. — *V.* Addition.

IN ADVANCE. — *V.* Advance.

IN AID. — Where a testator charged his general realty "*in aid of my personal estate* and in exoneration of my other personal estate,

Digitized by Google

with the payment of all my just debts, funeral and testamentary expenses," — it was held that this did not amount to a direction to pay a mortgage debt on realty specifically devised (*Re Newmarch*, 48 L. J. Ch. 28; 9 Ch. D. 12: *Buckley* v. *Buckley*, 19 L. R. Ir. 555: Debts).

IN AND ABOUT. — *V.* In or about.

IN AND FOR. — In this phrase in a Justices' Order, "In" indicates the place in which the Order is made: "For" merely denotes the ambit of their jurisdiction, and does not imply that the Order was made within that ambit (*R.* v. *Stockton*, 7 Q. B. 520; 14 L. J. M. C. 128: *Vh*, *R.* v. *St. George, Bloomsbury*, 24 L. J. M. C. 49; 4 E. & B. 520).

IN ANY ORDER, &c. — *V.* Liberty to call.

IN ATTENDANCE. — Cab Drivers who go as customers to a Cab Proprietor's yard, are none the less "in attendance" there, within s. 38, P. H. London Act, 1891 (*Bennett* v. *Harding*, cited Workplace).

IN BLOOD. — The addition of "In Blood" to "Next-of-kin," makes the latter phrase stronger against a widow taking under it (*Re Fitzgerald*, 58 L. J. Ch. 662; 37 W. R. 552). *Sv*, Next of Kin.

Bequest to A.'s "Next of Kin in Blood, as if A. had died unmarried," means, A.'s nearest of kin (*Halton* v. *Foster*, cited Next of Kin).

V. Blood.

IN CAPITE. — *V.* Capite.

IN CASE. — *V.* If: When.

"In case of the *Death*"; *V.* Die: Or.

"In case of *Dispute*"; *V.* Dispute.

"Referee in case of *Need*," of a Bill of Exchange, is a person to whom the Holder may resort if the Bill is dishonoured (s. 15, Bills of Ex. Act, 1882). *Vf*, *Re Leeds Banking Co*, *Ex p. Prange*, 35 L. J. Ch. 33; L. R. 1 Eq. 1.

"In case the Parties differ"; *V. Baxendale* v. *Lucas*, W. N. (95) 30.

V. As the case requires: Either.

IN CASH. — A statutory requirement that things, — *e.g.* Shares in a Co under s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1890, — shall be paid for "In Cash" unless otherwise determined, is satisfied not only by actually handing over the amount in moneys counted, but by anything that would sustain a plea of Payment in point of law, as distinguished from mere Accord and Satisfaction; therefore, if there be *money due* to the person who has to make the payment and that money be set off against what he has to pay, that will be a payment "In Cash" (*Spargo's Case*, 8 Ch. 407; 42 L. J. Ch. 488: *Fothergill's Case*, 8 Ch.

Digitized by Google

270; 42 L. J. Ch. 481: *White's Case*, 12 Ch. D. 517; 48 L. J. Ch. 820: *Kent's Case*, 39 Ch. D. 259: *Re Jones & Co*, 41 Ch. D. 159; 58 L. J. Ch. 582. *Sv*, per Halsbury, C., *Ooregum Co* v. *Roper*, cited OTHERWISE, but that dictum was cited without avail in *Larocque* v. *Beauchemin*, 1897, A. C. 365; 66 L. J. P. C. 59). But the debt must be presently payable (*Re Land Development Assn*, 57 L. J. Ch. 977; 39 Ch. D. 259; 59 L. T. 449; 36 W. R. 818). The arrangement in *Re Johannesburg Hotel Co*, (1891, 1 Ch. 119; 60 L. J. Ch. 391; 39 W. R. 260) was one of mere Accord and Satisfaction.

Vh, *Ooregum Co* v. *Roper*, and other cases, cited OTHERWISE: Buckl. 599: Hamilton, 178.

"Payment shall be made in Cash against receipt of the Documents"; *V. Fry* v. *Raggio*, 40 W. R. 120.

V. CASH.

IN CHARGE.—"Being in Charge of any person so suffering," s. 126 (2), P. H. Act, 1875; *V. Tunbridge Wells* v. *Bisshopp*, 2 C. P. D. 187.

"RENTS payable to the Crown were formerly put 'In Charge' in one or other of two ways; (1) By the Auditor General *ex officio* from the King's grant; or (2) By the Court of Exchequer upon a *Scire facias* on behalf of the Crown. When a grant of lands was made by the Crown to a subject, the fiat of the Attorney or Solicitor General for the patent or grant was lodged in the Rolls Office; and when the grant was sealed and enrolled it was not given directly to the party concerned, but was brought by one of the clerks in the Rolls Office to the Auditor General to be entered by him. The Auditor General, having ascertained the Rent, inserted it in the Roll of the King's Rents, and the grant was then delivered to the party. The great Roll of the Pipe was the principal record in the Exchequer, and the medium of charge and discharge of rents and debts due to the Crown; and in it the accounts of the ancient royal revenue were entered. Hence Ld Coke (3 Inst. 189, in his Commentary on the first Nullum Tempus Act, 21 Jac. 1, c. 2), says, — 'Duly In Charge, in judgment of law, is the Roll of the Pipe: for although a note before the Auditor, or any other, may be a mean to bring it in question and to be put In Charge, yet that is not, in judgment of law, said to be, Duly In Charge, unless it be In Charge in the Pipe'" (per Bewley, J., *Re Maxwell*, 28 L. R. Ir. 362, 363). *Semble*, QUIT RENTS are within the word "Rents" as used in s. 1, Crown Claim Limitation (Ir) Act, 1808, 48 G. 3, c. 47; but its third saving proviso is of Rents, &c "Duly In Charge," and therefore the Act does not run against Rents entered in the Crown Rental; nor does the Nullum Tempus (Ir) Act, 1876, 39 & 40 V. c. 37, apply, except "where the Rent has been wrongfully received by a subject for the statutory period" (*Ib.* 364).

Digitized by Google

IN CIRCULATION.—*V.* Circulation.

IN COMMENDAM.—*V.* Commendam.

IN COMMON USE.—*V.* Common to the Trade.

IN CONFIDENCE.—*V.* Precatory Trust.

IN CONNECTION WITH.—*V.* Connected with.

IN CONSEQUENCE OF.—*V.* Caused by: Compulsory Powers.

IN CONSIDERATION.—*V.* Consideration: Premises.

IN COURSE.—*V.* In the Course: Holder in due course.

IN COURT.—Proceeding "in Court"; *V.* Proceeding.

IN DANGER.—*V.* Danger.

IN DEFAULT.—An owner "in Default," s. 150, P. H. Act, 1875, does not include a person who was owner when the notice to do the work was given, but who has ceased to be owner before completion of the works by the Local Authority (*R.* v. *Swindon*, 48 L. J. M. C. 119; 4 Q. B. D. 305).

"In default of such Issue," to what antecedent referable; *V. R.* v. *Stafford*, 7 East, 521.

V. Default: Die without Issue.

IN DEFEASANCE.—*V.* Defeasance, at end.

IN DISCHARGE.—*V.* For, towards end.

Accident "in discharge of Duty"; *V. Vickery* v. *G. E. Ry*, cited Accident.

IN DUE COURSE.—*V.* Holder in due course.

IN EITHER CASE.—*V.* Either.

IN ESSE.—*V.* In Posse.

IN EXECUTION.—*V.* Pursuance: Enforce: In Exercise: Delivered in Execution: Take in Execution.

IN EXERCISE.—When anything is done under a power "in Exercise of every Power or Authority" thereunto Enabling, and there are two or more Powers under which the thing might be done, that Power which is the more favourable to the Donee should be presumed to be the one executed, especially if it is the first in point of time (*Lonsdale* v. *Crawfurd*, 69 L. J. Ch. 686; nom. *Lonsdale* v. *Lowther*, 1900, 2 Ch. 687).

Digitized by Google

IN EXPECTANCY.— *V.* Expectancy.

IN FAVOUR.—*V.* Favour.

IN FORCE.— A Beerhouse License "in Force" on 1st May 1869, s. 19, 32 & 33 V. c. 27, means, a License in existence on that date and which has continued and remains in existence at the time application is made for its Renewal (*Hargreaves* v. *Dawson*, 24 L. T. 428: *R.* v. *Curzon*, 42 L. J. M. C. 155; L. R. 8 Q. B. 400; 21 W. R. 887); and this is so whether the application is under that section or is for a Transfer under s. 14, Alehouse Act, 1828 (*Freer* v. *Murray*, 1894, A. C. 576; 63 L. J. M. C. 242; 71 L. T. 444; 58 J. P. 508).

In the interp of "Sanitary Acts" in s. 2, P. H. Ireland Act, 1878, "'In Force,' means, in force for the time being" (s. 31, P. H. Ireland Act, 1896). It is submitted that this is the general meaning.

IN FORMÂ PAUPERIS.— *V.* Formâ Pauperis.

IN FULL.— Agreement to pay Rent "in full," s. 103, 5 & 6 V. c. 35; *V. Lamb* v. *Brewster*, 48 L. J. Q. B. 421; 4 Q. B. D. 220.

A man who compounds with his creditors, does not pay "his Debts in full," s. 52, 5 & 6 W. 4, c. 76 (*Hardwick* v. *Brown*, L. R. 8 C. P. 406).

Award "in full *of all Demands*," disposes of all matters referred (*Mannion* v. *Harrison*, Ir. Rep. 11 C. L. 102; following *Jewell* v. *Christie*, 36 L. J. C. P. 168; L. R. 2 C. P. 296).

Sending a cheque "in full *of all Demands*," even though the cheque be kept and placed to credit, does not, of itself, amount to an Accord and Satisfaction (*Day* v. *McLea*, 22 Q. B. D. 610; 58 L. J. Q. B. 293; 60 L. T. 947; 5 Times Rep. 379).

"In full *for the Voyage*"; *V. Sweeting* v. *Darthez*, 23 L. J. C. P. 131; 14 C. B. 538.

IN GROSS.—*V.* Gross.

IN GOOD FAITH.—*V.* Bonâ Fide: Good Faith.

IN HÂC RE.—Solicitor "In hâc re"; *V.* jdgmt of Turner, L. J., *Holman* v. *Loynes*, 23 L. J. Ch. 534.

IN HAND.—"Balance in hand," in a Poor Rate Collector's account, does not, necessarily, connote that he has it in his cash-box; it may simply be a statement of what has to be accounted for (*R.* v. *Williams*, 79 L. T. 739).

"Available Balance in hand"; *V.* Available.

A bequest of "all my Moneys in hand"; held to pass balance at bankers (*Vaisey* v. *Reynolds*, cited Farming Stock).

"Profits in hand"; *V. Re Mercantile Trading Co*, 4 Ch. 475; 38 L. J. Ch. 698.

Digitized by Google

IN HEIGHT.—*V.* Height.

IN HIS CAPACITY or CHARACTER.—*V.* Capacity: Character.

IN HIS DEMESNE AS OF FEE.—*V.* Demesne.

IN HIS HANDS.—"Trust Funds in his hands"; *V. Hume* v. *Lopes,* cited Trust Funds.

Agreement to let the Bar so long as the Theatre shall "remain in his hands"; *V. Edwardes Co* v. *Chudleigh,* 14 Times Rep. 47, 64.

IN HIS OWN RIGHT.—Holding Shares "in his Own Right," quà qualification of Director, does not mean holding beneficially (*Pulbrook* v. *Richmond Mining Co,* 48 L. J. Ch. 65; 9 Ch. D. 610; 27 W. R. 377). In that case Jessel, M. R., said, "the Company cannot look behind the Register as to the beneficial interest." But in *Bainbridge* v. *Smith* (41 Ch. D. 462; 37 W. R. 594), Cotton, L. J. (*obiter*), dissented from that view, whilst Lindley, L. J., said that that conventional meaning had been acted upon so long that he was not prepared to disturb it (*Vth, Re Bainbridge,* 34 S. J. 154, 155; W. N. (89) 228). That conventional meaning *quà the Co* will be adhered to; but quà a Charging Order under s. 14, Judgments Act, 1838, 1 & 2 V. c. 110, Shares or Stock standing in his name "in his Own Right," mean, those which a person holds beneficially (*Cooper* v. *Griffin,* 1892, 1 Q. B. 740; 61 L. J. Q. B. 563; 40 W. R. 420; 66 L. T. 660: *Howard* v. *Sadler,* 1893, 1 Q. B. 1; 68 L. T. 120; 41 W. R. 126).

Vh, 33 S. J. 624: *Gill* v. *Continental Gas Co,* 41 L. J. Ex. 176; L. R. 7 Ex. 332: *Re Glory Paper Mills,* 1894, 3 Ch. 473; 63 L. J. Ch. 885: *Re Blakely Ordnance Co,* 46 L. J. Ch. 367.

An Acceptor of a Bill of Ex. who becomes its Holder "in his Own Right," s. 61, Bills of Ex. Act, 1882, means something more than one who does not acquire it in a representative character; it means, a holder "having a right to it, not subject to that of any one else, but his own,—good against all the world" (per Collins, L. J., *Nash* v. *De Freville,* 69 L. J. Q. B. 493; 1900, 2 Q. B. 72).

IN HIS PROPER PERSON.—*V. Hesketh* v. *Lee,* 2 Saund. 95.

IN HIS TRADE OR BUSINESS.—This phrase, in s. 44 (iii), Bankry Act, 1883, does not comprise property unconnected with a bankrupt's trade or business, although mortgaged by him to secure a trade account (*Re Jenkinson,* 54 L. J. Q. B. 601; 15 Q. B. D. 441: *Vf, Colonial Bank* v. *Whinney,* and *Sharman* v. *Mason,* cited Possession Order or Disposition: *Re Harrison,* inf).

A Lodging-house Keeper, though he does not provide board, carries

Digitized by Google

on a "Trade or Business" within the section (*Re Harrison*, 67 L. T. 600).

V. TRADE: BUSINESS: AS A TRADER.

IN KIND.—*V.* DUES.

IN LIEU OF.—Bequest "in Lieu of"; *V. Barclay* v. *Maskelyne*, 5 Jur. N. S. 12: *Cooper* v. *Day*, 3 Mer. 154: *Hill* v. *Walker*, 4 K. & J. 166.

Liability "in lieu of"; *V.* UNDER.

Where a liability has to be discharged by A. "in lieu of" B., there must be a binding obligation on B. to do it before A. can be charged with it: *e.g.* when the Director of Public Prosecutions undertakes a prosecution the person who may have been bound over to prosecute is released and the Director "shall be liable to Costs *in lieu of* such person," s. 7, 42 & 43 V. c. 22; but if such person has given no security for costs, the Director cannot be made to pay them, because there is nobody in whose stead that liability can be imposed (*Stubbs* v. *Director of Public Prosecutions*, 59 L. J. Q. B. 201; 24 Q. B. D. 577; 62 L. T. 399; 38 W. R. 607).

Claimant in an Interpleader may "be made a Defendant . . . in lieu of the Applicant," R. 7, Ord. 57, R. S. C.; *V. Gerhard* v. *Montague*, 38 W. R. 76; 61 L. T. 564; 6 Times Rep. 19.

A section in an Act of Parliament "in lieu of" another, reads the substituted section into the Act containing the repealed section (per Bruce, J., *R.* v. *Hopkins*, 1893, 1 Q. B. 621; 62 L. J. M. C. 57; 68 L. T. 292; 41 W. R. 431; 57 J. P. 152).

V. INSTEAD OF: LIEU AND SUBSTITUTION: SUBSTITUTION: SUBSTITUTIONAL GIFTS.

IN LIKE MANNER.—*V.* AFORESAID.

IN LOCO PARENTIS.—*V.* LOCO PARENTIS.

IN MANNER AFORESAID.—*V.* AFORESAID.

IN MANNER AND FORM.—*V.* MANNER AND FORM.

IN MERCY.—*V.* AMERCIAMENT.

IN NEED.—*V.* IN CASE.

IN OPEN COURT.—*V.* OPEN.

IN OPERATION.—*V.* OPERATION.

IN OR ABOUT.—In *Re Labron* (29 S. J. 147), Kay, J., held that a residuary bequest of household furniture, plate, books, . . . and

Digitized by Google

other household effects, "in or about" testator's dwelling-house, included hay-ricks, chicken and sheep-troughs, store pigs, poultry, and carriages, that were on the grounds (40 acres in extent) appertaining to the dwelling-house. *Cp*, *Fitzgerald* v. *Field*, inf. *V.* HOUSEHOLD: IN.

A bequest of personal effects "in and about" testator's residence; held, to include the deer in his Park, but not the farming-stock and implements in his Home Farm (*Hastings* v. *Hastings*, W. N. (73) 118).

Horses used only at testator's Town House, but regularly wintered in the country where they happened to be at his death; held, to pass under a gift of the Town House, with the horses "in, upon, or about the same, or the stables thereof" (*Bruce* v. *Curzon-Howe*, 19 W. R. 116).

A bequest of all Corn, &c, "in or about" a Mill, held not to include a cargo of wheat consigned to the testator but which, in due course of transit, did not reach the mill till after his death (*Lane* v. *Sewell*, W. N. (74) 51).

There would appear to be no difference, in such a connection as the foregoing, between "in *or* about," and "in *and* about." Thus in *Gower* v. *Gower* (Ambl. 612; 2 Eden, 201) the Running Horses (Race-horses?) of a nobleman were held to be included in a bequest of goods and chattels "which should be in and about his dwelling-house and out-houses" (*Vth*, *Porter* v. *Tournay*, 3 Ves. 314: *Vf*, *Hastings* v. *Hastings*, sup). But a Money Bond and a sum of Cash (found in an iron chest in testator's house) were held not to pass under a bequest of such parts of personal estate "as should be in and about his house" (*Jones* v. *Sefton*, 4 Ves. 166), the short reason given by Loughborough, C., being, "there is no annexation." No such consideration as that is however to be discerned in *Fitzgerald* v. *Field* (1 Russ. 427), wherein the words "household furniture, &c, and UTENSILS in and about my house," were held not to pass farming utensils on lands occupied by testator along with his house.

Stock-in-Trade and "other Articles" "in and about" a Business; *V. Dean* v. *Brown*, cited OTHER.

Cp, IN OR UPON.

A WORKMAN was arranging timber in a cart belonging to his employers (a firm of builders) which stood in the street near the entrance to their yard; a piece of the timber on which he was standing tilted and thereby he was thrown into the road and injured; held, that he was "about" the FACTORY within the phrase "on, or in, or about," s. 7 (1), Workmen's Comp Act, 1897 (*Powell* v. *Brown*, 1899, 1 Q. B. 157; 68 L. J. Q. B. 151; 79 L. T. 631; 47 W. R. 145). But the phrase "about" implies "in close proximity to" (per Smith, L. J., *Ib.*); therefore, an accident to a carter when delivering goods 1½ miles from his employer's factory, does not happen "about" the factory (*Lowth* v. *Ibbotson*, 1899, 1 Q. B. 1003; 68 L. J. Q. B. 465; 80 L. T. 341; 47 W. R. 506: *Vf*, *Chambers* v. *Whitehaven Harbour Commrs*, 1899, 2 Q. B. 132; 68 L. J. Q. B.

Digitized by Google

740; 80 L. T. 586; 47 W. R. 533: *Fenn* v. *Miller*, 1900, 1 Q. B. 788; 69 L. J. Q. B. 439; 82 L. T. 284; 48 W. R. 369; 64 J. P. 356). *V.* Dock: A.

"In or about" a Mine, in the same section; *V. Turnbull* v. *Lambton Co*, 82 L. T. 589; 64 J. P. 404; 16 Times Rep. 369.

V. Railway.

"In or about," as used in stating a Date; *V. R.* v. *St. Paul's, Covent Garden*, 14 L. J. M. C. 109; 7 Q. B. 232: *R.* v. *St. Anne, Westminster*, 15 L. J. M. C. 119; 7 Q. B. 241.

Errors or Irregularities "in or about" an *Election*; *V. R.* v. *Samuel*, 1895, 1 Q. B. 815; 64 L. J. Q. B. 515; 72 L. T. 572; 11 Times Rep. 358: *Vf*, Error.

"In or about a Shop"; *V.* Shop.

V. About.

IN OR AS OF.—*V.* As of.

IN OR NEAR.—*V.* Near: In sive juxta.

IN OR UPON.—A contractee's lien on his contractor's Implements, Materials, &c, that may be "in or upon" the lands or grounds where the contract works are going on at the time of the contractor's default, is in the nature of a Shifting Lien; and the place where such lien attaches must be interpreted reasonably, and not literally, and it extends to all places where the works are, in a popular sense, going on, if such places are in the possession of the contractee (*Hawthorn* v. *Newcastle Ry*, 3 Q. B. 736, 737).

Cp, In or about. *V.* Upon.

IN ORDER.—"In order to" or "In order that," *semble*, intensifies "with Intent" (*A-G.* v. *Sillem*, 2 H. & C. 525).

IN PAIS.—*V.* Pais.

IN PART.—*V.* Part: Wholly.

IN PAYMENT.—"In Payment and Discharge"; *V.* For, towards end.

IN PERSON.—"In Person or by Proxy"; *V.* Proxy.

IN PORT.—*V. Hunter* v. *Northern Insrce*, 13 App. Ca. 717: *Colby* v. *Hunter*, 3 C. & P. 7; Moo. & M. 81: *Kenyon* v. *Berthon*, 1 Doug. 12 a: Port: Warranted in Port.

IN POSSE.—"Possibility of being,—as opposed to In Esse, in a state of being. A child *in ventre sa mère*, is a child *In Posse*, but the law regards it as *In Esse* for all purposes which are for its benefit: *Doe* d. *Clarke* v. *Clarke*, 2 Bl. H. 399" (6 Encyc. 503: Cowel, *Posse*).

V. Posse.

Digitized by Google

IN POSSESSION.—*V.* Estate and Interest: Possession: Come to: Occupation.

IN PRACTICE.—*V.* Practise.

IN PREFERENCE.—*V.* Preference.

IN PRISON.—*V. Sumption* v. *Monzani*, 4 A. & E. 1007: Poison.

IN PURSUANCE.—*V.* Pursuance.

IN PURSUIT.—"In Pursuit of Game"; *V.* Search.
V. Fresh Pursuit.

IN QUESTION.—*V.* Matter: Question.

IN RECEIPT.—"In receipt of the *Profits* of such land or such rent," s. 3, 3 & 4 W. 4, c. 27;—"The expression 'in receipt of the Profits of any land' is used in this Act in conjunction with the words 'in Possession of the land,' to denote, not the receipt of rent from a tenant but, the receipt of the actual proceeds of the land" (Sug. R. P. Statutes, 2 ed., 47. *V. Grant* v. *Ellis*, 11 L. J. Ex. 228; 9 M. & W. 113; *Vthc*, *Irish Land Commission* v. *Grant*, 10 App. Ca. 26).
V. Possession.

Shortly after a Receiving Order (and to secure an advance wherewith to purchase his debts) a bankrupt (an actor) agreed that his manager should deduct £20 a week from his weekly salary of £30; held, that the bankrupt was not "in the receipt of a Salary or Income" of £30, but only of £10, a week, within s. 53 (2), Bankry Act, 1883 (*Re Shine*, 1892, 1 Q. B. 522; 61 L. J. Q. B. 253; 66 L. T. 146; 40 W. R. 386). So, quà that section, a bankrupt is not "in receipt of" so much of his Salary or Income as is required to pay Alimony that has been ordered against him (*Ib.*).

IN REGULAR TURNS OF LOADING.—*V.* Turn.

IN RELATION TO.—*V.* Relating: Relation: Ship: Generally.

IN REM.—*V.* Action: Rem.

IN RESPECT OF.—Proceedings "in respect of a Debt" released by a bankry; *V. Heather* v. *Webb*, 46 L. J. C. P. 89: 2 C. P. D. 1.

Bets paid by an Agent for his Principal, or by a Partner in a Betting Partnership, though not paid "under," are paid "in respect of" a Gaming Contract within s. 1, 55 & 56 V. c. 9; and the money is irrecoverable (*Tatam* v. *Reeve* and *Saffery* v. *Mayer*, cited Gaming Contract). *V.* Paid.

"An Offence in respect of the commission of which," s. 17 (1), Sum

Digitized by Google

Jur Act, 1879; *V. Williams* v. *Wynne,* 57 L. J. M. C. 30; 58 L. T. 283; 52 J. P. 343.

In a Covenant to pay taxes, &c, "on, or in respect of," demised premises, "in respect of" is used in contradistinction to "on," and is strong to throw liability on the covenantor (*Brett* v. *Rogers,* cited TAXES: *Vf, Tidswell* v. *Whitworth* and *Farlow* v. *Stevenson,* also cited TAXES).

The cost of removing a Vessel which by a Collision has become a WRECK, is not money paid "in respect of Injury" *to* the vessel occasioned by the collision, within a Marine Policy (*Burger* v. *Indemnity Mutual Mar Assrce,* 1900, 2 Q. B. 348; 69 L. J. Q. B. 838; 82 L. T. 831; 48 W. R. 643).

Powers and Duties of the Board of Trade "with respect to" approval of Working Agreements between Railways; *V. Huddersfield* v. *G. N. Ry,* 50 L. J. Q. B. 587.

IN SEARCH.—"In Search, or Pursuit, of Game"; *V.* SEARCH.

IN SIVE JUXTA.—*V. A-G.* v. *Horner,* 54 L. J. Q. B. 227; 55 Ib. 193; 14 Q. B. D. 245; 11 App. Ca. 66: NEAR.

IN SPECIE.—*V.* SPECIE.

IN SUBSTANCE.—*V.* SUBSTANCE.

IN SUBSTITUTION.—*V.* SUBSTITUTION.

IN SUMMARY MANNER.—*V.* SUMMARILY.

IN TERMS.—"In terms of the Lands Clauses Acts"; *V.* P. H. Scotland Act, 1897, s. 4 (3).

IN THAT BEHALF.—"'In that behalf,' is a phrase of wide signification" (per Pollock, C. B., *Garby* v. *Harris,* 21 L. J. Ex. 160).

IN THE CAUSE.—*V.* COSTS IN THE CAUSE.

IN THE CONDUCT OF A SUIT.—Matters done before action brought or after judgment recovered, were not "In the conduct of a suit," within s. 36, Co. Co. Act, 1856, 19 & 20 V. c. 108 (*Druiff* v. *Joel,* 51 L. J. Q. B. 490; nom. *Re Emanuel,* 9 Q. B. D. 408: *Vth, Re Dod & Co, Ex p. Lamond,* 21 Q. B. D. 242). *V.* CONDUCTING.

IN THE COURSE.—Sample of MILK "in Course of Delivery," s. 3, 42 & 43 V. c. 30; *V. Filshie* v. *Evington,* cited DELIVERY.

"In the Course of his Employment"; *V.* EMPLOYMENT.

"Debts due to the bankrupt in the Course of his Trade," s. 44 (2, iii), Bankry Act, 1883, means, in *connection* with his trade (*Ex p. Rensberg, Re Pryce,* 4 Ch. D. 685. *Vf,* DEBT).

Digitized by Google

"In the Course of Trade or Husbandry"; *V.* CARRIAGE.
V. Speak v. *Powell*, cited TRADE.
Cp, COURSE: ORDINARY COURSE.

IN THE FIRST PLACE.—In some of the cases reliance seems to have been placed on such words as "*Imprimis*," "*In the first place*," and "*First*" in determining whether a direction to pay Debts charged the realty; but it seems now tolerably well settled that such phrases "are merely introductory words of form, denoting the commencement of the testamentary act; or, if they have any meaning, only denote the order of payment, not the fund out of which payment is to be made" (2 Jarm. 588), nor do they imply priority of payment (*Nash* v. *Dillon*, 1 Moll. 236). *Vf*, 2 Jarm. 587–590, for a discussion of the cases hereon: *Va*, Watson Eq. 32.

"In the first place," "In the next place"; *V. Re Hardy*, 50 L. J. Ch. 241; 17 Ch. D. 798.
V. FIRST.

IN THE FORM.—Where a statute says that a thing shall be "in the Form" prescribed, that means that the form must be strictly and literally followed (*Henry* v. *Armitage*, 53 L. J. Q. B. 111; 12 Q. B. D. 257. *V.* on this phrase in R. 2 of Rules of Nov 1842, under 5 & 6 V. c. 116, *Re Russell* and *Re Fry*, 28 L. T. O. S. 343: *Re Hendrie*, 31 Ib. 14: *Re Pollastrini*, 7 L. T. 171: *Re Edwards*, 28 L. T. O. S. 258). *Secus*, where the words "or to the effect" or "or to the like effect," are added (*Henry* v. *Armitage*, sup): thus, where a Proxy was to be "in the form, or to the effect" prescribed, and the form used the words "one of the Members" of the Co, but the proxy given was expressed to be from the "Proprietor of Shares," that was "to the effect" of the form (*Re Indian Zoedone Co*, 26 Ch. D. 78).

Where the words are IN ACCORDANCE WITH THE FORM, the obligation to comply with the Form is strict; though not so strict as where "in the Form" is used.

IN THE MEANTIME.—*V.* MEANTIME.

IN THE NAME.—*V.* NAME.

IN THE SAME MANNER.—*V.* AFORESAID: FEME.

IN THIS PARTICULAR.—*V.* PARTICULAR.

IN TRANSIT.—Stoppage in Transitu; *V.* STOPPAGE.
V. DELAY IN TRANSIT.

IN TRUST.—The phrase "In trust," or "On trust," may frequently be read as, "entrusted to": *e.g.* in a floating fire policy by a carrier or warehouseman on "goods *in Trust* or on Commission" (*Waters* v. *Mon-*

Digitized by Google

arch Insrce, 25 L. J. Q. B. 102; 5 E. & B. 880: *Lond. & N. W. Ry* v. *Glyn*, 28 L. J. Q. B. 188; 1 E. & E. 652: *Cp, North British Co* v. *Moffatt*, 41 L. J. C. P. 1; L. R. 7 C. P. 25: *Martineau* v. *Kitching*, 41 L. J. Q. B. 227; L. R. 7 Q. B. 436).

Stock standing in the name of Accountant General is held "In trust" for the person entitled to it, within s. 14, Judgments Act, 1838 (*Hulkes* v. *Day*, 10 Sim. 41: *Va*, s. 1, 3 & 4 V. c. 82).

Property held "In Trust for an Industrial Society" shall vest in the Society on registration, s. 6, 25 & 26 V. c. 87; *V. Queensbury Industrial Society* v. *Pickles*, 35 L. J. Ex. 1; 3 H. & C. 857; L. R. 1 Ex. 1.

Property held "In Trust for an Infant," s. 43, Conv & L. P. Act, 1881; *V. Re Dickson, Hill* v. *Grant*, 54 L. J. Ch. 510; 29 Ch. D. 331: *Re Smith, Henderson-Roe* v. *Hitchins*, 58 L. J. Ch. 860; 42 Ch. D. 302: *Re Humphreys*, 1893, 3 Ch. 1; 62 L. J. Ch. 498; 68 L. T. 729; 41 W. R. 519.

A Royal Warrant granting Booty "In Trust" to be distributed, does not transfer the booty, or create a trust (*Kinloch* v. *Indian Secretary*, 51 L. J. Ch. 885; 7 App. Ca. 619).

A Transfer of Shares by a Bank Manager signed by him as "Manager In Trust," means, that he acts in trust for the Bank, and not that he has any fiduciary relation to any other person suggesting enquiry to the transferee (*London & Canadian Loan Co* v. *Duggan*, 1893, A. C. 506; 63 L. J. P. C. 14).

V. Upon Trust.

IN TURN TO DELIVER.—*V.* Turn.

IN VALUE.—Where a statute prescribes that something may be done by a Majority "In Value" of creditors, the value of the securities held by such creditors as are secured is not to be deducted from the amounts of their debts (*Whittaker* v. *Lowe*, 35 L. J. Ex. 44; L. R. 1 Ex. 74; 4 H. & C. 109).

IN VESTRY ASSEMBLED.—*V.* Parishioner.

IN VIEW.—*V.* View.

IN WRITING.—"*An Agreement* in Writing" between Solicitor and Client as to costs, in *Contentious* Business, s. 4, Solrs Act, 1870, need not be signed by both parties; if signed by the party at whose instance the taxation takes place, that suffices (*Re Thompson*, 1894, 1 Q. B. 462; 63 L. J. Q. B. 187; followed in *Re Jones*, 1895, 2 Ch. 719; 1896, 1 Ch. 222; 64 L. J. Ch. 832; 65 Ib. 191; and over-ruling the dictum of Coleridge, C. J., *Ex p. Munro, Re Lewis*, 45 L. J. Q. B. 816; 1 Q. B. D. 724; and explaining *Re Raven*, 45 L. T. 742). *Cp,* Submission. *V.* Fair and Reasonable.

Digitized by Google

An Agreement quà Costs in *Non-Contentious* Business under s. 8, Solrs Rem Act, 1881, is to be "in Writing, signed by the person to be *bound* thereby, or by his agent in that behalf"; *à fortiori*, a signature of both parties is not necessary, for "the meaning is that the person who seeks to get rid of an agreement is the person who is bound" (per Lindley, L. J., *Re Frape*, 1893, 2 Ch. 284; 62 L. J. Ch. 473).

As to both enactments; *V. Re West*, 1892, 2 Q. B. 102; 61 L. J. Q. B. 639; 67 L. T. 57; 40 W. R. 644.

Note. As to what document will amount to an Agreement within the enactments, *V. Re Frape*, sup, *Svthc, Re Baylis*, 1896, 2 Ch. 107; 65 L. J. Ch. 612; 74 L. T. 506; 44 W. R. 533: *Pontifex* v. *Farnham*, 62 L. J. Q. B. 344; 68 L. T. 168; 41 W. R. 238: *Re Palmer*, 59 L. J. Ch. 575; 45 Ch. D. 291; 62 L. T. 778; 38 W. R. 673. An Agreement not to charge costs at all is not within the Acts, and may be by parol (*Jennings* v. *Johnson*, L. R. 8 C. P. 425).

"*Contract* duly made in Writing," s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900; "'*Duly* made in writing,' means, I suppose, signed by the contracting party" (per Jessel, M. R., *Firmstone's Case*, 44 L. J. Ch. 618; L. R. 20 Eq. 524), or, rather, by both the contracting parties (*Re New Eberhardt Co*, 59 L. J. Ch. 73; 6 Times Rep. 56; 38 W. R. 97), and was required to state the consideration (*Re Karaskhoma Syndicate*, 1897, 2 Ch. 451; 66 L. J. Ch. 675; 77 L. T. 82). *Vf*, as to what was a "Contract" within this phrase, *Firmstone's Case*, and *Re New Eberhardt Co*, sup: *Forde's Case*, 30 Ch. D. 153; 54 L. J. Ch. 724: CONTRACT: OTHERWISE: Buckl. 606: Hamilton, 181.

"I think that the expression 'Contract in Writing,' in s. 1, Bovill's Act, 28 & 29 V. c. 86, means, 'Contract in Writing signed by the parties'" (per Jessel, M. R., *Pooley* v. *Driver*, 46 L. J. Ch. 467; 5 Ch. D. 458); accordingly, an unsigned Contract was held not within the section. *Vf*, Rosc. N. P. 552: Watson Eq. 792.

A "*Consent or Agreement . . . by Deed or Writing*," which, under s. 3, Prescription Act, 1832, 2 & 3 W. 4, c. 71, will prevent the acquisition of an easement for Light, need only be signed by the licensee, by or through whom the easement is claimed (*Bewley* v. *Atkinson*, 49 L. J. Ch. 153; 13 Ch. D. 283: *Mitchell* v. *Cantrill*, 37 Ch. D. 61; 57 L. J. Ch. 72). But a mere general Exception out of a Grant is not such a Consent or Agreement (*Mitchell* v. *Cantrill*, sup); *secus*, of an express Proviso (*Haynes* v. *King*, 1893, 3 Ch. 439; 63 L. J. Ch. 21; 69 L. T. 855; 42 W. R. 56). As to "Consent or Agreement" under s. 2, *V. Simpson* v. *Godmanchester*, 1896, 1 Ch. 214; 1897, A. C. 696; 64 L. J. Ch. 837; 65 Ib. 154; 66 Ib. 770.

"*Consent* in Writing of the Author, or other Proprietor," s. 2, Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15; *V. Eaton* v. *Lake*, 57 L. J. Q. B. 227; 20 Q. B. D. 378; 59 L. T. 100; 36 W. R. 277. The Consent need not be signed by anybody, and may be given by an Agent

Digitized by Google

(*Morton* v. *Copeland*, 16 C. B. 517; 24 L. J. C. P. 169); but all the proprietors must concur (*Powell* v. *Head*, 12 Ch. D. 686; 48 L. J. Ch. 731; 41 L. T. 70). *V. Fuller* v. *Blackpool Co*, 1895, 2 Q. B. 429; 64 L. J. Q. B. 699. *Cp*, Own Consent.

"*Deed or Note in Writing*," s. 3, Statute of Frauds, is not satisfied by a mere recital in a second Lease that it is being granted in consideration of the surrender of a prior Lease (*Roe* d. *Berkeley* v. *York*, 6 East, 86).

Demand "in Writing"; *V.* Demand.

"Lease in Writing"; *V.* Lease.

An Order verbally intimated by a Magistrate, is not in any sense an Order "in Writing" within s. 75, Metrop Man. Act, 1862; and a written Order is not made "On" a person until it has been duly served upon him, or otherwise brought to his knowledge (per Ld Watson, *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).

"In Writing," s. 6 (1), Trustee Act, 1888, applies only to "Consent," and not to "Instigation or Request" (*Griffith* v. *Hughes*, 1892, 3 Ch. 105; 62 L. J. Ch. 135; 66 L. T. 760; 40 W. R. 524). *V.* Instigation.

V. Instrument in Writing: Note: Signed: Writing.

INABILITY.—"Inability," and "Incapable," to act, in regard to Trustees, seem convertible terms; and mean, a personal impossibility of acting (*e.g.* from age or infirmity, *Re Lemann*, 22 Ch. D. 633; 52 L. J. Ch. 560), as distinguished from unfitness (*V.* Unfit).

In *Withington* v. *Withington* (16 Sim. 104), it was held that a Trustee did not become "incapable," or "unable," to act by residing abroad (*Va*, *Re Harrison*, 22 L. J. Ch. 69; 1 W. R. 58); but in *Mesnard* v. *Welford* (22 L. J. Ch. 1053; 1 W. R. 443; nom. *Mennard* v. *Welford*, 1 Sm. & G. 426), Stuart, V.C., said,—"How *can* Mr. Welford perform the duties of a trustee of property situate at Somers Town and in Paddington, if he is a resident in New York? I think that a trustee domiciled at New York can hardly be *capable* of acting as a trustee of the property in question." But it has been said that this "seems scarcely in harmony with correct principle (residence abroad being rather a question of *unfitness*, than incapacity), and cannot be reconciled with other authorities (*Withington* v. *Withington*, sup: *Re Harrison*, sup: *Va*, *Re Watts*, 9 Hare, 106; 20 L. J. Ch. 337: *O'Reilly* v. *Alderson*, 8 Hare, 104). And the Court has since intimated an opinion that Incapacity, means *personal* incapacity (*Re Bignold*, 7 Ch. 223; 41 J. L. Ch. 235)." Lewin, 780. *Vf*, *Re Wheeler and De Rochow*, 1896, 1 Ch. 315; 65 L. J. Ch. 219.

A temporary absence would clearly not be "inability" or "incapacity" (*Re Moravian Socy*, 26 Bea. 101; 4 Jur. N. S. 703).

By s. 24, Co. Co. Act, 1846, a Co. Co. Judge could remove a Co. Co. Clerk "in case of Inability or Misbehaviour"; pecuniary embarrassment

Digitized by Google

was not within that phrase (*R.* v. *Owen*, 19 L. J. Q. B. 490; 15 Q. B. 476). *Note* this section is replaced by s. 27, Co. Co. Act, 1888.

"Inability to LOAD," in a Marine Insrce, construed a total inability (*Smith* v. *Fenning*, 3 Com. Ca. 75).

Abatement of FREIGHT upon loss of time "from Ship's Inability to execute or proceed on the service," arises if the "Inability" be caused by wilful misconduct or neglect, or necessity, or the ACT OF GOD, *e.g.* the crew being ravaged by small-pox (*Beatson* v. *Schank*, 3 East, 233).

V. INCAPABLE: INCAPACITATED: INEXPEDIENT: UNABLE: UNSOUND MIND: ABILITY: DISABILITY: LEGAL DISABILITY.

INACCURACY.—*V.* DEFECT: ERROR: MISTAKE.

INACCURATE.—"Inaccurate Description . . . of the Premises," s. 75, 6 V. c. 18; *V. Cook* v. *Luckett*, 2 C. B. 168; 15 L. J. C. P. 78. *Cp,* MISTAKE.

INADVERTENCE.—"If North, J., in *Re Lister* (1892, 2 Ch. 417; 61 L. J. Ch. 721) intended to hold that 'Inadvertence' and 'MISTAKE' are convertible terms, I cannot agree with him" (per Smith, L. J., *Re Piers*, 1898, 1 Q. B. 631; 67 L. J. Q. B. 522). "Inadvertence," *e.g.* in R. 10, Sch 1, Bankry Act, 1883, and the (identical) R. 8, Sch 1, Comp Winding-up Act, 1890, means, "the opposite of deliberate action; and does not include a deliberate election founded on misinformation as to the facts. It means that the doer never really meant to do what he did; he was not aware of what he was doing" (per Wright, J., *Ib.*; approved on appeal, 1898, 1 Q. B. 627; 67 L. J. Q. B. 519; 78 L. T. 314; 46 W. R. 475: *Vf,* per Williams, J., *Ex p. Clarke*, 67 L. T. 232). In *Re Piers*, Smith, L. J., further said that, "'Inadvertence,' points to forgetfulness, or accident."

Ignorance of the provisions of s. 25, Comp Act, 1867 (repld s. 7, Comp Act, 1900), was an "Inadvertence" within s. 1 (1), Comp Act, 1898, which gave relief if the omission to file a CONTRACT under s. 25 was "ACCIDENTAL, or due to Inadvertence" (*Re Jackson*, 1899, 1 Ch. 348; 68 L. J. Ch. 190; 79 L. T. 662).

Electoral Offence through "Inadvertence," means, one arising through "negligence, or carelessness, where the circumstances show an absence of bad faith" (per Huddleston, B., *Ex p. Lenanton*, 53 J. P. 263). *Vf, Ex p. Darlington*, 53 J. P. 71: *Ex p. Walker*, 58 L. J. Q. B. 190; 22 Q. B. D. 384; 60 L. T. 581; 37 W. R. 293; 53 J. P. 260.

V. CARELESSLY: FORGETFULNESS: NEGLIGENCE.

INALIENABLE.—"Even if there were no authority to the effect that the word 'inalienable' (in a gift to a married woman) amounts to a restraint on anticipation, I should be prepared so to hold; but there is ample authority—*Steedman* v. *Poole*, 6 Hare, 193: *Spring* v. *Pride*, 10

Digitized by Google

Jur. N. S. 646, 647, and other cases" (per Bowen, L. J., *Harrison* v. *Harrison*, 58 L. J. P. D. & A. 32; 13 P. D. 186).

V. Restraint on Alienation.

INAPPRECIABLE. — An "inappreciable" abstraction of water from a stream, has been suggested to mean, so "inconsiderable an amount as to be incapable of value or price" (per Talfourd, J., *Embrey* v. *Owen*, 20 L. J. Ex. 212; 6 Ex. 353); on which Parke, B., in delivering the jdgmt of the Court of Exchequer, said, — "We are not prepared to say that the learned judge was correct in the interpretation of 'inappreciable' when connected with 'quantity'; nor are we sure that he was not. The word 'unappreciable,' or 'inappreciable,' is one of a new coinage, not to be found in Johnson's Dictionary, Richardson's, or Webster's. The word 'appreciate' first appears in the edition of Johnson by Todd, in 1827, with the explanation, 'To estimate and value.'" *Vth,* per Bowen, L. J., *Brunsden* v. *Humphrey*, 14 Q. B. D. 150.

INATTENTION. — *V.* Mismanagement.

INCAPABLE. — "Debt or Liability incapable of being fairly estimated," s. 31, Bankry Act, 1869, s. 37 (6), Bankry Act, 1883; — The liability of a bankrupt contributory for future Calls to a Company which goes into liquidation pending his bankruptcy, is not so "incapable" (*Re Mercantile Mar Insrce*, 53 L. J. Ch. 593; 25 Ch. D. 415); nor is an Annuity terminable on a second marriage (*Ex p. Blakemore*, 46 L. J. Bank. 118; 5 Ch. D. 372); nor Damages for the breach of a Business Contract (*Ex p. Waters*, 8 Ch. 562). *V.* Fairly Estimated.

A Mayor is "incapable *of acting*," s. 36, 5 & 6 W. 4, c. 76, whether the incapacity be physical, or legal, *e.g.* when he is a candidate for election as Town Councillor and is thus disqualified from acting as Returning Officer (*R.* v. *Owens*, 2 E. & E. 86; 28 L. J. Q. B. 316: *R.* v. *White*, 36 L. J. Q. B. 267; 8 B. & S. 587; L. R. 2 Q. B. 557); so, of an Alderman, under s. 72, 3 & 4 V. c. 108 (*Fanagan* v. *Kernan*, 8 L. R. Ir. 44).

A Trustee "incapable"; *V.* Inability.

V. Unfit: Legal Incapacity: Disabled from acting: Rape. *Cp,* Capable: Capacity.

INCAPACITATED. — A functionary "incapacitated" from acting, is, *semble,* the same thing as if he be Disabled from acting (*V.* jdgmt of Martin, B., *Nicholson* v. *Fields*, 31 L. J. Ex. 237; 7 H. & N. 810).

A person "incapacitated by any law or statute from voting," s. 28 (7), 41 & 42 V. c. 26, means the same as one who is "prohibited" from voting under s. 7, Ballot Act, 1872: *V.* Prohibited, and espy *Hayward* v. *Scott*, there cited, and jdgmt of Coleridge, C. J., *Doulon* v. *Halse*, also there cited.

"Incapacitated from Employment by reason of Accident"; *V. Pugh* v. *L. B. & S. Ry*, cited Accident. *Cp,* Partial Incapacity.

V. Inability.

Digitized by Google

INCENDIARISM.—In a Fire Policy, a condition that it does "not cover any loss or damage occasioned by or in consequence of *Incendiarism*," includes any act of incendiarism, wherever committed, *e.g.* in the adjoining house, which directly causes the loss (*Walker* v. *London & Prov. Insrce*, 22 L. R. Ir. 572). *V.* CAUSED BY.
V. ARSON.

INCERTAINTY.—*V.* CERTAINTY.

INCEST.—"Is sexual intercourse between persons who are within the prohibited Degrees of Affinity, or Consanguinity," stated in the Book of Common Prayer (6 Encyc. 334).

INCH.—An Inch is the $\frac{1}{12}$th of a FOOT (s. 11, 41 & 42 V. c. 49).
Sale by "Inch of Candle"; *V.* CANDLE.

INCIDENT: INCIDENTAL.—A thing is "Incident" to another when it appertains to, or follows on, that other which is more worthy, or principal (Co. Litt. 151 b), *e.g.* a Court Baron is incident to a Manor, Rent to a Reversion, Distress to Rent, Timber Trees to the Freehold, Title Deeds to an Estate, &c, "and of Incidents, some be separable, and some inseparable" (Co. Litt. 151 b); "Separable, as Rents incident to Reversions, &c, which may be severed: Inseparable, as Fealty to a Reversion or Tenure" (Ib. 93 a), or, Possession or Usage and Time to a Custom or Prescription (Ib. 113 b).

"COSTS of and incident to all Proceedings in the Supreme Court," R. 1, Ord. 65, R. S. C.; *V. Re Chennell*, 47 L. J. Ch. 583; 8 Ch. D. 492; 38 L. T. 494; 26 W. R. 595: COSTS: COSTS AND CHARGES.

On a sale under the S. L. Act, 1882, by a Tenant for Life, the Costs of the concurrence of his mortgagee are not costs "of or incidental to" the sale, within s. 21 (x) of the Act (*Cardigan* v. *Curzon Howe*, 58 L. J. Ch. 177, 436; 40 Ch. D. 338; 41 Ib. 375; explaining, but not following, *Re Beck*, 52 L. J. Ch. 815; 24 Ch. D. 608; and considering *Re Sebright*, 56 L. J. Ch. 169; 33 Ch. D. 429). *Vf, Re Llewellin*, 57 L. J. Ch. 316; 37 Ch. D. 317; 58 L. T. 152; 36 W. R. 347: *Re Stamford*, 43 Ch. D. 84: *Re Smith*, 60 L. J. Ch. 613; 1891, 3 Ch. 65; 64 L. T. 821; 39 W. R. 590.

"Costs of and incident to any proceeding" in Bankruptcy, s. 105 (1), Bankry Act, 1883, do not include the debtor's solicitor's attendance at a meeting of creditors to confirm an Arrangement (*Re Strand*, 53 L. J. Q. B. 563; 13 Q. B. D. 492).

The Costs of a Rule to return a fi. fa. are not "Incidental EXPENSES" to the Execution (*Hutchinson* v. *Humbert*, 8 M. & W. 638; 10 L. J. Ex. 418).

INCOME of unconverted property (directed to be sold, but sale of which may be postponed), to go to A. "after payment thereout of all Incidental

Digitized by Google

Expenses and OUTGOINGS," will, *semble*, have to bear structural meliorations of the property rendered necessary in a reasonable course of management, unless it be an Improvement under S. L. Acts (*Re Thomas*, cited IMPROVEMENT).

Labour "incident" to *Manufacturing Process*; *V. Haydon* v. *Taylor*, 4 B. & S. 519; 33 L. J. M. C. 30: *vthc*, *Whymper* v. *Harney*, 18 C. B. N. S. 249, 253.

Incidental *Printing Process*; *V. Hoyle* v. *Oram*, cited EMPLOYED.

Matter "incident to the *Sale and Conveyance*" quà Stamp Duty; *V. Doe* d. *Phillips* v. *Phillips*, 11 A. & E. 796.

"Relating or incidental to the Sale"; *V.* RELATING.

Charges for "*Services* incidental to the duty or business of a Carrier," in a Ry Act, include a reasonable share of the expenses of station and siding accommodation, weighing, checking, clerkage, watching, shunting, and labelling (*Hall* v. *L. B. & S. Ry*, 4 Ry & Can Traffic Ca. 398; 5 Ib. 28; 15 Q. B. D. 505; 17 Ib. 230: *Sowerby* v. *G. N. Ry*, 7 Ry & Can Traffic Ca. 156; 60 L. J. Q. B. 467; 65 L. T. 546: *Neston Co* v. *Lond. & N. W. Ry*, 4 Ry & Can Traffic Ca. 257); but not taking waggons to and from a private siding, or allowing heavy goods to be left on the carrier's land (*Lanc. & Y. Ry* v. *Gidlow*, 45 L. J. Ex. 625; L. R. 7 H. L. 517: *Cp*, *Manchester S. & L. Ry* v. *Pidcock*, cited CONVEYANCE). *V.* REASONABLE SUM.

"It is said that 'Services' implies personal acts, and that no charge can be made for a share of the expenses of providing and maintaining stations. The answer is, that the performance of a Service may, and in many cases must, require the erection of a building in which, or of appliances and conveniences with which, to perform that Service. Any reasonable tradesman or carrier making a charge for Services performed in a building, would include in it a reasonable payment in respect of interest, or otherwise, in respect of the annual allowance to be made for the expenditure on that building" (per Esher, M. R., *Sowerby* v. *G. N. Ry*, sup). *Cp*, "Terminal Charges," sub TERMINAL: EXTRAORDINARY SERVICES.

V. ANCILLARY: COMMON.

INCIDENTAL OR CONDUCIVE.—As to the meaning of this phrase in a Memorandum of Association of a Joint Stock Co; *V. Simpson* v. *Westminster Palace Hotel Co*, 29 L. J. Ch. 561; 2 D. G. F. & J. 141, 146, 152; 8 H. L. Ca. 712: *Joint Stock Discount Co* v. *Brown*, L. R. 3 Eq. 150: *Re Baglan Hall Colliery Co*, 5 Ch. 346, 356: *Leifchild's Case*, L. R. 1 Eq. 231, 235: *Taunton* v. *Royal Insrce*, 33 L. J. Ch. 406; 2 H. & M. 135: *Studdert* v. *Grosvenor*, 33 Ch. D. 538: *London Financial Assn* v. *Kelk*, 53 L. J. Ch. 1025; 26 Ch. D. 107: *Re Faure Electric Accumulator Co*, 58 L. J. Ch. 48; 40 Ch. D. 141.

A *Gratuity* may be within this phrase, if for the benefit of the Com-

Digitized by Google

pany as, *e.g.*, tending to secure able officers (*Henderson* v. *Bank of Australasia*, 58 L. J. Ch. 197; 40 Ch. D. 170); *secus*, of a mere subscription, *e.g.* to the Imperial Institute (*Tomkinson* v. *S. E. Ry*, 35 Ch. D. 675).

INCLINED PLANE.—As used in s. 76, Ry C. C. Act, 1845; *V. Lancashire Brick Co* v. *Lanc. & Y. Ry*, 71 L. J. K. B. 141.

INCLOSE. — *Semble*, to make new fences, partly to replace decayed ones and partly to divide a park for grazing purposes, is within s. 25 (vi), S. L. Act, 1882, which authorizes CAPITAL MONEY to be spent in "Inclosing; straightening of fences; re-division of fields" (*Re Verney*, cited REDEEM).

Stat. Def. — Inclosure Act, 1845, 8 & 9 V. c. 118, s. 167.

INCLOSED LANDS.—"Inclosed Lands," ss. 97, 98, Turnpike Roads Act, 1822, 3 G. 4, c. 126, is used in its popular sense, as denoting lands which are actually inclosed within fences (*Tupsell* v. *Crosskey*, 10 L. J. Ex. 188; 7 M. & W. 441); the effect of that decision, quà that Act, was taken away by 4 & 5 V. c. 51.

Vf, *Allaway* v. *Wagstaff*, 29 L. J. Ex. 51; 4 H. & N. 681.

INCLOSING WALLS. — As used in s. 8, Metrop Building Act, 1855; *V. Tear* v. *Freebody*, 4 C. B. N. S. 228.

INCLOSURE. — *V.* ENCLOSURE: OLD ENCLOSURES.

Stat. Def. — Inclosure Act, 1845, 8 & 9 V. c. 118, s. 167.

"The Inclosure Acts, 1845 to 1882"; *V.* Sch 2, Short Titles Act, 1896.

INCLUDE. — "Shall include," is a phrase of extension, and not of restrictive definition; it is not equivalent to "shall MEAN" (*R.* v. *Kershaw*, 6 E. & B. 1007; 26 L. J. M. C. 19: *R.* v. *Hermann*, 48 L. J. M. C. 106; 4 Q. B. D. 284; 27 W. R. 475; 40 L. T. 263). *Vf*, per Channell, J., *Savoy Hotel Co* v. *London Co. Co.*, cited SHOP.

"'Include' is very generally used in Interp Clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also, those things which the interp clause declares that they shall include. But 'include' is susceptible of another construction which may become imperative if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to '*Mean and Include*,' and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the

Digitized by Google

Act, must invariably be attached to these words or expressions" (per Ld Watson, *Dilworth* v. *Commr of Stamps*, 1899, A. C. 105, 106; 68 L. J. P. C. 4).

"Include" in s. 27, Wills Act, 1837, is equivalent in meaning to "comprise" in s. 24 (per Stirling, J. *Re Wells*, 58 L. J. Ch. 840; 61 L. T. 592).

V. Extend to and Include.

INCLUDING. — *V.* Namely.

INCOMBUSTIBLE. — A material to be "Incombustible," within s. 19 (1), Metrop Bg Act, 1855, must be wholly incombustible; therefore, a roof-covering of Duroline (the foundation of which material is of wire but which is coated with an ignitable compound) is not a compliance with the section (*Payne* v. *Wright*, 1892, 1 Q. B. 104; 61 L. J. M. C. 7; 65 L. T. 612; 40 W. R. 191; 56 J. P. 120).

Wall of "hard and incombustible" material; *V.* Wall.

V. Fire-Resisting.

INCOME. — "Income" signifies "what comes in" (per Selborne, C., *Jones* v. *Ogle*, 42 L. J. Ch. 336). "It is as large a word as can be used" to denote a person's receipts (per Jessel, M. R., *Re Huggins*, 51 L. J. Ch. 938); and will therefore, for the purpose of s. 90, Bankry Act, 1869, and now of s. 53 (2), *Bankry Act*, 1883, include the retiring pension of a Colonial Judge notwithstanding that such pension has to be voted every year (*Re Huggins*, 51 L. J. Ch. 935; 21 Ch. D. 85: *Va*, *Re Currie*, 26 S. J. 563); so, of the retired pay of an Army Officer (*Re Ward*, 1897, 1 Q. B. 266; 66 L. J. Q. B. 310; 76 L. T. 37; 45 W. R. 329), or the stipend of a Workhouse Chaplain (*Re Mirams*, cited Public Officer). But it will not include a Voluntary Allowance even though made from public funds (*Ex p. Wicks*, 50 L. J. Ch. 620; 17 Ch. D. 70: *Re Webber*, 56 L. J. Q. B. 209; 18 Q. B. D. 111; 55 L. T. 816; 35 W. R. 308; 3 Times Rep. 138), nor, seeing that the word in the sections mentioned is used in association with the word "Salary," will it for the purpose of those sections include prospective personal earnings in a profession or business carried on by a bankrupt on his own account (*Ex p. Benwell, Re Hutton*, 54 L. J. Q. B. 53; 14 Q. B. D. 301; 51 L. T. 677; 33 W. R. 242: *V. Hamilton* v. *Brogden*, W. N. (91) 36: *Holmes* v. *Millage*, 1893, 1 Q. B. 551; 62 L. J. Q. B. 380; 68 L. T. 205; 41 W. R. 354), nor the weekly wages of a Working Man (*Re Jones*, 1891, 2 Q. B. 231; 60 L. J. Q. B. 751; 64 L. T. 804; 40 W. R. 95: *Re Hurrell*, 12 Times Rep. 133). But "Salary" includes the earnings of a Commercial Traveller employed at so much a year, terminable at a week's notice (*Ex p. Brindle*, 56 L. T. 498; 35 W. R. 596), and "Salary or Income" includes an actor's earnings under an engagement at so much a week

Digitized by Google

with forfeiture and deductions in certain cases (*Re Shine*, cited, In Receipt). *V.* Personal Labour.

V. Salary: Debt.

So, quà the *Income Tax Acts*, a person's "Income,"—even "Total Income from all sources," s. 8, 39 V. c. 16,—means, Money, or Money's Worth, received by him, and (in this connection, at least) Money's Worth must be something that "can be turned into money" (per Halsbury, C., *Tennant* v. *Smith*, inf); the tax, whether under Sch D or E, is, "not on what saves a person's pocket but, on what goes into his pocket" (per Ld Macnaghten, *Ib.*). Therefore, an employee, though of so superior a character as a Bank Manager, who as part of the terms of his employment has to reside on his employer's premises, which residence he gets rent free but cannot sub-let or turn to pecuniary account, does not thereby get any addition to his Income, any more than does the Master of a Ship who is spared the cost of house rent while afloat (*Tennant* v. *Smith*, 1892, A. C. 150; 61 L. J. P. C. 11; 66 L. T. 327; 56 J. P. 596). It may be a Gain to him, in the popular sense of the word, but it is not "Profits or Gains," as that phrase is used in Sch D, nor is it "Salaries, Fees, Wages, Perquisites, or Profits," within R. 1, Sch E, nor is it "Profits, Gains, or Emoluments," within R. 2, Case 2, Sch D, or "Perquisites . . . from Fees or other Emoluments" within R. 4, Sch E (*Ib.*). *V.* Income Tax.

The like ruling applies to the Minister of a *Free Kirk* Manse, who has merely a right of residence (*M'Dougal* v. *Sutherland*, 21 Rettie, 753; W. N. (96) 113); *secus*, of the Minister of a *Parish* Manse, who is entitled to let it (*Corke* v. *Fry*, 22 Rettie, 422; W. N. (96) 128).

A Government annual subvention, *e.g.* to a Railway Co, is taxable Income, even as regards so much of it as is to form a Sinking Fund for redemption of debentures (*Nizam's State Ry* v. *Wyatt*, 59 L. J. Q. B. 430; 24 Q. B. D. 548).

But, quà Alimony in Divorce Proceedings, Income includes moneys ordinarily received but "of which the recipient has no legal power to enforce the payment" (per Jeune, P., *Bonsor* v. *Bonsor*, 1897, P. 77; 66 L. J. P. D. & A. 35; 76 L. T. 168; 45 W. R. 304), *e.g.* annual moneys in the absolute discretion of trustees (*Clinton* v. *Clinton*, L. R. 1 P. & D. 215), or voluntary allowances (*Moss* v. *Moss*, 15 W. R. 532: *Bonsor* v. *Bonsor*, sup).

Quà *Finance Act*, 1894, s. 21 (5), "Income," means, income only; and therefore, where on the death of a husband or wife the Survivor becomes entitled to the corpus of settled property, the section does not apply (*A-G.* v. *Strange*, 67 L. J. Q. B. 629; 1898, 2 Q. B. 39; 78 L. T. 516; 46 W. R. 663).

A *Devise* of the "Income" of Realty may pass the property itself (*V.* Rents and Profits: Use and Occupation); but the ordinary acceptation of "Income," in a devise or bequest, is the Net Annual Income (*Re*

Digitized by Google

Little, Mather v. *Roddy*, W. N. (81) 138: *Re Redding*, 1897, 1 Ch. 876; 66 L. J. Ch. 460; *Vthlc, Re Tomlinson*, 1898, 1 Ch. 232; 67 L. J. Ch. 97): *Vf*, PROFITS: OUTGOING, at end.

"Profits" and "Income" are sometimes used as synonyms; but, strictly speaking, "Income" means, that which comes in without reference to the OUTGOINGS; whilst "Profits," generally, means the Gain which is made when both receipts and payments are taken into account (*People* v. *Niagara Supervisors*, 4 Hill, 23).

In a Divesting Clause in the event of a Tenant for Life succeeding to an "Income" of so much *per annum*, one year must be taken with another, and the usual and proper deductions, as fairly as possible, must be made, including allowances off rents in order to maintain good relations between landlord and tenant (*Bateman* v. *Faber*, 83 L. T. 7).

"Income," ss. 43 and 2 (iii), Conv & L. P. Act, 1881: *V. Re Dickson, Hill* v. *Grant*, 54 L. J. Ch. 510; 29 Ch. D. 331; 52 L. T. 707; 33 W. R. 511: *Re Clements*, 1894, 1 Ch. 665; 63 L. J. Ch. 326; 70 L. T. 682; 42 W. R. 374.

Quà S. L. Acts, "'Income' includes Rents and Profits" (s. 2 (10, i), S. L. Act, 1882).

As to what is Income as between *Tenant for Life* and the *Remainder-Men*; *V.* Lewin, 324 *et seq*: 3 Encyc. 442–445: PRODUCE: PROFITS: *Re Kemeys-Tynte*, 1892, 2 Ch. 211; 61 L. J. Ch. 377; 66 L. T. 752; 40 W. R. 423: *Allhusen* v. *Whittell*, 36 L. J. Ch. 929; L. R. 4 Eq. 295.

Extraordinary Profits of a Company are "Income" or "CAPITAL" according to the way in which the Co (acting within its powers) deals with them; — if they are distributed as a Dividend, they are "Income" (*Re Alsbury, Sugden* v. *Alsbury*, 45 Ch. D. 237; 60 L. J. Ch. 29); if properly used for creating new Shares, they are "Capital" (*Bouch* v. *Sproule*, 12 App. Ca. 385; 56 L. J. Ch. 1037; 33 W. R. 621; *Svthc, Re Northage*, 60 L. J. Ch. 488; 64 L. T. 625). *Vh, Re Paget*, 9 Times Rep. 88: *Re Malam*, 1894, 3 Ch. 578; 63 L. J. Ch. 797; 71 L. T. 655: *Re Armitage*, 1893, 3 Ch. 337; 63 L. J. Ch. 110; 69 L. T. 619.

"Income," in a Building Society's Rules, read as including all the incomings of whatever nature (*Re West Riding Socy*, 6 Times Rep. 16; 59 L. J. Ch. 197; 43 Ch. D. 407; 62 L. T. 486; 38 W. R. 376).

"Income," s. 4, St. John's, New Brunswick, Assessment Act (31 V. c. 36), means, the balance of gain over loss in any financial year (*Lawless* v. *Sullivan*, 50 L. J. P. C. 33; 6 App. Ca. 373); but where Commrs are, by statute, authorized to receive certain moneys, and at the same time directed to pay a portion to another body, the gross sum received is to be deemed the "Income" of the Commrs (*R.* v. *Southampton Commrs*, L. R. 4 H. L. 449; 39 L. J. Q. B. 253). *V.* INCOME TAX.

The losses, outgoings, and expenses, incurred "*in the production of his*

Digitized by Google

Income," and which a tax-payer is (by s. 28, New South Wales Land and Income Tax Assessment Act, 1895) entitled to deduct from the taxable amount of his income, means, the losses, &c, incurred in producing the WHOLE amount of his income from whatever source arising, and whether the Act exempts a portion or not; they are not confined to those immediately connected with, or properly attributable to, his taxable income (*New S. Wales Commrs* v. *Teece,* 1899, A. C. 254; 68 L. J. P. C. 8; 79 L. T. 601).

"Actually producing Income"; *V. Re Hubbuck,* 1896, 1 Ch. 754; 65 L. J. Ch. 271.

"Income arising from any Endowment": *V.* ENDOWMENT. *Va,* ARISING.

"Whole Income"; *V.* WHOLE.

INCOME TAX. — "'Income Tax,' is a tax on INCOME. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct. There is no difference, in kind, between the duties of Income Tax assessed under Sch D and those assessed under Sch A, or any of the other Schedules of charge. One man has fixed property; another lives by his wits; each contributes to the tax if his Income is above the prescribed limit. The standard of assessment varies according to the nature of the source from which Taxable Income is derived; that is all" (per Ld Macnaghten, *London Co. Co.* v. *A-G.,* 70 L. J. Q. B. 80).

As to what words will exonerate beneficiary from Income Tax; *V.* CLEAR: DEDUCTION.

"The Income Tax Act, 1842," is 5 & 6 V. c. 35, "The Income Tax Act, 1853," is 16 & 17 V. c. 34 (s. 5, 43 & 44 V. c. 19).

Vh, INCOME: CARRY ON: DERIVE: PROFITS: TRADE: AGENT: FOREIGN POSSESSIONS: PUBLIC OFFICE: VOCATION: Dowell's Income Tax Laws: 6 Encyc. 339–352.

INCOMING TENANT. — The Trustee in a Bankry is not, as such, the "Incoming Tenant" of the bankrupt's premises (per Cotton, L. J., *Re Peake,* 53 L. J. Ch. 977; 13 Q. B. D. 753); but he assumes that character if he takes possession of the premises and uses them for the purposes of the estate (*Re Flack,* 1900, 2 Q. B. 32; 69 L. J. Q. B. 458; 82 L. T. 503; 48 W. R. 446). *Vf,* NEW OCCUPIER: OUTGOING OCCUPIER.

INCOMMODIOUS. — Dealing with a Declaration which charged that deft's Public Nuisance caused a Private Wrong by rendering the plaintiff's Coffee-house "Unhealthy and Incommodious," Brett, J., said, — "When we speak as lawyers we do not always use words in their ordinary and popular signification; and we shall not be doing violence to language by holding that 'Incommodious' sufficiently de-

Digitized by Google

scribes Annoyance by bad smells" (*Benjamin* v. *Storr*, 43 L. J. C. P. 162; L. R. 9 C. P. 400).

V. INJURIOUS TO HEALTH.

INCONSISTENT. — When a statute says that its provisions are to obtain, quà its subject-matter, except so far as they may be "Inconsistent" with a previous statute, the Inconsistency connoted must be one "so at variance with the machinery and procedure indicated by the previous Act that, if that obligation were added, the machinery of the previous Act would not work" (per Fry, L.J., *Re Knight and Tabernacle Bg Socy*, 60 L. J. Q. B. 633; 65 L. T. 550; 39 W. R. 507; 55 J. P. 534: *Vf*, EVERY). Therefore, it was held in that case that the power to state a Case under s. 19, Arb Act, 1889, applies to a Building Socy arbitration, and is not "inconsistent" with s. 36, Bg Socy Act, 1874, which makes an arbitration thereunder "binding and conclusive" and "final to all intents and purposes"; for on a Case stated the Court only instructs the arbitrators as to the law and does not destroy the finality of their award which they make after receiving the instruction: affd in H. L. nom. *Tabernacle Bg Socy* v. *Knight*, 1892, A. C. 298; 62 L. J. Q. B. 50; 67 L. T. 483; 41 W. R. 207; 56 J. P. 709.

"Not inconsistent"; *V.* APPLICABLE.

INCONTESTABLE. — A Life Policy declared "Incontestable," is not thereby rendered valid if it is contrary to law, *e.g.* if the insured had no Insurable INTEREST in the Life (*Anctil* v. *Manufacturers' Life Insrce*, 1899, A C. 604; 68 L. J. P. C. 123; 81 L. T. 279).

Cp, FULL INTEREST ADMITTED.

INCONVENIENCE. — *V.* ANNOYANCE: EXTRAORDINARILY: INCOMMODIOUS: UNNECESSARY INCONVENIENCE.

INCORPORATED. — A Railway Act which is repealed and in part re-enacted by a subsequent amalgamating Act is thereby "incorporated" with the latter, within s. 80, Lands C. C. Act, 1845 (*Re Ellison*, 8 D. G. M. & G. 62; 25 L. J. Ch. 379; 4 W. R. 306; 26 L. T. O. S. 267; following *Ex p. Eton College*, 15 Jur. 45).

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

Other incorporated Co; *V.* COMPANY.

V. UNINCORPORATED.

A Document "incorporated"; *V.* RATIFY.

"Incorporated Enactments"; Stat. Def., 47 & 48 V. c. 12, s. 2.

"Incorporated Law Society"; Stat. Def., 23 & 24 V. c. 127, s. 1; 40 & 41 V. c. 25, s. 4; 44 & 45 V. c. 44, s. 1; 51 & 52 V. c. 65, s. 4. — *Ir.* 29 & 30 V. c. 84, s. 1; 61 & 62 V. c. 17, s. 4.

INCORPOREAL HEREDITAMENT. — Is "a right issuing out of a thing corporate, whether real or personal, or concerning or annexed

Digitized by Google

to, or exercisable within, the same. It is not the thing corporate itself, which may consist in lands, houses, jewels, or the like; but something collateral thereto, as a rent issuing out of those lands or houses, or an office relating to those jewels" (2 Kerr's Blackstone, 4 ed., 16, cited and applied by Cotton, L. J., *Re Christmas*, 55 L. J. Ch. 880).

Mixed Incorporeal Hereditaments are Reversions, Remainders, and Executory Interests (Wms. R. P. Part 2, chs. 1, 2, and 3).

There are three kinds of pure Incorporeal Hereditaments: —

1. *Appendant*:
   e.g. Seigniories; Manorial Rights of Common; Advowson (appendant to a Manor);
2. *Appurtenant*:
   e.g. Rights of Common, of Way, or of Light, annexed to land and arising by grant or prescription;
3. *In gross*:
   e.g. Seigniories severed from a Manor; Rent-Seck; Rent-Charge; Common in Gross; Advowsons (generally); Tithes; Titles of Honour; Offices.

V. Wms. R. P. Part 2, ch. 4: Goodeve, ch. 13: Challis, 47, 48: Appendant: Gross: Corporeal: Hereditament.

Poor Rates, being charged in respect of the occupation of land, may reasonably be considered as Incorporeal Hereditaments within the Mortmain Acts (*Re Christmas*, 55 L. J. Ch. 878; 33 Ch. D. 332; 55 L. T. 197; 33 W. R. 779; 50 J. P. 759).

Vf, Hastings v. *N. E. Ry*, cited Leasehold Reversion.

"Incorporeal Hereditament," s. 2 (10, i), Settled Land Act, 1882, is not to be restricted to incorporeal hereditaments of a saleable or alienable character, but extends to an hereditary Dignity, whether such Dignity does or does not concern lands or a place; so that the Court, under s. 37, has power to order a sale of chattels devolving with the title (*Re Rivett-Carnac's Will*, 54 L. J. Ch. 1074; 30 Ch. D. 136; 53 L. T. 81; 33 W. R. 837: *Re Aylesford*, 32 Ch. D. 162: *Sv*, both cases criticised by Hood & Challis on Conveyancing, 6 ed., 277, 274).

INCORRECT. — Incorrect Statement, *V.* Error.

Incorrect Weight, &c; *V.* Correct: Unjust.

INCORRIGIBLE ROGUE. — Stat. Def., Vagrancy Act, 1824, 5 G. 4, c. 83, s. 5: Steph. Cr. 132.

V. Rogue and Vagabond.

INCREASE. — A mortgage of "all the Issue, *Increase*, and Progeny, of the sheep," does not, under the word "Increase," include additions to the flock made by purchase, but means the natural increase or offspring of the original sheep mortgaged (*Webster* v. *Power*, 37 L. J. P. C. 9: L. R. 2 P. C. 69).

Digitized by Google

"The King hath a title to *Maritima Incrementa,* or, Increase of Land by the SEA; and this is of three kinds, viz. (1) Increase *per projectionem vel alluvionem*; (2) Increase *per relictionem vel desertionem*; (3) Per *insulæ productionem*" (Hale, De Jure Maris, ch. 4):

(1) "Is when the Sea, by casting up sand and earth, doth by degrees (*V.* IMPERCEPTIBLE) increase the land and shut itself out further than the ancient bounds went";

(2) Is the "recess of the Sea . . . and so also it regularly holds in lands deserted by a River that is an Arm of the Sea or CREEK of the Sea *primâ facie,* especially if the Creek or River be part of a PORT";

(3) "Islands arising *de novo* in the King's Seas, or the King's Armes thereof" (Ib.).

Vf, Hale, ch. 6; and as to the law by which *Nova Insula* is to be governed, *V.* Callis, 44 *et seq.*

Increase of Nominal Share Capital; *V.* NOMINAL.

There is no "Increase" of any Rate or Charge, directly or indirectly, within s. 1 (1), Ry & Canal Traffic Act, 1894, if a Ry Co makes a legal charge for an Accommodation which it has previously given gratuitously, *e.g.* a Siding Rent for coal waggons after 4 clear days allowed for their discharge (*Manchester, &c Traders' Assns* v. *Lanc. & Y. Ry,* 10 Ry & Can Traffic Ca. 127). *Vf, South Yorkshire Coal Owners' Assn* v. *Mid. Ry,* Ib. 28: *Mid. Ry* v. *Black,* Ib. 142.

INCREASED RENT.—The "Increased Rent" assessed by Commrs under s. 56, Drainage and Improvement of Lands Act (Ir) 1863, 26 & 27 V. c. 88, is not an ordinary contract RENT, though recoverable as such; it is assessed in respect of a specific improvement to the HOLDING, and is unaffected by the Land Law (Ir) Act, 1881, 44 & 45 V. c. 49 (*Enniskillen* v. *Reilly,* 32 L. R. Ir. 372).

INCUMBENT.—"'*Incumbent*' commeth from the verbe *incumbo,* that is, to be diligently resident, *id est, obnixè operam dare*; and when it is written *encumbent,* it is falsely written, for it ought to be *incumbent,* as *Littleton* doth here (s. 180). And therefore the law doth intend him to be resident on his benefice" (Co. Litt. 119 b). *Vf,* Termes de la Ley.

"Incumbent or Minister," ss. 32, 52, Burial Act, 1852, 15 & 16 V. c. 85; *V. Stewart* v. *West Derby Burial Bd,* 34 Ch. D. 314; 56 L. J. Ch. 425; 56 L. T. 380; 35 W. R. 268.

Quà Sale of Advowsons Act, 1856, 19 & 20 V. c. 50, "'Incumbent,' *means,* the Rector, Vicar, or Perpetual Curate (as the case may be) of a Church or Ecclesiastical Benefice, the Advowson of which is to be dealt with under this Act; and *includes,* the Officiating Clergyman for the time being, if the Incumbent reside abroad or be incapable of acting" (s. 1).

Digitized by Google

Quà Public Worship Regulation Act, 1874, 37 & 38 V. c. 85, "'Incumbent,' means, the person or persons in Holy Orders legally responsible for the due performance of Divine Service in any Church, or of the Order for the Burial of the Dead in any Burial Ground" (s. 6).

Quà 23 & 24 V. c. 72, "Incumbent" means, "Rector, Vicar, or Perpetual Curate" (s. 2).

"The Incumbent or Minister of any Church, Chapel, or Place appropriated to Public Religious Worship, which is now by law exempt from" Poor Rates (s. 151, P. H. Act, 1875), means, an Incumbent or Minister in the ordinary sense of the term, and cannot apply to the Trustees of a Dissenting Chapel (*Hornsey* v. *Brewis*, 60 L. J. M. C. 48: *Cp*, *Caiger* v. *St. Mary, Islington*, and *G. E. Ry* v. *Hackney*, cited HOUSE).

V. MINISTER.

INCUMBER. — *V.* CHARGE OR INCUMBER: CHARGE: INCUMBRANCE.

INCUMBRANCE. — "In Wharton's Law Lexicon, I find 'Incumbrance' defined as being, 'A CLAIM, LIEN, or LIABILITY, attached to property'; and this definition is wide enough to cover the plt's claim," which was, as assignee for value of a reversionary interest, against a person coming in under a subsequent title (per Romer, J., *Jones* v. *Barnett*, 68 L. J. Ch. 247, 248; 1899, 1 Ch. 620).

A power to charge land with a sum of money, is an "Incumbrance" on the land (*Evans* v. *Evans*, 22 L. J. Ch. 785).

A Lease is an Incumbrance if a vendor has contracted to give Vacant Possession (Sug. V. & P. 304: *Caballero* v. *Henty*, 43 L. J. Ch. 635; 9 Ch. 447; 30 L. T. 314; 22 W. R. 446); but, *semble*, a mere Tenancy from Year to Year is, generally, not an Incumbrance (*Doe* d. *Davies* v. *Davies*, 16 Q. B. 951; 20 L. J. Q. B. 408). So, a Lease at an inadequate rent is an Incumbrance, within a clause prohibiting a married woman from incumbering the property (*Baggett* v. *Meux*, 13 L. J. Ch. 228; 1 Coll. 138).

"Incumbrances, *Claims, and Demands,*" in the ordinary covenant against Incumbrances, whether express or implied under s. 7 (1, A), Conv & L. P. Act, 1881, includes apportioned assessment under the P. H. Act, 1875 (*Re Betlesworth and Richer*, 57 L. J. Ch. 749; 37 Ch. D. 535: *Vth*, *Re Boor*, 40 Ch. D. 577); but not those under s. 77, Metrop Man. Act, 1862 (*Egg* v. *Blayney*, 57 L. J. Q. B. 460; 21 Q. B. D. 107; 59 L. T. 65; 36 W. R. 893; 52 J. P. 517). A Liability to a Local Authority for Works completed before the date of a V. & P. contract, is an "Incumbrance," within a covenant implied by s. 7 (1, A, C), Conv & L. P. Act, 1881 (*Stock* v. *Meakin*, cited OUTGOING).

Quà Part 1, Finance Act, 1894, "'Incumbrances,' includes, Mortgages and Terminable Charges" (subs. 1, *k*, s. 22); in Scotland "'Incum-

Digitized by Google

brance,' includes, any Heritable Security, or other debt or payment secured upon Heritage" (subs. 10, s. 23).

Other Stat. Def. — Land Registry Act, 1862, 25 & 26 V. c. 53, s. 140; Conv & L. P. Act, 1881, s. 2 (vii). — *Ir.* 21 & 22 V. c. 72, s. 1; 28 & 29 V. c. 88, s. 2, c. 101, s. 3; 50 & 51 V. c. 33, s. 34; 54 & 55 V. c. 66, s. 95.

"Incumbrance *affecting*" an estate, 18 G. 2, c. 20, includes a SEQUESTRATION on a Benefice (*Pack* v. *Tarpley*, 8 L. J. M. C. 93; 9 A. & E. 468; 1 P. & D. 478).

"Incumbrances affecting the *Inheritance*," s. 21 (ii), S. L. Act, 1882, means, Incumbrances affecting the land sold or any other land comprised in the Settlement (*Re Chaytor*, 53 L. J. Ch. 312; 50 L. T. 88; 32 W. R. 517; 25 Ch. D. 651: *Re Stamford*, 43 Ch. D. 95); but it only includes incumbrances in the ordinary sense, *e.g.* Mortgages, Portions, &c; and does not include sums which, if he lives sufficiently long, will be payable by the tenant for life, or which, at any rate, affect him as much as those in remainder, *e.g.* charges for a Drainage Loan effected prior to the Act (*Re Knatchbull*, 54 L. J. Ch. 154, 1168; 27 Ch. D. 349; 29 Ib. 588; 33 W. R. 10, 569; 51 L. T. 695; 53 Ib. 284; *Vf, thc* as to application of Capital to Drainage under s. 25 (i), S. L. Act: *Re Knatchbull* followed in *Re Leinster*, 23 L. R. Ir. 160: *Va, Re Dalison*, 1892, 3 Ch. 522; 61 L. J. Ch. 712). *Note:* As to application of CAPITAL MONEY in discharge of Incumbrances, *V. Re Richardson*, cited TENANT FOR LIFE.

"Incumbrance affecting the *Land* charged," s. 9, 33 & 34 V. c. 56; *V. Provident Clerks' Assn* v. *Law Life Assrce*, W. N. (97) 73.

"'ESTATE,' shall extend to any Interest, CHARGE, Lien, or Incumbrance, in, upon or affecting lands, either at Law or in Equity," s. 1, Fines and Recoveries Act, 1833; *V. Miller* v. *Collins*, 1896, 1 Ch. 573; 65 L. J. Ch. 353: *S. C.*, cited INTEREST.

"Incumbrance affecting" land, s. 5, S. L. Act, 1882, includes an Improvement Rent-charge created under 27 & 28 V. c. 114, s. 51 *et seq* (*Strafford to Maples*, 1896, 1 Ch. 235; 65 L. J. Ch. 124; 73 L. T. 586; 44 W. R. 259). *Sv*, S. L. Act, 1887, and thereon *Re Howard*, 1892, 2 Ch. 233; 61 L. J. Ch. 311; 67 L. T. 156; 40 W. R. 360.

Except where the mtgee purchases, the Solrs Scale Fee on the Sale of property "*subject to* Incumbrances" is to be calculated on the gross amount of the purchase money, including the incumbrances, and not on the amount thereof attributable to the equity of redemption (Solrs Rem Ord Sch 1, R. 9: *Fortescue* v. *Mercantile Bank*, 1897, 2 Q. B. 236; 66 L. J. Q. B. 591; 76 L. T. 645; 45 W. R. 529: *Re Gallard*, 57 L. J. Q. B. 528; 21 Q. B. D. 38).

V. DEDUCTION: FREE FROM INCUMBRANCES: CHARGE: CHARGE OR INCUMBER.

Digitized by Google

INCUMBRANCER.—"Purchaser, Payee, or Incumbrancer": *V.* PAYEE.

Stat. Def.—Conv & L. P. Act, 1881, s. 2 (vii).—*Ir.* 21 & 22 V. c. 72, s. 1; 28 & 29 V. c. 101, s. 3.

V. PRIOR INCUMBRANCER.

INCUR.—*V.* DEBT OR LIABILITY.

INCURRED.—A statutory power to Quarter Sessions to order payment of "COSTS incurred," means that the Court must, for itself, ascertain what costs have been incurred and then put the amount in the Order (*Sellwood* v. *Mount*, 10 L. J. M. C. 121; 1 Q. B. 726); so, if the Court has to "CERTIFY" the amount (*R.* v. *Long*, 10 L. J. M. C. 124; 1 Q. B. 740): *Cp*, OPINION: REASONABLE COSTS.

Though a contract with a Local Authority may not be obligatory on them by reason of its not being under seal (s. 174 (1), P. H. Act, 1875: *Hunt* v. *Wimbledon Local Bd*, 48 L. J. C. P. 207; 4 C. P. D. 48: *Young* v. *Royal Leamington Spa*, 8 App. Ca. 517), yet if street work be done for a Local Authority, and they recognize their liability and pay for such work, though there be no contract under seal, such payments are "EXPENSES *incurred*" and may be recoverable against owners under s. 150, P. H. Act, 1875 (*Bournemouth Commrs* v. *Watts*, 54 L. J. Q. B. 93; 14 Q. B. D. 87).

But the phrase "have incurred expenses" (s. 257, Ib.) means at least, that the local authority has paid those expenses, or become liable to pay them, as distinguished from estimated expenses (*West Ham* v. *Grant*, 58 L. J. Ch. 121). *Vf*, NECESSARILY: PURSUANCE: REPAID.

Where an Arbitrator or Justices have to APPORTION "Expenses incurred" by a Local Authority, the enquiry is limited to the Apportionment, and does not embrace the reasonableness or actual payment of the expenses (*Bayley* v. *Wilkinson*, 33 L. J. M. C. 161; 16 C. B. N. S. 161: *Cook* v. *Ipswich*, 40 L. J. M. C. 169; L. R. 6 Q. B. 451).

"Right or Liability incurred"; *V.* RIGHT: ACQUIRE.

INDEBTED.—As to the meaning of this word in Art. 10, Table A, Comp Act, 1862; *V.* Buckl. 494, 495. It has a similar meaning to "due," *i.e.* presently payable (*Re Stockton Iron Co*, cited DUE).

INDECENCY.—*V.* 6 Encyc. 365.

"GROSS Indecency with Another Male Person," s. 11, 48 & 49 V. c. 69; *V. R.* v. *Jones*, cited ANOTHER.

INDECENT.—A prostitute accosted four men in the Haymarket, for the purposes of her trade, and in each case put her arm into that of the man and walked by his side until he threw her off; the Middlesex Sessions held she had not behaved in an "indecent manner" within s. 3, 5 G. 4, c. 83 (*R.* v. *De Ruiter*, 44 J. P. 90). *Cp*, INDECENTLY.

Digitized by Google

Indecent ASSAULT; *V. R.* v. *Rosinski*, 3 Russ. Cr. 307, 308: *R.* v. *Case*, 1 Den. 580: *R.* v. *Lock*, L. R. 2 C. C. R. 10; 42 L. J. M. C. 5: INFAMOUS CRIME.

Indecent *Exposure* of the Person; *V.* PLACE: Rosc. Cr. 701: Arch. Cr. 1128.

Indecent *Publication*; *V.* OBSCENE: Rosc. Cr. 596, 597: Arch. Cr. 1130.

INDECENTLY.—"The word 'indecently' has no definite legal meaning; and with respect to the word 'presence,' I remember that in our older Courts of Justice the judge retired to a corner of the court for a necessary purpose, even in the presence of ladies. That, perhaps, would be considered 'indecent' now" (per Pollock, C. B., *R.* v. *Webb*, 2 C. & K. 938). *Cp*, INDECENT. *V.* PRESENCE.

INDEFEASIBLE.—*V.* ABSOLUTE AND INDEFEASIBLE.

INDEMNIFY.—A contract to "indemnify," quà a sum of money, means, in its ordinary sense, that the contractor will pay the amount; and, if given in respect of a past debt, the word "Indemnity" does not, necessarily, import that the contractee will forbear to sue for the sum due (*Bell* v. *Welch*, 19 L. J. C. P. 184).

Where a person has a contract to "indemnify" him against obligations that will lie upon him, that implies that the contractee must himself pay before he sues on the contract (*Collinge* v. *Haywood*, 8 L. J. Q. B. 98; 9 A. & E. 633): *Secus*, where the contract is to be "answerable," or "responsible" (*Spark* v. *Heslop*, 28 L. J. Q. B. 197; 1 E. & E. 563.

The duty of CONTRIBUTION between Sureties and Co-Contractors is founded on principles of Equity, and does not spring from Contract; therefore "Indemnification for the advances made and loss sustained," by a Surety against a Co-Surety, not exceeding a "Just Proportion," s. 5, Mer Law Amend Act, 1856, includes interest on the Co-Surety's proportion from the date of payment (*Re Swan*, Ir. Rep. 4 Eq. 209, *whv* for a statement of the authorities on the principles of this kind of Contribution, showing how the Irish Courts ignored English decisions, and *vice versâ*). *Vf*, on this section, *Re McMyn*, 55 L. J. Ch. 845; 33 Ch. D. 575.

V. DAMAGE.

INDEMNITY.—An "Indemnity" is a CONTRACT, express or implied, to indemnify against a liability, and the liability under which is coterminous with the liability it is intended to cover, and is independent of the question whether somebody else makes default or not (*Pontifex* v. *Foord*, 53 L. J. Q. B. 321; 12 Q. B. D. 152: *Catton* v. *Bennett*, 53 L. J. Ch. 685; 26 Ch. D. 161: *Speller* v. *Bristol Steam Nav Co*, 53 L. J. Q. B. 322; 13 Q. B. D. 96: *Carshore* v. *N. E. Ry*, 29 Ch. D. 344: *Birmingham Land Co* v. *Lond. & N. W. Ry*, 34 Ch. D. 272; inf: *Trit-*

Digitized by Google

ton v. *Bankart,* 56 L. J. Ch. 629; 56 L. T. 306; 35 W. R. 474: per Davey, L. J., *Guild* v. *Conrad,* cited ANOTHER). *Cp,* GUARANTEE.

Therefore the covenants by an underlessee, in precisely similar terms to those of the original lease, are not an "Indemnity" by the underlessee to the original lessee within the Third Party Procedure, R. 48, Ord. 16, R. S. C.; because the effect in such a case, even of the same words, would vary according to the age of the house, or the condition of the demised premises, at the time each obligation was undertaken (*Pontifex* v. *Foord,* sup; distinguishing *Hornby* v. *Cardwell,* 51 L. J. Q. B. 89; 8 Q. B. D. 329; 45 L. T. 781; 30 W. R. 263. *Vf, Tritton* v. *Bankart,* sup: *Gooch* v. *Clutterbuck,* cited FROM PERFORMANCE). And so a right to damages for breach of contract, is not a right to an "Indemnity" within the rule (*Birmingham Land Co* v. *Lond. & N. W. Ry,* 34 Ch. D. 261; 56 L. J. Ch. 956; 55 L. T. 699; 35 W. R. 173; 3 Times Rep. 179: *The Jacob Christensen,* 1895, P. 281; 64 L. J. P. D. & A. 92; 72 L. T. 902). So, the claim of a Trustee (sued to replace a trust fund lost by the default of a solicitor co-trustee) to have the loss made good by the partners of the defaulting trustee, is not within the Rule (*Wynne* v. *Tempest,* 1897, 1 Ch. 110; 66 L. J. Ch. 81; 75 L. T. 624; 45 W. R. 183).

So, an allegation, by one defendant against a co-defendant, that the contract sued on was induced by the co-defendant's false representation, will not well found a claim for "CONTRIBUTION or Indemnity" under R. 55, Ord. 16 (*Catton* v. *Bennett,* sup).

Vf, Baxter v. *France,* 1895, 1 Q. B. 455, 591; 64 L. J. Q. B. 335, 337; 72 L. T. 146, 183; 43 W. R. 227, 341; 11 Times Rep. 234.

Vh, Add. C. Bk. 2, ch. 5.

The "*Full and Reasonable Indemnity*" as to COSTS, given by s. 2, Limitations of Actions and Costs Act, 1842, 5 & 6 V. c. 97, generally, means, Costs as between Solr and Client, and is in the nature of Damages, and is unaffected by R. 1, Ord. 65, R. S. C., or by s. 116, Co. Co. Act, 1888 (*Garnett* v. *Bradley,* 48 L. J. Ex. 186; 3 App. Ca. 944; 26 W. R. 698; 39 L. T. 261: *Hasker* v. *Wood,* 54 L. J. Q. B. 419; 33 W. R. 697: *Reeve* v. *Gibson,* 1891, 1 Q. B. 652; 60 L. J. Q. B. 451; 39 W. R. 420): *Sv,* FULL COSTS.

Indemnity for Breach of Trust; *V.* BREACH OF TRUST.

INDENTURE.—"Indenture" is a Word of Art, and implies that the document is a DEED, and sealed by the parties (Litt. s. 217: Co. Litt. 143 b, and *V.* Hargrave's notes, 233, 234, thereon: 2 Bl. Com. 295: 19 L. J. Q. B. 215: Wms. R. P. 128. *Vh,* 8 & 9 V. c. 106, s. 5; 24 & 25 V. c. 9, s. 1). *V.* POLL.

But an Apprentice Indenture, as the phrase is used in 3 W. & M. c. 11, s. 8 (explained by s. 1, 31 G. 2, c. 11), does not require sealing as a Deed (*Woodstock* v. *Shipton-on-Stour,* 68 L. T. 449; 62 L. J. M. C. 43; 57 J. P. 167).

Digitized by Google

INDIA. — For stat. def. in Acts passed since 31st Dec 1889, *V.* British India.

Prior Stat. Def. — 21 & 22 V. c. 106, s. 1; 22 & 23 V. c. 20, s. 15; 26 & 27 V. c. 57, s. 2; 44 & 45 V. c. 58, s. 190 (21); 47 & 48 V. c. 31, s. 18.

"Government of India"; Stat. Def., 42 & 43 V. c. 45, s. 5.

"*Native* of India"; Stat. Def., 33 & 34 V. c. 3, s. 6; 44 & 45 V. c. 58, s. 190 (22).

"India *Stock*"; Stat. Def., 25 & 26 V. c. 7, s. 1; 26 & 27 V. c. 73, s. 2; 48 & 49 V. c. 25, s. 2. *Cp*, East India Stock.

INDIA-RUBBER WORKS. — *V.* Non-Textile Factories.

INDIAN. — Indian *Island*; *V.* East Indies.

"Indian *Military Law*"; Stat. Def., 44 & 45 V. c. 58, s. 180 (2, *b*).

"Indian *Railway Co*"; Stat. Def., 48 & 49 V. c. 25, s. 2; 57 & 58 V. c. 12, s. 2.

"Indian *Waters*," quà Indian Marine Service Act, 1884, 47 & 48 V. c. 38, "includes, the High Seas between the Cape of Good Hope on the west and the Straits of Magellan on the east, and all Territorial Waters between those limits" (s. 3).

INDICTMENT. — "'Indictment,' is a Bill or Declaration in forme of Law, exhibited by way of accusation against one for some Offence either criminall or penall, and preferred unto Jurors, and by their verdict found presented to be true before a Judge or Officer that hath power to punish or certifie the offence" (Termes de la Ley, *Enditement*). *Vf*, Jacob: Arch. Cr. 1-127: 6 Encyc. 371-388: True Bill.

"I think it is clear that in old times the word 'Indictment' included any charge made by an inquest which had power to make the inquiry, and that when the charge made by them was reduced into writing, it was called an 'Indictment.' And the reason of the thing is, that in all charges of felony the preliminary step is that 12 men should be sworn to make the inquiry. The ordinary case is that of Grand Jurors (*V.* Grand Jury). They are sworn, and when they find some charge it is reduced into writing, and becomes a record of the Court. In practice it is brought to them in the shape of a Bill, and they write upon the back of it either, 'A True Bill' or 'No Bill'; but when it is thus in the shape of a record, it appears in the present tense, 'the Jurors &c present,' as in the old times they would have come into Court, and would have said, 'We present,' &c, and their presentment would afterwards have been put into writing. The Coroner has authority to make an inquiry by the jury upon the dead body; but the accusation by such jury is equally an accusation as that of the grand jury, and the judgment upon the one is like a judgment upon the other" (per Blackburn, J., *R.* v. *Ingham*, 33 L. J. Q. B. 189; 5 B. & S. 257; *Va*, per Cockburn, C. J.,

Digitized by Google

Ib.). It was accordingly held in that case that "Indictment" generally includes an Inquisition, and does so within s. 6, 24 & 25 V. c. 100.

But "Indictment" does not include an Information, *e.g.* in the proviso to s. 7, 26 V. c. 29 (*R.* v. *Slator*, 51 L. J. Q. B. 246; 8 Q. B. D. 267: INFORMATION); but, not infrequently, by an interp clause, "Indictment" is made to include Information, *e.g.* 46 & 47 V. c. 51, s. 64; 47 & 48 V. c. 76, s. 20.

For a wide def, *V.* Criminal Procedure Act, 1851, 14 & 15 V. c. 100, s. 30.

For Scotland, "Indictment" includes "Criminal Letters," quà 46 & 47 V. c. 51 (*V.* s. 68); 47 & 48 V. c. 76 (*V.* s. 20); and quà 34 & 35 V. c. 112 (*V.* s. 20) it includes "Criminal Letters, and Criminal Libel." Quà Criminal Procedure (Scot) Act, 1887, 50 & 51 V. c. 35, "Indictment," includes, "any Indictment, whether in the Sheriff Court or the High Court of Justiciary, framed according to the existing practice or according to the form given in Sch A" to the Act (s. 1); a def adopted for 55 & 56 V. c. 4 (*V.* s. 7).

"Acquitted on the Indictment"; *V.* ACQUITTED.

INDIFFERENT.—Commissioners of Sewers to be appointed under 23 H. 8, c. 5, are to be "substantial and indifferent persons" (s. 1); "Indifferent," "that is persons who have no interest in the matter with which they are dealing" (per Coleridge, C. J., *R.* v. *Essex Commrs of Sewers*, 14 Q. B. D. 578).

INDIRECT TAXATION.—*V.* DIRECT TAXATION.

INDIRECTLY.—"Directly or Indirectly" carry on a Business; *V.* CARRY ON.

V. DIRECTLY: DIRECTLY AFFECT: INCREASE.

INDIVIDUAL.—For a TRADE-MARK the "Name of an Individual, or Firm," s. 10 (1, *a*), 51 & 52 V. c. 50, means, a real, as distinguished from an imaginary, person or firm (*Re Holt*, 1896, 1 Ch. 711; 65 L. J. Ch. 410; 74 L. T. 225; 44 W. R. 369, Kay, L. J., diss.). In *the* Lindley, L. J., said,—"In metaphorical language, an imaginary person may, perhaps, be called an 'Individual'; but such a use of the word is unusual, and, to my mind, rather fanciful. It is hardly to be supposed that the legislature meant 'Individual' to be taken in a fanciful or metaphorical sense, or meant it to denote an imaginary person who has not, and never had, any real existence. I do not think that such words as 'Hamlet,' 'Sam Weller,' 'Jupiter,' 'Venus,' &c, can be called Names of Individuals, within clause (*a*) of s. 10. Such names fall within (*e*) rather than (*a*)." Smith, L. J., thought the same construction should be placed on "Individual or Firm" in clause (*b*). Does "Individual" here, include a Body Corporate? *V.* per Stirling, J., *Re Colman*, cited NAME.

V. FANCY WORD: WORD: NAME: DISTINCTIVE.

Digitized by Google

A Railway "obligation in favour of the PUBLIC or *any Individual*," s. 9 (*c*), Ry and Canal Traffic Act, 1888, includes, in the words italicised, not only what is commonly called an individual person, but also a Co or Corporation, *i.e.* "any Legal PERSON who is not the General Public" (*G. N. Ry* v. *G. Central Ry*, 10 Ry & Can Traffic Ca, 275, 276).

INDOOR. — "Indoor Pauper"; Stat. Def., Loc Gov Act, 1888, s. 43 (2). *V.* PAUPER.

Indoor Servant; *V.* DOMESTIC SERVANT.

INDORSE. — *V.* ENDORSE.

INDORSED. — "Indorsed," in an allegation in an action on a Bill of Ex or Promissory Note against the Acceptor or Maker, does not, necessarily, mean such an indorsement as will give a right of action against the Indorser, but only such an indorsement as gives the plt a title (*Smith* v. *Johnson*, 27 L. J. Ex. 363; 3 H. & N. 222).

"The Claim *indorsed*" on a Writ, s. 26, 19 & 20 V. c. 108, meant a claim for a liquidated money demand; for at the date of the Act that was the only kind of claim that could be "indorsed": therefore, there was no power under that section to remit an action to the County Court where *damages* for breach of contract were claimed (*Knight* v. *Abbott*, 52 L. J. Q. B. 131; 10 Q. B. D. 11: *Vf*, *Mackay* v. *Bannister*, 16 Q. B. D. 174); so, under s. 65, Co. Co. Act, 1888 (*Bassett* v. *Tong*, 1894, 2 Q. B. 332; 63 L. J. Q. B. 653; 71 L. T. 16; 42 W. R. 668).

License "indorsed, or otherwise affected"; *V.* AFFECTED.

INDORSEE. — *V.* HOLDER.

INDORSEMENT. — *V.* ENDORSE.

"Indorsement" of a BILL OF EXCHANGE, "means, an Indorsement completed by Delivery" (s. 2, Bills of Ex. Act, 1882). But that def "does not help us much" (per Wills, J., *Jenkins* v. *Comber*, 1898, 2 Q. B. 168; 67 L. J. Q. B. 780); "a proper Indorsement can only be made by one who has a right to the Bill, and who thereby transmits the right, and also incurs certain well-known and well-defined liabilities" (per Ld Watson, *Steele* v. *M'Kinlay*, 5 App. Ca. 782: *whc* has not been deprived of authority by the Bills of Ex. Act, *V. Jenkins* v. *Comber*, sup).

Forged Indorsement; *V. La Cave* v. *Credit Lyonnais*, cited CUSTOMER.

V. NEGOTIATE: BILL OF LADING: PLEADING: SPECIAL.

INDORSER. — Indorser of a Bill of Exchange; *V.* BILL OF EXCHANGE: and as to the liability of an Indorser, *V.* s. 55 (2), Bills of Ex. Act, 1882, on *whv Jenkins* v. *Comber*, cited INDORSEMENT.

INDOWMENT. — *V.* ENDOWMENT.

Digitized by Google

INDUCE.—*V.* PROCURE.

An "Inducement" may amount to a Bargain:—"If a man is induced to do a thing upon the faith of a sum being paid to him, that amounts to a Bargain between the parties, whether the word describing the transaction be 'Inducement,' or 'Bargain'" (per Hatherley, C., *Bayspoole* v. *Collins*, 6 Ch. 234; 40 L. J. Ch. 292).

A CONDITION forfeiting a devise to a TENANT FOR LIFE, if he shall alienate the lands or fail to reside there, is void; because it is "*tending to induce*" the Tenant for Life to abstain from exercising his powers under the S. L. Acts, within s. 51, S. L. Act, 1882 (*Re Ames*, 1893, 2 Ch. 479; 62 L. J. Ch. 685; 41 W. R. 505: *Re Paget*, and *Re Eastman*, cited RESIDE: *Vf*, *Re Trenchard*, 16 Times Rep. 525, commented on 44 S. J. 668); *secus*, of a proviso for recoupment of IMPROVEMENT money (*Re Sudbury*, 1893, 3 Ch. 74; 62 L. J. Ch. 539; 68 L. T. 707; 41 W. R. 585). *V.* OCCUPATION. The section applies where the Inducement is made outside the Settlement by a person other than the Settlor (*Re Smith*, 1899, 1 Ch. 331; 68 L. J. Ch. 198).

INDUCTION.—"'Induction,' *inductio*, a leading into: It is most commonly taken for the giving possession to an Incumbent of his Church by leading him into it and delivering him the Keys by the Commissary or Bishops Deputy, and by his ringing one of the Bells" (Cowel). *Vf*, 1 Bl. Com. 391: Jacob: Phil. Ecc. Law, 350, 359.

INDUSTRIAL AND PROVIDENT SOCIETY.—*V.* s. 4, Industrial and Provident Societies Act, 1893, 56 & 57 V. c. 39: 6 Encyc. 389–391. *Cp*, FRIENDLY SOCIETY. *V.* LAWFUL PURPOSE.

INDUSTRIAL ASSURANCE CO.—*V.* s. 4, Friendly Societies Act, 1875; s. 1 (*b*), 59 & 60 V. c. 26: 6 Encyc. 391. *Cp*, FRIENDLY SOCIETY.

INDUSTRIAL EMPLOYMENT.—Quà Fatal Accidents Inquiry (Scot) Act, 1895, 58 & 59 V. c. 36, "Industrial Employment, or Occupation," means, "employment or occupation for, or in the performance of, any MANUAL LABOUR, or the Superintendence of any such labour, or the working, management, or superintendence, of Machinery or other Appliances, or Animals, used in the prosecution of any WORK" (s. 7). *Cp*, RURAL.

INDUSTRIAL SCHOOL.—*V.* CERTIFIED: *Vh*, 6 Encyc. 393–399.

INEBRIATE.—The Inebriates Acts, 1879, 1888, 1898, and 1899, 42 & 43 V. c. 19; 51 & 52 V. c. 19; 61 & 62 V. c. 60; 62 & 63 V. c. 35,—amended for Scotland by 63 & 64 V. c. 28.

Inebriate Reformatory; *V.* 61 & 62 V. c. 60, s. 5. *Cp*, RETREAT.

V. DRUNK: DRUNKEN PERSON: HABITUAL.

INEVITABLE.—An "Inevitable ACCIDENT," or an "UNAVOIDABLE Accident," is that which could not possibly be prevented by the exercise

Digitized by Google

of ordinary care, caution, and skill (*The Marpesia*, L. R. 4 P. C. 212: *The Merchant Prince*, 1892, P. 179: *The Schwan*, 1892, P. 432, 434; nom. *The Albano*, 8 Times Rep. 425: *Lucas* v. *The Swan*, 6 McL. 288: *Dygert* v. *Bradley*, 8 Wend. 473), and will not comprise anything arising from the acts or defaults of either of the contracting parties. This phrase does not apply to anything known when the deed or contract is executed (*Jervis* v. *Tomkinson*, 26 L. J. Ex. 41; 1 H. & N. 195; 4 W.R. 683); nor does it apply to anything which either party might have avoided, and it is immaterial upon which of them the burden lies of providing against it (per Fry, J., *Saner* v. *Bilton*, 47 L. J. Ch. 270; 7 Ch. D. 815; approved in *Manchester Bonding Warehouse Co* v. *Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507): *Vf, The Buckhurst*, 51 L. J. P. D. & A. 10; 6 P. D. 152: *Brabant* v. *King*, 1895, A. C. 632; 64 L. J. P. C. 161; 72 L. T. 785; 44 W. R. 157: Abbott, 825, 826.

V. Act of God: Perils of the Sea.

"An influx of Brine is, probably, in a Lease of Salt Mines, an 'Inevitable Accident'" (MacS. 244, *n* 1, citing *Jervis* v. *Tomkinson*, sup).

A lessee of a Coal Mine covenanted that a stated quantity of coal should be raised, unless prevented by "Unavoidable Accident"; held, that he was not discharged from that obligation by a great influx of water coming through faults in the mine but which might have been remedied, though at a greater expense than could possibly repay (*Morris* v. *Smith*, 3 Doug. 279); in *the* Mansfield, C. J., said, "'Unavoidable Accident,' means, an Accident physically unavoidable. An interruption for some months will not discharge the lessee." *Cp,* Impracticable.

V. Unforeseen.

INEXPEDIENT.—Where a Power of appointing new Trustees was exerciseable by husband and wife jointly, but the wife had obtained a judicial separation and the husband was living in Australia, North, J., held that it was "*inexpedient or difficult*," within s. 32, Trustee Act, 1850, to exercise the power without the assistance of the Court, and accordingly made the appointment (*Re Somerset*, 31 S. J. 559). So, of a Trustee permanently residing abroad (*Re Bignold*, 41 L. J. Ch. 235; 7 Ch. 223; 20 W. R. 345), or incapacitated through age or infirmity (*Re Lemann*, 22 Ch. D. 633; 52 L. J. Ch. 560; 48 L. T. 389; 31 W. R. 520). *V.* Inability: Unfit.

INFAMOUS CONDUCT.—"If a Medical Man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgraceful, or dishonourable, to his professional brethren of good repute and competency, then it is open to the General Medical Council, if that be shown, to say that he has been guilty of 'Infamous Conduct in a Professional respect,'" within s. 29, 21 & 22

Digitized by Google

V. c. 90 (per Lopes, L. J., and adopted by Esher, M. R., and Davey, L. J., *Allinson* v. *Gen. Med. Council,* 1894, 1 Q. B. 750; 63 L. J. Q. B. 534; 70 L. T. 471; 42 W. R. 289; 58 J. P. 542).

Thus, for a medical man to publish in a popular form, directions to enable women to prevent conception (*Allbutt* v. *Gen. Med. Council,* 23 Q. B. D. 400; 37 W. R. 771), or to allow his name to be used as a "Cover" for an unqualified person (*Leeson* v. *Gen. Med. Council,* 43 Ch. D. 366; 59 L. J. Ch. 233; 38 W. R. 303), or to advertise for practice, espy if the advertisements are in themselves discreditable (*Allinson* v. *Gen. Med. Council,* sup), may be regarded as such "Infamous Conduct." In *Leeson's* case it was held that to state in the notice that the offender had acted so as to enable the other to charge "as if he were *duly qualified,*" was sufficient, because in that connection, "duly qualified" had reference to a medical qualification.

Cp, MISCONDUCT: OBSCENE.

INFAMOUS CRIME.—Quà written accusations to extort money, &c, "the abominable crime of BUGGERY, committed either with mankind or with beast, and every Assault with intent to commit the said abominable crime, and every Attempt or Endeavour to commit the said abominable crime, and every Solicitation, Persuasion, Promise, or Threat, offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an 'Infamous Crime' within the meaning of this Act" (s. 46, Larceny Act, 1861). *V.* ACCUSATION.

In America, it has been said that, at Common Law, the Infamous Crimes are, Treason, Felony, and Crimen Falsi (*People* v. *Toynbee,* 20 Barb. 189).

INFANGTHEEFE.—The Privilege "that Theeves taken within your demesne or fee convicted of thefts, shall be judged in your Court" (Termes de la Ley). *Cp,* OUTFANGTHEEFE.

INFANT.—"Infant, or Minor,—whom we call any that is under the age of 21 yeares" (Co. Litt. 2 b: *Va,* CHILD). This is the sense in which the word is used in Infants Relief Act, 1874, on *who* CONTRACT: NECESSARIES: VOID, towards end: VOIDABLE. "The law knows of no distinction between Infants of tender and of mature years" (per Parke, B., *Morgan* v. *Thorne,* 7 M. & W. 408).

Quà Betting and Loans (Infants) Act, 1892, 55 & 56 V. c. 4, "Infant," in Scotland, "means and includes, any Minor, or Pupil" (s. 7).

Vh, 1 Bl. Com. 464 *et seq*: Simpson on Infants: Eversley on Domestic Relations, Part 4: 6 Encyc. 405–424: GUARDIAN: NONAGE: NURTURE: YOUNG PERSON.

INFECTIOUS.—Quà Infectious Disease (Notification) Act, 1889, 52 & 53 V. c. 72, "'Infectious Disease,' *means,* any of the following

Digitized by Google

Diseases, viz. Small Pox, Cholera, Diphtheria, Membranous Croup, Erysipelas, the disease known as Scarlatina or Scarlet Fever, and the Fevers known by any of the following names, — Typhus, Typhoid, Enteric, Relapsing, Continued, or Puerperal; and *includes*, as respects any particular District, any Infectious Disease to which this Act has been applied by the Local Authority of the District in manner provided by this Act" (s. 6).

That def is made applicable to the Isolation Hospitals Act, 1893, 56 & 57 V. c. 68 (*V.* s. 26); and a similar one is provided for the P. H. Scotland Act, 1892 (*V.* subs. 15, s. 4).

V. CONTAGIOUS.

INFEFTMENT. — Stat. Def., Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3.

INFERENCE. — *V.* IMPLICATION: JUDICIAL PERSUASION: PRESUMPTION.

INFERIOR COURT. — Quà Inferior Courts Judgments Extension Act, 1882, 45 & 46 V. c. 31, "'Inferior Courts,' shall include, County Courts, Civil Bill Courts, and all Courts in England and Ireland having jurisdiction to hear and determine (*V.* HEAR) Civil Causes, other than the High Courts of Justice; and in Ireland, Courts of Petty Sessions, and the Court of Bankruptcy; and in Scotland, shall include, Sheriffs Courts, and the Courts held under the Small Debts and Debts Recovery Acts" (s. 2).

Other Stat. Def. — *Scot.* 28 & 29 V. c. 85, s. 1.

The London Lord Mayor's Court is an Inferior Court (*London* v. *Cox*, 36 L. J. Ex. 225; L. R. 2 H. L. 239: *whv* for an extraordinarily elaborate and learned opinion by Willes, J., which was adopted by the H. L., and in which, as Ld Cranworth said, the subject-matter of Inferior Courts was investigated "with a care and attention rarely equalled"). The Mayor's Court is also within "any other Inferior Court" as used in s. 45, Jud. Act, 1873 (*Appleford* v. *Judkins*, 47 L. J. C. P. 615; 3 C. P. D. 489; 38 L. T. 801; 26 W. R. 734).

Vh, 6 Encyc. 426–440. *Cp*, HIGH COURT: SUPERIOR COURT. *Vf*, COURT.

INFERIOR JUDGE. — Quà Summary Prosecutions Appeals (Scot) Act, 1875, 38 & 39 V. c. 62, "'Inferior Judge,' means and includes, any Sheriff, or Sheriff Substitute, Justice or Justices of the Peace, or Magistrate or Magistrates" (s. 2).

INFERIOR TRADESMAN. — The "Inferior Tradesman" or "other Dissolute Persons" punishable by having to pay "FULL COSTS of Suit" if he should "presume" to hunt on another man's ground "to

Digitized by Google

the ruin of themselves and damage of their neighbours" (s. 10, 4 & 5 W. & M. c. 23) included a Clothier (*Bennet* v. *Talboys*, Carth. 382; 1 Raym. Ld, 149: *Wickham* v. *Walker*, Barnes, 125), also an Alehouse-Keeper (*Wickham* v. *Walker*); but the better opinion was that the section did not hit an APOTHECARY or SURGEON (*Buxton* v. *Mingay*, 2 Wils. K. B. 70), in *whlc* Noel, J., said,—"In my own opinion a Surgeon is the fittest person in the world to be in the field with gentlemen a-hunting, for I remember the Master of a pack of hounds had his neck dislocated by a fall from his horse when out a-hunting, and if a Surgeon had not been near him when the accident happened, who pulled his neck right, the gentleman would, most certainly, have lost his life." The same learned judge also said, "There is a known distinction universally agreed to be between Tradesmen with respect to Superior and Inferior,—as Master, and Journeyman, and Apprentice." *Cp*, TRADE. Bathurst and Clive, JJ., however, were of opinion that all tradesmen qualified by land to hunt were "not Inferior Tradesmen, and that all unqualified Tradesmen were Inferior," but counsel for deft denied that any such qualification was necessary.

INFIRMARY.—*V.* PUBLIC HOSPITAL.

INFIRMITY.—In a Friendly Socy's Rules "Infirmity" connotes "some permanent DISEASE, ACCIDENT, or something of that kind" (per Kekewich, J., *Re Buck*, 65 L. J. Ch. 884). *V.* FRIENDLY SOCIETY.

"Permanent Infirmity"; *V.* PERMANENT.

INFLICT.—To "inflict GRIEVOUS BODILY HARM," s. 20, 24 & 25 V. c. 100, means, "the *direct* causing of some grievous injury to the body itself with a weapon, as by a cut with a knife, or without a weapon, as by a blow with a fist or by pushing a person down." Poisoning, whether of the ordinary kind or by animal infection, is not within the phrase. "If a man by a grasp of the hand infects another with small pox, it is impossible to trace out in detail the connection between the act and the disease, and it would, I think, be an unnatural use of language to say that a man by such an act 'inflicted' small pox on another. It would be wrong in interpreting an Act of Parliament to lay much stress upon etymology; but I may just observe that 'inflicting' is derived from *infligo*, to which, in Facciolati's Lexicon, three Italian and three Latin equivalents are given, all meaning 'to strike,'—viz. *dare*, *ferire*, and *percutere*, in Italian, and *infero*, *impingo*, and *percutio*, in Latin" (per Stephen, J., *R.* v. *Clarence*, 58 L. J. M. C. 18, 19; 22 Q. B. D. 23). And in accordance with the reasoning of Stephen, J., it was held (by a majority) in the case cited, that knowingly suffering from a venereal disease and yet having connection with, and imparting the disease to, one of the opposite sex who is ignorant that the embracer is so suffering, is not to "inflict grievous Bodily Harm" within the section; nor is it

Digitized by Google

an "*Assault occasioning Actual Bodily Harm*" within s. 47 of the same statute: and whether the parties are married or not is immaterial for the purpose of this construction. But Hawkins, J., delivered a strong judgment against the conclusion at which the majority of the Court arrived; and in the course of that judgment said that, in his opinion, "Inflict," "Cause," and "Occasion," were used as synonymous terms in the sections (and their cognates) then under discussion. *Vh*, *Hegarty* v. *Shine*, 4 L. R. Ir. 288.

Vh, *R.* v. *Martin*, cited MALICE: Following that case, where a woman had been so terrified by her husband that she attempted to get out of the window but, when partially out, her daughter caught hold of her and was preventing her from falling, when the husband ordered the daughter to let go which she accordingly did, and in consequence the woman fell into the street and broke her leg, there it was held that the injury was "inflicted" by the husband within the section cited (*R.* v. *Halliday*, 6 Times Rep. 109; 34 S. J. 129).

Cp, INTENT: OCCASIONED.

INFLUENCE.—*V.* UNDUE INFLUENCE: INDUCE.

INFORMALITY.—To quash an Order for "Informality" does not exclusively mean for something informal appearing on the face of the Order; it may mean nothing more than that the decision to quash did not proceed upon the merits (*R.* v. *Cottingham*, 4 L. J. M. C. 65; 2 A. & E. 250).

V. FORMAL.

INFORMANT.—Quà Factory and Workshop Acts, "Informant" in Scotland, "means, Petitioner, Pursuer, or Complainer" (s. 105 (12), 41 & 42 V. c. 16; s. 159 (11), 1 Edw. 7, c. 22).

Cp, INFORMER.

INFORMATION.—"'Information' is of a two-fold character, one granted by the Queen's Bench at the relation of a private person, and the other laid by the Attorney-General, *ex proprio motu*, as the officer of the Crown" (per Denman, J., *R.* v. *Slator*, 51 L. J. Q. B. 246; 8 Q. B. D. 267. *Vf*, Termes de la Ley: Jacob: 3 Burn's Justice, 30 ed., 2). *Cp*, INDICTMENT. *V.* RELATOR.

Stat. Def.—28 & 29 V. c. 104, s. 6.

Vh, Shortt on Informations: Short and Mellor's Crown Office Practice: Arch. Cr. 128: 6 Encyc. 445–459.

The foregoing definition relates to an Information in the High Court. There is also an Information leading to a Justice's Summons or Warrant for an offence punishable upon a Summary conviction; and in this connection "Information" is used as distinguished from "COMPLAINT" leading to an Order for the payment of money or otherwise (ss. 1, 8, 9,

Digitized by Google

and 10, 11 & 12 V. c. 43: *Vh*, Stone, *Procedure, Practice*). "The term 'Information' is of well-defined meaning; and, whether it be in writing or *ore tenus*, is understood to be the initiatory step in proceedings of a Criminal nature which are to be disposed of summarily,—while 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).

"Information" is sometimes made to *include* "Complaint," *e.g.* 38 & 39 V. c. 63, s. 33 (3); sometimes, for Scotland, it is made to *mean* "Petition or Complaint," *e.g.* 41 & 42 V. c. 16, s. 105 (11); 1 Edw. 7, c. 22, s. 159 (10).

V. WHOSOEVER WILL GIVE INFORMATION.

"Information" *not* in a Vendor's possession, s. 3 (6), Conv & L. P. Act, 1881, is as wide a word as can be, extending indeed to the Vendor's own title deeds, so that the expense of searching for his lost deeds is, under an Open Contract, thrown on the purchaser (*Re Stuart and Seadon*, 1896, 2 Ch. 328; 65 L. J. Ch. 576; 74 L. T. 450; 44 W. R. 610); but the enactment only concerns the expenses of "Production and Inspection," and does not affect the purchaser's right to have the deeds handed over on completion (*Re Duthy and Jesson*, 1898, 1 Ch. 419; 67 L. J. Ch. 218; 78 L. T. 223; 46 W. R. 300), or to have a proper Abstract (*Re Johnson and Tustin*, 54 L. J. Ch. 889; 30 Ch. D. 42; 33 W. R. 737). *Note*: If the deeds are proved to have been lost, the purchaser can be compelled to complete on being, in proper time, furnished with satisfactory secondary evidence of them (*Bryant* v. *Busk*, 4 Russ. 1: *Moulton* v. *Edmunds*, 29 L. J. Ch. 181; 1 D. G. F. & J. 246; 8 W. R. 153: *Re Halifax Commercial Bank and Wood*, 79 L. T. 183).

A statement in an Affidavit on "*Information and Belief*," without giving the sources thereof, is irregular (*Re Young Manufacturing Co*, 1900, 2 Ch. 753; 69 L. J. Ch. 868). *Cp*, BEST BELIEF.

INFORMER.—"Informer" is frequently used in the same sense as APPROVER.

"Common Informer" is a person suing for a Penalty which goes to any person who will sue for it (2 Bl. Com. 439), *e.g.* a Plaintiff in a POPULAR ACTION.

INFRA.—"*Infra*," though strictly meaning "underneath," will easily be regarded as a substitute for "*intra*" (per Ld Herschell, *Lord Advocate* v. *Wemyss*, 1900, A. C. 61), in *whc* a grant of a right to work minerals "*infra fluxum maris*," was held, not to refer to the permanent waters of the ocean but, to mean "*within* the Sea Flood," *i.e.* the FORESHORE.

Digitized by Google

INFRINGEMENT.—"Infringement of his PATENT," proviso to s. 32, 46 & 47 V. c. 57; *V. Barrett* v. *Day*, 59 L. J. Ch. 464; 43 Ch. D. 435: USE: PERSONAL ACTION.

Quà Infringement of a DESIGN, the object of the Design is not considered; "the eye must be the judge in such a case, *i.e.* by placing the Designs side by side, and asking whether they are the same, or whether the one is an OBVIOUS imitation of the other" (per Ld Herschell, *Hecla Foundry Co* v. *Walker*, 59 L. J. P. C. 46; 14 App. Ca. 550).

As to Measure of Damages for Infringement; *V. United Horse Shoe Co* v. *Stewart*, 13 App. Ca. 401: *American Braided Wire Co* v. *Thomson*, 59 L. J. Ch. 425; 44 Ch. D. 274: *Pneumatic Tyre Co* v. *Puncture Proof Co*, 16 Pat. Ca. 209, applied in *British Motor Syndicate* v. *Taylor*, cited USE.

Vh, Wallace & Williamson on Patents, ch. 21: Frost, Ib. ch. 13: Edmunds on Designs, ch. 8: Knox & Hind on Designs, ch. 5.

Infringement of COPYRIGHT; *V.* Copinger on Copyright: Scrutton, Ib.

ING.— *V.* EY.

INGIURIE GRAVI.—These words (Art. 46, Ordinance of Malta, No. 5, 1867) leave a large discretion to the tribunal having to consider the facts; and words, as well as acts, designed to wound the feelings of the party complaining may amount to "Ingiurie Gravi" (*Sant* v. *Sant*, 43 L. J. P. C. 73; L. R. 5 P. C. 542). *V.* INJURY.

INGRESS.—A grant of a Right of "*Ingress, Egress, and Regress,*" is a grant of a right of way from the *locus a quo* to the *locus ad quem*, and from the *locus ad quem* forth to any other spot to which the grantee may lawfully go, or back to the *locus a quo* (*Somerset* v. *G. W. Ry*, 46 L. T. 883).

As to the Kind of WAY granted by this phrase, *V. Cannon* v. *Villars*, 8 Ch. D. 415; 47 L. J. Ch. 597: *Cousens* v. *Rose*, L. R. 12 Eq. 366.

INGROSSER.—"'Ingrosser' comes of the French word 'Grosier,' one that selleth by whole sale. But in our Law an Ingrosser is one that buyeth Corne, Graine, Butter, Cheese, Fish, or other dead victuals, with an intent to sell the same againe; and so he is defined in 5 Edw. 6, c. 14, made against such Ingrossing" (Termes de la Ley). But that statute and the obvious sense of the thing show that the Offence of Ingrossing connoted, not only buying to sell again but also, that its intent must be to create what would now be called a "Corner" in the article dealt in, like Forestalling: *V.* REGRATOR.

INHABIT.—"The word 'inhabit' simply means to dwell in" (per Cave, J., in delivering jdgmt of the Court in *Atkinson* v. *Collard*, 55 L. J. Q. B. 23; 16 Q. B. D. 254; 53 L. T. 670; 34 W. R. 75; 50 J. P.

Digitized by Google

23: *vthc* and *Adams* v. *Ford*, 55 L. J. Q. B. 13, and *Stribling* v. *Halse*, 55 L. J. Q. B. 15, as to meaning of the word in Rep People Act, 1884). Would it not be more accurate to say that "inhabit" implies the place where a person usually sleeps? *Cp*, DWELL, and DWELLING-HOUSE: *V.* SERVE.

Power to Rate persons who "Inhabit or Occupy"; *V. Donne* v. *Martyr*, 8 B. & C. 62; 2 M. & R. 98: *Cp*, OCCUPIED.

Quà London Bg Act, 1894, "'Inhabited,' applied to a Room, means a Room in which some person passes the NIGHT, or which is used as a Living Room; including a Room with respect to which there is a PROBABLE presumption (until the contrary is shown) that some person passes the Night therein, or that it is used as a Living Room" (subs. 37, s. 5).

"Cease to inhabit"; *V.* CEASE.

INHABITANT.—"Inhabitants," "takes in housekeepers, though not rated to the poor, also persons who are not housekeepers, as for instance, such as who have gained a Settlement and by that means have become Inhabitants" (per Hardwicke, C., *A-G.* v. *Parker*, 3 Atk. 577; 1 Ves. sen. 43). *Cp*, HOUSEHOLDER: PARISHIONER: RATEPAYER: and for a comparative analysis of the cases on "Inhabitants" and "Parishioners," *V.* Tudor Char. Trusts, 867–870.

An "Inhabitant" of a place, speaking generally, is one who has his permanent home there (*R.* v. *Mitchell*, 10 East, 511); but the word has no definite legal meaning, its signification varying according to the subject matter (*A-G.* v. *Foster*, 10 Ves. 339: *R.* v. *Mashiter*, 6 L. J. K. B. 121; 6 A. & E. 153; 1 N. & P. 314), or the context, or, sometimes, according to usage (*R.* v. *Sandford*, 6 L. J. K. B. 126; 1 N. & P. 328; nom. *R.* v. *Davie*, 6 A. & E. 374). It "may mean, either OCCUPIER or Resiant. The latter is the proper sense when it is used to denote persons on whom a personal (and not a pecuniary) charge is to be imposed" (per Bayley, J., *Donne* v. *Martyr*, 8 B. & C. 69; 2 M. & R. 98).

"Inhabitant" in s. 1, 43 Eliz. c. 2, means a person, who, by himself, family, or servants, resides and sleeps in the parish (*R.* v. *Nicholson*, 12 East, 330: *R.* v. *Rochester, Bp*, Ib. 358: *R.* v. *North Curry*, 4 B. & C. 953); therefore, a person who is lessee of a stall in a market and comes there only on market days to sell his wares, is not rateable to the Poor Rate, as an "Inhabitant" (*Holledge's Case*, 1 Bott, 134. *Vf*, Arch. P. L. 763: *Donne* v. *Martyr*, sup). So of the liability of an "Inhabitant" to serve as Constable (*R.* v. *Adlard*, 4 B. & C. 772). *Cp*, RESIDE.

Stat. Def.— City of London Burial Act, 1857, 20 & 21 V. c. 35, s. 8.

But when the object of an Act is to impose a burden on property, then "Inhabitants" will (probably) generally include all holders of rateable property in the district; but not mere dwellers therein, *e.g.* servants (*R.* v. *North Curry*, sup: *Vf*, Maxwell, 77, 78). "The Inhabitant of

Digitized by Google

a Parish in reference to a parochial tax, *e.g.* s. 6, Highway Act, 1835, is the person having property in respect of which he is liable to that tax" (per Campbell, C. J., *R.* v. *Kershaw*, 6 E. & B. 1004; 26 L. J. M. C. 21). So, in the repealed statute (27 Eliz. c. 13, s. 5) relating to HUE AND CRY, "Inhabitant" chargeable thereunder, meant, an Occupier of land, although he had neither a house or a lodging in the Hundred (per Hale, C. J., *Leigh* v. *Chapman*, 2 Wms. Saund. 423, in *whc*, p. 423 *d*, it is said that this construction "is agreeable to that which Ld Coke gives to the same word in the Statute of Bridges, 22 H. 8, c. 5, — 2 Inst. 702": *Vf*, *Jeffrey's Case*, 5 Rep. 66 b: *Atkins* v. *Davis*, 2 Wms. Saund. 423 *e*; Cald. 315).

A person who qualifies as a Vestryman as being an "inhabitant," *semble*, need not sleep as well as reside in the parish (*Wilson* v. *Sunderland*, 34 L. J. M. C. 90; 17 C. B. N. S. 694).

A legacy for the benefit of the "Inhabitants" of a place would seem a good CHARITY (*A-G.* v. *Clarke*, Amb. 422), as one to the "Poor Inhabitants" certainly is, under which the persons to be benefited are those poor inhabitants who are not in receipt of parochial relief (*Ib.*: Wms. Exs. 1009, 1010).

In *Rogers* v. *Thomas* (2 Keen, 8), a gift "to the Inhabitants of Tawleaven Row, Sethney" took effect as a *designatio personarum*.

A Grant to or Prescription by the "Inhabitants" of a place is too vague and not good (Touch. 237: *Warrick* v. *Queen's College*, 6 Ch. 724); unless the Grant be by the Crown and then it erects the Inhabitants into a Corporation (*Willingale* v. *Maitland*, 36 L. J. Ch. 64; L. R. 3 Eq. 103; *whc* explained by *Chilton* v. *London*, 47 L. J. Ch. 433; 7 Ch. D. 735). Towards end of the jdgmt of Jessel, M. R., in *thlc*, see obs as to what would be the meaning of "Inhabitant" in such a Crown Grant: *Va*, *Rivers* v. *Adams*, 48 L. J. Ex. 47; 3 Ex. D. 361: *Re St. Alphage, London Wall*, 59 L. T. 614.

So, where Rights of Common have long been exercised by the freehold tenants of a Manor and also by the Inhabitants, the Court will presume that the Inhabitants claim through the freehold tenants (*Warrick* v. *Queen's College*, 6 Ch. 716, as to whose are such Inhabitants, *V.* p. 724 *ib.*; 19 W. R. 1098; 25 L. T. O. S. 254).

Highway "repairable by the Inhabitants *at Large*"; *V.* HIGHWAY: REPAIRABLE.

"Inhabitant HOUSEHOLDER"; *V. Rutter* v. *Chapman*, 10 L. J. Ex. 495; 8 M. & W. 1: *R.* v. *Exeter*, L. R. 4 Q. B. 110, 114: *M'Dougal* v. *Creedon*, Ir. Rep. 7 C. L. 165.

"Inhabitant OCCUPIER," s. 3, 30 & 31 V. c. 102, as explained by s. 5, 41 & 42 V. c. 26; *V. Bradley* v. *Baylis*, 51 L. J. Q. B. 183; 8 Q. B. D. 195. *Vf*, *Stribling* v. *Halse*, 16 Q. B. D. 246; 55 L. J. Q. B. 15: *Hogan* v. *Sterrett*, 20 L. R. Ir. 344: *Sv*, quà *Stribling* v. *Halse*, DWELLING-HOUSE. *Cp*, RESIDE.

Digitized by Google

"Inhabitants," s. 11 (2), Customs & Inl. Rev. Act, 1885, means, the Inhabitants generally, as distinguished from only a portion of them (per Ld Herschell, *Inl. Rev.* v. *Scott*, cited MANNER).

A Municipal Bye-Law prohibiting things to the "annoyance of *any of the Inhabitants*," does not mean "any one," but means a reasonable number, of the Inhabitants (*Booth* v. *Howell*, 5 Times Rep. 449); but the contrary seems to have been held in *Innes* v. *Newman* (1894, 2 Q. B. 292; 63 L. J. M. C. 198).

INHABITED.—Inhabited Dwelling-house; *V.* DWELLING-HOUSE.

"Dwelling-house to be inhabited, or adapted to be inhabited, by persons of the WORKING CLASS," s. 13 (5), London Bg Act, 1894;—a PUBLIC BUILDING may be a "Dwelling-house," although the def in the Act of "DOMESTIC BUILDING" includes a "Dwelling-house," and excludes a "Public Building": "*to be* inhabited," means, intended by the person who erects the dwelling-house, when he erects it, to be inhabited: "*adapted* to be inhabited," means, "structurally adapted to be inhabited," and nothing more, of which there would be strong proof if it be shown that a house was, at the time of its erection, specially adapted to be used in a particular way, and that it was afterwards actually so used: the Rowton Houses were not constructed "to be inhabited by the Working Class," for they are built for the accommodation of *any* class who may choose to use them (*London Co. Co.* v. *Davis*: *Same* v. *Rowton Houses, Lim.*, 77 L. T. 693; 62 J. P. 68).

INHERIT.—"Inherit" held to mean, succession by descent (*East* v. *Twyford*, 9 Hare, 729). *V.* SUCCESSION.

"To inherit," held to mean, "'to take.' But if more is required, then, certainly, the words 'to inherit' are fully satisfied by holding them to mean, 'to take an Estate of INHERITANCE'" (per Westbury, C., *Watkins* v. *Frederick*, 11 H. L. Ca. 366).

Bequest to A., but if he die, "without leaving any children legally to inherit," then lapse; A. died in testator's lifetime leaving children; held, that his children took the bequest by IMPLICATION (*M'Clean* v. *Simpson*, 19 L. R. Ir. 528).

INHERITANCE.—"This word (Inheritance) is not only intended where a man hath lands or tenements by descent of inheritage, but also everie fee simple or taile which a man hath by his purchase may be said an inheritance, because his heires may inherit him" (Litt. s. 9; *Vth*, Co. Litt. 16 a, 383 b). *V.* Termes de la Ley, *Enheritance*: FREEHOLD.

In what, probably, is the first formal Interp Clause to an Act, "*Estate* of Inheritance" is "declared, expounded, taken, and judged of, Estates in Fee Simple only" (s. 3, of the second Act authorizing a Will of Lands, 34 & 35 H. 8, c. 5).

Digitized by Google

"Estate of Inheritance," "Equal to an Estate of Inheritance"; *V.* PUR AUTRE VIE.

A devise of an "Inheritance," apart from the Wills Act, 1837, carries the fee (2 Jarm. 283; *Sv, n* thereto). So too of an appointment by Will of "*Trustees of* Inheritance, for the execution hereof," for that phrase is equivalent to "Trustees of my inheritance" or "Trustees to inherit my estate for the execution of this my Will" (2 Jarm. 394, citing *Trent* v. *Hanning*, 1 B. & P. N. R. 116; 10 Ves. 495; 7 East, 97: *Va*, Lewin, 229).

"By inheritance"; *V. Wilkinson* v. *Bewicke*, 22 L. J. Ch. 781; 3 D. G. M. & G. 937.

As to the Rules of Descent of Inheritance; *V.* DESCENT.

INHERITOR.—This word may be used in the sense merely of "Taker" (per Knight-Bruce, L. J., *Boys* v. *Bradley*, 22 L. J. Ch. 621; 10 Hare, 389; 4 D. G. M. & G. 58).

INHIBIT.—"'Inhibition' is a writ to inhibite a Judge to proceed further in the cause depending before him: See Fitzh. Nat. Brev. fol. 39., where he putteth Prohibition and Inhibition together. Inhibition, is most commonly a writ issuing forth of a higher Court Christian" —*i.e.* an Ecclesiastical Court—"to a lower and inferiour, upon an appeale; and Prohibition, out of the Kings Court of Record at Westminster to a Court Christian or to an inferiour Temporall Court" (Termes de la Ley). *Vh*, Phil. Ecc. Law, 977–979.

Inhibition under Public Worship Regn Act, 1874, 37 & 38 V. c. 85; *V.* s. 13: Phil. Ecc. Law, 1032, 1033.

Inhibition during Visitation, *V.* Phil. Ecc. Law, 1050; during Sequestration, 34 & 35 V. c. 45, ss. 5, 6, 7.

INITIAL.—*V.* CHRISTIAN NAME: MISNOMER: SIGNED.

Kinnersley v. *Knott* (7 C. B. 980; 18 L. J. C. P. 281), should occupy a high place in legal curiosities, for there a Demurrer was allowed against a Plea because the deft's Christian Name began with a Consonant and not with a Vowel. He used its initial letter only and that was a consonant, "which (as remarked by Maule, J.) can only be sounded with the aid of a vowel," and therefore it could not (as, astutely, a vowel might) be regarded as a compliance with the then rule of pleading that the "Name" of every person mentioned must be correctly set forth.

"Initial *Valuation*"; *V.* TRADE INTEREST.

INJUNCTION.—An Injunction is a JUDGMENT, or ORDER, to do or refrain from doing a particular thing.

It is either (1) Interlocutory or Interim, *i.e.* an Order until the hearing of the action or further order; or (2) Perpetual, *i.e.* a judgment determining and concluding the right in litigation: it is also (*a*) Restrain-

Digitized by Google

ing, *i.e.* when it inhibits the doing of anything; or (*b*) Mandatory, *i.e.* when it commands the doing, or restoring, of anything.

Vh, Joyce on Injunctions: Kerr, Ib.: Notes in Ann. Pr. to R. 6, Ord. 50, R. S. C. *Cp*, MANDAMUS.

Quà Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, "Injunction," in Scotland, "means, Interdict" (subs. 2, s. 76).

INJURE.—"An intent to 'injure,' in strictness, means more than an intent to do harm. It connotes an intent to do wrongful harm" (per Bowen, L. J., *Mogul Co* v. *McGregor*, 58 L. J. Q. B. 479; 23 Q. B. D. 598). *Vf* MALICE.

The offence of administering "Poison, or other destructive or noxious Thing, with intent to injure, aggrieve, or annoy," s. 2, 23 V. c. 8, is committed by a man giving a woman cantharides with intent to excite her sexually in order that he may obtain connection with her (*R.* v. *Wilkins*, 31 L. J. M. C. 72; L. & C. 89).

V. ANNOYANCE: DAMAGE.

INJURIA.—*V.* DE INJURIÂ.

INJURIOUS.—*V.* OFFENSIVE.

"Injurious Noise"; *V.* DISAGREEABLE.

INJURIOUS TO HEALTH.—"An offensive smell which makes sick people worse, must, more or less, interfere with the health of robust people"; and is therefore "injurious to health" generally (per Stephen, J., *Malton Local Bd* v. *Malton Manure Co*, 49 L. J. M. C. 93; 4 Ex. D. 302). *V.* NUISANCE. *Cp*, INCOMMODIOUS: INJURY.

INJURIOUSLY AFFECTED.—Lands or any Interest therein "Injuriously affected by the execution of the works," s. 68, Lands C. C. Act, 1845;—The complex meaning of this phrase has, probably, never been more clearly explained than by Bramwell, B., in *McCarthy* v. *Metrop Bd of Works* (42 L. J. C. P. 93, 94; L. R. 8 C. P. 208, 209), as follows:—

1. "The word 'Injuriously' does not mean 'Wrongfully' affected. What is done is rightful under the powers of the Act. It means 'Hurtfully' or 'Damnously' affected. As where we say of a man that he fell and injured his leg, we do not mean that his leg was wronged, but that it was hurt. We mean he fell, and his leg was injuriously (that is to say), hurtfully affected. At the same time I am clearly of opinion that to entitle the parties interested to compensation, the injury or hurt must be such as could not lawfully be inflicted except by the powers of the Act."

2. "The words of the section shew this: The lands must be 'injuriously affected by reason of the EXERCISE, as regards such lands, *of the*

Digitized by Google

powers of the Act.' The Act, therefore, injuriously affecting must be one which would be wrongful but for the statute."

In accordance with the first branch of this definition it is settled that no injury can be embraced in this phrase unless it would have been an actionable wrong but for the Act authorizing it (*Rickett* v. *Metrop Ry*, L. R. 2 H. L. 175; 36 L. J. Q. B. 205; 15 W. R. 937; 16 L. T. 542: *Metrop Bd of Works* v. *McCarthy*, L. R. 7 H. L. 243; 43 L. J. C. P. 385; 23 W. R. 115; 31 L. T. 182). But in *Re Stockport Ry* (33 L. J. Q. B. 251; 10 L. T. 426), it was held, as an exception to this rule, that non-actionable nuisances might be the subject of compensation if done on land that had, by the nuisance maker, been compulsorily acquired from the person complaining and whose other land was affected by such nuisances. After a long litigation the ruling in the *Stockport Ry Case* has been upheld by the H. L. (*Cowper-Essex* v. *Acton*, 14 App. Ca. 153; 58 L. J. Q. B. 594; 61 L. T. 1; 38 W. R. 209; 53 J. P. 756).

In accordance with the second branch of the definition, the injury must be done whilst the powers of the Act are being exercised, as distinguished from the authorized user of the thing which the Act authorizes. Therefore, *e.g.*, though damages may be recovered against a Railway Company for injury caused by vibration, smoke, and noise, caused by their trains during the *construction* of their line, because such damage is caused by reason of the exercise of their powers; yet they are not liable for such damages occasioned by their trains *after their line is completed*, because then they are only using the thing that their Act has authorized (*Brand* v. *Hammersmith Ry*, *Hammersmith Ry* v. *Brand*, L. R. 2 Q. B. 223; L. R. 4 H. L. 171; 36 L. J. Q. B. 139; 38 Ib. 265; 16 L. T. 101; 21 Ib. 238; 15 W. R. 437; 18 Ib. 12). That case is applicable to Canada (*Jones* v. *Stanstead Ry*, 41 L. J. P. C. 19; L. R. 4 P. C. 98: *Sv*, *North Shore Ry* v. *Pion*, inf); and for an application in England, *V. A-G.* v. *Metrop Ry*, 1894, 1 Q. B. 384; 69 L. T. 811; 42 W. R. 381.

When *Metrop Bd of Works* v. *McCarthy* (sup) was in the H. L. the following def (which, probably, amplifies both branches of that laid down by Bramwell, B.) was submitted by Mr. Thesiger and adopted by Cairns, C., as to when land is "Injuriously affected," — "Where, by the construction of works, there is a physical interference with any Right, public or private, which the Owner or Occupier of any property is, by law, entitled to make use of in connection with that property, and which Right gives it a Marketable Value apart from the uses to which any particular occupier might put it, there is a title to compensation, if, by reason of such interference, the property, as a property, is lessened in value": that def was adopted and applied by Darling, J., *Re Masters and G. W. Ry*, 1900, 2 Q. B. 677; 69 L. J. Q. B. 673; 82 L. T. 819; 49 W. R. 29.

The following are examples of how land may be "injuriously affected" so as to give right to compensation under the section: — Narrowing

Digitized by Google

(*Beckett* v. *Mid Ry*, 37 L. J. C. P. 11; L. R. 3 C. P. 82; 17 L. T. 499; 16 W. R. 221), or Obstructing a Highway which is the Proximate Access to the land in question (*Caledonian Ry* v. *Walker*, 7 App. Ca. 259; 30 W. R. 569; in *whc* Selborne, C., questioned whether a mere change of gradient would carry compensation, and *Vth*, *R.* v. *Eastern Counties Ry*, 2 Q. B. 347; 11 L. J. Q. B. 66; 1 G. & D. 589; 2 Rail. Ca. 756: *Vf*, *Metrop Bd of Works* v. *Howard*, inf): Interference with a Right of Way, though only of a temporary nature (*Ford* v. *Metrop Ry*, 55 L. J. Q. B. 296; 17 Q. B. D. 12; 54 L. T. 718; 34 W. R. 426; 50 J. P. 661): Darkening Ancient Lights (*Eagle* v. *Charing Cross Ry*, 36 L. J. C. P. 297; L. R. 2 C. P. 638; 15 W. R. 1016; 16 L. T. 593): so of Modern Lights when ancient ones are darkened with them (*Gower's-Walk Schools* v. *London Tilbury & Southend Ry*, 59 L. J. Q. B. 162; 24 Q. B. D. 326; 6 Times Rep. 120): Obstructing Access to a water frontage (*Metrop Bd of Works* v. *McCarthy*, sup: *Buccleuch* v. *Metrop Bd of Works*, 41 L. J. Ex. 137; L. R. 5 H. L. 418; 27 L. T. 1: *Lyon* v. *Fishmongers' Co*, 46 L. J. Ch. 68; 1 App. Ca. 662; 25 W. R. 165: *North Shore Ry* v. *Pion*, 59 L. J. P. C. 25; 14 App. Ca. 612: *Sv*, *Falls* v. *Belfast Ry*, 12 Ir. L. R. 233): Noise of Children outside a Board School (*R.* v. *Pearce*, 67 L. J. Q. B. 842; 78 L. T. 681): Prevention of sinking a Mine Shaft at the spot compulsorily taken (*Re Masters and G. W. Ry*, sup): Inundation caused by raising the level of a stream (*R.* v. *North Mid Ry*, 2 Rail. Ca. 1): Damage caused by insufficient drainage or protection of a Railway (*R.* v. *North Union Ry*, 1 Rail. Ca. 729).

But land is *not* "injuriously affected" in the following cases:—Drainage or intercepting its percolating subterraneous water (*R.* v. *Metrop Bd of Works*, 3 B. & S. 710; 32 L. J. Q. B. 105; 11 W. R. 492): Diversion of Traffic by interference with a Highway, and not being the Immediate Access to the land in question (*Rickett* v. *Metrop Ry*, sup: *Martin* v. *London Co. Co.*, 79 L. T. 170), or which Highway is an access to a FERRY (*Hopkins* v. *G. N. Ry*, 46 L. J. Q. B. 265; 2 Q. B. D. 224; 36 L. T. 898): Level Crossing (*Caledonian Ry* v. *Ogilvy*, 2 Macq. 229). But if a place of Business is on a Highway and the latter be diverted in such a way that the place is less accessible to CUSTOMERS, then it is "injuriously affected" (*Metrop Bd of Works* v. *Howard*, 5 Times Rep. 732: *Vf*, *Caledonian Ry* v. *Walker*, sup).

Note. — The dictum of Chelmsford, C., in *Rickett* v. *Metrop Ry* (sup) that land to be "injuriously affected" must have *permanent* damage done to it is not supported (*Ford* v. *Metrop Ry*, sup).

Vf, Lloyd on Compensation, 6 ed., 97–137; Woolf. & Middleton, Ib. 120–129: Browne & Allan, Ib. 118, 129–143: Cripps, Ib., 4 ed., 118–141.

S. 332, *P. H. Act*, 1875, is not *in pari materiâ* with s. 68, Lands C. C. Act, 1845; and the cases under the latter are, in great measure, irrelevant to the former: a "Reservoir, Canal, River, or Stream," &c, is "injuri-

Digitized by Google

ously affected," within s. 332, P. H. Act, 1875, if a Local Authority, claiming a right to do so, interferes with the accustomed flow of water, even though such interference causes no actual damage to a riparian proprietor who complains of it (*R.* v. *Darlington*, 35 L. J. Q. B. 45: *Roberts* v. *Gwyrfai*, 1899, 1 Ch. 583; 1899, 2 Ch. 608; 68 L. J. Ch. 233, 757; 81 L. T. 465; 48 W. R. 51; 64 J. P. 52).

"Injuriously affected," s. 6, *W. W. C. Act*, 1847; *V. Holliday* v. *Wakefield*, cited LAND: *Bush* v. *Trowbridge Water Co*, cited TAKE.

V. PREJUDICIALLY AFFECTED: TELEGRAPHIC LINE.

INJURY.—"'Injury, *Injuria.* A wrong or DAMAGE to a man's person or goods" (Jacob).

"*Damnum absque injuriâ*" is a hurt or inconvenience which inflicts no actionable wrong or damage: *Vh, Acton* v. *Blundell*, 13 L. J. Ex. 289, 302; 12 M. & W. 324, 341, 354: *Chasemore* v. *Richards*, 29 L. J. Ex. 81; 7 H. L. Ca. 349: Broom's Maxims, 3 ed., 184. The converse phrase is, *Injuria sine damno*, on *whv, Ashby* v. *White*, 2 Raym. Ld, 953; 1 Sm. L. C. 268.

"Injury," s. 2, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, is not confined to the time when it was originally done; it is being committed every day that it is continued; therefore, an action for a continuing Obstruction to an Ancient Light lies against the exors of the obstructor, though the obstruction was completed more than six months before his death (*Jenks* v. *Clifden*, 1897, 1 Ch. 694; 66 L. J. Ch. 338; 76 L. T. 382; 45 W. R. 424).

"Continuance of Injury or Damage"; *V.* CONTINUANCE.

Loss of condition to cattle through want of food and water, is "Injury" to them within s. 7, Ry and Canal Traffic Act, 1854 (*Allday* v. *G. W. Ry*, 34 L. J. Q. B. 5; 5 B. & S. 903: *Sheridan* v. *Midland G. W. Ry*, 24 L. R. Ir. 161).

Quà the Acts for Protection of Children, "Injury to its HEALTH" includes, "Injury to, or loss of, Sight or Hearing or Limb or Organ of the Body, and any Mental Derangement" (s. 19, 57 & 58 V. c. 27).

V. ANNOYANCE: COMPULSORY POWERS: DAMAGE: INGIURIE GRAVI: INJURE: IRREPARABLE: LOSS: SERVICE OF THE SHIP.

INJURY TO PROPERTY.—Means "a substantial physical injury to property" (per Fry, J., *Goodhand* v. *Ayscough*, 52 L. J. Q. B. 99; 10 Q. B. D. 71).

So, of "Injury to the land itself" by removal of improvements; *V.* IMPROVEMENT.

V. WILFUL AND MALICIOUS.

INJUSTICE.—"Without Injustice to Creditors," s. 18 (11), Bankry Act, 1883: *V. Re Moon*, 56 L. J. Q. B. 496; 19 Q. B. D. 669; 35 W. R. 743: *Ex p. Charlton*, 6 Ch. D. 45; 46 L. J. Bank. 110.

Digitized by Google

INLAND. — Inland, is DEMESNE land (Elph. 590, citing Spelm.; *So* other references given by Elph.: *Vf*, Cowel); Outland, is land beyond the Demesne, and let out like Copyholds (Jacob, *Outland*).

An Inland *Bill of Exchange* was defined in *Amner* v. *Clark* (2 Cr. M. & R. 471: *Vf*, *Mahoney* v. *Ashlin*, 2 B. & Ad. 478) as a Bill both drawn and payable in Great Britain; and now such a Bill, "is a Bill which is, or on the face of it purports to be, (*a*) both drawn and payable within the BRITISH ISLANDS, or (*b*) drawn within the British Islands upon some person resident therein. Any other Bill is a FOREIGN Bill.

"For the purposes of this Act, 'British Islands' mean, any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

"Unless the contrary appear on the face of the Bill the holder may treat it as an Inland Bill" (s. 4, Bills of Ex. Act, 1882).

So of Promissory Notes (s. 89, Ib.). *Vf*, PROMISSORY NOTE.

"Inland PARCELS," quà Post Office (Parcels) Act, 1882, 45 & 46 V. c. 74, "means, parcels posted within the UNITED KINGDOM, and addressed to some place in the United Kingdom" (s. 17). Observe, that the def does not extend to the Channel Islands and the Isle of Man, as, by another Act, is expressly done quà an Inland Postal PACKET (s. 12, 38 & 39 V. c. 22). *Cp*, FOREIGN.

"Inland POSTAGE," quà Post Office (Offences) Act, 1837, 1 V. c. 36, means, "the duty charged for the transmission of post letters within the limits of the UNITED KINGDOM or within the limits of any COLONY" (s. 47). *Cp*, FOREIGN.

"Inland REVENUE," quà Inland Revenue Regn Act, 1890, 53 & 54 V. c. 21, "means, the Revenue of the UNITED KINGDOM collected or imposed as Stamp Duties, Taxes, and Duties of Excise, and placed under the care and management of the Commissioners, and any part thereof" (s. 39). *Vth*, *Lord Advocate* v. *Sawers*, W. N. (98) 131; 25 Rettie, 242.

"Inland Revenue *affidavit*"; Stat. Def., Finance Act, 1894, ss. 22 (1 *n*), 23 (5).

Inland *Sea*; *V.* 6 Encyc. 493.

"Inland WATERS," quà Salmon Fishery Act, 1861, 24 & 25 V. c. 109, means, "All Waters that are not TIDAL WATERS" (s. 4): *Va*, s. 108, Explosives Act, 1875, 38 & 39 V. c. 17.

INMATE. — "'Inmates' are those persons of one family that are suffered to come and dwell in one cottage together with another family, by which the poore of the parish will be increased. And therefore by the statute of 31 Eliz. c. 7, there is a penalty of ten shillings a moneth set upon every one that shall receive or continue such an Inmate" (Termes de la Ley). *Vf*, Cowel: Jacob. *Cp*, HOGHENHINE.

A Clerk in an Office was an "Inmate" of his employer's "Place of

Digitized by Google

Abode" within s. 150, P. H. Act, 1848 (*Mason* v. *Bibby*, 2 H. & C. 881; 33 L. J. M. C. 105; 12 W. R. 382; 9 L. T. 692). *Vf*, PLACE.

"The temporary occupiers of an HOTEL would be 'Inmates' of that hotel" (per Russell, C. J., *R.* v. *Slade*, 65 L. J. M. C. 109). In that case it was held, that mere Wayfarers getting a night's rest in a Shelter, are "Inmates" of a HOUSE within s. 2 (1 *e*), P. H. London Act, 1891 (65 L. J. M. C. 108; 74 L. T. 656; 60 J. P. 358).

Vf, note to *Buxton* v. *Jones* (1 M. & G. 86) at the end of which it is said, "It would rather seem that every LODGER is an Inmate."

INN. — An Inn or Hostel may be defined to be a house in which TRAVELLERS, passengers, wayfaring men, and other such like casual GUESTS, are accommodated with victuals and lodgings and whatever they reasonably desire, for themselves and their horses, at a reasonable price, while on their way (*V. R.* v. *Luellin*, 12 Mod. 455: *Thompson* v. *Lacy*, 3 B. & Ald. 283. 1 Burn's Jus., *Alehouse*). A Refreshment-bar, structurally severed, though part of a duly licensed premises, is not an Inn (*R.* v. *Rymer*, 46 L. J. M. C. 108; 2 Q. B. D. 136: *Strauss* v. *County Hotel Co*, 53 L. J. Q. B. 25; 12 Q. B. D. 27); nor is an ordinary Coffee-house (*Doe* v. *Laming*, 4 Camp. 77) nor a Restaurant (*Ultzen* v. *Nicols*, 1894, 1 Q. B. 92; 63 L. J. Q. B. 289; 70 L. T. 140; 42 W. R. 58); nor is a Boarding-house (*Dansey* v. *Richardson*, 23 L. J. Q. B. 217; 3 E. & B. 144): but a London Coffee-house where beds as well as provisions are provided would seem to be an Inn (*Thompson* v. *Lacy*, sup).

In *Cunningham* v. *Philp* (Times, 29th April 1896) the jury (after a direction from Cave, J., wherein he cited *Thompson* v. *Lacy*, sup) found that an unlicensed house advertised as a "Temperance Hotel" (which had bed accommodation, but had no sign, and wherein no intoxicants were sold) was an Inn: *V. Webb* v. *Fagotti*, cited HOTEL.

But, Inn, or not an Inn? — is a question of fact, and "it would be open to a Court to find that many Hotels in London, carried on as they are at the present time, do not hold themselves out as taking in all persons coming to them as Travellers, according to the Custom of England" (per Esher, M. R., *Lamond* v. *Richard*, 1897, 1 Q. B. 541; 66 L. J. Q. B. 319; 45 W. R. 289; 61 J. P. 260; 76 L. T. 141).

Assuming a place, *e.g.* an Hotel, to be an Inn according to that custom, then its ordinary Dining Room is part of the Inn (*Orchard* v. *Bush*, cited GUEST).

Quà Innkeepers' Liability Act, 1863, 26 & 27 V. c. 41, an "Inn" means, "any Hotel, Inn, Tavern, Public-house, or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his GUESTS"; and "Innkeeper," means, "the keeper of any such place" (s. 4).

Quà the Acts for regulating Public Houses in Scotland, "'Inn and

Digitized by Google

Hotel,' shall, in Towns and the suburbs thereof, refer to a house containing at least 4 apartments set apart exclusively for the sleeping accommodation of TRAVELLERS; and in Rural Districts and Populous Places, not exceeding 1,000 inhabitants according to the Census last before taken, to a house containing at least 2 such apartments" (s. 37, 25 & 26 V. c. 35). *Cp*, SHEBEEN.

Vh, 1 Sm. L. C. 142: Add. C. 680, 681: Rosc. N. P. 649: Haycroft on Innkeepers: 6 Encyc. 495–497.

V. HOTEL: ALEHOUSE: PUBLIC HOUSE: VICTUALLING HOUSE: BEER-HOUSE: LICENSED PREMISES.

INN OF CHANCERY. — *V. Smith* v. *Kerr*, cited CHARITY.

INNINGS. — Are "Lands recovered from the sea in Romney Marsh, by draining" (Jacob).

INN-KEEPER. — *V.* INN: LICENSED PERSON; GUEST.

As to what is carrying on the trade of an Inn-Keeper, within a Restrictive Covenant, *V. Buckle* v. *Fredericks*, cited RETAIL.

INNOCENT. — Innocent *Dealer* infringing a Patent or Trade-Mark sometimes escapes Costs (*Upmann* v. *Forester*, 52 L. J. Ch. 946; 24 Ch. D. 231: *American Tobacco Co.* v. *Guest*, 61 L. J. Ch. 242; 1892, 1 Ch. 630.)

"'Innocent' is a word of many meanings"; but in such a connection as Whisky only to be coloured with an "Innocent *Material*," it means, "a material which would not be injurious to the commodity by rendering it unfit for the purpose for which it was intended" (per Cairns, C., *Macfarlane* v. *Taylor*, 18 L. T. 217).

Innocent *Misrepresentation*; *V.* MISREPRESENT: *Whittington* v. *Seale-Hayne*, W. N. (1900) 31; 82 L. T. 49, discussing *Adam* v. *Newbigging*, 57 L. J. Ch. 1066; 13 App. Ca. 308.

Innocent Shippers; *V. Brooking* v. *Maudslay*, 57 L. J. Ch. 1001; 38 Ch. D. 636; 58 L. T. 852; 36 W. R. 664.

INNOCENTLY ACTED. — A *primâ facie* offence, as to a TRADE-MARK or TRADE DESCRIPTION, may be rebutted if the accused proves that he acted without INTENT to defraud, &c, or otherwise "acted innocently" (s. 2, Merchandize Marks Act, 1887), on which latter phrase, *V. Wood* v. *Burgess*, 59 L. J. M. C. 11; 24 Q. B. D. 162: *Kirshenboim* v. *Salmon*, cited FALSE TRADE DESCRIPTION: *Coppen* v. *Moore*, cited TRADE DESCRIPTION: *Christie* v. *Cooper*, 1900, 2 Q. B. 522; 69 L. J. Q. B. 708; 83 L. T. 54; 49 W. R. 46; 64 J. P. 692. *Cp*, KNOWINGLY.

V. INTENT.

INNONIA. — An inclosure (Spelm.).

Digitized by Google

INNUENDO. — An Innuendo, is a statement by the plaintiff in an action for Defamation "of the construction which he puts upon the words himself, and which he will endeavour to induce the jury to adopt at the trial" (Odgers, 160, *wh et seq v.* for cases in illustration: *Vh,* Ib. 556, 596, 634).

V. LIBEL: SLANDER.

INOFFICIOUS. — A Will is said to be "Inofficious" when it wholly passes by those having strong natural claims on the testator. "By the Roman Law, testaments might be set aside as being *inofficiosa* if they totally passed by (without assigning a true and sufficient reason) any of the children of the testator: though if the child had any legacy, however small, it was a proof the testator had not lost his memory or his reason, which otherwise the law presumed. But the law of England makes no such constrained suppositions of forgetfulness or insanity; and, therefore, though the heir or next-of-kin be totally omitted, it admits no *querela inofficiosa* to set aside such testament" (Wms. Exs. 32, citing 2 Bl. Com. 503: *Wrench* v. *Murray,* 3 Curt. 623).

V. UNDUE INFLUENCE.

INQUEST. — "'Enquest,' is that INQUIRY which is made by jurors in all causes, civill or criminall, touching the matter in fact" (Termes de la Ley). *Vf,* Cowel: JURY.

INQUIRY. — *V.* INQUEST.

An "Inquiry" in an action is not limited to what a man can see with his own eyes; it signifies a judicial inquiry with witnesses; therefore in a Reference "for Inquiry and Report" under s. 56, Jud. Act, 1873, the Referee may, and it is the invariable practice to, hear counsel and witnesses (*Wenlock* v. *River Dee Co,* 19 Q. B. D. 155; 56 L. J. Q. B. 589; 57 L. T. 320; 35 W. R. 822).

Stat. Def. — 55 & 56 V. c. 64, s. 1.

The power in Club Rules to expel a Member "after Inquiry," means, after a fair inquiry into the truth of the alleged facts by giving due notice to the accused, and by taking and fairly considering the evidence (*Labouchere* v. *Wharncliffe,* 13 Ch. D. 346).

A "*Due* Inquiry," s. 29, 21 & 22 V. c. 90, means to give its subject-matter a fair hearing (*Allbutt* v. *Gen. Med. Council,* and *Leeson* v. *Gen. Med. Council,* cited INFAMOUS CONDUCT).

A "Due Inquiry" by the Local Government Bd, under s. 299, P. H. Act, 1875, is one which the Board thinks sufficient, and (in the absence of *mala fides*) the Q. B. D. has no right to interfere (*R.* v. *Staines,* 62 L. J. Q. B. 540; 69 L. T. 714).

Inquiry on *Title*; *V.* REQUISITION: INVESTIGATING.

INQUISITION. — Quà Lunacy Act, 1890, "'Inquisition,' includes an Order, Certificate, or Verdict, operating as an Inquisition" (s. 341).

Digitized by Google

INROL. — *V.* Enrol.

INSANE. — *V.* Idiot: Lunatic: Unsound Mind.

INSERT. — *V.* Full Apology.

INSINUATION. — *V.* Charge of Fraud.

INSIST. — A Power to rescind a Contract of Sale, if purchaser shall make Requisitions "and shall *insist* thereon," cannot be exercised until a fair attempt has been made to answer the Requisitions (*Greaves* v. *Wilson*, 25 Bea. 290; 27 L. J. Ch. 546); in this connection "persist" is synonymous with "insist" (*Mawson* v. *Fletcher*, 39 L. J. Ch. 583; L. R. 10 Eq. 212). The exercise of the power must be prompt and in good faith (*Smith* v. *Wallace*, 1895, 1 Ch. 385; 64 L. J. Ch. 240; 71 L. T. 814; 43 W. R. 539).
Cp, Unwilling.

INSOLUBLE. — Quà Fertilizers and Feeding Stuffs Act, 1893, 56 & 57 V. c. 56, "'Soluble,' and 'Insoluble,' shall respectively mean, soluble and insoluble in Water" (s. 8).

INSOLVENCY. — *V.* Insolvent: Bankruptcy and Insolvency.

INSOLVENT. — "An 'Insolvent,' in ordinary acceptation, is a person who cannot pay his debts" (per Parke, B., *Parker* v. *Gossage*, 5 L. J. Ex. 4; 2 Cr. M. & R. 617; Tyr. & G. 105); but in its special use in s. 16, 7 & 8 V. c. 112, it was restricted to mean, a person who had taken the benefit of an Insolvent Debtors Act (*The Princess Royal*, 9 Jur. 433).

A person is an "Insolvent," within a clause of Forfeiture, or for terminating a Contract, who enters into a Composition Deed which recites his inability to pay his creditors in full (*Billson* v. *Crofts*, 42 L. J. Ch. 531; L. R. 15 Eq. 314), or who (under the Bankry Act, 1869) presented a petition for liquidation under which a composition was accepted (*Nixon* v. *Verry*, 54 L. J. Ch. 736; 29 Ch. D. 196). It is indeed broadly stated that "where 'Insolvency' is made a cause of forfeiture, it is not generally necessary that the legatee should have taken the benefit of any Act for the relief of insolvent debtors. It is enough that he is unable to pay his debts in full" (2 Jarm. 37). "As to the meaning of the word 'Insolvent' it is now settled that it is not a technical term, but simply means a person who is incapable of paying his debts" (per Wood, V. C., *Re Muggeridge*, 29 L. J. Ch. 288; Johns. 625), or the being liable to more debts than he can pay (*Biddlecombe* v. *Bond*, 5 L. J. K. B. 47; 4 A. & E. 332; 5 N. & M. 621); but insolvency is not shown by proving non-payment on demand of one debt (*Doe* d. *Gatehouse* v. *Rees*, 7 L. J. C. P. 184; 4 Bing. N. C. 384; 6 Sc. 161).

Digitized by Google

Is the above interpretation quite applicable to a Forfeiture clause in a Lease on the Lessee becoming "Insolvent"? Or, must there not, in that case, be a stricter interpretation? *Vh, Bowser* v. *Colby*, 1 Hare, 135, 136, and cases there cited: *Doe* d. *Gatehouse* v. *Rees*, sup. And where the phrase is, shall become "*bankrupt or otherwise insolvent*," "insolvent" (it may plausibly be contended) should be read as *ejusdem generis* with "bankrupt" (per Blackburn, J., *R.* v. *Saddlers' Co*, 32 L. J. Q. B. 340; 10 H. L. Ca. 404: *Vf*, *Parker* v. *Gossage*, sup: *Re Birmingham Benefit Socy*, 3 Sim. 421). The question as to "Insolvent" arose in *R.* v. *Saddlers' Co* on the following Bye-Law of the Saddlers' Co, — "that no person who has been a Bankrupt, or become otherwise Insolvent, shall hereafter be admitted a member of the Court of Assistants, unless it be proved, to the satisfaction of the Court, that such person, after his bankruptcy or insolvency, has paid his creditors in full, or shall have established a fair and honourable character for the seven years subsequent." The H. L., having regard chiefly to the need of some definite time from which to calculate this 7 years, held that "become otherwise Insolvent" meant notorious or avowed insolvency, *e.g.* a public stoppage in business, or calling creditors together and obtaining time or terms of indulgence, or entering into a deed of composition: *V.* jdgmt of Westbury, C. *Vf*, BECOME.

Quà Sale of Goods Act, 1893 (*V.* espy ss. 44–46), "A person is deemed to be Insolvent, who either has ceased to pay his debts in the ORDINARY COURSE of business or cannot pay his debts as they become due, whether he has committed an Act of Bankruptcy or not and whether he has become a Notour Bankrupt or not" (subs. 3, s. 62). *Note*: A "Notour Bankrupt" is a Scotch phrase meaning one legally declared bankrupt (Imperial Dicty).

Other Stat. Def. — *Ir.* 20 & 21 V. c. 60, s. 4.

Indebtedness to the extent of Insolvency, quà 13 Eliz. c. 5; *V.* *Shears* v. *Rogers*, 3 B. & Ad. 362; 1 L. J. K. B. 89: INSOLVENT CIRCUMSTANCES.

Co "unable to pay its debts"; *V.* UNABLE.

A Company becoming "Insolvent" as regards the return of a parliamentary deposit; *V. Re Bradford Tramway Co*, 46 L. J. Ch. 89; 4 Ch. D. 18.

"Insolvent," in the Colony of Victoria, is equivalent to "Bankrupt" in England (*Hunt* v. *Fripp*, 77 L. T. 516; 46 W. R. 125).

Cp, BANKRUPT.

INSOLVENT CIRCUMSTANCES. — "'In Insolvent Circumstances' has always been held to mean, not merely being behind the world if an account were taken, but insolvency to the extent of being unable to pay just debts in the ORDINARY COURSE of trade and business" (per Willes, J., *R.* v. *Saddlers' Co*, 32 L. J. Q. B. 345; 10 H. L. Ca.

Digitized by Google

404. *Vf*, per Ellenborough, C. J., *Bayly* v. *Schofield*, 1 M. & S. 350: *Teale* v. *Younge*, McCl. & Y. 497).

V. INSOLVENT: INSOLVENT DEBTOR.

INSOLVENT DEBTOR. — *V. Re Gordon*, 28 Bea. 5; 29 L. J. Ch. 352; 1 L. T. 359; 2 L. T. 100: INSOLVENT.

INSPECT. — A statutory power to "inspect" a Co's documents, includes, generally, a right to take copies, *e.g.* under s. 28, Comp C. Act, 1863 (*Mutter* v. *Eastern & Midland Ry*, 57 L. J. Ch. 615; 38 Ch. D. 92; 36 W. R. 401), or under s. 43, Comp Act, 1862 (*Nelson* v. *Anglo-American Land Co*, 1897, 1 Ch. 130; 66 L. J. Ch. 112; 45 W. R. 171; 75 L. T. 482: *Boord* v. *African Co*, 1898, 1 Ch. 596; 67 L. J. Ch. 451; 77 L. T. 553; 46 W. R. 150), or under s. 14, 36 & 37 V. c. 48 (*Perkins* v. *Lond. & N. W. Ry*, 1 Ry & Can Traffic Ca. 327). But that right is negatived by a statutory provision expressly directing a mode of obtaining copies, *e.g.* s. 32, Comp Act, 1862, under which a Co may be required to furnish copies on being paid therefor (*Re Balaghât Gold Co*, 1901, 2 K. B. 665; 70 L. J. K. B. 866; 85 L. T. 8; 49 W. R. 625; over-ruling *Boord* v. *African Co*, sup).

V. R. v. *Mariquita Co*, cited PROCEEDING.

S. 16 (1), Conv & L. P. Act, 1881, in giving a mtgor a right to "inspect" the documents of title in his mtgee's hands, expressly adds "and make copies or abstracts of, or extracts from," the same.

INSPECTION. — Expenses of "Production and Inspection" of Documents, s. 3 (6), Conv & L. P. Act, 1881; *V. Re Duthy and Jesson*, cited INFORMATION.

The Bank of England books of the National Debt are only "OPEN for Inspection," s. 52, 33 & 34 V. c. 71, to persons who are *bonâ fide* interested in the matters to which the entries in the books relate; not to those who are merely collecting trade-lists of unclaimed dividends (*R.* v. *Bank of England*, 1891, 1 Q. B. 785; 60 L. J. Q. B. 497; 64 L. T. 468; 39 W. R. 558; 55 J. P. 695).

"Inspection" and "MANAGEMENT" of a bankrupt's estate, s. 192, Bankry Act, 1861; *V. Bailey* v. *Bowen*, 37 L. J. Q. B. 61; L. R. 3 Q. B. 133; 16 W. R. 396; 17 L. T. 470.

INSPECTOR. — "Inspector," s. 35, 35 & 36 V. c. 77, includes his authorized agent (*Foster* v. *Fyfe*, 1896, 2 Q. B. 104; 65 L. J. M. C. 184; 74 L. T. 784; 44 W. R. 524; 60 J. P. 423).

Stat. Def. — 26 & 27 V. c. 124, s. 3; 52 & 53 V. c. 21, s. 35. — *Ir.* 31 & 32 V. c. 97, s. 4.

"Inspector," "Inspector of the *Bd of Agriculture*," "Inspector of a *Local Authority*"; *V.* ss. 59 and 69 (4), Diseases of Animals Act, 1894, 57 & 58 V. c. 57.

Digitized by Google

"Inspector of *Constabulary*," quà Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25, "*means*, a County Inspector of the Royal Irish Constabulary; and *includes*, an Inspector of the Dublin Metropolitan Police" (s. 35).

"*Her Majesty's* Inspectors" under the Education Acts; Stat. Def., 33 & 34 V. c. 75, s. 3. — *Scot.* 35 & 36 V. c. 62, s. 1.

"Inspectors of *Irish Fisheries*"; Stat. Def., 40 & 41 V. c. 42, s. 13.

"Inspectors" of *Salmon Fisheries*; *V.* s. 31, Salmon Fishery Act, 1861, 24 & 25 V. c. 109; s. 4, S. F. Act, 1873, 36 & 37 V. c. 71.

INSTANT. — "Although an instant *est unum indivisibile tempore quod non est tempus nec pars temporis, ad quod tamen partes temporis connectuntur*, and that *instans est finis unius temporis et principium alterius*; yet in consideration of law there is a prioritie of time in an instant," so that a surviving joint tenant takes and is preferred before the devisee of his companion (Co. Litt. 185 b). *Vf,* Termes de la Ley.

INSTANTLY. — "Instantly" does not, at least in a Bill of Sale, seem a more intense word than "IMMEDIATELY" (*Massey* v. *Sladen*, 38 L. J. Ex. 34; L. R. 4 Ex. 13).

Indeed, in *R.* v. *Brownlow* (9 L. J. M. C. 15; 11 A. & E. 119; 3 P. & D. 52), it was said that "Instantly" had no definite meaning; there a Coroner's Inquisition stated an explosion on a Thames steamer from the effects of which A. B. "instantly died," and the Inquisition was quashed for not averring with sufficient distinctness the time of the death, the Court saying "'Instanter' and 'Incontinenter' are not words implying what is expressed by 'ad tunc'": *Cp,* THEN, at end.

INSTEAD OF. — The words "Instead of," "In lieu of," though naturally implying some, need not necessarily mean a total, substitution. Thus a gift by a Codicil "instead of" one in the Will, may be read "instead of so much of the gift in the Will only as is incompatible with the Codicil" (1 Jarm. 177, 178, citing *Doe* d. *Murch* v. *Marchant*, 13 L. J. C. P. 59; 6 M. & G. 813; 7 Sc. N. R. 644: *Hill* v. *Walker*, 4 K. & J. 168: *Butler* v. *Greenwood*, 22 Bea. 303: *Barclay* v. *Maskelyne*, 5 Jur. N. S. 12). *Vf, Ex p. Drew*, W. N. (71) 184: *Re Wilcock*, 1898, 1 Ch. 95; 67 L. J. Ch. 154; 77 L. T. 679; 46 W. R. 153.

A fund provided by statute "in lieu of" other means of payment, may become the primary fund (*R.* v. *St. Saviour's, Southwark*, 7 L. J. M. C. 59; 7 A. & E. 925; 3 N. & P. 126).

Buildings "in lieu of," mean, "in the place of" (*Boyer* v. *Bancroft*, W. N. (83) 67).

V. ADDITION: IN LIEU OF: LIEU AND SUBSTITUTION.

INSTIGATION. — A Breach of Trust committed "at the Instigation or Request, or with the Consent IN WRITING, of a Beneficiary"

Digitized by Google

(s. 6, Trustee Act, 1888, repld s. 45, Trustee Act, 1893) applies only to such Breach of Trust as the Beneficiary knows of; and, *semble*, that constructive notice, by having the same Solicitor as the Trustee, would not be sufficient (*Re Somerset*, 1894, 1 Ch. 231; 63 L. J. Ch. 41; 69 L. T. 744; 42 W. R. 145). In that section "In Writing" only applies to "Consent," and not to "Instigation, or Request" (*Griffith* v. *Hughes*, 1892, 3 Ch. 105; 62 L. J. Ch. 135; 66 L. T. 760; 40 W. R. 524; approved in *Re Somerset*, sup). Mere Consent, though in writing, differs from, and does not necessarily amount to, an Instigation or Request (*Bolton* v. *Curre*, 1895, 1 Ch. 544; 64 L. J. Ch. 164; 71 L. T. 752; 43 W. R. 521: *Mara* v. *Browne*, cited BREACH OF TRUST).

V. CONSENT.

INSTITUTED.—A PROCEEDING "instituted," means, one commenced; therefore, where, to a petition for restitution of conjugal rights, the Answer charged Adultery, there was no "Action, Suit, or Proceeding, . . . *instituted* in consequence of Adultery" within s. 4, 14 & 15 V. c. 99 (*Blackborne* v. *Blackborne*, 37 L. J. P. & M. 73; L. R. 1 P. & M. 563).

So, of s. 2, M. W. P. Act, 1893; which, quà an Appeal by a married woman who is the *Defendant* in the action, gives no power to order costs out of her property restrained from ANTICIPATION, for such an Appeal is not an "Action or Proceeding instituted" by her (*Hood-Barrs* v. *Cathcart*, 1894, 3 Ch. 376; 63 L. J. Ch. 793: *Hood-Barrs* v. *Heriot*, 1897, A. C. 177; 66 L. J. Q. B. 356: *Vh, Re Lumley*, 63 L. J. Ch. 900: *Re Godfrey*, 43 W. R. 244; 63 L. J. Ch. 854); *secus*, where the married woman is *Plaintiff* (*Paget* v. *Paget*, 67 L. J. Ch. 266). A *Counter-Claim* is a "Proceeding instituted" within the section (*Hood-Barrs* v. *Cathcart*, 1895, 1 Q. B. 873; 64 L. J. Q. B. 520; 72 L. T. 427; 43 W. R. 560: *Cp*, PLAINTIFF). A *Caveat* does not "institute" a Probate Action within the section (*Moran* v. *Place*, 1896, P. 214; 65 L. J. P. D. & A. 83; 74 L. T. 661; 44 W. R. 593).

Proceedings before Justices are "instituted" when the INFORMATION is laid, or COMPLAINT is made; therefore, where an Information under the Sunday Observance Act, 1677, was laid without the written consent of the CHIEF Officer of Police of the District, s. 1, 34 & 35 V. c. 87, it was "instituted" without that required consent and was bad, although such consent was given the next day and before the summons was served (*Thorpe* v. *Priestnall*, 1897, 1 Q. B. 159; 66 L. J. Q. B. 248; 45 W. R. 223; 60 J. P. 821; 13 Times Rep. 95).

V. this word in the Prayer of Consecration in the Communion Office.

Cp, COMMENCEMENT.

Sometimes "instituted" means, established, *e.g.* a Society instituted for the purposes of Science, &c; *V.* SCIENCE: INSTITUTION.

Digitized by Google

INSTITUTION.—*V.* ADMISSION: COLLATION.

"Endowed Institution"; *V.* ENDOWED.

"Institution" for Idiots; Stat. Def., 49 & 50 V. c. 25, s. 17.

"Institution for Lunatics"; Stat. Def., 53 & 54 V. c. 5, s. 341.

"Literary or Scientific Institution"; *V.* LITERARY.

"Public Charitable Institution"; *V.* PUBLIC CHARITY.

"Societies and Institutions"; *V.* SOCIETIES.

INSTROKE.—"The right of 'Instroke' is the right of conveying Minerals from a demised mine to the surface through a pit or shaft in an adjoining mine. It is the converse right to that of 'Outstroke'; which is the right of conveying Minerals from an adjoining mine to the surface through a pit or shaft in the demised mine" (MacS. 231, *whv*).

INSTRUCT.—*V.* TEACH AND INSTRUCT.

INSTRUCTION.—*V.* MANUAL INSTRUCTION: TECHNICAL.

INSTRUMENT.—An "Instrument" is a Writing, and generally imports a document of a formal legal kind. *Semble*, the word may include an Act of Parliament (*V.* DEED OF SETTLEMENT); so, quà the Trustee Act, 1893 (*V.* s. 50).

"The words, 'Instrument of Foundation or Statutes,' s. 19, 32 & 33 V. c. 56, and s. 7, 36 & 37 V. c. 87, point with great distinctness to written instruments" (per Selborne, C., *St. Leonards Trustees* v. *Charity Commrs*, 54 L. J. P. C. 31; 10 App. Ca. 304; 51 L. T. 305; 33 W. R. 756); and "entitled under any Instrument," s. 1, Malins' Act, 20 & 21 V. c. 57, does not include an Intestacy (*Allcard* v. *Walker*, 1896, 2 Ch. 369; 65 L. J. Ch. 660; 74 L. T. 487; 44 W. R. 661: *Va*, *Re Elcom*, cited PECUNIARY LEGACIES).

A Power by "Deed, *Instrument*, or Will," is well executed by a mere writing which is neither a Deed nor a Will, provided the document refers to the Power, or can only have effect by operating on a fund which is subject to the Power, *e.g.* an order, a letter, or a cheque on the fund; and this is not altered by the Power providing that the "Deed, Instrument, or Will" shall not be "executed" until after a stated event (*Brodrick* v. *Brown*, 1 K. & J. 328). *V.* WRITING: INSTRUMENT IN WRITING.

Orders of Court are not "Instruments" within s. 2, Apportionment Act, 1834, 4 & 5 W. 4, c. 22 (*Jodrell* v. *Jodrell*, 38 L. J. Ch. 507; L. R. 7 Eq. 461).

A Post Office Telegram accepting a Wager is an "Instrument" within s. 38, Forgery Act, 1861, 24 & 25 V. c. 98 (*R.* v. *Riley*, 1896, 1 Q. B. 309; 65 L. J. M. C. 74; 74 L. T. 254; 44 W. R. 318; 60 J. P. 519).

"Instrument," in the phrase "BOND, COVENANT, or Instrument," Sch, Stamp Act, 1870, repld Sch 1, Stamp Act, 1891, means an Instrument of the same nature as "Bond" or "Covenant" with which it is asso-

Digitized by Google

ciated, *i.e.* one which is a SECURITY FOR MONEY (*Thames Conservators* v. *Inl. Rev.*, 56 L. J. Q. B. 181; 18 Q. B. D. 279; 56 L. T. 198; 35 W. R. 274: *Cp, Limmer Asphalte Co* v. *Inl. Rev,* 41 L. J. Ex. 106; L. R. 7 Ex. 211; 20 W. R. 610, and *Sweetmeat Co* v. *Inl. Rev.*, 1895, 1 Q. B. 484; 64 L. J. Q. B. 84; 71 L. T. 763; 43 W. R. 318: *Vthlc*, PERIODICAL). A document whereby money is made payable for a Telephone Service is an "Instrument" for the "SECURITY" of money within the phrase, and requires the Bond *ad val.* duty on the aggregate amount necessarily payable thereunder, *i.e.* the whole of the payments for the period for which the service must necessarily continue (*National Telephone Co* v. *Inl. Rev.*, 1899, 1 Q. B. 250; 1900, A. C. 1; 68 L. J. Q. B. 222; 69 Ib. 43).

"Instrument" in Exemption 11 to *Receipt*, Sch, Stamp Act, 1891; *V. London and Westminster Bank* v. *Inl. Rev.*, cited RECEIPT.

Quà Conv & L. P. Act, 1881, "'Instrument,' includes Deed, Will, Inclosure, Award, and Act of Parliament" (subs. xiii, s. 2): quà Stamp Duties it, generally, "includes every Written Document" (s. 27, 54 & 55 V. c. 38; s. 122, Stamp Act, 1891); but quà and by s. 44 of the latter Act "Instrument" which an unqualified person may not prepare, does not include "(*a*) A Will or Testamentary Instrument; or (*b*) An Agreement under hand only; or (*c*) A Letter or Power of Attorney; or (*d*) A Transfer of Stock containing no trust or limitation thereof."

Other Stat. Def. — Stamp Act, 1891, s. 9; Great Seal Act, 1884, 47 & 48 V. c. 30, s. 4. — *Scot.* 21 & 22 V. c. 76, s. 36; 31 & 32 V. c. 101, s. 3; 37 & 38 V. c. 94, s. 3.

V. DEED: INSTRUMENT IN WRITING: TESTAMENT: SEIZIN.

"Instrument or Device" to catch Fish; *V.* TO PLACE: ROD AND LINE.

"Snare . . . or other *like* Instrument" to catch Salmon; *V. Jones* v. *Davies*, cited OTHER, p. 1365.

"Measuring Instrument"; *V.* MEASURING.

"Noisy Instrument"; *V.* NOISY.

"Instruments" of a Ship; *V.* TACKLE.

"Weighing Instrument"; *V.* WEIGHING.

INSTRUMENT IN WRITING. — Where by a Company's Articles a Transfer of Shares may be by an "Instrument in Writing," a Deed is not necessary, even though the Company's uniform practice has required one (*Re Tahiti Cotton Co, Ex p. Sargent,* L. R. 17 Eq. 273; 43 L. J. Ch. 425: *Ortigosa* v. *Brown,* 47 L. J. Ch. 168; 38 L. T. 145. *Vh,* Buckl. 488).

Semble, an "Instrument in Writing" does not necessarily require to be signed by the party making it (per Parke, B., *Hunter* v. *Parker,* 10 L. J. Ex. 288; 7 M. & W. 322).

As to the execution of a Power by Deed or "Instrument in Writing"; *V.* WRITING.

Digitized by Google

Submission to arbitration by "Deed or Instrument in Writing," s. 17, Com. L. Pro. Act, 1854; *V. Re Dawdy and Hartcup*, 54 L. J. Q. B. 574; 15 Q. B. D. 426: SUBMISSION.

"Deed, Will, or Instrument in Writing" in the definition of TRUSTEE, s. 1, Larceny Act, 1861, includes the Rules of a Savings Bank (*R.* v. *Fletcher*, L. & C. 180; 31 L. J. M. C. 206); that is so even though "Instrument in Writing" has to be read as *ejusdem generis* with "Deed or Will," for "whatever shape an Instrument may assume, if it authorizes a Trustee to receive money upon certain trusts and points out the mode of investment and generally declares the purposes to which the property is to be applied, it is an Instrument *ejusdem generis* as a Deed or Will" (per Cockburn, C. J., *S. C.* L. & C. 204).

"*Written* Instrument," s. 28, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, means, an Instrument creating the obligation to pay; therefore, a mere letter of application for a loan is not such an Instrument (*Taylor* v. *Holt*, 3 H. & C. 452; 34 L. J. Ex. 1: *Vf, L. C. & D. Ry* v. *S. E. Ry*, 1893, A. C. 429; 63 L. J. Ch. 93; 69 L. T. 637).

A Bill or Note paid by a Surety is a "Written Instrument" entitling him to prove for Interest under R. 20, Sch 2, Bankry Act, 1883 (*Re Evans*, 76 L. T. 530; 66 L. J. Q. B. 499; 46 W. R. 8).

V. CERTAIN TIME: SUM CERTAIN: DEMAND.

"Deed, Will, or other Written Instrument," R. 1, Ord. 54 a, R. S. C., applies to "any written document under which any right or liability, whether legal or equitable, exists," *e.g.* a Contract for an OPTION to repurchase land, a Bill of Lading, or a Charter-Party (*Mason* v. *Schuppisser*, 81 L. T. 147).

V. IN WRITING: INSTRUMENT.

INSTRUMENT OF DISSOLUTION.—"Instrument of Dissolution" of a Building Socy; *V.* s. 32, Bg Socy Act, 1874. It cannot vary priorities (*Botten* v. *City & Suburban Bg Socy*, 1895, 2 Ch. 441; 64 L. J. Ch. 609), nor alter the rights of advanced members (*Kemp* v. *Wright*, 1895, 1 Ch. 121; 64 L. J. Ch. 59). Its signatories respectively may sign by an agent (*Dennison* v. *Jeffs*, 1896, 1 Ch. 611; 65 L. J. Ch. 435; 74 L. T. 270; 44 W. R. 476).

INSTRUMENT OF GAMING.—A machine used for registering bets at a race, is an "Instrument of Gaming" (*Tollet* v. *Thomas*, 24 L. T. 508).

Money is not an "Instrument of Gaming" (*Watson* v. *Martin*, 34 L. J. M. C. 50; 28 J. P. 775: *Hirst* v. *Molesbury*, 40 L. J. M. C. 76; L. R. 6 Q. B. 130; 23 L. T. 555).

V. GAMING.

INSTRUMENTALITY.—Under s. 28, 23 & 24 V. c. 127, a Solicitor is entitled to a charge for his costs on property recovered or preserved

Digitized by Google

through his "instrumentality." "Suppose that a Solicitor is employed in a hotly contested action, and prepares the whole case of the plaintiff down to the moment of trial, and that just before the trial the plaintiff changes his solicitor, and then, owing to the exertions of the solicitor formerly employed, he succeeds in the action. Can it possibly be said that that success is not owing to the 'instrumentality' of the discharged solicitor?" (per Kay, J., *Re Wadsworth*, 54 L. J. Ch. 640; 29 Ch. D. 517; 52 L. T. 613; 33 W. R. 558). *V.* RECOVERED OR PRESERVED.

INSUFFICIENT.—"Insufficient" Sureties for Costs, s. 8, Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, does not mean general incapacity of entering into a suretyship, but insufficiency for the purpose of the Act; therefore, a Recognizance for Costs signed by an election petitioner is "insufficient" and may be amended by a deposit of money under s. 9; and, *semble*, that this would be so if the Recognizance were signed by an infant or married woman (*Pease* v. *Norwood*, L. R. 4 C. P. 235; 38 L. J. C. P. 161). *Vthc*, and espy jdgmt of Bovill, C. J., for discussion of contrast as to when such a Recognizance is "insufficient" and amendable, and when "*invalid*" and altogether void. *V.* ON BEHALF.

Insufficient Accommodation Works; *V.* ACCOMMODATION.

"Insufficient or Unreasonable," Proposed Works, s. 7 (*d*), Private Street Works Act, 1892, 55 & 56 V. c. 57, means, insufficiency of the Work to carry out its object, and not that the Work ought to include something else; or (using a wider word) that it is "unreasonable" as a scheme of work with reference to the street itself, and not because it does not go further (*Mansfield* v. *Butterworth*, 1898, 2 Q. B. 274; 67 L. J. Q. B. 709; 78 L. T. 527; 46 W. R. 650; 62 J. P. 500: *Vf*, *Sheffield* v. *Anderson*, cited UNREASONABLE).

Cp, SUFFICIENT, and succeeding defs.

INSULT.—*V.* WILFUL INSULT.

INSURABLE INTEREST.—*V.* INTEREST.

INSURANCE.—A contract of "Insurance" is one *uberrimæ fidei*, and demands a full disclosure of all facts and circumstances affecting the risk and is vitiated by their non-disclosure, whether innocent or fraudulent; *secus*, of a Contract of GUARANTEE (*Davies* v. *London & Prov. Mar Insrce*, 47 L. J. Ch. 511; 8 Ch. D. 469; 26 W. R. 794: *North British Insrce* v. *Lloyd*, 24 L. J. Ex. 14; 10 Ex. 523: *Seaton* v. *Heath*, 1899, 1 Q. B. 782; 68 L. J. Q. B. 631; 80 L. T. 579; 47 W. R. 487. *V.* CONCEAL). There is no magic in the words "Insurance" or "Guarantee"; whether the transaction is the one or the other depends on the character of the Contract itself (per Romer, L. J., *Seaton* v. *Heath*, sup: *Vf*, *Dane* v. *Mortgage Insrce*, 1894, 1 Q. B. 54; 63 L. J. Q. B. 144: *Finlay* v. *Mexican Investment Corp*, 1897, 1 Q. B. 517; 66 L. J. Q. B. 151; 76

Digitized by Google

L. T. 257: *Parr's Bank* v. *Albert Mines Syndicate*, 5 Com. Ca. 116). *Vf*, 8 Encyc. 150.

"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 & G. W. Steam Co*, L. R. 9 Q. B. 546; 43 L. J. Q. B. 205; 22 W. R. 752; 30 L. T. 714). But, observe, the reason given by Lush, J. (p. 550, L. R.), "I think that it must be confined to cases where the goods receive damage from some Peril *which may be insured against*," words which are thus reported in the Law Journal (p. 207), "I think it is confined to cases where the goods receive damage by one of the Perils *insured against*." It is submitted that the words in the L. R. correctly report the learned judge; if so, it may be doubted whether, on this point, *Taylor's Case* is now a binding authority seeing that since its date Insurance against Larceny has become well known. *Vh*, *Moore* v. *Harris*, 45 L. J. P. C. 55; 1 App. Ca. 318.

V. on *Marine* Insrce, Park: Arn.: Phillips: Marshall: Jacob, *Insurance*: 8 Encyc. 132–210: On *Fire* Insrce, Park, ch. 24: Bunyon: 5 Encyc. 348–353: On *Life* Insrce, Park, ch. 23: Bunyon: 7 Encyc. 436–447: On *Fire, Life, Accident, and Guarantee* Insrce, Porter. Policy.

V. Sea Insurance.

INSURANCE CLERK.—*V.* *Grant* v. *Shaw*, cited Government Clerk.

INSURANCE COMPANY.—"Insurance Company" whose premiums may be deducted from Income Tax (s. 54, 16 & 17 V. c. 34; 16 & 17 V. c. 91), must be a Co in the United Kingdom, which also is a Co subject to English law (*Colquhoun* v. *Heddon*, 59 L. J. Q. B. 465; 25 Q. B. D. 129; 38 W. R. 545; 62 L. T. 853; 6 Times Rep. 153).

Quà Comp Act, 1862, "a Co that carries on the business of Insurance in common with any other business or businesses shall be deemed to be an Insurance Company" (s. 3). Prior to, and independently of that provision, the reverse was held (*London Monetary Co* v. *Smith*, 3 H. & N. 543: *London Provident Socy* v. *Ashton*, 12 C. B. N. S. 709, 723; 11 W. R. 152; 7 L. T. 530).

Other Stat. Def.—Metropolitan Fire Brigade Act, 1865, 28 & 29 V. c. 90, s. 2.

V. Assurance Company.

INSURED.—*V.* Not Insured: Uninsured.

INSURED ELSEWHERE.—As a Condition in a Fire Policy: *V.* *Australian Agricultural Co.* v. *Saunders*, 44 L. J. C. P. 391; L. R. 10 C. P. 668.

INSURRECTION.—*V.* Civil Commotion: Levy War.

Digitized by Google

INTAKE MEASURE OF QUANTITY DELIVERED.—*V.* *Spaight* v. *Farnworth*, 5 Q. B. D. 115; 49 L. J. Q. B. 346; 42 L. T. 297; 28 W. R. 508; cited and stated 1 Maude & P. 380, 381, and Carver, 657, 658.

INTENDED.—A part of a Building Estate was sold to A. under restrictive covenants as to user and occupation, and in the Conditions of Sale and also in the recitals to the conveyance to A. it was stated that "it is intended" that the other parts of the Estate should, in the hands of the respective purchasers thereof, be subject to similar covenants, but the vendor entered into no covenant in that behalf with A.; held, that "intended" amounted, if not to a covenant, yet to an implied agreement by the vendor, and that he could be restrained by A. from selling the remaining parts of the Estate free from the restrictive covenants, so as to contravene the building scheme thereby contemplated (*Mackenzie* v. *Childers*, 43 Ch. D. 265; 59 L. J. Ch. 188: *Vf*, *Collins* v. *Castle*, 57 L. J. Ch. 76; 36 Ch. D. 243: *Sheppard* v. *Gilmore*, 57 L. J. Ch. 6: *Spicer* v. *Martin*, 58 L. J. Ch. 309; 14 App. Ca. 12).

V. INTENT.

INTENDED HUSBAND.—A clause restraining alienation of a married woman's separate estate being applicable to all her covertures, unless expressly limited (*Re Gaffee*, 19 L. J. Ch. 179; 1 Mac. & G. 541), the phrase, in a Marriage Settlement, that separate estate is to be enjoyed by the lady "independently of her said intended husband" is not enough to confine the restraint clause to that particular coverture (*Hawkes* v. *Hubback*, 40 L. J. Ch. 49; L. R. 11 Eq. 5: *Shafto* v. *Butler*, 40 L. J. Ch. 308; 19 W. R. 595). *Vh*, Elph. 299, 300.

INTENDED TO BE DONE.—*V.* DONE.

INTENDMENT.—"'Intendment of the Law.' *Intendment*, *i.e.* *intellectus*, the understanding or intelligence of the law. Regularly, judges ought to adjudge according to the common intendment of law" (Co. Litt. 78 b). *V.* Jacob: NECESSARY: INTENTION.

INTENT.—*V.* VIEW: IN ORDER: MENS REA: KNOWINGLY.

The distinction between an "Intent" and an "ATTEMPT" to do a thing is, that the former implies the purpose only, while the latter implies that and also something done towards its accomplishment (*Prince* v. *State*, 35 Ala. 369: *State* v. *Marshall*, 14 Ib. 414).

"With intent *to Defeat or Delay*" Creditors, 13 Eliz. c. 5; s. 4 (1 *d*), Bankry Act, 1883; s. 4, New S. Wales Bankry Act, 1887, 51 V. No. 19:—*V. Morris* v. *Morris*, 1895, A. C. 625; 64 L. J. P. C. 136; 72 L. T. 879; 44 W. R. 65; distinguishing *Re Ash*, 7 Ch. 636. *Vf*, BONÂ FIDE: GOOD: May on Fraudulent Dispositions: Baldwin, 83: Wms. Bank. 19.

To use a FALSE TRADE DESCRIPTION with "Intent *to Defraud*,"

Digitized by Google

s. 2 (1), Merchandize Marks Act, 1887, does not mean "with intent to cheat," for as good Goods may be supplied under a false, as under a true, Description; an intention to represent the Goods as being manufactured by some one other than the real manufacturer brings a case within the section (*Starey* v. *Chilworth Gunpowder Co*, 59 L. J. M. C. 13; 24 Q. B. D. 90; 62 L. T. 73; 38 W. R. 204; 54 J. P. 436: *Wood* v. *Burgess*, 59 L. J. M. C. 11; 24 Q. B. D. 162); so, of a representation that the Goods are of FOREIGN manufacture when they have been made or finished in England (*Bischop* v. *Toler*, 73 L. T. 402; 65 L. J. M. C. 1; 44 W. R. 189; 59 J. P. 807). *V.* INNOCENTLY ACTED.

"Intent to do Grievous Bodily Harm"; *V.* GRIEVOUS BODILY HARM: INFLICT.

INTENTION.—"'Intention of the Legislature,' is a common but very slippery phrase; which, popularly understood, may signify anything from Intention embodied in positive enactment to Speculative Opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by REASONABLE and NECESSARY Implication" (per Ld Watson, *Re Salomon*, 1897, A. C. 38; 66 L. J. Ch. 44). *Cp*, PUBLIC POLICY.

A like rule obtains as regards the Intention of a Testator, which has to be gathered from the Will itself, except in so far as Extrinsic Evidence may be given of the circumstances in which it is made so that the intention may be elucidated thereby; the Golden Rule enunciated in *Grey* v. *Pearson* (*V.* Introductory Chapter of this book) being the guide for ascertaining a testator's intention: *Vf*, *Hill* v. *Crook*, *Re Lowe*, and *Re Walker*, cited CHILD.

The Intention is presumed to cause that which is the natural consequence of something consciously done or omitted. "I take the rule of law to be as stated by Ellenborough, C. J., in *R.* v. *Dixon* (3 M. & S. 15). He says, 'It is a universal principle that when a man is charged with doing an act,'—*i.e.* a wrongful act without legal justification,—'of which the probable consequence may be highly injurious, the Intention is an inference of law resulting from the doing the act'" (per Blackburn, J., *R.* v. *Hicklin*, cited OBSCENE).

INTENTS.—"Void to all intents and purposes"; *V.* VOID: ALL INTENTS AND PURPOSES.

INTER-COMMONING.—"Is where the Commons of two Manors lie together and the inhabitants of both have, time out of mind, depastured their Cattel promiscuously in each" (Cowel).

INTERDICT.—*V.* INJUNCTION.

Digitized by Google

INTEREST.—"*Interesse* is vulgarly taken for a terme or chattle reall, and more particularly for a future tearme; in which case it is said in pleading that he is possessed *de interesse termini.* But *ex vi termini,* in legall understanding, it extendeth to estates, rights, and titles, that a man hath of, in, to, or out of, lands; for he is truly said to have an interest in them: and by the grant of *totum interesse suum* in such lands, as well reversions as possessions in fee simple shall passe" (Co. Litt. 345 b; *Vh,* Elph. 205).

Thus, a mere Possibility or Expectancy of an interest is not an "Interest" or even a "FUTURE Interest," within s. 1, Malins' Act, 20 & 21 V. c. 57 (*Allcard* v. *Walker*, 1896, 2 Ch. 369; 65 L. J. Ch. 660; 74 L. T. 487: 44 W. R. 661: *Cp, Re Parsons,* cited CONTINGENT).

"Interest in Expectancy"; *V.* EXPECTANCY. *Cp,* VESTED.

A Lessee for Years before entry is said to have an interest, *Interesse termini* (Co. Litt. 46 b); but the phrase is never used with regard to a Freehold Lease (*Ecclesiastical Commrs* v. *Treemer,* cited ESTATE AND INTEREST). *Vh,* 6 Encyc. 519.

The Lessor has "an Interest" in Disclaimed Leaseholds, within s. 55 (6) Bankry Act, 1883 (*Re Cock, Ex p. Shilson,* cited ONEROUS: *Re Finley,* 57 L. J. Q. B. 628; 21 Q. B. D. 475; 37 W. R. 6).

"Provided the Interest of the Lessor shall so long continue"; *V.* CONTINUE.

"'ANY Interest,' must Include an Equitable Interest" (per Fry, L. J., *Re Casey,* cited EQUITABLE).

"Interest," s. 2 (1 *b*), Finance Act, 1894, is *not* to be cut down to "Interest in POSSESSION" (per Williams, J., *A-G.* v. *Wood,* cited SUBSIST).

"Interest," s. 38 (2 *c*), Customs & Inl. Rev. Act, 1881, 44 & 45 V. c. 12; *V. A-G.* v. *Heywood,* 56 L. J. Q. B. 572; 19 Q. B. D. 326; 57 L. T. 271; 35 W. R. 772.

The "Interests *of all parties* entitled under the Settlement" to which a TENANT FOR LIFE is to have regard, s. 53, S. L. Act, 1882, do not merely connote pecuniary interests, but include, *e.g.* wishes and sentimental feelings (*Bruce* v. *Ailesbury,* 1892, A. C. 356; 62 L. J. Ch. 95; 67 L. T. 490: *Sutherland* v. *Sutherland,* 62 L. J. Ch. 951; 1893, 3 Ch. 169; 69 L. T. 186; 42 W. R. 13). *Vf, Hampden* v. *Buckinghamshire,* 1893, 2 Ch. 531; 62 L. J. Ch. 643; 68 L. T. 695; 41 W. R. 516.

"Interest of the Beneficiary in the Trust Estate," s. 6 (1), Trustee Act, 1888, repld s. 45 (1), Trustee Act, 1893, probably, includes that kind of dominion which is given to a donee of a general Power of Appointment (*Fleming* v. *Buchanan,* 22 L. J. Ch. 886; 3 D. G. M. & G. 976).

An *Insurable* "Interest" in *Goods,* "does not, necessarily, imply a right to the whole, or a part, of a thing, nor, necessarily and exclusively, that which may be the subject of privation; but the having some relation

Digitized by Google

to, or concern in, the subject of the insurance, which relation or concern, by the happening of perils insured against, may be so affected as to produce a damage, detriment, or prejudice, to the person insuring: and where a man is so circumstanced with respect to matters exposed to certain risks or dangers as to have a moral certainty of advantage or benefit but for those risks or dangers, he may be said to be INTERESTED IN the safety of the thing. To be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, — prejudice from its destruction" (per Lawrence, J., *Lucena* v. *Craufurd*, 2 B. & P. N. S. 302). *Vf*, Park, ch. 14: *Stainbank* v. *Fenning*, 11 C. B. 72; 20 L. J. C. P. 226: *Lond & N. W. Ry* v. *Glyn*, 28 L. J. Q. B. 193; 1 E. & E. 652; 7 W. R. 238: *Waters* v. *Monarch Insrce*, 25 L. J. Q. B. 102; 5 E. & B. 870: *Hill* v. *Scott*, 1895, 2 Q. B. 713; 65 L. J. Q. B. 87: Add. C. 1022: Carver, 131: Scrutton, 165. *V.* FULL INTEREST ADMITTED.

The "Interest," s. 1, 14 G. 3, c. 48, required in an Insurer on another *Life* than his own, must be a *pecuniary* interest (*Halford* v. *Kymer*, 10 B. & C. 724). *Cp*, INTERESTED IN.

By Art. 2590, Civil Code of Lower Canada, an "Insurable Interest" of the Insured in a Life, means, that the Life insured must be "(1), Of Himself; (2) Of any person upon whom he depends, wholly or in part, for Support or Education; (3) Of any person under Legal Obligation to him for the payment of Money, or respecting the Property or Services which Death or Illness might defeat, or prevent, the performance of; (4) Of any person upon whose life any Estate or Interest in the insured depends": *Vth*, *Anctil* v. *Manufacturers' Life Insrce*, cited INCONTESTABLE.

"Declare his Interest"; *V.* DECLARE.

Compensation for injury "in respect of any Interest for GOODWILL"; *V. Ex p. Farlow*, 2 B. & Ad. 341; 9 L. J. O. S. K. B. 255.

"Rights or Interests" in Literary or Artistic Work; *V.* RIGHTS.

"All MY Interest"; *V. Manton* v. *Tabois*, 30 Ch. D. 92; 54 L. J. Ch. 1008; 53 L. T. 289; 33 W. R. 832: *Scott* v. *Best*, 6 L. R. Ir. 7.

"Part, Share, and Interest"; *V.* PART.

"Interest," of Judgment Debtor, in Stock or Shares which under s. 1, Jdgmts Act, 1840, 3 & 4 V. c. 82, is chargeable under s. 14, Jdgmts Act, 1838; *V. Cragg* v. *Taylor*, L. R. 2 Ex. 131; 36 L. J. Ex. 63: *Dixon* v. *Wrench*, L. R. 4 Ex. 154; 38 L. J. Ex. 113: *Re Ashton*, 44 S. J. 429.

V. ABANDONMENT: BENEFICIAL: CONTINUING INTEREST: EQUITABLE: ESTATE: ESTATE AND INTEREST: FULL INTEREST ADMITTED: GENERAL INTEREST: PECUNIARY INTEREST: PUBLIC: PUBLIC INTEREST: RIGHT AND TITLE: SHARE: TRANSMISSIBLE: UNCERTAIN.

"Where the 'Interest' or 'Produce' of a *Fund* is bequeathed to a legatee, or in trust for him, *without any limitation as to continuance*, the principal will be regarded as bequeathed also" (Wms. Exs. 1058,

Digitized by Google

and cases there cited); but this "is not a very strong rule," and "it is always a question of construction whether the testator did or not intend to give more than a life interest" (per Parker, V. C., *Blann* v. *Bell*, 21 L. J. Ch. 813; 5 D. G. & S. 663: *Va*, *Wetherell* v. *Wetherell*, 32 L. J. Ch. 476; 1 D. G. J. & S. 134; 4 Giff. 51). *V.* PRODUCE.

"Interest and Profits," "Interest Dividends and Profits," "Residue of Interest and Rents"; *V.* RENTS AND PROFITS.

"Bearing Interest"; *V.* BEARING. Interest on Money is, generally, Damages; but when payable by express stipulation or provision it is recoverable as a Debt (*Watkins* v. *Morgan*, 6 C. & P. 661: *Hudson* v. *Fossett*, 13 L. J. C. P. 141; 7 M. & G. 348: *Florence* v. *Jenings*, 26 L. J. C. P. 274; 1 C. B. N. S. 584: *Hamilton* v. *Brogden*, 60 L. J. Ch. 88: *Vh*, LIQUIDATED DEMAND).

Interest until COMPLETION, in a V. & P. contract, if from "any Cause" the completion be delayed; *V.* "Any Cause," sub ANY: WILFUL DEFAULT.

Interest when and what payable on Sum Certain, &c; *V.* CERTAIN TIME: DEMAND: what by Trustees; *V.* CURRENT.

"Rate of Interest varying with Profits"; *V.* RATE.

V. YEARLY INTEREST.

INTEREST IN LAND.—By the construction put upon the *Mortmain Act* (9 G. 2, c. 36; repealed, but its provisions re-enacted by the Mortmain and Charitable Uses Act, 1888), no Interest in Land could be given by Will to Charitable Uses, but this is modified as regards Wills of persons dying after 5th Aug 1891 (54 & 55 V. c. 73). For the very numerous and frequently conflicting cases defining what is such an Interest in Land, *V.* Tudor Char. Trusts, 398–409: Wms. Exs. 914–927: 1 Chit. Stat., 3 ed., 486: Seton, 1337, 1345, 1346. In *Jervis* v. *Lawrence* (52 L. J. Ch. 244; 22 Ch. D. 202), Bacon, V. C., said, "I believe there is a fault that has been committed in a great many of these cases."

Many of the cases came under review in *Attree* v. *Hawe* (47 L. J. Ch. 863; 9 Ch. D. 337), which decided that a Railway Debenture is not an Interest in Land. The principle of that case as stated by Jessel, M. R., *Re Harris* (49 L. J. Ch. 687; 15 Ch. D. 561), is that in order to create an Interest in Land, within the Mortmain Acts, the land must be affected directly. *In re Harris* decided that Bonds charged on Police Rates under 3 & 4 V. c. 88, and payable by justice's precept under 7 & 8 V. c. 33, are pure personalty. *Va*, the effect of *Attree* v. *Hawe*, and *Re Harris* (sup), on the cases prior thereto, discussed and applied by Bacon, V. C., in *Jervis* v. *Lawrence* (sup). In *thlc* the learned judge illustrated his position by the following reasoning, "A man who has a power of distress has no interest in the land. *A landlord or lessor, while the lease subsists, has no interest in the land*"! but only his right of distress. It was in that case held that Bonds created under the Act for the improvement of the Norland Estate, in St. Mary Abbot's,

Digitized by Google

Kensington (6 V. c. xxxiii.), which were secured by a rate levied upon owners or occupiers on the estate and enforceable against them by action or distress, did not create an Interest in Land, but were pure personalty (*Sv*, *Toppin* v. *Lomas*, 24 L. J. C. P. 144; 16 C. B. 159; 3 W. R. 446). So, of a Charge on a Borough Fund derived partly from realty, for such a charge is only on the surplus of the Fund after the statutory payments thereout have been satisfied (*Re Thompson*, 59 L. J. Ch. 689; 45 Ch. D. 161). So, Railway Stock the interest on which has to be kept down by the income from SUPERFLUOUS LAND, is not an "Interest in Land" (*Re Hollon*, 68 L. T. 160; 69 Ib. 425). So, a Charge binding assets of a Building Society is not an Interest in Land within the Mortmain Acts; but a charge on Municipal Rates, *e.g.* Metropolitan Consolidated Stock (*Cluff* v. *Cluff*, 2 Ch. D. 222: *Re Crossley*, 1897, 1 Ch. 934; 66 L. J. Ch. 558) is such an Interest, and so of a legacy payable out of realty and personalty (*Walmsley* v. *Rice*, 29 S. J. 256). An Equitable Interest in money secured by mortgage of real estate is such an Interest (*Re Watts*, 55 L. J. Ch. 332; 29 Ch. D. 947, discussing *Re Harris*, sup: *Va*, *Miller* v. *Collins*, inf), and so is a share of proceeds of realty the time for selling which has not arrived (*Brook* v. *Badley*, 36 L. J. Ch. 741; 3 Ch. 672). Whether Statutory Duties, Tolls, or Dues, are an interest in land within the Statute of Mortmain depends on the particular provisions of the Act by which they are authorized (*Re Christmas*, 55 L. J. Ch. 878; 33 Ch. D. 332; 55 L. T. 197; 34 W. R. 779; 50 J. P. 759, in *whc Knapp* v. *Williams*, 4 Ves. 430, *n*, was commented on and explained. *Vf*, *Re David*, *Buckley* v. *Lifeboat Inst.*, 43 Ch. D. 27; 59 L. J. Ch. 87; 38 W. R. 162; 60 L. T. 786). In *Re Parker*, *Wignall* v. *Park* (1891, 1 Ch. 682; 60 L. J. Ch. 195), a mtge of its Waterworks by a Municipal Corporation was held *not* such an Interest. So other Municipal Corporation Bonds have been sometimes held to be pure personalty (*Bedford* v. *Teal*, 59 L. J. Ch. 689; 45 Ch. D. 161: *Re Pickard*, 1894, 3 Ch. 704; 64 L. J. Ch. 92), and sometimes an Interest in Land (*Re Holmes*, 60 L. J. Ch. 267: *vthc*, *Re Crossley*, sup).

Note. "Interest in" Land, quà the Mortmain Acts, 1888 and 1891, is now no part of the def of "Land," which now includes "tenements and heredits, corporeal or incorporeal, of any tenure; but not money secured on land, or other personal estate arising from or connected with land" (s. 3, Act 1891), the effect of which is merely to exclude Impure Personalty from the operation of the Mortmain Acts, but not otherwise to restrict therein the meaning of "land" (*Re Hume*, 1895, 1 Ch. 422; 64 L. J. Ch. 267; 72 L. T. 68; 43 W. R. 291).

By s. 4, *Statute of Frauds*, 29 Car. 2, c. 3, no CONTRACT for the Sale of lands tenements or hereditaments, or "any Interest in or concerning them," is valid, unless evidenced by a signed writing. For the cases on that provision, *V.* Add. C. 22, 29: Woodf. 135: Rosc. N. P. 312. These decisions have gone to the length of establishing that a right to shoot

Digitized by Google

game and take it away for one's own benefit is an "Interest in Land" within that Act (*Webber* v. *Lee*, 51 L. J. Q. B. 486; 9 Q. B. D. 315, *vhv*, for cases establishing the contrary as regards contracts for Board and Lodging, use of a Graving-Dock, Shares in a Cost-book Mine, and an Opera Box). So, the sale of standing Buildings to be taken down and cleared away in 2 months, is of an "Interest in Land" (*Lavery* v. *Purssell*, 57 L. J. Ch. 570; 39 Ch. D. 508; 58 L. T. 846; 37 W. R. 163). So, of the sale of a Debenture of a Co creating a FLOATING SECURITY on its land (*Driver* v. *Broad*, 1893, 1 Q. B. 744; 63 L. J. Q. B. 12; 69 L. T. 169; 41 W. R. 483), or of the Assignment of a debt charged on land (*Jarvis* v. *Jarvis*, 63 L. J. Ch. 10; 69 L. T. 412). But *semble*, an agreement allowing a Tenant to remove FIXTURES after the expiration of his term, is *not* such an Interest (per Hawkins, J., *Thomas* v. *Jennings*, 66 L. J. Q. B. 8); so, a tenant's severable Fixtures are not such an Interest (*Hallen* v. *Runder*, and *Lee* v. *Gaskell*, cited GOODS, WARES, AND MERCHANDISE), nor are Growing Crops or standing Timber which are sold to be taken away (*Evans* v. *Roberts*, and *Marshall* v. *Green*, cited Ib.). *Vf*, *McManus* v. *Cooke*, 56 L. J. Ch. 662; 35 Ch. D. 681; 56 L. T. 900; 35 W. R. 754; 51 J. P. 708: *Gray* v. *Smith*, 43 Ch. D. 208; 58 L. J. Ch. 803; 59 Ib. 145; 38 W. R. 310. *Cp*, UNCERTAIN.

"Lands" or an Interest in Land within s. 3, *Lands C. C. Act*, 1845, includes an equitable interest (*Martin* v. *L. C. & D. Ry*, 35 L. J. Ch. 795; 1 Ch. 501; 14 W. R. 880; 14 L. T. 814); but not a contract for purchase (*Tasker* v. *Small*, 7 L. J. Ch. 19; 3 M. & Cr. 63; *vthc* cited in jdgmt of Erle, C. J., *Bird* v. *G. E. Ry*, 34 L. J. C. P. 371; 13 W. R. 991; 19 C. B. N. S. 267). A right of shooting, by an agreement not under seal, is not an interest in land within the Lands C. C. Act, nor (probably) would it be so if granted by deed (*Bird* v. *G. E. Ry*, sup: *Sv*, *Webber* v. *Lee*, sup). *V.* HEREDITAMENT. A quarterly tenant, after notice to quit duly given, has no "interest in land" entitling him to notice under s. 18, Lands C. C. Act, 1845 (*Syers* v. *Metrop Bd of Works*, 36 L. T. 277).

A right of support, or of light, is not an "Interest in Land" within s. 19, *Artisans and Labourers Dwellings Improvement Act*, 1875, 38 & 39 V. c. 36; but is an "EASEMENT" upon the servient tenement within s. 20 (*Barham* v. *Marris*, 45 L. T. 579; 52 L. J. Ch. 237: *Swainston* v. *Finn*, 52 L. J. Ch. 235).

A life interest in part of the proceeds of the sale of land is an "Interest" in land within s. 9, *Dower Act*, 1833, 3 & 4 W. 4, c. 105 (*Re Thomas*, 56 L. J. Ch. 9; 34 Ch. D. 166; 55 L. T. 629; following dictum of Jessel, M. R., *Lacey* v. *Hill*, 44 L. J. Ch. 215; L. R. 19 Eq. 346).

An Equitable interest in money secured by Mortgage of Realty, is an "Interest" in Land," within s. 1, *Fines and Recoveries Act*, 1833, 3 & 4 W. 4, c. 74, which by its s. 77 defines "ESTATE" (per Lindley and

Digitized by Google

Smith, L. JJ, diss. Kay, L. J., *Miller* v. *Collins*, 1896, 1 Ch. 573; 65 L. J. Ch. 353; 74 L. T. 122; 44 W. R. 466; citing *Re Watts*, sup, and over-ruling *Re Newton*, 23 Ch. D. 181).

A general Power of Appointment is an "Interest" in Land, within 3 & 4 W. 4, c. 104 (per Turner, L. J., *Fleming* v. *Buchanan*, 22 L. J. Ch. 886; 3 D. G. M. & G. 976).

"Interest in Land," s. 13, *Judgments Act*, 1838, 1 & 2 V. c. 110; *V. Thomas* v. *Cross*, 34 L. J. Ch. 580; 2 Dr. & Sm. 423.

In New South Wales Real Property Act, 1862, "Interest in Land" includes Equitable, as well as Legal, Interests (*Williams* v. *Papworth*, 1900, A. C. 563; 69 L. J. P. C. 129; 83 L. T. 184).

An Interest in Land is not to be confounded with a mere Charge on land (per Page Wood, L. J., *Franks* v. *Bollans*, 3 Ch. 718).

V. Estate and Interest: Real Estate.

INTEREST IN LEASE.—Sale of; *V.* Lease.

INTEREST IN POSSESSION.—*V.* Possession.

INTEREST IN THE NATURE OF REAL ESTATE.—*V.* Real Estate.

INTEREST OF MONEY.—Sch D, Income Tax Act, 1853, 16 & 17 V. c. 34; *V.* Yearly Interest.

INTEREST OR CHARGE.—"Interests and Charges having priority to the settlement," s. 20 (2), Settled Land Act, 1882; *V. Grainge* v. *Wilberforce*, 5 Times Rep. 436.

INTERESTED.—*V.* Person interested: Party interested.

INTERESTED IN.—"Interested in" an Award; *V. Carr* v. *Metrop Bd of Works*, 49 L. J. Ch. 272; 14 Ch. D. 807.

"Interested in" a Business or Bargain seems a little wider expression than "Concerned in." But still it does not mean that which is "interesting to" the person from affection, curiosity, novelty, or the like; it means, having a direct pecuniary interest in the business or bargain, or, at least, some interest therein whereby the person's legal rights or liabilities are affected (*R.* v. *Bedfordshire*, 4 E. & B. 541, 542: *Smith* v. *Hancock*, inf: *Halford* v. *Kymer*, cited Interest).

A person is "interested in" a Contract if he have a mortgage thereon (*Hunnings* v. *Williamson*, 52 L. J. Q. B. 416; 11 Q. B. D. 533; 49 L. T. 361; 32 W. R. 267; 48 J. P. 132). So, of a shareholder in a Company who has a contract (*Dimes* v. *Grand Junc. Canal Co*, 3 H. L. Ca. 759). The principle of those cases applies as regards officers and servants of Local Authorities in respect of s. 193, P. H. Act, 1875 (*Todd* v. *Robinson*, 54 L. J. Q. B. 47; 14 Q. B. D. 739; 52 L. T. 120; 49 J. P. 278). An Officer of a Local Authority who lets rooms to the Board is

Digitized by Google

"concerned or interested in a Bargain or Contract" within that section (*Burgess* v. *Clark*, 14 Q. B. D. 735); and a Town Surveyor who takes out the quantities for a contract for which he is paid by the contractor, is "interested in" the contract (*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: *R.* v. *Whiteley*, 58 L. J. M. C. 164); *secus*, of the mere act of supplying materials to a Board Contractor (*Le Feuvre* v. *Lankester*, 23 L. J. Q. B. 254; 3 E. & B. 530: *Cp*, *Tomkins* v. *Jolliffe*, 51 J. P. 247), or selling a single small article, or completing a previous contract for the sale of land to a Board (*Woolley* v. *Kay*, 1 H. & N. 307; 25 L. J. Ex. 351: *Sv*, *Re Louth*, cited OFFICE).

Semble, that a person may be "interested in" a contract made by him with a Municipal Corporation though he be unable to enforce it for want of the Corporation Seal (*R.* v. *Francis*, 18 Q. B. 526; 21 L. J. Q. B. 304; 16 J. P. 664).

Disqualification for being elected a Municipal Councillor if the candidate have "any Share or Interest in any Contract or Employment" with the Council, s. 12 (1 *c*), 45 & 46 V. c. 50; *V. Cox* v. *Ambrose*, cited CONCERNED IN.

"Interested in the Sale or Lease of any lands," clause 64, Sch 2, P. H. Act, 1875; *V. R.* v. *Gaskarth*, 49 L. J. Q. B. 509; 5 Q. B. D. 321.

Having sold his Business, A. agreed not to be "interested in" a like business within a specified time and area; within that time and area A.'s wife (with her separate estate) carried on a like business (A. and his wife living together on the premises), and A. assisted his wife in negotiating the lease of the premises and also wrote a trade circular for her which he distributed and he introduced her manager to some of the wholesale merchants; held, that A. was not "interested in" that business and had not committed a breach of his agreement (*Smith* v. *Hancock*, 1894, 2 Ch. 377; 63 L. J. Ch. 477; 70 L. T. 578; 42 W. R. 465). So, a salaried servant is not "interested in" a business (*Gophir Diamond Co.* v. *Wood*, 71 L. J. Ch. 550).

Cp, CONCERNED IN: ENGAGE IN: PECUNIARY INTEREST. *V.* BARGAIN OR CONTRACT.

As regards Municipal Corporations, *V.* proviso to s. 28, 5 & 6 W. 4, c. 76, and s. 5, 32 & 33 V. c. 55.

"Interested in" Goods quà an Insurable Interest; *V.* INTEREST.

"OWNER and every other person interested in the Minerals," s. 13, Metalliferous Mines Regn Act, 1872; *V. Devonshire* v. *Stokes*, 76 L. T. 424; 61 J. P. 406.

V. CARRY ON: PARTY INTERESTED: PERSON INTERESTED: ERECT.

INTERFERE. — "Every man's business is liable to be 'interfered with' by the action of another and yet no action lies for such interference. Competition represents 'interference,' and yet it is in the interest

Digitized by Google

of the community that it should exist. A new invention utterly ousting an old trade would certainly 'interfere with' it. . . . Every organizer of a strike in order to obtain higher wages, 'interferes with' the employer carrying on his business; also every member of an employers' federation who persuades his co-employer to Lock-out his workmen must 'interfere with' those workmen. Yet I do not think it will be argued that an action can be maintained in either case on account of such interference" (per Ld James, *Allen* v. *Flood*, 1898, A. C. 179, 180; 67 L. J. Q. B. 212; 77 L. T. 717; 46 W. R. 258; 62 J. P. 595). *Cp*, MALICE.

"Interfere, or attempt to interfere, with" the management of a testator's estate, within a clause of Forfeiture; *V.* ATTEMPT: INTERMEDDLE.

"The words 'interfere with or affect any SETTLEMENT,' s. 19, M. W. P. Act, 1882, mean, invalidate or render inoperative any Settlement" (per Lindley, L. J., *Re Armstrong*, 57 L. J. Q. B. 557; 21 Q. B. D. 264; 36 W. R. 772: *Re Onslow*, 57 L. J. Ch. 941; 39 Ch. D. 622; 59 L. T. 308; 36 W. R. 883). *Cp*, CONFLICT.

"Interfere with, or prejudicially affect any Ancient Mill," s. 50, 11 & 12 V. c. 112; *V. R.* v. *Metrop Bd of Works*, cited PREJUDICIALLY.

V. AFFECT: UNNECESSARY INTERFERENCE: MOLEST: INTERMEDDLE: ATTEMPT.

INTERIM.—Does an Interim Curator Bonis (in Scotland) mean a Curator appointed until the Patient recovers his faculties, or until some more regular proceeding is instituted? *V. Dickson* v. *Graham*, 4 Bligh, N. S. 492.

V. INJUNCTION.

INTERIOR.—*V.* INTERNAL.

Interior Repairs; *V.* REPAIR: TENANTABLE REPAIR.

Insrce of Cotton "at and from Savannah to Barcelona, while there, and thence by any conveyances to the mills in the Interior, including Press Risk at port of shipment"; re-insrce "at and from Savannah to Barcelona, or as per original Policy, including the Risk of Craft to and from the vessel, but no *Interior Risk*"; the cotton, when awaiting shipment at Savannah, was destroyed by fire; held, that "Interior Risk" did not include "Shore Risk," and that the re-insurer was liable (per Day, J., *Hewitt* v. *United Mar Insrce*, Times, 2nd March 1892). *V.* RISK.

INTERLINEATION.—"Interlineation," s. 21, Wills Act, 1837, is not confined to something written between lines; it includes something put into one of the lines, but written *on* the line (per Hannen, P., *Bagshawe* v. *Canning*, 52 J. P. 583). *V.* APPARENT. *Cp*, OBLITERATE.

INTERLOCUTORY.—Interlocutory *Costs*; *V. Thompson* v. *Parish*, 5 C. B. N. S. 685; 28 L. J. C. P. 153; 7 W. R. 210.

Interlocutory *Injunction*; *V.* INJUNCTION.

Digitized by Google

An Interlocutory *Judgment* determines the right to recover, but not the amount. *Vh*, R. 5, Ord. 13, R. S. C.

The following are Interlocutory *Orders* within R. 15, Ord. 58, R. S. C.: — Leave to sign immediate judgment under Ord. 14 (*Standard Discount Co* v. *La Grange*, 47 L. J. C. P. 3; 3 C. P. D. 67); Order on Summons by Creditors and Claimants in an Administration or Winding-up (*Lewis* v. *Lewis*, 34 W. R. 40, 420; 54 L. T. 199: *Lewis* v. *Williams*, 31 Ch. D. 623: *Pheysey* v. *Pheysey*, 12 Ch. D. 305); Order to work out rights given by a Final Judgment (*Blakey* v. *Latham*, 43 Ch. D. 23); Order on a Case stated by an Arbitrator for his guidance prior to making Award (*Collins* v. *Paddington*, 49 L. J. Q. B. 264; 5 Q. B. D. 368: *Sv*, *Shubrook* v. *Tufnell*, 9 Q. B. D. 621; 30 W. R. 740: *V.* Final Order); Findings on Interpleader Issues (*McAndrew* v. *Barker*, 47 L. J. Ch. 340; 7 Ch. D. 701: *McNair Co* v. *Audenshaw*, 1891, 2 Q. B. 502: 60 L. J. Q. B. 770; 65 L. T. 292); Findings by a judge of the Ch. D. on distinct issues of fact which at the commencement of the trial have been agreed shall be first tried, *secus* if issues not so settled (*Krehl* v. *Burrell*, 48 L. J. Ch. 252; 11 Ch. D. 146: *Lowe* v. *Lowe*, 48 L. J. Ch. 383; 10 Ch. D. 432); Order discharging rule *nisi* for Prohibition (*R.* v. *Local Board*, 26 S. J. 545); Opinion of Q. B. D. on Case stated from Quarter Sessions (*Peterborough* v. *Wilsthorpe*, 53 L. J. M. C. 33; 12 Q. B. D. 1).

Note. — As to what Interlocutory Orders are not appealable, *V.* s. 1, Jud. Act, 1894. On Appeals, "any doubt which may arise as to what Decrees, Orders, or Judgments, are Final, and what are Interlocutory, shall be determined by the Court of Appeal" (s. 12, Jud. Act, 1875).

"Interlocutory Order," s. 25 (8), Jud. Act, 1873, is not confined to an Order made between writ and final judgment but, means an Order other than final judgment; and, therefore, a Receiver may be appointed under that section after final judgment (*Smith* v. *Cowell*, 6 Q. B. D. 75; 50 L. J. Q. B. 38: *Vth*, *Manchester and Liverpool Bank* v. *Parkinson*, 22 Q. B. D. 175).

Cp, Final Judgment: Final Order.

INTERMARRY. — *V.* Knowingly.

INTERMEDDLE. — A provision that "no Court shall intermeddle" with an inferior Court, does not oust the supervision of the High Court (*R.* v. *Moreley*, 2 Burr. 1041: *Vth*, *Re Heaphy*, 22 L. R. Ir. 513).

As to what is an "Intermeddling" by an Exor with his testator's estate, so as to preclude him from being able to renounce probate; *V.* Wms. Exs. 228. The phrase includes an application for a debt, though unsuccessful (*Re Stevens*, 1897, 1 Ch. 422; 66 L. J. Ch. 155; 76 L. T. 18; 45 W. R. 284).

"Executor de son tort"; *V.* Executor.

Digitized by Google

"Intermeddle, or attempt to intermeddle" with the management of a testator's estate, within a clause of Forfeiture; *V.* ATTEMPT.
Cp, INTERFERE.

INTERMEDIATE. — "Intermediate EDUCATION," quà Welsh Intermediate Education Act, 1889, 52 & 53 V. c. 40, "means, a Course of Education which does not consist chiefly of Elementary Instruction in reading, writing, and arithmetic, but which includes instruction in Latin, Greek, the Welsh and English language and literature, Modern Languages, Mathematics, Natural and Applied Science, or in some of such studies, and generally in the higher branches of knowledge" (s. 17). *Cp*, TECHNICAL.
"Intermediate *Examination*" of an Articled Clerk to a Solr; Stat. Def., 40 & 41 V. c. 25, s. 4; 61 & 62 V. c. 17, s. 4.

INTERMENT. — Re-interment of human remains is not an "Interment" of bodies, within s. 44, 15 & 16 V. c. 85 (*Scadding* v. *St. Pancras*, W. N. (89) 45, 120).
"Set apart for the purposes of Interment"; *V.* SET APART.
V. BURIAL.

INTERNAL. — Construction of a Lessee's Covenant not to make "Internal *Alterations*"; *V.* EXTERNAL ALTERATION.
Cp, INTERIOR.

INTERNATIONAL. — "The International Copyright Acts"; *V.* Sch 2, Short Titles Act, 1896.

INTERPLEADER. — "'Enterpleader,' is when in any cause a matter happeneth which of necessity ought to bee discussed before the principall cause it selfe bee determined" (Termes de la Ley).
Interpleader Issue; *V.* ACTION.
"Proceedings in Interpleader," s. 120, Co. Co. Act, 1888; *V. Lumb* v. *Teal*, 58 L. J. Q. B. 298; 22 Q. B. D. 675.
V. Ord. 57, R. S. C., on *whv* Ann. Pr.: 7 Encyc. 18–30.

INTERRUPTION. — The "Interruption" which (under ss. 3 and 4, 2 & 3 W. 4, c. 71, and, *semble*, in ss. 1 and 2, ib.) defeats a Prescriptive Right (*V.* PRESCRIPTION), is an ADVERSE obstruction by the owner of the servient tenement, not a mere discontinuance of user by the claimant himself (*Carr* v. *Foster*, 3 Q. B. 581; 11 L. J. Q. B. 284; 2 G. & D. 753; 6 Jur. 837: *Cooper* v. *Straker*, 58 L. J. Ch. 26; 40 Ch. D. 21: *Smith* v. *Baxter*, 1900, 2 Ch. 138; 69 L. J. Ch. 437; 82 L. T. 650; 48 W. R. 458: *Hollins* v. *Verney*, 53 L. J. Q. B. 430; 13 Q. B. D. 304: *Vf*, *Bennison* v. *Cartwright*, 33 L. J. Q. B. 137; 5 B. & S. 1: *Arkwright* v. *Gell*, 8 L. J. Ex. 201; 5 M. & W. 203: *Flight* v. *Thomas*, 8 Cl. & F. 231; 10 L. J. Ex. 529: Dart, 432): as to a Fluctuating Interruption, *V. Presland* v. *Bingham*, 41 Ch. D. 268. Taking a money

Digitized by Google

payment for permission to enjoy, is not an "Interruption" of the enjoyment of the easement (*Plasterers Co.* v. *Parish Clerks Co*, 20 L. J. Ex. 362; 6 Ex. 630). *Note*: Under s. 4, no Interruption counts unless there be ACQUIESCENCE for a year; therefore, Actual Enjoyment of Light for 19 years and a fraction gives title if the right is promptly asserted at the expiration of the 20 years (*Flight* v. *Thomas*, sup). But this inchoate right will not be protected by injunction before the lapse of the full 20 years (*Bridewell Hospital* v. *Ward*, 62 L. J. Ch. 270: *Battersea* v. *Commrs of Sewers*, 1895, 2 Ch. 708; 65 L. J. Ch. 81; 73 L. T. 116; 44 W. R. 124). *V.* ACTUALLY ENJOYED.

"The words 'Interruption,' 'DISTURBANCE,' and the like, in the covenant for QUIET ENJOYMENT, mean lawful interruptions and disturbances only" (Elph. 483); but the covenant may be so worded as to extend to tortious acts, *e.g.* if against all "claiming or *pretending to claim*" (*Chaplin* v. *Southgate*, 10 Mod. 384: nom. *Southgate* v. *Chaplin*, 1 Comyn, 230: *V. Hunt* v. *Allen*, Winch, 25). *V.* THROUGH.

INTERVAL.—Where an "Interval" of so many days has to elapse between two events, *e.g.* two meetings, the days are *clear* days, and have to be reckoned exclusive of both the days between which the interval is to elapse (*Re Railway Sleepers Co*, 54 L. J. Ch. 720; 29 Ch. D. 204); but, possibly, if the interval, in a Company's meetings, be less than 14 clear days, the defect does not concern Creditors (*Re Miller's Dale Co*, 31 Ch. D. 211).

V. BETWEEN: CLEAR: NOT LESS: WITHIN.

INTERVENTION.—Plaintiffs (house agents) were instructed by Defendant to offer a house for sale, at a commission of 2½ per cent. on the purchase money if they found a purchaser, but to receive £1. 1*s.* 0*d.* only if sale made "without their Intervention." A., who had observed that the house was for sale, but had not then seen over it, called on Plaintiffs, and obtained a Card to View the house, and also other houses, the terms being written by Plaintiff's clerk on the back of the Card. A. went to the house, but thought the price asked (£2200) too high, and went away. A. had no further communication with Plaintiffs; but he subsequently renewed his negotiation with a friend of Defendant's, and became the purchaser for £1700; held, that there was evidence for a jury that A. had become the purchaser "through the Intervention" of the Plaintiffs, and the jury found that they were entitled to the commission. At the trial, the Judge put the following question to A., "Would you, if you had not gone to the Plaintiffs' office and got the Card, have purchased the house?" and, overruling an objection by Defendant's counsel, received this answer, "I should think not"; *Semble*, that the answer was properly received (*Mansell* v. *Clements*, L. R. 9 C. P. 139).

Cp, INTRODUCE: INTERFERE.

Digitized by Google

Intervention in Divorce proceedings (generally by the King's Proctor) is for, (1) COLLUSION, or (2) Suppression of a MATERIAL FACT (s. 7, 23 & 24 V. c. 144). *Vh,* Brown & Powles on Divorce: Dixon, Ib.

INTESTATE.—A person dying "Intestate," as that phrase is used in the Statute of Distribution, 22 & 23 Car. 2, c. 10, includes one dying *partially* intestate (*Twisden* v. *Twisden*, 9 Ves. 425); but as used in 53 & 54 V. c. 29, it means only one who is *wholly* intestate (*Re Twigg*, 1892, 1 Ch. 579; 61 L. J. Ch. 444; 66 L. T. 604). It is submitted that this latter is the primary meaning of the word, *i.e.* (as Cowel puts it) "one that makes no Will at all"; in *Hensloe's Case* (9 Rep. 40 a) it was held to mean, one who makes no Will, or one who makes a Will but the Exors refuse to act.

Quà Intestate Moveable Succession (Scot) Act, 1855, 18 & 19 V. c. 23, "Intestate," means and includes, "every person deceased who has left undisposed of by Will the whole, *or any portion*, of the MOVEABLE Estate on which he might (if not subject to incapacity) have tested"; "Intestate Succession," means and includes, "succession in cases of partial, as well as of total, intestacy" (s. 9).

V. LEFT: NEXT OF KIN.

"Sole and Intestate"; *V.* UNMARRIED.

INTIMIDATE.—"Intimidation" is not a technical word having a necessary meaning in a bad sense (*O'Connell* v. *The Queen*, 11 Cl. & F. 155).

"Intimidate" is not a Word of Art as employed in s. 7 (1), Conspiracy, and Protection of Property Act, 1875, 38 & 39 V. c. 86; it there means, "such Intimidation as would justify a magistrate in binding over the intimidator to keep the peace towards the person intimidated; in other words, such Intimidation as implies a threat of personal violence" (*Connor* v. *Kent*, 1891, 2 Q. B. 545; 61 L. J. M. C. 9; 65 L. T. 573; 55 J. P. 485): "What is 'Intimidation'? Why, the using of language which causes another man to fear" (per Smith, J., *Judge* v. *Bennett*, inf). *Semble*, to tell a Master that he should not employ a Workman not belonging to a Trades Union (*Shelbourne* v. *Oliver*, 30 J. P. 213), or to say to a Workman, "If you leave the town quietly we shall not hurt you" (*Hodgson* v. *Graveling*, 31 J. P. 115), or to threaten a picketing (*Judge* v. *Bennett*, 36 W. R. 103), would be such Intimidation; but there is no Intimidation in *bonâ fide*, and in answer to enquiries, communicating a Society rule as to the number of apprentices a Master might take (*Wood* v. *Bowron*, 7 B. & S. 931; 36 L. J. M. C. 5; L. R. 2 Q. B. 21; 15 L. T. 207; 31 J. P. 21: *Vf, Connor* v. *Kent*, sup). *Cp,* BESET: CONSPIRACY: DURESS: MALICE: THREAT.

Quà Prevention of Crime (Ir) Act, 1882, 45 & 46 V. c. 25, "'Intimidation,' includes, *any word spoken*, or *act done*, in order to and calculated

Digitized by Google

to put any person in fear of any injury or danger to himself or to any member of his family or to any person in his employment, — or in fear of any injury to or loss of *his* property, business, or means of living" (s. 7).

Similar, but in important details different, is the def quà Criminal Law and Procedure (Ir) Act, 1887, 50 & 51 V. c. 20, viz., "'Intimidation,' includes, ANY *words or acts*, intended and calculated to put any person in fear of any injury or danger to himself or to any member of his family or to any person in his employment, — or in fear of any injury to or loss of property, business, employment, or means of living" (s. 19). "Words," within that def, may be words published (*Whelan* v. *Fisher*, 26 L. R. Ir. 340).

As to Electoral Intimidation; *V.* SPIRITUAL: Leigh & Le Marchant, 4 ed., 30–38: 2 Rogers, 325.

Vh, 7 Encyc. 51–53. *Cp,* BOYCOTT: MOLEST.

INTO. — The employment of a Humber pilot is not compulsory upon a vessel which is being towed from one dock to another in the port of Hull, as it is not, under such circumstances, passing "*into or out of*" the port within s. 22, Hull Pilot Act, 2 & 3 W. 4, c. cv., nor is it "bound *to or from*" the port within s. 89, Ib. (*The Maria*, L. R. 1 A. & E. 358).

Discharge of Cargo "into Lighters"; *V.* LIGHTER.

V. THROUGH.

INTOXICATING LIQUOR. — Quà the Licensing Act, 1872, "'Intoxicating Liquor,' means, SPIRITS, WINE, BEER, Porter, CIDER, Perry, and SWEETS, and any fermented, distilled, or spirituous, liquor which cannot, according to any law for the time being in force, be legally sold without a license from the Commrs of Inland Revenue" (ss. 74, 77); but throughout the Act the phrase should be taken distributively so as in each case to mean that description of liquor which the dealer is licensed to sell (per May, C. J., *Dowling* v. *O'Loughlin*, Ir. Rep. 11 C. L. 488).

V. SPIRITUOUS LIQUOR.

INTRODUCE. — To merely introduce a person who becomes a Customer, is not to "introduce *Business*," so as to earn an agreed commission: "In order to found a legal claim for commission, there must not only be a Causal, there must also be a Contractual, relation between the introduction and the ultimate transaction of sale" (per Ld Watson, *Toulmin* v. *Millar*, 58 L. T. 96). *Vf, Neck* v. *Andrews*, 1 Times Rep. 607: INTERVENTION. *Cp,* PROCURE, last par.

Introduce a *Law*; *V.* ESTABLISH.

INTRUDER. — *V.* DEFORCEOR.

Digitized by Google

INTRUSION.—"'Intrusion' first properly is, when the ancestor died seised of any estate of inheritance expectant upon an estate for life, and then tenant for life dieth, and between the death and the entry of the heire an estranger doth interpose himselfe and intrude.

"Secondly, he that entreth upon any of the king's demesnes, and taketh the profits, is said to intrude upon the king's possession.

"Thirdly, when the heire in ward entereth at his full age without satisfaction for his marriage, the writ saith, *quòd intrusit*" (Co. Litt. 277 a, b, *whv* for the difference between Abate, Intrusion, Deforcement, Usurpation, and Purpresture). *Vf*, 3 Bl. Com. 167–174: 7 Encyc. 56: Entry: Ouster.

Semble, to "intrude" into a Parish, does not connote going to dwell there (*R.* v. *Willats*, 7 Q. B. 516; 14 L. J. M. C. 157).

INTRUSTED.—Factors Act, 6 G. 4, c. 94, s. 2: *V. Phillips* v. *Huth*, 10 L. J. Ex. 65; 6 M. & W. 572: *Hatfield* v. *Phillips*, 11 L. J. Ex. 425; 9 M. & W. 647; 14 Ib. 665; 12 Cl. & F. 343: *Fuentes* v. *Montis*, 38 L. J. C. P. 95; L. R. 4 C. P. 93. *Vth*, s. 4, 5 & 6 V. c. 39: *Sheppard* v. *Union Bank*, 7 H. & N. 661; 31 L. J. Ex. 154; 10 W. R. 299; 5 L. T. 757: 1 Sm. L. C. 822. *Note*: The Factors Act, 1889, s. 2, omits the phrase "intrusted with."

A person is not "intrusted with" a thing if all that he has is access to it (*R.* v. *Bakewell*, Russ. & Ry. 35).

"Person anyways intrusted" by or for a Papist, and incapable of nominating to a Benefice, 13 Anne, c. 13, s. 1; *V. Boyer* v. *Norwich, Bp*, 1892, A. C. 417; 61 L. J. P. C. 46; 67 L. T. 30; 56 J. P. 692.

"Superintendence entrusted"; *V.* Superintendence.

V. Agent Intrusted: In Trust.

INVALID.—*V.* Insufficient.

INVENTED.—Where a person states that he has "invented" an article, that word implies the statement by him that the invention was new and that he was its First Inventor (*Bowman* v. *Taylor*, 2 A. & E. 278; 4 L. J. K. B. 58: *Smith* v. *Scott*, 6 C. B. N. S. 771; 28 L. J. C. P. 325).

"Invented Word"; *V.* Fancy Word.

INVENTION.—Quà the Patent Acts "'Invention,' means, any manner of New Manufacture the subject of Letters Patent" (s. 46, 46 & 47 V. c. 57). *V.* Nature.

INVENTOR.—*V.* First Inventor.

INVENTORY.—An "Inventory" is a detailed list of goods, enumerating them with reasonable particularity according to the well under-

Digitized by Google

stood usage of business men; and the word is so used in s. 4, Bills of Sale Act, 1882 (*Witt* v. *Banner*, 20 Q. B. D. 114; 57 L. J. Q. B. 141; 58 L. T. 34; 36 W. R. 115; 3 Times Rep. 759: *Carpenter* v. *Deen*, 23 Q. B. D. 566; 33 S. J. 590; 5 Times Rep. 647). *V.* SPECIFIC.

In a Bill of Sale under the heading "Study" was this item, "1800 volumes of books, *as per catalogue*"; held, that the Catalogue was not a "Schedule or Inventory" requiring registration under s. 10 (2), Bills of Sale Act, 1878 (*Davidson* v. *Carlton Bank*, 1893, 1 Q. B. 82; 62 L. J. Q. B. 111; 67 L. T. 641; 41 W. R. 132).

"Schedule, Inventory, or Catalogue," 55 G. 3, c. 184; *V. Strutt* v. *Robinson*, 3 B. & Ad. 395.

V. Termes de la Ley, *Inventory.*

INVEST. — In a Will, a Trust for Sale may be implied from a trust "to invest" (*Affleck* v. *James*, 17 Sim. 121). *V.* THINK FIT.

V. ACCUMULATION: *Cp*, DIVEST: VESTURE.

INVESTED. — A Bequest of the income of a certain sum "invested by me" in a particular way, is SPECIFIC (*Kermode* v. *Macdonald*, 35 L. J. Ch. 358; 37 Ib. 879; L. R. 1 Eq. 457; 3 Ch. 584). *Vf, Re Pratt*, 1894, 1 Ch. 491; 63 L. J. Ch. 487, and cases there cited.

INVESTIGATING. — If a purchaser's solicitor has in any way inquired into the vendor's title, he is entitled to the Scale Fee for "investigating TITLE" provided by Sch 1, Part 1, Solrs Rem Ord; and this though no Abstract or Evidence of Title be delivered by the vendor, or though "the investigation took only 5 minutes instead of 10 days" (per Kay, J., *Ex p. London Corp*, 56 L. J. Ch. 308; 34 Ch. D. 452; 35 W. R. 211; 56 L. T. 13: *Ex p. Ferguson to Buckley*, 21 L. R. Ir. 396, 397).

Cp, "Deducing Title"; *V.* DEDUCE.

Note, on Conditions restricting Investigation of Title: — A Condition of Sale which provides that, "No Requisition or Enquiry" (which, in such a connection, are synonymous terms) shall be made as to the Title prior to a specified date, or to the Title at all, will not prevent the purchaser from ascertaining a defect aliunde; and, if it be substantial, it will entitle him to cancel the contract, and (if there be a breach of contract, *V.* DEPOSIT) he may recover the deposit (*Waddell* v. *Woolfe*, 43 L. J. Q. B. 138; L. R. 9 Q. B. 515); so, of a Condition (on sale of Leaseholds) that the vendor "shall not be obliged to PRODUCE the lessor's title" (*Shepherd* v. *Keatley*, 3 L. J. Ex. 288; 1 Cr. M. & R. 117): *Secus*, if the contract provides that the Title "will not be shown and shall not be inquired into" (*Hume* v. *Bentley*, 21 L. J. Ch. 760; 5 D. G. & S. 520), or that it shall not be "required, investigated, or objected to" (*Re Marsh*, 64 L. J. Ch. 255). In *thlc* North, J., dissented from the dictum of Wood, V. C., in *Darlington* v. *Hamilton* (23 L. J. Ch.

Digitized by Google

1000; Kay, 558) that "whatever may be the terms of the Condition of Sale, if the purchaser obtain information aliunde that the Title of the vendor is not clear and distinct, he has a right to insist upon the objection"; but the decision in *Re Marsh* was on a V. & P. summons for return of deposit, and North, J., pointed out that the Court was not being asked by the vendor for specific performance: *Vf, Scott* v. *Alvarez*, 1895, 2 Ch. 603; 64 L. J. Ch. 376, 821; 73 L. T. 43; 43 W. R. 694: Dart, 163–176: Fry, 593: Webster on Conditions of Sale, 2 ed., 208. *V.* REQUISITION: BAD.

INVESTING.—"Investing" member of a Building Society; *V. Re Norwich and Norfolk Bg Socy*, 45 L. J. Ch. 785.

INVESTMENT.—"In the like Mode of Investment as the same shall be at my decease"; *V. Re Grindey*, cited REASONABLY: SAME.

V. ONE INVESTMENT: PERMANENT: PROPER INVESTMENT: SECURITIES.

INVESTMENTS.—Foreign Government Bonds will pass under a bequest of "Investments" (*Arnould* v. *Grinstead*, 21 W. R. 155).

As to what are Trustee Investments, *V.* Part 1, Trustee Act, 1893, on *whv, Re Owthwaite*, cited AUTHORIZE: R. 17, Ord. 22, R. S. C.

Quà Scotland; *V.* 47 & 48 V. c. 63; 61 & 62 V. c. 42.

V. ISLE OF MAN.

INVOICE PRICE.—Where an Agent's Commission is to be calculated on "Invoice Prices," that means, the amounts that ought to go into the invoices; and though the invoices themselves (when unchallenged) are the best evidence of those amounts, yet their production is not essential (*Plank* v. *Gavila*, 3 C. B. N. S. 807; 6 W. R. 210; 30 L. T. O. S. 287).

INVOICE VALUE.—In a Marine Insrce "Invoice Value" is, *semble*, synonymous with, SHIPPING VALUE (per Blackburn, J., *Anderson* v. *Morice*, L. R. 10 C. P. 614).

INVOLVE.—A thing is only said to be "involved" in another when it is a necessary resultant of that other. Therefore, actual injury sustained by a boy under 13 through a man attempting to commit an unnatural offence with him, does not bring the case within s. 15 (1), Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41 (which allows unsworn evidence of a child of tender years); for this offence is not specifically mentioned, and it does not come within the general words of the Schedule to the Act because it is not one "*involving* Bodily Injury," it being very common to have an Indecent Assault without any bodily injury (*R.* v. *Beer*, 62 J. P. 120).

"Questions involved in the Cause or Matter," R. 11, Ord. 16, R. S. C.; *V. Montgomery* v. *Foy*, 1895, 2 Q. B. 321; 65 L. J. Q. B. 18; 73 L. T. 12; 43 W. R. 691.

Digitized by Google

Land "involved in Partnership Dealings," so as to become part of the partnership ASSETS; *V. Davies* v. *Games*, 28 W. R. 16; 12 Ch. D. 813: *Jackson* v. *Jackson*, 7 Ves. 535; 9 Ib. 591: *Waterer* v. *Waterer*, L. R. 15 Eq. 402; 21 W. R. 508; on *whlcv*, *Murtagh* v. *Costello*, 7 L. R. Ir. 428: *Vf*, *Morris* v. *Barrett*, 3 Y. & J. 384: *Houghton* v. *Houghton*, 11 Sim. 491; 10 L. J. Ch. 310.

INWARD-BOUND.—Quà Post Office (Duties) Act, 1840, 3 & 4 V. c. 96, " 'Inward-Bound,' shall be held to include, Vessels bound as well *to* any Port in the UNITED KINGDOM, as to any Port in any of Her Majesty's Colonies; and 'Outward-Bound,' shall be held to include, Vessels bound as well *from* any Port in the United Kingdom as from any Port in Her Majesty's Colonies" (s. 71).

INWARDS.—"Trading Inwards"; *V.* TRADING.
V. OUTWARDS.

I. O. U.—An I. O. U. is evidence of an Account Stated (*V.* ACCOUNT), but not of money lent, goods sold, &c (*Fesenmayer* v. *Adcock*, 16 M. & W. 449). It is merely an ACKNOWLEDGMENT of a Debt; it is neither a Promissory Note nor a Receipt (*Fisher* v. *Leslie*, 1 Esp. 427).

An I. O. U. not given in acknowledgment of a debt due, nor as the result of an account stated between the parties, is not evidence under a count on an Account Stated (*Lemere* v. *Elliott*, 30 L. J. Ex. 350; 6 H. & N. 656).

IRELAND.—*V.* UNITED KINGDOM.

IRISH FUNDED PROPERTY.—Government Debentures, held not to pass under a bequest of "Irish Funded Property" (*Ridge* v. *Newton*, 4 Ir. Eq. Rep. 389; 2 Dr. & War. 239; 1 Con. & L. 381).

IRISH VALUATION ACTS.—*V.* s. 24, Interp Act, 1889.

IRON.—In a Marine Insurance was this clause,—"Warranted no Iron or ore or phosphate cargoes, exceeding the net register tonnage, across the Atlantic"; held, that Steel was included in the word "Iron" (*Hart* v. *Standard Mar Insrce*, 22 Q. B. D. 499; 58 L. J. Q. B. 284; 37 W. R. 366; 60 L. T. 649).

The waste from Iron-works called Tap-Cinders is not Stores or other Effects, Iron or Ironstone, Slack, or Cannel, nor is it within a Lease demising "all Mines, Seams, Veins, and BEDS, as well opened as unopened, of all other Minerals and Clay lying and being within and under the lands" (*Boileau* v. *Heath*, 1898, 2 Ch. 301; 67 L. J. Ch. 529; 78 L. T. 622; 46 W. R. 602).

"Iron Mills"; *V.* NON-TEXTILE FACTORIES.

IRRECOVERABLE.—*V.* RECOVERABLE.

Digitized by Google

IRREGULARITY. — *V. Ex p. Johnson*, 53 L. J. Ch. 309; 25 Ch. D. 112; *Davies* v. *Bolton*, 1894, 3 Ch. 678; 63 L. J. Ch. 743; 71 L. T. 336; 43 W. R. 171: Error: Formal: Informality.

IRREPARABLE. — Irreparable Injury may be said to be done to a Trading Co, *e.g.* a Railway, if it entail an "expenditure of money which it will be impossible, perhaps, ever to get back again" (per Cranworth, V. C., *Beman* v. *Rufford*, 1 Sim. N. S. 571).

IRRESISTIBLE. — Irresistible Inference, *V.* Judicial Persuasion. *Cp*, Necessary Implication, sub Necessary.

"'*Vis Major*,' which we translate 'Irresistible Violence'" (per Campbell, C. J., *Walker* v. *Guarantee Assn*, 18 Q. B. 286). *Cp*, Act of God.

IRRESPONSIBLE. — "In their uncontrolled and irresponsible Discretion"; *V.* Discretion.

IRREVOCABLE. — A Submission "irrevocable, except by leave," and to "have the same effect in all respects as if it had been made an Order of Court," s. 1, Arb Act, 1889, means, that the power of the Arbitrators when once appointed cannot be revoked; but the section does not give the Court power to order a party to appoint his arbitrator, for such a power would not, prior to the Act, have followed on the submission being made a Rule of Court (*Re Smith and Nelson*, 59 L. J. Q. B. 533; 25 Q. B. D. 545; 39 W. R. 117; 63 L. T. 475); nor can a Commission for examining witnesses abroad be ordered (*Re Shaw and Ronaldson*, 1892, 1 Q. B. 91; 61 L. J. Q. B. 141).

IS. — "Is" with an active participle, generally connotes present time, *e.g.* "Is proceeding"; *V.* Proceeding, at end: *Vf, Fisher* v. *Ford*, 12 A. & E. 654.

But with a perfect participle, "is" sometimes connotes future time. Thus, the disqualifications, imposed by s. 32, Bankry Act, 1883, where a debtor "is adjudged bankrupt," apply only to persons adjudged bankrupt under that Act (*Bourke* v. *Nutt*, 1894, 1 Q. B. 725; 63 L. J. Q. B. 497; 70 L. T. 639; 42 W. R. 388: *Vf*, Are). But "where . . . houses . . . *are* connected with a Public Sewer," s. 19, P. H. Act, 1890, was held to connote an existing state of things, giving the section a retrospective operation (*Eastbourne* v. *Bradford*, cited Drain).

"*Is* of Full Age," s. 6, Rep People Act, 1867, means, being of full age at or before the end of the year of qualification (*Hargreaves* v. *Hopper*, 45 L. J. C. P. 105; 1 C. P. D. 195). In this connection "is" was read "was."

V. Being: Has Been.

ISLAND. — *V.* Isle.

Islands arising *de novo* in the King's Seas; *V.* Increase.

Digitized by Google

"Islands" of Scotland; *V.* Highlands.
V. British Islands.

ISLE. — "By the name of an isle, *insula*, many manors, lands and tenements may passe" (Co. Litt. 5 a: *Vf,* Touch. 92). *V.* Island.

ISLE OF MAN. — A Trustee's power of Investment in Securities of the Isle of Man, or of the Government of a Colony, includes securities under the Isle of Man Loans Act, 1880, 43 & 44 V. c. 8 (s. 5 (4), Trustee Act, 1893).
V. England: "Foreign Dominion," sub Foreign.

ISOLATED. — "Isolated Parts of Counties," s. 26, Parliamentary Boundaries Act, 1832, 2 & 3 W. 4, c. 64; *V. R.* v. *Brecon,* 15 Q. B. 813; 19 L. J. M. C. 203.

ISSUE. — This is a word of flexible meaning; —
1. Its legal meaning is, "Descendants" *in infinitum* (*Holland* v. *Fisher,* Orl. Bridg. 214: *Warman* v. *Seaman,* Poll. 117: *Davenport* v. *Hanbury,* 3 Ves. 259: per Ld Watson, *Hickling* v. *Fair,* 68 L. J. P. C. 15; 1899, A. C. 15):
2. Its popular meaning is, "Children" (per Jessel, M. R., *Morgan* v. *Thomas,* 51 L. J. Q. B. 556; 9 Q. B. D. 643: and per James and Brett, L. JJ., *Ralph* v. *Carrick,* 48 L. J. Ch. 807, 808, 809; 11 Ch. D. 873): and (like "heirs," *Powell* v. *Boggis,* cited Heir) it may be used in different clauses of the same instrument in different senses (*Carter* v. *Bentall,* 9 L. J. Ch. 303; 2 Bea. 551, on *whcv, Re Hopkins,* 9 Ch. D. 131; 47 L. J. Ch. 672: *Re Warren,* 53 L. J. Ch. 787; 26 Ch. D. 208: *Sv, Ridgeway* v. *Munkittrick,* 1 Dr. & War. 84: *Rhodes* v. *Rhodes,* 27 Bea. 413: *Re Harrison,* 3 L. R. Ir. 114).

In its popular meaning it is a Designation of Persons; whilst in its technical import it is generally a word of Limitation.

In devises of *Real Estate,* "Issue" is a word of limitation which when uncontrolled by the context, is equivalent to, but more flexible than (*Doe* d. *Cooper* v. *Collis,* 4 T. R. 300: *Lees* v. *Mosley,* 5 L. J. Ex. Eq. 78: 1 Y. & C. 589) "Heirs of the Body"; so that a devise to A. "and his Issue" will generally give to A. an Estate Tail (*Roddy* v. *Fitzgerald,* 6 H. L. Ca. 823: *Bowen* v. *Lewis,* 54 L. J. Q. B. 55; 9 App. Ca. 890: *Pelham-Clinton* v. *Newcastle,* 49 W. R. 12; 69 L. J. Ch. 875: *Sandes* v. *Cooke,* 21 L. R. Ir. 445: *Woodhouse* v. *Herrick,* 24 L. J. Ch. 649; 1 K. & J. 352: *Simmons* v. *Simmons,* 8 Sim. 22; 5 L. J. Ch. 198: *Vf,* 2 Jarm. 414 *et seq*: *Williams* v. *Williams,* 33 W. R. 118; W. N. (84) 198: *Whitelaw* v. *Whitelaw,* 5 L. R. Ir. 120). Indeed, it has been said that a devise to A. "and his Issue" is the aptest way to describe an Estate Tail (per Ld Thurlow, *Hockley* v. *Mawbey,* 1 Ves. 149).

It is, however, an old doctrine that, by a context, "Issue" may be

Digitized by Google

taken as a word of PURCHASE, and may denote a particular person or persons (*Luddington* v. *Kime*, 1 Raym. Ld, 205).

And where there is a manifest indication in a Will, made since 31st Dec 1837, that the Testator intended A. to take a life interest in Realty, a subsequent limitation to the "Issue" of A. would be construed as words of Purchase (*Rotheram* v. *Rotheram*, 13 L. R. Ir. 442, distinguishing *Roddy* v. *Fitzgerald*, sup), and the "Issue" would be entitled to take subject to the life interest, and the word would frequently, if not generally, be construed as "Children" (*Ralph* v. *Carrick*, 11 Ch. D. 882, 885: *Foster* v. *Hayes*, 24 L. J. Q. B. 161; 4 E. & B. 717: *Morgan* v. *Thomas*, 51 L. J. Q. B. 289, 556; 9 Q. B. D. 643: *Vthlc* for a collection of the cases on Wills made prior to 1838 showing the care the Courts took to construe a devise, where "issue" mentioned, as an Entail when the words superadded were insufficient to carry the Fee; — a reason which, as was observed by the M. R. in *Morgan* v. *Thomas*, does not exist as regards Wills made since the Wills Act, 1837).

In a gift to the "Issue" of an existing marriage, *e.g.* to wife and "the Issue of our marriage," there is not such a context as will take the gift out of the general rule whereby "Issue" includes all Lineal Descendants, and, in the case of Realty, gives an Entail to the person whose issue is spoken of (*Walsh* v. *Johnston*, 1899, 1 I. R. 501). *Cp*, *Harris* v. *Loftus*, inf.

A direction that "Issue" shall take a VESTED Interest at a certain period, is a context inconsistent with "Issue" being a word of Limitation, and the Issue take as Purchasers (*Re Wilmot*, 76 L. T. 415; 45 W. R. 492).

It has been said that a bequest of *Personal Property* to "A. and his Issue" will give to A. the absolute interest (Wms. Exs. 971). But the rule would seem to be better stated thus: — "The rule that 'Issue' is *primâ facie* a word of limitation does not extend to bequests of personal estate (*Knight* v. *Ellis*, 2 Bro. C. C. 570: *Ex p. Wynch*, 5 D. G. M. & G. 188; 1 Sm. & G. 427; 22 L. J. Ch. 750; 23 Ib. 930). If it be clear that the testator intended to make such a disposition of personal estate as would in the case of real estate amount to an estate tail, the first taker will take the absolute interest; but it is not the case that every expression which would create an estate tail in real estate, will be held to indicate the same intention in the case of personal estate; . . . and slight circumstances would probably be held to show an intention that the issue should take in remainder after a life interest in the parent" (Hawk. 197, 198: *V.* this point elaborately treated, 2 Jarm. 567–581). *Cp*, CHILDREN.

But the question frequently occurs in cases where "Issue" are entitled in remainder under words of PURCHASE, whether the word means "Descendants" according to its legal rendering and so includes grandchildren and remoter issue, or whether it should be confined to children

Digitized by Google

in the first generation. Upon this branch of the meaning of the word "Issue," it is conceived that there could be no difference between a devise of real, and a bequest of personal, estate; and then we come to this proposition, — When the phrase "Issue" is employed in a Will (and *à fortiori* in a Deed, *Harrison* v. *Symons*, 14 W. R. 959) as a word of Purchase or as a description of a Class, it will, in its ordinary import, comprise all those who can claim as Descendants of the person whose issue are indicated, *i.e.* grandchildren and great-grandchildren and so on, as well as children; and in order to restrain this primary legal sense of the word, a clear intention to do so must appear upon the instrument (Wms. Exs. 973, and cases there cited). The rule hereon has also been thus stated, — "The word *Issue*, though its popular sense is said to be 'Children,' is, technically and when not restrained by the context, co-extensive and synonymous with *Descendants*, comprehending objects of every degree" (2 Jarm. 101).

"But it is, I think, settled by the case of *Pruen* v. *Osborne* (11 Sim. 132), that as a general rule, when you find a gift to a person, and then a gift to the issue of that person, such issue to take only the *parent's* share, the word 'Issue' is cut down to mean 'Children'" (per James, L. J. *Ralph* v. *Carrick*, 48 L. J. Ch. 807; 11 Ch. D. 873: the leading case on this point is *Sibley* v. *Perry*, 7 Ves. 522, but of that case Brett, L. J., said, in *Ralph* v. *Carrick*, "I should have no objection to be present at the funeral of *Sibley* v. *Perry*," 48 L. J. Ch. 809); and a similar construction will obtain if a similar collocation of Parent and Issue occur in a Deed (*Barraclough* v. *Shillito*, 53 L. J. Ch. 841). But where there is a gift over, the meaning of "Issue," even when collocated with "Parent," will frequently be widened to mean "Descendants" (*Ross* v. *Ross*, 20 Bea. 645: *Ralph* v. *Carrick*, sup); but so that grandchildren will not take in competition with children, or great-grandchildren with grandchildren (*Robinson* v. *Sykes*, 23 Bea. 40; 28 L. T. O. S. 114).

A further rule has, *semble*, been laid down in Ireland that, where the occasion of the instrument in which "Issue" occurs is the making a MARRIAGE SETTLEMENT, *e.g.* "Issue of intended marriage," that, in itself and when not otherwise controlled, is sufficient to restrict its meaning to the Children of such marriage (*Harris* v. *Loftus*, 1899, 1 I. R. 499, stating and somewhat reluctantly following, *Re Dixon*, Ir. Rep.. 4 Eq. 1, and *Re Denis*, Ir. Rep. 10 Eq. 81: *Sv*, *Hobbs* v. *Tuthill*, 1895, 1 I. R. 115). *Cp*, *Walsh* v. *Johnston*, sup.

If the construction of "Issue" should be "Descendants" distributively, they will take *per capita* and, failing words of severance, as joint tenants (*Davenport* v. *Hanbury*, 3 Ves. 258: *Hobgen* v. *Neale*, 40 L. J. Ch. 36; L. R. 11 Eq. 48: *Hume* v. *Lloyd*, 47 L. J. Ch. 775; 26 W. R. 828: 2 Jarm. 101: Wms. Exs. 1384–1386, *n* (*a*): *Sv*, *Stonor* v. *Curwen*, 5 Sim. 264, where, on a context, "Issue" was read as, "Children and Descendants of Children, per Stirpes").

Digitized by Google

In the following cases "Issue" was read as "*Children*":—*Sibley* v. *Perry*, sup: *Pruen* v. *Osborne*, sup: *Barraclough* v. *Shillito*, sup: *Re Birks*, 1900, 1 Ch. 417; 69 L. J. Ch. 124: *Re Walker*, cited CHILD: *Re Merricks*, 35 L. J. Ch. 418; L. R. 1 Eq. 551: *Re Hopkins*, sup: *Heasman* v. *Pearse*, 41 L. J. Ch. 705; 7 Ch. 275: *Martin* v. *Holgate*, 35 L. J. Ch. 789; L. R. 1 H. L. 175: *Bryden* v. *Willett*, L. R. 7 Eq. 472: *Re Dreweatt*, W. N. (68) 106: *Re Hall*, W. N. (71) 136: *Grove* v. *Marshall*, W. N. (72) 43: *Buckingham* v. *Sellick*, W. N. (72) 136: *Morgan* v. *Thomas*, sup: *Re Hopkin*, 47 L. J. Ch. 672; 9 Ch. D. 131: *Re Smith*, 58 L. J. Ch. 661: *Re Mullis*, 27 S. J. 585: *Fairfield* v. *Bushell*, 32 Bea. 158: *Lanphier* v. *Buck*, 34 L. J. Ch. 650; 2 Dr. & Sm. 484: *Marshall* v. *Baker*, 31 Bea. 608: *Maynard* v. *Wright*, 26 Bea. 285: *Smith* v. *Horsfall*, 25 Bea. 628: *Tathum* v. *Vernon*, 9 W. R. 822; 4 L. T. 531: *Pope* v. *Pope*, 21 L. J. Ch. 276; 14 Bea. 591: *Slater* v. *Dangerfield*, 16 L. J. Ex. 51; 15 M. & W. 263: *Swift* v. *Swift*, 8 Sim. 168; 5 L. J. Ch. 376: *Cursham* v. *Newland*, 7 L. J. Ex. 212; 4 M. & W. 101: *Dalzell* v. *Welch*, 2 Sim. 319: *Doe* d. *Comberbach* v. *Perryn*, 3 T. R. 484: *R.* v. *Stafford*, 7 East, 527: *Smyth* v. *Power*, Ir. Rep. 10 Eq. 192: *Foster* v. *Wybrants*, 11 Ib. 40: *Re Handcock*, 23 L. R. Ir. 34.

In the following cases "Issue" was read as "*Descendants*":—*Leigh* v. *Norbury*, 13 Ves. 344: *Clay* v. *Pennington*, 7 Sim. 370; 6 L. J. Ch. 183: *Louis* v. *Louis*, 7 L. T. 666: *Hobgen* v. *Neale*, sup: *Re Warren*, 53 L. J. Ch. 787; 26 Ch. D. 208: *Waldron* v. *Boulter*, 22 Bea. 284.

Vf, *McGregor* v. *McGregor*, 1 D. G. F. & J. 63: 2 Jarm. 101–107: Wms. Exs. 971: Watson Eq. 1391–5: Hawk. 189–198: Prior on Issue: Chitty Eq. Ind. 7719–7726, 7907.

"Issue," *primâ facie*, means, Legitimate Issue: *V.* RELATIONS. In *Re Walker* (cited CHILD) Illegitimate Issue were held to be included in "Issue."

V. CHILDREN: OFFSPRING: DESCENDANTS: LAWFUL ISSUE: HEIR: DIE WITHOUT ISSUE: OTHER THE ISSUE.

Issue "living"; *V. Re Burrows*, cited LIVING.

"Issue *Male*," means Sons (*Fitzherbert* v. *Heathcote*, cited 4 Ves. 794) or Sons of Sons (*Lambert* v. *Peyton*, 8 H. L. Ca. 1): "Issue *Female*," means Daughters (*Sussex* v. *Temple*, 1 Raym. Ld, 310). *Note*: In *Blackwell* v. *Hale* (1 Ir. C. L. Rep. 612), "Issue Male" was read "Heirs Male." *V.* MALE: MALE DESCENDANTS: MALE LINE.

V. INCREASE: GENERAL ISSUE.

To ISSUE.—A power to a Co "to issue" Securities, may be exercised by creating an Oral security; for "to issue" applies to words spoken as well as to words written (per Williams, J., *Re Tilbury Cement Co.* 62 L. J. Ch. 814; 69 L. T. 495); but in that case the power in the Memorandum was aided by a clause in the Articles.

V. ISSUED.

Digitized by Google

ISSUE of Bank Notes. — The word "Issue" (of Bank Notes) "means, the delivery of the Notes to persons who are willing to receive them in exchange for value in gold, in bills, or otherwise, the person who delivers them being prepared to take them up when they are presented for payment" (per Stephen, J., delivering jdgmt of the Court, *A-G.* v. *Birkbeck*, 53 L. J. Q. B. 382; 12 Q. B. D. 605). *Vf*, ISSUED.

ISSUE of Bills of Ex. or Promy. Notes. — "Issue" of a Bill or Note, "means, the first delivery of a Bill or Note, complete in form, to a person who takes it as a HOLDER" (s. 2, Bills of Ex. Act, 1882). *Vth*, *Scholfield* v. *Londesborough*, cited ACCEPTANCE: *Clutton* v. *Attenborough*, cited HOLDER IN DUE COURSE.

ISSUE of Debentures. — To "issue" a Debenture, s. 17, Bills of Sale Act, 1882, means, its "delivery over by the Company to the person who has the charge" (per Chitty, J., *Levy* v. *Abercorris Co*, cited DEBENTURE). *V.* ISSUED.

ISSUE of a Dispute. — *V.* LEGAL ISSUE.

ISSUE of Fact. — *V.* JOINDER: TRIAL: GENERAL ISSUE.

ISSUE of Law. — An Issue of Law in an action arises "where either side perceives any material objection in point of law upon which he may rest his case" (3 Bl. Com. 314); it was formerly raised by a DEMURRER (Ib.), but now in England, "no Demurrer shall be allowed" (R. 1, Ord. 25, R. S. C.), and the Order cited establishes Proceedings in lieu of Demurrer.

ISSUE of Orders. — By s. 161, Metrop Man. Act, 1855, Overseers, to whom an Order of a District Board of Works "is issued," have to levy the amount mentioned therein. "The *issuing* of the Order is not effected by sending the precept by the Clerk of the Board to the Overseers, but by the putting of the hands and seal of the Board to the document" (per Stephen, J., *Glen* v. *Fulham*, 54 L. J. M. C. 12; 14 Q. B. D. 328; 51 L. T. 856; 33 W. R. 165; 49 J. P. 519: but *cp* jdgmt of Day, J., *Ib.*).

"Date and Issuing" of a Fiat in Bankry, 2 & 3 V. c. 29, meant, the time of its delivery out as an operative instrument (*Pewtress* v. *Annan*, 9 Dowl. 828); but "sued forth," 6 G. 4, c. 16, s. 6, meant, the time the application was made and the docket struck (*Re Rowe*, 4 Dea. 68).

ISSUE of Shares. — The word "Issue" in s. 25, Comp Act, 1867, repld s. 7, Comp Act, 1900, means, putting the shareholder in complete possession of his share, a conclusion which is one more of fact than of law on a consideration of all the circumstances. It was not, necessarily, either the allotment of the shares or delivery of the share certificate which con-

Digitized by Google

stituted "Issue" within that section (*Blyth's Case*, 4 Ch. D. 140: *Clarke's Case*, 8 Ch. D. 635; 47 L. J. Ch. 696: *Pool's Case*, 35 Ch. D. 581: *Spitzel* v. *Chinese Corp*, 80 L. T. 347: *Re Gibson & Co*, 5 L. R. Ir. 139: *Vh*, Buckl. 612). *V.* ISSUED.

Sale or Re-Allotment of Forfeited Shares, is not an "Issue" of Shares (*Morrison* v. *Trustees, &c Corp*, 79 L. T. 605; 68 L. J. Ch. 11).

ISSUED. — Debentures "Already issued"; *V.* ALREADY.

Issued capital; *V.* CAPITAL.

"Execution Issued," 3 G. 4, c. 39, s. 2; the Court refused to read this as Execution either "levied" or "executed" (*Green* v. *Wood*, 14 L. J. Q. B. 217; 7 Q. B. 178).

Foreign Security "issued" in the United Kingdom, s. 2 (1), 34 V. c. 4; s. 21, 48 & 49 V. c. 51; *V. Grenfell* v. *Inl. Rev.*, 45 L. J. Ex. 465; 1 Ex. D. 242.

A Foreign MARKETABLE SECURITY is "made or issued in the United Kingdom," s. 82 (1 *b*), Stamp Act, 1891, if that be the locality where "it becomes an actual, valid, subsisting, document" (per Smith, L. J., *Baring* v. *Inl. Rev.* 1898, 1 Q. B. 78; 67 L. J. Q. B. 44; affd in H. L. nom. *Revelstoke* v. *Inl. Rev.*, 1898, A. C. 565; 67 L. J. Q. B. 855: *Vf, Chicago Ry* v. *Inl. Rev.*, 75 L. T. 572). *Vf, Brown* v. *Inl. Rev.*, cited OFFER.

V. TO ISSUE, and succeeding defs.

ISSUES. — "Issues," — as used in old Charters, *e.g.* in such a phrase as "all Fines for Licenses to agree, and all Amercements, Ransoms, and *Forfeited Issues*," — "applies only to money issuing out of Property, and has no reference to money coming from a Debt due to the Crown" (per Pollock, B., *Re Nottingham Corp*, cited AMERCIAMENT: *Vf, R.* v. *Dover*, cited CONTEMPT). *V.* PRINCIPAL ACCOUNTANT.

"To have the 'Issues and Profits,' and to have the Land, is all one" (*Parker* v. *Plummer*, Cro. Eliz. 190). *Cp*, RENTS AND PROFITS.

IT SHALL BE LAWFUL. — *V.* MAY: SHALL AND LAWFULLY MAY: and obs of Jessel, M. R., *Emden* v. *Carte*, 51 L. J. Ch. 373; 19 Ch. D. 311: *Va, Re Newport Bridge*, 29 L. J. M. C. 52; 2 E. & E. 377: *Re Morgan*, 32 S. J. 272, 273.

Vh, in a direction to Trustees to renew Leaseholds, Lewin, 424.

IT SHALL NOT BE LAWFUL. — Where a statute simply prescribes that "It shall not be lawful" to do a stated thing, Is the doing it an indictable offence, necessarily? *V. R.* v. *Nott*, 4 Q. B. 768.

IT SHALL SUFFICE. — "There is no doubt that in many cases these words, standing alone and unexplained by a context, would be quite consistent with something different from, larger or smaller, more or less numerous, more or less costly, than what is mentioned, being supplied.

Digitized by Google

"Here, however (Rubric to Communion Office as to the Bread), the sentence commences with the introduction: 'To take away all occasion of dissension and superstition which any person hath or might have concerning the Bread, *it shall suffice,' &c.* These words seem to their Lordships to make it necessary that that which is to take away the occasion of dissension and superstition should be something definite, exact, and different from what had caused the dissension and superstition. If not, the occasion of dissension remains, and the superstition may recur. 'To suffice,' it must be as here described. What is substantially different will not 'suffice'" (per Cairns, C., delivering jdgmt of P. C., *Ridsdale* v. *Clifton*, 46 L. J. P. C. 63; 2 P. D. 276). It was accordingly there held that a Communion Wafer was not allowed by the words "it shall suffice that the Bread be such as is usual to be eaten."

ITA QUOD. — *V.* IF.

ITEM. — As an adverb, is synonymous with LIKEWISE.

"Item in any account for distilled SPIRITUOUS LIQUORS," s. 12, Tippling Act, 24 G. 2, c. 40, may be made up of two sorts of spirits sold at the same time (*Owens* v. *Porter*, 4 C. & P. 367).

Digitized by Google

JACTITATION—JETTISON

JACTITATION.—Jactitation of Marriage, is an action (originally Ecclesiastical) for the false, malicious, and unexcusable boast and assertion by a person that some one else is married to him or her (3 Bl. Com. 93). "As stated by Ld Stowell in *Hawke* v. *Corri* (2 Hagg. Con. 280), it is in the nature of a Criminal suit. It has something in common with proceedings for Defamation" (per Bowen, L. J., *Thompson* v. *Rourke*, 1893, P. 70; 62 L. J. P. D. & A. 46; 67 L. T. 788). Therefore, if the respondent has lived as spouse with the petitioner, or if the petitioner has represented, or acquiesced in the representation, that the respondent was spouse to him or her, that is an answer to the action (*Hawke* v. *Corri*, and *Thompson* v. *Rourke*, sup). *Vf*, *Cowley* v. *Cowley*, cited HONOUR.

JAMPNA.— *V.* JUNCARIA.

JENKIN.— *V.* GRAVELLING.

JEOFAILS.—The Statutes of Jeofails,—*i.e.* for rectifying oversights in Pleading,—14 Edw. 3, c. 6; 9 H. 5, c. 4; 4 H. 6, c. 3; 8 H. 6, c. 12, c. 15; 32 H. 8, c. 30; 37 H. 8, c. 23; 2 & 3 Edw. 6, c. 32; 18 Eliz. c. 14; 21 Jac. 1, c. 13; 16 & 17 Car. 2, c. 8; 4 & 5 Anne, c. 16; 9 Anne, c. 20; 5 G. 1, c. 13. *Vh*, Termes de la Ley: 3 Bl. Com. 407.

JEOPARDY.—"It would be giving a very narrow meaning to the word 'Jeopardy' to hold that because nothing could be done that is improper, and because the security of the Debenture Holders will of course be preserved, they ought not to take care of themselves. That being so, I can appoint a Receiver. It is mere protection" (per Kekewich, J., *Re Victoria Steam Boats*, 1897, 1 Ch. 158; 66 L. J. Ch. 23; 45 W. R. 135).

JERVIS' ACTS.—The Indictable Offences Act, 1848, 11 & 12 V. c. 42:

The Sum Jur Act, 1848, 11 & 12 V. c. 43:

The Justices Protection Act, 1848, 11 & 12 V. c. 44.

JETTISON.—"'Jettison,' in its largest sense, signifies any throwing overboard; but, in its ordinary sense, it means, throwing overboard for the preservation of the ship and cargo, and most jurists treat of it in this sense under the head of GENERAL AVERAGE" (per Abbott, C. J.,

Digitized by Google

Butler v. *Wildman*, 3 B. & Ald. 400). *V.* Maude & P. 487: Termes de la Ley, *Jetsam*: on "Jetsam," *V.* FLOTSAM.

Some say that "Jettison" and "Jetsam" are the same. No doubt, the leading idea of each is common to both, viz., Goods cast into the SEA from a Ship in Distress with the view to save her; but goods Jettisoned are, frequently, irrecoverably lost and give rise to a claim of AVERAGE; whilst Jetsam are goods found, in and to which legal rights arise. Jettisoned goods may become Jetsam, but only so when found.

Vh, Abbott, 625: Arn. 1034: Carver, 424: Lowndes on General Average.

An Exception of "Jettison," in a Bill of Lading, does not cover goods carried on deck contrary to the contract (*Royal Ex. Co* v. *Dixon*, 12 App. Ca. 11) nor goods Jettisoned in consequence of the ship putting to sea without sufficient ballast (*Leuw* v. *Dudgeon*, 3 Mar. Ca. 3; 37 L. J. C. P. 5; L. R. 3 C. P. 17; 17 L. T. 145; 16 W. R. 80).

JEWELS. — On the context, and having regard to the circumstances of the testatrix, the word "Jewels" was held by Lyndhurst, L. C., as specially comprising diamonds, — *e.g.* diamond necklace, cross, and rings, — so that a direction to sell "Jewels" took effect on such diamonds; and that accordingly (and in competition with the word "Jewels"), diamond rings did not pass under the words "the remainder of my rings" (the testatrix having specifically given one diamond ring), nor did a valuable diamond necklace and cross pass under "necklaces of every description" (*A-G.* v. *Harley,* 5 Russ. 173; 7 L. J. O. S. Ch. 31. *Note*: It is suggested that it will be seen, on reference to the reports, that the statement of the judgment in this case is erroneously given in Wms. Exs. 1065, in that it is there stated that the L. C. held that the diamond necklace, &c, "were *not* to be sold"; the "not" here should, it is suggested, be placed between the words "did" and "pass").

A bag of Coins held not to pass under a bequest of "Jewellery" (*Sudbury* v. *Brown,* 4 W. R. 736). Masonic Orders and filigree ornaments passed as "Jewels" (*Brooke* v. *Warwick,* 12 Jur. 912; 2 D. G. & S. 425).

JOB. — "Job *Carriage,*" quà Dublin Carriage Act, 1853, 16 & 17 V. c. 112, includes, "every hearse and mourning coach, and also every carriage which shall not ply publicly for hire or stand for the soliciting of passengers, but shall be let out to hire for the purpose of conveying, from or to any place within the limits of this Act to or from any place within or beyond the said limits, any person or persons engaging the same by the hour, day, or otherwise, by way of job" (s. 80). *Cp,* HACKNEY CARRIAGE.

"Job *Horse,*" quà the same Act and by the same section, includes, "every horse let out for hire, singly or otherwise in the way of job, to

Digitized by Google

draw any carriage for the carrying of persons from or to any place within the limits of this Act to or from any place within or beyond the said limits, such carriage not being a hackney, job, post, or stage, carriage."

JOBBER.—Is one "who sells, to any one who comes to him, at a fraction above the market price; and buys, of any one, at a fraction below the market price" (per Blackburn, J., *Mollett* v. *Robinson*, 41 L. J. C. P. 78; L. R. 7 C. P. 104, 105). *Cp*, BROKER.

JOCKEY.—A "Regular Jockey, or Paid Rider," is one who follows the business of a Jockey for a livelihood; and does not include one who is in the habit of riding at races without payment, except that he sometimes receives his expenses (*Walmsley* v. *Matthews*, 3 M. & G. 133). Probably, if the word were "Jockey," without more, it would have the same meaning.

JOHN BULL.—*V.* GEOGRAPHICAL.

JOINDER.—"Joinder of Issue," is where the two parties to a litigation (whether civil or criminal) "have agreed to rest the fate of the cause upon the truth of the fact in question" (3 Bl. Com. 315).

As to such Joinder in Civil actions; *V.* R. 18, Ord. 19; R. 5, Ord. 23; R. 13, Ord. 27, R. S. C.:

In Criminal prosecutions; *V.* 4 Bl. Com. 339–341.

V. ISSUE OF FACT.

JOINT.—"There is in the cases of Joint *Contract* and Joint *Debt*,—as distinguished from the cases of Joint and Several Contract and Joint and Several Debt,—only one CAUSE OF ACTION" (per Bowen, L. J., *Re Hodgson*, 55 L. J. Ch. 241; 31 Ch. D. 177, considering *Kendall* v. *Hamilton*, 48 L. J. Q. B. 705; 4 App. Ca. 504, and *King* v. *Hoare*, 14 L. J. Ex. 29; 13 M. & W. 494). *Note*, As to the consequence of this principle in discharging a joint obligor if a Jdgmt be obtained against, or a Release be given to, his fellow obligor, *V.* the cases cited: *McLeod* v. *Power*, 1898, 2 Ch. 295; 67 L. J. Ch. 551, and cases there cited: Rosc. N. P. 557: *Vf*, JOINTLY AND SEVERALLY.

A Joint *Covenant* is one by which each covenantor "becomes answerable for himself, and is, in effect, a surety also for the due performance of the covenant by the other" (Platt Cov. 116, 117). *Cp*, SEVERAL COVENANT.

Where a husband is liable for the ante-nuptial debts of his wife, and he and she are sued jointly, the judgment "shall be a *joint* judgment against the husband personally, and against the wife as to her separate property" (s. 15, M. W. P. Act, 1882); but "what the word 'joint'

Digitized by Google

means in this sentence is not clear" (per Lindley, L. J., delivering the jdgmt of the C. A., *Beck* v. *Pierce*, 58 L. J. Q. B. 518). From the decision in that case, "joint" would seem to be without meaning in the sentence cited.

JOINT AND EQUAL.—A direction that the subject of a gift shall "be distributed in joint and equal Proportions" creates a Tenancy in Common (2 Jarm. 257, citing *Ettricke* v. *Ettricke*, Amb. 656). *Sv*, Jointly and Equally.

JOINT AND SEVERAL.—*V.* Jointly and Severally: Joint.

JOINT APPOINTMENT.—A Joint Appointment of Property is one made under a Power by two or more persons, the commonest example being one made by a husband and wife under a marriage settlement. *Vh*, Farwell, 453 *et seq.*

Quà Poor Law Officers' Superannuation Act, 1896, 59 & 60 V. c. 50, "'Joint Appointment,' includes, any Office the tenure whereof is determined by the death, removal, resignation, or incapacity, of the holder of another Office under the same Authority" (s. 19).

JOINT AUTHORSHIP.—*V.* Author.

JOINT CAPTORS.—For the purposes of Booty, "Joint Captors" are those who, not being the actual captors, have assisted, or are taken to have assisted, the actual captors by conveying either encouragement to them, or intimidation to the enemy (*Banda and Kirwee Booty*, cited Co-Operation). *Cp*, Association.

JOINT HEIRESSES.—*V.* Parceners.

"Equally as Joint Heiresses"; *V.* Equally.

JOINT LIVES.—A gift to two or more for "their lives," or their "joint lives," and then over, will generally mean "for their joint lives and the lives or life of the survivors or survivor of them," and then over; and this construction is not altered by the fact that the first gift is to a husband and wife for their lives (*Townley* v. *Bolton*, 2 L. J. Ch. 25; 1 My. & K. 148: *Smith* v. *Oakes*, 14 Sim. 122: *Moffat* v. *Burnie*, 23 L. J. Ch. 591; 18 Bea. 211; 2 W. R. 83; 22 L. T. O. S. 218: *Alder* v. *Lawless*, 32 Bea. 72: *Sv*, *Grant* v. *Winbolt*, 23 L. J. Ch. 282. *Vf*, 2 Jarm. 542: Elph. 283).

"During their joint lives," will not, generally, be read as "During their intended coverture" (*Hamilton* v. *Hamilton*, cited During).

JOINT STOCK.—*Semble*, Railway Shares were not "Joint Stock" within the Stock Jobbing Act, 7 G. 2, c. 8 (*Hewitt* v. *Price*, 4 M. & G. 355).

V. Stock.

Digitized by Google

JOINT STOCK COMPANY.—The first part of the def in s. 2, 7 & 8 V. c. 110, may, probably, be stated as defining the *general* meaning of "Joint Stock Company" thus,—"Every partnership whereof the Capital is divided, or agreed to be divided, into Shares and so as to be transferable without the express consent of all the co-partners."

"It is not of the essence of a Joint Stock Co that it should provide for a Dividend or Bonus among its members," for, among other reasons, the Comp Act, 1862, recognizes the existence of Companies formed for the acquisition of GAIN, as distinguished from others that are not" (per North, J., *Re Russell Institution*, 1898, 2 Ch. 72; 67 L. J. Ch. 411; 78 L. T. 588). Therefore, though an unregistered Literary or Scientific Socy which does not permit of any dividend, division, or bonus, among its members, is not such an UNREGISTERED COMPANY as can be wound-up under s. 199, Comp Act, 1862 (*Re Bristol Athenæum*, 59 L. J. Ch. 116; 43 Ch. D. 236); yet it is "in the NATURE of a Joint Stock Co," and, as such on its dissolution, its surplus assets are distributable among its members under the proviso to s. 30, 17 & 18 V. c. 112 (*Re Russell Institution*, sup: *Re Jones*, 1898, 2 Ch. 83; 67 L. J. Ch. 504; 78 L. T. 639; 46 W. R. 577). *V.* SCIENCE.

Quà Comp Act, 1862, and "so far as the same relates to the description of Companies empowered to register as Companies Limited by Shares,—a 'Joint Stock Company' shall be deemed to be, a Co having a permanent paid-up or nominal Capital of fixed amount, divided into Shares also of fixed amount, or held and transferable as Stock, or divided and held partly in one way and partly in the other; and formed on the principle of having for its Members the holders of Shares in such Capital or the holders of such Stock, and no other persons: and such Co, when registered with limited liability under this Act, shall be deemed to be a Co Limited by Shares" (s. 181).

Quà Irish Bankrupt and Insolvent Act, 1857, 20 & 21 V. c. 60; *V.* s. 4.

JOINT TENANCY.—"A limitation, either at Common Law or in a Conveyance to Uses [or in a Will], of estates of the same nature to several, either nominatim or as a class, without more, makes them joint tenants. The estate must begin at the same time if the conveyance is at Common Law (Termes de la Ley, *Joyntenants*), but this is immaterial if it be under the Statute of Uses" (Elph. 279, *whv*: *Vh*, 2 Jarm. ch. 32). *Cp*, TENANCY IN COMMON.

This is not a rule of Tenure, or of Real Property Law exclusively. It also applies to Personalty, *e.g.* to Terms of Years, Policies, and Patents: thus, a grant of a Patent to "A. and B., their exors admors and assigns," creates a joint tenancy in A. and B., with all its incidents (*National Socy for Distribution of Electricity* v. *Gibbs*, 1899, 2 Ch. 289; 68 L. J. Ch. 503; 80 L. T. 524; 47 W. R. 518; revd, quà the Covenants

Digitized by Google

to be given on the sale of such a Patent, 1900, 2 Ch. 280; 69 L. J. Ch. 457; 82 L. T. 443; 48 W. R. 499).

The chief practical incident which distinguishes a Joint Tenancy from a TENANCY IN COMMON is the *Jus accrescendi* of Joint Tenants, *i.e.* the right of the survivors or survivor to the whole property. The Court leans strongly against that right, and frequently adjudicates "a Tenancy in Common by construction on the intent of the parties" (per Hardwicke, C., *Rigden* v. *Vallier*, 2 Ves. sen. 258; 3 Atk. 731: *Harrison* v. *Barton*, 30 L. J. Ch. 213; 1 J. & H. 287). *V.* AMONG: BETWEEN: DIVIDE: EACH: EQUALLY: RESPECTIVE: SHARE AND SHARE ALIKE: per contra, ALL AND EVERY: BENEFIT: JOINTLY AND EQUALLY: JOINTLY AND SEVERALLY.

As to what words create Joint Tenancy as distinguished from Tenancy in Common, *Vf*, 6 Cru. Dig. 329–343: Elph. ch. 19: Jarm. ch. 32: Theobald, 358–364: Hawk. ch. 10.

As to Joint Tenancy and Tenancy in Common generally, *V.* 2 Cru. Dig. Titles 18, 20: Goodeve, ch. 9: Wms. R. P. Part 1, ch. 6: 7 Encyc. 102–104, 12 Ib. 112–117: PER MY ET PER TOUT: PARTNERSHIP.

V. SEVERANCE.

Under a Conveyance of realty, before 1st Jan 1883, to Husband and Wife as joint tenants "they hold the estate in Entireties, the Husband being entitled to receive the rents during coverture," and if the marriage is dissolved, they hold as ordinary joint tenants; under a conveyance, since 31st Dec 1882, they are ordinary joint tenants, the Wife holding her interest as her SEPARATE PROPERTY (per Romer, J., *Thornley* v. *Thornley*, 1893, 2 Ch. 229; 62 L. J. Ch. 370).

"Where there is a Devise or Bequest to a Husband and Wife and one or more other persons, *primâ facie* the husband and wife take as one person, and take *only one share* (Litt. s. 291: Co. Litt. 187: *Re Wylde*, 2 D. G. M. & G. 724; 22 L. J. Ch. 87). Thus, if the gift be to husband and wife and A., the husband and wife take one moiety, and A. the other moiety. The rule applies whether the gift be in Joint Tenancy or Tenancy in Common, and whether of real or personal estate (*Re Wylde*)." Hawk. 115. *Semble*, the M. W. P. Act, 1882, has not altered this rule (per Kay, J., *Re Jupp*, 57 L. J. Ch. 774; 39 Ch. D. 148; dissenting from Chitty, J., *Re March*, 52 L. J. Ch. 680; 54 Ib. 143; 24 Ch. D. 222; 27 Ib. 166). But the rule easily yields to a context (*Warrington* v. *Warrington*, 2 Hare, 54: *Re Dixon*, 42 Ch. D. 306).

JOINT TENANTS.—*V.* JOINT TENANCY: PARCENERS: RECEIVING.

"The expression 'as Joint Tenants' is, no doubt, a technical expression" (per Stuart, V. C., *Booth* v. *Alington*, 27 L. J. Ch. 117; 5 W. R. 811); but the decision in that case shows that a gift to two or more "as joint tenants" may be controlled by a context so that, notwithstanding that expression, a tenancy in common may be created, *e.g.* as in *thc*, where

Digitized by Google

the fund is directed to be "divided equally between" the beneficiaries; *V.* DIVIDE.

Quà Rep People Act, 1884, "Joint Tenants," or "Tenants in Common," includes, "Pro Indiviso Proprietors" (s. 11).

JOINTLY. — *V.* SEIZED JOINTLY.

A gift to two or more "jointly *and between* them" is a tenancy in common (*Perkins* v. *Baynton*, 1 Bro. C. C. 118; *Richardson* v. *Richardson*, 14 Sim. 526). *Vf,* CONJOINTLY.

Where two had been appointed "to execute jointly the Office of Clerk" to a County Court, s. 25, Co. Co. Act, 1846, and one died, the survivor continued in office but could not act till the appointment of a successor to the deceased person (*R.* v. *Wake*, 8 E. & B. 384; 27 L. J. Q. B. 11); if the Office were judicial, the death of one of two or more appointed to act "jointly" would vacate the Office (*Curle's Case*, 11 Rep. 2 b).

JOINTLY AND EQUALLY. — A gift to two or more "jointly and equally," creates a JOINT TENANCY (*Cookson* v. *Bingham*, 17 Bea. 262; 3 D. G. M. & G. 668; 23 L. J. Ch. 127). *Sv,* JOINT AND EQUAL. *V.* EQUALLY.

JOINTLY AND SEVERALLY. — A Joint and Several Covenant, is a combination of a JOINT Covenant and a SEVERAL COVENANT (Platt Cov. 117).

"If a covenant be so constructed as to be ambiguous, *i.e.* as to whether it be Joint or Several, then it will be Joint if the interest be joint and it will be Several if the interest be several. On the other hand, if it be in its terms unmistakeably Joint then, although the interest be several, all the parties must be joined in the action. So, if the covenant be clearly Several the action must be several, although the interest be joint" (per Pollock, C. B., *Keightley* v. *Watson*, 3 Ex. 721; 18 L. J. Ex. 339). *V.* SEPARATE COVENANT.

"If a man grants *proximam advocationem*, or makes a Lease for years of land to two 'jointly and severally,' these words 'severally' are void, and they are joint tenants" (*Slingsby's Case*, 5 Rep. 19 a: *Vth, White* v. *Tyndall*, 13 App. Ca. 275). *V.* SEVERALLY.

Where a Note signed by three persons was in the following Words, — "For value received, We the subscribers *jointly and severally* promise to pay Messrs. B. or order, for the Boston Glass Manufactory," it was held, in America, that the words "jointly and severally" showed that it was a personal undertaking (*Bradlee* v. *Boston Glass Manufactory*, 16 Pickering, 347); in citing which case, Bramwell, B., said, — "I infer that, but for those words, it would have been held that the Note bound the Company" (*Aggs* v. *Nicholson*, 25 L. J. Ex. 349; 1 H. & N. 167, 168). But the learned Baron seems to have forgotten that a few years pre-

Digitized by Google

viously, and in his own Court of Ex., the point had been definitely decided in England in the same way (*Healey* v. *Story*, 3 Ex. 3; 18 L. J. Ex. 8), in *whlc* Alderson, B., said, "The plain, grammatical, meaning of the words is 'We jointly promise, and we severally promise'; that is to say, We *personally* promise."

V., as to a "joint and several" Note of Hand, Byles, 8: "joint and several" Contracts, Add. C. 300–302: Leake, 376–381: "joint and several" Partnership Debts and Property, per Cairns, C., *Kendall* v. *Hamilton*, 4 App. Ca. 504; 48 L. J. C. P. 705; 41 L. T. 418: *Cambefort* v. *Chapman*, 19 Q. B. D. 229: *Pilley* v. *Robinson*, 20 Ib. 155: *Re Hodgson*, 55 L. J. Ch. 241; 31 Ch. D. 177: *Badeley* v. *Consolidated Bank*, 34 Ch. D. 536: Watson Eq. 822, 823: Lindley P. 202, 718, 331.

JOINTURE.—"Before the Statute of Uses, the Use of Equitable Estate was subject neither to Curtesy nor to Dower. Hence settlements upon marriage became necessary, of which the most simple form was to make the husband and wife JOINT TENANTS, that the whole might go to the survivor. This seems to be the origin of the word 'Jointure' as applicable to the provision made for a woman upon marriage *in the event of her husband's death*; though it has been more usual, as being more secure, to make this provision by way of Remainder expectant upon a Life Estate in the husband" (Burton's Compendium, 7 ed., 124).

Primâ facie, "'Jointure' is a provision for the wife *after* the death of the husband" (per Stirling, J., *Re De Hoghton*, 1896, 2 Ch. 385; 65 L. J. Ch. 667, citing Burton's Compendium, sup: Co. Litt. 36 b: 2 Bl. Com. 137: 2 Bacon Abr. 744: Sug. Power, 484. *Vf*, Termes de la Ley, *Joynture*: 1 Cru. Dig. 187, 4 Ib. 149); so that a Power of Jointuring does not give the donee power to create a Rent-Charge payable to his wife during his own life (*Re De Hoghton*, sup), unless the context enlarges the meaning of the phrase (*Jamieson* v. *Trevelyan*, 23 L. J. Ex. 281; 10 Ex. 269).

V. Re De Hoghton, sup, for Form of Power of Jointuring.

Jointure was an "estate made to the wife in satisfaction of her DOWER" (Co. Litt. 36 b). A woman shall not have both a Jointure and Dower (s. 6, 27 H. 8, c. 10); and any provision for a wife (even if out of Personal Estate) which imports a "Jointure" bars the Dower, though not using the word or not expressed to be in bar of dower (*Walker* v. *Walker*, 1 Ves. sen. 54, 55: *Vizod* v. *Londen*, Kelynge, W. 17, *vthc*, 1899, 1 I. R. 438). Thus, an annuity for a wife's "*Livelihood and Maintenance*" if she should survive her husband, was held to bar her dower (*Vizod* v. *Londen*, sup); *secus*, where it was only "for the purpose of making a *Provision*" for her (*Lemon* v. *Mark*, 1899, 1 I. R. 416).

Vh, Vaizey, 974–1003: 1 Cru. Dig. Title 7.

Statute of Jointures, 11 H. 7, c. 20; repealed by Fines and Recoveries Act, 1833, s. 17.

Digitized by Google

JONCARIA. — *V.* JUNCARIA.

JOURNEYMAN. — " 'Journey-man' cometh of the French word *Journee*, that is a day, or days-work, so that properly it is one that wrought with another by the day, though now, by 5 Eliz. c. 4, it be extended to those likewise that covenant to work with another in his Trade or Occupation by the year" (Cowel). Yet, notwithstanding this extension of meaning, Ld Mansfield (in 1774), said, "A Journeyman is a servant *by the day*; and it makes no difference whether the work is done by the day or by the piece" (*Hart* v. *Aldridge*, 1 Cowp. 55, 56). *Vh*, *Lowther* v. *Radnor*, cited LABOURER. *Cp*, PERSONAL LABOUR.

JUDAS. — To write of one that he is a "Judas" is Libel, and needs no innuendo (per Coleridge, J., *Hoare* v. *Silverlock*, 12 Q. B. 633).

JUDGE. — "The words 'Judges' and 'JUSTICES' cannot mean any but the Judges and Justices of the Courts at Westminster" (per Littledale, J., *Wardroper* v. *Richardson*, 1 A. & E. 75). "The words 'Judge or Judges' certainly mean, a Judge or Judges of the Superior Courts" (per Parke, B., *Elsley* v. *Kirby*, 12 L. J. Ex. 97; 9 M. & W. 536: *Vf*, *Kissam* v. *Link*, 1896, 1 Q. B. 574; 65 L. J. Q. B. 433; 74 L. T. 368; 44 W. R. 452: *Re Noyce*, 1892, 1 Q. B. 642; 61 L. J. Q. B. 628). But prior to the Jud. Acts "Judge of one of the Superior Courts at Westminster," generally, meant a Common Law Judge, and did not include a Chancery Judge (*Miles* v. *Presland*, 4 My. & C. 431).

Notwithstanding R. 12, Ord. 54, and R. 6, Ord. 35, R. S. C., "Judge," in s. 49, Jud. Act, 1873, means only a Judge of the High Court (*Foster* v. *Edwards*, 48 L. J. Q. B. 767: *Svth*, *Bryant* v. *Reading*, 17 Q. B. D. 131). *Vf*, as to R. 12, Ord. 54, *Re Donisthorpe*, 1897, 1 Q. B. 671; 66 L. J. Q. B. 399; 76 L. T. 371; 45 W. R. 386.

"Judge" in R. 11, Ord. 27, "probably, refers only to a Judge of the Chancery Division" (per Kennedy, J., *Greenwood* v. *Briggs*, 41 S. J. 409).

"Unless *the Judge* certify," s. 5, County Court Act, 1867, meant, "the Judge who tried the case," *e.g.* a County Court Judge to whom the case was remitted (*Taylor* v. *Cass*, L. R. 4 C. P. 614), or an Undersheriff on a Writ of Inquiry (*Craven* v. *Smith*, L. R. 4 Ex. 146). And now *V.* s. 116, Co. Co. Act, 1888, on *whv*, *Harris* v. *Judge*, 1892, 2 Q. B. 565; 61 L. J. Q. B. 577; 67 L. T. 19; 41 W. R. 9.

The power to appoint "Judges" given to the Governor of New Zealand by the New Zealand Supreme Court Act, 1882, Part 1, is restricted to Judges who have at the time an ascertained salary payable by law (*A-G. New Zealand* v. *Edwards*, 1892, A. C. 387; 61 L. J. P. C. 64; 66 L. T. 833).

V. COURT: COURT OR JUDGE: INFERIOR JUDGE: PUISNE.

"Judge" in a modern Act is generally defined by the Act's interp clause according to the subject-matter of the Act, *e.g.* — Inferior Courts

Digitized by Google

Act, 1844, 7 & 8 V. c. 19, s. 9; 7 & 8 V. c. 96, s. 73; 8 & 9 V. c. 127, s. 24; 15 & 16 V. c. 76, s. 227; Naval Prize Act, 1864, 27 & 28 V. c. 25, s. 52; Crown Suits, &c, Act, 1865, 28 & 29 V. c. 104, s. 5; Vice Admiralty Courts Act, Amendment Act, 1867, 30 & 31 V. c. 45, s. 3; 35 & 36 V. c. 51, s. 4; Jurisdiction in Rating Act, 1877, 40 & 41 V. c. 11, s. 3 (a comprehensive def); 42 & 43 V. c. 11, s. 10; 49 & 50 V. c. 42, s. 2 (5); County Court Act, 1888, s. 186; Arb Act, 1889, 52 & 53 V. c. 49, s. 27. — *Ir.* 16 & 17 V. c. 113, s. 4; 21 & 22 V. c. 72, s. 1; 28 & 29 V. c. 88, s. 2; 30 & 31 V. c. 114, s. 2; Juries Act (Ir), 1871, 34 & 35 V. c. 65, s. 3; Debtors Act (Ir), 1872, 35 & 36 V. c. 57, s. 10; Bankry (Ir) Act, 1872, s. 4; Mer Shipping Act, 1894, s. 610 (9). — *Scot.* Summary Procedure Act, 1864, 27 & 28 V. c. 53, s. 2.

Vf, County Court.

"Judge of Assize"; Stat Def., *Ir.* 8 & 9 V. c. 108, s. 25; 13 & 14 V. c. 88, s. 1; 33 & 34 V. c. 9, s. 3; 54 & 55 V. c. 48, s. 42; 61 & 62 V. c. 37, s. 109 (1).

"*Land* Judge"; Stat. Def., *Ir.* 54 & 55 V. c. 48, s. 42, c. 66, s. 95.

"*Presiding* Judge," s. 4, Evidence Further Amendment Act, 1869, 32 & 33 V. c. 68, includes, "any person or persons having By Law authority to administer an oath for the taking of evidence" (s. 1, 33 & 34 V. c. 49).

"*Receiver* Judge"; Stat. Def., *Ir.* 59 & 60 V. c. 47, s. 48.

"Judge of one of the Superior Courts"; Stat. Def., 39 & 40 V. c. 48, s. 2.

"Judges of the *Supreme Court*"; Stat. Def., *Ir.* 45 & 46 V. c. 25, s. 35.

To JUDGE. — "To judge" a matter, *e.g.* s. 29, 21 & 22 V. c. 90, means, generally, to come to a conclusion on it (*Allbutt* v. *Gen. Med. Council,* and *Leeson* v. *Gen. Med. Council,* cited Infamous Conduct).

JUDGMENT. — A "Judgment" is the sentence of the law pronounced by the Court upon the matter contained in the Record (*Vh,* Co. Litt. 39 a, 168 a); and the decision must be one obtained in an Action (*Ex p. Chinery,* cited Final Judgment: *Onslow* v. *Inl. Rev.*, cited Order). *Vf,* Decree: Balance Order: 7 Encyc. 114–126; 9 Ib. 310, 311.

"Judgment," in s. 40, 3 & 4 W. 4, c. 27, and, in the section replacing it, s. 8, Real Property Limitation Act, 1874, is not confined to jdgmts charging land but has a general application, and includes ordinary personal jdgmts (*Watson* v. *Birch,* 15 Sim. 523; 16 L. J. Ch. 188: *Henry* v. *Smith,* 2 Dr. & War. 381: *Ex p. Tynte,* 15 Ch. D. 125; 28 W. R. 767: *Hebblethwaite* v. *Peever,* 1892, 1 Q. B. 124; 40 W. R. 318: *Jay* v. *Johnstone,* 1893, 1 Q. B. 189; 62 L. J. Q. B. 128; 68 L. T. 129; 41 W. R. 161).

"Judgment," ss. 13 and 18, Judgments Act, 1838, 1 & 2 V. c. 110; *V. Pratt* v. *Bull,* 4 Giff. 117; 32 L. J. Ch. 144; 11 W. R. 295; 7 L. T. 702.

Digitized by Google

"Judgment or ORDER," s. 19, Jud. Act, 1873; a Judge's Certificate, —*e.g.* for Special Jury, or allowing Counsel, or under 3 & 4 V. c. 24, or under s. 31, Patents, &c Act, 1883,—is neither a "Judgment" nor an "Order" (*Haslam Co* v. *Hall*, 57 L. J. Q. B. 352; 20 Q. B. D. 491; 59 L. T. 102; 36 W. R. 406); so, of an Opinion of a Divisional Court on a Case stated under s. 19, Arb Act, 1889 (*Re Knight and Tabernacle Bg Socy*, 1892, 2 Q. B. 613; 62 L. J. Q. B. 33; 67 L. T. 403; 41 W. R. 35; 57 J. P. 229). *Vf*, Ann. Pr.

"Judgment," as used in Jud. Act, 1873, includes DECREE (s. 100), and as used in s. 47, and especially when read in connection with s. 19, Jud. Act, 1875, does not merely mean the final judgment in criminal cases, but is there used in its larger sense, as including *any decision* in such cases; such as taxation of costs, refusal to quash a magisterial conviction for trespass in pursuit of game, or refusing to admit to bail, or to grant a certiorari (*R.* v. *Steel*, 46 L. J. M. C. 1; 2 Q. B. D. 37; 25 W. R. 34; 35 L. T. 534: *R.* v. *Fletcher*, 46 L. J. M. C. 4; 2 Q. B. D. 43; 35 L. T. 538: *R.* v. *Foote*, 52 L. J. Q. B. 528; 10 Q. B. D. 378: *R.* v. *Rudge*, 16 Q. B. D. 459; 55 L. J. M. C. 112; 34 W. R. 207; 2 Times Rep. 243). *V.* CRIMINAL CAUSE. *Cp*, DECISION.

A Consent Order, made in Chambers, dismissing an action against a Public Authority, is a "Judgment" within s. 1 (*b*), 56 & 57 V. c. 61 (*Shaw* v. *Hertfordshire Co. Co.*, 1899, 2 Q. B. 282; 68 L. J. Q. B. 857; 81 L. T. 208). *V. Bostock* v. *Ramsey*, cited PURSUANCE.

A jdgmt against a *Married Woman*, though in the form laid down in *Scott* v. *Morley* (20 Q. B. D. 120; 57 L. J. Q. B. 43; 36 W. R. 67; 57 L. T. 919), is none the less a "Judgment" within R. 1, Ord. 45, R. S. C. (*Holtby* v. *Hodgson*, 59 L. J. Q. B. 46; 24 Q. B. D. 103; 62 L. T. 145; 38 W. R. 68; *vthlc*, *Softlaw* v. *Welch*, 1899, 2 Q. B. 419; 68 L. J. Q. B. 940; 81 L. T. 64). *Note*: As to the effect of M. W. P. Act, 1893, on *Scott* v. *Morley*, and as to the form of jdgmt now to be signed against a Married Woman, *V. Barnett* v. *Howard*, 1900, 2 Q. B. 784; 69 L. J. Q. B. 955; 83 L. T. 301: where she is a Defaulting Trustee, *V. Re Turnbull*, 1900, 1 Ch. 180; 69 L. J. Ch. 187. *V.* SEPARATE PROPERTY.

A Conviction is a "Judgment" within s. 7, 12 & 13 V. c. 45 (*R.* v. *Biggins*, 26 J. P. 437: *Vf*, CONVICTED). An Acquittal by Justices is not a jdgmt (*R.* v. *London Jus.*, cited DETERMINATION).

An Assessment under s. 68, Lands C. C. Act, 1845, is not equivalent to a Judgment, so as to carry interest (per Collier, Co. Co. Judge, *Evans* v. *Lond. & N. W. Ry*, 31 S. J. 333: *V.* SUM CERTAIN).

A Foreclosure Judgment is not included in the word "Judgment" as used in s. 18, Middlesex Registry Act, 1708, 7 Anne, c. 20, and would not be ordered to be registered thereunder (*Burrows* v. *Holley*, 56 L. J. Ch. 605; 35 Ch. D. 123). *Note*: registration of jdgmts under that section was abolished by s. 6, 54 & 55 V. c. 64.

Digitized by Google

Where a Rule for a Prohibition is made absolute without pleadings, there is no "Judgment" giving right to costs under 1 W. 4, c. 21 (*Ex p. Everton*, 40 L. J. C. P. 201; 19 W. R. 927; L. R. 6 C. P. 245; following *R.* v. *Kealing*, 1 Dowl. 440; *Svth, Wallace* v. *Allan*, 23 W. R. 703).

"Judgment *with Costs*" means only such costs as have been incurred through the adversary's act (per Esher, M. R., *Stumm* v. *Dixon*, 22 Q. B. D. 529; 60 L. T. 560).

Stat. Def. — Law of Property Amendment Act, 1859, 22 & 23 V. c. 35, s. 25; Law of Property Amendment Act, 1860, 23 & 24 V. c. 38, s. 5; Judgments Act, 1864, 27 & 28 V. c. 112, s. 2; 30 & 31 V. c. 127, s. 3; 39 & 40 V. c. 17, s. 2; 45 & 46 V. c. 31, s. 2; 51 & 52 V. c. 51, s. 4; 53 & 54 V. c. 27, s. 15; 55 & 56 V. c. 32, s. 12. — *Ir.* 40 & 41 V. c. 57, s. 3; 50 & 51 V. c. 33, s. 34.

V. Order: Final Judgment: Liberty to sign: Opinion.

JUDGMENT CREDITOR. — A Rule with Costs, did not make the person obtaining it a jdgmt Cr quà the Costs, within s. 61, Com. L. Pro. Act, 1854 (*Re Frankland*, L. R. 8 Q. B. 18; 42 L. J. Q. B. 13), so, of the Costs of an Interpleader Issue (*Best* v. *Pembroke*, L. R. 8 Q. B. 363; 42 L. J. Q. B. 212). *Note*: this section repealed by 46 & 47 V. c. 49, and as to present Garnishee proceedings, *V.* Ord. 45, R. S. C.

A petitioner in a Divorce Suit is not a "Judgment Creditor," within s. 103, Bankry Act, 1883, quà damages recovered against the Co-Respondent (*Re Fryer*, 55 L. J. Q. B. 478; 17 Q. B. D. 718; 55 L. T. 276; 34 W. R. 766).

V. Creditor.

JUDGMENT DEBT. — "Judgment Debt," includes the money payable under a Decree for Specific Performance when such Decree contains an Order to pay the purchase money with interest and costs (*Beaufort* v. *Phillips*, 1 D. G. & S. 321).

"Civil Debt" is used as a Scotch equivalent for "Judgment Debt" (s. 6 (3), 55 & 56 V. c. 64).

V. Debt: Enforce.

JUDGMENT MORTGAGE. — Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "'Judgment Mortgage,' means, an Affidavit of Ownership registered under" 13 & 14 V. c. 29, and any Act amending the same (s. 95).

JUDICATURE. — "The Judicature Acts, 1873 to 1894," "The Judicature (Ireland) Acts, 1877 to 1888"; *V.* Sch 2, Short Titles Act, 1896.

JUDICIAL. — "The word 'Judicial' has two meanings: — it may refer to the discharge of duties exerciseable by a Judge or Justices in

Digitized by Google

Court; or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind, *i.e.* a mind to determine what is fair and just in respect of the matters under consideration. Justices, for instance, act judicially when administering the law in Court, and they also act judicially when determining in their private room what is right and fair in some administrative matter brought before them, *e.g.* the levying of a Rate" (per Lopes, L. J., *Royal Aquarium* v. *Parkinson*, cited COURT). *V.* JUDICIAL PERSUASION: JUDICIAL PROCEEDING.

JUDICIAL APPOINTMENT. — Quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, "'Judicial appointment' includes, a Chairmanship of Quarter Sessions, and a Police or Stipendiary Magistrateship" (s. 12). *Cp,* JUDICIAL OFFICE.

JUDICIAL DOCUMENT. — "Judicial Document authorizing the arrest of a person accused of crime," interpreting "WARRANT," s. 26. Extradition Act, 1870, 33 & 34 V. c. 52; *V. R.* v. *Ganz,* 51 L. J. Q. B. 419; 9 Q. B. D. 93.

JUDICIAL FACTOR. — Quà Trusts (Scot) Acts, 1861 to 1884, "'Judicial Factor,' shall mean, any person judicially appointed FACTOR upon a Trust Estate or upon the Estate of a person Incapable of managing his own affairs, factor loco tutoris, factor loco absentis, and curator bonis" (s. 2, 47 & 48 V. c. 63). *Vf,* 20 & 21 V. c. 71, s. 3; 31 & 32 V. c. 101, s. 3; 43 & 44 V. c. 4, s. 3.

JUDICIAL OFFICE. — Quà Corrupt and Illegal Practices Prevention Act, 1883, "'Judicial Office,' includes, the office of Justice of the Peace, and Revising Barrister" (s. 64). *Cp,* JUDICIAL APPOINTMENT. *V.* HIGH JUDICIAL OFFICE.

JUDICIAL PERSUASION. — "In the case of *Goblet* v. *Beechey* (3 Sim. 24), the inference that Nollekens meant 'models' by the word 'mod' was irresistible to the mind of the V. C. His mind was *judicially persuaded* that such was the sense in which the testator used the word. The mind of the L. C. was proof against the same impression. That case is a fair illustration of the legal meaning of an 'Irresistible Inference' and a 'Judicial Persuasion'" (Wigram on Extrinsic Evidence, 3 ed., 99, 100). *Cp,* PRESUMPTION: Necessary Implication, sub NECESSARY.

JUDICIAL POWERS. — Stat. Def., Vice Admiralty Courts Act Amendment Act, 1867, 30 & 31 V. c. 45, s. 3.

JUDICIAL PROCEEDING. — Statements made extra-judicially to a Magistrate with a view to asking his advice are not a JUDICIAL Proceeding (*M'Gregor* v. *Thwaites,* 3 B. & C. 24). *Vf,* PERJURY.

Digitized by Google

Proceedings by Petition for the reception of an alleged lunatic, Lunacy Act, 1890, are judicial, and, as such, statements in the Particulars accompanying the Petition are absolutely privileged (*Hodson* v. *Pare*, 1899, 1 Q. B. 455; 68 L. J. Q. B. 309; 80 L. T. 13; 47 W. R. 241). *Vf*, COURT.

An *ex parte* Order of a Foreign Court is a "Judicial Proceeding" within s. 7, 14 & 15 V. c. 99 (*Leishman* v. *Cochrane*, 1 Moore P. C. N. S. 49).

V. PROCEEDING.

JUDICIAL RENT.—Quà Land Law (Ir) Act, 1896, 59 & 60 V. c. 47, "'Judicial Rent,' means, a FAIR RENT, whether fixed by the Court or by Agreement or Arbitration or by Demand of the landlord accepted by the tenant; and any reference to an application to fix a fair rent shall include a reference to an agreement to fix a fair rent or to refer to arbitration the fixing of a fair rent or to the demand of an increased rent by the landlord" (s. 48).

JUDICIAL SEPARATION.—A sentence of Judicial Separation has the same effect as a DIVORCE *à mensâ et thoro* had under the law prior to 1st Jan 1858, and such other legal effect as is provided by statute (s. 16, 20 & 21 V. c. 85: *Vf*, ss. 25, 26, ib.).

JUDICIAL TRUSTEE.—*V.* Judicial Trustees Act, 1896, 59 & 60 V. c. 35, on *whv*, *Re Ratcliff*, 1898, 2 Ch. 352; 67 L. J. Ch. 562: *Douglas* v. *Bolam*, 1900, 2 Ch. 749; 70 L. J. Ch. 1: *Re Martin*, W. N. (1900) 129.

V. TRUSTEE.

JUGUM.—"Jugum terræ in Domesday containeth halfe a plowland" (Co. Litt. 5 a); and "is as much as two oxen can till, and by the grant of half a plow-land may pass meadow and pasture" (Touch. 93). *V.* HIDE.

JUNCARIA.—"By the grant of *omnes juncarias* or *joncarias*, the soile where rushes do grow doth passe; for *jonc* in French is a rush, whereof *joncaria* commeth. . . . And *jampna* commeth of *jonc* and *nower*, a waterish place, and is all one in effect with *joncaria*" (Co. Litt. 5 a). But in *Gryffyth* v. *Jenkins* (Cro. Car. 179), Jampna is bracketed with BRUERA, and both were held to be "heath ground, whereupon gorse and furze are growing." *Vh*, Cowel, *Jampnum*.

JUNCTION.—"For the purposes of the Junction," s. 10, Ry. C. Act, 1863, is not confined to the actual union of the lines but, includes the formation of all Works necessary for effecting the Junction (*Dublin and Drogheda Ry* v. *Navan Ry*, Ir. Rep. 5 Eq. 393).

JUNIOR.—"Junior,"—*e.g.* Tom Brown, Junr.,—is no part of a man's name; to add "Junior" to the signature of a Nominator at a

Digitized by Google

County Council Election, if that be his ordinary mode of signing, does not invalidate the signature (*Gledhill* v. *Crowther*, 23 Q. B. D. 136; 58 L. J. Q. B. 327).

"Junior Assistant Teacher"; *V. Main* v. *Stark*, cited ASSISTANT.

JURE.—*V.* DE JURE.

JURISDICTION.—"'Jurisdiction,' is a DIGNITY which a man hath by a Power to do Justice in Causes of Complaint made before him" (Termes de la Ley).

In that sense of conferring power "Jurisdiction" is defined in 47 & 48 V. c. 47, s. 5; 53 & 54 V. c. 37, s. 16.—*Ir.* 27 & 28 V. c. 54, s. 4; Irish Church Act, 1869, 32 & 33 V. c. 42, s. 72.

But sometimes it means an Area or District, *e.g.* 26 & 27 V. c. 96, s. 2: this is obviously so where the phrase is "*Local* Jurisdiction," *e.g.* 35 & 36 V. c. 38, s. 1; 60 & 61 V. c. 57, s. 15.

In s. 20, 7 G. 4, c. 64, "Jurisdiction," means, local jurisdiction; and not jurisdiction with reference to the nature of the charge (*R.* v. *O'Connor*, 5 Q. B. 16).

"Jurisdiction of the Admiral," quà Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73; *V.* s. 7.

"Unlimited Civil Jurisdiction," quà Colonial Courts of Admiralty Act, 1890, 53 & 54 V. c. 27, "means, Civil Jurisdiction unlimited as to the Value of the Subject-matter at issue, or as to the Amount that may be claimed or recovered" (s. 15).

"Separate PRISON Jurisdiction"; *V.* 28 & 29 V. c. 126, s. 9.

V. SUMMARY JURISDICTION: WITHIN THE JURISDICTION.

JUROR.—"Juror" means a male person only (Juries Act, 1870, s. 5; Juries Act (Ir), 1871, s. 3). *V.* SPECIAL.

"The Average *English* Juror is a prosaic sort of person,—unimaginative, unexcitable, docile to the evidence, and amenable to the advice and guidance of the Judge. His *Irish* counterpart will be a man of another temper; and, not to push invidious distinctions too far, suffice it to say that, in certain classes of cases which need not be particularized but of which those of an agrarian order are undoubtedly an example, he is (to put it mildly) prone to be a little unreliable" (per Christian, L. J., *Moffett* v. *Gough*, 1 L. R. Ir. 371).

JURY.—*V* JUROR: PEER. *Vh*, Jacob: 7 Encyc. 145–157.

All the Exemptions from serving on Juries (for *whv*, Sch, 33 & 34 V. c. 77) are applicable to Coroners' Inquests; for by s. 9, 33 & 34 V. c. 77 (re-enacting s. 2, 6 G. 4, c. 50), the exemptions extend "to any Juries or inquests WHATSOEVER" (*R.* v. *Dutton*, 1892, 1 Q. B. 486; 61 L. J. Q. B. 190; 66 L. T. 324; 40 W. R. 270; 56 J. P. 455): *V.* arg. of Counsel in *thc* for obs on the word "INQUEST."

V. GOOD JURY: CHALLENGE: TRIAL: PAIS: PANEL.

Digitized by Google

"The Juries Acts, 1825 to 1870," "The Juries (Scotland) Acts, 1745 to 1869," "The Juries (Ireland) Acts, 1871 to 1894"; *V.* Sch 2, Short Titles Act, 1896. *Vf,* GRAND JURY.

JUS. — In the maxim *Ignorantia juris haud excusat,* "the word '*jus*' is used in the sense of denoting General Law, — the ordinary law of the country. But when '*jus*' is used in the sense of denoting a Private Right, that maxim has no application. Private Right of ownership is a matter of fact; it may be the result also of matter of law; but if parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that that agreement is liable to be set aside as having proceeded upon a common mistake" (per Ld Westbury, *Cooper* v. *Phibbs*, L. R. 2 H. L. 170). *V.* RIGHT.

Jus Accrescendi; *V.* JOINT TENANCY.

JUST. — Order for Sale of Goods in an Interpleader "upon such terms as may be Just," R. 12, Ord. 57, R. S. C.: *V. Forster* v. *Clowser*, 1897, 2 Q. B. 362; 66 L. J. Q. B. 693; 76 L. T. 825: *Stern* v. *Tegner*, 1898, 1 Q. B. 37; 66 L. J. Q. B. 859; 77 L. T. 347.

"Just and BENEFICIAL" application under s. 138, Comp Act, 1862; *V. Re Gold Co*, 12 Ch. D. 77; 48 L. J. Ch. 650: *Re Metropolitan Bank, Heiron's Case*, 15 Ch. D. 139; 49 L. J. Ch. 651: *Re North Australian Co*, 45 Ch. D. 87; 59 L. J. Ch. 654: *Re Great Kruger Co*, 1892, 3 Ch. 314, 315: *Ex p. Barnes*, 1896, A. C. 146; 65 L. J. Ch. 394; 44 W. R. 433.

"Just," in such a connection as "Just CAUSE" for a Court to do anything, "does not add much weight, though it may add a little. It means, some substantial reason must be shown" (per Jessel, M. R., *Ex p. Cocks, Re Poole*, 52 L. J. Ch. 65; 21 Ch. D. 397). *Cp,* GOOD CAUSE.

A Prerogative Mandamus is not a "Just and CONVENIENT" course when there is another appropriate remedy (*R.* v. *Registrar of Joint Stock Cos*, 57 L. J. Q. B. 433; 21 Q. B. D. 131: *R.* v. *Charity Commrs*, 1897, 1 Q. B. 407; 66 L. J. Q. B. 321; 76 L. T. 199; 45 W. R. 336: *R.* v. *St. Giles*, 66 L. J. Q. B. 337; 45 W. R. 335; 61 J. P. 217). *Vf,* as to when Prerogative Mandamus lies, *R.* v. *St. George the Martyr*, 61 L. J. Q. B. 398; 67 L. T. 412; 56 J. P. 821: MANDAMUS.

In ascertaining what is a "Just or Convenient" case in which the Court should grant an Interlocutory Mandamus or Injunction, or appoint a Receiver, s. 25 (8), Jud. Act, 1873, regard should be had to what is "Just" according to settled legal principles, as well as to what is "Convenient" (*Beddow* v. *Beddow*, 47 L. J. Ch. 588; 9 Ch. D. 89; 26 W. R. 570): — Quà Mandamus or Injunction, *V.* R. 6, Ord. 50, R. S. C.; quà Receiver, R. 15 *a* and 16, Ib.; and on each Rule, *V.* Ann. Pr.

"Just Debts"; *V.* DEBTS.

As to when it is "Just and EQUITABLE" that a Winding-up Order

Digitized by Google

should be made on a Co, s. 79 (5), Comp Act, 1862; *V. Re Suburban Hotel Co*, 36 L. J. Ch. 710; 2 Ch. 737: *Re Haven Gold Mining Co*, 20 Ch. D. 151; 51 L. J. Ch. 242; 46 L. T. 322: *Re German Date Coffee Co*, 20 Ch. D. 169; 51 L. J. Ch. 564: *Re Diamond Fuel Co*, 49 L. J. Ch. 301; 13 Ch. D. 400: *Re Bristol Joint Stock Bank*, 59 L. J. Ch. 722; 44 Ch. D. 703: *Re Crown Bank*, 59 L. J. Ch. 739; 44 Ch. D. 634; 62 L. T. 823; 38 W. R. 666: *Re Brinsmead*, 1897, 1 Ch. 406; 66 L. J. Ch. 290; 76 L. T. 100: *Re Amalgamated Syndicates*, 1897, 2 Ch. 600; 66 L. J. Ch. 783; 77 L. T. 431; 46 W. R. 75: *Re Australian Bank*, 41 S. J. 469; W. N. (97) 48: *Re Coolgardie Gold Mines*, 76 L. T. 269: Buckl. 243: Palmer Co. Prec. Part 2, 41–47.

"Peculiar Circumstances" rendering it "Just and EXPEDIENT" to enlarge time for enrolling a Decree; *V. Hooper* v. *Gumm*, 26 L. T. 537.

"Just *Proportion*"; *V.* INDEMNIFY.

"There is always some difficulty in understanding the meaning of the term 'just'; but I am putting a favourable construction on it if, in this case — *i.e.* on the phrase 'Just and REASONABLE' Conditions in s. 7, Ry & Canal Traffic Act, 1854 — I construe it as meaning 'to the advantage of the customer'" (per Cave, J., *Brown* v. *Manchester S. & L. Ry*, 51 L. J. Q. B. 601: *Vf*, *S. C.* 52 L. J. Q. B. 132; 53 Ib. 124; 9 Q. B. D. 230; 10 Ib. 250; 8 App. Ca. 703).

Disqualification from bankruptcy or notorious insolvency, is a "Just and Reasonable" provision in the Bye-Laws of a City Company (*R.* v. *Saddlers Co*, 32 L. J. Q. B. 337; 10 H. L. Ca. 404).

V. FAIR AND REASONABLE: REASONABLE.

Joint Tenant "receiving more than his Just SHARE"; *V.* RECEIVING, towards end.

JUST ALLOWANCES. — This term in a Redemption Order includes, — Payments in discharge of Legacies (*Nightingale* v. *Lawson*, 1 Cox, 23); Counsel's Opinions and procuring directions (*Fearns* v. *Young*, 10 Ves. 184); Dower deductions (*Graham* v. *Graham*, 1 Ves. sen. 262); Partnership Business Expenses (*Brown* v. *De Tastet*, Jac. 284, 289: *Cook* v. *Collingridge*, Ib. 607, 621); but not taxed costs of a solicitor accountable for rents received by him as Plaintiff's steward (*Jolliffe* v. *Hector*, 12 Sim. 398); *V.* the foregoing cases cited from Daniel Ch. Pr. by Jessel, M. R., in *Wilkes* v. *Saunion* (47 L. J. Ch. 151; 7 Ch. D. 188), which case decided that expenses of taking and holding possession of a mortgaged ship, advertising her sale, and effecting insurances, came under "Just Allowances." So do all necessary repairs; but not repairs beyond what are necessary, nor substantial improvements (*Tipton Green Colliery* v. *Tipton Moat Colliery*, 47 L. J. Ch. 152; 7 Ch. D. 192). So the expense of defending the Title is within the phrase (*Godfrey* v. *Watson*, 3 Atk. 518). *Vh*, Dan. Ch. Pr. 857:

Digitized by Google

Seton, 1976–1979: Fisher, 839–849: Coote, 814, 871–876: MacS. 84, 538: 7 Encyc. 159–161.

In an Administration Order; *V. Cotham* v. *West*, 1 Bea. 381.

In taking an account directed by a jdgmt or Order; *V.* R. 8, Ord. 33, R. S. C.: Ann. Pr.

JUST BEFORE. — In a plea justifying the shooting a dog, that "just before" the defendant shot the dog it was worrying the defendant's sheep, — "just before" was construed as "at the time when," or as implying that the dog had attacked the sheep and was about to renew the attack (*Kellett* v. *Stannard*, 2 Ir. Com. Law Rep. 156). *Vh, Janson* v. *Brown*, 1 Camp. 41.

JUST DEBTS. — *V.* Debts.

JUSTICE. — "Administration of Justice"; *V.* Administration. *Cp,* Court.

"Necessary for the purposes of Justice," R. 5, Ord. 37, R. S. C.; *V. Re Mysore Mining Co,* 58 L. J. Ch. 731.

"To do justice"; *V.* Justly.

V. Failure of Justice.

"High Court of Justice"; *V.* High Court.

"'Justice, *Justitiarius*,' signifies him that is deputed by the King to do Right by way of Judgment" (Cowel, *whv* for the various kinds of Justices: *Vf,* Jacob, *Justices*). *V.* Judge.

When a modern Act prescribes anything to be done by or before a "Justice," in *England*, its interp clause, generally, defines that word as meaning "Justice of the Peace," either without qualification or as acting within a prescribed area, *e.g.* 7 & 8 V. c. 31, s. 36, c. 110, s. 3; 8 & 9 V. c. 126, s. 84; 9 & 10 V. c. 74, s. 2, c. 96, s. 17; 10 & 11 V. cc. 14, 15, 16, 17, 27, 34, s. 3, c. 38, s. 20, c. 65, s. 3, c. 89, s. 3; 11 & 12 V. c. 63, s. 2, c. 112, s. 147, c. 123, s. 22; 12 & 13 V. c. 92, s. 29; 14 & 15 V. c. 34, s. 3; 25 & 26 V. c. 114, s. 1; 26 & 27 V. c. 112, s. 3; 28 & 29 V. c. 125, s. 2; 29 & 30 V. c. 117, s. 3, c. 118, s. 4; 32 & 33 V. c. 115, s. 13; 35 & 36 V. c. 93, s. 5; 38 & 39 V. c. 69, s. 2, c. 70, s. 4; 42 & 43 V. c. 19, s. 3; 43 & 44 V. c. 24, s. 3; 45 & 46 V. c. 50, s. 7; 51 & 52 V. c. 33, s. 2; 53 & 54 V. c. 5, s. 341; 54 & 55 V. c. 38, s. 27; 57 & 58 V. c. 57, s. 59.

Other and wider Stat. Def. — 8 & 9 V. c. 20, s. 3; 13 & 14 V. c. 115, s. 49; 14 & 15 V. c. 78, s. 48; 23 & 24 V. c. 112, s. 47; 25 & 26 V. c. 93, s. 3; 35 & 36 V. c. 23, s. 3; 39 & 40 V. c. 36, s. 284.

"Justices," as used quà *England*; *V.* 7 & 8 V. c. 18, s. 3; 8 & 9 V. c. 63, s. 6; 14 & 15 V. c. 16, s. 19; 20 & 21 V. c. 43, s. 12, c. 48, s. 2; 24 & 25 V. c. 113, s. 3; 38 & 39 V. c. 63, s. 2.

V. Edwards v. *Hodges*, 15 C. B. 477; 24 L. J. M. C. 81; 24 L. T. O. S. 237; 3 W. R. 167.

"Two Justices," is generally defined as meaning, two Justices as-

Digitized by Google

sembled and acting together, *e.g.* 8 & 9 V. cc. 16, 17, 18, 19, 20, 33, s. 3; 10 & 11 V. cc. 14, 15, 16, 17, 34, 65, 89, s. 3, c. 38, s. 20; 11 & 12 V. c. 63, s. 2, c. 112, s. 147, c. 123, s. 22; 18 & 19 V. c. 121, s. 2; 23 & 24 V. c. 113, s. 21; 26 & 27 V. c. 112, s. 3; 29 & 30 V. c. 118, s. 4; 31 & 32 V. c. 60, s. 2; 33 & 34 V. c. 78, s. 3.

"Justice," or "Justices," as used quà *Scotland*; *V.* 8 & 9 V. cc. 17, 19, 33, s. 3; 25 & 26 V. c. 97, s. 2; 27 & 28 V. c. 53, s. 2; 35 & 36 V. c. 68, s. 15; 46 & 47 V. c. 3, s. 9; 50 & 51 V. c. 28, s. 21; 52 & 53 V. c. 11, s. 9; 55 & 56 V. c. 8, s. 5.

"Justice," or "Justices," as used quà *Ireland*; *V.* 1 & 2 V. c. 56, s. 124; 9 & 10 V. c. 87, s. 2; 10 & 11 V. c. 84, s. 8; 12 & 13 V. c. 91, s. 89, c. 97, s. 133; 13 & 14 V. c. 102, s. 59; 14 & 15 V. c. 90, s. 18, c. 92, s. 25, c. 93, s. 44; 16 & 17 V. c. 112, s. 80; 17 & 18 V. c. 103, s. 1; 22 & 23 V. c. 52, s. 1; 28 & 29 V. c. 50, s. 4; 29 & 30 V. c. 44, s. 2; 31 & 32 V. c. 59, s. 3, c. 60, s. 2; 35 & 36 V. c. 68, s. 14.

Justices are never spoken of as a "Court or Judge" (***Re Jones***, cited COURT OR JUDGE).

"Majority of Justices," s. 9, Alehouse Act, 1828, applies only to Justices at Petty Sessions, and not to Quarter Sessions (***Ex p. Evans***, 1894, A. C. 16; 63 L. J. M. C. 81; 70 L. T. 45; 58 J. P. 260).

"Justices in Sessions assembled," quà Prison Acts; *V.* 28 & 29 V. c. 126, s. 6; 31 & 32 V. c. 21, s. 4.

"The Justices Qualification Acts, 1731 to 1875"; *V.* Sch 2, Short Titles Act, 1896.

Justices in Eyre, Justices of Assize; *V.* SUPERIOR COURT.

V. COURT: MAGISTRATE.

JUSTICE OF THE PEACE.—"'Justices of the Peace, *Justiciarii ad pacem*,' Are they that are appointed by the Kings Commission to attend the Peace of the COUNTY where they dwell" (Cowel), or of their BOROUGH if it have a Commission of the Peace. *V.* Jacob: 7 Encyc. 162–167: JUSTICE: PETTY SESSIONS.

Stat. Def.—1 V. c. 67, s. 3; 7 & 8 V. c. 91, s. 114; 10 & 11 V. c. 33, s. 4; 32 & 33 V. c. 115, s. 13; Army Act, 1881, 44 & 45 V. c. 58, s. 94.—*Scot.* 23 & 24 V. c. 45, s. 9; 33 & 34 V. c. 52, s. 26; 52 & 53 V. c. 44, s. 17; 57 & 58 V. c. 41, s. 26.—*Ir.* 1 & 2 V. c. 56, s. 124; 29 & 30 V. c. 4, s. 16.

JUSTICIARY.—*V.* HIGH COURT: CLERK.

"The Justiciary Court (Scotland) Acts, 1783 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

JUSTIFIABLE.—Justifiable HOMICIDE; *V.* 4 Bl. Com. 178 *et seq*: Arch. Cr. 742: Rosc. Cr. 543. *Cp*, EXCUSABLE.

JUSTIFICATION.—"'Justification,' is an affirming or showing good reason in Court why he did such a thing as he is called to answer" (Cowel).

Digitized by Google

"This word has acquired a somewhat special meaning in actions for Defamation. A 'Plea of Justification' is a Plea that the words complained of 'are true in substance and in fact.' Such a plea is a complete defence to any action of Libel or Slander" (7 Encyc. 170–173).

V. DEFENCE.

JUSTLY. — "To act justly" (*Mussoorie Bank* v. *Raynor*, 51 L. J. P. C. 72; 7 App. Ca. 321), or "to do Justice" to Relations (*Re Bond, Cole* v. *Hawes*, 4 Ch. D. 238; 46 L. J. Ch. 488), does not create a PRECATORY TRUST.

"Justly responsible"; *V.* RESPONSIBLE.

JUXTA. — *V.* IN SIVE JUXTA.

Digitized by Google

KALENDAR—KEEP

KALENDAR.—*V.* Almanac: Calendar Month.

KAY.—*V.* Quay.

KEATING'S ACT.—The Summary Procedure on Bills of Ex. Act, 1855, 18 & 19 V. c. 67; repealed by 46 & 47 V. c. 49, but the spirit of its provisions is made applicable to several Causes of Action by R. 6, Ord. 3 and Ord. 14, R. S. C.

KEELAGE.—Is a Toll for every Vessel coming within the Port (Hale, De Portibus Maris, ch. 6).

KEEP.—"'To keep in Good Repair' pre-supposes the putting into it, and means that during the whole term the premises shall be in good repair" (per Rolfe, B., *Payne* v. *Haine*, 16 M. & W. 546; 16 L. J. Ex. 130: *Luxmore* v. *Robson*, 1 B. & Ald. 584: *Proudfoot* v. *Hart*, 59 L. J. Q. B. 389; 25 Q. B. D. 42); the meaning is the same if the phrase is "keep in Repair" (*Vf, Crowe* v. *Crisford*, 17 Bea. 507: *Cooke* v. *Cholmondeley*, 4 Drew. 328: Woodf. 628: Fawcett, 314): and this ruling seems applicable not only to Buildings but also to a Road (*R.* v. *Kerry Jus.*, Ir. Rep. 9 C. L. 471).

But to "keep" in Repair or in Good Repair does not involve re-building if that become necessary through Natural Decay (*Crowe* v. *Crisford*, sup: *Lister* v. *Lane*, 1893, 2 Q. B. 212; 62 L. J. Q. B. 583; 69 L. T. 176; 41 W. R. 626): *Vf, Dashwood* v. *Magniac*, cited Good Repair. But to "keep" in repair involves re-building in case of Fire (*Bullock* v. *Dommitt*, and other cases, cited Repair), and also the building of a house agreed to be built but which agreement for building has been waived by receipt of rent after breach (*Jacob* v. *Down*, 1900, 2 Ch. 156; 69 L. J. Ch. 493; 83 L. T. 191; 48 W. R. 441; 64 J. P. 552).

Vf, Put. *Cp, Joliffe* v. *Twyford*, 26 Bea. 227; 28 L. J. Ch. 93; 32 L. T. O. S. 141, *whc* was on a direction to "keep in repair" in a Will: *Va,* Keeping same in repair.

A Lessor's implied agreement, on the letting of a *Furnished* house, that it is Fit for habitation (*Smith* v. *Marrable*, 11 M. & W. 5), is not displaced by express agreement on his part to "keep" the house in good repair (*Wilson* v. *Hatton*, 25 W. R. 537; 2 Ex. D. 336; 46 L. J. Ex. 489; 36 L. T. 473: *vthc, Bunn* v. *Harrison*, 3 Times Rep. 146). *Note*: There is no such implied agreement on the letting of an *Un*furnished

Digitized by Google

house (*Hart* v. *Windsor*, 12 M. & W. 68: *Manchester Bonding Warehouse Co* v. *Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507: *Chester* v. *Powell*, 52 L. T. 722: *Murray* v. *Mace*, Ir. Rep. 8 C. L. 396), or Land (*Sutton* v. *Temple*, 12 M. & W. 52: *Erskine* v. *Adeane*, 42 L. J. Ch. 835; 8 Ch. 756); nor, even in the case of a Furnished House or Apartments, is there any implied agreement of a *continuance* of fitness (*Sarson* v. *Roberts*, 1895, 2 Q. B. 395; 65 L. J. Q. B. 37; 73 L. T. 174).

V. KEEPING SAME IN REPAIR: REPAIRING LEASE.

"Keep such PAVEMENT in good and sufficient repair," s. 105, Metrop Man. Act, 1855; *V. R.* v. *Hackney*, 42 L. J. M. C. 151; L. R. 8 Q. B. 528.

A contractual obligation to "keep *in order*" Growing Trees, means, *semble*, not only to prune them but also to weed and clear the ground where they are growing (*Allen* v. *Cameron*, 1 C. & M. 832).

To "PERFORM and keep" the covenants (in a Forfeiture Clause) includes Negative as well as Positive covenants (*Timms* v. *Baker*, 49 L. T. 106); "if the word 'perform' alone had been used I think the case would have been very different" (per Lopes, J., *Ib.*).

"To keep" a *Place or Thing*, involves the idea of having over it the immediate control, of a character more or less permanent. Thus the landlord of a BROTHEL wholly let out in rooms to different tenants at weekly rents, and who has no control over the premises except that of determining the tenancies, does not "keep" the brothel (*R.* v. *Stannard*, 33 L. J. M. C. 61; L. & C. 349: *Va*, *R.* v. *Barrett*, 32 L. J. M. C. 36; L. & C. 263: Steph. Cr. 122: Stone, 233: *Sv*, *Halligan* v. *Ganly*, 19 L. T. 268). And to "keep" a place for a particular purpose, involves the idea that it is used for that purpose on more than one occasion; but the how many or how frequent those occasions must be, is a question of fact to be determined in each case (*Marks* v. *Benjamin*, 5 M. & W. 568; 9 L. J. M. C. 20), — *e.g.* PLACE "opened, kept, or used," for illegal Betting, s. 1, 16 & 17 V. c. 119; *Vth*, *R.* v. *Cook*, 13 Q. B. D. 377; 51 L. T. 21; 32 W. R. 796; 48 J. P. 694: *R.* v. *Brown*, 1895, 1 Q. B. 119; 64 L. J. M. C. 1; 72 L. T. 22; 43 W. R. 222; 59 J. P. 485.

As to keeping a place for Bull-baiting, &c, within s. 3, 12 & 13 V. c. 92, *V. Clarke* v. *Hague*, 29 L. J. M. C. 105: and as to the phrase "Open, keep, or use," a house for UNLAWFUL GAMING, s. 4, 17 & 18 V. c. 38; *V. Jenks* v. *Turpin*, 53 L. J. M. C. 161; 13 Q. B. D. 505: USE: *Cp*, PUBLIC SINGING.

The words "have" and "keep" are not, *per se*, synonyms in the phrase "*to have or keep*." Therefore, the proprietor of an unlicensed theatre incurs the penalty prescribed by s. 2, Theatres Act, 1843, 6 & 7 V. c. 68, by permitting it to be used, if only for a single occasion, for the public performance of stage plays (*Shelley* v. *Bethell*, 53 L. J. M. C. 16; 12 Q. B. D. 1); yet it would seem that the person to whom such occasional permission may be given would neither "have" nor "keep" the theatre (*R.* v. *Strugnell*, 35 L. J. M. C. 78; L. R. 1 Q. B. 93).

Digitized by Google

But under 12 G. 3, c. 61, s. 11, the word "have" as used in the phrase to "have or keep" gunpowder, was held to be synonymous with "keep," because in s. 18 of that Act there is the phrase "have and convey," and the word "have" was held to refer in each section to the word with which in each place it was associated; and therefore a carrier having only the temporary custody of the prohibited quantity of gunpowder was not liable to the penalty imposed by s. 11 (*Biggs* v. *Mitchell*, 31 L. J. M. C. 163; 2 B. & S. 523; 6 L. T. 242: *Vth*, per Coleridge, C. J., *Foster* v. *Diphwys Casson Co*, 18 Q. B. D. 432). *V.* Case or Canister: Have or Convey.

"Keep her Course"; *V.* Course.

A direction to "keep the Residue"; held, sufficient to pass the general residue of the estate (*Boys* v. *Morgan*, 3 My. & C. 661).

KEEP ACCOUNTS. — A direction to an Exor to "keep Accounts," furnishes a presumption that he is not to take beneficially; but the phrase may be explained by extrinsic evidence (*Gladding* v. *Yapp*, 5 Mad. 56).

KEEP COMPANY. — *V.* Associate.

KEEP DOWN. — "'Keeping down Interest,' is familiar in legal instruments, and means, the payment of interest as it becomes due; and not the payment of all arrears of interest which may have become due on any security from the time when it was executed" (*R.* v. *Hutchinson*, 4 E. & B. 211; 24 L. J. M. C. 30; 3 W. R. 70).

KEEP HOUSE. — "Begins to keep house," s. 4 (*d*), Bankry Act, 1883; *V.* Yate Lee, 50–53: Wms. Bank. 21: Robson, 137–139: Baldwin, 85.

KEEP OPEN. — To "Open," or "keep open" Licensed Premises, s. 9, 37 & 38 V. c. 49, means, that the opening is such as involves an invitation to persons outside to come in (*Jeffrey* v. *Weaver*, 1899, 2 Q. B. 449; 68 L. J. Q. B. 817; 81 L. T. 193; 63 J. P. 663; 47 W. R. 638). A Draper who is also a Grocer and licensed to sell Wines and Spirits not to be consumed on the premises, is not shown to "keep open" his premises for the sale of Intoxicating Liquors, within the section, by merely proving that his shop was open after prohibited hours; for, in the absence of other proof, it must be assumed that, quà such sale, his shop was duly closed (*Tassell* v. *Ovenden*, 2 Q. B. D. 383; 46 L. J. M. C. 228; 36 L. T. 696; 25 W. R. 692).

To "keep Open Shop for retailing" Poisons, s. 1, Pharmacy Act, 1868, 31 & 32 V. c. 121, means, to keep any Shop which is open to the public to come in and buy any Poison by retail, *e.g.* a Watchmaker who sells a substance containing Corrosive Sublimate "keeps Open Shop" for its sale (*Pharmaceutical Socy* v. *Hornsey*, 10 Times Rep. 492). *V.* Open.

Digitized by Google

KEEP OUT OF THE WAY.—*V.* 1 Maude & P. 599.

KEEP UP.—"Repair and keep up"; *V.* REPAIR.

KEEPER.—*V.* KEEP: KEEPING.

"Keeper of a COMMON LODGING-HOUSE," quà P. H. Scotland Act, 1897, "includes any person having, or acting in, the care and management of a Common Lodging-House" (s. 3).

"Keeper of the Gaol"; Stat. Def., *Ir.* 14 & 15 V. c. 90, s. 18, c. 93, s. 44.

A solicitor or other agent who (acting on behalf of the Liquidator of a Co, which Co is the owner of a Hall) lets the Hall for "PUBLIC ENTERTAINMENT" on Sunday (such Entertainment being contrary to s. 1, Sunday Observance Act, 1780, 21 G. 3, c. 49) is not the "Keeper" of the Hall, within that section; nor, within s. 2, does he "appear, act, or behave himself," as the "Master" of the Hall, or as the person having its "Care, Government, or Management"; nor is the Chairman, who simply introduces the entertainer to the audience, the person "managing or conducting" the Entertainment, within s. 1 (*Reid* v. *Wilson*, 1895, 1 Q. B. 315; 64 L. J. M. C. 60; 71 L. T. 739; 43 W. R. 161; 59 J. P. 516).

V. LORD KEEPER.

KEEPING.—"Custody, Possession, or Keeping," of Naval Stores; *V. R.* v. *Sunley*, 7 W. R. 418.

"Found in the Possession or Keeping"; *V.* FOUND.

"Keeping" a House, Stall, &c, s. 5, 39 & 40 G. 3, c. 104, means, keeping it as continuously as its nature will reasonably admit of (*Gray* v. *Cook*, 8 East, 336).

An agreement to have the "Keeping and Feeding" a Cow on another person's land, does not constitute a TENEMENT, quà a Pauper's Settlement; for the cow might be fed upon hay made previously or elsewhere (*R.* v. *Cumberworth Half*, 13 L. J. M. C. 49; 5 Q. B. 484). *Cp*, GOING.

KEEPING SAME IN REPAIR.—A devise of realty to A. for life, he "keeping the same in repair," gives the remainderman a right of action against the exors of A. if the property is allowed to go out of repair; and the measure of damages is the sum reasonably necessary to put the property in that state of repair in which A. ought to have left it (*Woodhouse* v. *Walker*, 49 L. J. Q. B. 609; 5 Q. B. D. 404; 42 L. T. 770: *Re Williames*, 52 L. T. 41: *Batthyany* v. *Walford*, 33 Ch. D. 630, 631; affd 36 Ch. D. 269; 56 L. J. Ch. 881). *Cp*, *Re Cartwright*, cited WASTE, towards end. *Vf*, KEEP: REPAIR.

Fitzroy KELLY'S ACTS.—The Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102:

The Legitimacy Declaration Act, 1858, 21 & 22 V. c. 93, amended by s. 7, 22 & 23 V. c. 61.

Digitized by Google

KELP-SHORE. — "Kelp-Shore," probably, includes the land between high and low water mark; but where a conveyance of land "with the Kelp-Shore" gave metes and bounds which clearly excluded the land between high and low water mark, it was held that such land was not included, and that parol evidence could not be received to show that it was included (*Boyle* v. *Mulholland*, 10 Ir. Com. Law Rep. 150).

KEPT. — *V.* KEEP: BRED.

KEPT UP. — *V.* KEEP UP: WHOLLY.

KEY. — *V.* CONTENTS: DONATIO MORTIS CAUSA.

KEYAGE. — *V.* WHARFAGE.

KIDEL: KIDDLE. — "Kidels is a proper name for open weirs whereby fish are caught" (2 Inst. 38: *Vf*, Cowel: Termes de la Ley). "Weirs (kidelli, or gurgites) were the means usual in ancient times for appropriating and enjoying several fisheries in tidal waters" (per Selborne, C., *Neill* v. *Devonshire*, 8 App. Ca. 144: *Vf*, *A-G.* v. *Emerson*, cited SEVERAL FISHERY). *V.* GURGES: WEIR.

KILL. — "Killing is causing the death of a person by an act or omission but for which the person killed would not have died when he did, and which is directly and immediately connected with his death. The question whether a given act or omission is directly and immediately connected with the death of any person, is a question of degree dependent upon the circumstances of each particular case" (Steph. Cr. 151, 152). *Vf*, Arch. Cr. 750–772.

V. HOMICIDE: MANSLAUGHTER: MURDER: SEEDS.

KIN. — *V.* KINDRED.

KIND. — *V.* DYE.

"Of what Nature and Kind soever"; *V. Campbell* v. *Prescott*, cited EFFECTS: EVERY THING ELSE.

"In kind"; *V.* DUES.

KINDRED. — Neither husband nor wife is of "kin" to the other (Wms. Exs. 983, 984); but persons related by the half-blood are of "kin" equally with those of the whole-blood (Ib. 984).

The Statutes of Distribution (22 & 23 Car. 2, c. 10; 1 Jac. 2, c. 17, s. 7), furnish the best rules that can be observed for limiting the extent of this word (*Carr* v. *Bedford*, 2 Rep. in Chanc. 146).

Devise of freeholds to A. and B. for life, "and in the event of either dying, the deceased's share to revert to the Next Male Kin"; held, that "Next Male Kin" did not indicate an individual but meant the NEAREST of Kin of the testator, being males living at his death, who

Digitized by Google

took as Joint Tenants in fee simple (*Re Chapman*, W. N. (83) 232; 49 L. T. 673).

V. CONSANGUINITY: FRIENDS AND RELATIONS: NEXT OF KIN: *Re Parsons*, cited CONTINGENT.

KING.—*V.* MAJESTY: QUEEN: RESTRAINT OF KINGS.
V. LOCKE KING'S ACTS.

KING'S ENEMIES.—*V.* ENEMY: QUEEN'S ENEMIES: QUEEN.

KING'S PLEASURE.—*V.* AT THE KING'S PLEASURE.

KING'S WILL.—"At the King's will for Body, Lands, and Goods"; *V.* FELONY.

Lord KINGSDOWN'S ACT.—The Wills Act, 1861, 24 & 25 V. c. 114.

KNACKER.—Quà Slaughter-houses, &c (Metropolis) Act, 1874, 37 & 38 V. c. 67, "'Knacker,' means, a person whose business it is to slaughter any horse, ass, or mule, or any cattle, sheep, goat, or swine, which is *not* killed for the purpose of its flesh being used as Butcher's Meat" (s. 12). A similar def is given quà P. H. London Act, 1891 (s. 141), and quà P. H. Scotland Act, 1897 (s. 3); and by these two lastly mentioned sections "Knacker's Yard," "means, any building or place used for the purpose of such business." *Cp*, SLAUGHTERER.

KNEELING.—"It is not necessary that a person should touch the ground in order to perform such an act of reverence as will constitute kneeling. Of course there may be such a bowing of the knee as would not amount to Kneeling,—there may be an accidental bowing of the knee arising from fatigue or otherwise; but here is a knee bent for the purpose of reverence and in such a manner that those who behold cannot tell whether or not touching the ground with the knee has been arrived at, and, indeed, Mr. Mackonochie says that at certain times his knee has momentarily touched the ground. This seems to their Lordships to be literally Kneeling" (*Martin* v. *Mackonochie*, L. R. 3 P. C. 66; 39 L. J. Ecc. 18).

Cp, HOMAGE.

KNIGHT'S FEE.—"There is great diversity of opinions concerning the contents of a knight's fee, that is, how much land goeth to the livelyhood of a knight. For some say that a knight's fee consisteth of eight hides, and every hide containeth an hundred acres, and so a knight's fee should contain 800 acres. Others say that a knight's fee containeth 680 acres. Others say, that an oxgange of land containeth 15 acres, and eight oxgangs make a plowland; by which account a plowland containes 120

Digitized by Google

acres; and that *virgata terræ*, or a yardland, containeth 20 acres. But I hold that a knight's fee, an hide or plowland, a yardland or oxgange of land, doe not containe any certaine number of acres; but a knight's fee is properly to be esteemed according to the qualitie and not according to the quantity of the land, that is to say, by the value and not by the content" (Co. Litt. 69 a). *V.* Hide.

"The word 'Knight's-fee' is a compound word, and may comprehend many things. And therefore by the grant of this may pass land, meadow, and pasture, as parcel of it. And sometimes by this, doth pass so much land as to make a knight's fee. And some say it doth contain 8 hides of land. And it seems also that a manor may pass by this name if it be usually called so" (Touch. 92, 93). In Hilliard's note to this passage it is said, "In different ages a Knight's fee was estimated at several values, 2 Inst. 596"; and "probably it does not contain any certain number of acres" (Elph. 590, *whv* for further references).

KNIGHT'S SERVICE.—*V.* Litt. ss. 103–116: Co. Litt. 74 b–85 a: 2 Bl. Com. ch. 5. "*Note*, that Knights Service is Service of lands or tenements to beare Armes in war in defence of this Realme" (Termes de la Ley, *Service de Chivaler*). *V.* Tenure.

KNIGHT OF THE SHIRE.—A Knight of the Shire is the Parliamentary Representative of a County, or (now) of a Division of a County. Blackstone wrote, "The Knights of Shires are the representatives of the Landowners or Landed Interest of the Kingdom" (1 Bl. Com. 172, citing 8 H. 6, c. 7; 10 H. 6, c. 2; and 14 G. 3, c. 58: *Vf*, May's Parliamentary Practice); but s. 19, Rep People Act, 1832, gave £10 Copyholders a County vote, and s. 20, Ib. (the Chandos clause) gave a like vote to £10 Leaseholders and £50 Occupiers. The Rep People Act, 1884, established a uniform Householder and Lodger Franchise for Counties and Boroughs, but besides this, there is still a property qualification for Counties.

By s. 9, Redistribution of Seats Act, 1885, 48 & 49 V. c. 23, Counties are now divided into separate Divisions, and "the law relating to Parliamentary Elections shall apply to each such Division as if it were a separate County." Therefore, the character of County Members is not destroyed; and where a trust or function (established prior to this last Act) has to be performed by the "Knights of the Shire" for the time being of a stated County, that means the Members of Parliament elected by the several Divisions of that County (*R.* v. *Runciman*, 28 L. R. Ir. 527).

KNOL.—*V.* Howe.

KNOW.—"To know" a thing or state of things, is not only to have precise Knowledge of it; knowledge of circumstances ordinarily leading to the conclusion that the thing or state of things exists will suffice,

Digitized by Google

e.g. quà a provision in a New South Wales Act saving payments to Creditors by an Insolvent, if a Creditor so paid "shall not, at the time of payment, have known that the Debtor was then insolvent" (*National Bank of Australasia* v. *Morris*, 1892, A. C. 287; 61 L. J. P. C. 32; 66 L. T. 240). *Cp*, KNOWN.

"Well Know"; *V.* PRECATORY TRUST.

"Know of or be privy to"; *V.* PERMIT.

KNOWINGLY.—As to the importance of the presence, or absence, of this word in statutory definitions of offences; *V. Mullins* v. *Collins*, 43 L. J. M. C. 67; L. R. 9 Q. B. 292; 22 W. R. 297; 29 L. T. 838; 38 J. P. 629: *Cundy* v. *Le Cocq*, cited DRUNKEN PERSON, and cases cited in the latter case. From the observations of Stephen, J., in *Cundy* v. *Le Cocq*, it would seem that the maxim, *Actus non facit reum nisi mens sit rea* is not nearly as robust as it once was: "the Act of Parliament must be looked at to see what knowledge is necessary to complete the criminal act." "Knowingly" ought not to be read into a statutory offence "unless it is clear that the legislature intended some such qualification" (per Cave, J., *Betts* v. *Armstead*, 57 L. J. M. C. 101; 20 Q. B. D. 771; 58 L. T. 811; 36 W. R. 720; 52 J. P. 471). But how that clear intention is to be ascertained,—by trained minds, to say nothing of the common herd,—is not very apparent. Thus in *R.* v. *Tolson* (23 Q. B. D. 168; 58 L. J. M. C. 97; 37 W. R. 716), nine judges read the word into s. 57, 24 & 25 V. c. 100; whilst five judges declined to do so: the practical point which the majority decided in that case being that a married person, who re-marries, is not guilty of Bigamy if he or she, in good faith and on reasonable grounds, believes that his or her wife or husband is dead at the time of such re-marriage, and this notwithstanding the proviso in the section which, in terms, excepts from Bigamy a re-marriage after a seven years' absence (*V.* KNOWN). The following observations of Stephen, J., in *R.* v. *Tolson*, may be usefully added:—"Crimes are in the present day much more accurately defined by statute or otherwise than they formerly were. The mental element of most crimes is marked by one of the words '*Maliciously*,' '*Fraudulently*,' '*Negligently*,' or '*Knowingly*,' [should it not be added "wilfully"?]; but it is the general,—I might, I think, say the invariable,—practice of the legislature to leave unexpressed some of the mental elements of crime. In all cases whatever, competent age, sanity, and some degree of freedom from some kinds of coercion, are assumed to be essential to criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined."

Sherras v. *De Rutzen* (1895, 1 Q. B. 918; 64 L. J. M. C. 218; 43 W. R. 526; 72 L. T. 839; 59 J. P. 450) seems very like an emphatic re-assertion of the doctrine that *Mens Rea* is an essential ingredient in every offence; and there Wright, J. (in a remarkable judgment), reduced

Digitized by Google

the exceptions to three classes, — (1) Cases not criminal in any real sense but which, in the public interest, are prohibited under a penalty; (2) Public Nuisances; (3) Cases criminal in form but which are really only a summary mode of enforcing a civil right. *Vthe*, *Bank of New South Wales* v. *Piper*, 1897, A. C. 383; 66 L. J. P. C. 73; 76 L. T. 572; 61 J. P. 660: *Fitzgerald* v. *Hosford*, 1900, 2 I. R. 396. "The general rule is that, unless the contrary is expressed, *Mens Rea* enters into every OFFENCE" (per Russell, C. J., *Williamson* v. *Norris*, cited PERSON).

It is, however, not necessary to show that the seller of an Article of Food, — *e.g.* MILK, — in an altered state, s. 9, 38 & 39 V. c. 63, knew that it had been altered (*Pain* v. *Boughtwood*, 6 Times Rep. 167; 54 J. P. 68; 59 L. J. M. C. 45; 24 Q. B. D. 353: *Dyke* v. *Gower*, 1892, 1 Q. B. 220; 61 L. J. M. C. 70; 65 L. T. 760; 56 J. P. 168: *Brown* v. *Foot*, 61 L. J. M. C. 110; 66 L. T. 649; 56 J. P. 581), or, indeed, that he was in any way morally to blame (*Parker* v. *Alder*, 79 L. T. 381; 68 L. J. Q. B. 7).

So, of the possessor of Diseased Food, s. 117, P. H. Act, 1875 (*Mallinson* v. *Carr*, 1891, 1 Q. B. 48; 60 L. J. M. C. 34; 63 L. T. 459; 39 W. R. 270: *Blaker* v. *Tillstone*, 1894, 1 Q. B. 345; 63 L. J. M. C. 72; 58 J. P. 184).

So, a master is responsible for the acts of his servant, done within the scope of the latter's employment, in contravention of s. 2, Merchandize Marks Act, 1887, unless the master brings himself within one or other of the excuses prescribed in that section (*Coppen* v. *Moore*, cited TRADE DESCRIPTION, *whv* for other instances).

As to necessity at Common Law of showing *Mens Rea*, even for selling Diseased Meat for human food; *V. Emmerton* v. *Matthews*, 31 L. J. Ex. 139; 7 H. & N. 586.

Mens Rea has nothing to do with the offence of selling intoxicants to a DRUNKEN PERSON (*Cundy* v. *Le Cocq*, sup), or of not Keeping open a Salmon Weir, under s. 40, 5 & 6 V. c. 106 (*Fitzgerald* v. *Hosford*, sup). So, a *bonâ fide* belief that a girl was over 16 years of age, is no answer to a charge of ABDUCTION under s. 55, 24 & 25 V. c. 100, if in fact she was under that age (*R.* v. *Prince*, 44 L. J. M. C. 122; L. R. 2 C. C. R. 154). *Vf*, *Collman* v. *Mills*, cited PERMIT.

But the *bonâ fide* belief of a Publican that a Policeman is off duty, is a defence to an Information under s. 16 (2), 35 & 36 V. c. 94, for supplying the latter with liquor (*Sherras* v. *De Rutzen*, sup); in *thc* Day, J., said that the only effect of "knowingly" being in subs. 1 and not in subs. 2 was "to shift the burden of proof": *Sv*, *Mullins* v. *Collins*, sup. *Vf*, SUFFER.

Knowledge is necessary to an offence against R. 19, Part 2, Order 1871, made under Contagious Diseases (Animals) Act, 1869, s. 75 (*Nicholls* v. *Hall*, 42 L. J. M. C. 105; L. R. 8 C. P. 322). So, of Cruelty to Animals (*Elliott* v. *Osborn*, cited CRUELTY). So, of sending

Digitized by Google

Dangerous Goods by railway (*Hearne* v. *Garton*, 2 E. & E. 66; 28 L. J. M. C. 216).

So, there must be knowledge, or at least the means of knowledge, of Obstruction to make a Surveyor liable under s. 56, Highway Act, 1835 (*Hardcastle* v. *Bielby*, cited ALLOW). So, under s. 27 (3), Sale of Food and Drugs Act, 1875 (*V.* FALSE WARRANTY); so, under ss. 6, 8 Ib., and therefore a master is not responsible under the latter sections for a sale by a servant contrary to express orders (*Kearley* v. *Tonge*, 60 L. J. M. C. 159; nom. *Kearley* v. *Tylor*, 65 L. T. 261: *Svthc*, 42 S. J. 91). *Sv*, *Farley* v. *Higginbotham*, cited REFUSAL.

As to s. 8, 6 & 7 W. 4, c. 37; *V. Core* v. *James*, 41 L. J. M. C. 19; L. R. 7 Q. B. 135.

V. LAWFUL EXCUSE: SUFFER: Stone, 733, 734: Maxwell, 115: 6 Encyc. 125–127.

"Knowingly and wilfully *intermarry*, without due publication of BANNS," s. 22, Marriage Act, 1823, 4 G. 4, c. 76; *V. R.* v. *Clarke*, 16 L. T. 429; 15 W. R. 796. *V.* MARRY.

"Knowingly *issuing*" Fraudulent Prospectus, s. 38, Comp Act, 1867, means, intentionally issuing it (*Twycross* v. *Grant*, 2 C. P. D. 469; 46 L. J. C. P. 636).

"Knowingly *permits*" Sewage to fall into a Stream; *V.* CAUSE OR PERMIT.

"Knowingly *sell*, publish or expose to sale" any printed book contrary to s. 17, Copyright Act, 1842, 5 & 6 V. c. 45; *V. Cooper* v. *Whittingham*, 49 L. J. Ch. 752; 15 Ch. D. 501.

In *Royse* v. *Birley* (cited PUBLIC SERVICE), the Court read "knowingly and willingly" into the first part of s. 1, 22 G. 3, c. 45, taking that phrase from the latter part, and applying it to the first part, of the section.

V. FRAUD: MALICE: NEGLIGENTLY: WILFUL NEGLECT: WILFULLY: WITTINGLY: PRESUME: OFFENCE: INNOCENTLY ACTED.

KNOWLEDGE.—"Come to the Knowledge"; *V.* COME TO. *Cp*, KNOW.

"Knowledge and Belief" in an affidavit, *cp*, 'Information and Belief," sub INFORMATION.

"Notice and Knowledge"; *V.* NOTICE.

V. NOT TO MY KNOWLEDGE: SCIENTER.

KNOWN.—Husband or wife absent and not "known" by the other to be living within 7 years, s. 22, 9 G. 4, c. 31, meant, not "known" at any time during the 7 years (*R.* v. *Cullen*, 9 C. & P. 681); but "known" did not include "having the means of knowing" (*R.* v. *Briggs*, Dears. & B. 98).

V. R. v. *Tolson*, cited KNOWINGLY: BIGAMY. *Cp*, KNOW.

KNOWN CHANNEL.—*V.* DEFINED CHANNEL.

Digitized by Google

KUT-KUBALA.—A Kut-kubala, or Bye-bil-waffa, is a Deed of Conditional Sale, and one of the customary deeds or instruments of security in INDIA as declared by Regulation 17 of 1806, regulating the legal proceedings to be taken to enforce such deeds; such conditional sales are to be regarded in the same light as mortgages, and therefore, adverse possession is not to be presumed against a person claiming under such a conditional sale (*Prannath Roy Chowdhry* v. *Ramrutton Roy*, 8 W. R. 29, cited also GOOD CAUSE). The deed in that case began as follows,—"To the high in dignity, Baboo Prannath Chowdhry. This mortgage-deed, or kut-kubala, of the land and garden house, held under a khirajeepottah (rent-lease) is executed in the year 1231 (*i.e.* 1825 A. D.), by Meer Sydoo and Beebee Noor Jehan, neekahee wife of the said Meer, inhabitants of Cossipore."

Digitized by Google

L. S.—LABOURER.

L. S.—L. S. as commonly encircled at the end of a copy of a DEED, in or about the place where the seal would be in the original, is the abbreviation of *Locus Sigilli*, the place of the seal; and is the proper designation and copy of the seal (*Smith* v. *Butler*, 25 N. Hamp. 524).

LABEL.—Quà Merchandize Marks Act, 1887, "'Label,' includes any Band or Ticket" (subs. 2, s. 5).
V. TRADE-MARK.

LABOUR.—"The expression used" (in the definition of "Workman" in the Employers and Workmen Act, 1875, and Employers' Liability Act, 1880), "is not 'manual *Work*,' but 'manual *Labour*'; for many occupations involve the former but not the latter, such as telegraph clerks, and all persons engaged in writing" (per Smith, J., *Cook* v. *Metrop Tramways Co*, 18 Q. B. D. 684; 56 L. J. Q. B. 309; 56 L. T. 448; 57 Ib. 476; 35 W. R. 577; 51 J. P. 630); in *whc* it was held that the Driver of a Tram-car, though engaged in manual *work*, is not engaged in manual *labour*, and is, therefore, not a "Workman" within the Acts cited: so, of a Hairdresser (*R.* v. *Louth Jus.*, 1900, 2 I. R. 714).

Probably, the true meaning of "Labour" is this, "Real 'labour,' is that which tests a man's muscles and sinews" (per Esher, M. R., *Yarmouth* v. *France*, 19 Q. B. D. 651).

V. LABOURER: MANUAL LABOUR: PERSONAL LABOUR: TROUBLE: WORKMAN.

LABOURER.—"A 'Labourer,' is a man who digs and does other work of that kind with his hands. A Carpenter or a Bailiff or a Parish Clerk is not called a Labourer" (per Brett, L. J., *Morgan* v. *London Gen. Omnibus Co*, 53 L. J. Q. B. 353; 13 Q. B. D. 832: *Vf*, per Lopes, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23).

So, under s. 1, 20 G. 2, c. 19, a Man in Possession was not a "Labourer" (*Bramwell* v. *Penneck*, 7 B. & C. 536; 1 M. & R. 409). Neither would "Labourer" include a skilled ARTIZAN; "there being, as I take it, a known distinction between a JOURNEYMAN in any art, trade, or mystery, or other workman employed in the different branches of it, and a Labourer" (per Ellenborough, C. J., *Lowther* v. *Radnor*, 8 East, 124).

Digitized by Google

A Fireman or a Stoker on board ship (or, probably, on land) is a "Labourer," within the exemption from Agreement Duty in the Stamp Acts (*Wilson* v. *Zulueta*, 19 L. J. Q. B. 49; 14 Q. B. 405); so, *semble*, of a Farm Bailiff who takes charge of glebe lands at a salary and share of profits (*R.* v. *Wortley*, 21 L. J. M. C. 44; 2 Den. 333). In *thlc* Campbell, C. J., said, "I see no reason for confining the meaning of the word 'Labourer' to a mere hedger and ditcher."

V. LABOUR: ARTIFICER: HANDICRAFTSMAN: MECHANIC: SERVANT: WORKMAN.

It is doubtful whether the word "Labourer" in the Sunday Observance Act, 1677, 29 Car. 2, c. 7, extends to an Agricultural Labourer (*R.* v. *Silvester*, 33 L. J. M. C. 79, nom. *R.* v. *Cleworth*, 4 B. &. S. 927; nom. *Cleworth* v. *Leigh Jus.*, 12 W. R. 375). That case decided that a FARMER is not a Labourer within the Act, even though he work with his own hands.

Agricultural Labourer; *V.* AGRICULTURAL.

Quà Land Law (Ir) Acts, "Labourer" means, "a man whose occupation, during the ordinary season of agricultural work, is the doing of Agricultural Work for HIRE on the HOLDING; and shall include, a Herdsman" (s. 26 (1), 54 & 55 V. c. 48).

"The Labourers (Ireland) Acts, 1883 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

A representation that a Ship "will carry *Emigrant* Labourers, not more than 40," is satisfied if not more than that number of *men* are taken; although with their wives and children the number is exceeded (*Richards* v. *Hayward*, 2 M. & G. 574; 10 L. J. C. P. 108; 2 Sc. N. R. 670).

LABOURING CLASSES.—Quà s. 5 (and by its subs. 7), Metropolitan Police Act, 1886, 49 & 50 V. c. 22, "'Persons belonging to the Labouring Classes,' *includes*, mechanics, artizans, labourers, and others, working for WAGES, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons (other than DOMESTIC SERVANTS) whose income does not exceed an average of 30*s.* a week; and the families of any such persons who may be residing with them."

That def is adopted quà s. 8 (*V.* subs. 3), of the Sch to Electric Lighting Clauses Act, 1899, 62 & 63 V. c. 19, by which, however, "Labouring Classes" *means* the enumerated persons, instead of merely *including* them.

Cp, WORKING CLASSES.

LACE.—As used in s. 1, Carriers Act, 1830, "Lace" does not include Machine made Lace (s. 1, 28 & 29 V. c. 94); but it includes a

Digitized by Google

piece of valuable lace framed for an exhibitiou (*Treadwin* v. *G. E. Ry*, L. R. 3 C. P. 308; 37 L. J. C. P. 83).

"Lace Factories"; "Lace Machine"; *V.* s. 4, 24 & 25 V. c. 117.

"Lace Warehouses"; *V.* NON-TEXTILE FACTORIES.

LACERTA. — *V.* SALIVA.

LACHES. — "*Laches*, or *lasches*, is an old French word for slacknesse or negligence, or not doing" (Co. Litt. 380 b: *Va*, Ib. 246 b: Termes de la Ley: Cowel): that def was cited and applied by North, J., *Partridge* v. *Partridge*, 1894, 1 Ch. 351; 63 L. J. Ch. 122.

"'Laches' is a neglect to do something which by law a man is obliged to do" (per Ellenborough, C. J., *Sebag* v. *Abitbol*, 4 M. & S. 463).

LACTARIUM: LACTITIUM. — *V.* VACCARIA.

LADIES' OUTFITTER. — What amounts to a breach of a covenant not to carry on the business of a "Ladies' Outfitter"; *V. Stuart* v. *Diplock*, 59 L. J. Ch. 142; 43 Ch. D. 343; 38 W. R. 223: *Vthe*, *Bailey* v. *Skinner*, cited CARRY ON; which dealt with a like covenant quà "General Draper."

LADING. — *V.* LOAD: PORT: BILL OF LADING.

LADY DAY. — *V.* MICHAELMAS.

LÆSÆ MAJESTATIS. — "When disloyalty so rears its crest as to attack even Majesty itself, it is called by way of eminent distinction HIGH TREASON, *alta proditio*, being equivalent to the *Crimen Læsæ Majestatis* of the Romans, as Glanvil (lib. 1, c. 2) denominates it also in our English law" (4 Bl. Com. 75). Glanvil's instances, quà English law, are Regicide and Sedition.

LAGAN. — *V.* FLOTSAM.

LAGE-DAY. — *V.* LAW DAY.

LAID OUT. — "Money laid out," s. 7, S. L. Act, 1882, does not comprise a past voluntary expenditure; it means, money "laid out" in reference to the transaction of which the lease to be granted under the section is part (*Re Chawner*, cited CONSIDERATION).

V. NEW STREET.

LAID UP. — A clause in a Marine Insrce for a return of part of the premium if the Ship "is sold, or laid up," means ("laid up" being in association with "sold"), "a permanent laying up similar to that which would take place if the Ship had been sold; *i.e.* such a laying up as would put a final end to the policy"(per Tenterden, C. J., *Hunter* v. *Wright*, 10 B. & C. 714).

Digitized by Google

LAIRAGE. — A Lairage is a building, generally of brick and wood roofed over, used for the reception and slaughter of cattle and sheep brought from abroad, and for the cooling and preservation of the carcasses (*Mersey Docks* v. *Birkenhead*, cited Annual Value).

LAITY. — *V.* Clergy.

LAKE. — *V.* Pond: Pool.

LAMB. — *Semble*, the offspring of sheep when between 9 and 12 months old is still a Lamb (*R.* v. *Spicer*, 1 Den. 82, 83). *V.* Sheep.

LAME DUCK. — "'Lame Duck' would be actionable if applied to a person on the Stock Exchange, because there it has acquired a particular meaning" (per Watson, B., *Barnett* v. *Allen*, 27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217). *Vf*, *Morris* v. *Langdale*, 2 B. & P. 284.

LAMMAS LANDS. — "Lands belonging to the owner in fee simple, who is absolutely the owner in fee simple, to all intents and purposes for half the year; and the other half of the year he is still the owner in fee simple, subject to a right of pasturage over the land by other people" (per Jessel, M. R., *Baylis* v. *Tyssen Amhurst*, 46 L. J. Ch. 721; 6 Ch. D. 507). Lammas lands were formerly opened to the right of pasturage on the 1st August; but since the 2nd September, 1752, the right commences eleven days later, *i.e.* 12th August (24 G. 2, c. 23, s. 5).
Vh, per Hatherley, C., *Warrick* v. *Queen's College*, 6 Ch. 724.

LANCASTER. — "The Lancaster County Palatine Acts, 1794 to 1871"; *V.* Sch 2, Short Titles Act, 1896.

LAND. — "To land"; *V.* Landed.

LAND: LANDS. — Though the word "Land" anciently meant "whatsoever may be plowed" (Co. Litt. 4 a), and signified "nothing but arable land" (Touch. 91: *Cp*, Mountain); yet in and since the time of Ld Coke, and now, it "comprehendeth any ground, soile, or earth, whatsoever" (Co. Litt. 4 a: *Va*, Touch. 91); whether of freehold or copyhold tenure (*Doe* d. *Clarke* v. *Ludlam*, 7 Bing. 275). But as regards Leaseholds, the law prior to Jan. 1, 1838, was that "if a man hath Land in fee, and Lands for yeers, and deviseth all his Lands and Tenements, the Fee simple Lands passe only and not the Lease for yeers: And if a man hath a Lease for yeers, and no Fee simple, and deviseth all his Lands and Tenements, the Lease for yeers passeth; For otherwise the Will should be meerly void" (*Rose* v. *Bartlett*, Cro. Car. 293; *Vthc*, *Arkell* v. *Fletcher*, cited Farm: *Vf*, *Thompson* v. *Lawley*, 2 B. & P. 303: *Swift* v. *Swift*, 29 L. J. Ch. 121; 1 D. G. F. & J. 160: 1 Jarm. 667–672). But *Rose* v. *Bartlett* governed a Conveyance *inter vivos* (*Doe* d. *Davies*

Digitized by Google

v. *Williams*, 1 Bl. H. 25); and, since the date mentioned, a Will of "Lands" *primâ facie* includes all kinds of leaseholds (Wills Act, 1837, s. 26: *Wilson* v. *Eden*, 11 Bea. 237; 14 Ib. 317; 16 Ib. 153; 17 L. J. Ch. 459; 21 L. J. Q. B. 385; 5 Ex. 752; 18 Q. B. 474: *Prescott* v. *Barker*, 43 L. J. Ch. 498; 9 Ch. 174: *Butler* v. *Butler*, 54 L. J. Ch. 197; 28 Ch. D. 66; 33 W. R. 192: *Re Davison*, 58 L. T. 304: *Sv*, 41 S. J. 75, for note of an anonymous case in which Kekewich, J., found a CONTRARY INTENTION. *Vf*, 1 Jarm. 673).

Even before the Wills Act, 1837, a devise of "Lands" included Leases for Lives (*Watkins* v. *Lea*, and *Fitzroy* v. *Howard*, cited FREEHOLD).

"Land or other hereditaments of whatever TENURE," Locke King's Act, 1877, 40 & 41 V. c. 34, includes Leaseholds (*Re Kershaw*, 57 L. J. Ch. 599; 37 Ch. D. 674; 58 L. T. 512; 36 W. R. 413).

V. REAL ESTATE.

In *R.* v. *Mid. Ry.* (4 E. & B. 958) "Land," in a Local Rating Act, was restricted to mean, land occupied for cultivation and uses ancillary thereto.

"Land," or "Lands," not only means the surface of the ground, but also everything (except gold or silver mines, *V.* Note to MINE) on or over or under it, for *cujus est solum ejus est usque ad cœlum et ad inferos* (Co. Litt. 4 a: Touch. 91: 2 Bl. Com. 18. Ld Coke calls the earth "the Suburbs of Heaven"). But though a devise of "Lands" will generally carry the houses on it, "yet, of course, this does not hold where the testator evidently uses the term in contradistinction to 'house.' As where A., having a messuage at L., and a messuage and lands at W., devised his house at L., with all other his lands, meadows, pastures, with their appurtenances, lying in W., the house at W. was held not to pass" (1 Jarm. 777, citing *Ewer* v. *Hayden*, Cro. Eliz. 476, 658; 2 And. 123: *Va*, *Re Portal to Lamb*, 54 L. J. Ch. 1012; 30 Ch. D. 50; 33 W. R. 859; 53 L. T. 650).

Tithes (*Ritch* v. *Sanders*, Styles, 261), or a Fee-Farm Rent (*Inchley* v. *Robinson*, 2 Leon. 165, pl. 218), may pass under a devise of "Lands" when there is nothing else on which it can operate: *Sq*, as to Rent-Charge or Rent-Seck (*West* v. *Lawday*, 11 H. L. Ca. 375). So Running Water may, by a context, pass under the name of "land" (*Canham* v. *Fish*, 2 Cr. & J. 126; 2 Tyr. 155): but the Touchstone says (p. 91), "Rents, Advowsons, and such like things," do not pass under this word (*Va*, *Westfaling* v. *Westfaling*, 3 Atk. 460).

"The word 'Lands' has often been extended to include Trusts" (Lewin, 884); and money to be laid out in land "will pass, by the cestui que trust's Will, under the general description of all the testator's *lands*" (Ib. 1154, citing *Guidot* v. *Guidot*, 3 Atk. 256: *Rashleigh* v. *Master*, 1 Ves. 201: *Chandler* v. *Pocock*, 15 Ch. D. 491: *Re Greaves*, 23 Ch. D. 313; 52 L. J. Ch. 753).

In all Acts of Parliament since 1850, "Land" includes, "messuages

Digitized by Google

tenements and hereditaments, houses and buildings, of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure" (13 & 14 V. c. 21, s. 4; *Vf*, s. 3, Interp Act, 1889). This def is confined to CORPOREAL Heredits (per Chitty, J., *Re Danson*, 11 Times Rep. 455); and, probably, does not include a mere EASEMENT (*V. Chelsea W. W. Co* v. *Bowley*, 20 L. J. Q. B. 520; 17 Q. B. 358: *Metrop Ry* v. *Fowler*, 1893, A. C. 416; 60 L. J. Q. B. 518; 62 Ib. 553; 69 L. T. 390; 42 W. R. 270; 57 J. P. 756).

In the great Clauses Consolidation Statutes of 1845, the word "Lands" extends to "messuages, lands, tenements, and hereditaments, of any tenure" (8 V. cc. 16, 18, and 20). In the contemporary Consolidation Statutes for Scotland, the def is, "houses, lands, tenements, and heritages, of any description or tenure" (8 V. cc. 17 and 19), *Va*, 8 & 9 V. c. 33, s. 3. As to the first of these definitions, *V. G. W. Ry* v. *Swindon Ry*, 53 L. J. Ch. 1075; 9 App. Ca. 787; 32 W. R. 957; 48 J. P. 821: HEREDITAMENT: TENEMENT. These defs, like that copied from them in s. 3, W. W. C. Act, 1847, include MINES (per Cairns, C., *Smith* v. *G. W. Ry*, 47 L. J. Ch. 105; 3 App. Ca. 180: *Holliday* v. *Wakefield*, 1891, A. C. 81; 60 L. J. Q. B. 361; 64 L. T. 1; 40 W. R. 129; 55 J. P. 325), at least when the subjacent minerals, as well as the surface of the "lands," are necessary for the support of the authorized works (per Ld Watson, *Holliday* v. *Wakefield*, sup). But, observe that, by ss. 77 to 85, Ry C. C. Act, 1845, a Ry Co is not entitled to the Mines under "lands" purchased by them, except such as are necessarily excavated in the construction of their works, or are expressly purchased; *Vh*, *Errington* v. *Metrop District Ry*, 19 Ch. D. 559; 51 L. J. Ch. 305: *Re Metrop Ry and Cotton's Trustees*, 45 L. T. 103: *Gerard* v. *Lond. & N. W. Ry*, 1895, 1 Q. B. 459; 64 L. J. Q. B. 260; 72 L. T. 142; 43 W. R. 374. *Note*: ss. 18–27, W. W. C. Act, 1847, "constitute a special code relating to Mines and their working, and to interference with them" quà that Act, and Acts incorporating it (per Ld Herschell, *Holliday* v. *Wakefield*, sup).

New Buildings on a Settled Estate, are substantially new "Land," within s. 69, Lands C. C. Act, 1845 (per James, L. J., *Re Leigh*, 40 L. J. Ch. 687; 6 Ch. 887: *Vf*, *Drake* v. *Trefusis*, 10 Ch. 364: *Re Lytton*, W. N. (84) 193: *Re Speers*, 3 Ch. D. 262); but that construction is not applicable to "Land" as somewhat similarly used in s. 21 (7), S. L. Act, 1882 (*Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 231).

Quà Conv & L. P. Act, 1881, "'Land,' unless a CONTRARY INTENTION appears, includes, land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land" (s. 2, ii). In *Re Lake and Taylor*, *Spain* v. *Mowatt* (33 W. R. 597), Pearson, J., seems to have held that a share of an equitable interest in an agreement for a lease is within that definition.

Digitized by Google

Quà Conveyancing (Scot) Act, 1874, 37 & 38 V. c. 94, "'Land,' or 'Lands,' shall include, all subjects of heritable property which are or may be held of a superior, according to feudal tenure; or which (prior to the Commencement of this Act) have been or might have been held by burgage tenure or by tenure of booking" (s. 3).

Quà Entail (Scot) Acts, "Land" includes, "all heritages" (38 & 39 V. c. 61, s. 3). A similar def, for Scotland, is provided quà 23 & 24 V. c. 143 (s. 2); 45 & 46 V. c. 49 (s. 52); 57 & 58 V. c. 44 (s. 18).

Quà S. L. Act, 1882, "'Land' includes, incorporeal hereditaments, also an undivided share in land" (s. 2, subs. 10, i): *Vth*, *Re Gerard*, sup. Under that def a Baronetcy or other title is "Land" (*Re Rivett-Carnac*, 54 L. J. Ch. 1074; 30 Ch. D. 136: *Re Aylesford*, 55 L. J. Ch. 523; 32 Ch. D. 162; 54 L. T. 414; 34 W. R. 410). A TENANT FOR LIFE of "an undivided share" in land can sell it without the consent of the owner of any other share (*Cooper* v. *Belsey*, 1899, 1 Ch. 639; 68 L. J. Ch. 258; 80 L. T. 69; over-ruling *Re Collinge*, 57 L. J. Ch. 219; 36 Ch. D. 516). *Vf, Re Thomas*, cited CAPITAL MONEY.

In s. 2, Poisoned Flesh Prohibition Act, 1864, 27 & 28 V. c. 115, "Land," includes, *e.g.* a Pigeon-house in an enclosed garden, because s. 3 supplies an enlarging context (*Rogers* v. *Hull*, 12 Times Rep. 470).

As to what "Land," or "Lands" includes under,

Agricultural Holdings Act, 1883, and the subsequent acts read therewith; *V.* HOLDING:

Allotments Act, 1887, 50 & 51 V. c. 48; *V.* s. 17:

Chief Rents Redemption (Ir) Act, 1864, 27 & 28 *V.* c. 38; *V.* s. 1:

Friendly Societies Act, 1896, 59 & 60 V. c. 25; *V.* ss. 102, 106:

Gas Works Clauses Act, 1847, 10 & 11 V. c. 15; *V.* s. 3:

Harbours, Docks, and Piers, Clauses Act, 1847; *V.* s. 3:

Inheritance Act, 1833: *V.* s. 1:

Industrial and Provident Societies Act, 1893, 56 & 57 V. c. 39; *V.* s. 79:

Judgments Act, 1864, 27 & 28 V. c. 112; *V.* s. 2; Dart, 545:

Land Debentures (Ir) Act, 1865, 28 & 29 V. c. 101; *V.* s. 3:

Land Drainage Act (Ir), 1863, 26 & 27 V. c. 26; *V.* s. 3; *Va*, 5 & 6 V. c. 89, s. 159:

Land Tax Act, 1797, 38 G. 3, c. 5, s. 4; *V. Chelsea W. W. Co* v. *Bowley* and *Metrop Ry* v. *Fowler*, sup:

Land Transfer Act, 1897, 60 & 61 V. c. 65; *V.* s. 24:

Landed Estates Court (Ir) Act, 1858, 21 & 22 V. c. 72; *V.* s. 1: A Fishery is within that def (*Gore* v. *M'Dermott*, 15 W. R. 843; Ir. Rep. 1 C. L. 348):

Lighting and Watching Act, 1833, 3 & 4 W. 4, c. 90; *V.* s. 33, on *whv*, PROPERTY OTHER THAN LAND:

Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66; *V.* s. 95:

Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14; *V.* s. 3:

Metrop Man. Acts, 1855, 1862; *V. Higgins* v. *Harding*, L. R. 8 Q. B. 7;

Digitized by Google

42 L. J. M. C. 31; 27 L. T. 483; 21 W. R. 191: *Wright* v. *Ingle*, cited House:

Military Lands Act, 1892, 55 & 56 V. c. 43; *V.* s. 23:

Mortmain Acts; *V.* Interest in Land:

Police, &c (Scot) Acts; *V.* 25 & 26 V. c. 101, s. 3:

Poor Law (Scot) Act, 1845, 8 & 9 V. c. 83; *V.* s. 1:

Public Health Acts; *V.* P. H. Act, 1875, s. 4; P. H. Ireland Act, 1878, s. 2; P. H. Scotland Act, 1897, s. 3; on *whv*, *Durrant* v. *Branksome*, 1897, 2 Ch. 291; 66 L. J. Ch. 653; 76 L. T. 739; 46 W. R. 134; 61 J. P. 472: *Cleckheaton* v. *Firth*, 62 J. P. 536:

Public Works (Ir) Act, 1869, 32 & 33 V. c. 74; *V.* s. 6:

Real Property Limitation Acts, 1833 and 1874; *V.* Dart, 433, 434, 454:

Record of Title Act (Ir), 1865, 28 & 29 V. c. 88; *V.* s. 2:

Registration of Assurances (Ir) Act, 1850, 13 & 14 V. c. 72; *V.* s. 64:

Sale of Land by Auction Act, 1867, 30 & 31 V. c. 48; *V.* s. 5:

Satisfied Terms Act, 1845, 8 & 9 V. c. 112; *V.* Dart, 329, 330:

Telegraph Acts; *V.* 26 & 27 V. c. 112, s. 3; 31 & 32 V. c. 110, s. 3:

Thames Preservation Act, 1885, 48 & 49 V. c. 76; *V.* s. 29:

Titles to Land (Scot) Act, 1858, 21 & 22 V. c. 76; *V.* s. 36:

Trustee Acts; *V.* Dart, 657, *n*:

Vendor and Purchaser Act, 1874, 37 & 38 V. c. 78; *V.* Dart, 160.

Other Stat. Def. — 8 & 9 V. c. 35, s. 10, c. 124, s. 5; 24 & 25 V. c. 41, s. 1, c. 133, s. 28 (2); 27 & 28 V. c. 57, s. 2; 44 & 45 V. c. 20, s. 3 (1); 51 & 52 V. c. 29, s. 3 (1); Lunacy Act, 1890, s. 341; 53 & 54 V. c. 25, s. 2 (4), c. 70, s. 93; 55 & 56 V. c. 31, s. 20; Copyhold Act, 1894, 57 & 58 V. c. 46, s. 94. — *Scot.* 38 & 39 V. c. 49, s. 30, 41 & 42 V. c. 8, s. 27; 55 & 56 V. c. 54, s. 16. — *Ir.* 34 & 35 V. c. 22, s. 2; 37 & 38 V. c. 60, s. 2.

As to what "Land" includes in a Contract for Sale; *V.* Dart, 128–130.

Independently of the Wills Act, 1837, "there is no case in which a Fee has been held to pass by a mere devise of 'Lands'" (per Parke, J., *Doe* d. *Norris* v. *Tucker*, 3 B. & Ad. 477; 1 L. J. K. B. 163: *Va*, *Doe* d. *Ashby* v. *Baines*, 2 Cr. M. & R. 23). *V.* Fee Simple.

"Boundary of Lands"; *V.* Boundary.

"Buildings, Lands, and Heredits"; *V.* Hereditament.

"Corporate Land"; *V.* Corporate.

"Farm or Lands," s. 1, 14 & 15 V. c. 25; *V.* Farm.

"Lands and Assessments"; *V.* 31 & 32 V. c. 82, s. 4.

"Lands and Heritages"; *V.* s. 42, 17 & 18 V. c. 91, which def was adopted by 20 & 21 V. c. 72, s. 78; 23 & 24 V. c. 79, s. 2; 31 & 32 V. c. 96, s. 1; 39 & 40 V. c. 49, s. 3; 41 & 42 V. c. 51, s. 3.

"Lands and Houses"; *V.* 21 & 22 V. c. 84, s. 1.

"Lands and Premises"; *V.* 55 & 56 V. c. 55, s. 4.

"Lands and Streams"; *V.* W. W. C. Act, 1847, 10 & 11 V. c. 17, s. 2.

Digitized by Google

"Land lawfully occupied"; *V.* Lawfully Occupied.

Lands of "Like Quality"; *V.* Like.

"Land or Tenement"; *V.* Rep People Act, 1885, 48 & 49 V. c. 3, s. 11.

"Lands, Tenements, and Hereditaments"; *V.* 4 & 5 V. c. 39, s. 29.

"Recorded Land"; *V.* Recorded.

"Registered Land"; *V.* Registered.

"Settled Land"; *V.* Settled.

Waste Land; *V.* Waste.

V. Adjacent: Interest in Land: Land covered with water: Land Tax: Landed Property: Property other than Land: Recovery of Land: Soil: Subsoil: Terra: Tidal Land.

LAND CERTIFICATE.—Quà Land Transfer Act, 1897; *V.* 38 & 39 V. c. 87, s. 29; Land Transfer Acts, 1897, s. 8; Land Transfer Rules, 1898, 204–208.

Quà Record of Title Act (Ir), 1865, 28 & 29 V. c. 88, "'Certificate,' or 'Land Certificate,' shall include the counterpart of a conveyance, or the duplicate of a judicial declaration of title recorded pursuant to this Act" (s. 2).

LAND CHARGE.—Stat. Def., 51 & 52 V. c. 51, s. 4: *Vh,* 63 & 64 V. c. 26, c. 50, s. 3: Charge.

"Land Improvement Charge"; Stat. Def., 50 & 51 V. c. 33, s. 34; 51 & 52 V. c. 39, s. 6; 54 & 55 V. c. 66, s. 95.

LAND COMMISSIONERS.—*V.* Commissioners.

LAND COVERED WITH WATER.—These words,—*e.g.* in s. 55, Loc Gov Act, 1858, 21 & 22 V. c. 98, and s. 211 (1 *b*), P. H. Act, 1875,—include a Wet Dock (*R.* v. *Newport Dock Co,* 31 L. J. M. C. 266; 2 B. & S. 708: *R.* v. *Birmingham W. W. Co,* 1 B. & S. 84), the Reservoir of a W. W. Co (*Southwark & Vauxhall W. W. Co* v. *Hampton,* 1899, 1 Q. B. 273; 68 L. J. Q. B. 207; affd in H. L. nom. *Hampton* v. *Southwark, &c Co,* 1900, A. C. 3; 69 L. J. Q. B. 72; 81 L. T. 547; 48 W. R. 209; 64 J. P. 260), the Filter Beds of a W. W. Co and its Canal for conveying water to a Reservoir or Filter Bed (*East London W. W. Co* v. *Leyton,* 40 L. J. M. C. 190; L. R. 6 Q. B. 669; 20 W. R. 95): But not the Banks of a Reservoir or Filter Bed, nor land part of the public ways occupied by the Co's Pipes but available to it for any other purpose (*Ib.*).

Land is "not the less Land for being covered with water" (per Patteson, J., *R.* v. *Leeds & Liverpool Navigation Co,* 7 A. & E. 685; 7 L. J. M. C. 41; 2 N. & P. 540).

In *R.* v. *Regents Canal Co* (6 B. & C. 720) the expression in the Act incorporating the Company was, "Lands, whether covered with water or not."

Digitized by Google

"Land covered with water" is the phrase used by Ld Coke for a Pool (Co. Litt. 4 b, 5 a, 5 b); *semble*, for Pond also.

Cp, Property other than Land: Railway.

LAND JUDGE.—*V.* Judge.

LAND LAW.—"The Land Law (Ireland) Acts"; *V.* Sch 2, Short Titles Act, 1896.

LAND LAWFULLY OCCUPIED.— *V.* Lawfully Occupied.

LAND NOT SETTLED.—This phrase includes an unsettled Reversion of Settled land (1 Jarm. 654).

LAND ONLY USED AS RAILWAY.—*V.* Railway.

LAND PURCHASE.—"The Land Purchase (Ireland) Acts"; *V.* Sch 2, Short Titles Act, 1896.

LAND REGISTRY.—Established by Land Transfer Acts, 1875, 1897.

LAND TAKEN.—"Land taken for the purposes of the Works," s. 133, Lands C. C. Act, 1845; *V. Putney* v. *Lond. & S. W. Ry*, cited Works.

LAND TAX.—As to what is a sufficient recital in a title deed of the redemption of Land Tax, within a Condition of Sale making such a recital evidence, and justifying a statement in the Particulars that "Land Tax redeemed"; *V. Buchanan* v. *Poppleton*, 27 L. J. C. P. 210; 4 C. B. N. S. 20.

Quà the Finance Acts, "'Land Tax Acts,' means, the Land Tax Act, 1797, 38 G. 3, c. 5, and the Land Tax Redemption Act, 1802, 42 G. 3, c. 116, and the enactments amending those Acts"; "'Land subject to Land Tax,' includes, all the property specified in s. 4 of the Land Tax Act, 1797, which is not exonerated from Land Tax"; and "'Land Tax Parish,' means, any parish, township, tithing, precinct, or place, for which a separate assessment of land tax is for the time being made" (s. 35, 59 & 60 V. c. 28).

LAND USED FOR.— *V.* Building Purposes: Built upon: Railway.

LANDED.—"All risk of Craft until safely *landed*"; "landed" means, actually put ashore (*Houlder* v. *Merchants' Mar Insrce*, 55 L. J. Q. B. 420; 17 Q. B. D. 354; 55 L. T. 244; 34 W. R. 673: *Vf*, *Pelly* v. *Royal Ex. Assrce*, 1 Burr. 348). *Cp*, Load. *V. Brown* v. *Carstairs*, 3 Camp. 161.

Stones shot from boats on to a harbour shore, below high-water mark, where they remain until shipped for exportation, are not "landed" within an Act enabling Commrs to levy tolls on goods "landed" within

Digitized by Google

their harbour (*Harvey* v. *Lyme Regis*, 38 L. J. Ex. 141; L. R. 4 Ex. 260).

In *Ash* v. *Financial News* (cited Tout) a jury found that a statement in a comment on a trial that the plt (an Outside Stockbroker) had "landed a parson," was not libellous.

LANDED INTEREST. — *V.* Knight of the Shire.

LANDED PROPERTY. — "The Landed Property Improvement (Ireland) Acts"; *V.* Sch 2, Short Titles Act, 1896.

Devise of "all my Landed Property" at A.; held, equivalent to all the testator's Estate and Interest in land at A. (*Sharp* v. *De St. Sauveur*, 17 W. R. 1002; 20 L. T. 799).

V. Land: Real Estate.

LANDING WAITER. — Quà Customs Consolidation Act, 1853, 16 & 17 V. c. 107, "Landing Waiter," includes, "any officer duly authorized to superintend the landing and examination of goods on their importation" (s. 357).

LANDLORD. — Generally speaking, "'Landlord' implies, not the mere lordship or ownership of the soil, but, the relationship to a Tenant" (per Bramwell, B., *Churchward* v. *Ford*, 26 L. J. Ex. 354; 2 H. & N. 446).

The power to a "Landlord" of defending an Action of Ejectment brought against his Tenant (11 G. 2, c. 19, s. 13; ss. 172, 173, Com. L. Pro. Act, 1852; R. 25, 26, Ord. 12, R. S. C.), extends to any person claiming title consistent with the tenant's possession, whether he has received rent or not (*Lovelock* v. *Dancaster*, 4 T. R. 122); *e.g.* a Mtgee out of possession having a real interest in the result (*Doe* d. *Tilyard* v. *Cooper*, 8 T. R. 645: *Doe* d. *Pearson* v. *Roe*, 6 Bing. 613), or an Heir or Devisee who has never been in possession (*Doe* d. *Heblethwaite* v. *Roe*, 3 T. R. 783, *n*: *Lovelock* v. *Dancaster*, sup), or a Devisee in Trust (*Lovelock* v. *Dancaster*), or a Sub-Lessee (*Croft* v. *Lumley*, 4 E. & B. 608), or a Cestui que Trust (*Longbourne* v. *Fisher*, 47 L. J. Ch. 379; 38 L. T. 216; 26 W. R. 276: *Leader* v. *Hayes*, 54 L. T. 204): But not a Remainder-man (*Whitworth* v. *Humphries*, 5 H. & N. 185; 29 L. J. Ex. 113; 8 W. R. 215), or a person who has recovered jdgmt in Ejectment upon a Forfeiture of Lease, but has not obtained possession (*Thompson* v. *Tomkinson*, 11 Ex. 442), or a person claiming adversely (*Doe* d. *Horton* v. *Rhys*, 2 Y. & J. 88: *Fairclaim* v. *Shamtitle*, 3 Burr. 1295). *Vf*, Redman, 559.

Quà Small Debt (Scot) Act, 1837, 1 V. c. 41, "Landlord," includes, "any person having a right to exact Rent, whether as owner, life-renter, heritable creditor in possession, principal tenant, or otherwise" (s. 37).

Quà Small Tenements Recovery Act, 1838, 1 & 2 V. c. 74, "Landlord" signifies, "the person entitled to the Immediate Reversion of

Digitized by Google

the premises; or, if the property be held in Joint Tenancy, Co-parcenary, or Tenancy in Common," signifies "any one of the persons entitled to such Reversion" (s. 7); this def adopted for Co. Co. Act, 1888 (s. 186).

Quà Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46, "'Landlord,' in relation to a HOLDING, shall include, a superior mesne or immediate landlord, or any person, for the time being, entitled to receive the rents and profits or to take possession of any Holding" (s. 70): *Vf*, 23 & 24 V. c. 154, s. 1, on *whv*, *Liddy* v. *Kennedy*, L. R. 5 H. L. 134.

Quà Agricultural Holdings Act, 1883, "'Landlord,' in relation to a HOLDING, means, any person for the time being entitled to receive the rents and profits of any Holding" (s. 61): although that definition (having regard to the def of "Tenant" in the same section) does not include the Exors or Admors of a landlord, yet the clause at the end of the section gives them the right to a Charge on the Holding for the compensation paid by them to a tenant under proceedings pending at the landlord's death (*Gough* v. *Gough*, 1891, 2 Q. B. 665; 60 L. J. Q. B. 726; 65 L. T. 110; 39 W. R. 593; 55 J. P. 807).

Quà Agricultural Holdings (Scot) Act, 1883, 46 & 47 V. c. 62, "'Landlord,' in relation to a Holding, means any person for the time being entitled to receive the rents and profits of, or to take possession of, any Holding"; and "'Landlord,' or 'Tenant,' includes the exors, admors, assignees, legatee, disponee, or next-of-kin, husband, guardian, curator bonis, or trustees in bankruptcy, of a Landlord or Tenant" (s. 42)

Other Stat. Def.—50 & 51 V. c. 26, s. 4; Loc Gov Act, 1894, s. 10 (10); Loc Gov (Scot) Act, 1894, s. 26 (9); Loc Gov (Ir) Act, 1898, s. 109.—*Ir*. 9 & 10 V. c. 111, s. 22; 19 & 20 V. c. 65, s. 9; 44 & 45 V. c. 49, s. 57; 50 & 51 V. c. 33, s. 34; 59 & 60 V. c. 47, s. 48.

Same Distress "as Landlords"; *V*. DISTRESS.

"Landlord" is an insufficient description of a Vendor (*Coombs* v. *Wilks*, cited PROPRIETOR).

Cp, LANDOWNER: LESSOR: OWNER.

LANDLORD'S FIXTURES.—*V*. FIXTURES.

LANDOWNER.—Quà Extraordinary Tithe Redemption Act, 1886, 49 & 50 V. c. 54, "'Landowner,' means, the person for the time being receiving the RACK RENT of land, whether on his own account or as trustee for any other person, or who would so receive it if the land were let at a rack-rent" (s. 14).

Other Stat. Def.—Tithe Act, 1836, 6 & 7 W. 4, c. 71, s. 12; Improvement of Land Act, 1864, 27 & 28 V. c. 114, s. 8.

"Owner of Land"; Stat. Def., Public Money Drainage Act, 1846, 9 & 10 V. c. 101, s. 49, with which *cp*, 12 & 13 V. c. 100, s. 32; 24 & 25 V. c. 133, s. 38 (3).—*Ir*. 29 & 30 V. c. 97, s. 3, adopted for 61 & 62 V. c. 28, s. 6; 32 & 33 V. c. 42, s. 34 (8).

Cp, LANDLORD: OWNER.

Digitized by Google

LANDS CLAUSES ACTS. — *V.* s. 23, Interp Act, 1889: LAND.

LANDWARD. — In Scotland, the "Landward part of a COUNTY," connotes "a County exclusive of the Burghs situated therein" (20 & 21 V. c. 71, s. 3, c. 72, s. 78; 23 & 24 V. c. 105, s. 4).

"'Landward PARISH,' means, a Parish no part of which is comprised within the boundaries of a BURGH"; "'Landward part of a Parish,' means, any part of a Parish not comprised within the boundaries of a Burgh" (s. 54, Loc Gov (Scot) Act, 1894).

Lord LANGDALE'S ACTS. — The Wills Act, 1837, 1 V. c. 26:
The Public Record Office Act, 1838, 1 & 2 V. c. 94:
The Solicitors Act, 1843, 6 & 7 V. c. 73.

LANGUISH. — A "languishing" Tenant by Escuage could send a substitute to attend the King on his wars (Litt. s. 96), a phrase which included "an ideot, a mad-man, a leper, a man maymed, blind, deaf, of decrepit age, or the like" (Co. Litt. 70 b).

LANNEMANNI. — *V.* ALODIUM.

LAPSE. — "'Lapse,' is the omission of a Patron to present to a Church of his patronage within sixe moneths after an Avoidance by death, or taking of another Benefice without qualification or notice to him given of the resignation or deprivation of the present Incumbent, by which neglect title is given to the Ordinary to collate unto the said Church" (Termes de la Ley). *Vf,* 2 Bl. Com. 276: Phil. Ecc. Law, 366.

A Legacy is said to "lapse" when the legatee dies in the lifetime of the testator, or when something happens in such lifetime which prevents the intended legatee from being entitled to the legacy, or (it is submitted) when the legatee dies after the testator but before becoming entitled to the legacy. *Vh,* Jarm. ch. 11: Theobald, ch. 50: Wms. Exs. Part 3, Bk. 3, ch. 2, s. 5.

S. 33, Wills Act, 1837, saves from lapse gifts to a CHILD or ISSUE of a testator who "shall die in the lifetime of the testator LEAVING issue": *Vh,* COMPETENT: SURVIVE. *Va,* s. 32, Ib., as to saving an Estate Tail from lapse. Lapsed Devises fall into the Residuary Devise (s. 25, Ib.). *V.* CY-PRÈS.

If there is a testamentary gift to two or more persons, *by name,* who take as JOINT TENANTS, there is no lapse if one dies in the lifetime of the testator, because Joint Tenants take PER MY ET PER TOUT, and the survivors take the dying person's share; *secus,* if the persons take as TENANTS IN COMMON, for there each takes in severalty, and on the death of one in the testator's lifetime his share falls into the Residuary Gift, if there be one, or, if not, it will go as on an intestacy. If the

Digitized by Google

gift is to a CLASS, there is no lapse if one who would be a member of the Class dies in the lifetime of the testator, because such a Class is ascertained at the testator's death. *Vh,* 1 Jarm. 340, 341.

Where a Will directed that after payment of legacies and expenses, everything that remained was to "lapse" to the Exors; James, V. C., held that the Exors took the residue beneficially (*Prior* v. *Mackinnon,* W. N. (70) 117).

What is a "Lapse, Voidance, or Forfeiture," s. 20, Crown Lands (New South Wales) Act, 1884, is a question of fact to be determined by the Land Board after a trial held pursuant to s. 14 (*A-G. N. S. Wales* v. *Walters,* 1898, A. C. 460; 67 L. J. P. C. 36; 78 L. T. 272, *whv* for illustrations).

LARCENY.—*V.* THEFT: PETTY LARCENY: SIMPLE LARCENY.

LARGE.—*V.* AT LARGE: "Public at large," sub PUBLIC.

LARGEST.—In Conditions of Sale relating to who shall have the custody of the deeds, the "largest lot," means, largest in extent, not in value (*Griffiths* v. *Hatchard,* 23 L. J. Ch. 957; 1 K. & J. 17): and in this connection, "Lot" means single lot, and not the aggregation of more than one (*Scott* v. *Jackman,* 21 Bea. 110: *Sv, Re Doherty,* 15 L. R. Ir. 247, 256). *Vh,* Sug. V. & P. 34.

LAST.—"Last *Annual Balance Sheet* which should have been signed" in a Partnership, quà the ascertainment of a retiring or dying partner's share, means, that such share is to be ascertained by the accounts of the last year of the partnership completed prior to the retirement or death; *i.e.* by the actual signed Balance Sheet, if there was one; if not, then by taking the accounts for such last year (*Pettyt* v. *Janeson,* 6 Mad. 146: *Hunter* v. *Dowling,* 1893, 1 Ch. 391; 62 L. J. Ch. 617).

"Last *Defence,*" R. 1, Ord. 23, R. S. C.; Where the plaintiff added new defendants after Answer, the "last Answer" (Cons. Ord. 33, R. 10, 1), was held to mean the last Answer of the *original* defendants (*Bertolacci* v. *Johnstone,* 13 L. J. Ch. 99; 2 Hare, 632).

"Last *Place of Abode*"; *V. R.* v. *Evans,* 19 L. J. M. C. 151; nom. *Ex p. Jones,* 1 L. M. & P. 357: *R.* v. *Damarell,* L. R. 3 Q. B. 50; 37 L. J. M. C. 21; 8 B. & S. 659: *R.* v. *Davis,* 22 L. J. M. C. 143; 1 Bail C. C. 191: *R.* v. *Higham,* 26 L. J. M. C. 116; 7 E. & B. 557: *R.* v. *Brown,* 24 J. P. 5: *R.* v. *Smith,* L. R. 10 Q. B. 604; 23 W. R. 523; 39 J. P. 292, 322: *R.* v. *Farmer,* 1892, 1 Q. B. 637; 61 L. J. M. C. 65; 65 L. T. 736; 40 W. R. 228; 56 J. P. 341: *R.* v. *Webb,* 1896, 1 Q. B. 487; 65 L. J. M. C. 98; 74 L. T. 428; 44 W. R. 527; 60 J. P. 280. "Last *known* place of abode"; *V. Hanrott* v. *Evans,* 4 Times Rep. 128. *V.* PLACE: USUAL PLACE OF ABODE.

Digitized by Google

"Last *Port*"; *V. Price* v. *Livingstone*, cited PORT: FINAL PORT.

"Last *Rate*"; Stat. Def., Rep People (Ir) Act, 1850, 13 & 14 V. c. 69, s. 117.

A Sole trustee is "the last surviving or Continuing *Trustee*" within s. 31, Conv & L. P. Act, 1881, repld s. 10, Trustee Act, 1893 (per Pearson, J., *Re Shafto*, 29 S. J. 372).

"Last *Will*." "My last Will dated," &c, giving date of the first Will; held to mean the last Will in fact, the date given being rejected as a mistake (*Re Ince*, 46 L. J. P. D. & A. 30; 2 P. D. 111: *Re Steele*, L. R. 1 P. & D. 575; 37 L. J. P. & M. 72, *n*: *Re Wilson*, Ib.: *Thomson* v. *Hempestall*, 1 Rob. 783; 13 Jur. 814). And, generally speaking, "Last Will," means, the one latest in date, though there may be two or more Wills all speaking from the death of the testator (*Pettinger* v. *Ambler*, 35 L. J. Ch. 389; L. R. 1 Eq. 510; 35 Bea. 321: *Leslie* v. *Leslie*, Ir. Rep. 6 Eq. 332): *Vf*, *Woodroofe* v. *Creed*, 1894, 1 I. R. 508. "This is my last Will and Testament" does not, of itself, revoke a former Will (*Cutto* v. *Gilbert*, 9 Moore P. C. 131: *Freeman* v. *Freeman*, 5 D. G. M. & G. 704; 23 L. J. Ch. 838: *Re O'Connor*, 13 L. R. Ir. 406); but may be confirmatory proof of an intention to revoke (*Plenty* v. *West*, 16 Bea. 173; 22 L. J. Ch. 185; 1 W. R. 3). *Vf*, *Re Petchell*, L. R. 3 P. & M. 153; 43 L. J. P. & M. 22: REVIVAL.

LAST ENTITLED.—"Person last entitled to any Particular Estate," s. 2, Real Property Limitation Act, 1874; *V. Pedder* v. *Hunt*, cited HEIR: "Person last entitled to Land"; *V.* 3 & 4 W. 4, c. 106, s. 1. *Cp*, PURCHASER.

LAST MENTIONED.—*V. Brancker* v. *Molyneux*, 1 M. & G. 710: *Ashton* v. *Brevitt*, 14 M. & W. 106; 14 L. J. Ex. 297.

"Last mentioned Residue"; *V. Mathews* v. *Jordan*, Ir. Rep. 5 Eq. 200.

LAST PAST.—In a Deed, a day "now last past," means, last preceding the day of the Delivery, not of the Date (*Steele* v. *Mart*, 4 B. & C. 272). *Cp*, *Shaw* v. *King*, cited HABENDUM.

LATE.—*V.* SOMETIME.

LATELY.—Devise of cottages and premises "which I have *lately* purchased"; *V. Cave* v. *Harris*, 57 L. J. Ch. 62; 57 L. T. 768; 36 W. R. 182.

LATENT AMBIGUITY.—*V.* PATENT AMBIGUITY.

LATENT DEFECT.—*V.* DEFECT.

LATERAL.—"Lateral DEVIATION" defined and contrasted with "Vertical Deviation"; *V. Herron* v. *Rathmines Commrs*, 27 L. R. Ir. 179, 214; 29 Ib. 218; 1892, A. C. 498.

Digitized by Google

LATHE. — " 'Lathe, *læstum*,' is a great part of a County, sometimes containing three or more Hundreds, as in Kent, Sussex, &c" (Termes de la Ley). *V.* Hundred: Rape.

LAUNDRY. — *V.* Factory.

LAW. — *V.* By Law: Bye Law: Civil Rights: Common Law: Equity: Law Merchant: Local Law: Martial Law: Military Law: Penal: Right in Equity.

"Court of Law"; *V.* Court.

"Matter of Law," s. 40, 6 G. 4, c. 120; *V. Fleming* v. *Hislop*, 11 App. Ca. 686, cited Annoyance, towards end.

"Question of Law"; *V.* Question.

"Laws and Statutes"; *V.* Administration.

He acts "against law"; *V.* Unworthy.

LAW or LAWE. — "*Cope* signifieth a hill, and so doth *lawe*; as *stanlawe* is *saxeus collis*" (Co. Litt. 4 b). *V.* Howe.

LAW AGENT. — In Scotland "Law Agent," includes, "Writers to the Signet, Solicitors in the Supreme Courts, Procurators in any Sheriff Court, and every person entitled to practise as an Agent in a Court of Law in Scotland" (Law Agents (Scot) Act, 1873, 36 & 37 V. c. 63, s. 1; 54 & 55 V. c. 30, s. 1: *Vf*, 59 & 60 V. c. 49, s. 1).

LAW DAY. — " 'Law-day' signifies a Leet or Sheriffes tourne" (Termes de la Ley). "Law-day or lage-day was properly any day of open court, and commonly used for the more solemn courts of a county or hundred" (Hilliard's *n* to Touch. 92, citing Cowel. *Vf*, Elph. 591). *V.* Manor.

LAW LIBRARY. — Under a bequest of "Law Library, and Books of Antiquity," Dugdale's Monasticon, Domesday Book, and State Trials, passed (*Wallace* v. *Bayldon*, 4 L. J. O. S. Ch. 74).

LAW MERCHANT. — "The Law Merchant is neither more nor less than the Usages of Merchants and Traders in the different departments of trade ratified by the decisions of Courts of Law, which, upon such usages being proved before them, have adopted them as settled law, with a view to the interests of trade and the public convenience; the Courts proceeding herein on the well-known principle of law that, with reference to transactions in the different departments of trade, Courts of law, in giving effect to the contracts and dealings of the parties, will assume that the latter have dealt with one another on the footing of any Custom or Usage prevailing generally in the particular department. By this process, what before was usage only, unsanctioned by legal decision, has become engrafted upon, or incorporated into, the Common Law, and may thus be said to form part of it. 'When a general Usage has been judi-

Digitized by Google

cially ascertained and established,' — says Ld Campbell, in *Brandao* v. *Barnett*, 12 Cl. & F. 805, — 'it becomes a part of the Law Merchant which Courts of justice are bound to know and recognize' " (*Goodwin* v. *Robarts*, 44 L. J. Ex. 162; L. R. 10 Ex. 346).

Therefore, the Law Merchant is never a rigidly fixed body of law, but is constantly expanding: *V. Bechuanaland Exploration Co* v. *London Trading Bank*, cited NEGOTIABLE. But in *Crouch* v. *Credit Foncier* (42 L. J. Q. B. 190; L. R. 8 Q. B. 386) it was said that, as the Custom there under discussion related to instruments of "only *recent* introduction, it can be no part of the Law Merchant."

Vh, 17 L. Q. Rev. 232: 114 Law Times, 110.

LAW OFFICER. — "Law Officer," usually connotes the Attorney or Solicitor General for England (35 & 36 V. c. 70, s. 2; 46 & 47 V. c. 57, s. 117).

LAWFUL. — *V.* IT SHALL BE LAWFUL: IT SHALL NOT BE LAWFUL: MAY: LIBERTY OF WORKING. *Cp*, LEGAL, and succeeding defs.

LAWFUL CAUSE. — "The priest shall not without Lawful Cause deny the Communion," s. 8, 1 Edw. 6, c. 1; such cause is that the person is an open and notorious Evil Liver (*Jenkins* v. *Cook*, 45 L. J. P. C. 1; 1 P. D. 80). *V.* DEPRAVE: EVIL LIVER.

Whether a Coroner's absence is "from any Lawful or Reasonable Cause," s. 1, 6 & 7 V. c. 83, is a question for the judge; and it includes taking a necessary vacation, though a good part of it be spent in shooting (*R.* v. *Johnson*, 42 L. J. M. C. 41; L. R. 2 C. C. R. 15).

V. GOOD CAUSE: REASONABLE AND PROBABLE CAUSE.

LAWFUL DAY. — Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, "Lawful Day," means, "a day not being Sunday, Christmas Day, or Good Friday" (s. 1). *Semble*, that def is of general acceptation.

LAWFUL EXCUSE. — Absence of Knowledge is a "Lawful Excuse" for the possession of a FICTITIOUS Stamp, s. 7, Post Office (Protection) Act, 1884, 47 & 48 V. c. 76, but Innocency of Motive is not; there can be no "Lawful Excuse" for its retention after the proper authority has intervened (*Dickins* v. *Gill*, 1896, 2 Q. B. 310; 65 L. J. M. C. 187; 75 L. T. 32; 44 W. R. 686; 60 J. P. 488; 12 Times Rep. 427). *V.* KNOWINGLY.

Cp, REASONABLE EXCUSE.

LAWFUL GAME. — *V.* GAME, *Lawful*.

LAWFUL HEIRS. — The addition of "lawful" in no degree affects the word "heirs," for it is implied therein (*Mathews* v. *Gardiner*, 17 Bea. 254); therefore, a limitation to "lawful heirs" will not, standing

Digitized by Google

alone, create an Entail, but gives the Fee (2 Jarm. 325, and cases there cited). *Cp*, Lawfully Begotten.

So, a gift of Personalty in remainder to a person's "lawful heir or heirs," does not mean his next of kin, but means "the person or persons who, either together or separately, take the fee simple of an intestate" (per Jessel, M. R., *Smith* v. *Butcher*, 48 L. J. Ch. 136; 10 Ch. D. 113). *V.* Heir.

V. Legal Heirs: Legitimate.

LAWFUL IMPEDIMENT. — *V.* Let, at end.

LAWFUL ISSUE. — In *Edwards* v. *Edwards* (12 Bea. 97) "lawful issue" was held, upon the context, to mean Children, to the exclusion of grand-children born prior to the period of distribution. *Vf*, Issue.

Vh, *Re Corlass*, 45 L. J. Ch. 118; 1 Ch. D. 460.

LAWFUL MERCHANDIZE. — *V. Vanderspar* v. *Duncan*, cited Merchandize: Legal Merchandize: Other, *Ejusdem Generis*.

LAWFUL PURPOSE. — Though, possibly, the Rules of an Industrial Socy may, under the words "Lawful Purpose," s. 12 (7), 39 & 40 V. c. 45, enable subscriptions to be made to Strike Funds, yet such a subscription cannot be made under a Rule directing that the profits shall be applied "either to increase the Capital, Reserve Fund, or Business, of the Socy, or to any Lawful Purpose, and the remainder, less any grant that may be made for educational purposes," to be divided among the members; for there "Lawful Purpose" is controlled by the context and is restricted to purposes of the Socy similar to those indicated in the preceding words (*Warburton* v. *Huddersfield Industrial Socy*, 1892, 1 Q. B. 817; 61 L. J. Q. B. 422; 67 L. T. 43; 40 W. R. 346; 56 J. P. 453).

V. Purpose.

LAWFUL REPRESENTATIVES. — *V.* Legal Representatives: *Mallinson* v. *Siddle*, cited Heir.

LAWFUL TRADE. — In *Havelock* v. *Hancill* (3 T. R. 277) a marine insurance against loss "'in Lawful Trade,' was construed, 'during employment *by the owner* in lawful trade,' — that is, by limiting the condition to acts of the owner" (per Cotton, L. J., *Cory* v. *Burr*, 51 L. J. Q. B. 472; 9 Q. B. D. 463; affd 52 L. J. Q. B. 657; 8 App. Ca. 393).

Vf, *Manning* v. *Clement*, 7 Bing. 362.

LAWFULLY. — In a Pleading "lawfully," *e.g.* "lawfully being," "lawfully," means, lawfully so far as the other party is concerned (*Fawcett* v. *York & N. Mid. Ry*, 20 L. J. Q. B. 222; 16 Q. B. 610).

LAWFULLY BEGOTTEN. — A limitation in a Will to "Heirs lawfully begotten," creates an Entail (*Nanfan* v. *Legh*, 7 Taunt. 85,

Digitized by Google

cited by Parke, B., *Mortimer* v. *Hartley*, 20 L. J. Ex. 132: *Vf*, 2 Jarm. 325: *Mayhew* v. *Cattermole*, W. N. (78) 153).

A gift to all and every the Children of Nephews and Nieces "lawfully begotten," includes after-born children (*Browne* v. *Groombridge*, 4 Mad. 495). *Vf*, Born.

Cp, Lawful Heirs: Legitimate. *V.* To be born.

The children of a duly celebrated marriage of an English person who, prior to the marriage, had been divorced by a Foreign Tribunal, are not "lawfully begotten," quà English law, unless at the time of the divorce such person was really domiciled in the foreign country and obtained the divorce without Collusion (*Shaw* v. *Gould*, L. R. 3 H. L. 55; 37 L. J. Ch. 433; 18 L. T. 833: *Vf*, *Bonaparte* v. *Bonaparte*, 1892, P. 402).

LAWFULLY DEMANDED.—If a Lease in its clause of *Re-entry* on non-payment of rent, does not dispense with demand, or makes the right of re-entry conditional on the rent being "demanded" or on its being "*lawfully* demanded," such demand must be made by the landlord, or by his agent duly authorized; and it must be made (1) of the precise rent due and payable to save the forfeiture, (2) on the exact day on which it became so due and payable, (3) at a convenient hour before sunset, and (4) at the appointed place, if any appointed, and if not, then at the most notorious place of the demised premises, *e.g.* if there be a dwelling-house it must be made there and at its front door (Rosc. N. P. 1014, and cases there cited: *Sv*, *Manser* v. *Dix*, 8 D. G. M. & G. 703). When however *a half-year's rent* is in arrear, then *V.* Com. L. Pro. Act, 1852, s. 210, which makes similar provisions to those contained in 4 G. 2, c. 28, s. 2.

But a *Power of Distress* conditional on the rent being "demanded," does not need the demand to be made in the strict way above stated (*Maund's Case*, 7 Rep. 28 b); nor even if the condition require the rent to be "*legally* demanded" (*Thorp* v. *Hart*, 30 S. J. 469). If indeed such a power were made conditional on the rent being "*lawfully* demanded," it is submitted that such a phrase would not import into the condition the technicalities of demand required at Common Law prior to re-entry for non-payment. In *Thorp* v. *Hart* (sup), Chitty, J., finding that the power of distress was only conditional on the rent being "*legally* demanded," refused to say that that meant all that the cases had decided must be done prior to re-entry for default in payment after the rent had been "*lawfully* demanded." And that was enough for the decision in *Thorp* v. *Hart*. But having regard to the different character of a Forfeiture as compared with a Distress, it is difficult to believe that the strictness of the one would be applied to the other, even if the power of distress were not to be exercised until after the rent had been "*lawfully* demanded." It seems indeed not free from doubt whether *any* demand of rent is needed prior to distress, even though the Lease give power to

Digitized by Google

distrain on default of payment of rent after demand (Bac. Abr., *Rent*, J., cited by Chitty, J., in *Thorp* v. *Hart*, sup). *Vf*, On Demand.

A Poor Rate is "legally demanded," s. 12, 54 G. 3, c. 170, when the first demand is made, though the rate be payable by quarterly instalments under s. 2, 32 & 33 V. c. 41 (*Walton-on-the-Hill* v. *Jones*, 1893, 2 Q. B. 175; 62 L. J. M. C. 123; 69 L. T. 319; 42 W. R. 32; 57 J. P. 552).

LAWFULLY DETAINED. — A person "lawfully detained as a Lunatic," s. 116 (1 *c*) Lunacy Act, 1890, is one detained under that Act, not one detained in a foreign Country (*Re Watkins*, 1896, 2 Ch. 336; 65 L. J. Ch. 636; 74 L. T. 504). *Vh*, *Re B. A. S.*, 1898, 2 Ch. 392; 67 L. J. Ch. 453; 78 L. T. 638.

LAWFULLY OCCUPIED. — "Land lawfully occupied by a Building or Structure," s. 22 (2), London Bg Act, 1894; *V. Scott* v. *Carritt*, 81 L. T. 454; 63 J. P. 772; affd 82 L. T. 67; 16 Times Rep. 134.

LAWFULLY PRODUCED. — *V.* Produced.

LAWLESS MAN. — "Is he *qui est extra legem*, Bract. lib. 3, tr. 2, c. 2" (Cowel), *i.e.* an Outlaw.

LAWN. — *V. Palmer* v. *M'Cormick*, 25 L. R. Ir. 110, 120.

LAWND or LOUND. — *V.* Frythe.

LAWRENCE. — *V.* St. Lawrence.

LAY. — "If any Surveyor shall lay, or cause to be laid, any heap of stone," &c, on a Highway, s. 56, Highway Act, 1835; *V. Hardcastle* v. *Bielby*, cited Allow.

LAY DAYS. — "Days which are given to the charterer in a Charterparty either to load or unload without paying for the use of the ship are 'Lay Days.'" "The Lay Days are described as days for loading and unloading, and they are sometimes called Lay Days and sometimes Working Days" (per Esher, M. R., *Nielsen* v. *Wait*, 16 Q. B. D. 70; 55 L. J. Q. B. 89). *Vh*, *Pyman* v. *Dreyfus*, 24 Q. B. D. 152; 59 L. J. Q. B. 13: *Little* v. *Stevenson*, 1896, A. C. 108; 65 L. J. P. C. 69. In *Commercial S. S. Co* v. *Boulton* (cited Running Days) "Lying Days," held, on the context, to mean "Working," and not "Running" Days.

Lay Days, mean, days of the week, and not periods of 24 hours. *V.* Running Days: Ready to load.

V. Days: Demurrage: Demurrage Days: Working Days.

LAY IMPROPRIATOR. — *Vh*, 7 Encyc. 330.

LAY OUT. — *V.* New Street.

Digitized by Google

LAYLAND. — "Land that lies fallow" (Cowel).

LEA. — "*Lea* or *ley* signifieth pasture" (Co. Litt. 4 b).

LEAD. — A Reward for such information as shall "lead to" the apprehension and conviction of a criminal, will be earned if the information given was the CAUSA CAUSANS of the apprehension and conviction, even though it was somewhat remote (*Tarner* v. *Walker*, L. R. 2 Q. B. 301; 35 L. J. Q. B. 179).

LEAD AWAY. — A power or right to "lead away," *e.g.* manure, implies the drawing it away in a CARRIAGE (*Brunton* v. *Hall*, 1 Q. B. 792; 10 L. J. Q. B. 258; 1 G. & D. 207).

V. TAKE AND CARRY AWAY.

LEAKAGE AND BREAKAGE. — "'Not accountable for Leakage,' — is frequently inserted in Bills of Lading, and in such case the owners are not answerable for loss by leakage, unless it is proved that the leakage was caused by the negligence of the master and crew" (1 Maude & P. 356, citing *The Helene*, Brown & Lush. 429; 35 L. J. Adm. 1; L. R. 1 P. C. 231: *Phillips* v. *Clark*, 2 C. B. N. S. 156; 26 L. J. C. P. 168: *Allan* v. *James*, 3 Com. Ca. 11). "Breakage," in such a connection, "is not used in an active sense, but means that the Shipowner is not to be responsible for the broken condition of the goods at the Port of Delivery" (per Inglis, L. P., *Moes* v. *Leith & Amsterdam Co*, 5 Sess. Ca. 3rd Ser. 988; also stated Abbott, 492).

An Exception of damage arising from "Rust, Leakage, and Breakage," does not include rust, leakage, or breakage, caused by the carelessness of the shipowner or his servants in stowing (*Phillips* v. *Clark*, sup: *The Nepoter*, L. R. 2 A. & E. 375; 38 L. J. Adm. 63: *Czech* v. *Gen. Steam Nav. Co*, 37 L. J. C. P. 3; L. R. 3 C. P. 14: *The Chasca*, 44 L. J. Adm. 17; L. R. 4 A. & E. 446: and per Lindley, L. J., *Chartered Bank of India* v. *Netherlands Steam Nav. Co*, 52 L. J. Q. B. 230; 10 Q. B. D. 521); and the primary and natural meaning of the Exception is that the shipowner will not be answerable if the thing comprised in the Bill of Lading shall *itself* rust, leak, or break, and therefore it furnishes him no protection against his liability to compensate for consequential damage happening to that thing by reason of some other thing rusting, leaking, or breaking (*Thrift* v. *Youle*, 46 L. J. C. P. 402; 2 C. P. D. 432: *Barrow* v. *Williams*, 7 Times Rep. 37). But though such consequential damage be not caused by a "Leakage" it may, if the facts lead to that conclusion, be a PERIL OF THE SEA (*The Catherine Chalmers*, 32 L. T. 847).

LEARNING. — *V.* GODLY LEARNING: SCHOOL.

LEASE. — "If the owner of land consents by Deed that another person shall occupy the land for a certain time, that is a Lease" (per Bayley,

Digitized by Google

J., *St. Germains* v. *Willan*, 2 B. & C. 220). So, now, if the document be under hand only (*Duxbury* v. *Sandiford*, 80 L. T. 552).

"A Lease doth properly signify a demise or letting of lands, rent, common, or any hereditament, unto another for a lesser time than he that doth let it hath in it. For when a lessee for life or years doth grant over all his estate or time unto another, this is more properly called an Assignment than a Lease" (Touch. 266: *Vf*, 4 Cru. Dig. 54: *Burton* v. *Reevell*, 16 M. & W. 308: *Beardmore* v. *Wilson*, 38 L. J. C. P. 91; L. R. 4 C. P. 57; 17 W. R. 54). But "the word 'Lease' does not in law import a written instrument" (per Abinger, C. B., *Bridgland* v. *Shapter*, 5 M. & W. 381; 8 L. J. Ex. 246: *Va*, *Bicknell* v. *Hood*, 5 M. & W. 107, 108; 8 L. J. Ex. 193), except, it may perhaps be added, in those cases where, by statute, a writing is required, or (as quà the Solrs Scale Fee, *V.* inf) where a writing is implied.

"Lease In Writing," s. 8, 3 & 4 W. 4, c. 27, means, "not merely a Demise in Writing but, an instrument that passes an Interest" (per Patteson, J., *Doe* v. *Gower*, 21 L. J. Q. B. 57; 17 Q. B. 589).

As to when a Renewal is a continuation of the old Lease; *V. Rawe* v. *Chichester*, and *Winslow* v. *Tighe*, cited During.

Sometimes a document which expresses itself to be an *Agreement* for a Lease will (if it contain words of present Demise, *e.g.* "A. hereby agrees to let and B. agrees to take") be construed as a Lease (*V.* the somewhat conflicting cases hereon collected, 1 Platt on Leases, 582–610: *Va*, Woodf. 142: *Parker* v. *Taswell*, cited Void). But "if the whole instrument import rather an intention to a future act than a thing done, the words will not be construed to amount to an actual letting or taking, though certain terms used, taken by themselves, might imply a present Demise" (1 Platt on Leases, 582).

"Lease," as defined by an Interp Clause, is usually made to include an *Agreement* for a Lease; *e.g.* 8 & 9 V. cc. 16, 17, 18, 19, 20, 33, s. 3; 10 & 11 V. c. 14, s. 3; 23 & 24 V. c. 112, s. 47.—*Ir.* 10 & 11 V. c. 32, s. 66; 11 & 12 V. c. 48, s. 1; 12 & 13 V. c. 105, s. 38; 21 & 22 V. c. 72, s. 1; 28 & 29 V. c. 88, s. 2; 32 & 33 V. c. 42, s. 72; 33 & 34 V. c. 46, s. 70; 54 & 55 V. c. 66, s. 95; 59 & 60 V. c. 47, s. 48.

Other Stat. Def.—12 & 13 V. c. 49, s. 7; 14 & 15 V. c. 104, s. 11; 37 & 38 V. c. 54, s. 7; 53 & 54 V. c. 5, s. 341.—*Scot.* 16 & 17 V. c. 80, s. 50; 46 & 47 V. c. 62, s. 42; 49 & 50 V. c. 50, s. 3.—*Ir.* 23 & 24 V. c. 154, s. 1; 63 & 64 V. c. 63, s. 3 (4).

V. Demise.

"The definition of 'Lease' given in s. 14 (3), Conv. & L. P. Act, 1881, does not appear to include an *Agreement* for a lease" (per Esher, M. R., *Coatsworth* v. *Johnson*, 55 L. J. Q. B. 221: *Vf*, per Charles, J., *Swain* v. *Ayres*, 20 Q. B. D. 585; 52 J. P. 500, and per Farwell, J., *Manchester Brewery Co* v. *Coombs*, cited Assigns, quà s. 10), and certainly does not include a tenancy from year to year (*Swain* v. *Ayres*, 21

Digitized by Google

Q. B. D. 289; 57 L. J. Q. B. 428; 36 W. R. 798). "Lessee" in the same section includes an Assignee of a Lease (*Cronin* v. *Rogers*, Cab. & El. 348); but not, quà the original lessor, 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: *Vf*, A). But these decisions are modified by s. 5, Conv & L. P. Act, 1892, whereby, for that Act and for s. 14, Conv & L. P. Act, 1881, "Lease," includes, "an Agreement for a Lease, where the lessee has become entitled to have his lease granted," and "Under-lease," includes, "an Agreement for an Under-lease, where the under-lessee has become entitled to have his under-lease granted"; and, quà the Act of 1892, "Under-lessee," includes, "any person deriving title under, or from, an under-lessee," on which latter def in its application to s. 4, Act of 1892; *V. Cholmeley School* v. *Sewell*, 1894, 2 Q. B. 906; 63 L. J. Q. B. 820; 71 L. T. 88; 58 J. P. 591: *Imray* v. *Oakshotte*, 1897, 2 Q. B. 218; 66 L. J. Q. B. 544; 76 L. T. 632; 45 W. R. 681. Still "Lessee," in s. 2, Act of 1892, does not include an Under-lessee (*Nind* v. *Nineteenth Century Bg Socy*, 1894, 2 Q. B. 226; 63 L. J. Q. B. 636; 70 L. T. 831; 42 W. R. 481). *V.* Relief.

As to what is a "Lease or Tack" for purposes of Stamp Duty; *V. Thames Conservators* v. *Inl. Rev.*, 56 L. J. Q. B. 181; 18 Q. B. D. 279; 56 L. T. 198; 35 W. R. 274: *Sweetmeat Co* v. *Inl. Rev.*, cited Instrument, and distd in *Clifford* v. *Inl. Rev.*, cited Periodical: s. 96, Stamp Act, 1870: s. 75, Stamp Act, 1891.

The Scale Fee for "Lease," Sch 1, Part 2, Solrs Rem Ord includes a Preliminary Agreement (*Re Emanuel and Simmonds*, 55 L. J. Ch. 710; 33 Ch. D. 40: per Ld Macnaghten, *Parker* v. *Blenkhorn*, 14 App. Ca. 10: *Savery* v. *Enfield*, 1893, A. C. 218; 62 L. J. Ch. 674), and negotiations for the Lease actually granted (*Re Field*, 54 L. J. Ch. 661; 29 Ch. D. 608); but not abortive negotiations with persons not the actual lessee (*Re Marten*, 58 L. J. Ch. 478; 41 Ch. D. 381). The Scale Fee applies to a mere Agreement (if that be the only document) even though the letting might have been created by parol (*Re Negus*, 1895, 1 Ch. 73; 64 L. J. Ch. 79). Under R. 5 of this Sch, when a Lease is partly for a premium, the Solr is entitled to the Scale Fee on the rent and for deducing title quà the premium, but nothing for negotiation (*Re Robson*, 59 L. J. Ch. 627; 45 Ch. D. 71: *Ex p. Connolly to Sheridan*, cited Long: *Re Horn and Francis*, 1896, 2 Ch. 797; 66 L. J. Ch. 15; 75 L. T. 370; 45 W. R. 72). *Vf*, Business connected with: Conveyance: *Re McGarell*, cited Each.

An Interest in Land for a year, a month, a week, or a day, is a "Lease," within s. 12 (2 *a*), Mun Corp Act, 1882 (*Re Louth*, 1894, 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499).

"Lease *in Perpetuity*"; Stat. Def., Irish Encumbered Estates Act, 11 & 12 V. c. 48, s. 1; 12 & 13 V. c. 105, s. 38; 21 & 22 V. c. 72, s. 1. *Cp*, Perpetual Interest: Renewal.

Digitized by Google

A title under an Underlease for the original term less (say) 3 days satisfies a contract by a vendor to sell "all his Interest in the Lease" (*Waring* v. *Scotland*, 57 L. J. Ch. 1016; 36 W. R. 756); *secus*, if the contract be "for the Residue" of the original term (*Madeley* v. *Booth*, 2 D. G. & S. 718). So, a contract which represents a property as held under a "Lease" when it is held under an Underlease for the original term less 2 days, will not be enforced against the purchaser (*Re Beyfus and Masters*, 39 Ch. D. 110; disapproving dictum of Jessel, M. R., *Camberwell & S. London Bg Socy* v. *Holloway*, 13 Ch. D. 760; 49 L. J. Ch. 361).

V. Building Lease: Church Lease: Derivative Lease: Mining: Occupation Lease: Pastoral Lease: Repairing Lease: Underlease: Let: Set: Costs of Lease: During.

Power to grant Lease as contrasted with a Restriction on granting; *V. Croft* v. *Lumley*, 6 H. L. Ca. 737; 27 L. J. Q. B. 343.

An indefinite Power of Leasing authorizes leases for any period however long (*Muskerry* v. *Chinnery*, L. & G. t. Sug. 185; nom. *Sheehy* v. *Muskerry*, 7 Cl. & F. 1; 2 Jebb & Sy. 300: 1 H. L. Ca. 576. *Taylor* v. *Mostyn*, 52 L. J. Ch. 848; 23 Ch. D. 583); it also includes a Building Lease (*Re James*, 73 L. T. 1; 64 L. J. Ch. 686).

A Power to lease Mines (following a Life Estate in the land of which they form part) though expressed in general terms, does not necessarily imply a power to lease beyond the life of the Tenant for Life (*Vivian* v. *Jegon*, L. R. 3 H. L. 285; 37 L. J. C. P. 313; 19 L. T. 218).

The word "lease," *semble*, has not the same force in implying a covenant as "demise"; *V.* Demise.

LEASEHOLD. — Property held on a Lease for Life, is properly described as "Leasehold" quà Parliamentary Qualification (*Jones* v. *Jones*, L. R. 4 C. P. 422; 38 L. J. C. P. 43).

LEASEHOLD AREA. — "Leasehold Area," in New South Wales Crown Lands Acts; *V. Colless* v. *N. S. Wales Minister for Lands*, 1899, A. C. 90; 68 L. J. P. C. 9; 79 L. T. 505: *N. S. Wales Minister for Lands* v. *Harrington*, 1899, A. C. 408; 68 L. J. P. C. 60; 80 L. T. 604.

LEASEHOLD ESTATE. — "Leasehold Estate," quà s. 53, Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66; *V.* its subs. 2, (*b*): *V.* (*a*) and (*c*) of same subs. for "Leaseholder."

LEASEHOLD GROUND RENT. — *V.* Ground Rent.

LEASEHOLD INTEREST. — A Lease of Chattels is not a "Leasehold Interest" (*Sheffield Waggon Co* v. *Stratton*, 48 L. J. Ex. 35; 27 W. R. 120; 40 L. T. 86).

Digitized by Google

LEASEHOLD REVERSION. — A "Leasehold Reversion," ss. 3 (1), 13 (1), Conv & L. P. Act, 1881, means, the reversion immediately after that term out of which the sub-term contracted to be sold or granted has been, or is to be, derived; therefore, the sections cited do not deprive an intended purchaser or sub-lessee of the right to call for an Abstract of the lease and subsequent documents under which the intended vendor or sub-lessor holds (*Gosling* v. *Woolf*, 1893, 1 Q. B. 39; 41 W. R. 106).

As used in 32 H. 8, c. 34; *V. Martyn* v. *Williams*, 26 L. J. Ex. 117; 1 H. & N. 817: *Norval* v. *Pascoe*, 34 L. J. Ch. 83: *Hastings* v. *N. E. Ry*, 1898, 2 Ch. 674; 67 L. J. Ch. 590; 47 W. R. 59; 78 L. T. 812; affd 1899, 1 Ch. 656; 68 L. J. Ch. 315; 80 L. T. 217; affd in H. L. nom. *N. E. Ry* v. *Hastings*, 1900, A. C. 260; 69 L. J. Ch. 516; 82 L. T. 429.

V. Reversion.

LEASEHOLD SECURITY. — A power to invest in "Leasehold Securities" does not authorize the lending of trust money on a short term, — *e.g.* one for 14 years (*Pince* v. *Beattie*, 9 Jur. N. S. 1119).

LEASEHOLDER. — *V.* Leasehold Estate.

LEAST. — *V.* At Least.

LEAVE. — "To leave" at the end of a term certain things comprised in a lease, — *e.g.* Pillars in a Mine, — does not assume that there will be any power to remove those things and afterwards to restore them (per Bacon, V. C., *Mostyn* v. *Lancaster*, 51 L. J. Ch. 702; 23 Ch. D. 583: 31 W. R. 3, 686; 46 L. T. 648; 48 Ib. 715).

"If tenant leaves the house," implies, in a condition for a payment to the tenant on that event, that the tenant shall "leave" on a legal termination of his tenancy (*Lucas* v. *Rideout*, L. R. 3 H. L. 153). *Cp*, *Murray* v. *Close*, cited Leaving.

A Power "to leave" property, signifies, *ex vi termini*, a disposition *by Will* (*Doe* d. *Thorley* v. *Thorley*, 10 East, 438: *Moore* v. *Ffolliot*, 19 L. R. Ir. 504: *Vf*, *Archibald* v. *Wright*, 7 L. J. Ch. 120; 9 Sim. 161: Dispose of: Sug. Pow. 210).

"To leave" a Port, — in a Charter-Party, — does not mean that the ship is to "sail on her voyage" therefrom; "leave," in such a connection, has no other than its ordinary signification of "going away from" (*Van Baggen* v. *Baines*, 23 L. J. Ex. 213; 9 Ex. 523). *Cp*, Depart: Sail.

Cruelty or Neglect causing a Wife "to leave and live separately"; *V.* Neglect.

V. Left.

Where there is an Appeal by "leave," its allowance or refusal by the constituted Authority is final (*Ex p. Stevenson*, 1892, 1 Q. B. 609; 61 L. J. Q. B. 492; 66 L. T. 544; 40 W. R. 417: *Lane* v. *Esdaile*, 1891,

Digitized by Google

A. C. 210; nom. *Payne* v. *Esdaile*, 60 L. J. Ch. 644; 64 L. T. 666; 40 W. R. 65). *Note*: Under s. 1 (1 *b*), Jud. Act, 1894, there are two independent constituted authorities, though it needs a very strong case for the Court of Appeal to give "leave" when the Judge has refused it.

"Special Leave"; *V.* SPECIAL.

LEAVING. — Though this word, in such a phrase as "dying without leaving children" "obviously points at the period of death" (2 Jarm. 199); yet, in a gift over, it frequently means "HAVING" or "having had."

Thus, if property, real or personal, be given by Will or limited by Settlement to the children of A., the shares to vest in them on a given event which has no reference to their surviving A., but there is a gift over on the death of A. without "leaving" a child, &c, — the word "leaving" will be construed "having," or "having had," in order not to defeat the vested interests which A.'s children, who may have predeceased him, may have acquired under the terms of the gift (*Maitland* v. *Chalie*, 6 Mad. 243: *Re Thompson*, 5 D. G. & S. 667: *Kennedy* v. *Sedgwick*, 3 K. & J. 540: *Marshall* v. *Hill*, 2 M. & S. 608: *Ex p. Hooper*, 1 Drew. 264: *White* v. *Hill*, L. R. 4 Eq. 265: *Bryden* v. *Willett*, L. R. 7 Eq. 472; *Svthlc*, *Re Watson*, L. R. 10 Eq. 36; 39 L. J. Ch. 770, following *Sheffield* v. *Kennett*, 27 Bea. 207; 4 D. G. & J. 593: *Vf*, *Re Brown*, L. R. 16 Eq. 239; 43 L. J. Ch. 84: *Treharne* v. *Layton*, L. R. 10 Q. B. 459; 44 L. J. Q. B. 202: Hawk. 217). This is sometimes called the Rule in *Maitland* v. *Chalie*: as to vesting words, *V.* VEST: PAYABLE.

But the interpretation of "having" or "having had" has not always been confined to the protection of vested interests of children. Thus in *White* v. *Hight* (12 Ch. D. 751; not followed in *Armstrong* v. *Armstrong*, 21 L. R. Ir. 114), where there was a devise to A. absolutely, with a gift over "after her decease without *leaving* any issue," it was held that the devise to A. became indefeasible upon her having a child (*thc*, criticised 2 Jarm. 825, and is now over-ruled; *Re Ball*, *Slatterley* v. *Ball*, 58 L. J. Ch. 232; 40 Ch. D. 11; 59 L. T. 800, on *whlcv*, *Re Bogle*, 78 L. T. 457, and *Armstrong* v. *Armstrong*, sup. *V.* generally as to meaning of "leaving," 2 Jarm. 200, 823–827).

If, however, a gift be introduced by words importing contingency, — such as a gift to the children of A. "in case he *shall leave* any child or children," — the word has its natural construction and means "leave living at his death" (*Bythesea* v. *Bythesea*, 23 L. J. Ch. 1004: *Young* v. *Turner*, 30 L. J. Q. B. 268; 1 B. & S. 550); but that ruling may be controlled the other way by a context, so that the representatives of children who took a Vested Interest may be entitled, though such children predeceased A. and though the words are "On the death of A. leaving issue" (*Hickling* v. *Fair*, 1899, A. C. 15; 68 L. J. P. C. 12).

But to construe "leaving" as "having" or "having had" is to do violence to the language; and such a construction will only be adopted within the lines distinctly laid down by the cases, or where there is a

Digitized by Google

real ambiguity (*Re Hamlet, Stephen* v. *Cunningham*, 38 Ch. D. 183; 39 Ib. 426; 57 L. J. Ch. 1007; 58 Ib. 242; in *whc* the authorities are reviewed). In *Re Hamlet*, it was said that the addition of such words as "her surviving" or "at her death," makes it much more difficult to construe "leaving" as "having" or "having had." In the case of a gift of an Annuity such a construction will not be adopted (*Re Hemingway*, 60 L. J. Ch. 85; 45 Ch. D. 453; 63 L. T. 218; 39 W. R. 4).

"Die without leaving *Issue Male*"; *V. Re Ball, Slatterley* v. *Ball*, sup: *Clay* v. *Coles*, 57 L. T. 682.

Devise to A. "and the Heir Male of his body, and the heirs and assigns of such heir male," but if A. should "die without leaving *any* Son," gives A. an estate for life, with a contingent remainder in fee to the person (if any) who at A.'s death should be the heir male of his body, with a limitation over if there should be no such heir (*Chamberlayne* v. *Chamberlayne*, 25 L. J. Q. B. 357; 6 E. & B. 625).

Devise to A. for life, and, "*she leaving no child*," remainder to B., is a gift to A. for life, and on her death B. takes in fee, even though A. leaves a child; for a fee simple in A. cannot be implied from the words italicised (*Scale* v. *Rawlins*, 1892, A. C. 342; 61 L. J. Ch. 421; 66 L. T. 542).

V. DIE: DIE WITHOUT ISSUE: DIE WITHOUT CHILDREN.

"Corresponding EXPENSES of leaving" the Place of Loading of a ship, R. x (*a*) York-Antwerp Rules, 1890, does not include the cost of what is really prosecuting a voyage, *e.g.* cutting through ice in the River between St. Petersburgh and Kronstadt, the ship having to make a voyage from St. Petersburgh to London (*Westoll* v. *Carter*, 3 Com. Ca. 112; 14 Times Rep. 281).

An Agreement restricting competition with an Employer "after leaving his Service," is operative on the termination, however accomplished, of the service, *e.g.* by a dismissal without notice (*Murray* v. *Close*, 32 L. T. O. S. 89). "A Convict who is sent to Botany Bay 'leaves' England" (per Campbell, C. J., *Ib.*). *Cp, Lucas* v. *Rideout*, cited LEAVE.

LEAVING A WIDOW. — "Shall die leaving a Widow"; *V. Hood* v. *Hood*, W. N. (69) 237.

LEAVINGS. — "Leavings" of a Tin Mine; *V. Mineral Residues Syndicate* v. *Levant Mine*, 7 Times Rep. 654.

LEEMAN'S ACTS. — The Banking Companies' (Shares) Act, 1867, 30 & 31 V. c. 29:

The Borough Funds Act, 1872, 35 & 36 V. c. 91.

LEET. — *V.* Elph. 592: Termes de la Ley: Cowel: Jacob, *Court Leet*: 4 Bl. Com. 273.

Digitized by Google

LEFT. — A bequest of what shall "remain," or "be left" at the decease of the prior legatee, or of what the legatee is possessed of at the time of death, or of "what he does not want," or "does not spend," or "can transfer," or "can save," or "of what remains undisposed of," or of the "bulk" of certain property, or a gift over of the whole legacy in case of the death of the prior legatee "intestate," is void for uncertainty (1 Jarm. 362, 363, and cases there cited).

But where the Will gives to A. a limited interest with a power of disposal of the corpus, and this is followed by a gift over of what "remains," or is "remaining" at the death of A., or of what "remains undisposed of," or "does not spend," or other like expression, the gift over will take effect upon such of the property as A. may not have disposed of by act *inter vivos* (*Re Pounder*, 56 L. J. Ch. 113; 56 L. T. 104: *Re Thomson*, 49 L. J. Ch. 622; 14 Ch. D. 263: *Re Stringer*, 46 L. J. Ch. 633; 6 Ch. D. 1). In *Re Pounder*, Kay, J., said that "Remaining" was equivalent to "Remaining undisposed of." *Vf*, What is left: Disposal.

Where there is a direction that property is to go as as it may be "left," that word "imports a Will" (per Chitty, L. J., *Hill* v. *Hill*, 66 L. J. Q. B. 334).

Notice to be "left"; *V.* Served.

"Left an Orphan"; *V.* Orphan.

V. Leave.

LEGACY. — "The plain import of the word 'Legacies,' includes both specific and pecuniary legacies" (per Romilly, M. R., *Ward* v. *Grey*, 29 L. J. Ch. 75, 76; 26 Bea. 485: *V.* Legatee).

"There is no doubt that the word 'Legacy' is sufficient to include an Annuity; but it is a word *ancipitis usus*, which sometimes may include an annuity and sometimes may not; whether it does so or not depends upon the context" (per Cairns, C., *Cunningham* v. *Foot*, 3 App. Ca. 989).

"Under a charge of 'Legacies,' Annuities will generally be included; unless the testator manifests an intention to distinguish them, as by sometimes using both words" (2 Jarm. 609: *Vf*, *Gaskin* v. *Rogers*, L. R. 2 Eq. 284: Wms. Exs. 1062, *n*: Seton, 1635), as in *Weldon* v. *Bradshaw* (Ir. Rep. 7 Eq. 168).

"A direction to pay 'Legacies' free of duty, will not generally include the proceeds of realty directed to be sold (*White* v. *Lake*, L. R. 6 Eq. 188); but, probably, would include legacies payable out of such proceeds (*Hodges* v. *Grant*, 36 L. J. Ch. 935; L. R. 4 Eq. 140)"; 1 Jarm. 187. Such a direction applies to specific, as well as pecuniary, legacies (*Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538).

"Legacy," *primâ facie*, has reference to personalty only (*Windus* v. *Windus*, 26 L. J. Ch. 185; 6 D. G. M. & G. 549: *Gethin* v. *Allen*, 23 L. R. Ir. 241); but, contextually, it may extend to realty (*Hardacre*

Digitized by Google

v. *Nash*, 5 T. R. 716: 1 Jarm. 743: *V.* Residuary Legatee). As used in s. 8, 37 & 38 V. c. 57, it "applies to both real and personal estate" (per Jessel, M. R., *Sutton* v. *Sutton*, cited Charged upon); and that, indeed, seems to have been the old *primâ facie* meaning of the word, which in Termes de la Ley is defined as, "lands or goods given unto any man by the Will or Testament of another."

V. Pecuniary Legacy: Cumulative: Demonstrative: Specific: Devise.

A bequest of a share of proceeds arising from the sale of real and leasehold properties is a "Legacy" within Co. Co. Acts, 9 & 10 V. c. 95, s. 65; 13 & 14 V. c. 61, s. 1; Co. Co. Act, 1888, s. 58 (*Pears* v. *Wilson*, 20 L. J. Ex. 381; 6 Ex. 833); so, *semble*, of a bequest conditional on good conduct (per Campbell, C. J., *Re Fuller*, 2 E. & B. 575, 576; 22 L. J. Q. B. 415; 21 L. T. O. S. 166). But where there are active trusts to be exercised in respect of the fund bequeathed (*Phillips* v. *Hewston*, 25 L. J. Ex. 133; nom. *Hewston* v. *Phillips*, 11 Ex. 699: *Va*, *Beard* v. *Hine*, 10 W. R. 45), or where so much a week is to be paid by a person taking a benefit under the Will (*Longbottom* v. *Longbottom*, 22 L. J. Ex. 74; 8 Ex. 203), there is no "Legacy" within the meaning of these sections.

"Residue is not a 'legacy' in the ordinary sense of the term" (per Romilly, M. R., *Ward* v. *Grey*, sup).

A Share of Residue is a "Legacy" within s. 40, Real Property Limitation Act, 1833, repld s. 8, 37 & 38 V. c. 57 (per Alderson, B., *Prior* v. *Horniblow*, 2 Y. & C. 200: *Sv*, *Christian* v. *Devereux*, 12 Sim. 264: *Adams* v. *Barry*, 2 Coll. 293); "but it only includes it where there is an exor named" (per Jessel, M. R., *Sutton* v. *Sutton*, cited Charged upon). *Vf*, quà "Legacy" in this connection, *Sheppard* v. *Duke*, 9 Sim. 567; 8 L. J. Ch. 228: *Piggott* v. *Jefferson*, 12 Sim. 26: *Re Davis*, 1891, 3 Ch. 119; 61 L. J. Ch. 85; 65 L. T. 128; 39 W. R. 627: *Re Swain*, cited Breach of Trust.

A direction to invest the "Legacies" given by a Will does not extend to the Residue (*Re Aiken*, 1898, 1 I. R. 335).

A direction in a Will that a Solicitor Trustee may make professional charges, is a "Legacy" within s. 15, Wills Act, 1837, so that if he be one of the attesting witnesses (to the testamentary document by which the direction is given, *Gurney* v. *Gurney*, 24 L. J. Ch. 656; 3 Drew. 208: *Re Marcus*, 57 L. T. 399) the direction is void (*Re Barber*, 55 L. J. Ch. 373; 31 Ch. D. 665: *Re Pooley*, 58 L. J. Ch. 1; 40 Ch. D. 1). If the estate be insolvent, such charges, though validly directed, cannot be paid, because (being a legacy) they cannot compete with the debts of creditors (*Re White*, 1898, 2 Ch. 217; 67 L. J. Ch. 502; 46 W. R. 676; 78 L. T. 770). *Va*, Gift: Professional Charges: Republication.

Legacy to Husband and Wife; *V.* Joint Tenancy, at end.

V. Addition.

Digitized by Google

LEGACY DUTY.—A direction in a Will that all legacies are "to be *paid*, free of Legacy Duty," will apply to all the specific legacies of chattels as well as to the pecuniary legacies; but not to the Succession Duty in respect of a bequest of leaseholds (*Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538).

As to what words will exempt a legatee from payment of Legacy Duty; *V.* 1 Jarm. 186, 187: CLEAR: DEDUCTION.

As to when Legacy Duty (and not Succn Duty) is payable in respect of an Annuity; *V. Re De Hoghton*, 1896, 1 Ch. 855; 64 L. J. Ch. 590; 65 Ib. 528; 74 L. T. 297; 44 W. R. 550, applying *A-G.* v. *Jackson*, 1 L. J. Ex. 21; 2 Cr. & J. 101, and distinguishing *Shirley* v. *Ferrers*, 12 L. J. Ch. 111; 1 Phill. 167.

LEGAL.—*V.* LEGALLY: RIGHT IN EQUITY. *Cp*, LAWFUL and succeeding defs.

LEGAL CHOSE IN ACTION.—*V.* CHOSE IN ACTION.

LEGAL CRUELTY.—*V.* CRUELTY.

LEGAL DISABILITY.—A FORFEITURE if a donee be "under any Legal Disability in consequence whereof he would be hindered from taking for his own personal and exclusive benefit," means, some DISABILITY imposed on the donee BY LAW, *e.g. bonâ fide* Bankry, or (per Lindley and Lopes, L. JJ.) Attainder for Treason, or Lunacy; the phrase does not include an inability to receive the property caused by a Charge created by the donee, or by a Jdgmt against him for debt (*Re Carew*, 1896, 2 Ch. 311; 65 L. J. Ch. 686; 44 W. R. 700; 74 L. T. 501).

V. ABILITY: INABILITY: LEGAL INCAPACITY.

LEGAL ESTATE.—The Legal Estate in Land, means, its legal proprietorship at Common Law, as distinct from those estates and interests which have their sanction in the jurisprudence of EQUITY (*Vh*, LEGALLY).

In the majority of cases the Legal Estate is given by express and apt words; but where there is a devise to Trustees, who have active duties to discharge in relation to the land devised, they will take the legal estate by implication; but, "the mere fact that the devised property is charged with Debts or Legacies, will not vest the legal estate in the trustees, unless they are directed to pay them, or the Will contains some other indication of an intention to create a trust for the purpose" (2 Jarm. 296, cited with approval by Stirling, J., *Re Adams and Perry*, 68 L. J. Ch. 263; 1899, 1 Ch. 554; 80 L. T. 149; 47 W. R. 326). Yet, if the legal estate is once in trustees, then it remains in them until all their active duties are fulfilled; for "it is a convenient rule that where there are recurring occasions for the exercise of active duties by the trustees,

Digitized by Google

and no repeated devises to them to enable them to perform the duties, the legal estate, if once in the trustees, is to be deemed to be vested in them throughout, — notwithstanding the duration, in the meantime, of what would but for the recurring duties be construed as Uses executed in the beneficiaries" (per Ld Davey, *Van Grutten* v. *Foxwell*, 1897, A. C. 683; 66 L. J. Q. B. 758, *who* cited and applied *Re Adams and Perry*, sup). But when their duties are fulfilled, then "it may be laid down, as a general rule, that where an estate is devised to trustees for Particular Purposes the legal estate is vested in them as long as the execution of the trust requires it, and no longer; and therefore, as soon as the trusts are satisfied it will vest in the person beneficially entitled" (per Bayley, J., *Doe* d. *Player* v. *Nicholls*, 1 B. & C. 342), unless the words of limitation in the instrument indicate that it is to remain in the trustees (*Tudball* v. *Medlicott*, 36 W. R. 886). *V.* Simple Trust.

Vf, as to what words vest the Legal Estate in Trustees, Jarm. ch. 34: Godefroi, ch. 1: *Richardson* v. *Harrison*, 55 L. J. Q. B. 58; 16 Q. B. D. 85; 54 L. T. 456: *Re Lashmar*, 1891, 1 Ch. 258; 60 L. J. Ch. 143; 64 L. T. 333: *Re Brooke*, 1894, 1 Ch. 43; 63 L. J. Ch. 159; 70 L. T. 71; 42 W. R. 186: *Re Townsend*, 1895, 1 Ch. 716; 64 L. J. Ch. 334; 72 L. T. 321; 43 W. R. 392. Convey: Heir: Net: Pay to: Permit: Rest: Upon.

LEGAL EXCUSE. — *V.* Lawful Excuse.

LEGAL FRAUD. — In the general acceptation of the phrases, there is no real difference between "Legal Fraud" and "Fraud" (*Derry* v. *Peek*, 14 App. Ca. 337; 58 L. J. Ch. 864; 38 W. R. 33; 61 L. T. 265; 5 Times Rep. 625).

Vh, *Angus* v. *Clifford*, 1891, 2 Ch. 449; 60 L. J. Ch. 443; 39 W. R. 498: *Joliffe* v. *Baker*, 52 L. J. Q. B. 609; 11 Q. B. D. 255: *Bishop* v. *Balkis Co*, cited Certification: *Glasier* v. *Rolls*, 42 Ch. D. 436; 58 L. J. Ch. 820.

V. Actual Fraud: Concealed Fraud: Fraud.

LEGAL HEIRS. — *V. Low* v. *Smith*, 25 L. J. Ch. 503; 2 Jur. N. S. 344: *Re Dixon*, 47 L. J. P. D. & A. 57; 4 P. D. 81: Heir: Lawful Heirs. In Ireland, "Legal Heir" has been construed "Heir of the body," and so creating an Entail (*Moffet* v. *Catherwood*, Al. & N. 472).

V. Lawful Heirs.

LEGAL INCAPACITY. — A woman, as such, is subject to a "Legal Incapacity" to vote for a Member of Parliament, within s. 3 (1), Rep People Act, 1867 (*Chorlton* v. *Lings*, 38 L. J. C. P. 25; L. R. 4 C. P. 374), or as a freeholder for a County (*Chorlton* v. *Kessler*, L. R. 4 C. P. 397): *Va*, *Beresford-Hope* v. *Sandhurst*, 58 L. J. Q. B. 316; 23 Q. B. D. 79; 61 L. T. 150; 37 W. R. 548: Female.

V. Legal Disability: Incapable: Sex.

Digitized by Google

LEGAL ISSUE. — The "Legal Issue" of disputed title to Shares or Stock after registration, R. 92, Stock Exchange Rules, means "one decided between the real principals to the transaction" (per Esher, M. R., *Smith* v. *Reynolds*, 66 L. T. 810; 36 S. J. 102, 103).
V. Issue: Issue of Law.

LEGAL MEASURES. — A direction in a Mandamus "to take the Necessary and Legal Measures and Proceedings for obtaining and recovering" stated payments, does not, necessarily, mean that an Action must be brought (*R.* v. *Southampton*, 30 L. J. Q. B. 244; 1 B. & S. 5, diss. Cockburn, C. J.).

LEGAL MEMORY. — *V.* Memory.

LEGAL MERCHANDIZE. — Under the words "Other Legal Merchandize" in a Charter-party, the charterer is at liberty to ship any lawful article he pleases (due regard being had to the safety of the vessel), but is bound to pay the same amount of freight as the vessel would have earned if loaded within the terms of the Charter (*Cockburn* v. *Alexander*, 18 L. J. C. P. 74; 6 C. B. 791). *Vf*, *Capper* v. *Foster*, 3 Bing. N. C. 938: *Southampton Colly Co.* v. *Clarke*, 40 L. J. Ex. 8; L. R. 6 Ex. 53; 19 W. R. 214: Other.

LEGAL MORTGAGE. — A "Legal Mortgage," means, a *first* mortgage. This is unquestionably so as regards Land, because it is only the first mortgage which can grant the legal estate in the land. But where a person had agreed to give a "Legal Mortgage" of a *Ship* it was contended that this did not necessarily mean a first mortgage, because (by the Mer Shipping Act, 1854, ss. 66, 70) even a first mortgage would not pass the legal interest in a ship. It was, however, held in that case that even as regards a ship the expression "Legal Mortgage" generally means a first mortgage (*Thompson* v. *Clerk*, 7 L. T. 269; 11 W. R. 23).
Vh, Fisher, Part 2, s. 1.

LEGAL NOTICE. — A "Legal Notice," — *e.g.* "Legal Notice to Quit," s. 50, Co. Co. Act, 1856, s. 138, Co. Co. Act, 1888, — means, a Notice provided by law, as distinguished from one prescribed by contract (*Friend* v. *Shaw*, 57 L. J. Q. B. 225; 20 Q. B. D. 374; 36 W. R. 236; 58 L. T. 89). *V.* By Law: Notice to Quit.

LEGAL OR EQUITABLE DEBT. — *V.* *Vyse* v. *Brown*, 13 Q. B. D. 199: Debt.

LEGAL OR NEXT OF KIN. — *V.* *Harris* v. *Newton*, 46 L. J. Ch. 268.
V. Next of Kin.

LEGAL PERSONAL REPRESENTATIVE. — Quà Mer Shipping Act, 1894, "Legal Personal Representative," means, the person

Digitized by Google

constituted (by Probate, Administration, Confirmation, or other Instrument) "Exor, Admor, or other Representative, of a deceased person" (s. 742). *Vf*, LEGAL REPRESENTATIVES.

LEGAL PROCEEDING.—Quà Bankers' Books Evidence Act, 1879, 42 & 43 V. c. 11, "'Legal Proceeding,' *means*, any Civil or Criminal proceeding or enquiry in which evidence is, or may be, given; and *includes*, an Arbitration." It is submitted that the first part of this def is of general application.

In *Smith* v. *Manchester* (53 L. J. Ch. 96; 24 Ch. D. 611), it was held that a Winding-up Petition was not a "legal proceeding" within Articles of Association empowering directors to direct "legal proceedings" to be prosecuted on behalf of the Company.

"Legal Proceedings," s. 2, 35 & 36 V. c. 91 (which section authorizes certain payments out of a Borough Fund) "means, the taking of some legal proceeding by or on the behalf of the Inhabitants, against some person or persons, in order to promote the interest of the Inhabitants; or, the defending of some legal proceedings, brought against the Corporation or the Inhabitants by some person or persons, in order to protect the interest of the Inhabitants. The Intervention of a Police Constable as a Respondent at Quarter Sessions in a Licensing Appeal, is neither the one nor the other" (per Smith, L. J., *A-G.* v. *Tynemouth*, 1898, 1 Q. B. 604; 67 L. J. Q. B. 489; 78 L. T. 372; 46 W. R. 518; 62 J. P. 292). *Cp*, *Boulter* v. *Kent Jus.* and *R.* v. *Sharman*, cited ORDER: *Sharpe* v. *Wakefield*, cited DISCRETION. But, none the less, Quarter Sessions cannot, without hearing evidence, dismiss such an Appeal (*Evans* v. *Conway Jus.*, 1900, 2 Q. B. 224; 69 L. J. Q. B. 636; 82 L. T. 704; 48 W. R. 577; 64 J. P. 467). *Vf*, COURT.

V. PROCEEDING.

LEGAL PROCESS.—*V.* PROCESS.

LEGAL REPRESENTATIVES.—Though Knight-Bruce, V. C., suggested that this phrase might be void for uncertainty (*Tipping* v. *Howard*, 15 Jur. 911), yet it may now be regarded as settled that the primary meaning of "REPRESENTATIVES," "Legal Representatives," "PERSONAL REPRESENTATIVES," or "LEGAL PERSONAL REPRESENTATIVES," is "Executors or Administrators" in their official capacity (*Price* v. *Strange*, 6 Mad. 159: *Saberton* v. *Skeels*, 1 Russ. & My. 587: *Hinchliffe* v. *Westwood*, 17 L. J. Ch. 167: *Smith* v. *Barneby*, 2 Coll. 728: *Stockdale* v. *Nicholson*, 36 L. J. Ch. 793; L. R. 4 Eq. 359 and cases cited in *thlc*: *Re Turner*, 13 W. R. 771; 12 L. T. 695: *Re Best*, L. R. 18 Eq. 686; 43 L. J. Ch. 545; 22 W. R. 599: 2 Jarm. 120: Wms. Exs. 991–993: Chitty Eq. Ind. 7690).

But that meaning may be controlled by the context. Thus, in a gift

Digitized by Google

to nephews and nieces, living on the happening of an event, "or their legal personal representatives *share and share alike*," the phrase "legal personal representatives" means NEXT OF KIN (*King* v. *Cleaveland*, 4 D. G. & J. 477; 26 Bea. 26, 166; 28 L. J. Ch. 835, 74, 76: *Va*, *Walter* v. *Meakin*, 2 L. J. Ch. 173; 6 Sim. 148: *Robinson* v. *Smith*, 2 L. J. Ch. 76; 6 Sim. 47; *Baines* v. *Ottey*, 1 My. & K. 465: *Walker* v. *Camden*, 17 L. J. Ch. 488; 16 Sim. 329). The phrase "Legal Representatives," and such like phrases, will generally mean Next of Kin, and not exors or admors, when the individuals so indicated are to take beneficially (*Bridge* v. *Abbott*, 3 Bro. C. C. 224: *Cotton* v. *Cotton*, 8 L. J. Ch. 349; 2 Bea. 67: *Briggs* v. *Upton*, 7 Ch. 376; 41 L. J. Ch. 33; 21 W. R. 30; 27 L. T. 62: *Re Gryll*, L. R. 6 Eq. 589: *Robinson* v. *Evans*, 43 L. J. Ch. 82; 22 W. R. 199; 29 L. T. 715: 2 Jarm. 111 *et seq*: Wms. Exs. 994–996: *Jacob* v. *Catling*, W. N. (81) 105: *V.* EXECUTORS). In *Atherton* v. *Crowther* (19 Bea. 448; 2 W. R. 639) the gift was to a Class and their "personal representatives," "such representatives to take *per stirpes and not per capita*"; held, that this latter phrase excluded the idea that exors or admors were to take, and (on another context) that "personal representatives" meant DESCENDANTS: *thc* was followed in *Re Knowles*, 59 L. T. 359: *Vf*, REPRESENTATIVES. In *Re Thompson* (55 L. T. 85), Kay, J., relied on the fact that the testatrix had used the words "executors or administrators" in a similar clause as an additional reason for following *Bridge* v. *Abbott* and *Cotton* v. *Cotton*, sup, and for holding that "legal personal representatives" in the clause under his consideration meant something else than exors or admors, *i.e.* Next of Kin.

So, again, "Legal Personal Representative" may sometimes include the person who on the death of the person spoken of becomes entitled to the property in question, *e.g.* as used in s. 23, M. W. P. Act, 1882, under which a Husband, who *jure mariti* succeeds on his wife's death to her separate leaseholds, is her "legal personal representative" without taking out Administration; and, as such, liable to her debts to the extent of such property (*Surman* v. *Wharton*, 1891, 1 Q. B. 491; 60 L. J. Q. B. 233; 64 L. T. 866; 39 W. R. 416).

Where such a phrase as "Legal Representatives" would be held to mean Next of Kin, that would, it has been said, generally imply Next of Kin according to the Statute of Distribution and would include a wife, but not a husband (2 Jarm. 125: Wms. Exs. 1000–1002). But *Booth* v. *Vicars* (13 L. J. Ch. 147; 1 Coll. 6) cited on this point in Wms. Exs. was, in *Stockdale* v. *Nicholson* (sup), thus dealt with by Malins, V.C., in his judgment:—"In the case of *Booth* v. *Vicars*, Lord Justice Knight-Bruce held that it was the next of kin, *according to the statute*, who took; but I think the authorities since that decision are so clear that a gift to the Next of Kin, as a Class, gives a joint tenancy to the *nearest of kin*." But as the point had only been slightly argued he

Digitized by Google

invited further discussion, upon which Counsel, whose interest it was to argue the other way, said that he considered the question had been so clearly settled by *Withy* v. *Mangles* (cited NEXT OF KIN) and other cases that it would be hopeless to argue it.

V. NEXT PERSONAL REPRESENTATIVES: REAL REPRESENTATIVE.

LEGAL RIGHTS.—S. 32, Patents, Designs, and Trade Marks, Act, 1883, 46 & 47 V. c. 57; *V. Kurtz* v. *Spence*, 55 L. J. Ch. 919; 33 Ch. D. 579; 55 L. T. 317; 35 W. R. 26: *Svth, Challender* v. *Royle*, 36 Ch. D. 425.

"Legal Rights," may include Equitable, as well as Common Law, rights (per Esher, M. R., *Warren* v. *Murray*, 1894, 2 Q. B. 648; 64 L. J. Q. B. 44).

LEGAL TIME.—*V.* TIME.

LEGAL VISITORS.—Stat. Def., Lunacy Regn (Ir) Act, 1871, 34 & 35 V. c. 22, s. 2.

LEGALITY.—The Poor Law Auditor to decide as to "the reasonableness, as well as the legality," of a Solrs untaxed Bill of Costs against Guardians, s. 39, 7 & 8 V. c. 101; "legality," in such a connection, means, the liability to pay (*R.* v. *Napton*, cited FINAL).

LEGALLY.—When you are contrasting "legally" with "equitably," "legal" refers to COMMON LAW as distinguished from EQUITY: *V.* LEGAL ESTATE. In such a contrast there cannot be a "legal" conveyance of an Equity, or an "equitable" conveyance of Common Law property. Therefore, an Agreement to sell Common Law property, *e.g.* a Goodwill, did not require *ad val.* Duty as a CONVEYANCE whereby property was "legally or equitably transferred" (s. 70, Stamp Act, 1870), for "the word 'legally' applies to a legal transfer of a legal right, and the word 'equitably' applies to an equitable transfer of an equitable interest" (per Esher, M. R., *Inl. Rev.* v. *Angus*, 23 Q. B. D. 589, 590, 594). *Sv*, s. 59, Stamp Act, 1891, which charges duty on such a transaction as on a Conveyance.

But where a Life Policy is saved from forfeiture for SUICIDE if "legally assigned" that means, "validly and effectually assigned," and an Equitable Charge is within the saving clause (*Dufaur* v. *Professional Life Assrce*, 25 Bea. 599; 27 L. J. Ch. 817; 32 L. T. O. S. 25).

LEGALLY APPROPRIATED.—Property "legally appropriated" for certain purposes, s. 11 (2), (3), Customs & Inl. Rev. Act, 1885; *V. Inl. Rev.* v. *Forrest*, and *Re Royal College of Surgeons*, cited SCIENCE.

LEGALLY ASSIGNED.—*V.* LEGALLY.

Digitized by Google

LEGALLY BOUND.—"Legally bound to maintain"; *V. R.* v. *Flintan*, cited WIFE.

LEGALLY DEMANDED.—*V.* LAWFULLY DEMANDED.

LEGALLY ESTABLISHED.—*V.* PUBLIC MARKET: SCHEME.

LEGALLY QUALIFIED.—*V.* MEDICAL.

LEGALLY TRANSFERRED.—*V.* LEGALLY.

LEGATEE.— Where a testator directed "every legatee" to make a per centage contribution "out of their legacies," it was held that legatees of chattels and annuities, as well as ordinary pecuniary legatees, were included, and also (on the context) the residuary legatees (*Ward* v. *Grey*, 29 L. J. Ch. 74; 26 Bea. 485).

V. LEGACY: RESIDUARY LEGATEE: PECUNIARY LEGACY.

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

LEGISLATIVE.—"Legislative *Assembly*," s. 2, New South Wales Parliamentary Representatives Allowance Act, 1889, is regarded as a permanent body, and the allowance given by the section is payable to the members of future Assemblies as well as of that existing when the Act passed (*A-G. N. S. Wales* v. *Rennie*, 1896, A. C. 376; 65 L. J. P. C. 52; 74 L. T. 532).

"Legislative *Body*," quà Colonial Prisoners Removal Act, 1869, 32 & 33 V. c. 10, means, "any House of Assembly, or other body of persons, having legislative powers in the Colony; and, where such body of persons consists of two separate Houses, it shall include both Houses; and, where there are Local legislative bodies as well as a Central legislative body, shall mean the Central legislative body only" (s. 2).

LEGISLATURE.—*V.* COLONIAL: LOCAL LEGISLATURE: REPRESENTATIVE LEGISLATURE.

Other Stat. Def., 18 & 19 V. c. 104, s. 1; 28 & 29 V. c. 63, s. 1, c. 64, s. 2; 31 & 32 V. c. 37, s. 5; 46 & 47 V. c. 57, s. 117.

LEGITIMATE.—In *Howarth* v. *Mills* (L. R. 2 Eq. 389) a gift by a woman (who had gone through the ceremony of an unauthorized marriage) to her children, "legitimate or otherwise," was held only to include children born at the date of the Will; but *thc* was disapproved in *Occleston* v. *Fullalove*, cited CHILD.

A limitation to A. "and his Legitimate Heir or Legitimate Heirs" passes a fee simple, as the words of the limitation are not to be construed as "heirs of the body lawfully begotten" (*Re Co-operative Wholesale Socy and Kershaw*, W. N. (86) 45). *V.* LAWFULY BEGOTTEN: LAWFUL HEIRS.

Digitized by Google

LEND. — A person who requests another to "lend" his ACCEPTANCE, impliedly engages to pay the Bill at maturity and to indemnify the Acceptor against the consequences of non-payment (*Reynolds* v. *Doyle*, 1 M. & G. 753).
V. ADVANCE.

LENDER. — In a Contract for a Mortgage, a description of the proposed mtgee as the "Lender" is insufficient; *V.* PROPRIETOR.
V. MONEY LENDER.

LESE-MAJESTY. — *V.* LÆSÆ MAJESTATIS.

LESS. — *V.* NOT LESS: SAY.

A covenant in a Mining Lease to pay certain royalties where "less than" a stated quantity is gotten, is applicable to a case where none is gotten (*Jervis* v. *Tomkinson*, 26 L. J. Ex. 41; 1 H. & N. 195). So, a place with no population may be within a statutory provision relating to places having a population "less than" a stated number (*R.* v. *Gee*, 1 E. & E. 1068; 28 L. J. Q. B. 298).

"Less than," read as "NOT EXCEEDING" (*Garby* v. *Harris*, 21 L. J. Ex. 160; 7 Ex. 591). But in *Millington* v. *Harwood* (1892, 2 Q. B. 166; 61 L. J. Q. B. 582; 66 L. T. 576; 40 W. R. 481) the Court refused to read "not exceeding" in R. 12, Ord. 65, R. S. C., as either inconsistent with, or affected by, "less than" in s. 116, Co. Co. Act, 1888, and, therefore, a plt who, in a High Court action, recovers exactly £50 in Contract is only entitled to Co. Co. Costs.

When in a Covenant to SETTLE there is a limit fixing the amount or value of the sum or property to be included in the covenant, — *e.g.* "if A. shall become ENTITLED to any real or personal property of the value of" so much, or "less than," or "not exceeding," the stated amount, — you cannot aggregate two or more properties or amounts, so as to pass the limit, if they come to A. under different titles, even though they so come at the same time and under the same instrument, *e.g.* a Definite Legacy and a Share of Residue given by the same Will cannot be so aggregated (*Re Middleton*, 16 W. R. 1107: *Re Gerard*, 58 L. T. 800: *Bower* v. *Smith*, 40 L. J. Ch. 194; L. R. 11 Eq. 279, on *whlcv*, *Steward* v. *Poppleton*, W. N. (77) 29). The same rule is applicable to s. 7, M. W. P. Act, 1870 (*Re Davies*, 1897, 2 Ch. 204; 66 L. J. Ch. 512). *Cp*, ONE TIME.

"Tenancy at Will, or *less than* a Tenancy from YEAR TO YEAR," s. 69, Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46; *V. Wright* v. *Tracey*, Ir. Rep. 7 C. L. 134; 8 Ib. 478: *Brew* v. *Conole*, 9 Ib. 151.

LESSEE. — The strict legal sense of "Lessee" is, the original lessee; but it may easily be controlled to also include the assignees of the original lease; in such a connection as a devise "to the Lessees, or Holders of the present leases," of the property devised, the word has that extended meaning (*King* v. *Rymill*, 78 L. T. 696; 67 L. J. P. C. 107).

Digitized by Google

"Lessee," s. 14, Conv & L. P. Act, 1881, and s. 2 (1), Conv & L. P. Act, 1892; *V.* Lease.

Where there are Joint Lessees and the Lease provides for Forfeiture if "the Lessees" do anything, *e.g.* assign, or become bankrupt, the forfeiture is worked if the thing be done by either of the lessees (*Horsey* v. *Steiger*, cited Liquidation: *Varley* v. *Coppard*, cited Assign).

Forfeiture on bankry of "lessee, his exors, admors, or assigns"; *V.* Bankruptcy.

Stat. Def.—14 & 15 V. c. 104, s. 11.—*Scot.* 40 & 41 V. c. 28, s. 3 (2).—*Ir.* 18 & 19 V. c. 39, s. 1; 20 & 21 V. c. 47, s. 2; 38 & 39 V. c. 11, s. 2; 50 & 51 V. c. 33, s. 3; 51 & 52 V. c. 13, s. 1; 54 & 55 V. c. 57, s. 3.

LESSEN.—*V.* Affect.

LESSOR.—Stat. Def., Stannaries Act, 1887, 50 & 51 V. c. 43, s. 2.—*Scot.* 40 & 41 V. c. 28, s. 3 (1).—*Ir.* 18 & 19 V. c. 39, s. 1; 20 & 21 V. c. 47, s. 2; 44 & 45 V. c. 65, s. 1; 54 & 55 V. c. 57, s. 3.

Cp, Landlord.

LESWES.—*V.* Pastures.

LET.—It has been said that, as an operative word in a Lease (whether under seal or not), "let" is synonymous with "Demise" (*Hart* v. *Windsor*, 12 M. & W. 68, 85; 13 L. J. Ex. 135, 136: *Mostyn* v. *West Mostyn Co*, 1 C. P. D. 152; 45 L. J. C. P. 405); but the contrary was held by Russell, C. J., in *Baynes* v. *Lloyd* (1895, 1 Q. B. 825; 64 L. J. Q. B. 411), and this ruling seems upheld by the Court of Appeal (*S. C.* 1895, 2 Q. B. 610; 64 L. J. Q. B. 787: *Va, Messent* v. *Reynolds,* 15 L. J. C. P. 226).

An Agreement to grant a Lease has been held to import an undertaking that the lessor has a title to grant it (*Stranks* v. *St. John*, 36 L. J. C. P. 118; L. R. 2 C. P. 376: *Svthc, Baynes* v. *Lloyd*, 1895, 2 Q. B. 616; 64 L. J. Q. B. 790: *Hoare* v. *Chambers*, 11 Times Rep. 185).

A Power to "let" is equivalent to a Power to "lease" (*Parker* v. *Sowerby*, 1 Drew. 493; 1 W. R. 404). *V.* Lease.

A Covenant not to "let" realty for a particular purpose, means that the covenantor will not permit the premises to be used for that purpose, *i.e.* he will do no act that shall suffer that purpose to take place, and that obligation binds every person who claims under him,—whether lessee, purchaser, or other (*Jay* v. *Richardson*, 30 Bea. 571; 31 L. J. Ch. 398; 10 W. R. 412; 6 L. T. 177).

"Let in Different Tenements"; *V. Hoddinott* v. *Home and Colonial Stores*, cited Divide.

V. Set: Assign: Letting: Underlease.

The application of Capital Money for Improvement to buildings,

Digitized by Google

so as "to enable the same *to be let*," s. 13 (ii), S. L. Act, 1890, is not authorized where the Tenant for Life is occupier, and the betterment of that occupation is the thing desired; an actual letting must be in contemplation (*Re De Teissier*, 1893, 1 Ch. 153; 62 L. J. Ch. 552: *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23).

"Let into POSSESSION"; *V. Wheeler* v. *Tootel*, 36 L. J. Ch. 221; L. R. 3 Eq. 571.

"Let to be used for Pasture"; *V.* PASTURE.

Further Recompense to be given by a Witness who absents himself "having not a lawful and reasonable *Let or Impediment*," s. 12, 5 Eliz. c. 9; *V. Pearson* v. *Iles*, 2 Doug. 561: *Farrah* v. *Keat*, 6 Dowl. 470.

LETTER.—Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "Letter" includes "PACKET," and *vice versâ* (s. 47). For other Stat. Def., in the Post Office Acts, *V.* 7 & 8 V. c. 49, s. 10; 10 & 11 V. c. 85, s. 20; 12 & 13 V. c. 66, s. 6.

Vf, COLONIAL: DOUBLE: FOREIGN: POST LETTER: SHIP LETTER: SINGLE LETTER: THREATENING: TREBLE.

Contract by Letter; *V.* BY POST: *Henthorn* v. *Fraser*, 1892, 2 Ch. 27; 61 L. J. Ch. 373: *Pearce* v. *Gardner*, cited DEAR SIR: SUBJECT TO.

Service by Letter; *V.* BY POST.

"Letters of Administration"; Stat. Def., 37 & 38 V. c. 42, s. 6; 55 & 56 V. c. 6, s. 6: from which it may be gathered that in Scotland they say, "CONFORMATION." *Vf*, PROBATE.

Letter, or Power, of Attorney, quà Stamp Duty; *V. Walker* v. *Remmett*, 2 C. B. 850; 15 L. J. C. P. 174.

Letter of Credit; *V.* BILL OF CREDIT.

Letters of Marque or Reprisal, are Commissions (recognized by the Law of Nations) issued by a Sovereign State "to the Commanders of Merchant Ships for Reprisals, in order to make Reparation for those damages they have sustained, or the Goods they have been despoiled of, by Strangers at Sea. Or to cruise against and make Prize of an Enemy's Ships or Vessels, either at Sea or in their Harbours" (Beawe's Lex Mercatoria, 5 ed., 229): *Vf*, 1 Bl. Com. 258, 259: Twiss, Law of Nations (War), ss. 13–21.

Letter of Request is a document from a Diocesan Court asking the assistance of another Ecclesiastical Tribunal in a matter within the cognizance of such Court; generally, it is used "in order that (as the case may be) a cause may be instituted in the Court of Arches, or the Chancery Court of York" (Phil. Ecc. Law, 981: *Vh*, Ib. Part 4, ch. 8).

Letters Patent; *V.* PATENT. Other Stat. Def., 28 & 29 V. c. 63, s. 1.

LETTER-PRESS.—*V.* SHEET OF LETTER-PRESS: PRINT.

"Letter-press Printing Works"; *V.* NON-TEXTILE FACTORIES.

LETTING.—"Letting for habitation by persons of the WORKING CLASSES"; *V.* s. 12, 48 & 49 V. c. 72.

Digitized by Google

LEVANT AND COUCHANT.—"'Levant and Couchant,' is said, when the Beasts or Cattell of a stranger are come into another mans ground, and there have remained a certaine good space of time" (Termes de la Ley), *i.e.* "have layne down and are risen again to feed" (Cowel), "which, in general, is held to be one night at least" (3 Bl. Com. 9).

Levancy and Couchancy, for the purpose of estimating the number of Cattle which a commoner has the right to depasture on an unstinted common (and which "he may borrow of a stranger if he pleases," Wms. on Commons, 32), means the *capability* of the commonable tenement to maintain, during the winter, by its summer produce, the cattle claimed to be depastured (*Scholes* v. *Hargreaves*, 5 T. R. 46: *Mellor* v. *Spateman*, cited STINT: *Rogers* v. *Benstead*, Camb. Sum. Ass. 1727, cor. Lord Raymond, C. J., M.S., Serj. Leeds, quoted by Bayley, J., *Cheesman* v. *Hardham*, 1 B. & Ald. 711: *Robertson* v. *Hartopp*, 43 Ch. D. 484; 59 L. J. Ch. 553; 62 L. T. 585, and cases there cited); but the cattle need not be actually fed on the commonable tenement, or from its produce (*Carr* v. *Lambert*, 34 L. J. Ex. 66; L. R. 1 Ex. 168; 3 H. & C. 499: *Robertson* v. *Hartopp*, sup).

Note: As to how the right may be proved; *V. Johnson* v. *Barnes*, 41 L. J. C. P. 250; 42 Ib. 259; L. R. 7 C. P. 592; 8 Ib. 527.

LEVEL.—Oral evidence may be given to explain this word as used in a Mining Lease (*Clayton* v. *Gregson*, 4 L. J. K. B. 161; 5 A. & E. 302; 6 N. & M. 694).

"Level of the Ground," quà London Bg Act, 1894; *V.* s. 5 (8).

Level Crossing; *V.* RAILWAY: TURNPIKE ROAD.

In a statutory power to Local Authorities to order owners or occupiers to "level" a STREET, each Street is to be regarded singly; and no power is given to order a Street to be "levelled" so as to correspond with the level of the streets in the surrounding district (*Caley* v. *Kingston*, 13 W. R. 143; nom. *Cary* v. *Kingston*, 34 L. J. M. C. 7).

LEVIED.—*V.* LEVY: MADE.

LEVIES.—*V.* PUBLIC TAXES.

LEVITICAL DEGREES.—The two statutes in which this phrase "is explained, are the 25 H. 8, c. 22 (where they are enumerated, and include a Wife's Sister), and the 28 H. 8, c. 7, in s. 9 of which are described, by way of recital, the Degrees prohibited by God's Laws in similar terms, with the addition of carnal knowledge by the husband in some cases" (per Ld Wensleydale, *Brook* v. *Brook*, 9 H. L. Ca. 244).

LEVY.—"'Levy,' signifies to collect, or exact, as to levy money; sometimes, to set up any thing, as to levy a Mill" (Cowel, citing Kitchen, 180: *Vf*, per Denman, C. J., *Williams* v. *Wilcox*, 7 L. J. Q. B. 235;

Digitized by Google

8 A. & E. 335); "sometimes, to cast up, as to levy a Ditch"; and sometimes, to levy a Fine (Cowel). *Va*, LEVY WAR.

To "levy" a Rate, in a Mandamus to Overseers and other Officers, "merely means to take all the necessary steps to enforce payment; that is, such steps as, under the particular circumstances of the case, would be reasonable and proper; and if the expense to be incurred in taking any particular step would render it unreasonable to take it, the Return must shew it" (per Blackburn, J., *R.* v. *Southampton*, cited LEGAL MEASURES).

By s. 1, 29 Eliz. c. 4, a Sheriff became entitled to poundage on the amount of goods which he should "levy" under a *fi. fa.*; "levy" there, means, to seize the goods and thereby obtain the money (per Bramwell, L. J., *Mortimore* v. *Cragg*, 47 L. J. Q. B. 348; 3 C. P. D. 217: *Vf*, *Cocker* v. *Musgrove*, 9 Q. B. 231): *Cp*, TAKE IN EXECUTION. Therefore, where the debt and costs were paid before seizure (*Coles* or *Colls* v. *Coates*, 9 L. J. Q. B. 232; 11 A. & E. 826; 3 P. & D. 511), or where the *fi. fa.* was, after seizure but before sale, set aside for irregularity (*Miles* v. *Harris*, 31 L. J. C. P. 361; 6 L. T. 649: *Vthc*, per Williams, L. J., *Re Thomas*, cited EXECUTION), there was no "Levy"; *secus*, where the writ was set aside after sale (*Bullen* v. *Ansley*, 6 Esp. 111), or where a sale was prevented by a compromise between the parties (*Alchin* v. *Wells*, 5 T. R. 470), or where the debtor pays after seizure of his goods and so prevents their sale (*Mortimore* v. *Cragg*, sup).

But *Alchin* v. *Wells* only related to civil proceedings; and under s. 3, 3 G. 1, c. 15, the amount "*levied or collected*" for the Crown, on which poundage was chargeable was the amount actually obtained, although such amount was the result of a compromise (*R.* v. *Robinson*, 4 L. J. Ex. 319; 2 Cr. M. & R. 334); but, on the other hand, the poundage under this latter statute was payable on the amount "levied *or collected*" and therefore, *semble*, if the amount was paid before seizure, the poundage was payable (*R.* v. *Jetherell*, Parker, 177: *Vth*, per Denman, C. J., *Coles* v. *Coates*, sup).

"Levied," in a Declaration for a False Return of *nulla bona*, imported not only a seizure and a sale under the plaintiff's *fi. fa.*, but also that the sheriff had in his hands the proceeds (*Drewe* v. *Lainson*, 9 L. J. Q. B. 69; 11 A. & E. 529; 3 P. & D. 245: *Shattock* v. *Carden*, 21 L. J. Ex. 200; 6 Ex. 725).

V. EXECUTED.

To "make" a Distress is synonymous with to "levy" it, quà Agricultural Holdings Acts, 1883, and 1888 (*Phillips* v. *Rees*, cited DISTRESS). "Make and levy" a Distress; *V.* MADE.

LEVY WAR.—"Every one commits HIGH TREASON who levies war against the Queen in any of her dominions. The expression 'to levy war' means—(a) Attacking in the manner usual in war the Queen her-

Digitized by Google

self or her military forces, acting as such by her orders, in the execution of their duty; (b) Attempting by an insurrection of whatever nature by force or constraint to compel the Queen to change her measures or counsels, or to intimidate or overawe both Houses or either House of Parliament; (c) Attempting by an insurrection of whatever kind to effect any general public object.

"But the expression 'to levy war against the Queen,' does not include any insurrection against any private person for the purpose of inflicting upon him any private wrong, even if such insurrection is conducted in a warlike manner" (Steph. Cr. 41).

Vf, Arch. Cr. 895–899.

V. Civil Commotion: Civil War: Rebellion: Riot: Usurped Power.

LIABILITY. — *V.* Charge or Liability: Debt or Liability: Debts: Incapable: Incumbrance.

"Liability," for purpose of Proof in Bankruptcy; *V.* s. 37 (8), Bankry Act, 1883. *Vh*, *Hardy* v. *Fothergill*, 56 L. J. Q. B. 363; 58 Ib. 44; 13 App. Ca. 351; nom. *Morgan* v. *Hardy*, 18 Q. B. D. 646: An amount not payable till after the death of the obligor is such a "Liability" (*Barnett* v. *King*, 1891, 1 Ch. 4; 60 L. J. Ch. 148; 63 L. T. 501; 39 W. R. 39), so of an unascertained claim by one Surety against another for Contribution (*Wolmershausen* v. *Gullick*, 1893, 2 Ch. 514; 62 L. J. Ch. 773; 68 L. T. 753). But Alimony is not (*Linton* v. *Linton*, 54 L. J. Q. B. 529; 15 Q. B. D. 239); nor are arrears of Permanent Maintenance (*Kerr* v. *Kerr*, 1897, 2 Q. B. 439; 66 L. J. Q. B. 838; 77 L. T. 29). *Vf*, *Re Perkins*, 1898, 2 Ch. 182; 67 L. J. Ch. 454; 78 L. T. 666; 46 W. R. 595: *Re McMahon*, 1900, 1 Ch. 173; 69 L. J. Ch. 142; 81 L. T. 715: Fairly Estimated: Creditor.

"Do not admit liability"; *V. G. W. Ry* v. *McCarthy*, 56 L. J. P. C. 33; 12 App. Ca. 218; 56 L. T. 582; 35 W. R. 429; 51 J. P. 532.

"Liabilities," in a Building Society's Rules, includes sums payable to Investing Members (*Re West Riding Bg Socy*, 59 L. J. Ch. 197; 43 Ch. D. 407; 6 Times Rep. 160).

"Liabilities," quà the Loc Gov Acts; *V.* Loc Gov Act, 1888, s. 100; Loc Gov (Scot) Act, 1889, s. 105; London Gov Act, 1899, s. 34. *Cp*, Power.

"Claims and Contingent Liabilities"; *V.* Claim.

"Right, Privilege, Obligation, or Liability," "Right or Liability"; *V.* Right.

LIABILITY TO CEASE. — In a Charter-Party, the cases show "that the plain meaning of the words 'liability to cease' is, not that the liability should cease to accrue but, that the liability should cease to be enforced" (per Cleasby, B., *Francesco* v. *Massey*, L. R. 8 Ex. 104; 42 L. J. Ex. 76, 77: *Vf*, *Kish* v. *Cory*, L. R. 10 Q. B. 561; 44 L. J. Q. B. 205: Cease).

Digitized by Google

LIABLE. — *V.* Answerable.

"Liable," "is generally regarded by jurists as a word of modern English, and not having any existence in ancient documents. It means very little more than 'under an Obligation'" (per Kekewich, J., *Re Chapman*, 1896, 1 Ch. 323; 65 L. J. Ch. 170), and shortly afterwards the same learned judge said, it "must mean, to some extent, 'under an obligation'" (*Re Hill*, 1896, 1 Ch. 962; 65 L. J. Ch. 511; 74 L. T. 460; 44 W. R. 573).

Money is "liable to be laid out in the purchase of Land," s. 33, S. L. Act, 1882, when the trust requires it, or on the request of one entitled to require it; and even if specific land is indicated in the trust, Capital Money may be applied in the purchase of other land (*Re Hill*, sup); but the phrase does not mean, *must* be so laid out, but "means that the money is in the hands of the trustees under some disposition under which it *may* be laid out in the purchase of land" (per North, J., *Re Soltau*, 79 L. T. 335; 1898, 2 Ch. 629; 68 L. J. Ch. 39).

For an instance of the practical value of this word; *V. James* v. *Young*, 53 L. J. Ch. 796; 27 Ch. D. 652.

"Liable to pay" a Solicitor's Bill and so entitled to have it taxed, s. 38, 6 & 7 V. c. 73; *V. Re Barber*, 15 L. J. Ex. 9; 14 M. & W. 720: *Re Early*, 1897, 1 Ch. 6.

An Owner is "liable" to pay rates within s. 19, Poor Rate Assessment and Collection Act, 1869, 32 & 33 V. c. 41, whether he is so by agreement with the overseers under s. 3, or by vestry order under s. 4, or by agreement with the occupier (*Barton* v. *Birmingham*, 48 L. J. C. P. 87).

"Liable, by reason of any contract or promise, to a demand in the nature of damages," s. 153, Bankry Act, 1861, repealed; *V. Johnson* v. *Shapte*, L. R. 4 Q. B. 700; 38 L. J. Q. B. 318.

"Liable to contribute in whole or in part to the County Rate," s. 117, 5 & 6 W. 4, c. 76; *V. R.* v. *Monck*, 2 Q. B. D. 544; 46 L. J. M. C. 251.

The person "liable *to repair*" a Highway repairable *ratione tenuræ*, s. 25, Loc Gov Act, 1894, is the Occupier of the land chargeable with the obligation (*Cuckfield* v. *Goring*, 1898, 1 Q. B. 865; 67 L. J. Q. B. 539; 78 L. T. 530; 46 W. R. 541; 62 J. P. 358: *Daventry* v. *Parker*, 1900, 1 Q. B. 1; 69 L. J. Q. B. 105; 81 L. T. 403; 48 W. R. 68; 63 J. P. 708).

"Stock liable *to be converted*," s. 25 (2), 51 & 52 V. c. 2; *V. Northumberland* v. *Percy*, 1893, 1 Ch. 298; 62 L. J. Ch. 331; 68 L. T. 45; 41 W. R. 597.

A Tenant for Life is "liable *to be deprived*," within a Forfeiture Clause, if he does or suffers an act which deprives him of control and leaves it to a Court to say whether or not he is to be deprived, *e.g.* if he commits an Act of Bankry on which a petition is founded (*Re Otway*, 1895, 2 Ch. 235; 64 L. J. Ch. 529; 43 W. R. 501; 72 L. T. 656). *Cp*, Danger: Imperil.

Digitized by Google

Food "liable *to be seized*," s. 47 (2), P. H. London Act, 1891; *V. Thomas* v. *Van Os*, 1900, 2 Q. B. 448; 69 L. J. Q. B. 665.

"Liable *to be surrendered*"; *V. Re Galwey*, cited BOUND.

V. LIABILITY: NOT LIABLE: PARTY LIABLE.

LIAR. — *V.* ANANIAS.

If deft justifies an allegation that the author of a book is a "barefaced liar," he may be ordered to give Particulars pointing out the particular passages of the book on which he based the allegation (*Devereux* v. *Clarke*, 1891, 2 Q. B. 582; 60 L. J. Q. B. 773). *V.* NAKED.

LIBEL. — "The word 'Libel' means —

(*a*) The offence defined in this Article.

(*b*) Anything by the publication of which the offence is committed.

"Everyone commits the misdemeanour called Libel who maliciously publishes defamatory matter of any person, or body of persons definite and small enough for its individual members to be recognized as such, in or by means of anything capable of being a Libel in the second sense of the word. The publication of a libel on the character of a dead person is not a misdemeanour unless it is calculated to throw discredit on living persons" (Steph. Cr. 197; *Vf*, Ib. 200–206: Arch. Cr. 1071: Rosc. Cr. 595–613). *V.* MALICE.

"*Defamatory Matter* is matter which, either directly or by insinuation or irony, tends to expose any person to hatred, contempt, or ridicule" (Steph. Cr. 198).

A similar definition obtains for the purposes of an action for Libel: *V.* Rosc. N. P. 837: Add. T. ch. 7, s. 1: Odgers on Libel and Slander: Folkard, Ib.: Fraser, Ib.: Fraser on Libel by the Press: 4 Encyc. 176–191. *Cp*, SLANDER. *Vh*, INNUENDO: JUSTIFICATION: PUBLICATION.

It is Slander, without special damage, to charge one with being a "Libeller" (*Russell* v. *Ligon*, 1 Roll. Ab. 46; 1 Vin. Ab. 423); so, of the phrase "Libellous Journalist" (*Wakley* v. *Cooke*, 19 L. J. Ex. 91; 4 Ex. 511).

"Criminal Libel"; *V.* INDICTMENT.

LIBERALITY. — *V.* BENEVOLENCE.

LIBERTY. — A "Liberty," not prerogative, "imports, *ex vi termini*, that it is a privilege to be exercised over another man's estate" (per Ellenborough, C. J., *Bourne* v. *Taylor*, 10 East, 205).

V. FRANCHISE: WITH ALL LIBERTIES.

"Liberties and Free Usages"; *V. Northumberland* v. *Houghton*, L. R. 5 Ex. 127; 39 L. J. Ex. 66; 18 W. R. 495, and cases there cited.

Quà the Liberties Act, 1850, 13 & 14 V. c. 105, "'Liberty' shall be taken to mean also Division of a County, Town and County, and Soke" (s. 9).

Digitized by Google

LIBERTY OF SPORTING. — *V. Sowerby* v. *Smith*, cited FREEHOLD: HUNTING.

LIBERTY OF THE SUBJECT. — As used in s. 1 (1 *b* i) Jud. Act, 1894; *V. Lancashire* v. *Hunt*, W. N. (95) 52: *Bowden* v. *Yoxall*, 45 S. J. 59; 70 L. J. Ch. 5; 1901, 1 Ch. 1; 83 L. T. 419.

V. FALSE IMPRISONMENT: HABEAS CORPUS: IMPRISONMENT.

LIBERTY OF WORKING. — Where an owner conveys lands in Scotland to a singular successor or other person, reserving the "Liberty of working the Coal" in these lands, he must be taken to have reserved the Estate of coal (unless there were clear words in the deed qualifying that right of property) with which he stands vested by infeftment at the date of the conveyance (*Hamilton* v. *Dunlop*, 10 App. Ca. 813). But that construction arises from the law of Scotland applicable to the indicated kind of conveyance (per Ld Watson, *Ib.*), and *Hamilton* v. *Dunlop* is not of general application (*Sutherland* v. *Heathcote*, 1892, 1 Ch. 475; 61 L. J. Ch. 248; 66 L. T. 210). For, the general rule is that, when a Conveyance of Land provides that "*it shall be lawful*" for the grantor, or he shall be at "*liberty*," or shall have "*full and free liberty*," to GET the MINERALS, turves, and such like things, therein or thereon, such a RESERVATION operates, not as an exception of those things but, as a Re-Grant of a *non*-exclusive license to get the things reserved (*Mountjoy's Case*, Godb. 24; Moore, 197; 4 Leon. 147: *Chetham* v. *Williamson*, 4 East, 469: *Doe* v. *Wood*, 2 B. & Ald. 724: *Carr* v. *Benson*, 3 Ch. 524: *Sutherland* v. *Heathcote*, sup).

On the construction of a reservation to a Lord of a Manor of Mines and Minerals, and Liberty of Working same, in an Inclosure Act; *V. Love* v. *Bell*, 53 L. J. Q. B. 257; 9 App. Ca. 286: *Hayles* v. *Pease*, 1899, 1 Ch. 567; 68 L. J. Ch. 222; 80 L. T. 220.

LIBERTY TO APPLY. — The rule that an Order carries with it "Liberty to apply" though not expressly reserved, only relates to an Order which is not one of a final nature (*Penrice* v. *Williams*, 23 Ch. D. 353; 52 L. J. Ch. 593). *Vh*, 1 Encyc. 285.

LIBERTY TO AVERAGE. — "Charterers to be at Liberty to Average the days for Loading and Discharging in order to avoid DEMURRAGE," authorizes the charterers to add together the days allowed for loading and discharging and exhaust them before demurrage can be calculated at all (*Molière S. S. Co* v. *Naylor*, 2 Com. Ca. 92).

LIBERTY TO CALL. — When a Bill of Lading, or Charter-party, gives "Liberty to CALL at any Ports" on the VOYAGE, that means that the ship must call at the ports in their geographical order; but when the liberty is "to call at any Ports *in any order*," then the ship may go

Digitized by Google

backwards and forwards from the Ports of Call as long as she does not deviate from the ordinary track of the voyage (per Esher, M. R., *Leduc* v. *Ward*, 20 Q. B. D. 475; 36 W. R. 537; 57 L. J. Q. B. 379; 58 L. T. 908; 4 Times Rep. 313: *Caffin* v. *Aldridge*, cited PORT); for neither the words "in any order," or "in any rotation," applied to general limits wider than the voyage, will justify a DEVIATION from the specified voyage, if that voyage be the main purpose of the contract (*Glynn* v. *Margetson*, 1893, A. C. 351; 62 L. J. Q. B. 466; 69 L. T. 1: *White* v. *Granada S. S. Co*, 13 Times Rep. 1). *V.* DIRECTION: PURPOSE: PORT OR PLACE.

LIBERTY TO SIGN.—"Liberty to sign FINAL JUDGMENT" is not equivalent to the actual signing of jdgmt, or to jdgmt, *e.g.* quà priority in an Administration (*Re Gurney*, 1896, 2 Ch. 863; 66 L. J. Ch. 32; 75 L. T. 332; 45 W. R. 92).

LIBERTY TO TOW.—A general clause in a Charter-Party, giving "liberty to tow and be towed, and assist vessels in all situations," embraces only such Deviations as do not frustrate the object of the contract (*Potter* v. *Burrell*, 1897, 1 Q. B. 97; 66 L. J. Q. B. 63). *Vh*, *Stuart* v. *British and African Steam Nav. Co*, 32 L. T. 257; 2 Asp. 497.

LIBRARY.—"Library" may mean, (1) the place where books are kept, or (2) the books in the aggregate (*Carter* v. *Andrews*, 16 Pickering, 9).

"Libraries or Reading Rooms for general use among the Members," s. 33, 17 & 18 V. c. 112; *e.g.* the Russell Institution (*Re Russell Institution*, cited JOINT STOCK COMPANY).

V. PUBLIC LIBRARY: LITERARY: HALL.

"Libraries and Museums," "Library Rate"; Stat. Def., *Scot.* 50 & 51 V. c. 42, s. 2.

"Library Authority"; Stat. Def., 50 & 51 V. c. 22, s. 4.

"Library District"; *V.* DISTRICT.

LIBRATA TERRÆ.—240 acres (Elph. 592, *whv*).

LICENSE.—A mere License, unlike an EASEMENT, is not an interest in the land but only a privilege to go upon the land for a specified purpose; it may be revocable, whilst an Easement is irrevocable (*Wood* v. *Leadbitter*, 13 M. & W. 838; 14 L. J. Ex. 161: *Forbes* v. *Balenseifer*, 74 Ill. 185). But a License "to shoot game, and to take game away when shot by the person who shoots it for his own benefit," is one for an INTEREST IN LAND, being a *Profit à prendre* (per Jessel, M. R., *Webber* v. *Lee*, 51 L. J. Q. B. 486; 9 Q. B. D. 315). And even quà a revocable License, its revocation may give rise to an action against the licensor

Digitized by Google

for breach of contract (*Kerrison* v. *Smith*, 1897, 2 Q. B. 445; 66 L. J. Q. B. 762). *V.* PROFIT À PRENDRE.

As to the distinction between "Grant" and "License"; *V.* GRANT.

License to *assign* not to be unreasonably withheld; *V.* UNREASONABLY.

A letter whereby the owner of goods authorizes another to *take* immediate possession of them and *afterwards* to sell them, and out of the proceeds to deduct money due to him from the owner, to pay certain accounts, and to pay over the balance to the owner, is a "*License* to take possession of personal chattels as SECURITY FOR ANY DEBT" within s. 4, Bills of Sale Act, 1878, and is a BILL OF SALE by way of security for money within the Bills of S. Act, 1882 (*Re Townsend, Ex p. Parsons*, 55 L. J. Q. B. 137; 16 Q. B. D. 532; 53 L. T. 897; 34 W. R. 329: *Sv*, *Charlesworth* v. *Mills*, cited HOLD); *secus*, of a PLEDGE (*Charlesworth* v. *Mills*: *Vf*, *Re Hall*, and *Ex p. Hubbard*, cited TRANSFER).

A Mortgage, of a Building in course of erection, which provides that all building materials brought by the mtgor on the land shall immediately attach to the fee simple and become part of the mtgee's security, is, quà such materials, a Bill of Sale; for, although it confers no RIGHT IN EQUITY, it is a "License to take possession of Personal Chattels as Security for a Debt" (*Climpson* v. *Coles*, 58 L. J. Q. B. 346; 23 Q. B. D. 465; 38 W. R. 110; 61 L. T. 116: *Vthc*, *Church* v. *Sage*, 67 L. T. 800; 41 W. R. 176): *Cp*, SECURITY FOR DEBT. *Vf*, AUTHORITY OR LICENSE.

"License," s. 50, Licensing Act, 1872, includes an Off-License (*R.* v. *Thornton*, 66 L. J. Q. B. 774; 67 Ib. 249; 1897, 2 Q. B. 308; 77 L. T. 26; 61 J. P. 470: *V. S. C.* nom. *Laceby* v. *Lacon*, cited REMOVAL).

"License," s. 29, Alehouse Act, 1828, includes a PROVISIONAL LICENSE under s. 22, Licensing Act, 1874, so that an appeal lies against a refusal to renew it (*R.* v. *London Jus.*, 59 L. J. M. C. 71; 24 Q. B. D. 341; 62 L. T. 458; 38 W. R. 269).

Stat. Def., quà Licensing Acts; *V.* Licensing Act, 1872, s. 74; for Ireland, Ib. s. 77; 37 & 38 V. c. 69, s. 37:—quà Spirits Act, 1880, 43 & 44 V. c. 24; *V.* s. 3.

V. OCCASIONAL: NEW LICENSE: AUTHORITY OR LICENSE: SPECIAL.

LICENSE FEE.—*V.* PASTORAL LEASE.

LICENSE RENT.—*V.* *Cutlan* v. *Dawson*, 13 Times Rep. 10.

LICENSED.—"'Licensed,' as applied to an Excise Trader, means, a person holding a License," granted by the Commrs or their Officer, "for the purpose of his business" (s. 3, Spirits Act, 1880).

LICENSED HAWKER.—*V.* HAWKER: PEDLAR.

Quà Markets and Fairs Clauses Act, 1847, and any Act incorporating same, a Certificate under Pedlars Act, 1871, has the same effect as a

Digitized by Google

Hawker's License; and "licensed Hawker," quà that legislation, includes "a Pedlar holding such a Certificate" (Pedlars Act, 1871, s. 6).

LICENSED HOUSE. — *V.* s. 17, Idiots Act, 1886, 49 & 50 V. c. 25; s. 2, 38 & 39 V. c. 67.

LICENSED MINISTER. — Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, *e.g.* s. 19, "Licensed Minister," and, quà 7 & 8 V. c. 101, "MINISTER," "shall be construed to mean and include, every person in Holy Orders, and also every person teaching or preaching in any Congregation for Religious Worship whose place of meeting is certified and recorded according to law" (s. 74, 7 & 8 V. c. 101).

LICENSED PERSON. — "Licensed Person," quà Licensing Act, 1872, "means a person holding a License as defined by this Act" (s. 74).

An occupier holding a temporary authority, under s. 1, 5 & 6 V. c. 44, to carry on a Beer-house, is not a "Licensed Person" entitled to Notice of Objection under s. 42, 35 & 36 V. c. 94 (*Price* v. *James*, 1892, 2 Q. B. 428; 61 L. J. M. C. 203; 41 W. R. 57; 67 L. T. 543; 57 J. P. 148); such authority does not cancel the existing license, and whilst he retains possession of the premises the licensee is a "Licensed Person" (*Andrews* v. *Denton*, 1897, 2 Q. B. 37; 76 L. T. 423; 66 L. J. Q. B. 520; 45 W. R. 500; 61 J. P. 326).

"Person duly licensed" whose house is pulled down and therefore entitled to apply for a Transfer of License under s. 14, Alehouse Act, 1828; *V. R.* v. *Yorkshire Jus.*, cited RENEWAL.

Vf, *Symons* v. *Wedmore*, cited RENEWAL: *R.* v. *Drake*, 6 M. & S. 116.

LICENSED PREMISES. — "Licensed Premises," quà Licensing Act, 1872, "means premises in respect of which a License, as defined by this Act, has been granted and is in force" (s. 74); and, as used in s. 12, means, premises open to the public for the sale of drink under the provisions of the Act, and therefore a publican may get tipsy on his own premises after hours, without becoming liable under this section (*Lester* v. *Torrens*, 46 L. J. M. C. 280; 2 Q. B. D. 403). *Vf*, "Found drunk," sub FOUND.

V. PUBLIC HOUSE: PEACEABLE: UNLICENSED: DRUNKEN PERSON: OPEN.

LICENSED TESTER. — *V.* TESTER.

LICENSING. — "The Licensing Acts, 1828 to 1886," "The Licensing (Ireland) Acts, 1833 to 1886," "The Licensing (Scotland) Acts, 1828 to 1887"; *V.* Sch 2, Short Titles Act, 1896.

"Licensing *Authority*"; Stat. Def., *Scot.* 50 & 51 V. c. 38, s. 8.

County Licensing *Committee*; V. 35 & 36 V. c. 94, s. 37.

"Licensing *District*"; Stat. Def., Licensing Act, 1872, s. 74; P. H. Act, 1890, s. 51 (13).

Digitized by Google

"Licensing *Justices*"; Stat. Def., Licensing Act, 1872, ss. 74, 77; 37 & 38 V. c. 69, s. 37; P. H. Act, 1890, ss. 12 (9), 51 (13).

V. Annual General Licensing Meeting.

"Licensing *Officer*"; Stat. Def., Licensing Act, 1872, s. 74.

LICENTIATE. — "Licentiate of Apothecaries' Hall," quà Pharmacy Act (Ir), 1875, 38 & 39 V. c. 57, means, "a person who has a Certificate to open shop or to follow the art and mystery of an Apothecary under the Act of 1791" (s. 3).

LICITATION. — Sale by auction; used in the Mauritius: *V. Chasteauneuf* v. *Capeyron*, cited Transmission.

LIE. — *V.* Liar: Naked.

LIEN. — A Lien — (without effecting a transference of the property in a thing) — is the right to retain Possession of a thing until a claim be satisfied; and it is either particular or general. So, quà Scotland, "Lien" is defined as including "the right of retention" (s. 62, Sale of Goods Act, 1893), or it "shall mean and include right of retention" (s. 1, Factors (Scot) Act, 1890).

For the different sorts of Lien and the cases thereon; *V.* Add. C. 829–840: Rosc. N. P. 968–975: Cavanagh on Money Securities, ch. 30: 7 Encyc. 418, 423: *Cp*, Pledge: Recovered or Preserved.

For an instance of Lien by Custom; *V. Re Catford*, 43 W. R. 159.

Unlike the foregoing, the "Lien" given on a Shareholder's Shares by a Co's Articles for his debts to the Co, does not depend on the retention of things or documents, for it constitutes an Equitable Charge upon the Shares (*Re General Exchange Bank*, 40 L. J. Ch. 429; 6 Ch. 818), and, as such, is a Mortgage of them within the def of "Mortgage" in s. 2 (vi), Conv & L. P. Act, 1881, and the shareholder, as "Mortgagor" (Ib.), is entitled to the rights given by s. 15 of the same Act (*Everitt* v. *Automatic Weighing Machine Co*, 1892, 3 Ch. 506; 62 L. J. Ch. 241; 67 L. T. 349). *Vh*, *Re Perkins*, 59 L. J. Q. B. 226; 24 Q. B. D. 613.

By s. 184, Bankry Act, 1849, the rights of creditors holding "any Mortgage of or Lien upon any part of the property" of a bankrupt were preserved; and that "referred to cases in the nature of mortgages or liens by some conveyance or contract, or course of dealing which is the same as contract, where some property in (Qy., right to possession of?) the thing passed"; and at all events the word "Lien" referred to something different from the mere binding of goods by delivery of a *fi. fa.* to the sheriff, or by the seizure of bills or notes under 1 & 2 V. c. 110, s. 12, or by the defendant being bound by a garnishee order (per Campbell, C. J., in delivering the jdgmt, *Holmes* v. *Tutton*, 24 L. J. Q. B. 351; 5 E. & B. 67; *Vthc*, *Murray* v. *Arnold*, 32 L. J. Q. B. 11; 3 B. & S. 287: *Vf*, *Tilbury* v. *Brown*, 30 L. J. Q. B. 46; 9 W. R. 147: *Turner* v. *Jones*, 26 L. J. Ex. 262; 1 H. & N. 878).

Thus, though a "Lien" is a "Security," yet the former word is much too narrow to comprise all that may be comprehended under the latter.

Digitized by Google

"Lien or Charge," throughout s. 7, Yorkshire Registries Act, 1884, 47 & 48 V. c. 54, means, a Lien or Charge in respect of unpaid purchase money, or by reason of a deposit of title deeds; this enactment was to alter the law laid down in *Sumpter* v. *Cooper*, cited CONVEYANCE (*Battison* v. *Hobson*, 1896, 2 Ch. 403; 65 L. J. Ch. 695: nom. *Re Hobson*, 44 W. R. 615).

Maritime Lien; A "'Maritime Lien' does *not* include or require Possession. The word is used in Maritime Law not in the strict legal sense in which we understand it in Courts of Common Law, in which case there could be no Lien where there was no possession, actual or constructive; but to express, as if by analogy, the nature of claims which neither presuppose nor originate in possession. This was well understood in the Civil Law, by which there might be a PLEDGE with possession and a Hypothecation without possession, and by which, in either case, the right travelled with the thing into whosesoever possession it came. Having its origin in this rule of the Civil Law, a Maritime Lien is well defined by Ld Tenterden to mean, a claim or privilege upon a thing to be carried into effect by legal process; and Mr. Justice Story (1 Sumner, 78) explains that process to be, a proceeding *in rem*, and adds that, wherever a Lien or Claim is given upon the thing, then the Admiralty enforces it by a proceeding IN REM, and, indeed, is the only Court competent to enforce it. A Maritime Lien is the foundation of the proceeding *in rem*, — a process to make perfect a right inchoate from the moment the Lien attaches; and whilst it must be admitted that, where such a Lien exists, a proceeding *in rem* may be had, it will be found to be equally true that in all cases where a proceeding *in rem* is the proper course, there a Maritime Lien exists which gives a privilege or claim upon the thing, to be carried into effect by legal process. This claim or privilege travels with the thing into whosesoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and, when carried into effect by legal process by a proceeding *in rem*, relates back to the period when it first attached" (*The Bold Buccleugh*, 7 Moore P. C. 284, cited and applied *The Feronia*, 37 L. J. Adm. 60; L. R. 2 A. & E. 65).

Cp, BOTTOMRY BOND.

"A Maritime Lien may be defined as, a right specifically binding a SHIP, her FURNITURE, TACKLE, CARGO, and FREIGHT, or any of them, for payment of a claim founded upon the maritime law and entitling the claimant to take judicial proceedings against the property bound to enforce, or to ascertain and enforce, satisfaction of his demand; thus, a Salvor has a Maritime Lien on the property saved for such an amount as a Court exercising Admiralty jurisdiction shall award. Maritime are distinguished from all other Liens in these two chief particulars; (1) they are in no way founded on possession or property in the claimant, (2) they are exercised by taking proceedings against the property itself in a form of action styled an Action *in rem* (*The Glasgow Packet*, 2 Rob. W. 312:

Digitized by Google

The Repulse, 4 Notes of Ca. 170), and, from this and their secret nature, they closely resemble the species of security known to Roman Law under the name of *Hypotheca* (Dig. xiii). Interest, if any allowed, and the Costs of enforcing a claim for which a Maritime Lien exists, will be included in such Lien (*The Margaret*, 3 Hagg. Adm. 240).

"A Maritime Lien is universal; that is, it attaches to every part of the *res* to the fullest extent; as long as a plank remains it is subject to the same claim as the vessel to which it belonged (*The Neptune*, 1 Hagg. Adm. 238). It continues to attach to the *res* whatever transfers or dealings take place (*The Bold Buccleugh*, 7 Moore P. C. 267: *The City of Mecca*, 50 L. J. P. D. & A. 53; 6 P. D. 106), until extinguished either by payment, or by acceptance of bail or other security on the part of the person entitled (*The Kalamazoo*, 15 Jur. 886: *The William Money*, 2 Hagg. Adm. 136), or by judicial sale (*The Nymph*, Swabey, 86), or by loss or destruction of the *res*, or by an agreement to postpone payment (*The Royal Arch*, Swabey, 269), or by want of diligence of the creditor (*The Saracen*, 6 Moore P. C. 56; 2 Rob. W. 451); but it is not affected by mere delay in enforcing the claim (*The Mellona*, 5 Notes of Ca. 452), or by a sale of the *res* to a bonâ fide purchaser for value without notice (*The Europa*, Brown. & Lush. 97), or by an agreement to refer the amount of the claim (*The Purisima Concepcion*, 7 Notes of Ca. 150), or to receive a certain sum therefor (*The William Lushington*, 7 Notes of Ca. 362), or by a receipt given in ignorance (*The Silver Bullion*, 2 Spinks, 74), or by knowledge in the claimant of an intended sale (*The Repulse*, sup), or by a release of the owner (*The Chieftain*, Brown. & Lush. 215)": Cavanagh on Money Securities, 2 ed., 464, 465. *Vh*, Abbott, 244–267: Carver, Part 3, ch. 18: 8 Encyc. 211–218. *V.* Towage.

Maritime Lien for Disbursements as well as for Wages; *V. Morgan* v. *Castlegate S. S. Co*, 1893, A. C. 38; 62 L. J. P. C. 17; 68 L. T. 99; 41 W. R. 349; 7 Asp. 284; 9 Times Rep. 139, expounding s. 1, Mer Shipping Act, 1889, repld s. 167, Mer Shipping Act, 1894.

Shifting Lien; *V.* In or Upon.

"Lien for Unpaid Purchase Money," s. 1, 40 & 41 V. c. 34; *V. Re Kidd*, 63 L. J. Ch. 855; 1894, 3 Ch. 558; 71 L. T. 481. *Vf*, on Vendor's Lien, *Ecc. Commrs* v. *Pinney*, 1900, 2 Ch. 736; 69 L. J. Ch. 844.

V. Bind: Charge: Incumbrance: Secured Creditor: Security.

LIEU and SUBSTITUTION.—A bequest in a Codicil, "in lieu of" or "in substitution for," one in the Will, is to be taken with all the accidents and conditions of the original bequest (*Shaftesbury* v. *Marlborough*, 7 Sim. 237; 2 My. & K. 111: *Re Boddington*, 53 L. J. Ch. 477; nom. *Boddington* v. *Clairat*, 25 Ch. D. 685).

V. Addition: In lieu of: Instead of.

LIEUTENANT.—Of a County; Stat. Def., 26 & 27 V. c. 65, s. 49; 34 & 35 V. c. 86, s. 19; 38 & 39 V. c. 69, s. 2.

Cp, Lord Lieutenant.

Digitized by Google

LIFE.—"During Life"; *V.* DURING: JOINT LIVES.
"Life or Member"; *V.* FELONY.
Life Salvage; *V.* SALVAGE.
V. TENANT FOR LIFE.

LIFE ASSURANCE.—"Life Assurance Company"; Stat. Def., 59 & 60 V. c. 8, s. 2.
"The Life Assurance Companies Acts, 1870 to 1872"; *V.* Sch 2, Short Titles Act, 1896.

LIFE POLICY.—Stat. Def., 59 & 60 V. c. 8, s. 2.
V. POLICY.

LIFEBOAT SERVICE.—Quà Mer Shipping Act, 1894, "'Lifeboat Service,' means, the saving, or attempted saving, of VESSELS, or of life or property on board Vessels, wrecked or aground or sunk, or in danger of being wrecked or getting aground or sinking" (s. 742).

LIGAN.—*V.* FLOTSAM.

LIGEANCE.—"Ligeance, is the true and faithful obedience of a liegeman or subject to his liege lord or soveraigne" (Co. Litt. 129 a).
"'Ligeance,' is a true and faithfull obedience of the subject due to his Soveraigne; and this Ligeance (which is an incident inseparable to every subject) is in foure manners; (1) Naturall, (2) Acquired, (3) Locall, and (4) Legal: of all which you may reade much excellent learning in *Calvin's Case*, 7 Rep. 1" (Termes de la Ley). *Vf*, 1 Bl. Com. ch. 10.
V. ALLEGIANCE: LOYALTY.

LIGHT.—*V.* SHOW A LIGHT: EASEMENT.
"Colonial Lights"; *V.* COLONIAL.

LIGHT CART.—An ordinary farmer's cart without springs, if driven with reins, is a "Light Cart" within s. 132, 3 G. 4, c. 126 (*Morton* v. *Freeman*, 26 J. P. 215).

LIGHT LOCOMOTIVE.—Stat. Def., 59 & 60 V. c. 36, s. 1: *Vh*, Mears on Motor Cars: Lewis & Porter, Ib.: 7 Encyc. 458–461.
V. LOCOMOTIVE.

LIGHT or UNJUST.—*V.* UNJUST.

LIGHT RAILWAY.—Stat. Def.—*Ir.* 52 & 53 V. c. 66, s. 11. *Vh*, Light Railways Act, 1896, 59 & 60 V. c. 48: 7 Encyc. 461–463.

LIGHTER.—*V.* WHERRY: GABBERT: VESSEL.
Discharge of Cargo "into Lighters"; *V. Petersen* v. *Freebody*, 1895, 2 Q. B. 294; 65 L. J. Q. B. 12; 73 L. T. 163; 44 W. R. 5; 11 Times Rep. 459.
Quà Thames Conservancy Act, 1894, "'Lighter,' includes any Barge, or other like Craft, for carrying goods" (s. 3).

Digitized by Google

LIGHTERMAN.—*V.* COMMON CARRIER.

LIGHTHOUSE.—Quà Mer Shipping Act, 1894, "'Lighthouse' shall, in addition to the ordinary meaning of the word, include any Floating and other Light exhibited for the guidance of Ships, and also any Sirens and any other description of Fog Signals, and also any addition to a lighthouse of any improved light or any siren or any description of fog signal" (s. 742).

"The General Lighthouse *Authorities*" are, (*a*) "Throughout England and Wales and the Channel Islands, and the adjacent Seas and Islands, and at Gibraltar," the TRINITY HOUSE; (*b*) "Throughout Scotland, and the adjacent Seas and Islands, and the Isle of Man," the COMMISSIONERS *of Northern Lighthouses*; and (*c*) "Throughout Ireland, and the adjacent Seas and Islands," the COMMISSIONERS *of Irish Lights*: and those areas are "Lighthouse areas" (s. 634, Mer Shipping Act, 1894). *Va*, the same section for def of "Local Lighthouse Authorities."

"New Lighthouse"; Stat. Def., 50 & 51 V. c. 62, s. 5.

LIGHTS.—*V.* LIGHT: OVERTAKEN: WITH ALL ITS LIGHTS.

LIKE.—"The like" is not equivalent to "the SAME": *Cp*, CORRESPOND. Therefore, where a sum of money was settled to A. for life, and in default of appointment to her next-of-kin, as if she had died intestate, and the Settlement contained a covenant that her after-acquired property should be settled "upon the like trusts, intents, and purposes," it was held that, in default of appointment, after-acquired realty went to her heir-at-law, personalty to her next-of-kin (*Brigg* v. *Brigg*, 54 L. J. Ch. 464.)

"Like *Circumstances*"; *V. G. W. Ry* v. *Sutton*, cited SAME: *Strick* v. *Swansea Canal Co*, 16 C. B. N. S. 245; 33 L. J. C. P. 240: *Manchester S. & L. Ry* v. *Denaby Main Co*, cited USING.

Goods of a "like *Description and Quantity*"; *V. G. W. Ry* v. *Sutton*, sup.

"To the like *Effect*"; *V. R.* v. *Harwich*, 1 E. & B. 617; 22 L. J. Q. B. 216: *R.* v. *Gen. Med. Council*, 1897, 2 Q. B. 203; 66 L. J. Q. B. 588; 76 L. T. 706; 46 W. R. 2.

"Other like *Instrument*"; *V.* SNARE.

"In like *Manner*"; *V.* AFORESAID.

Business of a "like *Nature*"; *V. Re Empire Assrce*, L. R. 4 Eq. 341; 36 L. J. Ch. 663: *Southland Frozen Meat Co* v. *Nelson*, cited ERECT.

"Like *Penalty*," means, a Penalty of a like amount, recoverable in a like way (per Selborne, C., *Bradlaugh* v. *Clarke*, 52 L. J. Q. B. 507; 8 App. Ca. 357).

"Like *Proceedings*," s. 21, Highway Act, 1864, includes all proceedings contained in s. 85, Highway Act, 1835, and also those proceedings designated by the general name of appeal to Quarter Sessions given by s. 88 (*R.* v. *Surrey Jus.*, L. R. 5 Q. B. 87; 39 L. J. M. C. 49).

Digitized by Google

Underlease to contain "like *Provisions,*" &c, as Original Lease; *V. Williamson* v. *Williamson,* 43 L. J. Ch. 738; 9 Ch. 729: *Haywood* v. *Silber,* 30 Ch. D. 404; 34 W. R. 114: SUCH.

S. 101, Regent's Canal Act, 52 G. 3, c. 195, provided that the land belonging to the Company should be rated "in like manner as LANDS of a like *Quality,*" *i.e.* as open land which never could be built upon, but which perhaps might have some enhanced value from its proximity to the Canal and adjoining buildings, as applicable to any purpose except for building (*Regent's Canal Co* v. *St. Pancras,* 47 L. J. M. C. 37; 3 Q. B. D. 73).

"With the like *Remainder* over in default of Issue, *similar to* and in all respects *corresponding with*"; *V. Surtees* v. *Hopkinson,* 36 L. J. Ch. 305; L. R. 4 Eq. 98.

Like *Services*; *V.* SAME.

"Like Traffic"; *V.* LOWEST RATE.

"Like *Trusts,* intents, and purposes," in a Settlement; *V. Brigg* v. *Brigg,* sup. In a Will, a referential declaration that on death of A. a fund of which she was life tenant should be held "upon such and the like *Trusts*" as those declared of B.'s fund, has been held to mean, the same trusts *mutatis mutandis,* and not identical trusts (*Bashford* v. *Chaplin,* W. N. (81) 126).

V. SIMILAR.

LIKEWISE.—When a clause begins with "Likewise," or "ITEM," it is, generally speaking, to be read independently of the former clause, as a fresh departure, and starting upon a new disposition (1 Jarm. 831, 832, citing *Lethieullier* v. *Tracy,* 3 Atk. 774; Amb. 204: *Pearson* v. *Rutter,* 3 D. G. M. & G. 398: *Boosey* v. *Gardener,* 5 D. G. M. & G. 122). "'Item,' is an usual word in a Will to introduce new distinct matter" (per Trevor, C. J., *Hopewell* v. *Ackland,* 1 Salk. 239); "'Item' shews that the testator is dealing with a new subject, and that the words following apply to that only, and not to the preceding matter unless the intention that they should do so is plain" (per Bayley, J., *Doe* d. *Ellam* v. *Westley,* 4 B. & C. 669).

"It is not, however, to be assumed that whenever the word 'Item' or 'Likewise' begins a sentence, it creates a complete severance of all that follows from the previously-expressed contingency. It cannot be put higher than this, that such expressions make a *primâ facie* case for the disconnection, which the context of the Will may either maintain or rebut" (1 Jarm. 832, 833); and where there is a devise, *e.g.* for life, upon condition, and that is followed by another devise of the same estate, commencing with "Likewise," such other devise will, probably, be construed as subject to the same condition as the prior devise (*Paylor* v. *Pegg,* 24 Bea. 105, stated 1 Jarm. 833).

V. ALSO.

Digitized by Google

LIMESTONE.—*V.* MINE.

LIMIT.—S. 43, P. H. Act, 1872, 35 & 36 V. c. 79, provided that any "Limit" of rating imposed by a Local Act shall not apply to that Act; "Limit" there does not include "Exemption," and, therefore, property exempted by a Local Act was held not rateable under the P. H. Act (*Walton* v. *Walford*, L. R. 10 Q. B. 180; 44 L. J. Q. B. 74: *R.* v. *Wexford*, 18 L. R. Ir. 132).

V. GENERAL LIMITS.

"To limit"; *V.* THREAT.

"Limit and appoint," quà property over which the Power of Appointment then being executed did not extend; held, words of GRANT (*M'Andrew* v. *Gallagher*, Ir. Rep. 8 Eq. 490).

LIMITATION.—Statutes of Limitation; *V.* ACKNOWLEDGMENT: ACQUIESCENCE: CESTUI: CLAIMING UNDER: DISPOSSESSION: FIRST ACCRUED: FORFEITURE: IN RECEIPT: INTERRUPTION: WRONGFULLY CLAIMING. *Vh,* Darby & Bosanquet on the Statutes of Limitations: 7 Encyc. 466–479.

Words of Limitation are "words which limit, or mark out, the ESTATE to be taken by the grantee" (Wms. R. P. 210, 211). *Cp,* PURCHASE: *V.* FEE SIMPLE: HEIR: HEIRS OF THE BODY: 7 Encyc. 483, 484.

LIMITED.—"Limited *Estate*"; Stat. Def., 24 & 25 V. c. 47, s. 2.—*Ir.* 27 & 28 V. c. 38, s. 1.

"Limited *Owner*"; Stat. Def., Landed Property (Ir) Improvement Act, 1860, 23 & 24 V. c. 153, ss. 7 and 24. The defs contained in those two sections were amalgamated in s. 26, Landlord and Tenant (Ir) Act 1870, 33 & 34 V. c. 46, which latter section is adopted for Land Law (Ir.) Act, 1896, 59 & 60 V. c. 47, with the addition that the latter def is also to include "any person having the powers of a Tenant for Life under the Settled Land Acts, 1882 to 1890" (s. 48). *Vf,* 36 & 37 V. c. 57, s. 7, which apparently was framed in view of s. 24, 23 & 24 V. c. 153.

LINARIUM.—"A place where flax groweth" (Cowel).

LINCOLNSHIRE.—*V.* DIVISION.

LINDSAY ACT.—25 & 26 V. c. 101.

LINE.—*V.* MALE LINE: LINEAL: NEW LINE: ROD AND LINE: TELEGRAPHIC LINE.

LINE OF BUILDINGS.—*V.* GENERAL LINE OF BUILDINGS.

LINE OF RAIL.—*V.* RAIL: RAILWAY.

LINEA MASCULINA.—*V.* MALE LINE.

Digitized by Google

LINEAL. — The expressions "Lineal Descent," "Lineally descended," indicate, *primâ facie*, a direct line of descent from father to son (*Vh*, note to *Craik* v. *Lambe*, 1 Coll. 491); but under the peculiar circumstances of that case, yet still with difficulty, Knight-Bruce, V. C., held that collateral next-of-kin were meant by "Relations by *Lineal Descent*" (14 L. J. Ch. 84; 1 Coll. 489). Again, in *Boys* v. *Bradley* (22 L. J. Ch. 623; 4 D. G. M. & G. 58), the same learned judge, when L. J., said, "Whatever may be the range of the word 'Lineal' considered by Mr. Collyer in his note to *Craik* v. *Lambe*, to speak of a man's collateral kindred, as related to him in any line, is *not* an improper use of language, but equally allowable with the genealogical *transversa linea* of the civil lawyers." *Vf*, 2 Jarm. 99. *Cp*, *Best* v. *Stonehewer*, cited DESCENDANTS.

"The eldest *male* lineal descendant" is inapplicable to a male person claiming in part through a female (*Oddie* v. *Woodford*, 7 L. J. Ch. 117; 3 My. & C. 584: *Vh*, 2 Jarm. 69). *V.* ELDEST: MALE LINE.

V. STRANGERS IN BLOOD.

Lineal Yard; *V.* YARD.

LINEN. — "Under this term, without qualification, table and bed linen, and every article to which that general word can be applied, will pass. But where there is a bequest of 'all linen and *clothes* of all kinds,' it has been held that only body linen will pass" (Wms. Exs. 1066, citing *Hunt* v. *Hort*, 3 Bro. C. C. 311).

An Insrce on "Household Furniture, Linen, and Wearing Apparel," does not include linen drapery bought for sale (*Watchorn* v. *Langford*, 3 Camp. 422).

LIQUIDATED DAMAGES. — Where parties to a contract agree that, in the event of default by either, a sum stated shall be paid as "Liquidated Damages"; the primary meaning of that phrase is, that the sum named has been "assessed between the parties" (per Cotton, L. J., *Wallis* v. *Smith*, 52 L. J. Ch. 154) as the damages to be paid by the party in default. Yet, where the Court sees plainly that the stated sum is a "Penal Sum" (8 & 9 W. 3, c. 11, s. 8: per Bramwell, B., *Betts* v. *Burch*, 4 H. & N. 506; 28 L. J. Ex. 267), there it is treated as a Penalty and only proved damages are recoverable (*Magee* v. *Lavell*, L. R. 9 C. P. 107; 43 L. J. C. P. 131, discussing *Reilly* v. *Jones*, 1 Bing. 302, and *Lea* v. *Whitaker*, L. R. 8 C. P. 70): and "where the parties themselves call the sum made payable a 'Penalty,' the onus lies on those who seek to show that it is to be payable as Liquidated Damages" (per Esher, M. R., *Willson* v. *Love*, cited PENALTY).

It is, however, always a question of construction, by the light of the rules laid down in decisions not always easy to be reconciled, — the tendency of modern decisions being to hold contracting parties to the bar-

Digitized by Google

gains they make, and the usual meaning of the words they use (*Wallis* v. *Smith*, 52 L. J. Ch. 145; 21 Ch. D. 243; 31 W. R. 214; 47 L. T. 389). In *Dickson* v. *Lough* (18 L. R. Ir. 529) O'Brien, J., said, — "Sir Geo. Jessel, in *Wallis* v. *Smith*, fell foul of the ruling in *Magee* v. *Lavell*, as he fell foul of many other things, for which reason those fell foul of him who came after him; and in his contempt for authority he went so far as to say there was no authority for it."

The rules where "Liquidated Damages" are *agreed upon*, may, probably, be stated thus, —

1. Where the payment of a smaller sum is secured by a larger, — the larger sum is a Penal Sum, or, in other phrase, a PENALTY (*Astley* v. *Weldon*, 2 B. & P. 346: *Davies* v. *Penton*, 6 B. & C. 216: *Betts* v. *Burch*, sup: *Kemble* v. *Farren*, 6 Bing. 141: *Law* v. *Redditch*, 1892, 1 Q. B. 127; 61 L. J. Q. B. 172):

2. Where a single lump sum is prescribed as payable on the breach of any one of several stipulations, and *one* of such stipulations is within the preceding rule, or is obviously of "very trifling consideration," others being substantial, — the lump sum is a Penalty (per Chambre, J., *Astley* v. *Weldon*, sup: per Ld Westbury, *Thompson* v. *Hudson*, L. R. 4 H. L. 30; 38 L. J. Ch. 443: per Ld Watson, *Elphinstone* v. *Monkland*, 11 App. Ca. 342: *Horner* v. *Flintoff*, 11 L. J. Ex. 270; 9 M. & W. 679: per Alderson, B., *Atkyns* v. *Kinnier*, 19 L. J. Ex. 132; 4 Ex. 776); and so of a lump sum payable on one event of trifling importance (*Jones* v. *Hough*, 49 L. J. Ex. 211; 5 Ex. D. 115: *Rayner* v. *Ornen S. S.*, 1895, 2 Q. B. 289; 64 L. J. Q. B. 540; 73 L. T. 96):

3. Where a sum of whatever amount is prescribed as payable on the breach sounding in uncertain damages of a single stipulation, — such sum is recoverable as Liquidated Damages (per Eldon, C. J., *Astley* v. *Weldon*, sup: *Roy* v. *Beaufort*, 2 Atk. 190: *Barton* v. *Glover*, Holt, N. P. 43: *Reynolds* v. *Bridge*, 26 L. J. Q. B. 12; 6 E. & B. 528: *Sparrow* v. *Paris*, 31 L. J. Ex. 137; 7 H. & N. 594: *Law* v. *Redditch*, sup: *Vf*, *Green* v. *Price*, 14 L. J. Ex. 225; 13 M. & W. 695: *Rawlinson* v. *Clarke*, 14 L. J. Ex. 364; 14 M. & W. 187: *Sainter* v. *Ferguson*, 18 L. J. C. P. 217; 7 C. B. 716: *Galsworthy* v. *Strutt*, 17 L. J. Ex. 226; 1 Ex. 659: *Ward* v. *Monaghan*, 59 J. P. 532; 11 Times Rep. 529: *Strickland* v. *Williams*, 68 L. J. Q. B. 241; 1899, 1 Q. B. 382; 80 L. T. 4):

4. Where a single lump sum is prescribed as payable on the breach sounding in uncertain damages of any one of several stipulations all of which are substantial *but which are various in kind and of different degrees of importance*, — the lump sum is recoverable as Liquidated Damages (*Wallis* v. *Smith*, sup: *Atkyns* v. *Kinnier*, sup: *Green* v. *Price*, sup. *So*, as to the words italicised, per Heath, J., *Astley* v. *Weldon*, sup: per Erskine, J., *Boys* v. *Ancell*, 8 L. J. C. P. 267; 5 Bing. N. C. 390: per Coleridge, C. J., *Magee* v. *Lavell*, sup: *Re Newman*, 46

Digitized by Google

L. J. Bank. 57; 4 Ch. D. 724; 25 W. R. 244. *Vf, Willson* v. *Love*, cited PENALTY):

5. A DEPOSIT which (per agreement, *Palmer* v. *Temple*, 8 L. J. Q. B. 179; 9 A. & E. 508: *Casson* v. *Roberts*, 32 L. J. Ch. 105) becomes forfeited, is retainable, or (where an I. O. U. given for it) is recoverable, as Liquidated Damages (per Jessel, M. R., *Wallis* v. *Smith*, sup: *Hinton* v. *Sparkes*, 37 L. J. C. P. 81; L. R. 3 C. P. 161).

Note. Though Channell, B., said in *Sparrow* v. *Paris* (sup) that "the use of 'Penalty' or 'Unliquidated Damages' signifies nothing," yet that is too wide a statement (*e.g. V.* per Erskine, J., *Boys* v. *Ancell*, sup: *Willson* v. *Love*, sup). Such words, however, are not conclusive either way (per Cranworth, C., *Ranger* v. *G. W. Ry*, 5 H. L. Ca. 94: per Bramwell, B., *Betts* v. *Burch*, sup: *Sainter* v. *Ferguson*, sup); though their use is nearly always material and will not infrequently be decisive. In *Lowe* v. *Peers* (4 Burr. 2229) Mansfield, C. J., said, "Where the precise sum is not the essence of the agreement, the quantum of the damages may be assessed by the jury; but where the precise sum is fixed and agreed upon between the parties, that very sum is the ascertained damage, *and the jury are confined to it*," on which italicised words, *V. Lea* v. *Whitaker*, sup. So, the association of the stated amount with the word "Forfeit" has been relied on to show that a Penalty was intended (per Parke, B., *Horner* v. *Flintoff*, sup); *secus*, as regards a provision under which a Deposit becomes "forfeited" (*Hinton* v. *Sparkes*, sup).

Vh, Add. C. 267–272: Leake, 933–942: STIPULATED.

"*Un*liquidated Damages," s. 31, Bankry Act, 1869, repld s. 37 (1), Bankry Act, 1883, does not include 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), nor a patentee's right to an account of profits made by an infringer (*Watson* v. *Holliday*, 52 L. J. Ch. 543; 31 W. R. 536; 48 L. T. 545; 20 Ch. D. 780). *Vf*, Wms. Bank. 114 *et seq*: DAMAGES.

LIQUIDATED DEMAND.—It is submitted that a "Liquidated Demand," R. 6, Ord. 3, R. S. C., includes all that is comprehended in "Liquidated Damages" (*V.* per Esher, M. R., *Law* v. *Redditch*, cited LIQUIDATED DAMAGES).

By s. 57 (1), Bills of Ex. Act, 1882, INTEREST and NOTING on a Bill or Note (as well as its principal sum) are to be deemed Liquidated Damages; therefore (though they may be withheld, subs. 3, s. 57) such interest and noting are a "Liquidated Demand in money" within R. 6, Ord. 3, R. S. C. (*Lawrence* v. *Willcocks*, 1892, 1 Q. B. 696; 61 L. J. Q. B. 519; 66 L. T. 511; 40 W. R. 419: *Vf*, *Dando* v. *Boden*, 1893, 1 Q. B. 318; 62 L. J. Q. B. 339; 68 L. T. 90); so, generally, of interest clearly shown to be payable by statute or by agreement (*Gold Ores Co* v. *Parr*, 1892, 2 Q. B. 14; 61 L. J. Q. B. 522; 66 L. T. 687; 40 W. R. 526). But interest which may be awarded on a SUM CERTAIN, is not within

Digitized by Google

the Rule (*Elliott* v. *Roberts*, 36 S. J. 92: *Blood* v. *Robinson*, Ib. 203: *Wilks* v. *Wood*, 1892, 1 Q. B. 684; 61 L. J. Q. B. 516: *London and Universal Bank* v. *Clancarty*, 1892, 1 Q. B. 689; 61 L. J. Q. B. 225; 66 L. T. 798; 40 W. R. 411: *Sheba Gold Co* v. *Trubshawe*, 1892, 1 Q. B. 674; 61 L. J. Q. B. 219; 40 W. R. 381; 66 L. T. 228).

A claim for Short Delivery of Goods sold, is a liquidated demand (*Biggerstaff* v. *Rowatt's Wharf*, 1896, 2 Ch. 93; 65 L. J. Ch. 536); so is an amount due on a Jdgmt (*Hodsoll* v. *Baxter*, E. B. & E. 884), though a foreign one (*Grant* v. *Easton*, 53 L. J. Q. B. 68; 13 Q. B. D. 302).

V. DEBT: DEBTS DUE: *Re Miller*, cited NOTICE.

LIQUIDATION.—Voluntary Liquidation of a Co, though merely for the purpose of Reconstruction, is none the less a "Liquidation" within a clause of FORFEITURE in a Lease to the Co (*Horsey* v. *Steiger*, 1898, 2 Q. B. 259; 67 L. J. Q. B. 747; 79 L. T. 116). But a Voluntary Liquidation is equivalent to "BANKRUPTCY," as that latter word is used in s. 14 (6, i), Conv & L. P. Act, 1881, and s. 2 (2), Conv & L. P. Act, 1892; therefore, in cases provided for by the latter section, NOTICE will have to be given under the first section (*S. C.* 1899, 2 Q. B. 79; 68 L. J. Q. B. 743; 80 L. T. 857; 47 W. R. 644). *Vf*, *Watney* v. *Ewart*, 18 Times Rep. 426.

Forfeiture on "Liquidation" is worked immediately on the making of a Winding-up Order (*General Share Co* v. *Wetley Co*, 20 Ch. D. 260; 51 L. J. Ch. 464).

LIQUIDATOR.—*V. Re English Bank of River Plate*, 1892, 1 Ch. 391; 61 L. J. Ch. 205; 66 L. T. 177; 40 W. R. 325.

V. OFFICIAL.

LIQUOR.—"Such Liquor"; *V.* SUCH.

V. SPIRITUOUS LIQUOR: PUBLIC HOUSE: SALE.

LIS MOTA.—"By the law of England, differing in this respect from the Civil Law, a suit is not necessary to constitute *lis*" (*Butler* v. *Mountgarret*, 7 H. L. Ca. 641); a family controversy capable of being litigated is a *lis mota* (*Ib.*). *Vf*, 7 Encyc. 485.

LIS PENDENS.—Is an Action PENDING.

For a review of the cases relating to the Registration, and effect of Registration, of a Lis Pendens, *V. Wigram* v. *Buckley*, 1894, 3 Ch. 483; 63 L. J. Ch. 689; 71 L. T. 287; 43 W. R. 147, *whc*, decides that the doctrine that a Lis Pendens, duly registered, binds the subject-matter of the action, does not apply to PERSONAL ESTATE, except Leaseholds, and, possibly, Money in Court.

Digitized by Google

LITERARY. — A Municipal Free Library is "the PROPERTY of a Literary or Scientific *Institution*" within R. 6, s. 61, Income Tax Act, 1842, and is, therefore, exempt from that tax (*Manchester* v. *McAdam*, 1896, A. C. 500; 65 L. J. Q. B. 672: *Musgrave* v. *Dundee Magistrates*, 24 Sess. Ca. 4th Ser. 930; W. N. (98) 127). In *Manchester* v. *McAdam* the majority in H. L. held that "the property of," in this context, does not connote ownership, but means, held for or appropriated for the purposes of a Literary or Scientific Institution; and, on the word "Institution," Ld Herschell (who was one of the majority) said, "It is a word employed to express several different ideas. It is sometimes used in a sense in which the 'Institution' cannot be said to consist of any persons, or body of persons, who could strictly speaking own property. The essential idea conveyed by it, in connection with such adjectives as 'literary' and 'scientific,' is often no more than a system, scheme, or arrangement, by which literature or science is promoted, without reference to the persons with whom the management may rest, or in whom the property appropriated for these purposes may be vested, save in so far as these may be regarded as a part of such system, scheme, or arrangement"; in support of this his lordship gives illustrations: *Vf*, jdgmt of Ld Macnaghten, *Ib*. *Cp*, SCIENCE.

"Literary *Work*," preamble to Copyright Act, 1842, means, a Work "intended to afford either information and instruction, or pleasure in the form of literary enjoyment" (per Davey, L. J., *Hollinrake* v. *Truswell*, 1894, 3 Ch. 420; 63 L. J. Ch. 722); Sporting Tips are not "Literary Work" (*Chilton* v. *Progress Co*, 1895, 2 Ch. 29; 64 L. J. Ch. 510; 72 L. T. 442; 43 W. R. 456), in *thlc* Lindley, L. J., suggested that the limit to which "Literary Work" could be stretched was reached in the Directory case, *Kelly* v. *Morris* (35 L. J. Ch. 423; L. R. 1 Eq. 697: *Va*, *Lamb* v. *Evans*, 1893, 1 Ch. 218; 62 L. J. Ch. 404; 68 L. T. 131).

"Literary and Artistic Work," quà International Copyright Act, 1886, "means, every BOOK, Print, Lithograph, Article of SCULPTURE, DRAMATIC Piece, MUSICAL COMPOSITION, PAINTING, Drawing, PHOTOGRAPH, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend" (s. 11).

LITERATURE. — *V.* SCIENCE.

LITIGATION. — *V.* ADVERSE.

The Rescission Clause in Conditions of Sale "notwithstanding any previous (or, intermediate) Litigation," means, "notwithstanding PENDING litigation"; notice to rescind comes too late after jdgmt (*Re Arbib and Class*, 1891, 1 Ch. 601; 60 L. J. Ch. 263; 64 L. T. 217; 39 W. R. 305). But, on the other hand, if the clause is without that phrase it is operative during the pendency of litigation if exercised *bonâ fide* (*Isaacs* v. *Towell*, 1898, 2 Ch. 285; 67 L. J. Ch. 508; 78 L. T. 619).

Digitized by Google

LITTER.—Quà Diseases of Animals Act, 1894, 57 & 58 V. c. 57, "'Litter,' means, straw, or other substance commonly used for bedding or otherwise for or about animals" (s. 59).

LITTLE DAMAGE.—"As little damage as can be"; *V.* DAMAGE.

LITTUS MARIS.—*V.* SHORE. *Vf,* WARETTUM.

LIVE AND DEAD STOCK.—"The words 'Live and Dead Stock' have never occurred alone in a bequest, consequently their import in the abstract could not have received a legal interpretation. Since, however, the term 'Stock' is of extensive meaning, and not rendered less so by the prefatory words 'Live and Dead,'—expressions that merely distinguish such part of the personal estate as is inanimate from that which is animate,—it is not improbable that a Court might interpret the word 'Stock,' under those circumstances, as synonymous with 'Property,' and sufficient to pass the whole of a testator's personal estate" (Rop. 274). It is however submitted that it would need a context, and probably a strong one, to warrant so large an interpretation, and that the primary meaning of "Live and Dead Stock" is that which was put on the phrase in *Porter* v. *Tournay* (3 Ves. 311), viz. "out-of-door Stock"; indeed in that case the M. R. said, that that would be the interpretation of the phrase "if those words stood alone." But where the bequest was of "all testator's furniture, linen, plate, pictures, carriages, horses, and *other Live and Dead Stock,*" Wood, V. C., considering that "other" referred to all the previous words of the sentence and that the testator evidently meant to include every stock and store he had about his house, held that Books and Wines passed under the bequest. He said, "The words 'Dead Stock' might apply to in-door things. The expression 'Stock of Wines' was common; but 'Stock of Books' was not heard so often" (*Hutchinson* v. *Smith,* 11 W. R. 417; 8 L. T. 602, also cited HOUSEHOLD: *Rudge* v. *Winnall,* 12 Bea. 357). In *Blake* v. *Gibbs* (5 Russ. 13, *n*) Growing Crops passed under this phrase.

Vf, Randall v. *Russell,* 3 Mer. 190: *Hardman* v. *Johnson,* Ib. 347: *Burbidge* v. *Burbidge,* 37 L. J. Ch. 47; 16 W. R. 76; 17 L. T. 138.

Quà Agricultural Holdings Act, 1883, "'Live Stock,' includes any Animal capable of being distrained" (s. 61), *i.e.* all animals except those which are *feræ naturæ.* *Vh,* AGIST.

V. STOCK: FARMING STOCK.

LIVE AND RESIDE.—A Condition in a gift of a house that the donee shall "live and reside" therein, does not seem more exigent than if it said nothing about living and only required residence: *V.* RESIDE, *whva* as to validity of such a condition quà the powers of a Tenant for Life under the S. L. Act. In *Fillingham* v. *Bromley* (T. & R. 534),

Digitized by Google

Ld Eldon said, — "Suppose the devisee had been an M. P., and had a house in London, would you say he did not *live and reside* at J. ?" It would seem that "live" in that question adds nothing to its point. In *thc*, a FORFEITURE was to be created if the donee did not "live and reside" at J., and the phrase was held too uncertain to work a forfeiture, and the title of the person claiming under the gift was forced on a purchaser. *Cp*, EDUCATION : RENT FREE.

LIVE IN. — A gift of "the HOUSE I live in," will include stables and coal-pen occupied by the testator with his dwelling-house, though used by him for the purposes of trade as well as for the convenience of that house (*Doe* d. *Clements* v. *Collins*, 2 T. R. 498). *V.* OCCUPATION.

LIVE SEPARATE. — *V.* SEPARATE: NEGLECT: LIVING APART.

LIVELIHOOD. — In *Stephens* v. *Derry* (16 East, 147), a man who lived with his wife in Middlesex, the wife carrying on a business there as a milliner, acted as clerk to a solicitor in London, and it was held that he was not within the London Court of Requests Act (39 & 40 G. 3, c. 104) as a person "Seeking his livelihood" in London; inasmuch as he did not get his *whole* livelihood there; the trade which he carried on by his wife, being, in fact, *his* trade. So, the context in the section shows that the phrase "points to a person carrying on some business on his own account, and not one in a subordinate situation," *e.g.* a Clerk (*Smith* v. *Hurrell*, 10 B. & C. 542). *Va*, *Jenks* v. *Taylor*, 5 L. J. Ex. 263; 1 M. & W. 578.

Trade, &c, "by which the occupier seeks a Livelihood or Profit," s. 13 (2), 41 V. c. 15; *V.* TRADE.

Provision for a Wife's "Livelihood and Maintenance"; *V.* JOINTURE.

V. OCCUPATION.

LIVERPOOL. — The Port of Liverpool is of many miles extent, with a series of docks for different classes of ships and trades; a Ship does not "ARRIVE" there the moment she enters the Mersey, but, generally, she arrives when she gets into her proper dock; but it may be shown by the Custom of a particular trade that she does not "arrive" at Liverpool until she is moored at a quay where she is allowed to discharge (*Norden S. S. Co* v. *Dempsey*, 1 C. P. D. 654; 45 L. J. C. P. 764; 24 W. R. 984; for obs on *whcv* Carver, 227).

LIVERY. — Of Liveries (1) in Law, and (2) in Deed, of which latter there are two kinds; General and Special; *V.* 2 Inst. 693: Co. Litt. 48 a: "Livery," in this connection, means, DELIVERY.

As to how Livery of SEIZIN was made, *V.* Co. Litt. 48 a–49 a: Termes de la Ley, *Livery of Seisin*: 2 Bl. Com. 311–316: 4 Cru. Dig. 46–48: 4 Encyc. 202.

Digitized by Google

LIVES.—*V.* Joint Lives.

LIVING.—"Now, the word 'Living' is ambiguous. It is sufficient to pass the Advowson. On the other hand it may be restricted to a single Presentation: the law does not determine which is its meaning, and the point must be ascertained from the context" (per Wood, V. C., *Webb* v. *Byng*, 2 K. & J. 674; affd 10 H. L. 171: *Vthc*, 2 Jarm. 286, *n*).

"A Power to Appoint to Children *living* at the parent's decease, includes a child in *ventre sa mère* at that time (*Beale* v. *Beale*, 1 P. Wms. 244). This point has been otherwise decided (*Pierson* v. *Garnett*, 2 Bro. C. C. 38, 63); but the law is now perfectly settled (*Clarke* v. *Blake*, 2 Bro. C. C. 320; nom *Doe* v. *Clarke*, 2 Bl. H. 399: *Va*, *Thellusson* v. *Woodford*, 4 Ves. 226: *Hale* v. *Hale*, Prec. Ch. 50)"; Sug. Pow. 673. So, a gift to A. if she have issue "living," will take effect if she be pregnant at the time indicated and afterwards give birth to a child (*Re Burrows*, 1895, 2 Ch. 497; 65 L. J. Ch. 52; 43 W. R. 683); in *thlc* Chitty, J., rejected the doctrine that a child *en ventre* is only "living" where a direct benefit passes to such child. *Cp*, Born.

Bequest to A. for life, remainder to "her children living"; held, that children of A. living at the death of testator took vested interests (*Hodgson* v. *Smithson*, 26 L. J. Ch. 110; 21 Bea. 354: *Va*, *Kidd* v. *North*, 3 D. G. M. & G. 947).

"Who shall be living"; *V. Penny* v. *Clarke*, 29 L. J. Ch. 370; 1 D. G. F. & J. 425; Johns. 619.

Bequest on condition of "Being" or "Living" in England or "residing in this country"; *V. Woods* v. *Townley*, 23 L. J. Ch. 281; 11 Hare, 314: *Dale* v. *Atkinson*, 3 Jur. N. S. 41: Reside.

V. Child: Then Living.

LIVING APART.—A husband and wife are "living apart," within the power given by s. 91, Fines and Recoveries Act, 1833, to dispense with his concurrence in her conveyance of property, if that be substantially the state of things between them; and "to suggest that they are not 'living apart' because occasionally they pay short visits to one another, there being at the same time an entire absence of mutual affection, is absurd" (per Erle, C. J., *Re Rogers*, H. & R. 88; 35 L. J. C. P. 71; L. R. 1 C. P. 47). *Vh*, *Ex p. Thomas*, 4 Moore & S. 331: *Ex p. Shuttleworth*, Ib. 332, *n*: *Ex p. Gilmore*, 3 C. B. 967: *Re Squires*, 17 C. B. 176: *Re Caine*, 52 L. J. Q. B. 354; 10 Q. B. D. 284: *Ex p. Sutcliffe*, 29 L. T. 747: *Re Horsfall*, 3 M. & G. 132. An unjustifiable (or, *semble*, even a justifiable) withdrawal from cohabitation by the Wife, is not a "living apart" entitling her to an Order under the section (*Re Price*, 13 C. B. N. S. 286). *Vf*, Shelford's Real Property Statutes, 9 ed., 305.

Cp, Cohabitation: Desertion: Separate: Neglect.

Digitized by Google

LIVING WITH ME.—The phrase "living with me" in a bequest to SERVANTS, does not mean "living in my house" but, means "living in my service" (per Turner, V. C., *Blackwell* v. *Pennant*, 22 L. J. Ch. 155; 9 Hare, 551).

LLOYD'S BOND.—A Lloyd's Bond, is a Bond issued by a Ry or other Incorporated Co, to secure a debt or other obligation it has already contracted in carrying out its undertaking, as distinct from a security for a present advance; its issue, therefore, is not dependent upon or limited by the Borrowing Powers of the Co (*White* v. *Carmarthen Ry*, 33 L. J. Ch. 93; 1 H. & M. 787: Cavanagh on Money Securities, Ch. 28). *Vh, Re Cork & Youghal Ry*, 4 Ch. 748; 39 L. J. Ch. 277. As to inadmissibility of evidence impeaching such a Bond, *V. Blackmore* v. *Yates*, 36 L. J. Ex. 121; L. R. 2 Ex. 225.

LLOYD'S CONDITIONS.—*V.* USUAL LLOYD'S CONDITIONS.

LOAD: LOADING.—To "load" a CARGO is actually to put it on board (*Hurry* v. *Royal Ex. Assrce*, 2 B. & P. 430: *Cp*, LANDED). "But the Loading begins in and at the place named in the Charter-Party" (per Brett, L. J., *Kay* v. *Field*, cited DETENTION BY ICE).

Circumstances which prevent the cargo from being brought to the place of loading, are not "Accidents preventing the loading" within an Exception in a charter-party relieving from charges for demurrage (*Grant* v. *Coverdale*, 53 L. J. Q. B. 462; 9 App. Ca. 470; 51 L. T. 472; 32 W. R. 881: *Stephens* v. *Harris*, 57 L. J. Q. B. 203; 4 Times Rep. 11).

Vf, as to Policy attaching on "loading," 8 Encyc. 176, 177.

The words "*loading or discharging*" as used in s. 41, Mer Shipping Act, 1862, are employed in their general sense, and are not confined to loading or discharging cargo, but (*int. al.*) comprise taking in coals to enable the ship to carry on her voyage (*The Winston*, 52 L. J. P. D. & A. 72; 53 Ib. 69; 9 P. D. 85; 51 L. T. 183).

"Loading excepted," in a CESSER clause in a Charter-Party, relates to all liabilities connected with the loading (*Lister* v. *Van Haansbergen*, 45 L. J. Q. B. 495; 1 Q. B. D. 269; 24 W. R. 395).

"Loading *in Turn*"; *V. Taylor* v. *Clay*, 9 Q. B. 713; 16 L. J. Q. B. 44.

V. READY TO LOAD: INABILITY: PORT.

"Load," and "Unload," in a *Railway Act*, are used in their ordinary sense, and do not cover station accommodation, and the like (*Kempson* v. *G. W. Ry*, 4 B. & Macn. 426).

Railway charges for "loading, covering, unloading, delivery, and collection, and any other services incidental to the duty or business of a Carrier"; *V.* INCIDENTAL.

"Preventing the loading"; *V.* PREVENT.

Digitized by Google

LOAD IN USUAL AND CUSTOMARY MANNER. — *V.* USUAL AND CUSTOMARY MANNER.

LOAD LINE. — *V.* ss. 436–445, Mer Shipping Act, 1894.

LOAD WITH USUAL DESPATCH OF PORT. — *V.* USUAL DESPATCH.

LOADED ARM. — *Semble*, a tin box containing gunpowder and detonators, the latter to ignite the gunpowder on the box being opened and so kill or injure the person opening it, was not a "Loaded Arm," within ss. 11 and 12, 9 G. 4, c. 31 (*R.* v. *Mountford*, 7 C. & P. 242). To be a "loaded" Arm, within these sections, even an ordinary fire-arm must have been "so loaded as to be capable of doing mischief by having the trigger drawn" (*R.* v. *Carr*, Russ. & Ry. 377: *R.* v. *Gamble*, 10 Cox C. C. 545); therefore, a pistol loaded with powder and balls, but its touch-hole so plugged up that it could not possibly be fired, was not a "loaded arm" (*R.* v. *Harris*, 5 C. & P. 159). *Vf*, *R.* v. *Coates*, 6 C. & P. 394: *R.* v. *Kitchen*, Russ. & Ry. 95: *R.* v. *Baker*, 1 C. & K. 254: *R.* v. *James*, Ib. 531.

But quà Offences against the Person Act, 1861, "any gun, pistol, or other arms, which shall be loaded in the barrel with gunpowder or any other EXPLOSIVE substance, and ball, shot, slug, or other destructive material, shall be deemed to be 'Loaded Arms,' although the ATTEMPT to discharge the same may fail from want of proper priming, or from any other cause" (s. 19). *V.* GUN: SHOOT.

LOAN. — A "Loan" for negotiating which a Solr is entitled to the Scale Fee prescribed by Sch 1, Part 1, Solrs Rem Ord, is not confined to a present advance of money; a mortgage for a pre-existing debt is also within the phrase (*Re D'Arcy to White*, 31 L. R. Ir. 142). In this connection, "Loan" is confined to a loan on mortgage; but not exclusively to a mtge on freehold, copyhold, or leasehold, property (*Re Furber*, 1898, 2 Ch. 538; 67 L. J. Ch. 593; 79 L. T. 266). *V.* FURTHER CHARGE.

A loan at interest to a Building Society from its bankers, secured by deposit of title deeds, and made by allowing over-draughts, is a "Loan" within s. 15, 37 & 38 V. c. 42 (*Looker* v. *Wrigley*, 9 Q. B. D. 397: *Cunliffe* v. *Blackburn Bg Socy*, 9 App. Ca. 857; 54 L. J. Ch. 376; 33 W. R. 309; 52 L. T. 225); but, generally speaking, merely over-drawing a banking account is not "borrowing," in the ordinary sense of the word (*Re Cefn Cilcen Co*, L. R. 7 Eq. 88; 38 L. J. Ch. 78; 19 L. T. 593: *Waterlow* v. *Sharp*, L. R. 8 Eq. 501; 20 L. T. 902). *V. Re Pyle Works, No. 2*, 1891, 1 Ch. 173; 60 L. J. Ch. 114: RECEIVE.

A rule of a Building Society merely stating that the Society is established for the purpose of raising by subscriptions and "Deposits on

Digitized by Google

Loans" a fund for advances, confers a power to borrow by receiving deposits on loans (*Re Mutual Aid Bg Society*, 54 L. J. Ch. 493; 29 Ch. D. 182).

For a Vendor to offer to allow part of the purchase money to remain unpaid, does not enable the Purchaser to "arrange a Loan" to that extent (*Heitzmann* v. *Gowenlock*, 7 Times Rep. 611); in an agreement for the purchase of a Public-house in London if purchaser "is able to *arrange loans* to complete the purchase," "loans" means, loans from Brewers and Distillers (*Ib.*).

Loan on "Security of Land"; *V.* Security.

"Loan Capital"; quà Stamp Duty; Stat. Def., 62 & 63 V. c. 9, s. 8 (5).

Loan *Company*; *V.* Mortgage Company.

V. Pawn.

LOBSTER.—*V.* Sea Fish.

LOCAL ACCEPTANCE.—Is "an Acceptance to pay only at a particular, specified place" (s. 19 (2 *c*), Bills of Ex. Act, 1882).

LOCAL ACT OF PARLIAMENT.—"Local and Personal" Act is "Local, in being confined to certain limits, and Personal, as affecting a particular description of persons only as distinguished from that of all the Queen's subjects" (per Parke, B., delivering jdgmt of the Court, *Richards* v. *Easto*, 15 L. J. Ex. 167; 15 M. & W. 251), which case shows that an Act may be "Local and Personal" although some of its objects are public. *Vf*, *Cock* v. *Gent*, 13 L. J. Ex. 24; 12 M. & W. 234: *Carr* v. *Royal Ex. Assrce*, 31 L. J. Q. B. 93; 6 L. T. 105: *R.* v. *London Co. Co.*, 1893, 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580; 42 W. R. 1; 58 J. P. 21.

A General or Public Act expressly incorporated into a Special Act is, quà the Undertaking authorized by the Special Act, a "Local or Private" Act (*Lond. & N. W. Ry* v. *Runcorn*, cited Sewer).

A Local Act "must be judicially noticed as a Public Act, and must have all the operation of a Public Act" (per Cairns, C., *Aiton* v. *Stephen*, 1 App. Ca. 457).

Stat. Def.—"Local Act," 62 & 63 V. c. 14, s. 34:—*Scot.* 60 & 61 V. c. 38, s. 192 (2). "Local Act of Inclosure," 8 & 9 V. c. 118, s. 167; 36 & 37 V. c. 19, s. 1. "Local and Personal Act," 56 & 57 V. c. 73, s. 75. "Local Police Act," 55 & 56 V. c. 55, s. 4.

Cp, Public Act of Parliament.

LOCAL APPEAL.—Quà Colonial Courts of Admiralty Act, 1890, 53 & 54 V. c. 27, "'Local Appeal,' means, an appeal to any Court inferior to Her Majesty in Council" (s. 15).

LOCAL AREA.—Stat. Def., Isolation Hospitals Act, 1893, 56 & 57 V. c. 68, s. 26.

Digitized by Google

LOCAL AUTHORITY.—"Local Authority," is a modern phrase and in a modern Act is generally defined by the Act's interp clause, according to the subject-matter of the Act; as follows,—

Allotments (Scot) Act, 1892, 55 & 56 V. c. 54; *V.* s. 16:
Barbed Wire Act, 1893, 56 & 57 V. c. 32; *V.* s. 2:
Canals Protection (London) Act, 1898, 61 & 62 V. c. 16; *V.* s. 8:
Cattle Diseases Prevention Act, 1866, 29 & 30 V. c. 2; *V.* s. 4:
Cleansing of Persons Act, 1897, 60 & 61 V. c. 31; *V.* s. 2, (*Scot*) s. 3, (*Ir*) s. 4:
Coroners Act, 1887, 50 & 51 V. c. 71; *V.* s. 41:
District Auditors Act, 1879, 42 & 43 V. c. 6; *V.* s. 8:
Electric Lighting Act, 1882, 45 & 46 V. c. 56; *V.* s. 31, (*Scot*) s. 36:
Explosives Act, 1875, 38 & 39 V. c. 17; *V.* s. 67, (*Ir*) s. 116:
Finance Act, 1899, 62 & 63 V. c. 9; *V.* s. 8 (5):
Forged Transfers Act, 1891, 54 & 55 V. c. 43; *V.* s. 2:
Gas and Water Works Facilities Act, 1870, 33 & 34 V. c. 70; *V.* s. 2:
Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70; *V.* s. 92:
Infant Life Protection Act, 1897, 60 & 61 V. c. 57; *V.* s. 15:
Isolation Hospitals Act, 1893, 56 & 57 V. c. 68; *V.* s. 26:
Labourers (Ir) Act, 1896, 59 & 60 V. c. 53; *V.* s. 3:
Local Authorities (Expenses) Act, 1887, 50 & 51 V. c. 72; *V.* s. 2:
Local Authorities Loans (Scot) Acts; *V.* 54 & 55 V. c. 34, s. 4; 56 & 57 V. c. 8, s. 5:
Loc Gov (Ir) Act, 1898, 61 & 62 V. c. 37; *V.* s. 109:
Loc Gov (Stock Transfer) Act, 1895, 58 & 59 V. c. 32; *V.* s. 1 (2):
Local Light Dues Reduction Act, 1876, 39 & 40 V. c. 27; *V.* s. 2:
Local Loans Act, 1875, 38 & 39 V. c. 83; *V.* s. 34:
Local Stamp Act, 1869, 32 & 33 V. c. 49; *V.* s. 3:
Local Taxation Returns Act, 1877, 40 & 41 V. c. 66; *V.* s. 3:
Margarine Act, 1887, 50 & 51 V. c. 29; *V.* s. 13:
Mer Shipping Act, 1894, 57 & 58 V. c. 60; *V.* s. 214 (7):
Metropolis Gas Act, 1860, 23 & 24 V. c. 125; *V.* s. 4:
Metropolis Water Act, 1897, 60 & 61 V. c. 56; *V.* s. 5:
Metropolitan Commons Act, 1866, 29 & 30 V. c. 122; *V.* s. 2:
Mortmain and Charitable Uses Act Amendment Act, 1892, 55 & 56 V. c. 11; *V.* s. 2:
Open Spaces Act, 1890, 53 & 54 V. c. 15; *V.* s. 2:
Petty Sessions Clerks (Ir) Act, 1881, 44 & 45 V. c. 18; *V.* s. 4:
Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41; *V.* s. 25, (*Scot*) s. 26, (*Ir*) s. 27:
Prison (Officers Superannuation) Act, 1878, 41 & 42 V. c. 63; *V.* s. 5:
Public Health Acts; *V.* P. H. Act, 1875, s. 4; P. H. Act, 1890, s. 11 (3); P. H., Ireland, Act, 1896, s. 8 (2); P. H., Scotland, Act, 1897, s. 12; *Vf*, 48 & 49 V. c. 22, ss. 3, 4:
Ry and Canal Traffic Act, 1888, 51 & 52 V. c. 25; *V.* ss. 45 (7), and 7:

Digitized by Google

Reservoirs and Water Supply Further Facilities Act, 1877, 40 & 41 V. c. 31; *V.* s. 10:

Sale of Food and Drugs Act, 1899, 62 & 63 V. c. 51; *V.* s. 25:

Sale of Horseflesh, &c, Regulation Act, 1889, 52 & 53 V. c. 11; *V.* s. 9:

Shannon Act, 1885, 48 & 49 V. c. 41; *V.* s. 17:

Technical Instruction Acts; *V.* 52 & 53 V. c. 76, s. 4, (*Ir*) s. 7; (*Scot*) 55 & 55 V. c. 63, s. 4:

Tramways Act, 1870, 33 & 34 V. c. 78; *V.* s. 3:

Trusts (Scot) Acts; *V.* 61 & 62 V. c. 42, s. 2:

Weights and Measures Acts; *V.* 41 & 42 V. c. 49, s. 50; 52 & 53 V. c. 21, s. 35.

V. Burgh.

LOCAL BANK.—Quà Bankry Act, 1883, "'Local Bank,' means, any bank in, or in the neighbourhood of, the bankruptcy District in which the proceedings are taken" (s. 168).

LOCAL BANKRUPTCY COURT.—Stat. Def., 51 & 52 V. c. 44, s. 3; 53 & 54 V. c. 24, s. 4.

LOCAL BOARD.—*V.* Board.

LOCAL COMMON LAW.—*V.* Custom.

LOCAL COURT.—Stat. Def., Court of Admiralty (Ir) Act, 1867, 30 & 31 V. c. 114, s. 2.

LOCAL FINANCIAL YEAR.—Means quà Loc Gov (Ir) Act, 1898, "the twelve months ending 31st March" (s. 109). *V.* Year.

LOCAL GOVERNMENT BOARD.—Established, constituted, and defined, by Loc Gov Board Act, 1871, 34 & 35 V. c. 70; *V.* Board. *Vh,* 7 Encyc. 503–515.

LOCAL GOVERNMENT DISTRICT.—*V.* District.

LOCAL GOVERNMENT ELECTORS.—Stat. Def., Loc Gov (Ir) Act, 1898, s. 109.

"Local Government Register of Electors"; *V.* Interp Act, 1889, s. 17 (3); Loc Gov (Ir) Act, 1898, s. 98 (10).

LOCAL GRANTS.—Stat. Def., Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48, s. 42.

LOCAL INVESTIGATION.—*V.* Prolonged Examination.

Digitized by Google

LOCAL JURISDICTION.—*V.* Jurisdiction.

LOCAL LAW.—Quà Medical Act, 1886, 49 & 50 V. c. 48, "'Local Law,' means, an Act or Ordinance passed by the legislature of a British Possession" (s. 27).

LOCAL LEGISLATURE.—Quà Indian Councils Acts; *V.* 55 & 56 V. c. 14, s. 6.

LOCAL LIGHTHOUSE AUTHORITIES.—*V.* Lighthouse.

LOCAL MEAN TIME.—*V.* Of the Clock: Time.

LOCAL MEASURE.—*V.* Measure.

LOCAL NEWSPAPER.—Quà Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, "Local Newspaper," means, "any newspaper circulating in the County or Burgh, as the case may be" (s. 3).
V. Newspaper.

LOCAL PRISON.—*V.* Prison.

LOCAL RATE.—"Local Rate" has received statutory definition in and for the following Acts;—
Advertising Stations (Rating) Act, 1889, 52 & 53 V. c. 27; *V.* s. 6 (2):
Coroners Act, 1887, 50 & 51 V. c. 71; *V.* s. 41 (*c*):
District Auditors Act, 1879, 42 & 43 V. c. 6; *V.* s. 8:
Electric Lighting Act, 1882, 45 & 46 V. c. 56; *V.* s. 31:
Explosives Act, 1875, 38 & 39 V. c. 17; *V.* s. 70, (*Ir*) s. 118:
Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70; *V.* s. 92:
Infant Life Protection Act, 1897, 60 & 61 V. c. 57; *V.* s. 15:
Isolation Hospitals Act, 1893, 56 & 57 V. c. 68; *V.* s. 26:
Local Loans Act, 1875, 38 & 39 V. c. 83; *V.* s. 34:
Metropolitan Commons Act, 1866, 29 & 30 V. c. 122; *V.* s. 2:
Public Parks (Scot) Act, 1878, 41 & 42 V. c. 8; *V.* s. 13:
Public Works Loans Act, 1897, 60 & 61 V. c. 51; *V.* s. 12 (1):
Rating Act, 1874, 37 & 38 V. c. 54; *V.* s. 15:
Summary Jurisdiction Act, 1879, 42 & 43 V. c. 49; *V.* s. 49:
Tramways Act, 1870, 33 & 34 V. c. 78; *V.* s. 3:
Voluntary Schools Act, 1897, 60 & 61 V. c. 5; *V.* s. 4:
Weights and Measures Act, 1878, 41 & 42 V. c. 49; *V.* s. 50.

LOCAL REGISTRAR.—Stat. Def., Local Bankry (Ir) Act, 1888, 51 & 52 V. c. 44, s. 3; Dentists Act, 1878, 41 & 42 V. c. 33, s. 2.

LOCAL TAXATION.—"Local Taxation (Ireland) Account"; Stat. Def., 54 & 55 V. c. 48, s. 42.
"Local Taxation Probate Duty"; Stat. Def., 53 & 54 V. c. 60, s. 6.

Digitized by Google

LOCAL TRAFFIC.—*V.* THROUGH TRAFFIC: *Plymouth & Dartmoor Ry* v. *G. W. Ry*, 6 Ry & Can Traffic Ca. 101: *Midland Ry* v. *Manchester, &c Ry*, W. N. (70) 117. *Vf*, TRAFFIC.

LOCALLY SITUATE.—The exemption from CONVEYANCE ad val. Stamp Duty where the subject-matter is "Lands, tenements, hereditaments, or heritages, or PROPERTY, locally situate out of the UNITED KINGDOM," s. 59 (1), Stamp Act, 1891, extends only to immovable property, *i.e.* Realty or quasi realty, and does *not* include that which has no locality, *e.g.* a CHOSE IN ACTION, or a mere License to use a PATENT (*Smelting Co* v. *Inl. Rev.*, 1897, 1 Q. B. 175; 66 L. J. Q. B. 137; 75 L. T. 534; 45 W. R. 203; 61 J. P. 116), or a TRADE-MARK (*Brooke* v. *Inl. Rev.* 1896, 2 Q. B. 356; 65 L. J. Q. B. 657; 44 W. R. 670). In the *Smelting Co's* case Esher, M. R., said, "If a Chattel is of a *tangible* character,—*i.e.* something which can be touched or seen,—it may perhaps have a Local Situation": *V. Muller* v. *Inl. Rev.*, cited PROPERTY OTHER THAN LAND.

Semble, a SPECIALTY debt is, quà Stamp (Probate) Duty, locally situate in the place where it is found at the time of the death (*Commrs of Stamps* v. *Hope*, cited IN).

Vf, *Farmer* v. *Inl. Rev.*, cited EQUITABLE.

Cp, CONTENTS: IN.

LOCH.—"River, Water, or Loch"; *V.* RIVER.

LOCK-OUT.—An excuse for non-fulfilment of a Contract on the ground of a Lock-out,—like one on the ground of a STRIKE,—in its ordinary meaning applies to labour disputes; the non-employment of men because there is no work for them to do, is not a Lock-out (*Re Richardsons and Samuel*, 77 L. T. 479; 66 L. J. Q. B. 868).

V. TURN-OUT.

LOCKE'S ACT.—The Solicitors Act, 1860, 23 & 24 V. c. 127.

LOCKE KING'S ACTS.—The Real Estates Charges Acts, 1854, 1867, and 1877; 17 & 18 V. c. 113, 30 & 31 V. c. 69, 40 & 41 V. c. 34.

LOCO PARENTIS.—"What is the meaning of a person *in loco parentis?* I cannot do better than refer to the definition of it given by Lord Eldon in *Ex p. Pye* (18 Ves. 140), referred to and approved by Lord Cottenham in *Powys* v. *Mansfield* (3 My. & C. 359, 367; 7 L. J. Ch. 9). Lord Eldon says it is a person, '*meaning* to put himself *in loco parentis*,—in the situation of the person described as the lawful father of the child.' Upon that Lord Cottenham observes,—'But this definition must, I conceive, be considered as applicable to those parental offices and duties to which the subject in question has reference, viz., to the

Digitized by Google

office and duty of the parent to make provision for the child. The offices and duties of a parent are infinitely various, some having no connection whatever with making a provision for a child; and it would be most illogical, from the mere exercise of any of such offices or duties by one not the father, to infer an intention of such person to assume also the duty of providing for the child.' So that a person *in loco parentis* means, a person taking upon himself the duty of a *father* of a child to make a provision for that child" (per Jessel, M. R., *Bennet* v. *Bennet*, 10 Ch. D. 477: *Vf, Montagu* v. *Sandwich*, 32 Ch. D. 537: per Kay, J., *Re Hamlet*, 38 Ch. D. 190: *Re Ashton*, 1897, 2 Ch. 574; 66 L. J. Ch. 731; 77 L. T. 49; 46 W. R. 138: Wms. Exs. 1199: Elph. 350: Godefroi, 178, 533, 534).

V. PORTION.

LOCOMOTIVE.—A tricycle capable of being propelled by the feet, or by steam as an auxiliary, or by steam alone, but going along without noise or escape of steam or anything to frighten or cause danger beyond any ordinary tricycle, is a "Locomotive propelled by steam or by other than animal power" within s. 38, Highways and Locomotives (Amendment) Act, 1878, 41 & 42 V. c. 77 (*Parkyns* v. *Preist*, 50 L. J. Q. B. 648; 7 Q. B. D. 313; 30 W. R. 13; 45 J. P. 452), and, *semble*, is within the like def in s. 17 (1), 61 & 62 V. c. 29.

V. AGRICULTURAL: CARRIAGE: LIGHT LOCOMOTIVE: LOCOMOTIVE ENGINE.

LOCOMOTIVE ENGINE.—The use of Locomotive Engines upon a Railway was recognized in 1823 (*R.* v. *Pease*, 4 B. & Ad. 30).

As to when a Locomotive Engine was included in "Engine"; *V. Jones* v. *Festiniog Ry*, 9 B. & S. 835; 37 L. J. Q. B. 214; L. R. 3 Q. B. 733.

A steam-crane fixed on a trolley, and propelled by steam along a set of rails when it is desired to move it, is not a "Locomotive Engine" within s. 1 (5), Employers' Liability Act, 1880, 43 & 44 V. c. 42 (*Murphy* v. *Wilson*, 52 L. J. Q. B. 524).

V. RAILWAY.

LODGER.—"Generally speaking, a lodger is a person whose occupation is of part of a house, and subordinate to, and in some degree under, the control of a landlord or his representative, who either resides in or retains the possession of or dominion over the house generally, or over the outer door, and under such circumstances that the possession of any particular part of the house held by the lodger does not prevent the house generally being in the possession of the landlord.

"Where a landlord resides in part of a house, and there is an outer door from the street, and he, by himself or his servants, has the control of this outer door, and undertakes the care or control of rooms let to other persons and the access to them, and those rooms themselves have not any-

Digitized by Google

thing in the nature of an outer door, and are not structurally severed from the rest of the house, there could be little hesitation in saying that an occupier of those rooms, being part of the house, is only a *Lodger*. On the other hand, if there be no real outer door to the street, and neither the landlord nor his servants, nor any one representing him, occupies any part of the premises, or exercises any control over any part of them, and the rooms occupied by another person are structurally severed from the rest of the house and have an outer door to the general landing or staircase, and no one but such tenant has or exercises any care or control over the room or that outer door, as a general proposition, the person so occupying those rooms could not properly be said to be a lodger.

"It is always important in determining whether a man is a lodger, to see whether the owner of the house retains his character of master of the house, and whether he occupies a part of it by himself or his servants, and at the same time retains the general control and dominion over the whole house, and this he may do though he do not personally reside on the premises."

The foregoing definition is taken from the judgment of Bovill, C.J., in *Thompson* v. *Ward* (40 L. J. C. P. 188; L. R. 6 C. P. 360, 361), and it seems closely applicable for determining who *as Lodger* is entitled to the *Parliamentary Franchise*. Perhaps a Lodger for the purpose of that franchise may be generally and briefly defined to be, — One who occupies apartments, whether furnished or not, in another man's dwelling-house, and who, besides the benefit of that occupation, is entitled to domestic service, or otherwise to participate (more or less) in the general economy of the house. If the rooms are, so to speak, self-sufficient, they would seem to confer the Household Franchise as being a "part of a house . . . SEPARATELY occupied as a dwelling" (s. 5, 41 & 42 V. c. 26: *Vf, Anketill* v. *Baylis*, 52 L. J. Q. B. 104; 10 Q. B. D. 577: *Bradley* v. *Baylis*, 51 L. J. Q. B. 183; 8 Q. B. D. 195: *Hogan* v. *Sterrett*, 20 L. R. Ir. 344: *Thompson* v. *Ward*, sup: and the cases cited in those cases. *Vf, Allchurch* v. *Hendon*, cited SEPARATE OCCUPATION: LODGING).

"Lodger Qualification"; Stat. Def., Rep. People Act, 1884, s. 7 (3, 5).

But the object of the *Lodgers' Goods Protection Act*, 1871, 34 & 35 V. c. 79, is "to protect persons who are in the house under contract subordinate to that of the tenant, and who are in no direct relation to the landlord of the premises" (per Grove, J., *Phillips* v. *Henson*, 47 L. J. Q. B. 276); therefore, it was there held that an under-tenant who lodges — *i.e. semble*, resides, — in a house, under an agreement rendering him independent of its general economy, is none the less a Lodger within the meaning of the last-named Act (*Phillips* v. *Henson*, 47 L. J. Q. B. 273; 3 C. P. D. 26); though probably he would be a Householder for the purpose of the parliamentary franchise. Still even for the purpose of the Lodger's Goods Protection Act there must be a retention by the imme-

Digitized by Google

diate landlord of the claimant-lodger of some such dominion over the house as the master of a house let in lodgings usually has (*Morton* v. *Palmer*, 51 L. J. Q. B. 7). In that case Brett, L. J., after noticing that the Act gives no definition of a "Lodger," proceeded to say, — "I am of opinion that the word 'Lodger' must be taken to mean, a lodger according to the understanding of that word by the majority of persons conversant with the modes of letting and occupying houses in this country to lodgers and under-tenants. The Courts have at various times given some tests which help to decide whether a person is a lodger or an under-tenant. I will refer to two tests which have been given. The first given by Mr. Justice Maule in *Toms* v. *Luckett* (17 L. J. C. P. 27; 5 C. B. 23), contains the fundamental proposition, which is as follows: — 'Where the owner of a house takes in a person to reside in a part of it, though such person has the exclusive possession of the rooms appropriated to him, and the uncontrolled right of ingress and egress, yet, *if the owner retains his character of master of the house*, the individual so occupying part of it occupies as a lodger only.' It is clear, therefore, that if all that has been done is for the owner or lessee of a house to give a man the house to live in on certain terms, that man may be a tenant or an under-tenant; but it cannot be said that the lessor has taken him in to lodge with him. It does not follow that a man who has been taken in to lodge with another should live at the table or sleep in the room of that other. He may very well have the exclusive use of part of the house. A further test was given by Mr. Justice Blackburn in *Allan* v. *Liverpool* (43 L. J. M. C. 69; L. R. 9 Q. B. 180), where he said: — 'A lodger in a house, although he has the exclusive use of rooms in the house in the sense that nobody else is to be there, and though his goods are stowed there,' — by which I understand him to mean that the rooms may be unfurnished, — 'yet he is not in exclusive occupation in that sense, because the landlord is there, for the purpose of being able, as landlords commonly do in the case of lodgings, to have his own servants to look after the house and the furniture, and has retained to himself the occupation,' — that is, of the house, — 'though he has agreed to give the exclusive occupation,' — that is, of the rooms, — 'to the lodger.' It follows that the person who takes in another to lodge must retain power in and dominion over the house, as the master of a house usually does in this country. It is not absolutely necessary that he should live or sleep in the house: he may live elsewhere and yet reserve power in and dominion over the house, such as a master of a house does in this country usually have. If, however, he goes away, if he gives up all power of dealing with the house as master, then I do not think it is possible to say that he takes another person in to lodge with him." Cotton, L. J., in the same case said: — "I think that a 'lodger' is a man living in a house owned by or leased by another person, and to some extent living there with that other person." *Vf*, *Ness* v. *Stephenson*, 9 Q. B. D.

Digitized by Google

245: *Heawood* v. *Bone*, 13 Q. B. D. 179; 51 L. T. 125; 32 W. R. 752; 48 J. P. 710.

"If one come to an INN and make a previous contract for a lodging for a set time and do not eat or drink there, he is no GUEST, but a Lodger and as such is not under the Innkeeper's protection; but if he eat and drink there, it is otherwise; or if he pay for his diet there though he do not take it there" (per Holt, C. J., *Parker* v. *Flint*, 12 Mod. 255).

Lodger or "Person Lodging" in licensed premises, s. 10, Licensing Act, 1874; *V. Pine* v. *Barnes*, 57 L. J. M. C. 28; 20 Q. B. D. 221; 58 L. T. 520; 36 W. R. 473; 52 J. P. 199: *Cope* v. *Landles*, 41 S. J. 39. Liquor which, under this section, can be supplied to a Lodger must be for consumption by him *on* the premises (*Mountifield* v. *Ward*, 1897, 1 Q. B. 326; 66 L. J. Q. B. 246; 76 L. T. 202; 61 J. P. 216).

Cp, BOARDER: GUEST. *V.* 8 Encyc. 128.

LODGING.—For the purposes of the parliamentary franchise the term "Lodgings" includes "any apartments or place of residence, whether furnished or unfurnished, in a dwelling-house" (s. 5, 41 & 42 V. c. 26).

V. LODGER: PROPER LODGING.

As to implied fitness of Furnished Lodgings, *V. Smith* v. *Marrable*, and other cases, cited KEEP.

LODGING-HOUSE.—*V.* COMMON LODGING-HOUSE.

Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, "'Lodging-house,' shall mean, a house in which Lodgers are housed for a less period than one week at a time, at an amount not exceeding 4*d.* per head per night" (s. 1).

"Lodging-houses for the WORKING CLASSES," quà Part 3, Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, includes, "separate Houses or Cottages for the Working Classes, whether containing one or several tenements; and the purposes of this Part of this Act shall include the provision of such Houses and Cottages" (s. 53, replacing s. 2 (1), 48 & 49 V. c. 72, in which, however, the phrase was "Lodging-houses for the LABOURING CLASSES").

LONDON.—"London," in a Contract, means strictly and properly, the *City* of London, and not the Metropolis in its popular sense (*Mallan* v. *May*, 14 L. J. Ex. 48; 13 M. & W. 511); so, *semble*, in an Act of Parliament when not otherwise thereby defined (*Hudson* v. *Tooth*, inf). But in *R.* v. *Lewen* (1 Sid. 405), there was a conviction for perjury for swearing that a person in Southwark was in London; but *this* "would be scarcely followed in the present day" (per Romilly, M. R., *Wallace* v. *A-G.*, 33 L. J. Ch. 316).

"The London Right" of a drama means, the whole right of repre-

Digitized by Google

sentation in London (*Taylor* v. *Neville*, 47 L. J. Q. B. 254); but in that case no definition of "London" was attempted, though it is obvious that it was accepted not in the restricted sense of *Mallan* v. *May*, but rather in a popular sense as embracing all the theatres which are usually called London Theatres.

In a Will where there was a bequest to the "Hospices de Londres," the Will being French and being made by an Englishman, who had resided all his life in France and who in his Will referred to his notary as "de Londres" (who however carried on business at Saville Row and had no place of business or residence in the City), Romilly, M. R., refused to follow *Mallan* v. *May* and only slightingly regarded *R.* v. *Lewen* (sup), and practically adopted Sir Wm. Petty's definition by which, writing in 1686, he defined "London" as, "The housing within the Walls, with the Liberties thereof, Westminster and the Borough of Southwark, and so much of the built ground in Middlesex and Surrey whose houses are contiguous unto, or within call of, those before mentioned" (*Wallace* v. *A-G.*, 12 W. R. 506; 33 L. J. Ch. 314; 33 Bea. 384; 10 L. T. 51, cited by Selwyn, L. J., *Carington* v. *Wycombe Ry*, cited Town: *Va*, *Beckford* v. *Crutwell*, 5 C. & P. 242; 1 Moo. & R. 187). *V.* Hospital.

By s. 9, Public Worship Regn Act, 1874, 37 & 38 V. c. 85, the Bishop, to whom a representation under the Act is made, is to transmit it to the Archbishop who shall forthwith require the Judge to hear the matter "at any place within the Diocese or Province, *or in London or Westminster*"; held, that Lambeth Palace, which obviously is not in Westminster, is not in "London" within that enactment (*Hudson* v. *Tooth*, 47 L. J. Q. B. 18; 3 Q. B. D. 46). In that case Cockburn, C. J., pointed out why the collocation of "London" with "Westminster" connoted that "London" meant the *City* of London; but he also said, "Even if the term had been 'London,' simply, I doubt very much whether it would not have been going much too far to say that the term 'London' could be taken in that vague and loose sense in which the precincts of this huge Metropolis are now sometimes spoken of as 'London.'" *Wallace* v. *A-G.* (sup), was cited in *Hudson* v. *Tooth*, but rejected as an authority on the point to be decided in *thlc*, Mellor, J., observing that "the construction of a Will proceeds upon very different principles indeed from that of a Statute which defines and gives jurisdiction." *Vf*, *Serjeant* v. *Dale*, 46 L. J. Q. B. 781; 2 Q. B. D. 558.

Diocese of London; *V.* Phil. Ecc. Law, 24.

Quà Loc Gov Act, 1888, the "Metropolis" is "the Administrative *County of London*" (subs. 1, s. 40); and the "'Metropolis,' means the City of London and the Parishes and Places mentioned in Schs A, B, & C to the Metrop Man Act, 1855, as amended by subsequent Acts" (s. 100); *Cp*, London District: *Vf*, London Gov Act, 1899, 62 & 63 V. c. 14: 8 Encyc. 11–34.

Digitized by Google

"London," "means the Administrative County of London" in the following statutes, 54 & 55 V. c. 76, s. 141; 55 & 56 V. c. 59, s. 9; 57 & 58 V. c. 53, s. 4.

"City of London"; Stat. Def., 11 & 12 V. c. clxiii, s. 262; 38 & 39 V. c. 36, s. 31.

"Port of London"; Stat. Def., Thames Conservancy Act, 1894, s. 3 and Sch 2: by the same section "London," quà that Act, "means the Administrative County of London."

V. Metropolis.

LONDON AGENT.—Of a Country Solicitor; *V.* Client.

LONDON DISTRICT.—Quà the London Coal and Wine Duties (abolished as to Coals, 52 & 53 V. c. 17), "London District" was defined as, "so much of the several Counties of Middlesex, Surrey, Kent, Herts, Essex, Bucks, and Berks, as shall be situate within the Metropolitan Police District; and shall include the Cities of London and Westminster" (24 & 25 V. c. 42, s. 3).

For the Merchant Shipping Acts, "The London District" comprises "the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the sea and channels leading thereto or therefrom as far as Orfordness, to the north, and Dungeness, to the south; so nevertheless that no Pilot shall be hereafter licensed to conduct Ships both above and below Gravesend" (s. 370 (1), 17 & 18 V. c. 104; repld s. 618, Mer Shipping Act, 1894). *Cp*, English.

Quà Infectious Disease (Notification) Act, 1889, 52 & 53 V. c. 72, "'London District,' means, the City of London, or the Parish or District mentioned in Sch A or Sch B of the Metrop Man. Act, 1855, for which a Local Authority is elected" (s. 16; for these Schs, *V.* Metropolis). *Cp*, London, towards end.

LONDON GAZETTE.—*V.* Gazette.

A single sheet from the *London Gazette*, containing a notice, is not proof that such notice has appeared in the *Gazette* (*R.* v. *Lowe*, 52 L. J. M. C. 122).

LONDON RIGHT.—The "London Right" of a Drama, means the right of its representation in London (*Taylor* v. *Neville*, 47 L. J. Q. B. 254): *Vf*, London.

LONDON TIME.—*V.* Of the clock.

LONG.—Possession to give a prescription at Common Law must be "*long*, continual, and peaceable" (Co. Litt. 113 b). "As to 'long,' Lord Coke says it is the time given by law, which in England is the 'time whereof there is no Memory of man to the contrary' . . . namely the time of Richard I. (A.D. 1189)" (per Ld Blackburn, *Dalton* v. *Angus*, 50 L. J. Q. B. 740; 6 App. Ca. 810, 811).

Digitized by Google

"Long Lease not at RACK RENT," Sch 1, Part 2, 2nd Scale, Solrs Rem Ord, includes a Lease for 100 years (*Ex p. Connolly to Sheridan*, 1900, 1 I. R. 1; *whcva* on the phrase generally, and same followed *Re Robson*, cited LEASE).

As long as; *V.* QUAMDIU.

LONG WEIGHT.—*V.* TON.

LOOK-OUT.—"Proper Look-out," in Bye Laws under Thames Conservancy Act, 1864; *V. Gosling* v. *Green*, or *Green* v. *Gosling*, 1893, 1 Q. B. 109; 62 L. J. M. C. 45; 67 L. T. 853; 41 W. R. 141; 57 J. P. 87.

LOOM.—*V.* BELONGING.

LOOSE.—To "turn loose" cattle on a thoroughfare, s. 54, 2 & 3 V. c. 47, means, to allow cattle to be there without any control at all, and does not apply to cattle turned out under the care of a boy (*Sherborn* v. *Wells*, 32 L. J. M. C. 179; 3 B. & S. 784). *Cp*, LYING ABOUT.

V. FAST AND LOOSE.

LOP.—To "lop" a tree, is to cut off its lateral branches; to "top" it, is to cut off its head. The powers as to lopping trees overhanging a Highway, s. 65, Highway Act, 1835, do not justify an Order to "top" such trees, nor can it excuse an injury done to trees by topping them (*Unwin* v. *Hanson*, 1891, 2 Q. B. 115; 60 L. J. Q. B. 531; 65 L. T. 511; 39 W. R. 587; 55 J. P. 662).

As to a landowner's right to lop his neighbour's overhanging trees, *V. Lemmon* v. *Webb*, 1895, A. C. 1; 64 L. J. Ch. 205; 71 L. T. 647.

LORD.—Quà Copyhold Act, 1894, 57 & 58 V. c. 46, "'Lord,' *means*, a Lord of a Manor, whether seized for life, or in tail, or in fee simple, and whether having power to sell the manor or not; or the person for the time being filling the character of, or acting as, Lord, whether lawfully entitled or not; and *includes*, all Ecclesiastical Lords seized in right of the Church or otherwise, and Lords Farmers holding under them, and Bodies Corporate or Collegiate" (s. 94).

Lord of Parliament; *V.* PARLIAMENT: PEER.

LORD CHANCELLOR.—*V.* CHANCELLOR.

LORD IN GROSS.—The King: *V.* GROSS.

LORD KEEPER.—"Lord Keeper" is equivalent to "Lord Chancellor"; for he "hath always had, used, and executed, and of right ought to have, use, and execute," and is to "have, perceive, take, use, and execute" . . . "the same and like place, authority, pre-eminence, jurisdiction, execution of laws, and all other customs, commodities, and advantages, as the Lord Chancellor of England" (5 Eliz. c. 18).

Digitized by Google

LORD LIEUTENANT.—*V.* s. 12 (9), Interp Act, 1889: *Cp,* LIEUTENANT.

"Lord Lieutenant in Council," is generally defined as, the Lord Lieutenant acting by and with the advice of the Privy Council in Ireland: *V.* 23 & 24 V. 152, s. 49; 26 & 27 V. c. 11, s. 3; 27 & 28 V. c. 54, s. 4; 30 & 31 V. c. 46, s. 1; 48 & 49 V. c. 78, s. 1.

LORD ORDINARY.—Quà the Clauses Consolidation Acts relating to Scotland, "Lord Ordinary," means, "the Lord Ordinary of the Court of Session in Scotland officiating on the Bills in time of Vacation, or the Junior Lord Ordinary if in time of Session, as the case may be" (8 & 9 V. cc. 17, 19, 33, s. 3).

Other Stat. Def.—19 & 20 V. c. 56, s. 47, c. 79, s. 4; 24 & 25 V. c. 86, s. 19; 31 & 32 V. c. 96, s. 1; 38 & 39 V. c. 61, s. 3; 55 & 56 V. c. 55, s. 4.

LORDS ACT.—The Debtors Imprisonment Act, 1758, 32 G. 2, c. 28, on *whv* s. 119, Judgments Act, 1838: it was amended by 33 G. 3, c. 5, and made perpetual by 39 G. 3, c. 50.

LORD'S DAY.—*V.* SUNDAY.

LORDS OF THE ADMIRALTY.—Stat. Def., 24 & 25 V. c. 45, s. 2.

LOSS.—The word "Loss," s. 1, Carriers Act, 1830, does not comprise all cases where the owner of the article suffers damage from the neglect of the carrier to carry. It means such loss as the abstraction of a parcel by a stranger, or by the carrier's servant, not amounting to a felonious act; or by the carrier or his servants losing a parcel in its transit, or mislaying it so that it cannot be found when it ought to be delivered (*Hearn* v. *Lond. & S. W. Ry*, 24 L. J. Ex. 181; 10 Ex. 801: *Vf, Harris* v. *G. W. Ry*, 45 L. J. Q. B. 729; 1 Q. B. D. 515: *Skipwith* v. *G. W. Ry*, 4 Times Rep. 589: *Roche* v. *Cork Ry*, 24 L. R. Ir. 250).

It is, however, "immaterial whether the loss is temporary or absolute" (per Lopes, J., *Millen* v. *Brasch*, 51 L. J. Q. B. 166; 10 Q. B. D. 142; affd, on this point, on appeal, 52 L. J. Q. B. 127); but in the case of a temporary loss, the carrier will not be protected against an unreasonable detention after the goods have been found (*Hearn* v. *Lond. & S. W. Ry*, sup: *Millen* v. *Brasch*, sup).

Loss of goods by the THEFT of a Ry Co's own servant, is not one "occasioned by the NEGLECT OR DEFAULT of such Co or its Servants" within s. 7, Ry and Canal Traffic Act, 1854; therefore, a Ry Co can contract itself out of liability for such a loss, even by a contract not "JUST and REASONABLE" as prescribed by the section (*Shaw* v. *G. W. Ry*, 1894, 1 Q. B. 373; 70 L. T. 218).

"It has been held, that, in construing a Bottomry Bond, 'Loss' (of a

Digitized by Google

Ship) means, a loss by going to the bottom of the sea" (per Martin, B., *Broomfield* v. *Southern Insrce,* L. R. 5 Ex. 196; 39 L. J. Ex. 186: *Vf, The Great Pacific,* L. R. 2 P. C. 516; 38 L. J. Adm. 14, 45).

Where a ship's main shaft was broken by a PERIL OF THE SEA so that she had to be towed back for such delaying repairs as that her owners lost the freight; held, that such loss of freight was "consequent on Loss *of Time,* whether arising from a Peril of the Sea or otherwise," within an Exception to an Insrce on the freight (*Bensaude* v. *Thames and Mersey Insrce,* 1897, A. C. 609; 66 L. J. Q. B. 45, 666; 77 L. T. 282; 46 W. R. 78; 2 Com. Ca. 238: *Vf, Turnbull* v. *Hull Underwriters,* 1900, 2 Q. B. 402; 69 L. J. Q. B. 588; 82 L. T. 818; 5 Com. Ca. 248).

"Compensation for Loss or Damage"; *V.* COMPENSATION.

"Loss or Damage by Collision"; *V.* DAMAGE BY COLLISION.

"Personal injury is not 'Loss'; because a limb may be broken without being lost. The word 'Injury' would certainly be more apt" (per Brett, M. R., in delivering jdgmt of the Court, *Haigh* v. *Royal Mail Steam Packet Co,* 52 L. J. Q. B. 643). *V.* INJURY.

"Injury or Loss"; *V.* COMPULSORY POWERS.

V. DAMAGE: FREIGHT: TOTAL LOSS: PARTIAL LOSS.

"Loss," in s. 20, Artizans' and Labourers' Dwellings Improvement Act, 1875, 38 & 39 V. c. 36; *V.* RIGHTS.

"Losses," in a Contract as to Contribution in, *e.g.* a Building Socy's Rules, only includes "sums actually lost" (per Chitty, J., *Re Reliance Bg Socy,* 61 L. J. Ch. 455).

LOST.—"Lost Capital"; *V.* CAPITAL.

Is a Pawnbroker liable as for a "lost" Pledge if it be destroyed by Accidental Fire? *V. Ex p. Cording,* 4 B. & Ad. 198.

LOST OR NOT LOST.—An INSURANCE on Goods "lost or not lost," implies that "if the Ship or Goods should be lost at the time of the insurance, still the Underwriter, provided there be no fraud, is liable" (Park, 36: *Vf, Sutherland* v. *Pratt,* 12 L. J. Ex. 235; 11 M. & W. 296: *Gledstanes* v. *Royal Ex. Assrce,* 34 L. J. Q. B. 30; 5 B. & S. 797; 13 W. R. 71: 8 Encyc. 41). Such a policy is good though the chance of loss was in fact over in consequence of the arrival, or loss, of the thing insured, if both parties knew, or were ignorant, of the fact (*Bradford* v. *Symondson,* 50 L. J. Q. B. 582; 7 Q. B. D. 456: *Mead* v. *Davison,* 4 L. J. K. B. 193; 3 A. & E. 303). *V.* RISK.

When money for the carriage of goods by sea is payable at the port of destination, "Ship lost or not lost," and the ship is wrecked upon the voyage, the shipowner has no lien upon the goods, although the money to be paid for carriage is described as "Freight" (*Nelson* v. *Protection Assn,* 43 L. J. C. P. 218).

Digitized by Google

A stipulation in a Charter-Party that freight should be paid in advance, vessel "lost or not lost," does not prevent the charterer from recovering back the freight as damages from the ship-owner upon a loss of the vessel owing to negligence (*Gt. Indian Pen. Ry* v. *Turnbull*, 53 L. T. 325; 33 W. R. 874).

LOT.—*V.* LARGEST: SCOT AND LOT.

Solrs Scale Fee on sale of several Lots at one time; *V. Re Thomas*, cited TRANSACTION.

LOT AND COPE.—These are duties payable to the Crown in respect of workings of mines in the Hundred of High Peak, Derbyshire (*Wake* v. *Hall*, 50 L. J. Q. B. 548). *Vf*, Cowel, *Cope*: Jacob, *Cope*: *Cp*, SCOT AND LOT.

LOT MEADS.—*V.* DOLE.

LOTHERWIT.—" 'Lotherwit,' that is, that you may take amends of him which doth defile your bond-woman without your license" (Termes de la Ley).

LOTTERY.—" In *Webster's Dictionary* a Lottery is defined to be, 'A distribution of prizes by lot or CHANCE,'—and a similar definition is given in *Johnson*. Such definitions are, in our opinion, correct; and in such sense we think the word is used in s. 2, 42 G. 3, c. 119" (per Hawkins, J., in delivering jdgmt of the Court, *Taylor* v. *Smetten*, 52 L. J. M. C. 101; 11 Q. B. D. 207). Accordingly it was held in that case that selling packets of good tea at prices worth the money, but in each packet of which (as publicly and truly stated) was a coupon entitling the purchaser to receive the prize (whatever it might turn out to be) mentioned on such coupon, was a "Lottery" within the statute. So, a Missing-Word Competition (where any one of several words would fill the blank but the winning word is selected by chance) is such a Lottery (*Barclay* v. *Pearson*, 1893, 2 Ch. 154; 62 L. J. Ch. 636; 68 L. T. 709; 42 W. R. 74); so, of a Weather-Forecast Competition (*R.* v. *Pearson*, 37 S. J. 749). *Vf*, SUBSCRIPTION OR CONTRIBUTION: EVENT: *Morris* v. *Blackman*, 2 H. & C. 912; 28 J. P. 199: *R.* v. *Harris*, 10 Cox C. C. 352.

But issuing coupons in connection with a Sporting Newspaper and offering prizes for naming winners of races on such coupons, is not a Lottery within the Act cited, or s. 41, Lotteries Act, 1823, 4 G. 4, c. 60 (*Caminada* v. *Hulton*, cited BET: *Stoddart* v. *Sagar*, 1895, 2 Q. B. 474; 64 L. J. M. C. 234; 73 L. T. 215; 59 J. P. 598: *Svthlc, R.* v. *Stoddart*, 83 L. T. 538); so, of a prize for predicting the number of births and deaths during a stated period in a stated locality (*Hall* v. *Cox*, 1899, 1 Q. B. 198; 68 L. J. Q. B. 167; 79 L. T. 653; 47 W. R. 161); so, of

Digitized by Google

a Co formed for making advances to its members, the members to receive advances to be selected by lot. (*Wallingford* v. *Mutual Socy*, 50 L. J. C. P. 49; 5 App. Ca. 685), but a Building Socy established since 25th Aug 1894, is prohibited from adopting this system (s. 12, 57 & 58 V. c. 47). *Vf*, *Sykes* v. *Beadon*, 48 L. J. Ch. 522; 11 Ch. D. 170.

"Foreign Lottery"; *V.* FOREIGN.

Vh, 8 Encyc. 42–45: PUBLICATION.

Cp, GAMING: GAMING CONTRACT.

Lord LOUGHBOROUGH'S ACT.—Sometimes the THELLUSSON ACT is called Ld Loughborough's Act, his lordship being its author.

LOW WATER.—*V.* HIGH WATER.

LOW WINES.—Quà Spirits Act, 1880, 43 & 44 V. c. 24, "'Low Wines,' means, Spirits of the first extraction conveyed into a Low Wines Receiver" (s. 3).

LOWER PASSENGER DECK.—*V.* DECK.

LOWEST PRICE.—A. wires to B. "Will you sell me X? Telegraph lowest price"; B. wires back "Lowest Price for X is £900"; A. replies "I agree to buy X for £900 asked by you": held, not a concluded bargain, for that "the mere statement of the lowest price at which the vendor would sell, contains no implied contract to sell at that price to the person making the enquiry" (*Harvey* v. *Facey*, 1893, A. C. 552; 62 L. J. P. C. 127; 69 L. T. 504; 42 W. R. 129).

LOWEST RATE.—"Lowest Rate for Like Traffic"; *V. Barry Ry* v. *Taff Vale Ry*, 1895, 1 Ch. 128; 64 L. J. Ch. 230; 71 L. T. 688: MILE.

LOYALTY.—"Attachment to the person of the reigning sovereign does not complete the idea of 'Loyalty.' That comprehensive term includes within its meaning, not only affection to the Person, but also to the Office, of the King; not only attachment to royalty but, as the word itself imports, attachment to the law and to the constitution of the realm: and he who would, by force or by fraud, endeavour to prostrate that law and constitution (though he may retain his affection for its head) can boast but an imperfect and spurious species of Loyalty" (per Crampton, J., *R.* v. *O'Connell*, 7 Ir. L. R. 300).

V. LIGEANCE. *Cp*, FEALTY.

LUBBOCK'S ACT.—The Bank Holidays Act, 1871, 34 & 35 V. c. 17; extended by 38 & 39 V. c. 13; 43 & 44 V. c. 17.

LUCIFER.—"Lucifer-Match Works"; *V.* NON-TEXTILE FACTORIES.

LUGGAGE.—The practical meaning of "Luggage," in such a collocation as "Ordinary" or "Personal" Luggage, seems at least to get

Digitized by Google

illustration from considering its, probable, derivation as being something which is lugged about, — Ordinary or Personal Luggage being that which is lugged about on a journey for personal convenience, as distinct from what is carried about the person. "In *Butcher* v. *Lond. & S. W. Ry* (16 C. B. 13; 24 L. J. C. P. 137), the Co were made liable for £400, carried by a passenger as luggage in a carpet-bag. But I doubt whether, having regard to *Phelps* v. *Lond. & N. W. Ry* (cited PERSONAL LUGGAGE) and the authorities therein cited, it would now be held that such a sum would be included in 'Luggage.' As stated in the note to that case (19 C. B. N. S. 330), 'It is a fraud to subject him (the Carrier) to so great a hazard without warning him of its existence.' It may be that Money to a reasonable amount and intended for personal use, may be governed by other considerations" (per Gibson, J., *Roche* v. *Cork Ry*, 24 L. R. Ir. 256).

Vh. Meux v. *G. E. Ry*, 1895, 2 Q. B. 387; 64 L. J. Q. B. 657: *Pratt* v. *S. E. Ry*, cited RESPONSIBLE: *The Stella*, 81 L. T. 235; Ib. 1900, P. 161; 69 L. J. P. D. & A. 70.

V. BAGGAGE: ORDINARY LUGGAGE: PERSONAL LUGGAGE.

LUNACY. — "The Lunacy (Scotland) Acts, 1857 to 1887," "The Lunacy (Ireland) Acts, 1821 to 1890"; *V.* Sch 2, Short Titles Act, 1896.

LUNATIC. — "A Lunatic is one who hath had understanding, but, by disease, grief or other accident, hath lost the use of his reason. He is, indeed, properly one that hath lucid intervals, sometimes enjoying his senses and sometimes not; and that, frequently depending upon the change of the Moon" (Jacob). *Cp*, IDIOT.

"Lunatic," s. 114, 8 & 9 V. c. 100, means, "every Insane Person, and every person being an Idiot or Lunatic, or of Unsound Mind"; imbecility arising from natural causes, — *e.g.* intemperance or old age, — would constitute "Unsoundness of Mind" within that section (*R.* v. *Shaw*, 37 L. J. M. C. 112; L. R. 1 C. C. R. 145). That Act is repealed by the Lunacy Act, 1890, quà which latter statute "'Lunatic,' means, an Idiot, or Person of Unsound Mind" (s. 341); *Vf*, s. 116 (1), on *whr*, *Re Browne*, 1894, 3 Ch. 412; 63 L. J. Ch. 729; 71 L. T. 365; 43 W. R. 175.

Other Stat. Def. — Trustee Act, 1850, s. 2; 49 & 50 V. c. 25, s. 17. — *Scot.* 20 & 21 V. c. 71, s. 3; 25 & 26 V. c. 54, s. 1. — *Ir.* 8 & 9 V. c. 107, s. 26; 30 & 31 V. c. 44, s. 2.

"Alleged Lunatic"; *V.* ALLEGE.

"Criminal Lunatic"; Stat. Def., 47 & 48 V. c. 31, s. 18, c. 64, s. 16; Lunacy Act, 1890, s. 341. — *Ir.* 8 & 9 V. c. 107, s. 26.

"Pauper Lunatic"; *V.* PAUPER.

"Lunatic Asylum," quà Loc Gov (Ir) Act, 1898, "means, an Asylum for the Lunatic Poor under the Lunatic Asylum Acts" (s. 109), for which Acts, *V.* Sch 1, Part 2, of the Act.

Digitized by Google

"District Lunatic Asylum"; Stat. Def., 38 & 39 V. c. 67, s. 2. *V.* District.

V. Unsound Mind: Dangerous.

Vh, Wood Renton on Lunacy: Pope, Ib.: Archbold, Ib.: 8 Encyc. 46–69.

LUPULICETUM.—"Where hoppes grow" (Co. Litt. 4 b): "a hop-yard or place where hops do grow" (Touch. 95).

LYING.—"Now lying"; *V.* Now.

V. Liar.

LYING ABOUT.—Cattle, &c, may be "lying about" a Highway, s. 25, 27 & 28 V. c. 101, although under the control of a keeper (*Lawrence* v. *King*, L. R. 3 Q. B. 345; 37 L. J. M. C. 78; 9 B. & S. 325); but animals grazing and occasionally lying down and always under the control of a keeper, were not "wandering or straying" within s. 75, 4 G. 4, c. 95 (*Morris* v. *Jeffries*, 35 L. J. M. C. 143; L. R. 1 Q. B. 261). In *Lawrence* v. *King*, Blackburn, J., said, "I think if cattle driven along a Highway were to lie down for a short time and then were driven on again, they could not be said to be found 'lying about' the highway." *Cp,* Loose.

LYING DAYS.—*V.* Lay Days.

LYNCHES: LINCES.—"The banks between the terraces formed where a common field is on a hill-side by ploughing, so as to turn the sod down hill; also the terraces themselves: Seebohm, Eng. Vill. Comm. 5" (Elph. 592).

Lord LYNDHURST'S ACTS.—The Marriage Act, 1835, 5 & 6 W. 4, c. 54:

The Nonconformists Chapels Act, 1844, 7 & 8 V. c. 45:

The Execution Act, 1844, 7 & 8 V. c. 96.

Lord LYTTON'S ACT.—The Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15, amended by 5 & 6 V. c. 45.

Digitized by Google

MACHINE — MADE

MACHINE.—"Machine" includes the ENGINE that works it; *V.* IMPLEMENT OF HUSBANDRY.

"A table with a hole in it for water, used in the manufacture of bricks, was held not to be a 'Machine prepared for, or employed in, any Manufacture,' within the repealed 7 & 8 G. 4, c. 30, s. 4, *R.* v. *Penny,* Chester Summer Ass., 1855 (per Jervis, C. J., after consulting Campbell, C. J.). But it would, no doubt, have been held to be a '*Tool*' or '*Implement*' within" s. 15, 24 & 25 V. c. 97 (Arch. Cr. 645).

Quà Threshing Machines Act, 1878, 41 & 42 V. c. 12, "'Threshing Machine,' means, a threshing machine which is worked by steam, or by any motive power other than MANUAL LABOUR" (s. 5).

V. WEIGHING: SPRAYING.

MACHINERY.—"'Machinery,' implies the application of mechanical means to the attainment of some particular end by the help of natural forces; '*Operative* Machinery,' means, Machinery with the potentiality of operating or doing work" (per Davey, L. J., *Chamberlayne* v. *Collins,* 70 L. T. 217: 10 Times Rep. 233); in *whc* it was held that a Switchback Ry was within a covenant prohibiting the fixing of "Operative Machinery."

V. TRADE MACHINERY: DANGEROUS.

"Hull and Machinery" of a SHIP; *V.* HULL.

"Machinery" contrasted with "Plant"; *V.* PLANT. *Va,* FACTORY.

Condition of Machinery; *V.* DEFECT.

"Machinery driven by . . . mechanical power," s. 7 (1), Workmen's Comp Act, 1897, is controlled only by "Building,"—that branch of the section contemplating two distinct classes of building, (1) One which exceeds 30 feet in HEIGHT; (2) One on which machinery driven by mechanical power is being used (*Mellor* v. *Tomkinson,* 1899, 1 Q. B. 374; 68 L. J. Q. B. 214; 79 L. T. 715; 47 W. R. 240; 63 J. P. 55).

Quà Factory and Workshop Act, 1901, "'Machinery,' includes, any driving-strap or band" (s. 156). *V.* SAME.

MACKENZIE.—*V.* FORBES MACKENZIE'S ACT.

MADE.—An Objection to the RENEWAL of a License, made privately to Justices before they come to Court, is not an "Objection made" within

Digitized by Google

s. 42, 35 & 36 V. c. 94 (*R.* v. *Merthyr Tydvil*, 14 Q. B. D. 584; 54 L. J. M. C. 78). But an Objection made openly at the Annual Licensing Meeting is a good "Objection made," although the nature of the objection is not stated at the time (*Daykin* v. *Parker*, 1894, 2 Q. B. 556; 63 L. J. M. C. 246; 71 L. T. 379; 42 W. R. 625; 58 J. P. 835). A Constable's Report may constitute an Objection (*Hawkins* v. *Bridgwater Jus.*, 1900, 2 Q. B. 382; 69 L. J. Q. B. 663; 82 L. T. 847; 48 W. R. 587; 64 J. P. 631).

Foreign MARKETABLE SECURITY "made or issued"; *V. Revelstoke* v. *Inl. Rev.*, cited ISSUED. In that case Ld Macnaghten said that such a Security is "made" when and where "the finishing touch" is given to it.

So, a *Contract for Sale* is "made in England or Ireland," s. 59, Stamp Act, 1891, if, as an effective document, it is completed there (*Muller* v. *Inl. Rev.*, 1900, 1 Q. B. 310; 69 L. J. Q. B. 291; 81 L. T. 667). *V.* WITHIN THE JURISDICTION.

A Deposit of Stock with a Banker "against Acceptances made," is ambiguous and may mean, "Acceptances already made," or "Acceptances to be made during the continuance of the security"; parol evidence is admissible to explain the ambiguity (*Ulster Bank* v. *Synnott*, Ir. Rep. 5 Eq. 595).

A DISTRESS is "made" when the goods are seized; it is "levied" when the goods are sold: therefore, where the right to "make *and* levy" a Distress, after a stated event, is restricted, *e.g.* s. 31, 7 G. 4, c. 57, that restriction does not arise as regards a Distress commenced before, but completed by sale after, the event (*Wray* v. *Egremont*, 2 L. J. K. B. 48; 4 B. & Ad. 122).

A Receiving Order in Bankruptcy is "made" when it is pronounced, not when it is afterwards formally drawn up and signed (*Re Manning*, 55 L. J. Ch. 613; 30 Ch. D. 480; 54 L. T. 33; 34 W. R. 111).

An Order by a Chancery Judge in Chambers is "made," not when it is pronounced but, when it is signed and entered, or otherwise perfected (*Heatley* v. *Newton*, 19 Ch. D. 326; 51 L. J. Ch. 225).

As to when an Order is made "on" a person; *V.* IN WRITING.

A Poor Rate is "made" when it is signed by the Parish Officers, and allowed by the Justices (*Jones* v. *Bubb*, L. R. 4 C. P. 468; 38 L. J. C. P. 57).

A WILL is "made," 20 & 21 V. c. 57, s. 1, when it is signed with such formalities as the law requires (*Re Elcom*, 1894, 1 Ch. 303; 63 L. J. Ch. 392; 70 L. T. 54; 42 W. R. 279). *Cp*, EXECUTE.

Will of a Married Woman "made during COVERTURE," s. 3, M. W. P. Act, 1893, applies to such a Will, whenever made, of every married woman dying after the date of the Act (*Re Wylie*, 1895, 2 Ch. 116; 64 L. J. Ch. 613; 43 W. R. 475). *V.* DURING.

"Made," in the Irritant Clause of a Scotch Entail making contra-

Digitized by Google

ventions void "sichlike as if the same had never been made"; *V. Howden* v. *Fleeming,* L. R. 1 Sc. & D. App. 40.

V. ACKNOWLEDGE.

"Made or Issued"; *V.* ISSUED.

Building "made or suffered to continue"; *V. Pearson* v. *Kingston,* 35 L. J. M. C. 326; 3 H. & C. 921.

Artistic Work "made"; *V.* PRODUCED.

"Matter or Thing begun or made"; *V.* BEGIN.

"Made to Appear"; *V.* APPEAR.

"Made Binding"; *V.* REQUIRED: OBLIGATORY: BIND.

V. MAKE.

MADE WINE.—*V.* BRITISH WINE: SWEETS: WINE.

MADRAS COTTON.—*V. Azemar* v. *Casella,* 36 L. J. C. P. 263; L. R. 2 C. P. 677.

MAG-BOTE.—*V.* BOTE.

MAGAZINE.—Quà Explosives Act, 1875, "'Magazine,' includes, any SHIP or other Vessel used for the purpose of keeping any explosive" (s. 108). *Cp,* "Factory Magazine," sub FACTORY.

MAGIC.—*V.* CONJURATION.

MAGISTRATE.—"Of Magistrates, some are *Supreme,* in whom the Sovereign Power of the State resides; others are *Subordinate,* deriving all their authority from the Supreme Magistrate, accountable to him for their conduct and acting in an inferior secondary sphere" (1 Bl. Com. 146: *V.* Ib. Bk. 1, chs. 2, 3, 4, 5, 6, 7, quà Supreme, and ch. 9, quà Subordinate, Magistrates).

But in ordinary daily affairs "Magistrate" commonly connotes a Justice of the Peace (or his Scotch or Irish equivalent), or a Stipendiary Magistrate. In a modern Act the meaning of "Magistrate" will frequently be ascertained by referring to its Interp Clause, *e.g.*—

Bail (Scot) Act, 1888, 51 & 52 V. c. 36, s. 9:
Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, s. 4:
Burgh Voters Registration (Scot) Act, 1856, 19 & 20 V. c. 58, s. 48:
Burghs (Scot) Act, 1852, 15 & 16 V. c. 32, s. 1:
Dockyard Ports Regn Act, 1865, 28 & 29 V. c. 125, s. 2:
Fugitive Offenders Act, 1881, 44 & 45 V. c. 69, s. 39:
Industrial Schools Act, 1866, 29 & 30 V. c. 118, s. 4:
Industrial Schools Act (Ir), 1868, 31 & 32 V. c. 25, s. 3:
Lunacy Act, 1890, 53 & 54 V. c. 5, s. 341:
Mer Shipping Act, 1894, 57 & 58 V. c. 60, s. 610 (9):
Metropolis Gas Act, 1860, 23 & 24 V. c. 125, s. 4:
Metropolitan Streets Act, 1867, 30 & 31 V. c. 134, s. 3:
Prevention of Gaming (Scot) Act, 1869, 32 & 33 V. c. 87, s. 2:

Digitized by Google

P. H. Scotland Act, 1897, 60 & 61 V. c. 38, s. 3:
Reformatory Schools Act, 1866, 29 & 30 V. c. 117, s. 3:
Sheriff Court Houses Act, 1860, 23 & 24 V. c. 79, s. 2:
Summary Procedure Act, 1864, 27 & 28 V. c. 53, s. 2:
Summary Prosecutions Appeals (Scot) Act, 1875, 38 & 39 V. c. 62, s. 2:
Trespass (Scot) Act, 1865, 28 & 29 V. c. 56, s. 2.

A Police Magistrate, or Metropolitan Police Magistrate, is a paid Magistrate appointed to act at, and sitting at, a Police Court within the Metropolitan Police District (s. 29, 11 & 12 V. c. 42: *Vh*, 2 & 3 V. c. 71; 3 & 4 V. c. 84: *Edwards* v. *Hodges*, 15 C. B. 477; 24 L. J. M. C. 81; 3 W. R. 167; 24 L. T. O. S. 237). Stat. Def., 33 & 34 V. c. 52, s. 26. — *Ir.* 50 & 51 V. c. 58, s. 77 (*d*). *Vf*, METROPOLITAN.

A Stipendiary Magistrate is a paid Magistrate appointed for any City, Town, Liberty, Borough, or Place, outside the Metropolitan Police District (s. 29, 11 & 12 V. c. 42: *Vh*, 21 & 22 V. c. 73; 26 & 27 V. c. 97). Sometimes "Stipendiary Magistrate" is made to include a Metropolitan Police Magistrate (32 & 33 V. c. 99, s. 2). The Scotch equivalent for "Stipendiary Magistrate" is, Sheriff or Sheriff Substitute (32 & 33 V. c. 99, s. 2; 34 & 35 V. c. 78, s. 16; 35 & 36 V. c. 76, s. 73; 38 & 39 V. c. 17, s. 109; 50 & 51 V. c. 58, s. 76). Stat. Def., quà Ireland, 7 & 8 V. c. 106, s. 156; 32 & 33 V. c. 99, s. 2; 39 & 40 V. c. 80, s. 42; Mer Shipping Act, 1894, s. 610 (9).

"Magistrates of *Burghs*"; Stat. Def., *Scot.* 17 & 18 V. c. 91, s. 42; 20 & 21 V. c. 71, s. 3; 25 & 26 V. c. 35, s. 30.

"Magistrates *and Council*"; Stat. Def., *Scot.* 30 & 31 V. c. 107, s. 1; 31 & 32 V. c. 42, s. 2; 50 & 51 V. c. 42, s. 2.

V. CHIEF: COMPETENT: JUSTICE: RESIDENT MAGISTRATE.

MAGNATES.—*V.* GREAT MEN.

MAGNOLIA.—*V.* GEOGRAPHICAL.

MAIL.—"*Mail,*" quà Post Office (Offences) Act, 1837, 1 V. c. 36, includes, "every conveyance by which post letters are carried, whether it be a Coach or Cart or Horse or any other conveyance, and also a Person employed in conveying or delivering post letters, and also every Vessel which is included in the term 'Packet Boat'" (s. 47).

"Mail *Bag*," quà same Act and by same section, means, "a Mail of Letters, or a Box or a Parcel or any other Envelope in which post letters are conveyed, whether it does or does not contain post letters": *Vf*, 54 & 55 V. c. 31, s. 9.

"*Mails,*" quà Regn of Railways Act, 1873, 36 & 37 V. c. 48, "includes, Mail Bags and Post-letter Bags," s. 3; quà Conveyance of Mails Act, 1893, 56 & 57 V. c. 38, the word has a like inclusiveness, with the addition of "Parcels within the meaning of the Post Office (Parcels) Act, 1882" (s. 5).

Digitized by Google

MAIM. — " '*Mayhem*,' *mahemium*, *membri mutilatio*, or *obtruncatio*, commeth of the French word *mehaigne*, and signifieth a corporall hurt, whereby hee loseth a member, by reason whereof hee is lesse able to fight: as by putting out his eye, beating out his fore-teeth, breaking his skull, striking off his arme hand or finger, cutting off his legge or foot, or whereby he loseth the use of any of his said members" (Co. Litt. 288 a). "And the law hath so appropriated this word *mayhem*, which our author here (s. 194) useth, to this offence, as *mayhemavit* cannot be expressed by any other word, as *mutilavit*, *truncavit*, or *detruncavit*, or the like" (Ib. 126 a, b). *Vh*, Termes de la Ley, *Maihim* or *Maime*.

"A Maim is bodily harm whereby a man is deprived of the use of any member of his body, or of any sense which he can use in fighting, or by the loss of which he is generally and permanently weakened; but a bodily injury is not a Maim merely because it is a disfigurement" (Steph. Cr. 142).

In shooting with intent to maim (24 & 25 V. c. 100, s. 18), "to Maim is to injure any part of a man's body which may render him, in fighting, less able to defend himself, or annoy his enemy" (Arch. Cr. 807).

V. DISABLE: DISFIGURE.

MAIN. — Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, " 'Main' means, any Electric Line which may be laid down by the Undertakers in any street or public place, and through which ENERGY may be supplied, or intended to be supplied, by the Undertakers for the purposes of GENERAL SUPPLY" (Sch, s. 1). *V*. "Distributing Main," sub DISTRIBUTE.

Gas and Water Mains; *V*. EASEMENT: HEREDITAMENT: PIPES.

MAIN DRAINAGE. — Stat. Def., 57 & 58 V. c. 11, s. 3.

"Main Drainage Securities"; Stat. Def., 34 & 35 V. c. 47, s. 2.

MAIN PURPOSE. — The "Main Purpose" of a Co, s. 1 (5 *b*), Comp Mem of Assn Act, 1890, is that which is its leading distinctive idea; it is not within the "Main Purpose" of a Co formed to invest in Government Stocks to give it the additional power of investing in Trust or Investment Companies (*Re Governments Stock Investment Co*, 1891, 1 Ch. 649; 60 L. J. Ch. 477; 64 L. T. 339; 39 W. R. 375). *Cp*, *Small* v. *Smith*, 10 App. Ca. 119, 129. *Vf*, *Re Coolgardie Gold Mines*, cited JUST.

V. EFFICIENTLY: CONSTITUTED.

MAIN ROAD. — A Main Road is, speaking generally, a Road which is a medium of communication between TOWNS (*V*. s. 15, 41 & 42 V. c. 77).

There are two classes of Main Roads, —

1. Roads which were TURNPIKE ROADS on 31st Dec 1870 and since disturnpiked (s. 13, 41 & 42 V. c. 77):

Digitized by Google

2. Roads which have been declared to be Main Roads by Order of Quarter Sessions (s. 15, Ib.), or, since the Loc Gov Act, 1888, by Order of a County Council (s. 3 (viii), Loc Gov Act, 1888) or of a Borough Council quà roads in a County Borough (s. 34, Ib.). "Main Road," when used in the Loc Gov Act, 1888, "in relation to the District of any Highway or Road Authority, means, so much of the Main Road as is situate within the District of such AUTHORITY" (s. 100).

V. Lancashire v. *Rochdale*, 53 L. J. M. C. 5; 8 App. Ca. 494; 32 W. R. 65; 49 L. T. 368; 48 J. P. 20: *West Riding* v. *The Queen*, 53 L. J. M. C. 41; 8 App. Ca. 781; 32 W. R. 253: *Newton-in-Makerfield* v. *Lancashire Jus.*, 54 L. J. M. C. 1; 56 Ib. 17; 13 Q. B. D. 623; 15 Ib. 25; 33 W. R. 488; 48 J. P. 406: *Middlesex Co. Co.* v. *Willesden*, 12 Times Rep. 437: Glen on Highways, 2 ed., 20, 920.

The Footways of a TURNPIKE ROAD are, like those of any other road, part of it; and, on such road being disturnpiked, its footways are part of the resulting Main Road (*Re Burslem and Staffordshire Co. Co.*, 1896, 1 Q. B. 24; 65 L. J. Q. B. 1; 73 L. T. 651; 44 W. R. 356; 59 J. P. 722: *Derby Co. Co.* v. *Matlock*, 1896, A. C. 315; 65 L. J. Q. B. 419; 74 L. T. 595; 60 J. P. 676, approving *Re Warminster and Wilts Co. Co.*, 59 L. J. Q. B. 434; 25 Q. B. D. 450).

V. HIGHWAY: CEASE.

"*Main Haulage Road*"; Stat. Def., Coal Mines Regn Act, 1887, s. 49, R. 12 (*k*).

MAIN SEA.—The Main Sea is the Ocean: *V.* SEA.

MAIN TIMBERS.—*V.* TIMBERS.

MAIN WALL.—*V.* FRONT MAIN WALL.

MAINLY.—*V.* PASTURE.

MAINOUR.—*V.* MANNER.

MAINPERNOR.—"Mainpernors differ from BAIL in that a man's Bail may imprison or surrender him up before the stipulated day of appearance; Mainpernors can do neither, but are barely sureties for his appearance at the day: Bail are only sureties that the party be answerable for the special matter for which they stipulate; Mainpernors are bound to produce him to answer all charges whatsoever" (3 Bl. Com. 128). *Vf,* MAINPRISE.

MAINPRISE.—"'Mainprise,' is when a man is arrested by *Capias*, then the Judge may deliver his body to certaine men for to keep and to bring him before him at a certain day, and these be called MAINPERNORS; and if the party appeare not at the day assigned the mainpernors shall be amerced" (Termes de la Ley). *V.* BAIL: AMERCIAMENT.

MAINTAIN.—To "maintain" an ACTION, is to support one which has already been brought (per Platt, B., *Moon* v. *Durden*, cited BROUGHT);

Digitized by Google

but the majority of the Court in that case held that, though the Gaming Act, 1845, provided that no suit should be "brought *or* maintained" for the recovery of a Wager, yet that that was not enough to give the Act a RETROSPECTIVE effect so as to prevent a plt, who had begun his action for a wager before the Act was passed, from going on with it after the passing of the Act. *V.* MAINTENANCE.

An Act which prohibits an uncertificated or unqualified person from "maintaining an Action or Suit" for the recovery of his fees, &c, is not quite the same thing as an Act which makes the fees not "recoverable." Thus s. 26, Solrs Act, 1843, enacts that no Uncertificated Solr "shall be capable of maintaining any Action or Suit . . . for the recovery of any fee, reward, or disbursement," in respect of a client's litigation; held, that a Client's Common Order to Tax was not within those words, and that his Solr, though uncertificated, was, under such an Order, entitled to have his costs allowed, for the Order was not an "Action or Suit" and it was not "maintained" by the Solr (*Re Jones*, 39 L. J. Ch. 83; L. R. 9 Eq. 63: *Re Hope*, 7 Ch. 766: *Va*, s. 26, Solrs Act, 1860). But the sections cited are now replaced by s. 12, Solrs Act, 1874, which provides that no costs, &c, of an Unqualified Solr "shall be *recoverable* in any Action, Suit, or Matter, by any person or persons whomsoever," under which words the successful client of an uncertificated solr cannot recover his solr's costs from the other side (*Fowler* v. *Monmouthshire Canal Co*, 48 L. J. Q. B. 457; 4 Q. B. D. 334), nor can such a solr get his costs, &c, allowed under his client's Common Order to Tax (*Re Sweeting*, 1898, 1 Ch. 268; 67 L. J. Ch. 159; 78 L. T. 6; 46 W. R. 242), for even under such an Order the solr seeks to recover his costs, and the proceeding is a "Matter" (even if it be not an "Action or Suit") which may be "by *any* person" and is not restricted to one by the solr (*Ib.*).

Quà Ancient Monuments Protection Act, 1882, 45 & 46 V. c. 73, "'Maintain' and 'Maintenance,' include, the fencing, repairing, cleansing, covering in, or doing any other act or thing which may be required for the purpose of repairing, any MONUMENT, or protecting the same from decay or injury" (s. 2): should not "Monument" here be "ANCIENT MONUMENT"?

"Control, manage, and maintain," a HIGHWAY; *V.* CONTROL.

Taking water "for the purpose of maintaining the *Navigation*" of a CANAL; *V. Llewellyn* v. *Swansea Canal Nav.*, 27 L. J. Ex. 85; 2 H. & N. 509.

To "maintain *and repair*" a ROAD, does not include lighting it (*County Road Trustees* v. *Fleming*, W. N. (86) 180). *Cp*, *Sevenoaks Ry* v. *L. C. & D. Ry*, inf, and Loc Gov (Ir) Act, 1898, s. 109.

"Where an express statutory right is given to '*make and maintain*' a thing necessarily requiring support, — *e.g.* a Canal, — the statute, in the absence of a context implying the contrary, must be taken to mean that the right to necessary support of the thing constructed shall accom-

Digitized by Google

pany the right to 'make and maintain' it" (per Bowen, L. J., *Lond. & N. W. Ry* v. *Evans*, 1893, 1 Ch. 16; 62 L. J. Ch. 1; 67 L. T. 630; 41 W. R. 149).

"*Work and maintain*" a RAILWAY; *V. Sevenoaks, &c Ry* v. *L. C. & D. Ry*, 48 L. J. Ch. 513; 11 Ch. D. 625: In that case Jessel, M. R., said, —"It is very difficult to define what Works of Maintenance are. It is a very large term; and useful and reasonable ameliorations would not be excluded by it. For instance, if a Co had power to maintain the Banks of a River on one side, might they not put on a facing to the banks in a particular way, even supposing that they were restricted, under the words of maintenance, to keeping up the banks in precisely the same mode, which might have been very good when the banks were originally formed but which had been very much improved by the subsequent advance of science? So, where a Ry Co has to maintain a Railway, I should not at all doubt for a moment that in 'maintaining' it they might use any reasonable improvement. If, for instance, the Ry were originally fenced with wooden palings and it was sought, when they decayed, to replace them by an iron structure, I should say, that was fully within their power. If the Ry was originally made in a deep cutting and it was thought desirable to face the cutting with brick to make it more secure, I should say, that was fair Maintenance: and if the Ry Station was found inconvenient and it was desirable when you came to repair it to alter the arrangement of the rooms or to alter the access or form of access and so to ameliorate at the same time that you repaired, I should say, all that was within the powers of Maintenance given by the legislature. That is, that you may maintain by keeping in the same state, or you may maintain by keeping in the same state *and* improving the state, —always bearing in mind that it must be Maintenance as distinguished from Alteration of Purpose." So, quà Loc Gov (Ir) Act, 1898, "'Maintenance,' when used in relation to any Road or Public Work, includes, the reasonable improvement and enlargement of such road or work" (s. 109). *Cp*, cases quà Highway, sub MAINTENANCE.

V. REPAIR: UPHOLD.

MAINTENANCE.—Maintenance has two meanings:

1. Maintenance of an Action;
2. Maintenance of Persons, Corporeal Things, or Documents.

1. In the judgment in *Bradlaugh* v. *Newdegate* (52 L. J. Q. B. 454; 11 Q. B. D. 1), Coleridge, C. J., said that perhaps the fullest and completest definition of "Maintenance" was to be found in Termes de la Ley, which is as follows, —"'Maintenance,' is where any man giveth or delivereth to another, that is plaintife or defendant in any action, any sum of money or other thing for to maintaine his plee, or else maketh extreame labour for him, when he hath nothing therwith to doe; then the party grieved shal have against him a Writ, called a Writ of Maintenance."

Digitized by Google

Va, same judgment for collection of other definitions of "Maintenance" and their application to the case then before the Court: *Vf*, *Alabaster* v. *Harness*, 1895, 1 Q. B. 339; 64 L. J. Q. B. 76; 71 L. T. 740; 43 W. R. 196: *Savill* v. *Langman*, 79 L. T. 44: Steph. Cr. 97, 355: Co. Litt. 368 b. But to assist an action *out of charity* is not Maintenance, even though the charity be not discreet (*Harris* v. *Brisco*, 55 L. J. Q. B. 423; 17 Q. B. D. 504; 55 L. T. 14; 34 W. R. 729). *V.* Maintain: Champerty. *Note*: This doctrine of Maintenance is confined to Civil, and does not apply to Criminal, proceedings (*Grant* v. *Thompson*, 72 L. T. 264; 43 W. R. 446; 11 Times Rep. 207): As to Measure of Damages, quà Civil proceedings, *V.* *Alabaster* v. *Harness*, sup. *Semble*, that Maintenance "is not an Equitable Offence" (per James, V. C., *Elborough* v. *Ayres*, 39 L. J. Ch. 602; L. R. 10 Eq. 367).

2. By s. 4, Prison Act, 1877, 40 & 41 V. c. 21, the "Maintenance" of Prisons and Prisoners is to be defrayed out of moneys provided by Parliament; and by s. 57, "the Maintenance of a Prisoner" "includes, all such necessary expenses incurred in respect of a prisoner for food, clothing, custody, safe conduct, and removal from one place of confinement to another or otherwise," from the time the Order of Committal is made out until his death or discharge; and includes, the cost of his conveyance from where he is committed to his place of confinement, and the cost of his food, &c, when in a lunatic asylum during the term of his imprisonment (*Mullins* v. *Surrey*, 51 L. J. Q. B. 145; L. R. 7 App. Ca. 1: *Mews* v. *The Queen*, 52 L. J. M. C. 57; 8 App. Ca. 339), or, if after imprisonment the prisoner be sent to a Reformatory School, the cost of suitable clothing prior to his admission there (*Prison Commrs* v. *Liverpool*, 49 L. J. Q. B. 431; 5 Q. B. D. 332).

"Costs of Maintenance" of Criminal Lunatics; *V.* 47 & 48 V. c. 64. s. 16.

Costs other than for the "Prosecution, Maintenance," &c, of Offenders; *V.* Prosecution.

"Support and Maintenance" of Prisoners; *V.* Support: — of Donee of a Power, *V.* inf.

V. Commitment: Prisoner.

The "Maintenance" of persons, includes their Lodging, and consequently the payment of the necessary rent, rates, and taxes; therefore, the payment of rates on a Lunatic Asylum is part of the Expenses of "Maintenance" of pauper lunatics within ss. 283 (1), 287 (1), Lunacy Act, 1890 (*R.* v. *Dolby*, 1892, 2 Q. B. 301; 61 L. J. Q. B. 809; 67 L. T. 296; 56 J. P. 599).

Quà 56 & 57 V. c. 42, "'Maintenance,' includes Clothing" (s. 15).

An obligation attached to a Testamentary Gift for "maintaining, educating, and bringing-up," children, includes such adequate supply of house-room, food, clothing, and other necessaries, as can reasonably be expected from the person who has to discharge such obligation, having

Digitized by Google

regard to his or her station in life and that of the children and the means available; added to that, the word "Education" connotes a like reasonable and proper scholastic instruction, either at school or by private tuition; it is difficult to give any definite additional meaning to "Bringing up," but that phrase connotes something more than "Maintenance and Education," *e.g.* the formation of the moral character and the general equipment for a healthy life, and must be accomplished properly: thus, a widow is not properly "bringing-up" her late husband's children if they are in a home where she is cohabiting with a man to whom she is not married, and especially is this so if the man is married to another woman (*Re G.*, 1899, 1 Ch. 719; 68 L. J. Ch. 374; 80 L. T. 470; 47 W. R. 491). If, however, children have to be removed because the mother is not bringing them up properly, a reasonably adjusted portion of the income must be appropriated for her own personal maintenance and support (*Ib.*).

As to what words will create an obligation for the Maintenance of Children, *V. Booth* v. *Booth*, 1894, 2 Ch. 282; 63 L. J. Ch. 560; 42 W. R. 613: *Longmore* v. *Elcum*, 12 L. J. Ch. 469; 2 Y. & C. Ch. 363: *Castle* v. *Castle*, 1 D. G. & J. 352: Lewin, 148–151.

A trust for Maintenance and Education does not, by implication, cease at 21, but is frequently one for life (*Bayne* v. *Crowther*, 20 Bea. 400: *Brocklebank* v. *Johnson*, Ib. 211, 212: *Carr* v. *Living*, 33 Bea. 474: *Scott* v. *Key*, 35 Bea. 291: *Wilkins* v. *Jodrell*, 49 L. J. Ch. 26; 13 Ch. D. 564; 41 L. T. 649; 28 W. R 224: *Booth* v. *Booth*, sup: 1 Jarm. 400, *n*: *Sv*, *Gandy* v. *Gandy*, 30 Ch. D. 76); *secus*, if it be for "Maintenance, Education, *and* Bringing-up" (*Badham* v. *Mee*, 1 Russ. & My. 632: *Somes* v. *Martin*, 3 Jur. 1144). As to cesser on a woman's Marriage, *V. Bowden* v. *Laing*, 14 Sim. 113: *Carr* v. *Living*, 28 Bea. 644. Probably, a Power for "Maintenance," without more, will generally last as long as the object requires support (*Carr* v. *Living*, 28 Bea. 645, 647: *Booth* v. *Booth*, sup: *Vf*, *Williams* v. *Papworth*, inf); but *Booth* v. *Booth* seems to show that, generally, a Trust for "Education" ceases at 21.

The Court will not over-rule the DISCRETION of Trustees when *bonâ fide* exercising, or refusing to exercise, a Power for Maintenance (*Wilson* v. *Turner*, 52 L. J. Ch. 270; 22 Ch. D. 521: *Re Bryant*, 1894, 1 Ch. 324; 63 L. J. Ch. 197; 70 L. T. 301; 42 W. R. 183), and, sometimes, money may be so applied when the years for Maintenance have expired (*Re Wise*, 1896, 1 Ch. 281; 65 L. J. Ch. 281; 73 L. T. 743; 44 W. R. 310).

But, observe, that sometimes there is no discretionary power, but a definite yearly sum is given "for," or "to be applied for," the Maintenance, Clothing, $\frac{\text{and}}{\text{or}}$ Education of a CLASS, without more, in which case the members of that Class take a Joint Interest in the yearly sum. Thus, where an Annuity of £416 was "to be applied by the Trustees for the Maintenance and Education of such children or child as aforesaid,"

Digitized by Google

that meant that "the children took a Joint Interest in the annuity,—but the shares of Minors were to be applied for their Maintenance and Education," for "the word 'applied' did not import a Power of Selection: it simply meant 'devoted to,' or 'employed for the special purpose of'" (*Williams* v. *Papworth*, 1900, A. C. 563; 69 L. J. P. C. 129; 83 L. T. 184). In that case the P. C. cited in support of their jdgmt *Lewes* v. *Lewes* (17 L. J. Ch. 425; 16 Sim. 266), *Somes* v. *Martin* (sup), and *Wilkins* v. *Jodrell* (sup), and stated *Lewes* v. *Lewes* thus,—"Certain estates were devised to trustees in trust to receive the rents and pay thereout the yearly sum of £300 for and towards the Maintenance, Clothing, and Education, of all and every the children of the testator's eldest son in equal shares and proportions during the life of the son. The eldest son had 3 children, one of whom died in his father's lifetime. The V. C. said, 'There is no sensible way of dealing with this case except by taking the words,—for the Maintenance, Clothing, and Education,—to be equivalent to, for the Benefit of the children'; and he therefore declared that the Personal Representative of the deceased child was entitled to one third of the £300 a year, during the life of the father."

A Power to a Wife to appoint for her "Maintenance and Support" enables her to appoint the corpus (*Re Heginbotham*, W. N. (84), 179).

For the statutory power of Trustees to apply income of an Infant's property for or towards his Maintenance, EDUCATION, or BENEFIT; *V.* s. 43, Conv & L. P. Act, 1881, and *Vth*, *Re Burton*, 1892, 2 Ch. 38: 61 L. J. Ch. 702; 67 L. T. 221: *Re Holford*, 1894, 3 Ch. 30; 63 L. J. Ch. 637; 70 L. T. 777; 42 W. R. 563: *Re Moody*, 1895, 1 Ch. 101; 64 L. J. Ch. 174; 72 L. T. 190; 43 W. R. 462: *Re Jeffery*, 1895, 2 Ch. 577; 64 L. J. Ch. 830; 73 L. T. 332; 44 W. R. 61: *Re Wells*, 43 Ch. D. 281; 59 L. J. Ch. 113: IN TRUST.

Education is included in the phrase "Maintenance and Support" as applied to Children (*Re Breed*, 45 L. J. Ch. 191; 1 Ch. D. 226).

Semble, that words giving income for the "Maintenance and Support" of a wife and children, are sufficient to create a separate use in the wife (*Austin* v. *Austin*, 46 L. J. Ch. 92; 4 Ch. D. 233).

A CHILD, s. 35, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85, s. 4, 22 & 23 V. c. 61, is a child till 21, and under those sections the Court may make an Order for "Maintenance and Education" until that age (*Thomassett* v. *Thomassett*, 1894, P. 295; 63 L. J. P. D. & A. 140; 71 L. T. 148, over-ruling *Blandford* v. *Blandford*, 1892, P. 148; 61 L. J. P. D. & A. 97).

V. BENEFIT: COMFORT: COMFORTABLE MAINTENANCE.

"Maintenance and Passage Home"; *V.* HOME.

As to what is included in the "Maintenance" of an ENDOWED SCHOOL; *V.* *A-G.* v. *Christ Church, Oxford*, cited EDUCATIONAL ENDOWMENT.

The restoration of a HIGHWAY that has been completely destroyed, or so damaged as not to be restorable except at a very large outlay, is not

Digitized by Google

within the parochial obligation, or a statutory power, requiring or enabling its "Maintenance" (*R.* v. *Paul*, 2 Moo. & R. 307: *R.* v. *Bamber*, 13 L. J. M. C. 13; 5 Q. B. 279: *R.* v. *Hornsea*, 23 L. J. M. C. 59; 1 Dears. C. C. 291); nor is converting a macadamised road into one paved with sets of granite, "Maintenance" within s. 13, 41 & 42 V. c. 77 (*Leek* v. *Stafford Jus.*, 57 L. J. M. C. 102; 20 Q. B. D. 794; 36 W. R. 654; 52 J. P. 403), for (as there remarked by Bowen, L. J.), "Maintenance," in that section, is identical with "Repair." But the restoration, at a cost of £341, of 252 yards of a highway rendered impassable by a landslip (*R.* v. *Greenhow*, 45 L. J. M. C. 141; 1 Q. B. D. 703), or, on the other hand, the removal of an obstruction occasioned by a heavy fall of snow (*Amesbury* v. *Wilts Jus.*, 52 L. J. M. C. 64; 10 Q. B. D. 480), are matters of "Maintenance." *V.* MAINTAIN.

A bequest for the "Maintenance" of an INSTITUTION is not against the Mortmain Act (*Kirkbank* v. *Hudson*, 7 Price, 221): *Va*, SUPPORT: FOUND.

Semble, that "Maintenance" of a RAILWAY, in a railway sense, generally connotes, not only the maintenance of the permanent way, but also the management and working of the line (*Portpatrick Ry* v. *Caledonian Ry*, 3 Ry & Can Traffic Ca. 201). *Vh*, *Clonmel Traders* v. *Waterford & Limerick Ry*, 4 Ib. 92.

"Maintenance *Rate*," quà Drainage and Improvement of Land (Ir) Act, 1892, 55 & 56 V. c. 65; *V.* s. 12.

"Construction and Maintenance of a *Telegraphic Line*"; *V.* CONSTRUCTION.

Terms for the "Maintenance of the *Security*," as used in the prescribed Form of a BILL OF SALE (Bills of S. Act, 1882), mean, such terms as may maintain the title to, or otherwise preserve, the goods comprised in a Bill of Sale or for rendering the document effective as a security (*Vh*, *Re Morritt*, 56 L. J. Q. B. 139; 18 Q. B. D. 222; 56 L. T. 42; 35 W. R. 277: *Furber* v. *Cobb*, 18 Q. B. D. 494; 56 L. J. Q. B. 273; 56 L. T. 689; 35 W. R. 398: *Goldstrom* v. *Tallerman*, 18 Q. B. D. 1; 35 W. R. 68; 56 L. J. Q. B. 22; 55 L. T. 866, *vthlc*, *Haslewood* v. *Consolidated Co*, 60 L. J. Q. B. 12; 25 Q. B. D. 555, and *Edwards* v. *Marston*, cited STIPULATED: *Hammond* v. *Hocking*, 12 Q. B. D. 291; 53 L. J. Q. B. 205; 50 L. T. 267: *Seed* v. *Bradley*, 1894, 1 Q. B. 319; 63 L. J. Q. B. 387; 70 L. T. 214; 42 W. R. 257); but an addition to a power of sale exonerating a purchaser from enquiring as to whether default has been made, is a provision for the relief of the purchaser and not a "Maintenance" of the security (*Blaiberg* v. *Beckett*, 56 L. J. Q. B. 35; 18 Q. B. D. 96; 55 L. T. 876; 35 W. R. 34. *Vf*, *Bianchi* v. *Offord*, 17 Q. B. D. 484; 55 L. J. Q. B. 486); nor is giving the grantee larger rights than the Act would confer, such a "Maintenance" (*Calvert* v. *Thomas*, 56 L. J. Q. B. 470; 19 Q. B. D. 204: *Watson* v. *Strickland*, 56 L. J. Q. B. 595; 19 Q. B. D. 391; 35 W. R. 769: *Lyon* v. *Morris*,

Digitized by Google

19 Q. B. D. 139; 56 L. J. Q. B. 378; 57 L. T. 324; 35 W. R. 707: *Macey* v. *Gilbert*, 57 L. J. Q. B. 461: *Peace* v. *Brookes*, 1895, 2 Q. B. 451; 64 L. J. Q. B. 747; 72 L. T. 798). *Cp*, Defeasance.

Seizure for the "Maintenance" of a Bill of S.; *V. Ex p. Ellis*, 1898, 2 Q. B. 79; 67 L. J. Q. B. 734; 78 L. T. 733; 46 W. R. 531, approving and distinguishing *Ex p. Wickens*, 1898, 1 Q. B. 543; 67 L. J. Q. B. 397; 78 L. T. 213; 46 W. R. 385. *Cp*, Reasonable Excuse.

MAISON. — *V.* House.

MAJESTY. — *V.* Crown: Queen: Permanent.

"His Majesty," "His Majesty in Council"; Stat. Def., 6 & 7 W. 4, c. 79, s. 64.

"Her Majesty in Council"; Stat. Def., 30 & 31 V. c. 114, s. 2.

"In Her Majesty's Service"; Stat. Def., 27 & 28 V. c. 91, s. 3.

"Her Majesty's Colonies"; Stat. Def., 1 V. c. 36, s. 47; 3 & 4 V. c. 96, s. 71; 12 & 13 V. c. 66, s. 6: *V.* Colony.

V. Private Estates.

MAJORITY. — "Majority of Justices"; *V.* Justices.

A person attains his Majority at 12 o'clock at night of the day preceding his 21st birthday (1 Bl. Com. 463: Day); but, *semble*, a Will made during such day is good, because "the law will not make a fraction of a day" (per Holt, C. J., *Howard's Case*, cited Date); but it may be observed that the legal status of Majority is not attained till the last minute of a person's 21 years has passed, and then it is complete, and immediately (and it is submitted, not before) testamentary capacity commences and is complete; it seems difficult to understand how the argument about a fraction of a day applies. *Vf*, Adult: Full Age: Manhood. *Cp*, Minority.

MAKE. — "To make," "in itself involves a conscious act on the part of the maker" (per Collins, J., *Dickins* v. *Gill*, 1896, 2 Q. B. 310; 65 L. J. M. C. 189).

A Tenant's covenant to "make, uphold, support, cleanse, and repair," all Sewers, Drains, &c, does not include the making of a *new* sewer or drain (*Lyon* v. *Greenhow*, 8 Times Rep. 457).

"Make and maintain"; *V.* Maintain.

"Make and prosecute"; *V.* Prosecute.

"Make, use, exercise, and vend," a Patent; *V. Minter* v. *Williams*, cited Vend.

V. Made: Do or make.

MAKE BINDING. — *V. G. W. Ry* v. *Halesowen Ry*, cited Required: Obligatory: Bind.

MAKE COMPLAINT. — *V.* Complaint.

Digitized by Google

MAKE DEFAULT.—*V.* DEFAULT.

"Make default in PERFORMANCE"; *V. Doe* d. *Palk* v. *Marchetti*, cited DONE: MAKING DEFAULT.

MAKE DISTRESS.—*V.* LEVY.

MAKE GOOD.—To "Make Good" damage done to property, means, to restore the property to the condition in which it was immediately before the damage; and not that pecuniary compensation be given (*Wells* v. *Ody*, 5 L. J. Ex. 199; 1 M. & W. 452: *Crofts* v. *Haldane*, 36 L. J. Q. B. 85; 8 B. & S. 194; L. R. 2 Q. B. 194).

V. RESTORE.

MAKE SALE.—*V.* NEGOTIATE.

MAKE USE OF.—"Make use of" a Patented Article; *V. British Motor Syndicate* v. *Taylor*, cited USE.

"Make use of" Perishable Articles, "must mean CONSUME" (per Denman, C. J., *Gale* v. *Burnell*, 7 Q. B. 862; 14 L. J. Q. B. 342). *V.* CONSUMABLE.

MAKE VOID.—*V.* AFFECT.

MAKER.—Maker of a PROMISSORY NOTE; *V.* per Lindley, L. J., *Edwards* v. *Walters*, cited MATURE: RENUNCIATION: and as to the liability of a Maker; *V.* s. 88, Bills of Ex. Act, 1882: TENOR.

The mere printer of Calicoes is not their "Maker or MANUFACTURER" (*R.* v. *Tregoning*, 2 Y. & J. 132).

The "real Worker or Maker of Goods," s. 23, 50 G. 3, c. 41, repld s. 3 (3 *b*), Hawkers Act, 1888, includes the manufacturer, though he does no manual labour to the goods, and the exception extends to his servants when selling in his presence and with his concurrence (*R.* v. *Faraday*, 1 B. & Ad. 275); but a person buying books in sheets and making them up, is not the "Maker" of the books (*Moore* v. *Edwards*, 2 Chitty, 213). *Vf*, *R.* v. *Websdell*, 2 B. & C. 136: HAWKER.

MAKING.—*V.* FROM HENCEFORTH.

MAKING COMPENSATION.—"Making Compensation," or "Satisfaction"; *V.* SATISFACTION.

MAKING DEFAULT.—"The purchaser making default" to pay interest; *Vh*, *Denning* v. *Henderson*, 17 L. J. Ch. 8; 1 D. G. & S. 689. *V.* WILFUL DEFAULT: MAKE DEFAULT.

MALÂ FIDE.—*V.* BONÂ FIDE.

MALE.—It may, it is submitted, be stated that, generally, in a gift or grant to a person's "Heirs Male," or "Heirs Female," these words are words of LIMITATION and not of PURCHASE, and create a Limited

Digitized by Google

Entail (*V. Doe* d. *Brune* v. *Martyn*, 8 B. & C. 497: *Toller* v. *Attwood*, 15 Q. B. 929; 20 L. J. Q. B. 40).

"In order to entitle a person to *inherit* by the description of 'Heir Male,' or 'Heir Female' of the body, it is essential, not only that the claimant be of the prescribed sex but, that such person trace his or her descent *entirely* through the male or female line, as the case may be. Thus, it is laid down by *Littleton* (s. 24) that, — 'If Lands be given to a man and to the heires males of his body, and he hath issue a daughter, who hath issue a sonne, and dieth, and after the donee die; in this case, the son of the daughter shall not inherit by force of the entaile; because whosoever shall inherit by force of a gift in taile made to the heires males, ought to convey his descent *whole by the heires males*.' It is otherwise, however, in the case of gifts to the heir male or female by words of *purchase*" (2 Jarm. 68, *whv et seq*). *V.* MALE DESCENDANTS.

"It has been long settled that where a testator devises lands to his 'Heir Male,' he must be held to mean his heir male at Common Law" (per Stuart, V. C., *Thorp* v. *Owen*, 2 Sm. & G. 94; 23 L. J. Ch. 286; 2 W. R. 208). *Vf*, HEIR.

"Next Heir Male"; *V. Dormer* v. *Phillips*, cited NEXT HEIR.

V. MALE LINE: FIRST MALE HEIR: RIGHT HEIR MALE.

MALE CHILDREN. — Held, MALE DESCENDANTS (*Bernal* v. *Bernal*, 7 L. J. Ch. 115; 3 My. & C. 559).

MALE DESCENDANTS. — In *Bernal* v. *Bernal* (cited MALE CHILDREN) a devise to "Male Descendants" was confined to males claiming through males; *Vth*, 2 Jarm. 69: Wms. Exs. 976: MALE: MALE LINE: MALE NEPHEW. *Vf, Pelham-Clinton* v. *Newcastle*, 49 W. R. 12; 69 L. J. Ch. 875.

MALE ISSUE. — "Eldest Male Issue"; *V.* ELDEST.

V. ISSUE: FAIL: DIE WITHOUT ISSUE.

MALE LINE: MALE LINEAL. — "The phrase 'linea masculina' properly means a line commencing with a male and continued through males" (per Earl Selborne, *D'Amico* v. *Trigona*, 58 L. J. P. C. 23; 13 App. Ca. 815: *Sceberras Trigona* v. *Sceberras D'Amico*, 1892, A. C. 69; 61 L. J. P. C. 8).

"'Male Lineal' has been construed to mean as though it were one word signifying, 'male in a line of males.' With this construction I entirely agree; and I agree that it may be read as though it were a compound word, 'Male-Line'" (per Bramwell, B., *Thellusson* v. *Rendlesham*, 28 L. J. Ch. 953; 7 H. L. Ca. 429).

But though the *primâ facie* meaning of "In the Male Line," "Male Lineal," may be a Male in a Line of Males, yet such meaning will readily yield to a context (*Boys* v. *Bradley*, 22 L. J. Ch. 617; 25 Ib.

Digitized by Google

593; 10 Hare, 389; 4 D. G. M. & G. 58; nom. *Sayer* v. *Bradly*, 5 H. L. Ca. 873). Whether the phrase means *ex parte paternâ* is doubtful: — *Cp*, jdgmt of Wood, V. C., with that of Knight-Bruce, L. J., in the case just cited. The latter learned judge said, — "The expression 'Female Line' is one habitually, I believe, used less strictly than the phrase 'Male Line.' The idiom of the English language seems to authorize me to designate all his maternal kindred as his relatives in the Female Line, whether related to his mother on her father's side, or otherwise; but not to authorize an equally free application of the term 'Male Line.' When a correct speaker says that one person is related to another in the Male Line we understand him to mean that they are the *agnati* of the Roman Law; that is *cognati per virilis sexûs personas cognatione conjuncti*"; and he added he did not think, in that case, that it would be safe to construe "In the Male Line" as equivalent to *ex parte paternâ*. The case, however, did not turn on this question; — the phrase there to be construed being, "The *Nearest of Kin* in the Male Line, in preference to the Female Line," a collocation which, with the other provisions of the Will, led the V. C., the L. JJ., and the H. L., unanimously to the conclusion that the (bachelor) testator's only surviving sister was entitled in preference to a remoter relative who was a male claiming kinship with the testator through an unbroken line of males. *Vh*, 2 Jarm. 110, 68, 69.

V. Male: Lineal: Issue.

MALE NEPHEW. — A bequest to "Male Nephews," goes to sons of a brother of the testator, to the exclusion of sons of a sister (*Lucas* v. *Cuddy*, Ir. Rep. 10 Eq. 514). *Cp*, Male Descendants.

MALE PERSON. — *V.* Another.

MALE SERVANT. — Quà Revenue Act, 1869, 32 & 33 V. c. 14, and by s. 19 (3) thereof, "the term 'Male Servant,' means and includes, any male servant employed, either Wholly or partially, in any of the following capacities; that is to say, maitre d'hôtel, house-steward, master of the horse, groom of the chambers, valet de chambre, butler, under-butler, clerk of the kitchen, confectioner, cook, house-porter, footman, page, waiter, coachman, groom, postilion, stable-boy or helper in the stables, gardener, under-gardener, park-keeper, gamekeeper, under-gamekeeper, huntsman and whipper-in; or in any capacity involving the duties of any of the above descriptions of servants by whatever style the person acting in such capacity may be called." But that def does not "include a servant who, being bonâ fide employed in any capacity other than the capacities" just specified, "is occasionally or partially employed in any of the said capacities; and shall not include a person who has been bonâ fide engaged to serve his employer for a portion only

Digitized by Google

of each day and does not reside in his employer's house" (s. 5, 39 V. c. 16). Observe further that, licenses are not required for male servants of Officers in the Army or Navy, or for servants employed in the business of a Licensed Retailer of Exciseable Liquors, Licensed Keeper of a Refreshment-house, Livery-stable Keeper, or Public Stage or Hackney Carriage Proprietor (s. 19 (5), 32 & 33 V. c. 14).

A Club Steward is a taxable "Male Servant" within s. 19 (3), 32 & 33 V. c. 14 (*Solomon* v. *Cropper*, 79 L. T. 301; 62 J. P. 758). But where a man, employed as a yardsman and farm labourer, did such groom-work as his master, a farmer, required, but this only occupied a small portion of the man's time; held, that the employer was not bound to take out a license for him, as the man was not a "Male Servant" within that section, but came within the exceptions in s. 5, 39 V. c. 16 (*Yelland* v. *Winter*, 34 W. R. 121; 2 Times Rep. 117).

V. DOMESTIC SERVANT: GARDENER: SERVANT.

MALICE: MALICIOUS: MALICIOUSLY. — "*Odium*, signifieth hatred, and *atia* or *acia* in this writ (*De odio et atia*) signifieth malice, because that malice is *acida*, that is, eager, sharpe and cruell" (2 Inst. 42), referring to which Jacob's definition is, "Malice is a formal design of doing mischief to another; it differs from hatred."

"'Malice,' in common acceptation, means, ill-will against a person; but in its legal sense, it means, a WRONGFUL act done intentionally without just cause or excuse" (per Bayley, J., *Bromage* v. *Prosser*, 4 B. & C. 255, cited by Brett, L. J., *Clark* v. *Molyneux*, 3 Q. B. D. 247, also cited and adopted by Halsbury, C., and Lds Watson and Herschell, *Allen* v. *Flood*, inf, and used, apparently without acknowledgement, by Littledale, J., *McPherson* v. *Daniels*, 10 B. & C. 272, from whom it was adopted by Martin, B., *Johnson* v. *Emerson*, L. R. 6 Ex. 373).

"The word 'Malice' is satisfied by the thing being done with knowledge of the plaintiff's right, and with intent to interfere with it 'maliciously' or, which is the same thing, 'with notice' (per Crompton, J., *Lumley* v. *Gye*, 2 E. & B. 224; 22 L. J. Ex. 9). The effect of Malice is adopted by Sir W. Erle, and so long ago as by Ld Holt in *Keeble* v. *Hickeringill* (11 Mod. 75, 130; 3 Salk. 9; Holt, 14, 17, 19: *Va*, 11 East, 574). 'Suppose,' he says, 'the defendant had shot in his own ground; if he had occasion to shoot, it would have been one thing; but to shoot on purpose to damage the plaintiff is another thing and a wrong.' In truth, I have never known this rule doubted" (per Esher, M. R., *Mogul Co.* v. *McGregor*, 58 L. J. Q. B. 477; 23 Q. B. D. 598: *S. C.* in H. L., 1892, A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 40 W. R. 337; 56 J. P. 101). In the same case, when in the Court of Appeal, Bowen, L. J., said, —"The terms 'maliciously,' 'wrongfully,' and 'injure,' are words all of which have accurate meanings well known to the law, but which also have a popular and less precise signifi-

Digitized by Google

cation. An intent to 'injure,' in strictness, means more than an intent to harm. It connotes an intent to do *wrongful* harm. 'Maliciously,' in like manner, means and implies an intention to do an act which is wrongful, to the detriment of another. The term 'wrongful' imports in its turn the infringement of some right." And if there be no such infringement there can be no actionable wrong, however vile the Motive (*Allen* v. *Flood*, 1898, A. C. 1; 67 L. J. Q. B. 119; 77 L. T. 717; 46 W. R. 258, in *whc* Ld Watson, who led the majority in H. L., cited with approval the above words of Bowen, L. J.: *Allen* v. *Flood*, was applied in *Lyons* v. *Wilkins, No. 2*, 67 L. J. Ch. 383; 68 Ib. 146; 1899, 1 Ch. 255, and in *Ajello* v. *Worsley*, 1898, 1 Ch. 274; 67 L. J. Ch. 172; 77 L. T. 783; 46 W. R. 245; and distd in *Leathem* v. *Craig*, 1899, 2 I. R. 667, affd in H. L. nom. *Quinn* v. *Leathem*, 1901, A. C. 495). Nor can Motive "in itself, constitute FRAUD, although it may incite the person who entertains it to adopt proceedings which, if successful, would necessarily lead to a fraudulent result" (*King* v. *Henderson*, 1898, A. C. 732; 67 L. J. P. C. 140). *Vf*, INTERFERE: *Kearney* v. *Lloyd*, and *Huttley* v. *Simmons*, cited CONSPIRACY: *R.* v. *Davis*, cited WILFULLY, on *whlcv* 43 L. J. M. C. 94, *n*: 8 Encyc. 77–80.

The word "Malice," "seldom has any meaning except a misleading one. It refers not to intention but to motive; and in almost all legal inquiries intention, as distinguished from motive, is the important matter. Another objection to it is that its popular meaning is not barely ill will, but an ill will which it is immoral to feel. No one would describe legitimate indignation as 'Malice'" (Steph. Cr. 204, *n* 3: *Vf*, the learned author's jdgmt in *R.* v. *Tolson*, 23 Q. B. D. 168; 58 L. J. M. C. 97; 37 W. R. 716: KNOWINGLY).

But a "Malicious Damage" is something illegally and unreasonably done for mischief's sake; and scarcely comprises a thing done in the exercise of a right that is reasonably believed to exist (*R.* v. *Jenner*, 7 L. J. O. S. M. C. 79).

"Where any person wilfully does an act injurious to another without lawful excuse" he does it maliciously (per Ld Blackburn, *R.* v. *Pembliton*, 43 L. J. M. C. 91; L. R. 2 C. C. R. 122: *Vthc*, *R.* v. *Welch*, 45 L. J. M. C. 17; 1 Q. B. D. 23; 24 W. R. 280: *Sv*, *R.* v. *Davis*, *sup*) even though it be a piece of foolish mischief which results in injury, *e.g.* causing panic by putting out the lights in a place where people are assembled (*R.* v. *Martin*, 51 L. J. M. C. 36; 8 Q. B. D. 54; 30 W. R. 106; 46 J. P. 228: *Vh*, *R.* v. *Ward*, 41 L. J. M. C. 69; L. R. 1 C. C. R. 356: INFLICT). So "it is common knowledge that when one person has a malicious intent against another and in carrying it out injures a third person, he is guilty of malice against the person he has injured; he has general malice, and that is enough to support the general allegation of malice" (per Coleridge, C. J., *R.* v. *Latimer*, 55 L. J. M. C. 136; 17 Q. B. D. 359; 54 L. T. 768).

Digitized by Google

So, it is "maliciously" to commit an offence under Malicious Damage Act, 1861, 24 & 25 V. c. 97, "whether the offence shall be committed from Malice conceived against the owner of the property in respect of which it shall be committed, or otherwise" (s. 58), a def which applies to "maliciously" as used in Conspiracy and Protection of Property Act, 1875, 38 & 39 V. c. 86 (s. 15).

Again, in an Action for Words, it is sufficient to charge that the deft uttered them falsely; "maliciously" need not be alleged (*Mercer* v. *Sparks*, Owen, 51; Noy, 35: *Bromage* v. *Prosser*, sup). Therefore, in an Indictment for "maliciously" publishing a Defamatory Libel, s. 5, 6 & 7 V. c. 96, it is sufficient to allege that it was done "unlawfully" (*R.* v. *Munslow*, 1895, 1 Q. B. 758; 64 L. J. M. C. 138; 72 L. T. 301; 43 W. R. 495).

But Malice *in Fact*, — *e.g.* that kind of Malice which, in an action for Defamation is an answer to a plea of PRIVILEGED COMMUNICATION, — "means a wrong feeling in a man's mind" (per Brett, L. J.. *Clark* v. *Molyneux*, sup). *Vf*, Odgers, ch. 11.

"Malicious Obstinacy"; *V. Mackenzie* v. *Mackenzie*, cited REASONABLE CAUSE.

"Unlawfully and maliciously"; *V.* UNLAWFULLY.

V. WILFUL AND MALICIOUS: IMPOSSIBLE.

MALICE AFORETHOUGHT.—"Malice Aforethought, means any one or more of the following states of mind preceding or co-existing with the act or omission by which death is caused, and it may exist where that act is unpremeditated:—

(a) An intention to cause the death of, or grievous bodily harm to, any person, whether such person is the person actually killed or not;

(b) Knowledge that the act which causes death will probably cause the death of, or grievous bodily harm to, some person, whether such person is the person actually killed or not; although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) An intent to commit any felony whatever;

(d) An intent to oppose by force any officer of justice on his way to, in, or returning from, the execution of the duty of arresting, keeping in custody, or imprisoning, any person whom he is lawfully entitled to arrest, keep in custody, or imprison, or the duty of keeping the peace, or dispersing an unlawful assembly, provided that the offender has notice that the person killed is such an officer so employed.

"The expression '*Officer of Justice*' in this clause includes every person who has a legal right to do any of the acts mentioned, whether he is an officer or a private person.

Digitized by Google

"Notice may be given, either by words, by the production of a warrant, or other legal authority, by the known official character of the person killed, or by the circumstances of the case" (Steph. Cr. 158, 159; *V.* Ib. 364 *et seq*).

Vf, Arch. Cr. 753: 4 Bl. Com. 198–202: Wilful and Malicious: Homicide.

MALICIOUS PROSECUTION. — *V.* Prosecute: Reasonable and Probable Cause: Rosc. N. P. 867–873: Add. T. 219–234: 8 Encyc. 85–89.

MALINS' ACTS. — Infant Settlements Act, 1855, 18 & 19 V. c. 43: Married Woman's Reversionary Interests Act, 1857, 20 & 21 V. c. 57.

MALT. — *V. R.* v. *Wheeler*, 2 B. & Ald. 345: Corn.

"Malt *Trader*," quà Inl. Rev. Act, 1880, 43 & 44 V. c. 20, "means and includes, a maltster or maker of malt, a dealer in malt, a roaster of malt, a brewer of beer for sale, and a vinegar maker" (s. 2).

MAN. — "No doubt the word 'Man,' in a scientific treatise on zoology or fossil organic remains, would include men women and children as constituting the highest order of vertebrate animals. It is also used in an abstract and general sense in philosophical or religious disquisitions. But in almost every other connection the word 'Man' is used in contradistinction to 'Woman.' Certainly, this restricted sense is its ordinary and popular sense" (per Byles, J., *Chorlton* v. *Lings*, L. R. 4 C. P. 392; 38 L. J. C. P. 33). In that case it was held that "Man," in s. 3 (1), Rep People Act, 1867, means only "Male Person" and does not include Woman, and that a woman is not entitled to be registered as a Parliamentary Voter under the section: *Vthc* for a wealth of learning on this word. *Vf, Wilson* v. *Salford*, L. R. 4 C. P. 398; 38 L. J. C. P. 35.

V. Men: Female: Feme: Woman: Legal Incapacity: Gender: Sex: One Man: Possession.

Note: Quà Municipal Elections, words "importing the masculine gender, include women" (s. 63, 45 & 46 V. c. 50); and so of County Council Elections, for they are in like manner as Municipal Elections (s. 2 (1), 51 & 52 V. c. 41).

"Man," quà the Reserve Forces; Stat. Def. 45 & 46 V. c. 48, s. 28; 45 & 46 V. c. 49, s. 51: Militia.

"Man of the Royal Marines"; *V.* 44 & 45 V. c. 58, s. 179 (21).

MAN-BOTE. — *V.* Bote.

MAN FRIDAY. — To write of a person that he is a "Man Friday" to another is not an actionable Libel without an innuendo imputing degradation (*Forbes* v. *King*, 1 Dowl. 672; 2 L. J. Ex. 109); "the 'Man Friday' we all know was a very respectable man although a black man,

Digitized by Google

and black men have not been denounced as criminals yet" (per Denman, C. J., *Hoare* v. *Silverlocke*, 17 L. J. Q. B. 308; 12 Q. B. 632).

MAN IN POSSESSION.—*V.* POSSESSION.

MAN OF STRAW.—To write, or speak, of a person in trade that he is a "Man of Straw," is to impute insolvency (*Eaton* v. *Johns*, 11 L. J. Ex. 150; 1 Dowl. N. S. 602); and yet an old English proverb (having its parallel in France and Italy) says, "A Man of Straw is worth a Woman of Gold" (N. Bailey's Dict., *Straw*).

MANAGE.—A power to a Land Agent to "manage and superintend" estates, authorizes him on behalf of his principal to enter into an agreement for the usual and customary Leases according to the nature and locality of the property (*Peers* v. *Sneyd*, 17 Bea. 151), and to do Repairs (*Bowes* v. *Strathmore*, 8 Jur. 92). For Trustees' general Powers of Management, *V.* s. 42 (2), Conv & L. P. Act, 1881; Trustee Act, 1893, Part 2.

"Managing and Conducting" an ENTERTAINMENT; *V.* KEEPER.

"Control, manage, and maintain," HIGHWAYS; *V.* CONTROL.

MANAGEMENT.—*V.* CARE: EXPENSES OF MANAGEMENT.

"The power to appoint a Receiver is clearly a power relating to 'Management and ADMINISTRATION,'" s. 116 *et seq*, Lunacy Act, 1890, although not specially mentioned in that group of sections (per Lindley, L. J., *Re Browne*, 1894, 3 Ch. 412; 63 L. J. Ch. 732; 71 L. T. 365: *Cp*, *Re Flowers*, cited CONTROL). *Vf*, quà "Management and Administration," *Re Langdale*, 45 S. J. 78; 70 L. J. Ch. 38.

Ry Co "having the Management of any CANAL," s. 17, Regn of Railways Act, 1873; *V. Foster* v. *G. W. Ry*, 3 Ry & Can Traffic Ca. 14.

Management of a GRAMMAR SCHOOL; *V.* DISCIPLINE.

Power to make rules for "Management of the *Property*, *Finances*, *and Civil Affairs*," of a Volunteer Corps, s. 24, 26 & 27 V. c. 65, does not authorize a penalty on a member for failing to render himself "efficient" (*R.* v. *Lewis*, 1896, 1 Q. B. 665; 65 L. J. M. C. 126; 74 L. T. 551; 60 J. P. 376).

The "Management" of a VESSEL, connotes *her* handling as distinguished from what is directly done to the Cargo, and is not limited to the time when she is actually at sea: therefore, damage from bad stowage is not within an Exception of damage arising from "Management" of the Vessel (*The Ferro*, 1893, P. 38; 62 L. J. P. D. & A. 48; 68 L. T. 418; 7 Asp. 309); but if, though during the discharge of a cargo, damage arises to the cargo through something done for the benefit of the vessel, that damage is due to the "Management" of the vessel within s. 3 of the Harter Act of U. S. A. (*The Glenochil*, 1896, P. 10; 65 L. J. P. D. & A. 1; 73 L. T. 416: *The Rodney*, 1900, P. 112; 69 L. J. P. D. & A. 29; 82 L. T. 27; 48 W. R. 527). In the latter case, Jeune, P., said,

Digitized by Google

" 'Management,' goes somewhat beyond, — perhaps, not much beyond, — 'NAVIGATION.' "

"Conduct or Management" of an Election; *V.* CONDUCT.

"Control or Management"; *V.* CONTROL.

"Expenses of the Management and Working"; *V.* WORKING EXPENSES.

V. INSPECTION.

MANAGER. — "A Manager, in ordinary talk, is a person who has the management of the whole affairs of the Company; not an agent who is to do one thing, or a servant who is to obey orders and do another, but a Manager who is entrusted with power to manage the whole of the affairs" (per Blackburn, J., *Gibson* v. *Barton*, 44 L. J. M. C. 86; L. R. 10 Q. B. 329): *Vthc* as to "Manager" as used in s. 27, Comp Act, 1862. *Cp*, RECEIVER.

A signature by A. as "Manager," to a Bill or Note, will, generally, not bind A. personally (*Bult* v. *Morrell*, 10 L. J. Q. B. 52; 12 A. & E. 745): *Cp*, SECRETARY. As to Bill or Note given to the "Manager" of a Bank, *V. Robertson* v. *Sheward*, 1 M. & G. 511.

"Manager in trust"; *V.* IN TRUST.

Quà Elementary Education Acts, " 'Managers' include, all persons who have the management of any Elementary School, whether the legal interest in the school-house is or is not vested in them" (s. 3, 33 & 34 V. c. 75): *Va*, quà Science and Art Schools, s. 1 (3), 54 & 55 V. c. 61. Quà Reformatory Schools, "Managers" includes, "any person or persons having the Management or Control of" a Reformatory School (s. 3, 29 & 30 V. c. 117; s. 3, 31 & 32 V. c. 59), so of an Inebriate Reformatory (s. 27, 61 & 62 V. c. 60).

Quà Lunacy Act, 1890, " 'Manager,' in relation to an Institution for Lunatics, means, the superintendent of an Asylum, the resident medical officer or superintendent of a Hospital, and the resident licensee of a Licensed House" (s. 341).

Is its President a "Manager" of a Savings Bank? *V. Re Cardiff Savings Bank*, 1892, 2 Ch. 100; 61 L. J. Ch. 357.

MANAGING CLERK. — *Semble*, a Managing Clerk to a Solr, is a clerk sufficiently skilled, and entrusted, to be able to do, or confer, or take the necessary steps in pending matters, if the solr himself be absent (*Pike* v. *Stephens*, 17 L. J. Q. B. 282; 12 Q. B. 465).

MANAGING OWNER. — One of the duties of a Managing Owner of a Ship is to procure charters and freights; he is therefore not entitled to make an extra profit to himself by accepting secret commissions on such business (*Williamson* v. *Hine*, 1891, 1 Ch. 390; 60 L. J. Ch. 123): quà his authority, *V. The Huntsman*, 1894, P. 214.

MANCHESTER. — Notwithstanding that by the Manchester Ship Canal Act, 1885, the "Port of Manchester" is defined to include the whole

Digitized by Google

of the Manchester Ship Canal above East Ham Locks and that the former Port of Runcorn is abolished, yet, *semble*, in a commercial sense, the words "Port of Manchester," introduced into SHIPPING DOCUMENTS, only include Manchester and the Waters adjacent thereto, and do not include Runcorn Lay-bye; therefore, in such a document, "Manchester" is not a SAFE PORT, though Runcorn Lay-bye is (*Re Goodbody & Co and Balfour & Co*, 80 L. T. 188; 82 Ib. 484; 4 Com. Ca. 119; 5 Ib. 59).
V. DIVISION.

MANDAMUS. — A Mandamus, generally speaking, is, —
(1) The high *Prerogative* Writ, issuing from the High Court, commanding an Inferior Court, Corporation, or Person, to do some Particular thing of Right and Justice appertaining to their Office or Duty: *Vh*, Shortt on Informations, &c: Short & Mellor's Crown Office Practice: Jacob: 8 Encyc. 92–115: —
(2) The *Private* Writ, commanding the performance of some ascertained private right, — a remedy closely allied to a Mandatory Injunction: *Vh*, Kerr on Injunctions, 3 ed., 48: Joyce on Injunctions, 1309, 10, 816, 439, 1044: Ann. Pr., notes on R. 6, Ord. 50, R. S. C.: *Cp*, INJUNCTION.
For other kinds of Mandamus, *V.* Termes de la Ley: Cowel.
"The 'Mandamus' spoken of in s. 25 (8), Jud. Act, 1873, is not the Prerogative Mandamus, but only a mandamus which may be granted to direct the performance of some act, of something to be done which is the result of an action where an action will lie" (per Brett, L. J., *Glossop* v. *Heston*, 49 L. J. Ch. 101; 12 Ch. D. 122). *Vh*, JUST.

MANHOOD. — Age of Manhood is the same as FULL AGE (*McCann* v. *McKaughley*, Cr. & Dix Ab. Ca. 435). *Vf*, MAJORITY.

MANIA. — *V.* UNSOUND MIND.

MANIFEST. — *V.* CLEARANCE.

MANIFESTED. — A TRUST or Confidence to be "manifested and proved" by a signed writing under s. 7, Statute of Frauds, need not be constituted by such writing, — it is sufficient if its existence and its terms be so evidenced (*Forster* v. *Hale*, 3 Ves. 707; 5 Ib. 308: *Randall* v. *Morgan*, 12 Ves. 73, 74: *Smith* v. *Matthews*, 30 L. J. Ch. 445; 3 D. G. F. & J. 139. *Vh*, *Rochefoucauld* v. *Boustead*, 1897, 1 Ch. 196; 66 L. J. Ch. 74; 75 L. T. 502; 45 W. R. 272). Notwithstanding what was said by Grant, M. R., in *Randall* v. *Morgan*, it would seem that the practical difference is scarcely appreciable between the document required by s. 7 and the Note or Memorandum under ss. 4 and 17 of the Statute of Frauds (*V.* cases cited NOTE, and espy *Barkworth* v. *Young*). *V.* PARTY BY LAW ENABLED TO DECLARE SUCH TRUST: TRUST.

Digitized by Google

MANILLA HEMP.—*V. Jones* v. *Just,* 37 L. J. Q. B. 89; L. R. 3 Q. B. 197; 9 B. & S. 141.

MANNER.—The Exemption, from the 5% tax on property of Bodies Corporate and Unincorporate, given by subs. 2 of the section imposing the tax (s. 11, Customs and Inl. Rev. Act, 1885) in favour of Property "appropriated and applied for the benefit of the PUBLIC at large, or of any County, Shire, Borough, or Place, or the Ratepayers or Inhabitants thereof, or *in any Manner expressly prescribed by Act of Parliament,*" does not (under these italicised words) require that the appropriating Act should contain any specific provisions as to the exact mode in which the income is to be dealt with: if the income is honestly applied for the benefit of the prescribed class, it will be entitled to the Exemption (*Inl. Rev.* v. *Scott,* 60 L. J. Q. B. 612; 62 Ib. 432; 1892, 2 Q. B. 152; 67 L. T. 173; 40 W. R. 632; 56 J. P. 580, 632).

"In *like* Manner"; *V.* AFORESAID.

"No penalty or forfeiture shall afterwards be recoverable in any *other* Manner," s. 21 (4), Taxes Management Act, 1880, 43 & 44 V. c. 19; *V. Ld Advocate* v. *Sawers,* W. N. (98) 131; 25 Rettie, 242.

"In such *other* Manner"; *V. Jackson* v. *Rainford Co,* 1896, 2 Ch. 340; 65 L. J. Ch. 757; 44 W. R. 554.

"*Particular* Manner"; *V.* DISTINCTIVE.

V. GENERAL MANNER: METHOD.

A Thief "*taken with the Manner,*" is one "taken with the thing stollen about him" (Cowel, *Mainour*). "'Maynour' is when a theefe hath stolne, and is followed with Hue and Cry and taken having that found about him which he stole, that is called Maynour. And so we commonly use to say, when we find one doing of an unlawfull act, that we took him with the maynour or manner" (Termes de la Ley, *Maynour*). "Taken with the mainour (or *mainoeuvre, a manu*), that is, in the very act" (3 Bl. Com. 71; *Vf,* 4 Ib. 307), or, as is frequently said, *flagrante delicto.* *Cp,* "Found Committing" sub FOUND: BLOODY HAND: BACKBERIND: BACK BARE: FRESH SUIT.

MANNER AND FORM.—"The words 'in Manner and Form' refer only to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it" (per Campbell, C. J., *Acraman* v. *Herniman,* 16 Q. B. 1003, 1004; 20 L. J. Q. B. 355).

V. TENOR.

MANOR.—"'This word *Manor* is a word of large extent, and may comprehend many things (*Hill* v. *Grange,* Plowd. 168). And therefore by the grant of a Manor, without the words of *cum pertinentiis,* do pass DEMESNES, rents, and services (Co. Litt. 310 b, 319 b), lands, meadows,

Digitized by Google

pastures, woods, commons, advowsons appendant (*Ive's Case*, 5 Rep. 11 b: *V.* Dart, 139: *Higgins* v. *Grant*, Cro. Eliz. 18), villains regardant, courts baron, and perquisites thereof, that are in truth at the time of the grant parcel of the manor. But nothing that in truth is not parcel of the manor, albeit it be so reputed, will pass by the grant of the manor (*A-G.* v. *Ewelme Hospital*, 17 Bea. 388); and therefore if one have a manor, and after purchase the Law-day (*i.e.* the Leet), or a WARREN to it, and then he grant away the manor, — hereby the law-day, or the warren, will not pass (Dy. 30 b, pl. 209). And yet if by union time out of mind [or for a short period] they have gotten a reputation of appendancy, perhaps by the grant of the manor *cum pertinentiis*, these things may pass (Plowd. 168 a). By the grant of a manor also divers towns (Co. Litt. 5 a) [the land in divers towns] may pass. An honor also may pass by this name. And so also may a castle or a hundred. And one manor also, that is parcel of another manor, may pass by the grant of that manor whereof it is parcel' (Touch. 92), viz. the seignory of the inferior manor; *Marsh and Smith's Case*, 1 Leon. 26; Cro. Eliz. 38. *Va*, Co. Litt. 58 a: Termes de la Ley, *Mannour*: *Darell* v. *Wybarne*, Dy. 207 a, pl. 14. The freehold interest in the copyhold passes; *Delacherois* v. *Delacherois*, 11 H. L. Ca. 62; 13 W. R. 24; 10 L. T. 884; 4 N. R. 501.

"By a grant of a '*Reputed* Manor,' the freehold interest in the Waste does not pass, nor does any specific tenement of the grantor; *Doe* d. *Clayton* v. *Williams*, 12 L. J. Ex. 429; 11 M. & W. 803.

"By 'Manor' a Reputed Manor may pass in a Deed, but not in a Fine or Recovery; *Mallet* v. *Mallet*, Cro. Eliz. 524, 707: *Finch's Case*, 6 Rep. 64 a: *Treswallen* v. *Penhules*, 2 Rol. Rep. 66" (Elph. 593–595, *whv*).

By grant of a Manor its unsevered Mines would pass (MacS. 203).

V. CASTLE: SHORE: TERRA: WARREN.

"The devise of a 'Manor' will carry everything which, having originally been copyhold of the manor, has, after the devise and before the testator's death, ceased to be copyhold only because it has been surrendered to the lord to his own use" (per Cranworth, C., *Hicks* v. *Sallit*, 3 D. G. M. & G. 793; 23 L. J. Ch. 571; 22 L. T. O. S. 322; 2 W. R. 173), in which case it was held that Allotments from the Waste made to the lord upon an Enclosure passed by a devise of the "Manor." *Vf*, Dart, 139.

Prior to the Wills Act, 1837, a devise of a "Manor" without words of limitation, only gave a life estate (*Paice* v. *Canterbury, Archbp.*, 14 Ves. 364); but such a devise comprised the devisor's copyholds, though acquired after the making of the Will (*Roe* d. *Hale* v. *Wegg*, 6 T. R. 708), and Escheats (*Delacherois* v. *Delacherois*, sup).

Quà Conv & L. P. Act, 1881, "'Manor,' includes lordship and reputed

Digitized by Google

manor or lordship" (s. 2, iv); so, quà S. L. Act, 1882 (subs. 10, v, s. 2). As to what passes under "Manor" in a Conveyance executed since 31st Dec 1881, *V.* s. 6 (3), Conv & L. P. Act, 1881.

Quà Copyhold Act, 1894, "'Manor,' includes a reputed manor" (s. 94); so, quà Metropolitan Commons Act, 1866 (s. 3).

Quà Inclosure Act, 1845, 8 & 9 V. c. 118, "Manor" includes "any hundred, honour, or lordship" (s. 167).

"Belonging to a Manor"; *V. Doe* d. *Gore* v. *Langton*, cited Belonging.

Vh. Jacob: Wms. R. P. Part 3: 1 Watkins on Copyholds, ch. 1: Scriven, Ib. ch. 1: Elton, Ib. ch. 1: 8 Encyc. 118–123: Waste.

MANSE. — "The House and Glebe are both comprehended under the word 'Manse,' of which the rule of the Canon Law is, *sancitum est ut unicuique ecclesiæ unus mansus integer absque ullo servitio tribuatur*" (Phil. Ecc. Law, 1125, citing Spelman, *Mansus*). *Cp*, House.

Quà Ecclesiastical Buildings and Glebes (Scot) Act, 31 & 32 V. c. 96, "Manse" includes, "all necessary and usual offices, garden, and garden walls, which the heritors are now by law bound to provide" (s. 1).

MANSION. — *V.* Family Mansion: Haga: Home-Stall.

"'Mansion' is in our law most commonly taken for the chief messuage or habitation of the Lord of a Mannor, — the Mannor House where he doth most remain or continue, his Capitall Messuage, as it is called" (Termes de la Ley). *V.* Manor.

"Mansion-house, garden, and premises," in a Devise; *V. Lethbridge* v. *Lethbridge*, cited Premises.

"Principal Mansion House," s. 15, S. L. Act, 1882; *V. Re Thompson*, 21 L. R. Ir. 109.

Whether "Principal Mansion House," s. 13 (4), S. L. Act, 1890, includes Stables depends on "where the stables are and what they are for" (per Lindley, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23; 69 L. T. 393); they would be so if they "practically amount to a necessary adjunct to the house," but that would not include "hunting stables at some distance off" (per Lopes, L. J., *Ib.*).

Formerly, and down to quite recent times (1 Burn's J. P., 30 ed., 551: 4 Bl. Com. 224, 225), a man's "Mansion-house" also meant an ordinary Dwelling-house; and the use of the word in that sense was common quà Burglary (Jacob), in which connection it included all out-houses, if parcel of the house though not under its roof or adjoining it (1 Hale P. C. 558, 559: *Sv*, s. 53, Larceny Act, 1861). In the sense of "Dwelling-house," a "Mansion" (or "Mansion-house") included, and probably still includes, "a Chamber or Room, be it upper or lower, wherein any person does inhabit or dwell," for that "is *domus mansionalis* in law" (3 Inst. 65, cited *Fenn* v. *Grafton*, sub Messuage).

Digitized by Google

MANSLAUGHTER.—"Manslaughter is unlawful homicide without MALICE AFORETHOUGHT" (Steph. Cr. 158; *Vf*, Ib. ch. 24, 362–383: Cowel). *V.* HOMICIDE: KILL.

"Homicide, which would otherwise be Murder, is not murder, but manslaughter, if the act by which death is caused is done in the heat of passion, caused by PROVOCATION, unless the provocation was sought or voluntarily provoked by the offender as an excuse for killing or doing bodily harm" (Steph. Cr. 161).

Vf, Arch. Cr. 16, 750–754: Rosc. Cr. 620–637: 8 Encyc. 126–130.

In the application to Scotland of the Prevention of Cruelty to Children Act, 1894, "'Manslaughter,' means, Culpable Homicide" (s. 26).

As to Manslaughter by Neglect of Duty; *V. R.* v. *Instan*, 1893, 1 Q. B. 450; 62 L. J. M. C. 86; 68 L. T. 420; 41 W. R. 368; 57 J. P. 282.

MANSURA.—*V.* HAGA.

MANUAL INSTRUCTION.—Quà Technical Instruction Act, 1889, 52 & 53 V. c. 76, "Manual Instruction," means, "instruction in the use of tools, processes of agriculture, and modelling in clay wood or other material" (s. 8); a def applied to Scotland by s. 4, 55 & 56 V. c. 63. *Cp*, TECHNICAL.

MANUAL LABOUR.—As to "Manual Labour" within s. 8, Employers' Liability Act, 1880, 43 & 44 V. c. 42; *V. Shaffers* v. *Gen. Steam Nav. Co*, 52 L. J. Q. B. 260; 10 Q. B. D. 356. The duties of an Omnibus Conductor (*Morgan* v. *London Gen. Omnibus Co*, 53 L. J. Q. B. 352; 13 Q. B. D. 832; 32 W. R. 759; 48 J. P. 503, dissenting from *Wilson* v. *Glasgow Tramways Co*, 5 Sess. Ca. 4th Ser. 981), or those of the Driver of a Tram-car (*Cook* v. *North Metrop. Trams Co*, 18 Q. B. D. 683; 56 L. J. Q. B. 309; 56 L. T. 448; 57 Ib. 476; 35 W. R. 577; 3 Times Rep. 523), or of a Guard of a Goods Train who occasionally assists in loading and unloading (*Hunt* v. *G. N. Ry*, 1891, 1 Q. B. 601; 60 L. J. Q. B. 216; 64 L. T. 418; 55 J. P. 470), or of a Grocer's Assistant (*Bound* v. *Lawrence*, cited WORKMAN), or of a Hair Dresser (*V.* LABOUR), do not involve manual labour, except incidentally.

V. LABOUR: PERSONAL LABOUR: INDUSTRIAL EMPLOYMENT: MANUAL OCCUPATION: WORKMAN: HANDICRAFT.

MANUAL OCCUPATION.—*V.* ART: MANUAL LABOUR.

A Butcher's was a "Manual Occupation" within a City of London Bye Law in restraint of trade (*Shaw* v. *Poynter*, 2 A. & E. 312; 4 L. J. K. B. 16).

Digitized by Google

MANUFACTORY. — As to what is a "Manufactory" within s. 92, Lands C. C. Act, 1845; *V. Gibson* v. *Hammersmith Ry*, 32 L. J. Ch. 337; 11 W. R. 299; 8 L. T. 43: *Barker* v. *North Staffordshire Ry*, 2 D. G. & S. 55; 12 Jur. 589: *Dakin* v. *Lond. & N. W. Ry*, 3 D. G. & S. 414; 13 L. T. O. S. 156; 13 Jur. 579: *Furniss* v. *Mid. Ry*, L. R. 6 Eq. 473: *Sparrow* v. *Oxford, Worcester, & Wolverhampton Ry*, 2 D. G. M. & G. 94; 19 L. T. O. S. 131; 16 Jur. 703: *Richards* v. *Swansea Improvement Co*, 9 Ch. D. 425; 38 L. T. 833; 26 W. R. 764: *Reddin* v. *Metrop Bd of Works*, 31 L. J. Ch. 661; 4 D. G. F. & J. 532; 10 W. R. 764; 7 L. T. 6: *Benington* v. *Metrop Bd of Works*, 54 L. T. 837; 50 J. P. 740: *Brook* v. *Manchester S. & L. Ry*, 1895, 2 Ch. 571; 64 L. J. Ch. 890; 43 W. R. 698. *Va*, House: Dart, 247: Seton, 2415.

Cp, Factory.

MANUFACTURE. — "The word 'Manufacture' in the Statute of Monopolies (21 Jac. 1, c. 3), must be construed in one of two ways. It may mean the machine when completed, or the mode of constructing the machine" (per Parke, B., *Morgan* v. *Seaward*, 6 L. J. Ex. 156; 2 M. & W. 558). "The word 'Manufacture,'" said Abbott, C. J., in *R.* v. *Wheeler* (2 B. & Ald. 349), "has been generally understood to denote, either a thing made which is useful for its own sake and vendible as such, as a medicine, a stove, a telescope, and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking frame, or a steam engine for raising water from mines; or, it may, perhaps, extend also to a new process to be carried on by known implements or elements acting upon known substances, and ultimately producing some other known substance but producing it in a cheaper or more expeditious manner, or of a better or more useful kind. No mere philosophical or abstract principle can answer to the word 'Manufactures.' Something of a corporeal and substantial nature, — something that can be made by man from the matters subjected to his art and skill, or at the least some new mode of employing practically his art and skill, is required to satisfy the word." *Vf*, *Gibson* v. *Brand*, 4 M. & G. 199; 11 L. J. C. P. 177.

On the contrast between "Process" and "Manufacture" consider the following by Eyre, C. J., in *Boulton* v. *Bull* (2 Bl. H. 492, 493), — "When the effect produced is some new *substance or composition* of things, it should seem that the privilege of the sole working or making ought to be for such new substance or composition, without regard to the *mechanism or process* by which it has been produced, which, though perhaps also new, will be only useful as producing the new substance. . . . When the effect produced is no substance or composition of things, the Patent can only be for the mechanism, if new mechanism is used, or

Digitized by Google

for the process, if it be a new method of operating with or without old mechanism, by which the effect is produced."

Stat. Def., — "'Manufacture' and 'Work,'" Hosiery Act, 1843, 6 & 7 V. c. 40, s. 35.

V. New Manufacture.

Article of Manufacture; *V.* Article.

Machine for any Manufacture; *V.* Machine.

Stage of Manufacture; *V.* Stage.

MANUFACTURED. — Quà, and by, s. 1, Fertilizers and Feeding Stuffs Act, 1893, 56 & 57 V. c. 56, an Article is "'Manufactured' if it has been subjected to any artificial process."

"Manufactured Goods," quà a statutory charge for carriage by a Ry Co, "must be understood in a popular sense, and must mean, not merely goods produced from the raw state by manual skill and labour but, such as are ordinarily produced in Manufactories; and we should, therefore, exclude Statuary, and include Shoes, Ironmongery, Glass, and Drapery." . . . But "the application of that meaning to particular articles is a question of fact, not of law" (*Parker* v. *G. W. Ry*, 6 E. & B. 109; 25 L. J. Q. B. 221).

MANUFACTURER. — The "Manufacturer" of an article is a different person from a "Dealer" in it; but in, *e.g.*, an agreement in Restraint of Trade, "Manufacturer" may, on the context and circumstances, include "Dealer," so as to prevent the covenantor from dealing in the article (*Harms* v. *Parsons*, 32 L. J. Ch. 247; 32 Bea. 328). So, quà Revenue Act, 1883, 46 & 47 V. c. 55, "Manufacturer" includes, "a Dealer, and a Manufacturing or Trading Company, having a place of business in the United Kingdom" (subs. 6, s. 2).

Quà Hosiery Act, 1845, 8 & 9 V. c. 77, "Manufacturer" means, "any person furnishing the materials of work to be wrought into hosiery goods, to be sold or disposed of on his own account" (s. 9).

Manufacturer of Tobacco; *V.* Retailer.

Other Stat. Def. — 50 & 51 V. c. 28, s. 3.

V. Maker: Merchant.

MANUFACTURING PROCESS. — Stat. Def., s. 3 (7), Factory, &c, Act, 1867, 30 & 31 V. c. 103, which Act was repealed by 41 & 42 V. c. 16; and it is believed that there is no existing statutory def of this phrase. *Vh*, ss. 104, 149, Factory and Workshop Act, 1901: Factory.

Semble, a large open-air Quarry is not a "Manufacturing Process" within either of the Factory Acts (*Kent* v. *Astley*, 39 L. J. M. C. 3; L. R. 5 Q. B. 19). *Vh*, Article.

MANUMISSION. — *V.* Litt. s. 204: Co. Litt. 137 a, b: Termes de la Ley.

Digitized by Google

MANURE. — Street sweepings may be Manure (*R.* v. *Freke*, 5 E. & B. 944; 25 L. J. M. C. 64; 26 L. T. O. S. 236; 4 W. R. 264). *V.* EMPLOYED.

"Manures," quà Agricultural Holdings (England) Act, 1883, *V.* s. 61, incorporating Nos. 22 and 23, Part 3, Sch 1: "Purchased Manure," in that def, does not include straw purchased by the tenant and converted by him into manure (*Brunskill* v. *Atkinson*, 29 S. J. 29).

In a TOLL Clause in a Railway Act, "all Sorts of Manure" held to mean, all sorts, as well artificial as natural, *bonâ fide* forwarded for the purpose of being used as fertilizers (*Aberdeen Commercial Co* v. *G. N. Scotland Ry*, 3 Ry & Can Traffic Ca. 205).

MAP. — *V.* PLAN: CHART: DEPOSITED.

MARBLE. — *V.* STATUARY.

MARE. — *V.* HORSE.

MARETTUM. — "This word *marettum* is derived of *mare* the sea, and *tego*, and properly signifieth a moorish and gravelly ground, which the sea doth cover and overflow at a full sea, and lyeth betweene the high water marke and low water marke, *infra fluxum et refluxum maris*" (Co. Litt. 5 a). *Cp*, WARETTUM: SHORE.

MARGARINE. — "Margarine," quà Margarine Act, 1887, means, "all substances, whether compounds or otherwise, prepared in imitation of BUTTER, and whether mixed with butter or not" (s. 3). *V.* EXPOSE: PACKAGE: PAPER: RETAIL.

"Margarine *Cheese*," quà Sale of Food and Drugs Act, 1899, "means, any substance, whether compound or otherwise, which is prepared in imitation of CHEESE, and which contains fat not derived from milk" (s. 25).

MARINE. — *V.* SEAMAN.

Marine Store Dealer; *V.* DEALER.

"Marine Work"; Stat. Def., Loc Gov (Ir) Act, 1898, s. 18 (4).

MARINER. — "Any Mariner or Seaman, *being at Sea*" may make a NUNCUPATIVE Will (Statute of Frauds, s. 22; Wills Act, 1837, s. 11).

The term "Mariner or Seaman" here includes *merchant* seamen (*Morrell* v. *Morrell*, 1 Hagg. Ecc. 51: *Re Milligan*, 2 Rob. Ecc. 108; 13 Jur. 1011: *Re Parker*, 2 Sw. & Tr. 375; 5 Jur. N. S. 553: *Re Thompson*, 5 Notes of Ca. 596); and includes also the whole profession, as well of the Royal Navy as of the Merchant Service, from the highest officer to a common seaman (*Re Hayes*, 2 Curt. 338), not excepting a Navy Surgeon (*Re Saunders*, 35 L. J. P. & M. 26; L. R. 1 P. & D. 16.)

"At Sea": An Admiral of a Naval Station, living on shore and who made his Will at his house, held not within this phrase (*Euston* v. *Sey-*

Digitized by Google

mour, cited 2 Curt. 339; 3 Ib. 530), and so it was held of a seaman who was in a British port whose vessel did not sail for several days after he had made the alleged Will (*Re Corby*, 18 Jur. 634). But a seaman stationed at Portsmouth on board a training ship was held to be "at Sea" (*Re MacMurdo*, 16 W. R. 283), and a seaman who, being in harbour, went on shore and there was so severely injured that he died, was held to be "at Sea" (*Re Lay*, 2 Curt. 375). A test seems to be, was the seaman "in expeditione"? and therefore (following *Re Lay*), it was held that a Seaman engaged with the enemy and on board ship, but in a River beyond the flux and reflux of the tide, was "at Sea" within the phrase under consideration (*Re Austen*, 17 Jur. 284; 2 Rob. Ecc. 611). *Vf*, Wms. Exs. 106: AT SEA.

V. SEAMAN: DESERTION.

MARISCUS. — "He that granteth *omnes mariscos suos*, all his fennes or marish grounds doe passe. *Mariscus* is derived of the French word *mares* or *marets*" (Co. Litt. 5 a).

MARITIMA INCREMENTA. — *V.* INCREASE.

MARITIME LIEN. — *V.* LIEN.

MARK. — *V.* DISTINCTIVE: OUTWARD MARK: TRADE MARK.

Quà Gold and Silver Wares Act, 1844, 7 & 8 V. c. 22; *V.* s. 14.

"Mark *of Distinction*," s. 16 (1), Corrupt and Illegal Practices Prevention Act, 1883, includes a party card intended for personal wear (*Walsall*, 4 O'M. & H. 123). A party card intended for general window exhibition, *e.g.* a Candidate's Portrait, — Is that a "Mark of Distinction" within the section? *Vth*, and as to the scope and object of the prohibition, jdgmt of Cave, J., *Stepney*, Times, 22nd Dec 1892; 4 O'M. & H. 179. A Banner may be a "Mark of Distinction" (*Ib.*). *Vf*, BANNER: COCKADE.

MARKET. — "Market (anciently written *mercat*, Fr., *mercatus*, L.), a public time and appointed place of buying and selling; also purchase and sale" (Wharton Law Lex.: *Cp*, FAIR: *V.* 1 Bl. Com. 274: 8 Encyc. 221–225). A market may be granted without metes and bounds, but, generally, will be restricted to the anciently accustomed day or days (*A-G.* v. *Horner*, 54 L. J. Q. B. 227; 55 Ib. 193; 14 Q. B. D. 245; 11 App. Ca. 66: *Vthc*, *Biddle* v. *Herbert*, 90 Law Times, 189). *V.* WITH ALL LIBERTIES.

V. PUBLIC MARKET: MARKET OVERT: MARKET PLACE: ENLARGE.

Vh, and as to DISTURBANCE of a Market, Pease & Chitty on Markets and Fairs.

"Market Authority"; Stat. Def., 50 & 51 V. c. 27, s. 2; 55 & 56 V. c. 50, s. 6.

Digitized by Google

"Delivery to Market," means, arrival at the place of destination (*Farrington* v. *Meek*, 30 Mo. 584).
V. RIGGING.

MARKET GARDEN. — A market-gardener and nurseryman occupied a piece of land upon which were built 16 green-houses on brick foundations, and which practically covered the surface of the land and in which the occupier grew fruit and vegetables for sale in his business; held, that it was a "Market Garden" or "Nursery Ground" within s. 211 (1 *b*), P. H. Act, 1875 (*Purser* v. *Worthing*, 56 L. J. M. C. 78; 18 Q. B. D. 818; 35 W. R. 682; 51 J. P. 596; 3 Times Rep. 509, 637). But "that case merely shows that a Market Garden, *primâ facie*, includes the Buildings upon it used for market garden purposes" (per Lindley, M. R., *Smith* v. *Richmond*, 67 L. J. Q. B. 440); and as used in the def of "Agricultural Land," s. 9, Agricultural Rates Act, 1896 (*V.* AGRICULTURAL) such a garden as that in *Purser* v. *Worthing* is not "Agricultural Land," for that phrase is, in that Act, the antithesis of "Buildings" (*Smith* v. *Richmond*, 1898, 1 Q. B. 683; 67 L. J. Q. B. 439; affd in H. L. 1899, A. C. 448; 68 L. J. Q. B. 898; 81 L. T. 269; 48 W. R. 115; 63 J. P. 804). *Cp*, "Land used only as a Ry," sub RAILWAY.

Quà Market Gardeners Compensation Acts, "Market Garden," means, "a HOLDING, or that part of a holding, which is cultivated wholly or mainly for the purpose of the trade or business of Market Gardening" (58 & 59 V. c. 27, s. 6; 60 & 61 V. c. 22, s. 6). *Cp*, PASTURE.
V. MARKET GARDENER: GARDEN.

MARKET GARDENER. — A tenant of 130 acres, under a farming lease, who grew annually 20 acres of green peas and 12 acres of young potatoes, the produce of which he sold by forwarding the same from time to time to salesmen in London, was held not to be a "Market Gardener" within the late Bankruptcy definition of "Trader" (*Ex p. Hammond*, 14 L. J. Bank. 14; D. G. 93; 9 Jur. 358: *Sv*, *Ex p. Sully*, *Re Wallis*, 14 Q. B. D. 950; 33 W. R. 733; 52 L. T. 625).
V. MARKET GARDEN.

MARKET OVERT. — In all places, outside the City of London, the MARKET PLACE, or spot of ground set apart by custom (or other legal authority?) for the sale of particular goods, is the only Market Overt (2 Bl. Com. 449, citing Godb. 131); and to be Market Overt it must be open, public, and legally constituted (per Jervis, C. J., *Lee* v. *Bayes*, 18 C. B. 601: as to how it is legally constituted, *V. Downshire* v. *O'Brien*, 19 L. R. Ir. 380).

But in the City of London "every SHOP is a Market Overt, for such things only which by the trade of the owner are put there for sale" (*Market Overt Case*, 5 Rep. 83 b; 8 Rep. 127 a; Cro. Eliz. 454; nom. *Bishop of Worcester's Case*, Moore, 360); therefore, a "Scrivener's Shop

Digitized by Google

is not a Market Overt for Plate, for none would search there for such a thing; *et sic de similibus*, &c" (*Ib.*). And the goods must not be sold behind a hanging or a cupboard, but must be sold "openly . . . so that any one that stood, or passed, by the shop might see it" (*Ib.*: *Hill* v. *Smith*, 4 Taunt. 533: *Lyons* v. *De Pass*, 9 L. J. Q. B. 51; 11 A. & E. 326: *Crane* v. *London Docks Co*, 33 L. J. Q. B. 224; 5 B. & S. 313) *i.e.*, *semble*, the shop must be on the ground floor; certainly an up-stairs show-room of a City shop to which access is only obtained by special permission is not Market Overt (*Hargreave* v. *Spink*, 1892, 1 Q. B. 25; 61 L. J. Q. B. 318; 65 L. T. 650; 40 W. R. 254). *Note*: *Semble*, the City's custom of Market Overt does not extend to goods bought by the shopkeeper (*Hargreave* v. *Spink*).

A Market constituted by statute is a "Market Overt" (*Ganly* v. *Ledwidge*, Ir. Rep. 10 C. L. 33: *Delaney* v. *Wallis*, 14 L. R. Ir. 31: the dictum to the contrary in *Moyce* v. *Newington*, 4 Q. B. D. 34, may, probably, be disregarded, the decision itself being over-ruled by *Bentley* v. *Vilmont*, cited RESTORE).

MARKET PLACE.—The Market Place of a Borough, means, that or those place or places where, in fact, the principal MARKET is held (*A-G.* v. *Cambridge*, L. R. 6 H. L. 303; 22 W. R. 37).

MARKET TOLL.—*V.* FAIR OR MARKET TOLLS.

MARKET VALUE.—The Market Value of property, means, what it would fetch in the market under the state of things for the time being existing; *e.g.* the Market Value of the Reversion of a Public-house, quà Lands C. C. Act, 1845, means, what the reversion of the premises *as* a Public-house would fetch, and not merely the reversionary value calculated on the rental of the premises apart from the license (*Belton* v. *London Co. Co.*, 68 L. T. 411; 62 L. J. Q. B. 222; 41 W. R. 315; 57 J. P. 185).

In a contract for the sale of goods, "Market Value" means, the price in the market to an ordinary customer, irrespective of the particular contract (*Orchard* v. *Simpson*, 2 C. B. N. S. 299).

Cp, VALUE.

MARKETABLE SECURITY.—"Marketable Security," quà Stamp Duty, means, "a Security of such a description as to be capable of being sold in any stock market in the United Kingdom" (s. 122, Stamp Act, 1891: *Vf*, s. 82, Ib.; s. 6, Finance Act, 1899, 62 & 63 V. c. 9):—in other words, the phrase means, "an INSTRUMENT which will be treated on the Stock Exchange as something which can be bought and sold" (per Esher, M. R., *Brown* v. *Inl. Rev.*, 1895, 2 Q. B. 598; 64 L. J. M. C. 241; 73 L. T. 377, adopting def of Ld Shand, *Texas Land*

Digitized by Google

& Cattle Co v. *Inl. Rev.*, 16 Sess. Ca. 4th Ser. 69; 26 Sc. L. R. 51). *Cp*, SECURITY.

Vh, *Stern* v. *The Queen*, 1896, 1 Q. B. 211; 65 L. J. Q. B. 240; 73 L. T. 752; 44 W. R. 302: *Chicago Ry* v. *Inl. Rev.*, 75 L. T. 572: *Noakes* v. *Inl. Rev.*, 83 L. T. 714.

A Co's Debenture is, ordinarily, a "Marketable Security, not transferable by delivery," Sch 1, Stamp Act, 1891, and requires a Mortgage *ad val.* stamp on the amount secured by it (*Rowell* v. *Inl. Rev.*, 1897, 2 Q. B. 194; 66 L. J. Q. B. 528: *V.* AMOUNT).

An Equitable Charge on Debentures, was held a "Marketable Security" within s. 2 (10), Stamp Act, 1870, which is in the same terms as s. 122, Stamp Act, 1891 (*Read* v. *Eley*, W. N. (1900) 57).

V. ISSUED: MADE.

MARLBRIDGE.—Statute of Marlbridge, 52 H. 3, c. 23.

MARQUE.—Letters of Marque; *V.* LETTER.

MARRIAGE.—"'Marriage' is one and the same thing substantially all the Christian world over. Our whole law of Marriage assumes this" (per Ld Brougham, *Warrender* v. *Warrender*, 2 Cl. & F. 532). "I conceive that 'Marriage,' as understood in Christendom, may, for this purpose,"—*i.e.* creating the status of "Husband" and "Wife" as those words are used in the Matrimonial Causes Act, 1857,—be defined as, the voluntary union for life of one man and one woman, to the exclusion of all others," the man and woman not being legally prohibited from marrying one another (per Penzance, J. O., *Hyde* v. *Hyde*, L. R. 1 P. & D. 133; 35 L. J. P. M. & A. 58: *Brinkley* v. *A-G.*, 59 L. J. P. D. & A. 51; 15 P. D. 76); it was accordingly held in *Hyde* v. *Hyde* that neither party to a so-called marriage accomplished according to a law allowing Polygamy, *e.g.* a Mormon Marriage, is entitled to a divorce in an English Court. Nor are the children of such a marriage legitimate (*Re Bethell*, 38 Ch. D. 220; 57 L. J. Ch. 487).

The Form or Ceremony of marriage is not its essential, so long as a marriage, as above defined, is intended and the law is observed and the contracting parties have the legal capacity thereunto (*Dalrymple* v. *Dalrymple*, 2 Hagg. Con. 54: *R.* v. *Millis*, 10 Cl. & F. 534: *Re De Wilton*, 1900, 2 Ch. 481; 69 L. J. Ch. 717; 83 L. T. 70; 48 W. R. 645: *Beamish* v. *Beamish*, 9 H. L. Ca. 274: *Simonin* v. *Mallac*, 29 L. J. P. & M. 97; 2 Sw. & Tr. 67: *Hay* v. *Northcote*, 1900, 2 Ch. 262; 69 L. J. Ch. 586).

Vh, Phil. Ecc. Law, Part 3, ch. 7.

As to Invalid Marriages, *V. Warter* v. *Warter*, 59 L. J. P. D. & A. 87; 15 P. D. 152; 63 L. T. 250.

As to Jews' Marriages, and history thereof in England; *V. Lindo* v. *Belisario*, 1 Hagg. Con. 216, 217 *n*: *Re De Wilton*, sup.

Digitized by Google

"Marriage" may, but only by a context, include a reputed, though illegal, marriage (*V.* per Ld Cairns, *Hill* v. *Crook*, 42 L. J. Ch. 716; L. R. 6 H. L. 285: per Halsbury, C., *Re Jodrell*, 59 L. J. Ch. 542; *S. C.* on appeal nom. *Seale-Hayne* v. *Jodrell*, 1891, A. C. 304; 61 L. J. Ch. 70). *Sv*, SOLEMNIZATION.

V. BIGAMY: ENGLISH MARRIAGE: LEVITICAL DEGREES: SPECIAL.

Cesser of a Life Interest on death or re-marriage; *V.* DEATH.

The "Right of Marriage," in its feudal sense, signified "the power which the Lord, or Guardian in Chivalry, had of disposing of his Infant Ward in matrimony" (2 Bl. Com. 70: *Vf*, Ib. 88).

"The Marriage Acts, 1811 to 1886"; *V.* Sch 2, Short Titles Act, 1896. *Vf*, MATRIMONIAL.

The Foreign Marriage Acts; *V.* 12 & 13 V. c. 68; 31 & 32 V. c. 61; 53 & 54 V. c. 47; 54 & 55 V. c. 74.

MARRIAGE SETTLEMENT. — "A 'Marriage Settlement' is well understood to be a Deed executed in consideration of a marriage about to take place" (per Hill, J., *Foster* v. *Fowler*, 5 Jur. N. S. 99); and therefore (unless made in pursuance of an ante-nuptial agreement), a post-nuptial Settlement of personal chattels is not a "Marriage Settlement" which, under s. 4, Bills of Sale Act, 1878, is exempt from registration (*Fowler* v. *Foster*, 28 L. J. Q. B. 210; 5 Jur. N. S. 99: *Ashton* v. *Blackshaw*, 39 L. J. Ch. 205; L. R. 9 Eq. 510); but "there is no doubt that a post-nuptial Settlement, in pursuance of an ante-nuptial Agreement, is a 'Marriage Settlement' and within that exemption" (per Bowen, L. J., *Courcier* v. *Bardili*, 27 S. J. 276: *Vf*, Rosc. N. P. 1189); so of Ante-Nuptial Articles, or of any ante-nuptial document, by which a Trust would be created in favour of the intended wife (*Wenman* v. *Lyon*, 1891, 2 Q. B. 193; 60 L. J. Q. B. 663; 65 L. T. 136; 39 W. R. 519).

V. SETTLEMENT: CONTRACT.

MARRIED MAN. — A Widower is a "Married Man" within s. 2, Married Women's Policies of Assurance (Scot) Act, 1880, 43 & 44 V. c. 26 (*Goss* v. *Sharpe*, 23 Rettie, 146). *Cp*, UNMARRIED: WIFE.

MARRIED WOMAN. — *V.* MARRY: FEME: WIFE: UNMARRIED: SEPARATE PROPERTY: SEPARATE USE: INSTITUTED: JUDGMENT: OPPOSITE PARTY: PENDING: RESTRAINT ON ALIENATION: BENEFIT: MADE.

MARRY. — "If she shall marry"; *V.* DEATH.

Gift to Widow "provided she shall not marry"; *V.* WIDOW.

Direction to settle the share of such of testator's daughters as "shall be a MARRIED WOMAN," does not apply to one who is a widow when the direction becomes operative (*Rudall* v. *Nichols*, W. N. (1900) 133).

V. UNMARRIED: WITHOUT HAVING BEEN MARRIED.

Digitized by Google

Knowingly marry without Banns; *V.* KNOWINGLY.
"Being married," "marries"; *V.* BIGAMY. *Vf,* KNOWN.

MARSHALL. — Marshalling ASSETS, is the adoption of this principle: — Where there are two funds and two parties, and one of those parties has a claim exclusively upon one fund whilst the other has the right of resorting to either, the Court sends the latter party primarily to that fund from which the former is excluded; or, if the party entitled to resort to either fund has actually resorted to the common fund, then, to that extent, the party entitled only to the common fund will be allowed to stand in the place of the other party (1 Jarm. 234, 235: *Aldrich* v. *Cooper*, 8 Ves. 382, 388: 1 White & Tudor, 36, which latter to p. 67, *V.* for the various applications of the doctrine). *Vf,* as to gifts to CHARITY, 1 Jarm. 234–237: Tudor Char. Trusts, 58–66: — in an Administration of a Deceased's Estate, Wms. Exs. 1585 *et seq*: Theobald, 740 *et seq*: Seton, 1663–1675: 8 Encyc. 228, 229.

Marshalling SECURITIES, resembles marshalling assets, and is this: — "If a person having two estates mortgages both to A., and then one only to B., who had no notice of A.'s mtge, B. may, as against the mortgagor, compel the payment of the first mtge out of the estate on which he had no charge" (per Kay, L. J., *Flint* v. *Howard*, 62 L. J. Ch. 812; 1893, 2 Ch. 72, stating the effect of *Lanoy* v. *Athol*, 2 Atk. 444, 446). The qualification here that B. "had no notice of A.'s mtge" seems not essential, for the doctrine of *Lanoy* v. *Athol* is said to apply whether B. took his mtge "with or without notice of the first" mtge (1 White & Tudor, 56). *Vh, Dolphin* v. *Aylward*, L. R. 4 H. L. 486: *Moxon* v. *Berkeley Bg Socy*, 59 L. J. Ch. 524: *Re Jones*, 1893, 2 Ch. 461; 62 L. J. Ch. 996; 69 L. T. 45: Robbins on Mortgages, ch. 41: 8 Encyc. 230, 231.

MARTIAL LAW. — "Martial Law, which is built upon no settled principles but is entirely arbitrary in its decisions, is (as Sir Matthew Hale observes, Hist. C. L. c. 2) in truth and reality, no law but something indulged rather than allowed as a law. The necessity of order and discipline in an army is the only thing which can give it countenance; and, therefore, it ought not to be permitted in time of peace, when the King's Courts are open for all persons to receive justice according to the laws of the land" (1 Bl. Com. 413). *Vh, Grant* v. *Gould*, 2 Bl. H. 69: *Sutton* v. *Johnstone*, 1 T. R. 493, 550: *Elphinstone* v. *Bedreechund*, 1 Knapp P. C. 316: *Ex p. Marais*, 1902, A. C. 109; 71 L. J. P. C. 42: *Ex p. Milligan*, 4 Wallace, 141, 142.

MARTINMAS. — *V.* MICHAELMAS.

MASCULINE. — In Acts after 1850, Masculine includes Feminine (s. 1 *a*, Interp Act, 1889). *V.* FEMALE: SEX: MAN: MALE: MALE LINE.

MASK. — *V.* MESH.

MASS. — Masses for the Dead; *V.* SUPERSTITIOUS.

Digitized by Google

MASTER.—"Master," R. 21, Ord. 54, R. S. C., includes a Registrar of the Probate Divorce and Admiralty Division (*Re Patrick*, 14 P. D. 42; 58 L. J. P. D. & A. 36; 60 L. T. 343). *Vf*, R. 1, Ord. 71. Stat. Def., *Scot.* 38 & 39 V. c. 17, s. 109; 57 & 58 V. c. 28, s. 7.

Master of the *Ceremonies*, s. 1, 21 G. 3, c. 49, is not applicable to an ENTERTAINMENT of an intellectual kind, *e.g.* a Lecture on Art (per Esher, M. R., *Reid* v. *Wilson*, 1895, 1 Q. B. 315; 64 L. J. M. C. 60).

"Master," "Under-Master," and "Schoolmaster" of a Grammar School; Stat. Def., 3 & 4 V. c. 77, s. 25.

"Master" of a House or Building, quà P. H. London Act, 1891; *V.* s. 141.

"Master or Mistress" of a House, &c, s. 2, 21 G. 3, c. 49; *V.* KEEPER.

"Master" of a Ship or Vessel, quà Mer Shipping Act, 1894, "*includes*, every person (except a PILOT) having command or charge of any SHIP" (s. 742); to the like effect are the following defs, 10 & 11 V. c. 27, s. 3; 28 & 29 V. c. 125, s. 2; 33 & 34 V. c. 90, s. 30; 35 & 36 V. c. 19, s. 2; 39 & 40 V. c. 36, s. 284; 48 & 49 V. c. 49, s. 12; 54 & 55 V. c. 31, s. 9:—quà Canal Boats Act, 1877, 40 & 41 V. c. 60, "'Master,' in relation to a Canal Boat, *means*, the person having for the time being command or charge of the boat" (s. 14); quà Thames Conservancy Act, 1894, "'Master,' when used in relation to any Vessel, means, any person (whether the owner, master, or other person) lawfully or wrongfully having or taking the command charge or management of the Vessel for the time being" (s. 3).

An Exception, in a Bill of Lading, of damage caused by the "NEGLECT OR DEFAULT of the Master"; held, not displaced by the fact that the Master was part-owner of the ship (*Westport Co* v. *McPhail*, 1898, 2 Q. B. 130; 67 L. J. Q. B. 674; 78 L. T. 490; 46 W. R. 566).

On Master and Servant; *V.* Eversley on Domestic Relations: Macdonell on Master and Servant: Parkyn, Ib.: 8 Encyc. 235–265.

V. FINDING A MASTER: GENTLEMAN.

MATERIAL.—Quà Stamp Acts, "Material," "includes every sort of material upon which words or figures can be expressed" (54 & 55 V. c. 38, s. 27, c. 39, s. 122).

"Hard and Incombustible Material"; *V.* INCOMBUSTIBLE: WALL.

V. MATERIALS: SPRAYING.

MATERIAL ALTERATION.—"When a Deed is altered in a Point material, by the Plaintiff himself or by any Stranger without the Privity of the Obligee, be it by Interlineation, Addition, Rasing, or by drawing of a Pen through a Line, or through the midst of any material Word, the Deed thereby becomes void: as if a Bond is to be made to the Sheriff for Appearance, &c, and in the Bond the Sheriff's name is omitted, and after the Delivery thereof his Name is interlin'd, either by the Obligee or a Stranger without his Privity, the Deed is void: So if one make a Bond

Digitized by Google

of £10 and after the Sealing of it another £10 is added which makes it £20, the Deed is void: So if a Bond is rased, by which the first word can't be seen, or if it is drawn with a Pen and Ink through the Word, although the first Word is legible, yet the Deed is void" (*Pigot's Case*, 11 Rep. 27 a: Touch. 68, 69: *Swiney* v. *Barry*, 1 Jones, 109).

The Touchstone (p. 68) thus particularizes what is a *material* alteration in a Deed:—"As if it be in a deed of grant, in the name of the grantor, grantee, or in the thing granted, or in the limitation of the estate; or if it be in an obligation when the word [heirs] shall be inserted, or the sum increased, or in the date of either, or the like." So a Surety-Bond is voided by the last signatory adding to his signature words limiting, otherwise than in the bond, the amount of his liability (*Ellesmere Co* v. *Cooper*, 1896, 1 Q. B. 75; 65 L. J. Q. B. 173; 73 L. T. 567; 44 W. R. 254).

But the execution of a Deed of Arrangement by Creditors *after* its registration under 50 & 51 V. c. 57, is not to make a Material Alteration in the deed, and does not render the deed void (*Re Batten, Ex p. Milne*, 58 L. J. Q. B. 333; 22 Q. B. D. 685; 37 W. R. 499).

The alteration of a date in a Bill of Exchange, whereby its due date would be accelerated (*Master* v. *Miller*, 4 T. R. 320; affd 5 T. R. 367; 2 Bl. H. 141; 1 Anst. 225; 1 Sm. L. C. 825: *Sv, Aldous* v. *Cornwall*, 37 L. J. Q. B. 201; 9 B. & S. 607; L. R. 3 Q. B. 573), or, adding words to an Acceptance, making the Bill payable at a particular place (*Hanbury* v. *Lovett*, 18 L. T. 366), or the alteration of the number of a Bank of England note (*Suffell* v. *Bank of Eng.*, 51 L. J. Q. B. 401; 7 Q. B. D. 270; 9 Ib. 555: *Leeds Bank* v. *Walker*, 11 Q. B. D. 84), is material (and so probably of the numbers on Bonds which have to be drawn by lot; but not of a number put on a Bill of Ex. or Cheque; per Jessel, M. R., *Suffell* v. *Bank of Eng.*, sup). Erasing the crossing of a Cheque is not a material alteration of the Cheque (*Simmons* v. *Taylor*, 27 L. J. C. P. 45, 248; 4 C. B. N. S. 463). *V.* now as to alterations in Bills of Ex., Bills of Ex. Act, 1882, ss. 63, 64: *Scholfield* v. *Londesborough*, cited ACCEPTANCE.

As to what verbal alteration in a Sale Note or other Contract is material; *V. Powell* v. *Divett*, 15 East, 29: *Mollett* v. *Wackerbarth*, 17 L. J. C. P. 47; 5 C. B. 181. It is probably safe to say that only such an alteration is material as would alter the business effect of the instrument if used for any ordinary business purpose for which such an instrument or any part of it is used (*V.* jdgmt of Brett, L. J., and *cp*, that of Jessel, M. R., *Suffell* v. *Bank of Eng.*, sup). To put a seal against the signature to a contract which was not under seal, is a material alteration of the contract (*Davidson* v. *Cooper*, 12 L. J. Ex. 467; 13 Ib. 276; 11 M. & W. 778; 13 Ib. 343).

Cp, ESSENTIAL. *V.* ALTERATION.

Material Alteration of Discipline; *V.* MATERIALLY ALTERED.

Digitized by Google

MATERIAL DETRIMENT.—In considering whether "Material Detriment" will be caused by Severance, on a Ry Co compulsorily taking land, regard must be had to all the circumstances and the mode and manner in which the Co are prepared to bind themselves as to the user of the land, *e.g.* where the land is only wanted for a viaduct, and the Co offer the grant of a perpetual and commodious right of way under the viaduct (*Re Gonty and Manchester S. & L. Ry*, 1896, 2 Q. B. 439; 65 L. J. Q. B. 625; 45 W. R. 83; 75 L. T. 239: *Vthc, Caledonian Ry* v. *Turcan*, cited ROAD). *Vf, Morrison* v. *G. E. Ry*, 53 L. T. 384.

MATERIAL DISCOMFORT.—*V.* ANNOYANCE.

MATERIAL ERROR.—As to what is a "Material Error" in a description of property quà Conditions of Sale; *V. Phelps* v. *White*, 5 L. R. Ir. 318: ERROR.

MATERIAL EVIDENCE.—"Material Evidence in Support of the Promise of Marriage," s. 2, 32 & 33 V. c. 68;—Evidence of silence when a man is to his face taxed with such a promise is "Material Evidence" in its support (*Bessela* v. *Stern*, 46 L. J. C. P. 467; 2 C. P. D. 265; 42 J. P. 197); *secus*, of leaving unanswered a letter which states the promise (*Wiedemann* v. *Walpole*, 1891, 2 Q. B. 534; 60 L. J. Q. B. 762; 40 W. R. 114). In *Bessela* v. *Stern* Bramwell, L. J., said,—"I rather fancy it has somewhere been said that the word 'Material' makes no difference in the meaning of the section."

V. CORROBORATED.

MATERIAL FACT.—The "Material Facts" that are to be stated in Pleadings, R. 4, Ord. 19, R. S. C., mean those that are "material to the party pleading, be he plt or deft" (per Lopes, L. J., *Darbyshire* v. *Leigh*, 1896, 1 Q. B. 554; 65 L. J. Q. B. 360; 74 L. T. 241; 44 W. R. 452). They may, and generally should, include the consequences, or motives, of the matter relied on as well as those pertinent to that matter itself; *e.g.* seduction and imparting venereal disease in an action for Breach of Promise of Marriage (*Millington* v. *Loring*, 50 L. J. Q. B. 214; 6 Q. B. D. 190; 43 L. T. 657; 29 W. R. 207), or of malicious motives in defamation (*Glossop* v. *Spindler*, 29 S. J. 556), or any other fact which the party is entitled to prove at the trial (*Lumb* v. *Beaumont*, 49 L. T. 772); but not damages (*Wood* v. *Durham*, 57 L. J. Q. B. 547; 21 Q. B. D. 501; 59 L. T. 142; 37 W. R. 222).

The following are examples of what are "Material Facts" within the Rule;—

In Defamation, the precise words complained of (*Harris* v. *Warre*, 48 L. J. C. P. 310; 4 C. P. D. 125); in a Defence to Defamation, the facts relied on to show justification or privilege (*Belt* v. *Lawes*, 51 L. J. Q. B. 359); the alleged purport of documents when such is relied on (*Philipps* v.

Digitized by Google

Philipps, 4 Q. B. D. 127; 48 L. J. Q. B. 135; 27 W. R. 436: *Darbyshire* v. *Leigh*, sup); in Ejectment, when the claim is by devolution, the material steps showing title (*Philipps* v. *Philipps*, sup: *Davis* v. *James*, 53 L. J. Ch. 523; 26 Ch. D. 778; 32 W. R. 406; 50 L. T. 115; *Sv*, *Evelyn* v. *Evelyn*, 28 W. R. 532: and as to the Defence, *V. Danford* v. *McAnulty*, 52 L. J. Q. B. 652; 8 App. Ca. 456); in a Right of Way case, the termini and general course of the Way and whether claim arises by prescription or grant (*Harris* v. *Jenkins*, 52 L. J. Ch. 437; 22 Ch. D. 481; 31 W. R. 137); in Negligence, inevitable accident (*Winchilsea* v. *Beckly*, 2 Times Rep. 300); in Negligence under Employers' Liability Act, the knowledge by the master of the danger and the want of such knowledge by the servant (*Griffiths* v. *London & St. K. Docks Co*, 53 L. J. Q. B. 504; 13 Q. B. D. 260); in Donatio Mortis Causâ, the actual facts attending the gift (*Re Parton*, 30 W. R. 287). *Vf*, Ann. Pr.

"Material Facts not brought before the Court," s. 7, Matrimonial Causes Act, 1860, 23 & 24 V. c. 144, includes Collusion (*Rogers* v. *Rogers*, cited COLLUSION); and "even events happening *after* the Decree *nisi*," *e.g.* subsequent adultery (per Jeune, P., *Ib.*, citing *Hulse* v. *Hulse*, 40 L. J. P. & M. 51; L. R. 2 P. & D. 259, and referring to the doubts on *thlc* in *Howarth* v. *Howarth*, 9 P. D. 218).

Cp, EVIDENCE: *V.* CONCEALMENT: FACT: PERJURY.

MATERIAL MEN.—"Those are commonly called Material Men whose trade it is to build, repair, or equip, Ships or to furnish them with tackle and provision (necessary in any kind). Those men, when they have furnished any victuals or materials upon the credit of a Ship, are certain losers if they be prohibited from taking their remedy against such Ships by arresting and proceeding to gain a possession of the Ship itself till the debt be satisfied according to the ancient course of the Admiralty" (per Sir Leoline Jenkins, temp. Car. 2, cited and adopted in *The Neptune*, 3 Hagg. Adm. 142).

MATERIAL PARTICULAR.—*V.* CORROBORATED.
Cp, "Essential Particular," sub ESSENTIAL.

MATERIAL RESPECT.—*V.* FALSE TRADE DESCRIPTION.

MATERIALLY ALTERED.—Transfer of an Endowment if a School should become "materially altered in discipline, numbers, or other circumstances"; *V. London School Bd* v. *Faulconer*, 48 L. J. Ch. 41; 8 Ch. D. 571.
V. MATERIAL ALTERATION.

MATERIALS.—"*Materials, Tools, or Implements*, to be used by such artificer in his trade or occupation, if such artificer be employed in mining," s. 23, Truck Act, 1831, 1 & 2 W. 4, c. 37;—Wooden Props

Digitized by Google

or "Sprags," though neither "Tools, or Implements," are "Materials" within these words (*Cutts* v. *Ward*, 36 L. J. Q. B. 161; L. R. 2 Q. B. 357; 15 W. R. 445; 15 L. T. 614). *V.* **Implement.**

Policy on "Hull, Materials, and Machinery"; *V.* **Hull.**

"Unfinished Goods or Materials"; Stat. Def., Pawnbrokers Act, 1872, 35 & 36 V. c. 93, s. 5.

Woollen, &c, "Materials"; Stat. Def., Hosiery Act, 1843, 6 & 7 V. c. 40, s. 35.

V. **Material.**

MATERNÂ.—*Ex p. maternâ*; *V.* **Next of Kin.** *Cp*, **Male Line.**

MATRIMONIAL.—"The Matrimonial Causes Acts, 1857 to 1878"; *V.* Sch 2, Short Titles Act, 1896. *Vf*, **Marriage.**

Matrimonial Cruelty; *V.* **Cruelty.**

MATRON.—Quà Prisons (Scot) Act, 1877, 40 & 41 V. c. 53, "'Matron' shall mean, the chief female officer of a prison" (s. 71).

MATTER.—*V.* **Cause: Cause and Matter: Proceeding.**

Quà Jud. Act, 1873, "Matter," includes, "every proceeding in the Court not in a Cause" (s. 100); *Va*, Jud. Act (Ir), 1877, s. 3.

An Originating Summons is a "Matter" within s. 43, Trustee Act, 1850 (*Re Jones*, 59 L. J. Ch. 157; 61 L. T. 554). So, a Company Summons is a "Matter" (*V.* **Trial**).

"Matter," in the phrase "Cause or Matter," R. 5, Ord. 37, R. S. C., includes a Voluntary Winding-up of a Co (*Re Mysore Mining Co*, 58 L. J. Ch. 731; 42 Ch. D. 535; 61 L. T. 453; 37 W. R. 794); but not an Arbitration by consent out of Court (*Re Shaw and Ronaldson*, 1892, 1 Q. B. 91; 61 L. J. Q. B. 141).

"Matter *not being an Action*," R. 15, Ord. 54, R. S. C.; *V. Re Fawsitt, Galland* v. *Burton*, 54 L. J. Ch. 1131; 30 Ch. D. 231.

Power to make "Orders as to Costs, and *all other Matters*," R. 15, Ord. 57, R. S. C., includes the charges for warehousing of an Interpleading Wharfinger (*Attenborough* v. *St. Katharine's Docks*, 47 L. J. C. P. 763; 3 C. P. D. 450; 38 L. T. 404; 26 W. R. 583: *De Rothschild* v. *Morrison*, 59 L. J. Q. B. 557; 24 Q. B. D. 752; 38 W. R. 635).

Quà Co. Co. Act, 1888, "Matter," means, "every proceeding in the Court which may be commenced as prescribed otherwise than by Plaint" (s. 186). A Counter-Claim exceeding £20 is an appealable "Matter" within s. 120 of that Act, though the Claim itself be under £20 (*Smith* v. *Gill*, 1896, 2 Q. B. 166; 65 L. J. Q. B. 556); *secus*, of disciplinary proceedings under s. 48 (*Lewis v. Owen*, 1894, 1 Q. B. 102; 63 L. J. Q. B. 233).

A Client's Order for Taxation of his Solr's Bill is a "Matter" within

Digitized by Google

s. 12, 37 & 38 V. c. 68, though, probably, not an "ACTION or SUIT" (*Re Sweeting*, cited MAINTAIN).

"Articles, Matters, *and Things*"; *V.* ARTICLE.

Exception of "Matters *or Things* done at any time before the passing of this Act," s. 1, 6 & 7 V. c. 73; *V. Doe* d. *Potts* v. *Jinders*, 14 L. J. Q. B. 245; 2 Dowl. & L. 986: DONE: BEGIN.

"Any other Matter or Thing relating or incidental to the Sale"; *V.* RELATING.

"Matter" contrasted with "SUBSTANCE"; *V.* DESTRUCTIVE.

"Matter *of Account*"; *V.* ACCOUNT.

"Matter" *of an Agreement*, quà Stamp Act; *V. Doe* d. *Marlow* v. *Wiggins*, 12 L. J. Q. B. 177; 4 Q. B. 367; 3 G. & D. 504: *Marlow* v. *Thompson*, 1 Dowl. N. S. 575.

"Matter *of Complaint*"; *V.* ARISE: COMPLAINT: DEFACE.

"All Matters *in Difference*"; *V.* CAUSE: CONSENT.

"Matter *of Law*"; *V.* LAW.

"Matter *of Practice and Procedure*"; *V.* PRACTICE.

Matter of Record; *V.* RECORD.

"Matter of Invention in Sculpture"; *V.* SCULPTURE.

"Matter *in Question*," R. 12, Ord. 31, R. S. C.; *V. Penrice* v. *Williams*, 23 Ch. D. 353; 52 L. J. Ch. 593. *V.* QUESTION.

"'Matters and Causes *Testamentary*,' shall comprehend all matters and causes relating to the grant and revocation of Probate of Wills, or of Administration" (20 & 21 V. c. 77, s. 2, c. 79, s. 2).

V. FILTHY WATER: SOLID MATTER.

MATURE. — A Bill of Exchange or Promissory Note matures when it becomes due; and when payable "ON DEMAND" it "Matures" at once, *e.g.* quà s. 62 (1), Bills of Ex. Act, 1882 (*Edwards* v. *Walters*, 1896, 2 Ch. 157; 65 L. J. Ch. 557; 44 W. R. 547; 74 L. T. 396): *Cp*, RENUNCIATION: OVERDUE.

MAURITIUS. — *V.* EAST INDIES.

MAXIMUM. — A Maximum Railway Rate is the major limit which is not to be exceeded (per Miller, Commr, *Skinningrove Co* v. *N. E. Ry*, 5 Ry & Can Traffic Ca. 265).

Maximum Width; *V.* WIDTH.

MAY. — Though dicta of eminent judges may be cited to the contrary, it seems a plain conclusion that "may," "it shall be lawful," "it shall and may be lawful," "empowered," "shall hereby have power," "shall think proper," and such like phrases, give, in their ordinary meaning, an enabling and discretionary power. "They are potential and never (in themselves) significant of any obligation" (per Ld Selborne, *Julius* v. *Oxford, Bp.*, 49 L. J. Q. B. 585; 5 App. Ca. 235). "They confer a faculty or power, and they do not of themselves do more than confer

Digitized by Google

a faculty or power"; and therefore, where the point in question is not covered by authority, "it lies upon those who contend that an *obligation* exists to exercise this power, to show in the circumstances of the case something which according to the principles I have mentioned creates this obligation" (per Cairns, C., *S. C.* 49 L. J. Q. B. 578, 579; 5 App. Ca. 223; 42 L. T. 546; 28 W. R. 726). On that case Cotton, L. J., observed: "'May' never can mean 'MUST,' so long as the English language retains its meaning; but it gives a power, and then it may be a question in what cases, where a Judge has a power given him by the word 'may,' it becomes his *duty* to exercise that power" (*Re Baker, Nichols* v. *Baker*, 59 L. J. Ch. 661; 44 Ch. D. 262).

Julius v. *Oxford, Bp* (sup), may be regarded as the leading case on the principles therein referred to by Lord Cairns for construing as obligatory, phrases which in their ordinary meaning are merely enabling. His Lordship in that case gathers those principles into the following proposition:—

"Where a power is deposited with a public officer for the purpose of being used for the benefit of persons (1) who are specifically pointed out, and (2) with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised" (49 L. J. Q. B. 580; 5 App. Ca. 214).

And the following supplemental proposition may be gathered from the judgment of Lord Blackburn in the same case:—

Enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right: and if the object of the power is to enable the donee to effectuate a legal right, then it is the *duty* of the donee of the power to exercise the power when those who have the right call upon him to do so.

Vh, Hill v. *Barge*, 12 Ala. 693: *Fowler* v. *Perkins*, 77 Ill. 273.

"May," and such enabling words as those above referred to, therefore group themselves into two classes according as they impose or give;—

I. An Obligatory Duty;

II. A Discretionary or Enabling Power.

I. In the following cases, which all seem to come well within the principles to which form and substance were given by *Julius* v. *Oxford, Bp.*, enabling words have been held to impose

An Obligatory Duty:—

Where, by the joint effect of 13 Eliz. c. 7, s. 2, and 1 Jac. 1, c. 15, s. 3, the Lord Chancellor "shall have full power and authority" to issue a bankruptcy commission (*Backwell's Case*, 1 Vern. 152: *vthc*, stated by Ld Blackburn, *Julius* v. *Oxford, Bp.*, sup):

Where, by Arb Act, 1889, s. 5, the Court "may" appoint an

Digitized by Google

An Obligatory Duty:—

Arbitrator or Umpire (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, Kay, L. J., hesitating):

Where, by s. 17, Matrimonial Causes Act, 1857, the Court "may" decree Restitution of Conjugal Rights (per Lopes and Lindley, L. JJ., *Russell* v. *Russell*, 1895, P. 315; 64 L. J. P. D. & A. 114); but observe from that jdgmt that this imperative sense has in one instance been qualified:

Where it was declared by 13 & 14 Car. 2, c. 12, s. 18, that constables and others, out of purse in enforcing the poor-law, "together with the churchwardens and overseers of the poor and other inhabitants of the parish, shall hereby have power and authority" to make a rate to reimburse the constables and others (*R.* v. *Barlow*, 2 Salk. 609: *vthc*, stated by Ld Blackburn, *Julius* v. *Oxford, Bp.*):

Where, by 56 G. 3, c. lv, "it shall be lawful" for the wardens, &c, to raise a rate to pay the increased stipends of two chaplains and the schoolmaster of St. Saviour's, Southwark (*R.* v. *St. Saviour's, Southwark*, 7 L. J. M. C. 59; 1 N. & P. 496; 7 A. & E. 925: *Vf*, per Holroyd, J., *R.* v. *Flockwood Commrs*, 2 Chitty, 253):

Where, by 8 & 9 W. 3, c. 11, s. 8, a plaintiff in an action on a Bond or for a penal sum "may" assign as many breaches as he shall think fit, the statute being for the benefit of defendants (*Roles* v. *Rosewell*, 5 T. R. 538: *Hardy* v. *Bern*, cited Ib. 540: *Plomer* v. *Ross*, 5 Taunt. 386):

Where a power was granted by royal charter to the steward and suitors of a manor enabling them to hear and determine civil suits (*R.* v. *Steward of Havering-atte-Bower*, 5 B. & Ald. 691):

Where, by 7 W. 4 & 1 V. c. 78, s. 24, "it shall be lawful" for the King's Bench to enquire into the title of a claimant (whose claim has been Rejected in the revision court) to have his name inserted in the Burgess Roll (*R.* v. *Harwich*, 8 A. & E. 919; *Sv*, s. 47 (2), Municipal Corporations Act, 1882):

Where, by 2 & 3 V. c. 84, s. 1, "it shall be lawful" for two justices to summon overseers to a special sessions for their contribution to their Union, "and if the justices at such sessions shall think fit" to issue warrant of distress (*R.* v. *Boteler*, 4 B. & S. 959; 33 L. J. M. C. 101):

Where, by 5 & 6 V. c. 54, s. 7, the Tithe Commissioners were "empowered" to confirm invalid agreements respecting tithes when a fair equivalent given (*R.* v. *Tithe Commrs*, 14 Q. B. 459; 19 L. J. Q. B. 177):

Where, by 7 & 8 V. c. 110, s. 66, judgments against certain joint-stock companies "shall and may" take effect and be enforced against the shareholders (*Hill* v. *London & County Assrce*, 1 H. & N. 398; 26 L. J. Ex. 89, over-ruling *Thompson* v. *Universal Salvage Co*, 3 Ex. 310; 18

Digitized by Google

An Obligatory Duty:—

L. J. Ex. 242: *Va*, *Morisse* v. *Royal British Bank*, 1 C. B. N. S. 67; 26 L. J. C. P. 62: *Vf*, SHALL AND LAWFULLY MAY):

Where, by 7 & 8 V. c. 113, s. 13, execution "may be issued by leave of the Court" (against a shareholder in a joint-stock bank) on motion by a judgment creditor, and that "it shall be lawful" for such Court to make absolute or discharge such rule (*Morisse* v. *Royal British Bank*, sup):

Where, by Indictable Offences Act, 1848, 11 & 12 V. c. 42, s. 9, justices "may if they think fit" issue summons or warrant (*R.* v. *Adamson*, 1 Q. B. D. 201; 45 L. J. M. C. 46):

Where, by P. H. Act, 1848, 11 & 12 V. c. 63, s. 89, a local board of health "may" make rates to pay charges within that section (*R.* v. *Rotherham*, 8 E. & B. 906; 27 L. J. Q. B. 156: *Worthington* v. *Hulton*, L. R. 1 Q. B. 63; 35 L. J. Q. B. 61; cited by Ld Blackburn, *Julius* v. *Oxford, Bp.*, sup):

Where, by the Joint Stock Companies Winding-up Act, 1848, 11 & 12 V. c. 45, s. 73, "it shall be lawful" for a judge to restrain an action against a contributory to a Company unless Master's permission to proceed obtained and the debt proved before the Master (*Marson* v. *Lund*, 13 Q. B. 664):

Where, by a Private Act it was declared that "it shall be lawful" for a Railway Company to construct bridges *of a certain height and span* (*R.* v. *Caledonian Ry*, 16 Q. B. 19; 20 L. J. Q. B. 150):

Where, by 13 & 14 V. c. 61, s. 13, a Judge "may" order costs of an action in a Superior Court (under certain defined conditions) though for an amount which might have been sued for in the County Court (*Macdougall* v. *Paterson*, 21 L. J. C. P. 27; 11 C. B. 755: *Crake* v. *Powell*, 21 L. J. Q. B. 183; 2 E. & B. 210: *Asplin* v. *Blackman*, 21 L. J. Ex. 78; 7 Ex. 386;—over-ruling the previous decisions in the Exchequer of *Jones* v. *Harrison*, 20 L. J. Ex. 166; 6 Ex. 328: *Palmer* v. *Richards*, 20 L. J. Ex. 323; 6 Ex. 335):

Where, by the Comp Act, 1862, s. 79, a Company "may" be wound up by the Court (*Bowes* v. *Hope Socy*, 11 H. L. Ca. 389; 35 L. J. Ch. 574):

Where, by s. 211, P. H. Act, 1875, power is given of rating the owner of property instead of the occupier, but at a reduced estimate, and when that estimate is in respect of tenements whether occupied or not, then the assessment "may" be on one half an occupier's rating (*R.* v. *Barclay*, 51 L. J. M. C. 47; 8 Q. B. D. 486):

Where a Merchant writes to his Commission Agent "you may invest" in a specified way proceeds of goods consigned to the latter (*Entwistle* v. *Dent*, cited PROCEEDS).

Digitized by Google

II. In the following cases the words now under consideration have been held to confer

A Discretionary or Enabling Power:—

Where, by 43 G. 3, c. 59, s. 2, "it shall and may be lawful" for justices in Quarter Sessions to widen county bridges (*Re Newport Bridge*, 29 L. J. M. C. 52; 2 E. & E. 377):

Where, by 1 W. 4, c. 22, s. 4, "it shall be lawful" for the Court to order examination of witnesses before a Master within the jurisdiction or to issue commission for the examination of witnesses out of the jurisdiction (*Ducket* v. *Williams*, 9 L. J. O. S. Ex. 177: *Castelli* v. *Groome*, 21 L. J. Q. B. 308; 18 Q. B. 490):

Where, by Church Discipline Act, 1840, 3 & 4 V. c. 86, s. 3, "it shall be lawful" for a Bishop to issue a commission to enquire as to the conduct of clerks in holy orders within his diocese (*R.* v. *Chichester, Bp.*, 29 L. J. Q. B. 23; 2 E. & E. 209: *Julius* v. *Oxford, Bp.*, sup); so, under ss. 8 and 9, Public Worship Regn Act, 1874, 37 & 38 V. c. 85 (*R.* v. *London, Bp.*, 59 L. J. Q. B. 169: 24 Q. B. D. 213: *Allcroft* v. *London, Bp.*, 1891, A. C. 666; 61 L. J. Q. B. 62; 65 L. T. 92; 55 J. P. 773):

Where, by s. 6 (1), Comp Winding-up Act, 1890, the Court "may" give effect to the nomination of a Liquidator by Creditors and Contributories (*Re Johannesberg Land and Gold Trust*, 1892, 1 Ch. 583; 61 L. J. Ch. 284; 66 L. T. 605; 40 W. R. 456):

Where, by s. 125 (4), Bankry Act, 1883, the Court "may" transfer an Administration Action to a Bankry Court (*Re Baker*, *Nichols* v. *Baker*, 59 L. J. Ch. 661; 44 Ch. D. 262); so, where "it shall be lawful" for a Bankry Court to remove a Trustee who becomes bankrupt (*Re Bridgman*, 1 Dr. & Sm. 164; 29 L. J. Ch. 844):

Where, by s. 49, Lunacy Act, 1890, the Commrs in Lunacy "may" discharge a patient, on certificate of two medical practitioners (*R.* v. *Lunacy Commrs*, 1897, 1 Q. B. 630; 66 L. J. Q. B. 387; 76 L. T. 353; 45 W. R. 505; 61 J. P. 278):

Where, by s. 134, Lunacy Act, 1890, the Court "may" order the transfer of stock vested in a person out of the jurisdiction (*Re Knight*, cited VESTED):

Where, by s. 74, Co. Co. Act, 1888, an Admiralty action "may" be brought in a specified district (*Pugsley* v. *Ropkins*, 1892, 2 Q. B. 189, 190; 61 L. J. Q. B. 645, explaining *The Hero*, 1891, P. 294; 60 L. J. P. D. & A. 99); so, under the same section, of the leave to be given by the Judge or Registrar (*R.* v. *Turner*, 1897, 1 Q. B. 445; 66 L. J. Q. B. 417):

Where, by s. 10, Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75, a Co. Co. Judge "may" make a Summary Order to restrain offences under that Act (per Lindley, L. J., *West Riding* v. *Holmfirth*,

Digitized by Google

A Discretionary or Enabling Power: —

1894, 2 Q. B. 842; 63 L. J. Q. B. 488; 71 L. T. 217: *Kirkheaton* v. *Ainley*, 1892, 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. 209; 41 W. R. 99):

Where, by s. 20, Commons Act, 1876, 39 & 40 V. c. 56, Justices "may" prescribe conditions as to mode of digging for gravel, &c (*Hayes Common Conservators* v. *Bromley*, 1897, 1 Q. B. 321; 66 L. J. Q. B. 155; 76 L. T. 51; 45 W. R. 207; 61 J. P. 104):

Where, by s. 8 (1), Private Street Works Act, 1892, 55 & 56 V. c. 57, Justices "may" if they think fit adjourn the hearing of Objections (*Twickenham* v. *Munton*, cited IF THEY SHALL THINK FIT):

Where, by s. 42 (13), Valuation (Metropolis) Act, 1869, Justices "may" hold Assessment Sessions at any time after 1st February which will enable them to determine all appeals before the ensuing 31st March (*R.* v. *London Jus.*, 1893, 2 Q. B. 476; 63 L. J. Q. B. 148; 69 L. T. 682; affd in H. L., nom. *London Co. Co.* v. *St. George's Assessment Committee*, 1894, A. C. 600; 64 L. J. Q. B. 48; 71 L. T. 409):

Where, by s. 17, Canada Temperance Act, 1864, two or more Offences by the same party "may" be included in one Complaint (*Wentworth* v. *Mathieu*, 1900, A. C. 212; 69 L. J. P. C. 11; 82 L. T. 161; 16 Times Rep. 223):

Where, by s. 37, Solicitors Act, 1843, "it shall be lawful" for the Court or Judge to order the delivery up of documents in possession of a solicitor upon an application under that section for taxation of costs (*Ex p. Jarman*, 46 L. J. Ch. 485; 4 Ch. D. 835):

Where, by R. 48, Ord. 65, R. S. C., the Taxing Master "may" allow Refreshers to Counsel (*Smith* v. *Wills*, 29 S. J. 684):

Where, by s. 97, Comp C. Act, 1845, Directors "may" contract on behalf of a Company by writing and under their common seal (per Turner, L. J., *Wilson* v. *West Hartlepool Ry*, 34 L. J. Ch. 250):

Where, by Acts obtained in 1846 and 1849, it was recited that it would be for the local and public advantage that a certain railway should be made and that "it shall be lawful" for the projecting Company to make it (per Exch. Chamber in *York. & North Mid Ry* v. *The Queen*, 22 L. J. Q. B. 225; 1 E. & B. 858, reversing jdgmt of the Queen's Bench wherein Erle, J., was diss., 22 L. J. Q. B. 41; 1 E. & B. 178: *Va*, *Scottish N. E. Ry* v. *Stewart*, 3 Macq. H. L. 382: *R.* v. *Lancashire & Yorkshire Ry*, 1 E. & B. 228: *R.* v. *G. W. Ry*, 1 E. & B. 253, 874, and jdgmt of Manisty, J., *S. E. Ry* v. *Ry Commrs*, 49 L. J. Q. B. 277; 5 Q. B. D. 217, revd 6 Q. B. D. 586: *R.* v. *G. W. Ry*, 69 L. T. 572; 62 L. J. Q. B. 572). *Vf*, CONTRACT.

Where, by s. 27 (2), Ry & Canal Traffic Act, 1883, the Court or Commrs in deciding as to an alleged UNDUE PREFERENCE "may" take into consideration whether a lower charge or difference in treatment is

Digitized by Google

A Discretionary or Enabling Power: —

necessary for securing the interests of the PUBLIC (*Liverpool Corn Traders Assn* v. *G. W. Ry*, 8 Ry & Can Traffic Ca. 142):

Where, by Com. L. Pro. Act, 1852, s. 40, "it shall be lawful" for a husband, in an action for injury to his wife, to add thereto claims in his own right (*Brockbank* v. *Whitehaven Junction Ry*, 31 L. J. Ex. 349; 7 H. & N. 834):

Where, by Com. L. Pro. Act, 1854, s. 64, a Judge, if a garnishee disputes his liability, "may" (instead of ordering execution) order that judgment creditor shall be at liberty to proceed against the garnishee by writ (*Wise* v. *Birkenshaw*, 29 L. J. Ex. 240):

Where, by 18 & 19 V. c. 128, s. 4, a vacancy in a Burial Board "may" be filled up by the Board, in case vestry shall, for one month, neglect to supply the vacancy (*R.* v. *South Weald*, 5 B. & S. 391; 33 L. J. M. C. 193):

Where, by the Sunday and Ragged Schools (Exemption from Rating) Act, 1869, 32 & 33 V. c. 40, s. 1, the rating authority "may" exempt from rating a Sunday or Ragged School (*Bell* v. *Crane*, 42 L. J. M. C. 122; L. R. 8 Q. B. 481; 29 L. T. 207; 21 W. R. 911):

Where, by s. 27, Industrial and Provident Societies Act, 1893, 56 & 57 V. c. 39, a Committee of a Provident Society "may," without Letters of Administration, distribute shares in cases of intestacy (*Escritt* v. *Todmorden Socy*, 1896, 1 Q. B. 461; 65 L. J. Q. B. 358; 74 L. T. 350; 44 W. R. 544).

Note.—In *Castelli* v. *Groome*, sup, it was contended in argument that the words there should be construed as imperative, as being governed by *R.* v. *Havering-atte-Bower*, sup, and it has since been urged that *Castelli* v. *Groome* is an inconsistent decision (Wilberforce, 202).

But in the earlier case the question was as to the right to sue at all and which right was inherent in suitors without distinction of mode; but in *Castelli* v. *Groome* the question was as to the mode of taking evidence in certain cases,—a mode by no means the usual and necessarily a costly one. It would therefore seem that *Castelli* v. *Groome* is peculiarly within the canon of *Julius* v. *Oxford, Bp.*, and like *Wise* v. *Birkenshaw*, sup, was a case in which enabling words should receive their ordinary meaning.

In *Ex p. Jarman*, and *R.* v. *South Weald*, sup, the enabling nature of the words would scarcely need adventitious aid; but in each case it was pointed out that the enabling words under discussion were found in sections which for other purposes employed imperative words.

Undetermined.

In *Davies* v. *Evans* (51 L. J. M. C. 132; 9 Q. B. D. 238), the magistrates decided that the power under 35 & 36 V. c. 65, s. 4, whereby

Digitized by Google

Undetermined.

justices "may if they see fit" commit a putative father for disobedience of a Bastardy Order, gave a discretion which they refused to exercise; and on appeal the Court was equally divided, Huddleston, B., holding that the power was obligatory, Grove, J., holding that it was discretionary.

It is doubtful whether "may" as used in s. 4, Removal of Wrecks Act, 1877, 40 & 41 V. c. 16, makes it obligatory on a Harbour Authority to remove wrecks that have sunk within the area of its jurisdiction. During the argument of *The Douglas*, Brett, L. J., indicated that "may" should here be read as "must," and apparently to a like effect was the judgment of Cotton, L. J. (7 P. D. 151; 51 L. J. P. D. & A. 89). But in *Dormont* v. *Furness Ry* (52 L. J. Q. B. 331; 11 Q. B. D. 496), Kay, J., hesitated to follow the lead as indicated, rather than positively ruled, in *The Douglas*, and based his decision for the plaintiff on another ground.

So, it is doubtful whether "may" is obligatory or enabling in s. 4 (3 *b*), P. H. London Act, 1891 (*V.* per Coleridge, C. J., *Thames Conservators* v. *Port of London Sanitary Authority*, 1894, 1 Q. B. 647; 63 L. J. M. C. 123).

V. SHALL: SHALL AND LAWFULLY MAY: MUST: Maxwell, 286–303: Wilberforce, 193–206.

A Lessee's Covenant (in a Public-house Lease) not to do or suffer anything whereby the License "*may be forfeited,*" is not to be read as "*shall* be forfeited," and if the license is put in jeopardy the covenant is broken (*Harmann* v. *Powell*, cited AFFECT).

"May," like "Shall," may denote futurity, *e.g.* a gift to the children of the members of a CLASS "who *may die* in my lifetime," would not include children of a member of such class who was already dead at the date of the Will (*Re Hotchkiss*, 38 L. J. Ch. 631; L. R. 8 Eq. 643).

MAY BE. — Guarantee of "any balance that may be due," construed by Pollock, C. B., and Martin, B. (diss. Bramwell, B.), as referring to a future balance (*Broom* v. *Batchelor*, 25 L. J. Ex. 299; 1 H. & N. 255). Pollock, C. B., said, — "'May be' is, in my judgment, clearly future. I have been unable to find direct authority in any Dictionary; but in *Cruden's Concordance of the Bible*, from sixty to eighty references are given, and the expression 'may be' is found in various parts of the Bible, nine out of ten of which have manifestly a reference to the future, and not to the past or present, and not one is necessarily future. The *Concordance of Shakspeare* gives no references in respect to the words 'may' and 'be.' But as far as I can bring my knowledge of the English language to bear upon the subject, 'may be' is much oftener used with

Digitized by Google

reference to the future than the past or the present." On the other hand Bramwell, B., said, —" 'May be' is the present tense, and, *primâ facie,* means, 'now may be.' It is occasionally used in the future tense, no doubt, as, for instance, 'may be due to-day,' or 'may be due to-morrow.' I apprehend you may use it to indicate future applications; but in that case it must be understood as applied in the present tense. A thing 'may be black,' or 'it may be fit to eat,' or 'it may be fit to cook.' If you use the words 'may be,' without indicating the time, to my mind the expression applies to the present, or, more correctly, not to a question with reference to the future." *V.* Given.

MAYHEM. — *V.* Maim.

MAYNOUR. — *V.* Manner.

MAYOR. — The Scotch equivalent for "Mayor," in the Ballot Act, 1872, is "the Provost, or other Chief Magistrate, of a Municipal Borough" (s. 22); so of 46 & 47 V. c. 51 (s. 68).

In Ireland "Mayor" sometimes includes Lord Mayor (18 & 19 V. c. 40, s. 3; 39 & 40 V. c. 76, s. 2; 61 & 62 V. c. 37, s. 109), and sometimes, "Chairman of Commrs, Chairman of Municipal Commrs, Chairman of Town Commrs, and Chairman of Township Commrs" (Ballot Act, 1872, s. 23).

Mayor *Elect*; *V.* Outgoing Alderman.

"The Municipal Corporation of a Borough shall bear the name of 'the *Mayor, Aldermen, and Burgesses*' of the Borough; or, in the case of a City, 'the *Mayor, Aldermen, and Citizens*' of the City" (s. 8, Mun Corp Act, 1882).

ME. — An Examination before Removing Justices "sworn before *me*" and "*I* do hereby certify," &c, is good if, in fact, signed by two Justices (*R.* v. *Silkstone*, 2 Q. B. 520; 12 L. J. M. C. 5). *Cp*, I promise.

MEADOWS. — "If a man grant *omnia prata sua,* all his meadowes, the land itselfe of that kinde passeth" (Co. Litt. 4 b). *V.* Prata.

"In general, where meadow or pasture land is named, it must be understood of Ancient Meadow or pasture" (Woodf. 147, citing *Tresham* v. *Lamb*, 2 Brownl. & Gold. 46: *Gunning* v. *Gunning*, Show. 354. But this deduction from the cases has been questioned, *V.* Elph. 596). *V.* Pastures.

MEAL. — *V.* Corn.

MEAN. — When a statute says that a word or phrase shall "mean," — not merely that it shall "include," — certain things or acts, "the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in the definition" (per

Digitized by Google

Esher, M. R., *Gough* v. *Gough*, cited LANDLORD: *Vf*, per same learned judge, *Bristol Trams Co* v. *Bristol*, 59 L. J. Q. B. 449). *Cp*, INCLUDE.

"Mean and include"; *V*. INCLUDE.

V. EXTEND TO AND INCLUDE.

MEAN OF TWO LONDON CHEMISTS. — *V*. *Heyworth* v. *Knight*, 33 L. J. C. P. 298; 17 C. B. N. S. 298.

MEAN TIME. — *V*. OF THE CLOCK: TIME.

V. MEANTIME.

MEANS. — A judgment-debtor was ordered to pay the debt by £5 a month; subsequently he received (by £5 a week) £60 as a voluntary gift from his brother; — Cave, J., refused to commit, being of opinion that Gifts are not "Means to pay" within s. 5 (2), Debtors Act, 1869, 32 & 33 V. c. 62. The Court of Appeal upheld the decision; but on the ground that there had been no evidence of the circumstances of the debtor other than the receipt of the £60; and both Cotton and Lindley, L. JJ., were of opinion that "Means" had no relation to their source (*Koster* v. *Park*, 54 L. J. Q. B. 389; 14 Q. B. D. 597; 33 W. R. 606; 52 L. T. 946). An inalienable Pension, while accruing, is not "Means" (*Bank of Scotland* v. *Cunningham*, 1899, 2 I. R. 780). *Vh*, *Chard* v. *Jervis*, 51 L. J. Q. B. 442; 9 Q. B. D. 178: *McIntosh* v. *Simkins*, 45 S. J. 30; revd 70 L. J. K. B. 268; 1901, 1 K. B. 487; 84 L. T. 21; 49 W. R. 241. Having means to pay *part only* of a jdgmt debt, justifies committal (*Re Fryer*, 3 Morr. 231).

V. FIRST AND READIEST: REASONABLE MEANS.

"Acts, Means," &c; *V*. ACTS.

Injury by "External and Visible Means," — in such a phrase, "Means" is used in the sense of "Cause" (per Esher, M. R., *Hamlyn* v. *Crown Insrce*, cited EXTERNAL).

V. MECHANICAL.

MEANTIME. — A payment made more than 12 years after right of action accrued but made within 12 years of action brought, is a payment "in the Meantime" within s. 8, Real Property Limitation Act, 1874; for the phrase "refers to the period between the time when the action is brought and the time after which the remedy for the debt would otherwise have been barred" (per Byrne, J., *Re Clifden*, 1900, 1 Ch. 774; 69 L. J. Ch. 478; 82 L. T. 558; 48 W. R. 428; following *Harty* v. *Davis*, 13 Ir. L. R. 23).

MEASE: MESE. — A MESSUAGE (Spelm.: Termes de la Ley). *V*. HOUSE.

MEASURAGE. — Measurage "was a TOLL due for the use of a Common Bushel, or other instrument, to measure dry or wet goods imported or exported" (Hale, De Portibus Maris, ch. 6).

Digitized by Google

MEASURE. — A "Measure," within 41 & 42 V. c. 49, is a Vessel ordinarily used as a Measure; — the material of which it is made is immaterial (*Washington* v. *Young*, 19 L. J. Ex. 348; 5 Ex. 403: *R.* v. *Aulton*, 30 L. J. M. C. 129; 3 E. & E. 568); a milk-churn may be within the word (*Harris* v. *London Co. Co.*, 1895, 1 Q. B. 240; 64 L. J. M. C. 81; 71 L. T. 844). As to selling by the "Glass"; *V. Craig* v. *McPhee*, 10 Sess. Ca. 4th Ser. 51; 48 J. P. 115.

V. STANDARD: WEIGHT.

"Local or Customary Measure," s. 19, 41 & 42 V. c. 49; *V. Hughes* v. *Humphreys*, 23 L. J. Q. B. 356; 3 E. & B. 954: *Jones* v. *Giles*, 23 L. J. Ex. 292; 24 Ib. 259; 10 Ex. 119; 11 Ib. 393.

For the old and modern *Measures of Land*; *V.* Elph. 596–602.

V. LEGAL MEASURES.

MEASUREMENT. — *V.* ADMEASUREMENT.

Measurement of Distance; *V.* DISTANCE.

V. WEIGHT AND MEASUREMENT.

MEASURING. — "Measuring Instrument," quà Weights and Measures Act, 1889, "includes, any instrument of length, capacity, volume, temperature, pressure, or gravity, or for the measurement and determination of electrical quantities" (s. 35). *Cp,* WEIGHING.

MECHANIC. — Probably, this word is synonymous with ARTIFICER. *Va, Jackson* v. *Hill*, 13 Q. B. D. 618; 48 J. P. 488.

V. WORKMAN.

MECHANICAL. — A Vessel whose fog-horn is sounded by the mouth, does not comply with Art. 12, Regns for Preventing Collisions at Sea, 1879, which required one "sounded by a Bellows or other Mechanical *Means*," and the vessel will be to blame for a Collision though the sound from the mouth-horn is heard by the other vessel (*The Love Bird*, 6 P. D. 80; 44 L. T. 650).

"Mechanical Means of Bodily Restraint," quà Lunacy Act, 1890, are "such instruments and appliances as the Commissioners may, by regulations to be made from time to time, determine" (s. 40).

MEDALS. — This word, in a bequest, will pass curious pieces of current coin kept by the testator with his medals (*Bridgman* v. *Dove*, 3 Atk. 202: Wms. Exs. 1066).

MEDICAL. — Quà Poor Relief (Ir) Act, 1851, 14 & 15 V. c. 68, "Medical" includes Surgical (s. 21).

The meaning of the term "Medical or Surgical Assistance" in the Medical Relief Disqualification Removal Act, 1885, 48 & 49 V. c. 46, "depends upon the nature of the service rendered, and not necessarily upon the person who renders it" (per Pollock, B., *Honeybone* v. *Ham-*

Digitized by Google

bridge, 56 L. J. Q. B. 48; 18 Q. B. D. 418; 56 L. T. 365; 35 W. R. 520; 51 J. P. 103); and it was there held that it included the attendance of a Mid-wife.

Medical Attendance; *V.* MEDICINE.

"Medical Authorities"; Stat. Def., 41 & 42 V. c. 33, s. 2.

"Medical Certificate"; Stat. Def., Police (Scot) Act, 1890, 53 & 54 V. c. 67, s. 30.

"Medical Corporation"; Stat. Def., Medical Act, 1886, 49 & 50 V. c. 48, s. 27: the Apothecaries Hall, Dublin, is a "Medical Corporation" within s. 3 of that Act (*A-G. Ireland* v. *Apothecaries Hall*, 21 L. R. Ir. 253); and so is the Royal College of Physicians, London (*Royal College of Physicians* v. *Gen. Med. Council*, 68 L. T. 496; 62 L. J. Q. B. 329).

"Medical Diploma"; Stat. Def., Medical Act, 1886, s. 27.

"Medical Institution"; *V.* PUBLIC HOSPITAL.

"Medical Officer"; Stat. Def., Lunacy Act, 1890, s. 341; General Prisons (Ir) Act, 1877, s. 3; P. H. Scotland Act, 1897, s. 3. "Medical Officer" of a Public Hospital, s. 22, Coroners Act, 1887, includes one who gives his services gratuitously (*Horner* v. *Lewis*, cited PUBLIC HOSPITAL). *V.* CHIEF.

"Medical Officer of Health"; Stat. Def., 53 & 54 V. c. 34, s. 2, c. 70, s. 96; P. H. Ireland Act, 1896, s. 18; P. H. Scotland Act, 1897, s. 3.

"Medical Person," quà Lunacy (Scot) Acts; Stat. Def., 20 & 21 V. c. 71, s. 3; 25 & 26 V. c. 54, s. 1.

"Medical Practitioner"; Stat. Def., 30 & 31 V. c. 84, s. 35; Lunacy Act, 1890, s. 341.—*Scot.* 23 & 24 V. c. 105, s. 4; 26 & 27 V. c. 108, s. 30; P. H. Scotland Act, 1897, s. 3. One holding only a United States degree of Doctor of Medicine is not a "Medical Practitioner" within s. 16, 30 & 31 V. c. 84 (*Cromack* v. *Brennand*, 37 J. P. 276).

"Registered Medical Practitioner"; Stat. Def., Medical Act, 1886, s. 27.

"The Medical Acts"; *V.* Sch 2, Short Titles Act, 1896.

V. USUAL MEDICAL ATTENDANT: APOTHECARY: PHYSICIAN: SURGEON.

MEDICINE.—"Medicine" is equivalent to "PHYSIC" (per Smith, L. J., *Royal College of Physicians* v. *Gen. Med. Council*, cited MEDICAL).

"Medicine dispensed by a registered person," s. 17, Pharmacy Act, 1868, 31 & 32 V. c. 121; *V. Berry* v. *Henderson*, L. R. 5 Q. B. 296; 39 L. J. M. C. 77.

Deductions for payment to a Sick and Funeral Allowance Club, are for "Medicine, or Medical Attendance," within s. 23, Truck Act, 1831, if it be proved that the whole amount of the deduction has been actually expended on medicine or medical attendance (*Lamb* v. *G. N. Ry*, cited CONTRACT TO SUPPLY).

"Patent Medicine"; *V.* POISON.

MEET.—*V.* SEEM MEET.

Digitized by Google

MEET TOGETHER. — *V.* Assemble.

MEETING. — One swallow does not make a summer, nor does the presence of one shareholder constitute a "Meeting" (*Re Sanitary Carbon Co*, W. N. (77) 223). "The word 'Meeting' implies a concurrence, or coming face to face, of at least two persons" (per Coleridge, C. J., *Sharpe* v. *Dawes*, 46 L. J. Q. B. 104; 2 Q. B. D. 26; 25 W. R. 66; 36 L. T. 188). There is accordingly, and speaking generally, no "Meeting" of Shareholders or other bodies if only one attends; though "no doubt in a particular statute the word might be used in a special sense, so that the attendance of one might satisfy it" (per Coleridge, C. J., *Sharpe* v. *Dawes*, sup). *V.* Quorum.

"Meeting," in Art. 35, Table A, Comp Act, 1862, does not apply to a meeting of subscribers of Mem of Assn (*John Morley Bg Co* v. *Barras*, cited Directors).

Quà Friendly Soc. Act, 1896, "'Meeting' shall include (where the Rules of a Socy or Branch so allow) a meeting of delegates appointed by members" (s. 106).

"Meeting of an Authority"; Stat. Def., Loc Gov Act, 1888, s. 78 (4).

Insurance of the Takings at a Cycling Meeting "provided that the Expenses attaching to the Meeting" are not less than a stated sum; held, that the cost of the Insrce was an "Expense attaching to the Meeting," for, in such a connection, "Meeting," means, not merely the actual Meeting while in progress but, the whole adventure" (per Bigham, J., *London County Cycling Club* v. *Beck*, 3 Com. Ca. 49).

V. General Meeting: Public Meeting: Special.

"Present at the Meeting," s. 18, Highway Act, 1835;—a power to determine questions by vestrymen so present, does not preclude the common law right to demand a poll (*R.* v. *How*, 33 L. J. M. C. 53; *R.* v. *D'Oyly*, 12 A. & E. 139: *R.* v. *St. Mary, Lambeth*, 8 Ib. 356; 9 L. J. M. C. 113: *White* v. *Steel*, 31 L. J. C. P. 265; 12 C. B. N. S. 383). *V.* Assembled.

MELIORATING WASTE. — *V.* Waste.

MEMBER. — "Life or Member"; *V.* Felony.

Quà Comp Act, 1862, and Companies thereunder, "Member," means, a *registered* shareholder or stockholder in a Co (s. 23: per Jessel, M. R., *Pender* v. *Lushington*, 46 L. J. Ch. 317; 6 Ch. D. 70). *Vf*, *Re Macdonald*, 1894, 1 Ch. 89; 63 L. J. Q. B. 193: *note* on s. 23, Buckl.

"In his Character of a Member"; *V.* Character.

"Members," s. 199, Comp Act, 1862, does not necessarily mean Shareholders (*Re South London Fish Market*, 39 Ch. D. 324; 37 W. R. 3; 59 L. T. 210). Past members who are merely liable as contributories and estates of deceased or bankrupt members, are not "Members" within the

Digitized by Google

section (*Re Bowling and Wilby*, 1895, 1 Ch. 663; 64 L. J. Ch. 427). *Vf*, PAST.

In Art. 27, Table A, Comp Act, 1862, "Member" includes a deceased member so long as his name remains on the register (*James* v. *Buena Ventura Syndicate*, 1896, 1 Ch. 456; 65 L. J. Ch. 284); so, generally, throughout the Table (*New Zealand Gold Co* v. *Peacock*, 1894, 1 Q. B. 622; 63 L. J. Q. B. 227: *Allen* v. *Gold Reefs of W. Africa*, 1900, 1 Ch. 656; 69 L. J. Ch. 266; 82 L. T. 210; 48 W. R. 452).

Stat. Def. — 11 & 12 V. c. 45, s. 3.

"Member of an AUTHORITY"; Stat. Def., Loc Gov Act, 1888, s. 78 (4).

"Member" of a *Building Socy* "is not a Term of Art; and it may mean different things according as you apply the term to persons outside the Socy, or as you apply it to the rights which arise under the Rules to persons within the Socy" (per Bowen, L. J., *Re Blackburn Bg Socy*, 52 L. J. Ch. 902; 24 Ch. D. 437). A Member of a Bg Socy who has given Notice of Withdrawal, does not cease to be a Member till he has been paid off (*Sibun* v. *Pearce, &c, Bg Socy*, 44 Ch. D. 354); but one who has been paid off, or who has redeemed his mortgage, ceases to all intents and purposes to be a Member (*Re West Riding Bg Socy*, 59 L. J. Ch. 823; 45 Ch. D. 463; 63 L. T. 483; 39 W. R. 74). *Note*: As to Priorities of WITHDRAWAL, and Deceased, Members on a Voluntary Dissolution of a Bg Socy, *V. Re Counties Conservative Bg Socy*, 69 L. J. Ch. 798; 1900, 2 Ch. 819; 49 W. R. 71.

Member of the Church of England; *V.* CHURCH.

"Member of a CATHEDRAL Church," quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, "means, any Dean, Residentiary Canon, Non-residentiary Canon, Prebendary, or Honorary Canon, of that Church" (s. 12).

"Member of the *Collegiate Establishment*"; Stat. Def., 51 & 52 V. c. 11, s. 8.

"Members of the CONSTABULARY Force"; Stat. Def., 29 & 30 V. c. 103, s. 1; 37 & 38 V. c. 80, s. 1.

"Member" of a *Railway Co*; *V. Hutton* v. *Thompson*, 3 H. L. Ca. 161.

A "Member" of a Body virtute officio, is none the less a Member, *e.g.* a Churchwarden was a Member of the Vestry of his parish within s. 54, Metrop Man. Act, 1855 (*Leftly* v. *Monnington*, 4 Ex. D. 307; 48 L. J. Ex. 543).

Members' Club; *V.* CLUB.

MEMORANDUM. — "'*Memorandum.*' This word doth ever betoken some excellent point of learning" (Co. Litt. 40 a): so of "NOTE" (Ib. 22 a), and "To WIT" (Ib. 16 a).

"Memorandum of Agreement"; *V.* AGREEMENT: EVIDENCE OF A CONTRACT: MINUTE: NOTE.

Digitized by Google

"Memorandum of ASSOCIATION" of a Co is its charter, and defines the limitation of its powers (per Cairns, C., *Ashbury Co* v. *Riche*, 44 L. J. Ex. 196; L. R. 7 H. L. 668); it prescribes the Co's Name, Registered Office, Objects, and Capital (Comp Act, 1862, Part 1, by Sch 2 of which Act the Form is provided). *Vh.* Comp Mem of Assn Act, 1890: Buckl. 6–21: Palmer Co. Prec. ch. 6: Hamilton, ch. 2: MAIN PURPOSE.

"Memorandum of Charge"; *V.* CONVEYANCE.

MEMORY. — The time of legal "Memory hath been long ago ascertained by the law to commence from the beginning of the reign of Richard 1" (2 Bl. Com. 31, citing 2 Inst. 238, 239). *V.* PRESCRIPTION: TIME OUT OF MIND.

MEN. — *V.* FREEHOLDER: MAN: MATERIAL MEN.

Men's Workshop; *V.* WORKSHOP.

MENACE. — A Menace is a threat to injure; and the injury may be to reputation as well as to the person or property. So, quà 24 & 25 V. c. 96, s. 49, provides that "it shall be immaterial whether the Menaces or Threats herein before mentioned be of Violence, Injury, or Accusation."

Thus, a threat to allege mere sexual immorality, is a "Menace" within s. 44, 24 & 25 V. c. 96 (*R.* v. *Tomlinson*, 1895, 1 Q. B. 706; 64 L. J. M. C. 97; 72 L. T. 155; 43 W. R. 544; 11 Times Rep. 212): *Vf*, *R.* v. *Smith*, 19 L. J. M. C. 80; 1 Den. 510; 2 C. & K. 882, on same word in s. 8, 7 & 8 G. 4, c. 29.

V. ACCUSATION: ACCUSE: THREAT: 8 Encyc. 354–358.

MENIAL SERVANT. — A "Menial Servant" is a subordinate DOMESTIC SERVANT (not always, though generally, an indoor servant, *V.* 1 Bl. Com. 425) whose service brings him into close proximity to his master, and thus rendering it to the interest of both master and servant that the contract should be determinable before the end of the year of service (per Erle, C. J., *Nicoll* v. *Greaves*, 33 L. J. C. P. 261; 17 C. B. N. S. 27).

A Head Gardener is a menial servant (*Nowlan* v. *Ablett*, 4 L. J. Ex. 155; 2 Cr. M. & R. 54); so is a Huntsman (*Nicoll* v. *Greaves*, sup); so is a general handy man, partly paid by perquisites (*Johnson* v. *Blenkensopp*, 5 Jur. 870).

But a Governess is not a menial servant (*Todd* v. *Kerrich* or *Kellage*, 8 Ex. 151; 22 L. J. Ex. 1); nor is a Housekeeper of a large hotel (*Lawler* v. *Linden*, Ir. Rep. 10 C. L. 188); nor is a Farm Bailiff who takes charge of glebe lands at a salary and share of profits (*R.* v. *Wortley*, 21 L. J. M. C. 44; 2 Den. 333).

In *Lawler* v. *Linden*, sup, Lawson, J., said, — "We have had an interesting disquisition as to the derivation of the word 'mœnia,' and it

Digitized by Google

has received a Saxon, a Latin, and a Greek, origin. If I were to offer an opinion I should say that the word 'mœnia' has nothing to do with it. Johnson derives it from the Saxon word *meiny*, which occurs in Chaucer and Shakespeare." *Vth*, Eversley on Domestic Relations, 2 ed., 824.

"I can find no better suggested explanation of 'Menial,' or statement of the position of a 'Domestic,' Servant than that given in Roberts & Wallace on the Employers' Liability Act, 3 ed., 214. It is as follows:—'It is submitted that the term *Menial Servant* may best be explained in accordance with all the authorities and the ordinary use of the word, as denoting those persons whose main duty is to do actual bodily work, as servants, for the personal comfort, convenience, or luxury, of the master his family and guests, and who, for this purpose, become part of the master's residential, or quasi residential, establishment.' It is not easy to conceive any clearer statement, or one which could be given to a jury with greater propriety" (per Collins, J., *Pearce* v. *Lansdowne*, 62 L. J. Q. B. 441; 69 L. T. 316; 57 J. P. 760). After referring with approval to the dictum in *Lawler* v. *Linden* (sup), Collins, J., added that (as pointed out by Roberts & Wallace, 215, *n*) the word was "originally spelt 'meyneall,' and may well be derived from the Saxon, *meine*, *mesnie*, a household, a family." "Meiny" is used for "Household" in 1 Ric. 2, c. 4.

V. Servant: Domestic Servant: Workman.

MENS REA.—*V.* Knowingly: Negligently: Offence: Wilful Neglect.

MENTAL.—Mental Gratification; *V.* Entertainment.
Mental Improvement; *V.* Conservative.
Mental Infirmity; *V.* Idiot: Lunatic: Unsound Mind.
Mental Shock by Fright; *V.* Accident.

MENTIONED.—*V.* Hereinbefore: Set forth.

MERCANTILE AGENT.—Quà Factors Act, 1889, "Mercantile Agent," means, "a Mercantile Agent having, in the customary course of his business *as such Agent*, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods" (s. 1): *Vh*, *Strohmenger* v. *Attenborough*, 11 Times Rep. 7. *Semble*, that a Jeweller's Traveller or agent, employed at a weekly salary and a commission on cash received, is not within that def (*Hastings* v. *Pearson*, 1893, 1 Q. B. 62; 62 L. J. Q. B. 75; 67 L. T. 553; 41 W. R. 127); and, at any rate, it is not "in the Ordinary Course" of his business, within s. 2 (1), to pledge his employer's goods with a pawnbroker (*Ib.*). A mere Warehousekeeper is not a "Mercantile Agent" (*Inglis* v. *Robertson*, 1898, A. C. 616; 67 L. J. P. C. 108; 79

Digitized by Google

L. T. 224). *Vf*, *Cole* v. *North Western Bank*, and *Tremoille* v. *Christie*, cited AGENT INTRUSTED: *Shenstone* v. *Hilton*, cited BUY: FACTOR.

This def is applicable to Sale of Goods Act, 1893; *V.* s. 25 (3).

MERCANTILE LAW. — *V.* LAW MERCHANT.

MERCHANDIZE. — *V.* GOODS, WARES, AND MERCHANDIZE: STONE.

In a Charter-Party the usual meaning of "Merchandize" is, "'Articles Shipped from the Port with reference to which the Contract of Carriage is made,' or 'Goods ordinarily shipped from the Port of Shipment'" (per Charles, J., *Vanderspar* v. *Duncan*, 8 Times Rep. 30). *Cp*, *Warren* v. *Peabody*, cited PRODUCE.

"Other legal Merchandize," in a Charter-Party; *V. Cockburn* v. *Alexander*, cited LEGAL MERCHANDIZE: *Vf*, *Warren* v. *Peabody*, sup: OTHER.

"Merchandize in trust or on commission for which the assured are responsible," in a Fire Policy; *V. North British Insrce* v. *Moffatt*, L. R. 7 C. P. 25; 41 L. J. C. P. 1.

Quà Ry and Canal Traffic Act, 1888, "'Merchandize,' includes, Goods, Cattle, Live Stock, and animals of all descriptions" (s. 55).

"Foreign Merchandize"; *V.* FOREIGN.

"The Merchandize Marks Acts, 1887 to 1894"; *V.* Sch 2, Short Titles Act, 1896.

MERCHANDIZE TRAFFIC. — "'Merchandize Traffic,' s. 10, Ry and Canal Traffic Act, 1888, is used in a more limited sense than the word 'TRAFFIC'" (per Peel, Commr, *Harrison* v. *Mid. Ry*, 8 Ry & Can Traffic Ca. 62).

MERCHANT. — A merchant of, or in, an article, is one who buys and sells it. A MANUFACTURER who confines himself to selling his own manufactures is not a "Merchant" (*Josselyn* v. *Parson*, 41 L. J. Ex. 60; L. R. 7 Ex. 127). In that case Bramwell, B., said that even where a man sells goods not of his own manufacture but sells only one class of those goods, he is not a Merchant. He said, "I think a Porter Merchant is a man who deals in all or many sorts of porter, not one only." The decision in the case was that a man travelling for a Brewer did not offend against a bond whereby he was prohibited from travelling "for any Porter, Ale, or Spirit, Merchant."

Ordinary Shopkeepers were formerly called Merchants (*Hamond* v. *Jethro*, 2 Brownl. & Gold. 99: Jacob: Com. Dig. *Merchant*, A); and, *semble*, "Merchant," s. 3, 21 Jac. 1, c. 16, includes an ordinary Shopkeeper (per Tindal, C. J., and Erskine, J., *Cottam* v. *Partridge*, 11 L. J. C. P. 161; 4 M. & G. 271). "But every one who buys and sells is not, at this day, called a Merchant; only those who traffic in the way of COMMERCE by importation or exportation, or carry on business by way

Digitized by Google

of emption, vendition, barter, permutation, or exchange, and who make it their living to buy and sell by a continued assiduity or frequent negotiation in the mystery of merchandizing, are esteemed Merchants. Those who buy goods to reduce them by their own art or industry into other forms and then to sell them are ARTIFICERS, not Merchants. Bankers, and such as deal by exchange, are properly called Merchants" (Jacob).

"Merchant" is a good description, quà Bills of Sale Acts, of a person who is a Coal Merchant and Ship Broker (*Gugen* v. *Sampson*, 4 F. & F. 974).

"Merchant Exporter"; *V. Camelo* v. *Britten*, cited EXPORTER.

In *R.* v. *Harper* (2 Salk. 611), the Court said, "they did not know what a *Merchant-Taylor* meant."

Statute of Merchants, 13 Edw. 1, stat. 3, repealed by Statute Law Revision Act, 1863.

V. LAW MERCHANT: BANKER.

MERCHANTABLE.—As between Manufacturer and Merchant, and where there is no express stipulation, goods are "merchantable" if they are reasonably fit for *some* of the merchant's purposes though not for others (*Jones* v. *Padgett*, 59 L. J. Q. B. 261; 24 Q. B. D. 650, discussing *Drummond* v. *Van Ingen*, cited SAMPLE).

MERCHANTS' ACCOUNTS.—The exception in the Limitation Act, 1623, 21 Jac. 1, c. 16, s. 3, relating to Merchants' Accounts, applies only to the Action of Account, or, *semble*, to an action for not accounting. It does not apply to an action for the several items of which the account is composed, or for the general balance (*Inglis* v. *Haigh*, 10 L. J. Ex. 406; 8 M. & W. 769: *Cottam* v. *Partridge*, cited MERCHANT). In *Cottam* v. *Partridge*, Erskine, J., pointed out that the exception was not of actions "upon" such accounts, but "for" them. *Note*: The exception was abolished by s. 9, Mer Law Amend. Act, 1856. *Vf*, ACCOUNT.

MERCHANT'S RISK.—Goods carried "at Merchant's RISK" and properly jettisoned, give rise to a claim by the charterers for a GENERAL AVERAGE CONTRIBUTION (*Burton* v. *English*, 53 L. J. Q. B. 133; 12 Q. B. D. 218; 48 L. T. 730; 31 W. R. 566). *Cp*, OWNER'S RISK.

"To be brought to and taken from Alongside the Ship at Merchant's Risk and Expense"; *V. Aktieselkab Helios* v. *Ekman*, cited ALONGSIDE.

MERCY.—"To be in Mercy"; *V.* AMERCIAMENT.

Shaving is not a "Work of Mercy," within the Sunday Observance Acts (*Phillips* v. *Innes*, cited HOLIDAY); from *whc* it may be stated that when GAIN is the object of the worker, his cannot be called a Work of Mercy.

MERE ACCOUNT.—*V.* ACCOUNT.

Digitized by Google

MERE MOTION.—"The words 'Ex mero motu et certâ scientiâ' do not reduce a Royal Grant to the same standard of construction as the grant of a subject and bring it within the principle that it is to be taken strongly against the grantor" (*R.* v. *Dover*, 4 L. J. Ex. 94; 1 Cr. M. & R. 726, citing *R.* v. *Capper*, 5 Price, 260).

MERELY CHARITABLE.—*V.* PURPOSE.

MERGER.—"Whenever a greater ESTATE and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated; or, in the law phrase, is said to be merged, that is, sunk or drowned in the greater" (2 Bl. Com. 177: Touch. 347, *n*), in other words, a Merger is accomplished by Operation of Law. It "is distinguishable from Suspension (*V.* SUSPENSE); the latter being the partial absorption occasioned by the temporary union of two estates or interests": "'Extinguishment' also differs from Merger and more especially denotes the annihilation of a collateral subject, right, or interest, in the estate out of which it is derived" (6 Cru. Dig. 467).

Vh. Preston on Merger: 6 Cru. Dig. Title 39: Goodeve, 162: Wms. R. P. 234: 8 Encyc. 366–370: *Re Radcliffe*, 1892, 1 Ch. 227; 61 L. J. Ch. 186; 66 L. T. 363; 40 W. R. 323.

"Mergers were never favoured in Courts of Law and still less in Courts of Equity" (Butler's *n* 4, Co. Litt. 338 b); and since the Jud. Act, 1873, (subs. 4, s. 25) there has been no "Merger, by Operation of Law only, of any Estate the beneficial interest in which would not be deemed to be merged or extinguished in Equity"; that means, there must now be a Merger both at Law and in Equity which is to be gathered from the intention of the parties (*Snow* v. *Boycott*, 1892, 3 Ch. 110; 61 L. J. Ch. 591; 66 L. T. 762; 40 W. R. 603: *Thellusson* v. *Liddard*, 1900, 2 Ch. 635; 69 L. J. Ch. 673; 82 L. T. 753; 49 W. R. 10: *Ingle* v. *Vaughan-Jenkins*, 1900, 2 Ch. 368; 69 L. J. Ch. 618; 83 L. T. 155; 48 W. R. 684).

A similar doctrine applies as to the Merger of a Mortgage or Charge when the Mtgee or Chargee becomes the Owner of the property (*Swinfen* v. *Swinfen*, 29 Bea. 199); but then, again, the question of Merger or not is one of intention; and that intention is to be gathered, not only from the documents, but also from the circumstances, an important consideration being whether or not Merger is for the benefit of the Owner (*Thorne* v. *Cann*, 1895, A. C. 11; 64 L. J. Ch. 1; 71 L. T. 852, *whc*, as nearly as possible without doing so in terms, over-rules *Toulmin* v. *Steere*, 3 Mer. 210: *Vf*, *Liquidation Co* v. *Willoughby*, 1898, A. C. 321; 67 L. J. Ch. 251; 78 L. T. 329). *Vh*, *Chetwynd* v. *Allen*, 1899, 1 Ch. 353; 68 L. J. Ch. 160; 80 L. T. 110; 47 W. R. 200: Beddoes on Mortgages, ch. 5: Fisher, Part 7, ch. 3: Robbins on Mortgages, ch. 62.

Cp, SURRENDER.

Digitized by Google

MERITS.—Rejection of a Bill in Parliament "upon Merits, and not merely upon Formal Points"; *V. N. Staffordshire Ry* v. *Lond. & N. W. Ry*, 6 W. R. 54.

If a Complainant in a Justices' Summons withdraws and gives Notice that he shall not attend, yet nevertheless the person charged attends on the Return-day and claims and obtains a dismissal of the charge, there is a "HEARING"; but not a Hearing "upon the Merits" within s. 44, 24 & 25 V. c. 100, to constitute which both the parties must appear and fight out their dispute before the Justices, and, failing such a "Hearing upon the Merits," a Certificate of Dismissal under s. 44 will not bar further proceedings under s. 45 (*Reed* v. *Nutt*, 59 L. J. Q. B. 311; 24 Q. B. D. 669; 62 L. T. 635; 38 W. R. 621; 54 J. P. 599). *Vh*, FORTHWITH: "Same Cause," sub CAUSE.

Amendments in Pleading "not material to the Merits," s. 23, 3 & 4 W. 4, c. 42; *V. Harvey* v. *Johnston*, 6 C. B. 295; 17 L. J. C. P. 298, and cases there cited.

MERTON.—The Statutes of Merton are those that were "provided in the Court of our Lord the King holden at Merton on Wednesday the morrow after the Feast of St. Vincent," 20 H. 3, A. D. 1235 (*V.* Preamble to these Statutes): repealed in part by Statute Law Revision Act, 1863.

MESE.—*V.* HOUSE: MEASE.

MESH.—The "Mesh or Mask" of a NET is the square formed by the lines; therefore, the provision, s. 3, 1 Eliz. c. 17, against fishing as therein mentioned except "with Net or Trammel whereof the Mesh or Mask shall be 2½ inches broad," does not mean that the Mesh may be drawn out in a straight line but, means that "every space between the threads of the Net should be 2½ inches from one thread to the opposite thread, and that the superficial area which bounds each Mesh should be 2½ inches square at least" (per Campbell, C. J., *Thomas* v. *Evans*, 27 L. J. M. C. 172; E. B. & E. 171); the word "broad" leads to that mode of calculation (per Campbell, C. J., and Wightman, J., *Ib.*).

S. 2, 3 Jac. 1, c. 12, speaks of a Mesh as that part of a Net which is "from knot to knot": *Cp*, s. 20, 5 & 6 V. c. 106.

MESIUL: MESUIL.—*V.* HAGA.

MESNE.—A Mesne Incumbrance is a charge on property subordinate to another. *Cp*, PUISNE.

A Mesne Lord is one holding of a Superior Lord (Termes de la Ley).

Mesne Process means, "preliminary, and not final, process" (per Lush, J., *Mainwaring* v. *Milner*, L. R. 4 Q. B. 152); therefore, a Capias under s. 3, 1 & 2 V. c. 110, was a "Mesne Process" within s. 21, 11 G. 4 & 1 W. 4, c. 70 (*S. C.*).

Digitized by Google

MESSAGE. — Though "Message" is frequently used in the Telegraph Acts of 1863 and 1868 in the sense of a substance with a message written upon it, yet a conversation through a Telephone is either a "Message" or, at all events, a "Communication" transmitted by a TELEGRAPH, which is the def of "Telegram" as given by s. 3, Telegraph Act, 1869, 32 & 33 V. c. 73 (*A-G.* v. *Edison Telephone Co*, 50 L. J. Q. B. 152; 6 Q. B. D. 244).

MESSUAGE. — This word is synonymous with (Co. Litt. 5 b: Touch. 94: per Ashhurst, J., *Doe* d. *Clements* v. *Collins*, 2 T. R. 502: per Bullen, J., *Scholes* v. *Hargreaves*, 5 Ib. 46: per Tindal, C. J., *Taylor* v. *Clemson*, 2 Q. B. 1036; 11 L. J. Ex. 453), or, at least, as comprehensive as, HOUSE, or DWELLING-HOUSE (*Fenn* v. *Grafton*, 2 Bing. N. C. 617); and includes an unfinished Carcase of a house (*Bennett* v. *Herring*, 3 C. B. N. S. 370, 374).

"The distinction suggested in the early cases between *Messuage* and *House* in regard to the greater comprehensiveness of the former (*V.* Termes de la Ley, *Mease*: *Arlett* v. *Ellis*, 9 B. & C. 681: HOUSE) is not to be relied on; and it is clear that even the word 'Messuage' would not now be held to carry land beyond a homestead or orchard, though contiguous to or enjoyed with it" (1 Jarm. 779). It may, however, be added that where under special circumstances, the word "House" would carry land or buildings beyond its own ambit, a like result would follow if the word "Messuage" were employed. *Vf,* 1 Jarm. 778, 779: Elph. 602: *Hibon* v. *Hibon*, 32 L. J. Ch. 374; 8 L. T. 195; 11 W. R. 455: *Smith* v. *Martin*, 2 Saund. 400; Wms. Saund.

"'Messuage,' denotes all that is occupied together at one and the same time, and no more" (per Abbott, C. J., *Kerslake* v. *White*, 2 Starkie, 508); therefore, a Lease of a Messuage with all its rooms, &c, will not comprise a room formerly part of the house but which had long ceased to be occupied with it and was separated from it by a wooden partition (*S. C.*).

"One Messuage"; *V. Rogers* v. *Hosegood*, cited HOUSE.

"All that my Messuage," being partly freehold and partly leasehold, and of which leasehold part testator afterwards acquired the fee, — passed the fee of the entirety (*Miles* v. *Miles*, L. R. 1 Eq. 462; 35 L. J. Ch. 315; 14 W. R. 272; 13 L. T. 697).

METAL. — "The word 'Metals' taken in its ordinary sense does not include the precious metals," *i.e.* gold or silver (per Parke, J., *Casher* v. *Holmes*, 2 B. & Ad. 597; 9 L. J. O. S. K. B. 280).

"'Metal' is a word of less extensive meaning than 'Mineral.' All Metals are Minerals; but all Minerals are not Metals" (MacS. 18); and the same learned author proceeds to adopt the definition in Johnson's Dictionary as follows; — "We understand by the term 'Metal' a firm,

Digitized by Google

heavy, and hard substance, opake, fusible by fire, and concreting again when cold into a solid body such as it was before, which is malleable under the hammer and is of a bright glossy and glittering substance where newly cut or broken."

"Metal fixed in land . . . in a Place dedicated to PUBLIC USE," s. 44, 7 & 8 G. 4, c. 29; held, to include a copper sundial fixed on the top of a wooden post standing in a churchyard (*R.* v. *Jones*, 27 L. J. M. C. 171; 31 L. T. O. S. 121).

"Metal *Goods*," quà s. 81, Patents, &c, Act, 1883, "means, all metals whether wrought, unwrought, or partly wrought; and all goods composed wholly or partly of any metal" (s. 20, 51 & 52 V. c. 50).

"Metal and India-Rubber Works"; *V.* NON-TEXTILE FACTORIES.

V. DEALER: PAVE: OTHER.

METER.—Quà Sale of Gas Act, 1859, 22 & 23 V. c. 66, "Meter" means, "Gas Meter, and shall include every kind of machine used for measuring gas" (s. 1).

"Meter Rent," quà Metropolis Gas Act, 1860, 23 & 24 V. c. 125, "includes, all rents and other payments for the use of Gas Meters" (s. 4).

METHOD.—"'Method,' properly speaking, is only placing several things and performing several operations in the most convenient order; but it may signify a contrivance or device" (per Lawrence, J., *Hornblower* v. *Boulton*, 8 T. R. 106), or a "mode or manner of effecting" a result or constructing a thing (per Rooke, J., *Boulton* v. *Bull*, 2 Bl. H. 478).

METHYLATE.—Quà Spirits Act, 1880, 43 & 44 V. c. 24, to "methylate" "means, to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage; and 'methylated spirits' means, spirits so mixed to the satisfaction of the Commissioners" of Inl. Rev. (s. 3).

METROPOLIS.—By the Metrop Man. Act, 1855, 18 & 19 V. c. 120, s. 250, the "Metropolis," for the purposes of that Act, is defined as,

The City of London:—

and the parishes and places mentioned in Schedules A, B, and C to that Act,—as follows,—

Schedule A.

The Parishes of St. Marylebone, St. Pancras, Lambeth, St. George Hanover Square, Islington, St. Mary, Shoreditch, St. Leonard:

The Parishes of Paddington, St. Matthew Bethnal Green, St. Mary Newington (Surrey), Camberwell, St. James Westminster, St. James and St. John Clerkenwell, Chelsea, Kensington, St. Mary Abbot, St. Luke Middlesex, St. George the Martyr Southwark, Bermondsey, St. George

Digitized by Google

in the East, St. Martin in the Fields, Hamlet of Mile End Old Town, Woolwich, Rotherhithe, St. John Hampstead.

Schedule B.

Whitechapel District, —The Parishes of St. Mary Whitechapel, Christchurch Spitalfields, St. Botolph without Aldgate (Middlesex), Holy Trinity (Minories), Precinct of St. Katherine, Hamlet of Mile End New Town, Liberty of Norton Folgate, Old Artillery Ground, District of Tower:

Westminster District, — The Parishes of St. Margaret, St. John the Evangelist:

Greenwich District, — The Parishes of St. Paul Deptford (including Hatcham), St. Nicholas Deptford, Greenwich:

Wandsworth District, — The Parishes of Clapham, Tooting Graveney, Streatham, St. Mary Battersea (excluding Penge), Wandsworth, Putney (including Roehampton):

Hackney District, — The Parishes of Hackney, St. Mary Stoke Newington:

St. Giles District, — The Parishes of St. Giles in the Fields, St. George Bloomsbury:

Holborn District, — The Parishes of St. Andrew Holborn above Bars, St. George the Martyr, St. Sepulchre Middlesex, — Saffron Hill, Hatton Garden, Ely Rents, and Ely Place, The Liberty of Glasshouse Yard:

Strand District, — The Parishes of St. Anne Soho, St. Paul Covent Garden, St. John the Baptist Savoy (or Precinct of the Savoy), St. Mary-le-Strand, St. Clement Danes, The Liberty of the Rolls:

Fulham District, — The Parishes of St. Peter and St. Paul Hammersmith, Fulham:

Limehouse District, — The Parishes of St. Anne Limehouse, St. John Wapping, St. Paul Shadwell, Hamlet of Ratcliffe:

Poplar District, — The Parishes of All Saints Poplar, St. Mary Stratford-le-Bow, St. Leonard Bromley:

St. Saviour's District, — The Parishes of Christchurch, St. Saviour (including the Liberty of the Clink):

Plumstead District, — The Parishes of Charlton next Woolwich, Plumstead, Eltham, Lee, Kidbrooke:

Lewisham District, — The Parishes of Lewisham including Sydenham Chapelry, Hamlet of Penge:

Rotherhithe and St. Olave District, — The Parishes of Rotherhithe, St. Olave, St. Thomas Southwark, St. John Horsleydown.

Schedule C.

The Close of the Collegiate Church of St. Peter:

The Charter House:

Digitized by Google

Inner Temple:
Middle Temple:
Lincoln's Inn:
Gray's Inn:
Staple Inn:
Furnival's Inn.

And any Parish adjoining, containing not less than 750 rated inhabitants, to which the Act may be extended by Order in Council (s. 249).

The foregoing definition is adopted for the purposes of the following statutes: —

Metropolis *Management* Amendment Act, 1862, 25 & 26 V. c. 102, *V.* s. 112;

Metropolitan *Fire Brigade* Act, 1865, 28 & 29 V. c. 90, *V.* s. 2;

Metropolis *Gas* Act, 1860, 23 & 24 V. c. 125, *V.* s. 4;

Metropolitan *Open Spaces* Acts, 1877 and 1881, *V.* s. 1, Act of 1881, 44 & 45 V. c. 34;

Metropolitan *Streets* Act, 1867, 30 & 31 V. c. 134, *V.* s. 2;

Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, *V.* s. 4;

Metropolis *Water* Act, 1871, 34 & 35 V. c. 113, *V.* s. 3 (for the previous def, *V.* 15 & 16 V. c. 84, s. 29);

Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26, *V.* s. 4;

County Electors Act, 1888, 51 & 52 V. c. 10, *V.* s. 5;

Elementary Education Act, 1870, 33 & 34 V. c. 75, *V.* s. 3;

Highways and Locomotives (Amendment) Act, 1878, 41 & 42 V. c. 77, *V.* s. 38;

Local Government Act, 1888, 51 & 52 V. c. 41, *V.* s. 100 (Metropolitan Boroughs, *V.* METROPOLITAN);

Poor Rate Assessment and Collection Act, 1869, 32 & 33 V. c. 41, *V.* s. 20; and

Public Health Act, 1875, 38 & 39 V. c. 55, *V.* s. 4.

The Infant Life Protection Act, 1872, 35 & 36 V. c. 38, 1st Sch, provides that, for the purposes of that Act, the "Metropolis" shall include all Parishes and Places in which the Metropolitan Board of Works have power to levy a Main Drainage Rate, exclusive of the City of London and the Liberties thereof.

Other Stat. Def. — Burial Act, 1852, 15 & 16 V. c. 85, s. 53 and Sch; City of London Parochial Charities Act, 1883, 46 & 47 V. c. 36, s. 53.

"The Metropolis Management Acts, 1855 to 1893"; *V.* Sch 2, Short Titles Act, 1896.

V. LONDON: COMMISSIONERS.

METROPOLITAN. — "The Metropolitan ASYLUMS Board" and "The Metropolitan Asylum Managers," are synonyms, each meaning, the Managers of the Metropolitan Asylum District (42 & 43 V. c. 54, s. 18; 54 & 55 V. c. 76, s. 141).

Digitized by Google

"Metropolitan AUTHORITY," quà Metropolis Water Act, 1871; *V.* s. 3.

"Metropolitan *Board*"; *V.* BOARD.

Metropolitan *Boroughs*; *V.* London Gov Act, 1899, 62 & 63 V. c. 14.

"Metropolitan COMMISSIONERS *of Sewers*," s. 112, Metrop Man. Act, 1862, refers to the Commrs created by 11 & 12 V. c. 112, and does not include prior Commrs of Sewers (*Appleyard* v. *Lambeth*, 76 L. T. 442; 66 L. J. Q. B. 347; 45 W. R. 370; 61 J. P. 276).

"The Metropolitan COMMONS Acts, 1866 to 1878"; *V.* Sch 2, Short Titles Act, 1896.

"Metropolitan DISTRICT"; Stat. Def. 31 & 32 V. c. 125, s. 3; 37 & 38 V. c. 49, s. 32.

"The Metropolitan *Police Acts*, 1829 to 1895"; *V.* Sch 2, Short Titles Act, 1896.

"Metropolitan *Police District*"; Stat. Def., 10 G. 4, c. 44, s. 4 and Sch; 2 & 3 V. c. 47, s. 2; 17 & 18 V. c. 33, s. 1.—*Ir.* 8 & 9 V. c. 109, s. 24; 16 & 17 V. c. 119, s. 18.

"Metropolitan *Police Force*"; Stat. Def., *Ir.* 8 & 9 V. c. 109, s. 24; 16 & 17 V. c. 119, s. 18.

"Metropolitan *Police Fund*"; Stat. Def., 49 & 50 V. c. 22, s. 7.

Metropolitan *Police Magistrate*; *V.* MAGISTRATE.

"Metropolitan *Police Rate*"; Stat. Def., 49 & 50 V. c. 11, s. 7.

"Metropolitan STAGE CARRIAGE"; Stat. Def., London Hackney Carriages Act, 1843, 6 & 7 V. c. 86, s. 2.

"Metropolitan *Water Companies*"; Stat. Def., 60 & 61 V. c. 56, s. 5; 62 & 63 V. c. 7, s. 6. *Vf,* WATER COMPANY.

MICHAEL.—Michael Angelo Taylor's Act, 57 G. 3, c. xxix; *V.* TAYLOR.

MICHAELMAS.—When "Michaelmas" or "the Feast of St. Michael" is mentioned as a date, it means New Michaelmas, 29th September; not 11th October according to the Old Style (*Doe* d. *Spicer* v. *Lea*, 11 East, 312). So "Martinmas" means the 11th November, not the 23rd (*Smith* v. *Walton*, 1 L. J. C. P. 85; 8 Bing. 235; 1 Moore & S. 380). So "Lady Day" means the 25th March, not the 6th April (*Doe* d. *Hall* v. *Benson*, 4 B. & Ald. 588). So, "Christmas Day" means the 25th December, not the 6th January.

The two firstly cited cases show that in a Deed or a Pleading parol evidence was not admissible to show that the date by the Old Style was meant; but that rule was otherwise on an agreement by parol (*Doe* d. *Hall* v. *Benson*, sup).

The Act (on which the above decisions proceeded) for regulating the commencement of the Year and rectifying the Julian Calendar (24 G. 2, c. 23), takes operation from the 1st January, 1752; so that in documents

Digitized by Google

prior to that date the Feast dates above referred to would be construed according to the Old Style.

V. ALMANAC.

MIGHT.—"Might have been"; *V.* COMMENCED.

MILE.—A mile in length is 1760 Imperial Standard Yards (s. 11, 41 & 42 V. c. 49). *V.* YARD.

How measured, *V.* DISTANCE: NEAREST: *Myers* v. *Lond. & S. W. Ry*, inf.

V. SQUARE MILE.

Railway "Rates per Mile not greater than the LOWEST RATE"; *V. Davis* v. *Taff Vale Ry*, 1895, A. C. 542; 64 L. J. Q. B. 488; 72 L. T. 632.

Where a Ry Co is entitled to so much "Per Mile" for the Carriage of Goods, the mileage is to be reckoned by the usual and reasonable route, though it may not be the shortest available route (*Myers* v. *Lond. & S. W. Ry*, L. R. 5 C. P. 1; 39 L. J. C. P. 57).

"Per Ton per Mile"; *V. Pryce* v. *Mon. Ry & Can Co*, 49 L. J. Ex. 130; 4 App. Ca. 197.

MILEAGE RATE.—*V. Warwick and Birmingham Canal Nav.* v. *Birmingham Canal Nav.*, cited TOLL.

MILITARY CUSTODY.—Quà Army Act, 1881, "'Military Custody,' means, according to the usages of the Service, the putting the offender under arrest, or the putting him in confinement" (subs. 2, s. 45); and by s. 6, Art. 29, Queen's Regulations, "'Military Custody' in the case of a Private Soldier, means, confinement under charge of a guard, picket, patrol, or sentry, or of a provost marshal": *Vth*, per Smith, L. J., *Marks* v. *Frogley*, cited SOLDIER.

MILITARY DECORATION.—Quà Army Act, 1881, "'Military Decoration,' means, any medal, clasp, good-conduct badge, or decoration" (subs. 18, s. 190). *Cp*, MILITARY REWARD.

MILITARY FORCES.—Quà Army Act, 1881, "'*Regular* Forces' and 'Her Majesty's Regular Forces,' mean, Officers and Soldiers who (by their commission, terms of enlistment, or otherwise) are liable to render continuously for a term MILITARY SERVICE to Her Majesty in any part of the world, including (subject to the modifications in this Act mentioned) the Royal Marines and Her Majesty's Indian Forces and the Royal Malta Fencible Artillery; and, subject to this qualification that when the RESERVE FORCES are subject to MILITARY LAW, such Forces become, during the period of their being so subject, part of the Regular Forces" (subs. 8, s. 190).

Quà Uniforms Act, 1894, 57 & 58 V. c. 45, "'Her Majesty's *Military* Forces,' means, the Regular Forces, the Reserve Forces, and the

Digitized by Google

Auxiliary Forces, within the meaning of the Army Act, other than the Naval Coast Volunteers and Naval Volunteers": "'Her Majesty's *Naval* Forces,' means, the Navy, the Naval Coast Volunteers, and the Naval Volunteers" (s. 4).

"Volunteer Forces"; *V.* Volunteer.

MILITARY LAW. — *V.* Training: Soldier. *Cp,* Martial Law.

MILITARY POWER. — *V.* Usurped Power.

MILITARY PURPOSES. — Quà Military Lands Act, 1892, 55 & 56 V. c. 43, "'Military Purposes,' includes, rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts targets batteries and other accommodation, the storing of arms, military drill, and any other purpose connected with military matters approved by the Secretary of State" (s. 23).

MILITARY REWARD. — Quà Army Act, 1881, "'Military Reward,' means, any gratuity or annuity for long service or good conduct; it also includes any good-conduct pay or pension, and any other military pecuniary reward" (s. 190). *Cp,* Military Decoration.

MILITARY SERVICE. — Quà Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, "Military Service," includes, "military telegraph and other employment whatever in, or in connection with, any military operation" (s. 30). A vessel despatched to furnish and lay for the French Government a telegraphic cable along the French coast between Cherbourg and Verdun, and which cable, though valuable to such Government in a military sense, was chiefly intended for commercial purposes and not to subserve the military service of France, was held not to have been despatched to be employed "in the *Military or Naval Service*" of France within s. 8, of the Act (*The International*, 40 L. J. Adm. 1; L. R. 3 A. & E. 321). *Cp,* Naval Service.

V. Actual Military Service: Employed.

MILITES REGIS. — *V.* Taini.

MILITIA. — Stat. Def., 34 & 35 V. c. 86, s. 19; 44 & 45 V. c. 57, s. 2, c. 58, s. 190; Militia Act, 1882, 45 & 46 V. c. 49, s. 51.

"Militia Reserve"; Stat. Def., 34 & 35 V. c. 86, s. 19: "Militia Reserve Force," 44 & 45 V. c. 58, s. 190; 45 & 46 V. c. 48, s. 28.

"Term of Militia Service"; Stat. Def., 45 & 46 V. c. 49, s. 51.

"Militia Man" or "Man in the Militia," includes a non-commissioned officer (44 & 45 V. c. 57, s. 2; Militia Act, 1882, s. 51). *V.* Man.

MILK. — "Milk, commercially speaking, means Skimmed Milk" (per Mathew, J., *Lane* v. *Collins*, 54 L. J. M. C. 76; 14 Q. B. D. 193: *Svthc, Smithies* v. *Bridge*, 1902, 2 K. B. 13; 71 L. J. K. B. 555). It

Digitized by Google

was accordingly held in *Lane* v. *Collins* that the sale of milk which had been deprived of 60 per cent of its butter-fat was not an offence within s. 6, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63: *Sv*, *Hotchin* v. *Hindmarch*, cited SELLER: *Heywood* v. *Whitehead*, 76 L. T. 781: 13 Times Rep. 503. But selling skimmed milk as "milk," is an offence under s. 9 of that Act (*Pain* v. *Boughtwood*, 24 Q. B. D. 353; 59 L. J. M. C. 45; 54 J. P. 68; 6 Times Rep. 167: *Vf*, KNOWINGLY), and so of selling milk which (being in the lower part of the receptacle for storing it) has been deprived of its butter-fat by natural process of that fat rising to the surface (*Dyke* v. *Gower*, 1892, 1 Q. B. 220; 61 L. J. M. C. 70; 65 L. T. 760; 56 J. P. 168: *Vf*, *Smithies* v. *Bridge*, sup: V. ABSTRACTION). *Note*: As to Analyst's Certificate, *V. Bridge* v. *Howard*, 1897, 1 Q. B. 80; 65 L. J. M. C. 229; 75 L. T. 300; 60 J. P. 790, distinguishing *Fortune* v. *Hanson*, 1896, 1 Q. B. 202; 65 L. J. M. C. 71: SAMPLE.

V. NATURE: SALE: SELLER.

"Pure New Milk"; *V. Robertson* v. *Harris*, cited WRITTEN WARRANTY.

MILL.—"By the grant of a Mill, the millstone doth pass, albeit at the time of the grant it be actually severed from the mill" (Touch. 90: *Vf*, *Place* v. *Fagg*, 4 M. & R. 277: *Thorpe* v. *Milligan*, 5 W. R. 336).

Looms, standing upon a loom-foot and removable at pleasure, do not "belong" to a mill, within a contract for its sale "with all machinery, &c, belonging to the said Mill" (*Hutchinson* v. *Kay*, 26 L. J. Ch. 457; 23 Bea. 413). *Vf*, *Burt* v. *Haslett*, 25 L. J. C. P. 201; 18 C. B. 162: *Haley* v. *Hammersley*, 3 D. G. F. & J. 587; 30 L. J. Ch. 771; 9 W. R. 562: *Holland* v. *Hodgson*, L. R. 7 C. P. 328; 41 L. J. C. P. 146: *Southport Banking Co.* v. *Thompson*, 37 Ch. D. 64; 57 L. J. Ch. 114; 58 L. T. 143; 36 W. R. 113: *Cosby* v. *Shaw*, 23 L. R. Ir. 181: BELONGING.

Insrce on "Oil Mill and Millwright's Gear therein"; *V. Hare* v. *Barstow*, 8 Jur. 928.

V. MILL GEARING.

MILL DAM.—*V.* FISHING MILL DAM.

MILL GEARING.—Quà Factory and Workshop Act, 1901, "'Mill-gearing,' comprehends every shaft, whether upright oblique or horizontal, and every wheel, drum, or pulley, or other appliance, by which the motion of the first moving power is communicated to any machine appertaining to a MANUFACTURING PROCESS" (s. 156).

V. GEARING.

MINE: MINES: MINERALS.—"The primary meaning of the word '*Mine*,' standing alone, is an underground excavation made for the

Digitized by Google

purpose of getting minerals (*Bell* v. *Wilson*, 35 L. J. Ch. 337; 1 Ch. 303; 14 L. T. 115; 14 W. R. 493: *Vf*, *Listowel* v. *Gibbings*, 9 Ir. Com. Law Rep. 223: *Cp*, QUARRY). In Leases and similar documents it is commonly used in a slightly different sense. For instance, 'all that mine, vein, or seam of coal,' — &c. There the word includes the stratum of the minerals as well as the excavation made to win it. '*Minerals*,' on the other hand, means primarily all substances, — other than (*and underneath*) the agricultural surface of the ground, — which may be got for manufacturing or mercantile purposes, whether from a mine, as the word would seem to signify, or such as stone or clay, which are got by open working as decided in *Mid. Ry* v. *Checkley* (36 L. J. Ch. 380; L. R. 4 Eq. 19; 15 W. R. 671; 16 L. T. 260), and *Rosse* v. *Wainman* (15 L. J. Ex. 67; 14 M. & W. 859). The particular signification of each of these words may be varied largely by the context" (per Kay, J., *Mid. Ry* v. *Haunchwood Co*, 51 L. J. Ch. 778; 20 Ch. D. 552; 46 L. T. 301; 30 W. R. 640; approved in *Mid. Ry* v. *Robinson*, 57 L. J. Ch. 441; 37 Ch. D. 386; affd in H. L. 59 L. J. Ch. 442; 15 App. Ca. 19; 62 L. T. 194; 38 W. R. 577; 6 Times Rep. 100); or indeed by the kind of document in which they are found (*Menzies* v. *Breadalbane*, 1 Shaw App. 225: *Glasgow* v. *Farie*, 58 L. J. P. C. 33; 13 App. Ca. 657; 37 W. R. 627; 60 L. T. 274, and espy jdgmt of Halsbury, C., in *thlc*).

The words "and underneath" italicised in the above definition by Kay, J., are not to be found in the extract just given, and are added, with submission, in order to complete the primary meaning of the word "Minerals." Thus, in *Hext* v. *Gill* (41 L. J. Ch. 761; 7 Ch. 699; 26 L. T. 502; 27 Ib. 291; 20 W. R. 959), Mellish, L. J., said the word "'Minerals' includes every substance which can be got from *underneath* the surface of the earth for the purpose of profit." (The *ipsissima verba* of that definition were adopted by Fry, J., in *A-G.* v. *Tomline*, 46 L. J. Ch. 657). And so in *Tucker* v. *Linger* (52 L. J. Ch. 941; 8 App. Ca. 508; 32 W. R. 40), Ld Blackburn said it was "by no means clear" that Flints in a flinty district, that were turned up by ploughing and lying on the surface, would be "Minerals" within a reservation in a Lease: and qy., is an Ancient Boat, — for centuries embedded in the soil several feet below the surface but not fossilised or petrified, — a "Mineral" within a like reservation? — Chitty, J., was of opinion that it was not (*Elwes* v. *Brigg Gas Co*, 55 L. J. Ch. 734; 33 Ch. D. 562). *Vf*, *Boileau* v. *Heath*, cited IRON.

Observe further, that though the above primary meaning states that the substances to be "Minerals" are such as "may be got for manufacturing or mercantile purposes," yet that does not mean that the substances must be such as can be worked for commercial profit (*Johnstone* v. *Crompton*, 1899, 2 Ch. 190; 68 L. J. Ch. 559; 81 L. T. 165; 47 W. R. 604).

"Minerals" is by far a more general word than "Mines" (per Mellish, L. J., in *Hext* v. *Gill*, sup); in which case, however, the same learned

Digitized by Google

judge said that "Mines" may possibly extend to open workings or even not apply to workings at all. But in *Darvill* v. *Roper* (24 L. J. Ch. 779; 3 Drew. 294; 3 W. R. 467; 25 L. T. O. S. 302), Kindersley, V. C., said, "Mining, is when you begin on the surface, and, by sinking shafts, you work underground in a horizontal direction, making a tunnel as you proceed, and leaving a roof overhead." But "putting the word 'Mines' before 'Minerals,' — as in the ordinary phrase 'Mines and Minerals,' — does not alter the more extended meaning of the word 'Minerals'" (per Mellish, L. J., *Hext* v. *Gill*, sup: *Va*, *Mid. Ry* v. *Haunchwood Co*, sup: jdgmt Ld Macnaghten in *Glasgow* v. *Farie*, sup). *Vf*, hereon MacS. 1–19, for a discussion of the cases in which the *primâ facie* meaning of "Mines and Minerals" has been restricted by the context.

In ss. 77, 78, Ry C. C. Act, 1845, "Mines" ought to receive the widest possible construction short of straining the language; the word there is not confined to minerals got by underground workings (*Mid. Ry* v. *Robinson*, sup). *V.* LAND.

The following have been held to be "Minerals": —

Brick Clay, in a Reservation by Deed (*Jersey* v. *Neath*, cited WHATSOEVER: *Shaftesbury* v. *Wallace*, 1897, 1 I. R. 381), or under s. 77, Ry C. C. Act, 1845, and whether got underground or by open workings (*Mid. Ry* v. *Haunchwood Co*, sup: *Loosemore* v. *Tiverton and North Devon Ry*, 51 L. J. Ch. 570; 22 Ch. D. 25; 30 W. R. 628; 47 L. T. 151: *Mid. Ry* v. *Miles*, 55 L. J. Ch. 745; 33 Ch. D. 632; 55 L. T. 428; 35 W. R. 76: *Dixon* v. *Cal. Ry*, 5 App. Ca. 820; 43 L. T. 513; 29 W. R. 249). *Cp*, *Glasgow* v. *Farie* and *Church* v. *Inclosure Commrs*, inf:

Calk and Calc-spar (*Stokes* v. *Arkwright*, cited PERSON INTERESTED):

China Clay (*Hext* v. *Gill*, sup):

Coal and Ironstone (*Bell v. Wilson*, sup: *Mid. Ry* v. *Robinson*, sup):

Coprolites (*A-G.* v. *Tomline*, 46 L. J. Ch. 654; 5 Ch. D. 750: *V.* STONE):

Freestone and Limestone got by open workings, as within s. 77, Ry C. C. Act, 1845 (*Dixon* v. *Cal. Ry*, sup: *Mid. Ry* v. *Robinson*, sup: *Sv*, *Menzies* v. *Breadalbane*, inf: *Listowel* v. *Gibbings*, inf):

Granite (*A-G.* v. *Welsh Granite Co*, 1 Times Rep. 549):

Slate got by underground workings (*Cleveland* v. *Meyrick*, 37 L. J. Ch. 125; *vthc* inf):

Stone got by quarrying (*Mid. Ry* v. *Checkley*, sup: *Bell* v. *Wilson*, sup: *Rosse* v. *Wainman*, sup: *Micklethwait* v. *Winter*, 20 L. J. Ex. 313; 6 Ex. 644; 17 L. T. O. S. 185):

Vf, MacS. 12, where it is said, on the authority chiefly of the above cases, that "Minerals" include, "every kind of Stone, Flint, Marble, Slate, Brick, Earth, Chalk, Gravel, and Sand; provided only that these articles are under the surface and do not lie loosely upon it." *Va*, Seton, 581, 582.

Digitized by Google

The following have been held *not* to be Minerals:—

Boat, ancient and embedded, but unpetrified (*Elwes* v. *Brigg Gas Co*, sup):

Brine formed by the percolation of rain-water through rock salt, quà s. 4 (3), Settled Estates Act, 1877, 40 & 41 V. c. 18 (*Re Dudley*, 26 S. J. 359):

Clay and Sand, under the Act of Settlement (1703) of the Isle of Man whereby tenants were confirmed in their customary estates, "saving always all mines and minerals of what kind and nature soever, quarries and delfs of flag, slate, or stone" (*A-G. Isle of Man* v. *Mylchreest*, 48 L. J. P. C. 36; 4 App. Ca. 294; 40 L. T. 764). In that case the Court said,—"The words 'quarries and delfs of flag, slate, or stone' appear to be used to describe open workings and the specified substances got by such workings, as distinguished from mines properly so called, and mineral substances usually got by underground works":

Clay Subsoil, quà s. 18, Waterworks Clauses Act, 1847, 10 V. c. 17, as incorporated in a Scotch Act (*Glasgow* v. *Farie*, 13 App. Ca. 657; 37 W. R. 627; 60 L. T. 274; 58 L. J. P. C. 33: *Va*, *Church* v. *Inclosure Commrs*, 31 L. J. C. P. 201; 11 C. B. N. S. 664. *Cp*, *Hext* v. *Gill* and *Mid. Ry* v. *Haunchwood Co*, sup):

Freestone Quarry, in a reservation in a Feu in Scotland (*Menzies* v. *Breadalbane*, 1 Shaw App. 225: *Sv*, *Dixon* v. *Cal. Ry*, sup):

Furnace Slag; *V.* QUARRY:

Limestone, in Ireland (*Listowel* v. *Gibbings*, 9 Ir. Com. Law Rep. 223).

The phrase "Mines *of Minerals*" does not, necessarily, restrict the Minerals to such as are got by mining (per Ld Watson, *Mid. Ry* v. *Robinson*, 15 App. Ca. 33; 59 L. J. Ch. 448: *Shaftesbury* v. *Wallace*, 1897, 1 I. R. 407).

In view of the doctrine that "*Coal Mines*" in 43 Eliz. c. 2, was confined to mines of coal so that mines of other minerals were not thereunder rateable to the Poor Rate (*Leadsmelting Co* v. *Richardson*, 3 Burr. 1341; 1 Bl. W. 389; 1 Bott, 159: *Morgan* v. *Crawshay*, 40 L. J. M. C. 202; L. R. 5 H. L. 304: *Thursby* v. *Briercliffe*, 1895, A. C. 32; 64 L. J. M. C. 66; 71 L. T. 849; 59 J. P. 180), it was held that Stone Quarries or Lime Works (*R.* v. *Alberbury*, 1 East, 534; 1 Bott, 210), Slate Works (*R.* v. *Woodland*, 2 East, 164; 1 Bott, 212), and a potter's Clay Pit (*R.* v. *Brown*, 8 East, 528), were not mines at all, but only gave additional value to the rateable land wherein they were; unless, indeed, the material was obtained by underground mining works (*R.* v. *Sedgley*, 2 B. & Ad. 65; 9 L. J. O. S. M. C. 61: *R.* v. *Brettell*, 3 B. & Ad. 424; 1 L. J. M. C. 46: *R.* v. *Dunsford*, 2 A. & E. 568; 4 L. J. M. C. 59). In the last case Denman, C. J., said,—"The principle established is, that the *mode* of obtaining the material, and not the nature of the material itself, is to be considered in order to come to a decision whether it

Digitized by Google

constitutes a Mine or not." In *Cleveland* v. *Meyrick* (sup) Malins, V. C., relied on the two lastly mentioned cases in holding that a partnership share in Slate, formerly got by QUARRY workings but which at the date of the Will was obtained by underground workings, passed under a gift of "all Shares in Mines of which I shall die possessed." *Vf*, jdgmt of Ld Watson, *Glasgow* v. *Farie* (sup). *Note*: — the exemption from rating of Mines other than Coal Mines was taken away by s. 3 (3), Rating Act, 1874, 37 & 38 V. c. 54; *V.* s. 7, Ib., for def of "Mine."

For the purpose of the Settled Land Act, 1882, "'Mines and Minerals,' mean, Mines and Minerals whether already opened or in work or not, and include, all minerals and substances in, on, or under, the land obtainable by under-ground or by surface working" (s. 2, subs. 10, iv).

Where in a conveyance there was a reservation to the vendor of mines and minerals, "with full liberty to search for, dig, bore, sink, win, work, lead and carry away, the same," it was held that the working must be by under-ground mining and not from the surface (*Bell* v. *Wilson*, sup). *Va*, *Proud* v. *Bates*, 34 L. J. Ch. 406; 12 L. T. 565.

Quà Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, "'Mine,' includes, every Shaft in the course of being sunk, and every Level and Inclined Plane in the course of being driven, and all the shafts, levels, planes, works, tram-ways, and sidings (both below ground and above ground), IN and ADJACENT to and BELONGING to the Mine" (s. 75), being the def a little shortened provided for Metalliferous Mines Regn Act, 1872, 35 & 36 V. c. 77 (s. 41); and quà Workmen's Comp Act, 1897, "'Mine,' means, a Mine to which the Coal Mines Regn Act, 1887, or the Metalliferous Mines Regn Act, 1872, applies" (subs. 2, s. 7).

Quà Duchy of Cornwall; Stat. Def., 21 & 22 V. c. 109, s. 8; 26 & 27 V. c. 49, s. 37.

Quà the Stannaries; Stat. Def., 6 & 7 W. 4, c. 106, s. 44; 18 & 19 V. c. 32, s. 2.

By Grant of Mines the land itself will pass (Touch. 96).

"Open Mine"; *V.* OPEN.

Erection used in the business of a Mine; *V.* ERECTION.

Note. Gold and Silver Mines are part of the prerogative of the Crown (*Mines Case*, 1 Plowd. 336, 336 a, *Sv*, 332 a: *A-G. British Columbia* v. *A-G. Canada*, 58 L. J. P. C. 91; 14 App. Ca. 295: *A-G.* v. *Morgan*, 1891, 1 Ch. 432; 60 L. J. Ch. 126; so much so that a Crown grant of land "including all coal, coal-oil, ores, stones, clay, marble, slate, *Mines, Minerals, and substances whatsoever*," will not pass its Gold and Silver (*Esquimalt & Nanaimo Ry* v. *Bainbridge*, 1896, A. C. 561; 65 L. J. P. C. 98; 75 L. T. 111: *Vf*, *Mines Case*, sup).

V. IRON: SOIL: SUBSOIL: VEIN: WITH ALL MINES: IN OR ABOUT: PRODUCE.

MINE OR PART OF A MINE.—*V.* PART.

Digitized by Google

MINER. — Quà Stannaries Act, 1887, 50 & 51 V. c. 43, "'Miners,' includes, all artizans, labourers, and other persons, working in and about a Mine, except the Purser, Secretary, Agent, or Manager" (s. 2). *V.* In or about.

Other Stat. Def. — 18 & 19 V. c. 32, s. 2.

"Practical Working Miner"; *V.* Practical.

MINERAL ESTATE. — *V.* per Ld Watson, *Campbell* v. *Wardlaw*, 8 App. Ca. 641: *Dashwood* v. *Magniac*, cited Timber Estate.

MINERAL GOTTEN. — "Mineral contracted to be gotten," s. 17, 35 & 36 V. c. 76, includes Slack as well as Large Coal (*Netherseal Co* v. *Bourne*, 59 L. J. Q. B. 66; 14 App. Ca. 228): *Vthc*, and as to "Mineral contracted to be gotten," s. 12 (1), 50 & 51 V. c. 58, *Brace* v. *Abercarn Co*, 1891, 2 Q. B. 699; 60 L. J. Q. B. 706; 40 W. R. 3; 56 J. P. 20: *Kearney* v. *Whitehaven Colliery*, 1893, 1 Q. B. 700; 62 L. J. M. C. 129; 68 L. T. 690; 41 W. R. 594; 57 J. P. 645.

MINERAL PROPERTY. — All erections made upon or affixed to the solum of the surface land, in virtue of the powers conferred upon the miner by the 5th Custom in the Act, constitute 'Mineral Property' as defined in s. 2, 14 & 15 V. c. xciv" (per Ld Watson, *Wake* v. *Hall*, 52 L. J. Q. B. 500; 8 App. Ca. 207; 31 W. R. 585; 48 L. T. 834; *Va*, per Ld Fitzgerald, *Ib.*).

MINING. — "Mining *Company*"; Stat. Def., 59 & 60 V. c. 45, s. 4.

"Mining *Effects*"; Stat. Def., 50 & 51 V. c. 43, s. 2.

"Mining Lease," quà Conv & L. P. Act, 1881, "is a Lease for Mining *Purposes*, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of, Mines and Minerals or purposes connected therewith; and includes, a grant or license for mining purposes" (s. 2, xi): *Va*, S. L. Act, 1882, s. 2 (10, iv), which gives a rather wider def of "Mining Purposes."

MINISTER. — A Bishop is included in the word "Minister," as used in the Rubrics relating to the celebration of the Holy Communion (*Read* v. *Lincoln*, *Bp.*, 14 P. D. 148).

"The word 'Minister' is general, and may apply to any person who has the cure of souls in the district" (per Blackburn, J., *R.* v. *Allen*, 42 L. J. Q. B. 37; L. R. 8 Q. B. 69); which case decides that a Perpetual Curate, as well as a Rector or Vicar, is a "Minister" entitled to appoint a Churchwarden within the meaning of a custom founded on the 89th of the Canons of 1603.

Where the Parson or Vicar has been suspended or inhibited, he cannot appoint the Parish Clerk because he is not "the Minister *for the time being*" within the 91st of the Canons of 1603, — such Minister is

Digitized by Google

the Curate in Charge (*Pinder* v. *Barr*, 24 L. J. Q. B. 30; 4 E. & B. 105); *secus*, if there be only a SEQUESTRATION (*Lawrence* v. *Edwards*, 1891, 1 Ch. 144; 60 L. J. Ch. 336).

"Minister," s. 68, 5 & 6 W. 4, c. 76, is "used in its most general signification" (per Littledale, J., *R.* v. *Liverpool*, 7 L. J. Q. B. 134; 8 A. & E. 176; 3 N. & P. 280); and it was there held that a Lecturer in Holy Orders at St. John's, Liverpool, who occasionally assisted its regular Incumbent in the services, though not "*the* Minister" of the Church, was yet *a* "Minister" of it, within the section.

Quà Clerical Disabilities Act, 1870, 33 & 34 V. c. 91, "'Minister,' means, a Priest or a Deacon" (s. 2).

V. INCUMBENT: CLERGYMAN: LICENSED MINISTER: REGULAR CLERGYMAN: REGULAR MINISTER.

Quà Glebe Lands (Scot) Act, 1866, 29 & 30 V. c. 71, "Minister," means, "the minister of any Parish in Scotland for the time who shall be in possession of a Glebe" (s. 2): quà Registration of Births, Deaths, and Marriages (Scot) Act, 1854, 17 & 18 V. c. 80, "Minister" includes "Ministers or Pastors of Christian Congregations of all Denominations" (s. 76).

"British Minister," in any Act relating to the solemnization of Marriages abroad, includes "a British Chargé d'Affaires" (s. 11, 54 & 55 V. c. 74); so, of "Minister" as used in that Act (Ib.).

MINISTERIAL POWERS.—Stat. Def., 30 & 31 V. c. 45, s. 3.

MINISTRATION.—"Ministering the Sacraments or other Rites of the Church," in the Ornaments Rubric at the beginning of the Church of England Prayer Book, does not include Preaching, for preaching is not a "Ministration" or a "RITE" (*Re Robinson*, 1897, 1 Ch. 85; 66 L. J. Ch. 97; 76 L. T. 95; 45 W. R. 181; 61 J. P. 132). In *the* the Court of Appeal said,—"What the exact meaning of the word 'Rite' is has not been decided."

MINOR.—*V.* INFANT.

MINOR CANON.—*V.* CANON.

MINORITY.—A gift of income "during minority" may, on a context, mean until the beneficiaries attain some other age than 21, if such other age be clearly indicated (*Milroy* v. *Milroy*, 13 L. J. Ch. 266; 14 Sim. 48; 1 Jarm. 845). *Vf*, *Weddell* v. *Munday*, 6 Ves. 341: *Hart* v. *Tulk*, 2 D. G. M. & G. 300: *Maddison* v. *Chapman*, 3 D. G. & J. 536; 28 L. J. Ch. 450; 7 W. R. 214; 33 L. T. O. S. 212.

As to ACCUMULATIONS during "Minority"; *V.* 1 Jarm. 304.

Cp, MAJORITY.

Digitized by Google

MINUTE. — A "Minute of an Agreement" is the same thing as a "MEMORANDUM of an Agreement," on *whv* EVIDENCE OF A CONTRACT. *Vf*, *Lucas* v. *Beach*, 1 M. & G. 417: *Blackwell* v. *M'Naughtan*, 1 Q. B. 127.

MISADVENTURE. — "'Misaventure,' or 'Misadventure,' has in law a special signification for the killing of a man partly by negligence, and partly by chance" (Cowel). *V.* CHANCE-MEDLEY: *Cp*, ADVENTURE, last par.

MISAPPLICATION. — "Misapplication" of public funds, s. 44, 7 W. 4 & 1 V. c. 78, only covers cases of corrupt practices or of showing illegal favour (*R.* v. *Norwich*, 30 W. R. 752).

"Wilfully waste or misapply"; *V.* WILFUL WASTE.

V. WITHHOLD.

MISAPPROPRIATE. — "Misappropriate," means, the wrongful conversion of or dealing with anything, by the person to whom it has been intrusted (*V.* Steph. Cr. 275–278, summarising and stating 24 & 25 V. c. 96, ss. 75–80). *V.* AGENT. *Note*: ss. 75, 76, repld s. 1, Larceny Act, 1901, on and from 1st Jan 1902.

MISBEHAVIOUR. — "Misbehaviour in his Office," s. 6, 23 & 24 V. c. 116; *V. Re Ward*, 30 L. J. Ch. 775. *Cp*, MISDEMEAN.

V. INABILITY.

MISCARRIAGE. — *V.* DEBT, DEFAULT, OR MISCARRIAGE: SUBSTANTIAL.

MISCHANCE. — *V.* MISADVENTURE.

MISCHIEF. — "Within the Mischief"; *V.* EQUITY.

MISCONDUCT. — "EXTORTION or Misconduct" by a County Court Officer, s. 50, Co. Co. Act, 1888, means, under the latter word, Misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistakes, do not constitute such Misconduct (*Moore* v. *Brompton Co. Co. Bailiff*, 69 L. T. 140; 62 L. J. Q. B. 498; 41 W. R. 557; 57 J. P. 742).

"Misconduct" in a Solicitor justifying the disciplinary jurisdiction of the Court, s. 13, 51 & 52 V. c. 65, is not confined to professional misconduct, but extends to conduct, — *e.g.* letting a BROTHEL, — which shows him to be an unworthy member of the legal profession (*Re Weare*, 1893, 2 Q. B. 439; 62 L. J. Q. B. 596; 69 L. T. 522). *Cp*, INFAMOUS CONDUCT.

V. CONDUCT: CONDUCE: MISFORTUNE: SERIOUS: WILFUL MISCONDUCT: WILFUL NEGLECT.

Digitized by Google

MISDEMEAN. — "Misdemean himself in his Office," s. 6, 1 W. & M. c. 21; *V. Wildes* v. *Russell*, L. R. 1 C. P. 722; 35 L. J. M. C. 241; H. & R. 689. *Cp*, MISBEHAVIOUR.

MISDEMEANOR. — "The word 'Misdemeanor,' in its usual acceptation, is applied to all those Crimes and Offences for which the law has not provided a particular name; and they may be punished, according to the degree of the offence, by fine or imprisonment, or both. A Misdemeanor is in truth any crime less than a FELONY, and the word is generally used in contradistinction to Felony; Misdemeanors comprehending all Indictable Offences which do not amount to Felony, — as, PERJURY, Battery, Libels, Conspiracies, and Public Nuisances" (1 Russell on Crimes, 6 ed., 193, 194). *Vf*, CRIME. *Cp*, OFFENCE.

In an Indictment "Misdemeanor" is *nomen collectivum*; and a finding that the defendant is Guilty of the "Misdemeanor" as alleged, is finding him guilty of the whole matter charged by the Indictment (*R.* v. *Powell*, 2 B. & Ad. 75: *vthc*, *Campbell* v. *The Queen*, 11 Q. B. 837: *Ryalls* v. *The Queen*, Ib. 795).

The absolute refusal of a Bankrupt's Discharge when "the Debtor has committed *any* Misdemeanor under Part 2 of the Debtors Act, 1869" (s. 2 (3), 50 & 51 V. c. 66), is restricted to any such Misdemeanor as may be committed "in any matter connected with, or arising out of, the bankruptcy"; the words quoted are to be read into the provision (*Re Brocklebank*, 58 L. J. Q. B. 375).

As respects Scotland, "Misdemeanour" in the Interp Act, 1889, and in every Act passed after its commencement, means "an Offence" (s. 28). In the prior and subsequent Acts the def, quà Scotland, generally, is, "Crime and Offence," *e.g.* 25 & 26 V. c. 88, s. 1; 34 & 35 V. c. 31, s. 23; 35 & 36 V. c. 76, s. 73; 37 & 38 V. c. 15, s. 4; 38 & 39 V. c. 17, s. 109, c. 60, s. 4, c. 63, s. 33; 39 & 40 V. c. 45, s. 3; 44 & 45 V. c. 58, s. 190; 46 & 47 V. c. 51, s. 68; 47 & 48 V. c. 76, s. 20; 48 & 49 V. c. 69, s. 15; 57 & 58 V. c. 41, s. 26; 59 & 60 V. c. 25, s. 102.

MISFEASANCE. — This word, in s. 165, Comp Act, 1862, means, "Misfeasance in the nature of a BREACH OF TRUST" (per James, L. J., *Coventry's Case*, 14 Ch. D. 670); "it must be an act resulting in loss to the Company. The section does not give the Court power to fine a Director for misconduct. It gives no new rights, but simply provides a summary mode of enforcing rights which must otherwise have been enforced by action" (Buckl. 435 *et seq*).

That section is now replaced by s. 10, 53 & 54 V. c. 63, wherein "Misfeasance" recurs; thereon Vaughan Williams, J., gave a broader interpretation than that of James, L. J. (sup), which he pointed out was obiter, and said, "It seems to me that 'Misfeasance' covers every misconduct by an Officer of the Co, as such, for which such Officer might

Digitized by Google

have been sued apart from the section" (*Re Kingston Cotton Mills Co, No. 2*, 1896, 1 Ch. 331; affd, 2 Ib. 279; 65 L. J. Ch. 290, 673; 74 L. T. 568: *Vh, Re North Australian Co*, 1892, 1 Ch. 322; 61 L. J. Ch. 129; 65 L. T. 800; 40 W. R. 212: *Re New Mashonaland Co*, 1892, 3 Ch. 577; 61 L. J. Ch. 617; 67 L. T. 90; 41 W. R. 75); but the Liquidator must prove that damage has resulted to the Co (*Re Wragg*, 1897, 1 Ch. 796; 66 L. J. Ch. 419: per Ludlow, L. J., *Re London and Colonial Finance Corp*, 77 L. T. 150). *Semble*, a sin of OMISSION, as well as one of Commission, may be a "Misfeasance" (per Kekewich, J., *Re Liverpool Household Stores*, 59 L. J. Ch. 617, commenting on *Re Wedgwood Coal Co*, 47 L. T. 612).

Cp, MISMANAGEMENT.

MISFORTUNE.—A thing caused by "Misfortune," is where it arises through something unforeseen which cannot ordinarily be guarded against (*Re Burgess*, 57 L. T. 200; 35 W. R. 702: *Vf*, CONDUCT). *Cp*, ACCIDENT.

Bankruptcy "caused by Misfortune without any MISCONDUCT," s. 32 (2 *b*), Bankry Act, 1883; *V. Re Campbell*, 20 Q. B. D. 816; 59 L. T. 194; 36 W. R. 582: *Re Grahame*, 5 Times Rep. 259.

HOMICIDE "by Misfortune," s. 7, 24 & 25 V. c. 100, does not extend to doing a lawful, but dangerous, act without taking proper precautions (*R.* v. *Salmon*, 50 L. J. M. C. 25; 6 Q. B. D. 79; 43 L. T. 573; 29 W. R. 246).

"Misfortune," in a plea that the plaintiff contributed to the "Misfortune" complained of, is not ambiguous (*Smith* v. *McAuley*, Ir. Rep. 8 C. L. 525).

MISLEADING.—Misleading Conditions of Sale; *V.* CONDITIONS.

MISMANAGEMENT.—"'Mismanagement' and 'Inattention' are not synonymous. The one is active, the other passive; the one denotes Commission, the other Omission" (per Vaughan, B., *Brooks* v. *Blanshard*, 2 L. J. Ex. 281; 1 C. & M. 779; 3 Tyr. 844).

Cp, MISFEASANCE.

MISNOMER.—A Writ wherein deft is described by his initials only may be amended as a "Misnomer" (*Rust* v. *Kennedy*, 8 L. J. Ex. 85; 4 M. & W. 586); and a Voting Paper which ought to contain the Christian and Surname of the person voted for is (probably) not accurate if it only gives the initial of such Christian name, but may be saved if there is provision that no "Misnomer" shall invalidate, if the description be such as to be commonly understood (*R.* v. *Plenty*, cited CHRISTIAN NAME). *Cp*, MISTAKE.

MISPRISION.—Misprision of *Felony*;—"Every one who knows that any other person has committed Felony and conceals or procures the

Digitized by Google

concealment thereof, is guilty of Misprision of Felony" (Steph. Cr. 104, 105). *Vf*, Rosc. Cr. 365.

Misprision of *Treason*; — "Every one who knows that any other person has committed High Treason, and does not within a reasonable time give information thereof to a Judge of Assize, or a Justice of the Peace, is guilty of Misprision of Treason" (Steph. Cr. 104).

Vh, Termes de la Ley: Cowel: Jacob: 4 Bl. Com. ch. 9: 8 Encyc. 430–432.

"The word 'Misprision' means a mere MISTAKE" (per Denman, C. J.: *R.* v. *Conyers*, 8 Q. B. 991).

MISREPRESENT. — To "misrepresent," "misrepresentation," do not, by themselves, import wilful falsehood or malice; "misrepresentation of facts may be, and often is, INNOCENT" (per Crampton, J., *Dowdall* v. *Kelly*, 4 Ir. Com. Law Rep. 556).

Cp, FALSE REPRESENTATION: QUALITY.

MISS. — Bequest to "Miss Sarah Jameson"; there was no "Miss" Sarah Jameson, but there was a "Mrs." S. J. who had a daughter named Miss Frances Ann Jameson; held, that the latter was entitled to the legacy, for clearly, by the use of the word "Miss," it was intended to give it to an unmarried lady (*Lee* v. *Pain*, 4 Hare, 253).

MISSING SHIP. — *V.* *Stribley* v. *Imperial Mar Insrce* 45 L. J. Q. B. 396; 1 Q. B. D. 507.

MISSIONARY PURPOSES. — A trust for "Missionary Purposes," is void for vagueness (*Scott* v. *Brownrigg*, 9 L. R. Ir. 246).

MIS-STATEMENT. — *V.* ERROR.

MISTAKE. — "Mistake," is not mere forgetfulness (per Esher, M. R., *Barrow* v. *Isaacs*, cited UNREASONABLY); it is a slip "made, not by design but, by mischance" (per Russell, C. J., *Sandford* v. *Beal*, 65 L. J. Q. B. 74; 73 L. T. 406: *Sv*, *Prescott* v. *Lee*, inf). *Vf*, 4 Bl. Com. 27.

As to what is a "Mistake" in a List, Claim, or Notice of Objection, which a Revising Barrister may amend under s. 28 (1, 2), Parliamentary and Municipal Registration Act, 1878, 41 & 42 V. c. 26; *V.* *Hartley* v. *Halse*, 58 L. J. Q. B. 100; 22 Q. B. D. 200; 60 L. T. 322; 37 W. R. 302: *Adams* v. *Bostock*, 51 L. J. Q. B. 175; 8 Q. B. D. 259; 45 L. T. 443; 30 W. R. 460: *Bollen* v. *Southall*, 54 L. J. Q. B. 589; 15 Q. B. D. 461; 34 W. R. 44: *Prescott* v. *Lee*, 68 L. J. Q. B. 906; 79 L. T. 447; 47 W. R. 139; 62 J. P. 824: *Secus*, *Smith* v. *Chandler*, 58 L. J. Q. B. 103; 22 Q. B. D. 208; 60 L. T. 327; 37 W. R. 351. *Vf*, "Nature of Qualification," sub NATURE: INACCURATE.

Digitized by Google

As to correcting Mistakes, —

In *Deeds*; *V.* Blanks. Wrong Description, *V. Cowen* v. *Truefitt*, 1898, 2 Ch. 551; 67 L. J. Ch. 695; 47 W. R. 29; 79 L. T. 348.

In *Wills*; *V.* Blanks. Where there is a gift to a defined Class generally, but the number of such a Class is wrongly stated, the number is rejected, and all take, if there be no indication to the contrary (*Garvey* v. *Hibbert*, 19 Ves. 124: *Lee* v. *Pain*, 4 Hare, 249, 250: *Wrightson* v. *Calvert*, 1 J. & H. 250: *Sleech* v. *Thorington*, 2 Ves. sen. 561: Hawk. 62, 63). *Note.* A wrong description of persons or things may be corrected, even by extrinsic evidence (*Camoys* v. *Blundell*, 1 H. L. Ca. 778: *Lee* v. *Pain*, 4 Hare, 251; 14 L. J. Ch. 346: *Reynolds* v. *Whelan*, 16 L. J. Ch. 434: *Re Feltham*, 1 K. & J. 528: Hawk. 10–13), *e.g.* by previous Wills (*Re Waller*, 68 L. J. Ch. 526; 80 L. T. 701; 47 W. R. 563).

Mistake of Fact; *V. Withington* v. *Herring*, 5 Bing. 442.

"Mistake or Inadvertence," s. 12, 54 G. 3, c. 173; *V. Doe* d. *Blewitt* v. *Phillips*, 1 Q. B. 96: — as to same phrase in preamble to 12 & 13 V. c. 26; *V. Sutherland* v. *Sutherland*, 1893, 3 Ch. 169; 62 L. J. Ch. 953.

V. Bonâ Fide: Forgetfulness: Misnomer: Omission: Kerr on Fraud and Mistake: 8 Encyc. 433–439.

MISTRESS. — *V.* Master.

MIS-USER. — *V.* Non-user.

MIXED. — *V.* Corporation: Tithes: Real Action.

MIXTURE. — *V.* Proper Mixture.

MOB. — *V.* Rebellion.

MODEL. — Quà Official Secrets Act, 1889, 52 & 53 V. c. 52, "'Model,' includes, Design, Pattern, and Specimen" (s. 8).

MODERATE SPEED. — "Moderate Speed" in Art. 13, Regulations for Preventing Collisions at Sea, 1879, replaced by Art. 16 of the Regns of 1897, is a relative term, depending upon the circumstances: it means, that a Vessel is to reduce her speed so far as she can, consistently with keeping steerage way (*The Zadok*, 9 P. D. 114; 53 L. J. P. D. & A. 72); and a sailing ship going in a dense fog is not to go at a greater speed than is enough to keep her under Control (*The Beta*, 9 P. D. 134). "A speed which may be moderate in a fog through which daylight appears, is not a proper speed in a dense fog in which nothing can be discerned" (per Brett, M. R., *Ib.*); "in a dense fog the vessel should be brought as nearly as possible to a standstill so as only to be just under Command" (per Brett, M. R., *The Dordogne*, 10 P. D. 10; 54 L. J. P. D. & A. 29). *Vf, The Pennsylvania*, 23 L. T. 55: *The Elysia*, 46 L. T. 840: *The Resolution*, 60 L. T. 430; 6 Asp. 363: *The Campania*, 70 L. J. P. D. & A. 101: Abbott, 843-847.

Digitized by Google

MODERATE TERMS. — An agreement to sell goods on "Moderate Terms" satisfies the Statute of Frauds quà price (*Aschcroft* v. *Morris*, 4 M. & G. 450).

MODEST. — Modest gifts from Husband to Wife; *V.* DON.

MODIFICATION. — A power to sanction "any Modification" of the rights of Debenture Holders, enables its donee to place another security in front of the debentures (*Re Canada Freehold Estate & Timber Co*, 55 L. T. 347: *Follit* v. *Eddystone Quarries Co*, 1892, 3 Ch. 75; 61 L. J. Ch. 567). But it is not a "Modification" of such rights to substitute for the debentures the shares (or, *semble*, debentures) of another Co; that is rather an Extinction of those rights than a Modification of them (per Fry, L. J., *Mercantile Trust* v. *International Co*, 1893, 1 Ch. 490, 491). *Vh*, *Hay* v. *Swedish & Norwegian Ry*, 33 S. J. 454.

This power is usually to effect a "Modification or COMPROMISE." But under "Compromise" "a power to 'compromise' their rights pre-supposes some dispute about them or difficulties in enforcing them, . . . it does not include a power to make presents" (per Lindley, L. J., *Mercantile Trust* v. *International Co*, 1893, 1 Ch. 489). Therefore, that case shows that where there is no dispute, difficulty, or peril, about the rights of debenture holders, a power to "compromise" such rights does not justify their extinction, abridgement, or, *semble*, alteration. But if there be dispute, or difficulty, or peril, then a power to "compromise" includes a power to compel the substitution for the debentures of debentures or shares of another Co (*Sneath* v. *Valley Gold*, 1893, 1 Ch. 477; 68 L. T. 602: *Mercantile Trust* v. *River Plate Trust*, 1894, 1 Ch. 578; 63 L. J. Ch. 366; 70 L. T. 131; 42 W. R. 365).

V. ALTER.

MODUS. — "*Modus decimandi*, is money, or other thing of value, given annually in lieu of TITHES" (Termes de la Ley). It, and indeed all Fees, *e.g.* a Marriage Fee, which have only CUSTOM for their warrant, must be fixed and unvarying and have been paid from time IMMEMORIAL, and their amount must be reasonable and avoid the sin of Rankness, *i.e.* it must be of such an amount as would not have been unreasonable and could have been claimable, as of Right, in the time of Richard 1 (2 Bl. Com. 30, 31: *Bryant* v. *Foot*, 36 L. J. Q. B. 65; 37 Ib. 217; L. R. 2 Q. B. 161; 3 Ib. 497; 7 B. & S. 725; 9 Ib. 444). *Cp*, TOLL TRAVERSE.

"Modus decimandi, or Exemption or Discharge from Tithes," 2 & 3 W. 4, c. 100; *V. Knight* v. *Waterford*, 15 L. J. Ex. 288; 15 M. & W. 419: *Salkeld* v. *Johnston*, 2 C. B. 749; 18 L. J. Ex. 89; 2 Ex. 256; 18 L. J. Ch. 493; 1 Mac. & G. 242.

MOIETY. — "Although the proper meaning of 'Moiety' is a *half* part, it is here, in my opinion, used by the testator, who seems to have

Digitized by Google

been an ill-educated person, in the sense of an *equal* part or share. I am not aware of any judicial opinion having been expressed on the meaning of this or a similar word; in the Imperial Dictionary, I find one of its meanings given as, a part or share as distinguished from a half part" (per Chatterton, V. C., *Morrow* v. *M'Conville*, 11 L. R. Ir. 252). In that case the testator had made provision for three separate moieties, adding "the several moieties to be arranged by the executors."

That "Moiety" means, generally, half part, *V.* Litt. ss. 662, 663: Jacob.

When a person goes into an auction room, where a "Moiety" of a piece of ground is being sold, and bids for the same at so much per yard, that means that his bids are for the interest in the property (*i.e.* the half part thereof) which is being sold, at so much per yard, not that he is bidding for the entirety of the property at so much per yard; his purchase money will, accordingly, be the amount of his successful bid multiplied by the number of yards, not half that amount (per Cottenham, C., *Chamberlain* v. *Lee*, 8 L. J. Ch. 266).

A devise of "My Moiety," even before Wills Act, 1837, would generally pass the fee (2 Jarm. 285: *Doe* d. *Atkinson* v. *Fawcett*, 3 C. B. 274; 15 L. J. C. P. 244; 10 Jur. 740).

"Where there is a general conveyance, as here, of a Moiety of a Ship, without saying more, the ordinary and fair Construction is that the conveying parties are the owners of the whole" (per Mansfield, C. J., *Reed* v. *Wilcox*, 5 Taunt. 258).

V. Per My et per Tout.

MOLEST: MOLESTATION.—"Molestation," in contravention of a covenant in a Separation Deed, is an act done by the person contracting (or contracted for), or her or his authorized agent. It must be an act the natural tendency of which is to injure or annoy, and intended to injure or annoy, the covenantee. The mere adultery of a wife, even though she have a bastard child, is not a "Molestation" by her of her husband. But adultery might be done under such circumstances of aggravation towards the covenantee as would amount to Molestation; *e.g.* if a wife caused her bastard child to be called by her husband's name, or by one of his titles (*Sv, Cowley* v. *Cowley*, 70 L. J. P. D. & A. 83; 1901, A. C. 450), and (especially) if she held out that such child was her husband's son and heir, that would amount to "Molestation" of the husband (*Fearon* v. *Aylesford*, 53 L. J. Q. B. 410; 54 Ib. 33; 12 Q. B. D. 539; 14 Ib. 792). Following that case, the adultery of a wife is not, by itself, an "Annoyance" of her husband within such a covenant (*Sweet* v. *Sweet*, 1895, 1 Q. B. 12; 64 L. J. Q. B. 108; 71 L. T. 672; 43 W. R. 303).

"It is clear law that a covenant not to 'molest' does not cover, and is not intended to cover, the same ground as a covenant not to take legal

Digitized by Google

proceedings" (per Collins, L. J., *Hunt* v. *Hunt*, 67 L. J. Q. B. 18; 1897, 2 Q. B. 547; 77 L. T. 421: *Cp*, *Gibbons* v. *Vouillon*, inf). Therefore, a *bonâ fide* suit for Judicial Separation or Divorce is not a breach of a covenant not to "Molest or Disturb" (*Thomas* v. *Everard*, 30 L. J. Ex. 214; 6 H. & N. 448: *Hunt* v. *Hunt*, sup). But for a wife or husband to write or adopt a statement holding up the other to reprobation and to send it to that other and his or her friends (or, probably, to send it only to the other), is such a "Molestation" (*Linton* v. *Mackenzie*, Times, 31st Oct 1893).

A woman "molests" a man, within the meaning of a Bastardy Agreement, if she falsely, fraudulently, and knowing it to be a false charge, imputes to him that he is the father of another of her illegitimate children (*Lane* v. *Panton*, 3 F. & F. 125).

In a Creditors' Deed of Arrangement, an agreement not to "molest or interfere with" the debtor, is broken by a creditor (who is a party to the deed) bringing an action against the debtor for a debt included in the deed (*Gibbons* v. *Vouillon*, 8 C. B. 483; 19 L. J. C. P. 74). *Cp*, *Hunt* v. *Hunt*, sup.

As to an agreement with a Tenant "not to molest, disturb, or raise the rent"; *V.* Woodf. 96, citing *Kusel* v. *Watson*, 11 Ch. D. 129; 48 L. J. Ch. 413; 27 W. R. 714: *Wood* v. *Davis*, 6 L. R. Ir. 50: *Roberts* v. *Tregaskis*, 38 L. T. 176: *Vf*, *Browne* v. *Warner*, 14 Ves. 156: *Re King*, L. R. 16 Eq. 521, which two last cases are distd in *Wood* v. *Beard*, 2 Ex. D. 30; 46 L. J. Q. B. 100; 35 L. T. 866: TERMINATE.

Picketing, — *i.e.* besetting workmen not joining in a strike, — with a view to prevent them from working; held, "Molestation" under s. 1 (3), 34 & 35 V. c. 32, repealed (*R.* v. *Druitt*, 16 L. T. 855). So, a threat by workmen to combine to strike as against other workmen, was a "Molestation" within s. 3, 6 G. 4, c. 129 (*Walsby* v. *Anley*, 30 L. J. M. C. 121). *Vth*, 22 V. c. 34: *Va*, THREAT: BESET: COERCION: INTERFERE.

MONEY. — "'Money,' as Currency and not as Medals, seems to me to have been well defined by Mr. Walker in *Money, Trade, and Industry*, as, — 'That which passes freely from hand to hand throughout the community, in final discharge of debts and full payment for commodities; being accepted equally without reference to the character or credit of the person who offers it, and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities'" (per Darling, J., *Moss* v. *Hancock*, 68 L. J. Q. B. 660; 1899, 2 Q. B. 111; 80 L. T. 693; 47 W. R. 698; 63 J. P. 517). *Cp*, CASH.

In a bequest, "Money" "is a general word, but yet not so large and comprehensive as the word *Pecunia* in the Roman tongue, for such word, in that language, means all the testator's substance, both real and personal, that can be converted into money. But the word 'Money' in

Digitized by Google

our language answers to the barbarian's Latin word 'Moneta,' and is a genus that comprehends two species, viz., READY MONEY and MONEY DUE, *i.e.* the money in testator's own hands, or his money in the hands of anybody else" (per Gilbert, C. B., *Re Shelmer*, Gilb. Eq. Rep. 202). *Vf*, Cowel, *Pecunia*.

The natural meaning of a gift of "Money," or "Moneys," as established by the authorities and when unaffected by a context, is that it will only include, "Cash in the house and at bankers and any other money belonging to the testator at law. Any sums actually due and really payable, —sums in fact which he had a right to receive on demanding them,— would pass; but income not payable until a future time would not pass. Arrears due under a Settlement would therefore pass, but the apportioned parts of current dividends would not pass" (per Selborne, C., *Byrom* v. *Brandreth*, 42 L. J. Ch. 826; L. R. 16 Eq. 475).

According to this definition "the term Moneys" is equivalent to "Ready Money at Call" (per Pearson, J., *Re Townley*, 53 L. J. Ch. 518).

But in *Williams* v. *Williams* (47 L. J. Ch. 857; 8 Ch. D. 789), Baggallay, L. J., cited with approval a dictum of Wood, V. C., in *Langdale* v. *Whitfield* (27 L. J. Ch. 795; 4 K. & J. 426), that *primâ facie* a bequest of "Moneys" "will be confined to Ready Money actually in Hand." *Vf*, *Re Sutton*, cited DESERVING: *Dunally* v. *Dunally*, 6 Ir. Ch. Rep. 540: *Dillon* v. *McDonnell*, 7 L. R. Ir. 335: CASH: MONEY DUE.

Without a context "Money" will not include Stocks or Shares, "though redeemable by money, or saleable for money" (*Re Shelmer*, sup: *Vf*, *Willis* v. *Plaskett*, 4 Bea. 208: *Ommaney* v. *Butcher*, 1 T. & R. 260); but in *Gallini* v. *Noble* (3 Mer. 691) a bequest of "Money in the Bank of England" included Bank Stock, because the testator never had had cash in the Bank: *Va*, *Brennan* v. *Brennan*, Ir. Rep. 2 Eq. 321: *Conly* v. *Green*, 5 Ib. 430. In *Re Smith*, *Henderson-Roe* v. *Hitchins* (58 L. J. Ch. 860; 42 Ch. D. 303), North, J., held that "the RESIDUE of my Money" comprised Stocks, Shares, and Securities for Money. *Va*, SURPLUS.

"Money" will not include the balance undisposed of arising from the sale of realty directed to be sold (*Re Shelmer*, sup).

The meaning of the word "Money" in a Will, will, generally, depend upon the context—if there is any that can explain it—and upon the surrounding circumstances (per Kay, J., *Re Cadogan*, 53 L. J. Ch. 209; 25 Ch. D. 154; 32 W. R. 57; cited POSSESSED OF). But from the observations of the learned judge in that case it would seem that there is no middle course between holding "Money" to its natural sense, and construing it as meaning "the PERSONAL ESTATE" according to the cases herein subsequently cited. And it would seem to follow that if the word is employed so that it could not be considered as having so wide a meaning as "Personal Estate," then it must be restricted to its natural sense. *Sv*, *Re Townley*, 53 L. J. Ch. 516: *Langdale* v. *Whitfield*, sup: *Kendall* v. *Kendall*, inf.

Digitized by Google

When "Money" is bequeathed charged with debts or funeral expenses, that affords "a strong inference that the testator considered himself as disposing of that property which by law was subject to those charges," namely his personal estate or (as the case may be) his residuary personal estate (per Leach, M. R., *Kendall* v. *Kendall*, 4 Russ. 371; 6 L. J. O. S. Ch. 111; a doctrine adopted by Langdale, M. R., in *Rogers* v. *Thomas*, 2 Keen, 13: *Va*, for other contexts by which "Money" carried all, *Barrett* v. *White* and *Re Egan*, cited REMAIN: *Newman* v. *Newman*, 26 Bea. 218: *Williams* v. *Williams* and *Re Cadogan*, sup: *Re White*, 51 L. J. P. D. & A. 40; 7 P. D. 65: *Re Buller*, 74 L. T. 406).

On the other hand if a bequest of "Money" is *followed* by other legacies, whether pecuniary or specific, then "Money" will generally be restricted to the natural meaning of the word (*Lowe* v. *Thomas*, 23 L. J. Ch. 453, 616; 5 D. G. M. & G. 315: *Byrom* v. *Brandreth*, sup: *Re Cadogan*, sup); but referring to *Lowe* v. *Thomas*, Malins, V. C., said in *Prichard* v. *Prichard* (inf), "I cannot say that I understand upon what grounds the decision was based."

The use of the word "Moneys" (in the plural) *e.g.* "ALL my moneys," — is a circumstance, though perhaps not a strong one, favouring the larger interpretation (*Re Townley*, 53 L. J. Ch. 516: *Manning* v. *Purcell*, 24 L. J. Ch. 522; 2 Sm. & G. 284; 7 D. G. M. & G. 55: *Whateley* v. *Spooner*, 3 K. & J. 542). In *Langdale* v. *Whitfield* (sup) "Moneys" was held to include all moneys due (whether on security or not) as well as cash in hand.

Besides the cases already cited on this word, *V. Dowson* v. *Gaskoin*, 2 Keen, 18; 6 L. J. Ch. 295: *Prichard* v. *Prichard*, 40 L. J. Ch. 92; L. R. 11 Eq. 232: *Legge* v. *Asgill*, T. & R. 265, *n*: *Stratton* v. *Hillas*, 2 Dr. & War. 51: *Waite* v. *Combes*, 5 D. G. & S. 676; 21 L. J. Ch. 814, in *whlc* (as well as in *Kendall* v. *Kendall* and *Rogers* v. *Thomas*, sup) it was held that "Money" included the undisposed-of personal estate: *Sv*, *Gosden* v. *Dotterill*, 1 My. & K. 56; 2 L. J. Ch. 15: *Larner* v. *Larner*, 26 L. J. Ch. 668; 3 Drew. 704: *Collins* v. *Collins*, 40 L. J. Ch. 541; L. R. 12 Eq. 455, in which the word was confined to its literal and natural meaning: *Va*, REMAIN.

In *Gaskell* v. *Harman* (11 Ves. 504) "Money," being controlled by a strong context, was held to include Securities for Money, and even REAL ESTATE.

Vf, PRINCIPAL MONEY: RESIDUE: 1 Jarm. 768, *n* (*e*): Wms. Exs. 1052: Watson Eq. 1324, 1325: Chitty Eq. Ind. 7819–7825, 7854.

As to the phrase "*Money Due*," *V. Stephenson* v. *Dowson*, cited MONEY DUE: and consider how that case is affected by s. 24, Wills Act, 1837.

"Moneys in hand"; *V. Vaisey* v. *Reynolds*, cited FARMING STOCK.

V. ALL: MONEY DUE: POSSESSED OF: READY MONEY: SECURITIES FOR MONEY: WHAT IS LEFT.

Digitized by Google

"Money," s. 12, Judgments Act, 1838, 1 & 2 V. c. 110, "means, specific gold and silver COIN; not a Debt" (per Alderson, B., *Harrison* v. *Paynter*, 6 M. & W. 390). Therefore, the word there does not include an execution debtor's unpaid purchase money (*Brown* v. *Perrot*, 4 Bea. 585), or his moneys in the sheriff's hands under an execution at his suit (*Collingridge* v. *Paxton*, 11 C. B. 683; 21 L. J. C. P. 39: *Wood* v. *Wood*, 4 Q. B. 397; 12 L. J. Q. B. 141: *Harrison* v. *Paynter*, sup: *Fieldhouse* v. *Croft*, 4 East, 510: *Vf*, *Willows* v. *Ball*, 2 B. & P. N. R. 376).

"Moneys," in a Declaration against a Sheriff for not levying "the whole of the moneys" under a fi. fa., held to embrace not only the debt but also all the items endorsed on the writ (*Slade* v. *Hawley*, 14 L. J. Ex. 217; 13 M. & W. 757).

"Money," s. 135, Com. L. Pro. Amendment Act (Ir), 1853, includes the Suitors Fee Fund (*Quinn* v. *O'Keeffe*, 10 Ir. C. L. Rep. 393).

Quà Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, "'*Pecuniary Reward*,' and 'Money,' shall be deemed to include, any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration; and expressions referring to money shall be construed accordingly" (s. 64).

Quà Stamp Act, 1891, "'Money,' includes, all sums expressed in British, or in any Foreign or Colonial, currency" (s. 122).

In a Criminal Statute, "Money," *e.g.* "Money, Goods, Wares, or Merchandize," s. 1, 30 G. 2, c. 24, has been held not to include Bank Notes (*R.* v. *Hill*, Russ. & Ry. 190); but the contrary was held on "Money, Goods, or Chattels," s. 2, 8 Eliz. c. 4 (2 East P. C. 701).

"Money" for which there may be an Order to RESTORE under s. 100, Larceny Act, 1861, *semble*, is limited to cases where the money stolen is found on the thief or in the possession of some one who took it from him otherwise than as currency (per Channell, J., *Moss* v. *Hancock*, sup, p. 1214); a Victorian £5 piece kept as a curio is "Money" within the section (*S. C.*).

A covenant in a Marriage Settlement to settle "Money or PROPERTY" wherein the covenantor has not "any ESTATE OR INTEREST" and which may become void under s. 47 (2), Bankry Act, 1883, does not include a covenant by him to pay money to the trustees at a future time; the money referred to by the section must be something specific (*Ex p. Bishop*, 42 L. J. Bank. 107; 8 Ch. 718).

"Any Moneys or Property of the Co," s. 10 (1), Comp Winding-up Act, 1890, is to be read in a popular sense, and includes any money which ought to be treated, whether on legal or equitable grounds, as received by any Promoter to the use of the Co (*Re Sale Hotel Co*, 46 W. R. 617; 78 L. T. 368).

"Money" distinguished from "Property"; *V.* POSSESSION.

"Money or other Property to which no existing Statute of Limitations

Digitized by Google

applies," s. 8 (1 *b*), Trustee Act, 1888, includes, and *semble* means, that which is sought to be recovered as upon a BREACH OF TRUST (*Re Bowden*, 59 L. J. Ch. 815; 45 Ch. D. 444).

To pay Money; *V.* PAY.

Money acquired; *V.* ACQUIRED.

Money "liable" for purchase of Land, s. 33, S. L. Act, 1882; *V.* LIABLE.

"Rogue Money"; *V.* ROGUE AND VAGABOND.

V. BRITISH COIN: COIN: CURRENT: PUBLIC MONEY: OTHER: PIN MONEY.

MONEY CHARGED UPON LAND.—*V.* CHARGED UPON.

MONEY, COSTS, CHARGES, AND EXPENSES.—"When the legislature mentions 'Money, Costs, Charges, and Expenses' (s. 18, 1 & 2 V. c. 110), it means money decreed or ordered to be paid, together with the costs, charges, and expenses, to be ascertained in the usual way by the officers of the Court. It is unnecessary to decide the further point; but I am of opinion, that, with respect to costs, it is enough if they are ascertained by the officer of the Court, and that it is not necessary that there should be any order to pay after they are taxed" (per Parke, B., *Jones* v. *Williams*, 10 L. J. Ex. 257; 8 M. & W. 349).

V. COSTS: COSTS AND CHARGES.

MONEY DUE.—A bequest of "Money *due*" obviously differs from one of MONEY. "Money due" points to debts or to moneys arising under a contractual obligation. Under a bequest of "Money due" will pass moneys payable on the termination of testator's own life (*Petty* v. *Willson*, 4 Ch. 574; 17 W. R. 778), and damages for breach of contract to which he was entitled, though the amount be ascertained in an action by his executor after his death (*Bide* v. *Harrison*, 43 L. J. Ch. 86; L. R. 17 Eq. 76; 29 L. T. 451); but not money for a service uncompleted at testator's death (*Stephenson* v. *Dowson*, 10 L. J. Ch. 93; 3 Bea. 342: *Vthr*, s. 24, Wills Act, 1837).

"I think it very likely that the words, 'Sums of money due and owing,' might extend beyond what were strictly debts. It might possibly, under the particular circumstances of certain Wills, be held to include any sum which could be recovered either at law or in equity" (per Mellish, L. J., *Martin* v. *Hobson*, 42 L. J. Ch. 342; 8 Ch. 401; 21 W. R. 376; 28 L. T. 427); but in that case it was held that such phrase did not comprise an unascertained share in certain partnership assets to which the testatrix was entitled as one of the next of kin of her son.

A bequest to testator's *debtor* of "All Moneys due" from him, means, if there be cross accounts, the balance (*Ganly* v. *Dowling*, 5 L. R. Ir. 628).

"Money due *on a mortgage*," will not pass a sum merely *charged* on property (*Poulett* v. *Hood*, 35 L. J. Ch. 253; L. R. 5 Eq. 115; 35 Bea.

Digitized by Google

234; 13 L. T. 783; 14 W. R. 298): *Sv, Brown* v. *Brown,* 6 W. R. 613.
V. Money on Mortgage.
V. Due.

MONEY EXPENDED.—Quà Naval Defence Act, 1889, 52 & 53 V. c. 8, "'Money expended,' includes, the value of stores issued from stock and used in the construction or completion of the vessels to be built under this Act" (s. 7).

MONEY, GOODS or CHATTELS.—*V. Robinson* v. *Jenkins,* cited Goods and Chattels, towards end.

MONEY IN COURT.—Stat. Def., 35 & 36 V. c. 44, s. 3.

MONEY IN HAND.—"There is no real difference between 'Money in Hand' and 'Ready Money'" (per Lyndhurst, C., *Parker* v. *Marchant,* 12 L. J. Ch. 387). *V.* Ready Money.

MONEY IN POSSESSION.—*V.* Possession.

MONEY IN THE FUNDS.—Foreign Bonds guaranteed by England not included herein (*Burnie* v. *Getting,* 2 Coll. 324: *V.* Funds).
V. Grant v. *Mussett,* 8 W. R. 330; 2 L. T. 133: Government Stock: Money out at Interest.

MONEY LENDER.—Quà Money-lenders Act, 1900, 63 & 64 V. c. 51, "Money-lender," includes, "every person whose business is that of money-lending, or who advertises or announces himself, or holds himself out in any way, as carrying on that business; but shall *not* include,—

"(*a*) Any Pawnbroker, in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to Pawnbrokers; or

"(*b*) Any Registered Society, within the meaning of the Friendly Societies Act, 1896, or any Society registered or having rules certified under ss. 2 or 4 of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894; or

"(*c*) Any Body Corporate, incorporated or empowered by a Special Act of Parliament to lend Money in accordance with such Special Act; or

"(*d*) Any person *bonâ fide* carrying on the business of Banking or Insurance, or *bonâ fide* carrying on any business (not having for its primary object the lending of money) in the course of which and for the purposes whereof he lends money; or

Digitized by Google

"(e) Any Body Corporate, for the time being exempted from registration under this Act by Order of the Board of Trade made and published pursuant to regulations of the Board of Trade" (s. 6).

MONEY ON MORTGAGE.—Prior to the Conv & L. P. Act, 1881, a bequest of "Money on Mortgage" passed also the fee in the mortgaged property (*Doe* d. *Guest* v. *Bennett*, 20 L. J. Ex. 323; 6 Ex. 892: *Re Arrowsmith*, 27 L. J. Ch. 704). But that Act, since it came into operation, has superseded this ruling (s. 30).

V. Money Due: Mortgage.

MONEY ON SECURITY.—*V.* Security for Money.

MONEY OUT AT INTEREST.—This phrase does not include such Government Stock or Funds the principal of which cannot be recalled, for it means "money which is capable of being recalled at some time or other" (per Ellenborough, C. J., *R.* v. *St. John, Maddermarket*, 6 East, 186).

Gift of "Property at Interest"; *V. Sealy* v. *Stawell*, Ir. Rep. 2 Eq. 326.

MONEY PAID.—*V.* Paid: Payment: Truly set forth.

MONEY RECEIVED.—Agreement to pay Commission on "Money Received"; *V. Fisher* v. *Drewett*, 48 L. J. Ex. 32; W. N. (78) 151.

MONEY SECURED.—*V.* Amount.

MONEY VALUE.—The reservation, in a Lease for 500 years dated in 1647, of a silver penny, if demanded, is a "Rent having no money value" within s. 65, Conv & L. P. Act, 1881 (*Re Chapman to Hobbs*, 54 L. J. Ch. 810; 29 Ch. D. 1007); but, *semble*, a rent of 3*s.* in a long Lease dated 1668, has a "money value" (*Re Smith and Stott*, 48 L. T. 512; 31 W. R. 411).

MONEY'S WORTH.—"Annuity or Rent-charge granted without regard to Pecuniary Consideration or Money's Worth," s. 10, 53 G. 3, c. 141; *V.* Pecuniary Consideration.

Marriage is not a "Valuable Consideration in *Money, or Money's Worth*" within s. 17, Sucn Dy Act, 1853 (*Floyer* v. *Bankes*, 33 L. J. Ch. 1; 3 D. G. J. & S. 306: *V.* per Westbury, C., in *the* on the meaning of this phrase, quoted by the Court in *A-G.* v. *Wolverton*, 1897, 1 Q. B. 231; 65 L. J. Q. B. 615; 66 Ib. 202; *S. C.* in H. L., 1898, A. C. 535; 67 L. J. Q. B. 829; 79 L. T. 58; 47 W. R. 97); nor does a Parent's covenant on his child's Marriage create a debt for "Money, or Money's

Digitized by Google

Worth" within s. 7, Finance Act, 1894 (*Re Gray*, 1896, 1 Ch. 620; 65 L. J. Ch. 462; 74 L. T. 275; 44 W. R. 406). *Vh, A-G.* v. *Rathdonnell*, 32 L. R. Ir. 594.

"Money, or Money's Worth," s. 3 (1), Finance Act, 1894; *V. A-G.* v. *Smith-Marriott*, 1899, 2 Q. B. 595; 69 L. J. Q. B. 59; 81 L. T. 359; 48 W. R. 12; 64 J. P. 54.

V. EARNINGS: INCOME: PURCHASE.

MONITION.—"'Monition' (which is sometimes itself called an Ecclesiastical Censure) is described in the books as of a 'preparatory' nature, that is (as I understand the term) as a warning or command to be followed in case of disobedience by some coercive sanction" (per Selborne, C., *Mackonochie* v. *Penzance*, 50 L. J. Q. B. 611; 6 App. Ca. 424, cited in *Enraght* v. *Penzance*, 51 L. J. Q. B. 510; 7 App. Ca. 240). *Vh,* Phil. Ecc. Law, 960, 1065: 8 Encyc. 454.

MONOPOLY.—"A Monopoly is an institution or allowance by the King, by his grant commission or otherwise, to any person or persons, bodies politique or corporate, of or for the sole buying, selling, making, working, or using, of any thing, whereby any person or persons, bodies politique or corporate, are sought to be restrained of any freedome or liberty that they had before or hindered in their lawful trade" (3 Inst. 181). *Vh,* 8 Encyc. 455–458: Gordon on Monopolies.

"Pretext of Monopoly"; *V.* PRETEXT.

Statute of Monopolies, 21 Jac. 1, c. 3, the exceptions in which are the foundation of the law of Patents (Wms. P. P., Part 3, ch. 2).

MONSELL'S ACT.—Registration of Marriages (Ir) Act, 1863, 26 & 27 V. c. 90.

MONSTRAVERUNT.—*V.* Termes de la Ley: SOCAGE.

MONTGOMERY ACT.—Entail Improvement Act, 1770, 10 G. 3, c. 51.

MONTH.—"A Month, *mensis*, is regularly accounted in law 28 dayes, and not according to the solar month, nor according to the Kalendar, unlesse it be for the account of the laps in a *quare impedit*" (Co. Litt. 135 b). "A Month, in law, is a lunar month, or 28 days, unless otherwise expressed; not only because it is always one uniform period, but because it falls naturally into a quarterly division by weeks" (2 Bl. Com. 141). "In legal proceedings, the word 'Months,' means lunar months, unless the contrary appear to be the meaning from the subject-matter to which that term is applied" (per Bayley, J., *Johnstone* v. *Hudleston*, 4 B. & C. 932). "In the instance, indeed, of a *quare impedit*, the computation of time is by calendar months, but that depends on the words of an Act of Parliament, *tempus semestre*. But for all

Digitized by Google

other purposes, and in all Acts of Parliament, where 'Months' are spoken of without the word 'Calendar,' and nothing is added from which a clear inference can be drawn that the legislature intended calendar months, it is understood to mean lunar months" (per Kenyon, C. J., *Lacon* v. *Hooper*, 6 T. R. 224). "One of the earliest things we learn is that the word 'Month,' *ex vi termini*, means a lunar month" (per Park, J., *Crooke* v. *M'Tavish*, 1 Bing. 310): *Vf*, *Ryalls* v. *The Queen*, 11 Q. B. 781. But in *Dyke* v. *Sweeting* (Willes, 588) the Court "thought, but came to no opinion," that "Month," in a Covenant to pay money, meant a calendar month. *So*, as to Acts of Parliament, inf.

"Month," means lunar month, "unless there is admissible evidence of an intention in the parties using the word to denote calendar month. If the context shows that calendar month was intended, the Judge may adopt that construction (*Lang* v. *Gale*, 1 M. & S. 111: *R.* v. *Chawton*, 10 L. J. M. C. 55; 1 Q. B. 247: *Marsh* v. *Higgins*, 9 C. B. 567). If the surrounding circumstances, at the time the instrument was made, show that the parties intended to use the word, not in its primary or strict sense, but in some secondary meaning, the Judge may construe it, from such circumstances, according to the intention of the parties (*Goldshede* v. *Swan*, 16 L. J. Ex. 284; 1 Ex. 154: *Walker* v. *Hunter*, 15 L. J. C. P. 12; 2 C. B. 324: Bacon's Maxims, 10, and the examples there given: *Mallan* v. *May*, 14 L. J. Ex. 48; 13 M. & W. 511: *Beckford* v. *Crutwell*, 1 Moo. & R. 187; 5 C. & P. 242). If there is evidence that the word was used in a sense peculiar to a trade, business, or place, the jury must say whether the parties used it in that peculiar sense (*Smith* v. *Wilson*, 1 L. J. K. B. 194; 3 B. & Ad. 728: *Grant* v. *Maddox*, 16 L. J. Ex. 227: *Jolly* v. *Young*, 1 Esp. 186)" (per Denman, C. J., *Simpson* v. *Margitson*, 17 L. J. Q. B. 81; 11 Q. B. 23; in *whc* it was held that the conduct of the parties was not, by itself, admissible evidence to vary the primary meaning of "Month").

"In a *Contract* at law 'Month' means a lunar month, unless there is admissible evidence of an intention in the parties using the word to denote a calendar month" (Sug. V. & P. 257: *Va*, Dart, 492). But that, if still law, must, at least from 1st Jan 1894, be confined to contracts not relating to the Sale of Goods, for on and since that date, in a Contract for the Sale of Goods "'month,' means, *primâ facie*, calendar month" (s. 10 (2), Sale of Goods Act, 1893).

On the question being suggested by counsel for the plaintiff as to whether so many "Months'" credit, for goods sold and delivered, meant Calendar or Lunar Months, Pollock, C. B., said, — "In Legal matters a 'Month' means, a Lunar month; but in *Commercial matters* a 'Month' always means a Calendar month. In Bills of Exchange, Promissory Notes, Invoices, Times of Credit, and everything else relating to commercial matters, it is so; and I know of no instance to the contrary" (*Hart* v. *Middleton*, 2 C. & K. 10). But it is to be observed

Digitized by Google

that this is a nisi prius ruling on a point not, apparently, taken by defendant's counsel and one on which, in the result, the case did not turn.

"The word 'Month,' although at common law it generally means a lunar month, is in *Mercantile Contracts* understood to mean a calendar month (*Jolly* v. *Young*, sup: *R.* v. *Chawton*, 10 L. J. M. C. 55; 1 Q. B. 247, 250: *Hart* v. *Middleton*, sup: *Webb* v. *Fairmaner*, 7 L. J. Ex. 140; 3 M. & W. 474: *Turner* v. *Barlow*, 3 F. & F. 946). And the Court will look at the context in all cases, to see whether a calendar month was not intended, and, if so, will adopt that construction (*Simpson* v. *Margitson*, sup: *Webb* v. *Fairmaner*, sup)" (Benj. 674). So, at p. 230, Blackb., citing *Hart* v. *Middleton*, sup, it is said, "The word 'Month' means a lunar month in legal matters; but in *Commercial* matters it always means a calendar month, unless the context shows differently." And again in Maude & P. 293, it is stated (on the authority of *Jolly* v. *Young* and *Simpson* v. *Margitson*, sup), that "in Charter-Parties, *as in other mercantile contracts*, the expression 'A Month' is construed to mean a calendar month." But on the other hand, and also citing *Simpson* v. *Margitson*, it is stated in Woodf. 236, "Month, *in any legal document*, means lunar month, unless calendar month be specified, or there be admissible evidence to show that a calendar month was intended." (*Va*, as to Agreement for hire of Furniture, *Hutton* v. *Brown*, W. N. (81) 116; 45 L. T. 343: and in an Agreement to engrave a Picture, which is not mercantile, "month" means a lunar month, *Turner* v. *Barlow*, sup). But again, per contra, it is said that where a term (in an agreement between Landlord and Tenant) "is for Months, without specifying whether lunar or calendar, the latter must now be understood" (Watson Eq. 544), and for that proposition 13 & 14 V. c. 21, s. 4, is cited; though it would be probably difficult to show how that statute operates on Leases, and the proposition seems negatived by *Rogers* v. *Hull Dock Co* (4 N. R. 494). In a Condition of RESIDENCE in a testamentary gift, "Month" means a lunar month (*Walcot* v. *Botfield*, 2 Eq. Rep. 758).

In Bills of Exchange or Promissory Notes, "Month" means a calendar month (s. 14 (4), Bills of Ex. Act, 1882). So also, in *Matters Ecclesiastical* (*Catesby's Case*, 6 Rep. 62 a). So, quà period allowed for redemption in a Foreclosure Decree (*Anon.*, Barnardiston Ch. Ca. 324: Fisher, 922: Robbins on Mortgages, 1027). And so also in *Proceedings in the Supreme Court* (R. 1, Ord. 64, R. S. C.), or in the *County Court* (Ord. 52, Co. Co. Rules, 1889); and so, as regards a stipulation for a "Six Months'" Notice to Quit (*V.* SIX MONTHS), and in calculating the time for performance of Conditions (*Franco* v. *Alvares*, 3 Atk. 346).

"Month," in the rule that a Domestic Servant may be discharged by a month's notice or payment of a month's wages, means a calendar month, — the wages being the money wages and not including board wages (*Gordon* v. *Potter*, 1 F. & F. 644).

In *Acts of Parliament* passed before the end of the year 1850, "Month,"

Digitized by Google

unless otherwise specially interpreted, means lunar month (2 Bl. Com. 141: *Lacon* v. *Hooper*, 6 T. R. 224: *Glassington* v. *Rawlins*, 3 East, 407); in all Acts passed since that date, "Month," "unless words be added showing lunar month to be intended," means calendar month (13 & 14 V. c. 21, s. 4; *Vf*, s. 3, Interp Act, 1889).

In sentences for Crime "Month" formerly meant lunar month, but since 1st Jan 1899, it means calendar month, unless the contrary is expressed (s. 12 (1), 61 & 62 V. c. 41).

For the American view of the meaning of "Month"; *V.* Burrill's Law Dictionary.

V. Calendar Month: Six Months: Twelve-month: Per Month: Warranted Sound.

MONTHLY. — Freight "monthly in advance"; *V.* Advance.
V. Per Month.

MONUMENT. — Quà Ancient Monuments Protection Act, 1900, 63 & 64 V. c. 34, "'Monument,' *means*, any structure, erection, or monument, of historic or architectural interest, or any remains thereof" (s. 6). *V.* Ancient Monument.

Quà Monuments (Metropolis) Act, 1878, 41 & 42 V. c. 29, "'Monument' shall *include*, any monument, statue, or other work" (s. 2).
V. Maintain.

MOOR. — *V.* Mora.

MOORAGE. — *V.* Moreage.

MOORED. — Vessel "moored at anchor" at Port of Discharge "in Good Safety"; *V.* Safety.

MOORING. — Mooring "is such a mode of attachment as will allow a Vessel to leave from time to time and to come back and re-take possession of the old attachment. A claim to a Mooring is not a claim of right of Possession in land, but is only a claim to come back from time to time and use the same mooring. . . . The right is not one to be attributed to a Grant by a sovereign or by an individual, but is a right common to every one except an Enemy; it is part of the right to use Navigable Waters in the ordinary way of navigation" (per Esher, M. R., *A-G.* v. *Wright*, 1897, 2 Q. B. 318; 66 L. J. Q. B. 834; 77 L. T. 295; 46 W. R. 85).

Change of Mooring; *V. M'Intosh* v. *Slade*, 6 B. & C. 657.
V. Moreage.

MORA. — "*Mora* is derived of the English word moore, and signifieth a more barren and unprofitable ground than marshes, dangerous for any cattell to go there, in respect of myrie and moorish soyle, neither serves it for getting of turves there" (Co. Litt. 5 a).

Digitized by Google

MORAL.—*V.* IMMORAL.
Moral Obligation; *Vh, Wennall* v. *Adney,* 3 B. & P. 249–252, *n.*

MORALITY.—"Offence against Morality, not being a question of Doctrine or Ritual," s. 2, Clergy Discipline Act, 1892; *V. Lee* v. *Flack,* 1896, P. 138, revd by *Beneficed Clerk* v. *Lee,* cited IMMORAL.

MORE.—*V.* IF MORE THAN ONE: FITTING.

MORE OR LESS.—"'ABOUT,' and 'More or less,' seem to be words of general import, and I should have much difficulty in saying that evidence ought to be received to ascertain their meaning" (per Littledale, J., *Cross* v. *Eglin,* 2 B. & Ad. 106; 9 L. J. O. S. K. B. 145); they frequently, if not generally, connote an estimate and not a warranty (*McLay* v. *Perry,* 44 L. T. 152).

Where goods are sold as "about" a certain quantity, or "thereabouts," or "more or less," these words are intended to provide only for a small difference between the numbers; and the purchaser is not bound to accept 350 tons on a bargain for "about 300 tons, more or less"; at léast, unless it be shown that a large excess was contemplated (*Cross* v. *Eglin,* sup). So, a tender of 2700 stones of wool is not warranted by a contract for "2300 stones, 100 stones more or less" (*Macdonald* v. *Longbottom,* 28 L. J. Q. B. 293; 29 Ib. 256; 1 E. & E. 977, 987). But in *Cockerell* v. *Aucompte* (26 L. J. C. P. 194; 2 C. B. N. S. 440), it was held that the delivery of 127 tons of coal was according to a contract for "100 tons, more or less." In *Morris* v. *Levison* (cited SAY), it was held that an allowance of 3 per cent either way would be a fair estimate for satisfying the word "about" (*V.* espy jdgmt of Brett, J.: *Vthc, Carnegie* v. *Conner* and *Miller* v. *Borner,* cited CARGO, in *whlc* a cargo of "about" 2800 tons was satisfied by one of 2840 tons). In *The Resolven* (9 Times Rep. 75) Jeune, P., held that 5 per cent was a fair margin to allow quà a Charter-Party agreement that the vessel was to carry "2000 tons, or THEREABOUTS." *Vf, Reuter* v. *Sala,* 48 L. J. C. P. 492; 4 C. P. D. 239: *Tamvaco* v. *Lucas,* 28 L. J. Q. B. 150, 301; 1 E. & E. 581: *Beckh* v. *Page,* 28 L. J. C. P. 164, 341; 5 C. B. N. S. 708; 7 Ib. 861: *Bourne* v. *Seymour,* 24 L. J. C. P. 202; 16 C. B. 337: *Moore* v. *Campbell,* 10 Ex. 323; 23 L. J. Ex. 310.

Where the Defendant instructed the Plaintiffs to buy for him 500 tons of sugar, "50 tons more or less of no moment if you are enabled to get a suitable vessel," and the plaintiffs bought 400 tons, parcel by parcel, according to the usage of the market, and could buy no more at the price named, it was held that the Defendant was not bound to accept the 400 tons, as the usage could not affect the express order (*Ireland* v. *Livingston,* 39 L. J. Q. B. 282; L. R. 5 Q. B. 516; reversed on another ground, 41 L. J. Q. B. 201; L. R. 5 H. L. 395). *Sv, Johnston* v. *Kershaw,* 36 L. J. Ex. 44; L. R. 2 Ex. 82.

Digitized by Google

A contract to supply the whole of a specified article required for a specified work, is not controlled and limited by the addition of an estimate o a specified quantity "more or less" (*Tancred Co* v. *Steel Co of Scotland*, 15 App. Ca. 125; 62 L. T. 738).

Vh, Blackb. 215–222: Benj. 682, 683: SAY: THEREABOUTS.

"The words 'More or Less' or 'Thereabouts,' in a Contract for Sale of Realty, will only cover a moderate excess or deficiency, and will never be suffered to be the instrument of fraud" (Add. C. 467: *Va*, *Day* v. *Fynn*, Owen, 133: Dart, 736). They would cover 5 out of 41 acres (*Winch* v. *Winchester*, 1 V. & B. 375), but not 100 out of 349 acres (*Portman* v. *Mill*, 8 L. J. Ch. 161; 3 Jur. 356; 2 Russ. 570). *Va*, *Gell* v. *Watson*, 3 Mad. 225; 2 Sim. & St. 402; Sug. V. & P. 325: *Leslie* v. *Tompson*, 9 Hare, 268, 273; 20 L. J. Ch. 561; 15 Jur. 717; 17 L. T. O. S. 277: *Simpson* v. *Dendy*, 8 C. B. N. S. 433: *Sv*, *Corless* v. *Sparling*, Ir. Rep. 9 Eq. 595.

"More or Less" in a Devise of Realty; *V. Whitfield* v. *Langdale*, 1 Ch. D. 61; 45 L. J. Ch. 177, cited FARM: *Harrison* v. *Hyde*, 4 H. & N. 805; 29 L. J. Ex. 119.

MOREAGE.—"A sum due by usage for moreing or fastening of Ships to trees or posts at the SHORE" (Hale, De Portibus Maris, ch. 6).

V. MOORING.

MORGAN.—*V.* OSBORNE MORGAN'S ACT.

MORTALITY.—"The word 'Mortality' may, under certain circumstances, include every description of death, every termination of life to which mortals are subject. It applies generally, however, to that description of death which is not occasioned by violent means" (per Bayley, J., *Lawrence* v. *Aberdein*, 5 B. & Ald. 112. *Vf*, *Gabay* v. *Lloyd*, 3 B. & C. 793).

"In *Campanhia de Navigacion la Flecha* v. *Brauer* (168 U. S. 104) Cattle were carried on deck 'at Owner's Risk,' and the shipowners were not to be 'accountable for Mortality from whatever cause arising.' Some of the cattle were thrown overboard by the Master under an unfounded fear and without apparent or reasonable necessity. It was held by the Supreme Court of the United States that the shipowners were not protected" (Carver, 122).

"Mortality from any cause whatever" in a Marine Insrce; *V. The Pomeranian*, 1895, P. 349; 65 L. J. P. D. & A. 39.

V. DEATH.

MORTGAGE.—"What is a Mortgage? Everybody knows, it consists of two things: it is a Personal Contract for a Debt secured by an Estate; and, in Equity, the Estate is no more than a PLEDGE or Security for the Debt:—the Debt is the Principal; the Estate is the Accident.

Digitized by Google

Whether the mtgee is, or is not, in possession of the pledge his right is precisely the same, with this difference, indeed, that he has never any right in Equity to the estate except as a fund to pay him his debt; for every other purpose the estate is the estate of the mtgor, and when the debt is paid all the mtgee's right and interest in the estate ceases; he has then the LEGAL ESTATE only and not a beneficial interest in it. If the mtgee has chosen to take possession and help himself, he becomes then a Bailiff without Salary and is accountable for the profits, which are applicable, in the first instance, to pay the principal and interest of his debt and all other mtgee allowances; but he is bound to be an Accounting Party, — taking the estate in possession upon the principle and upon the obligation to account with the mtgor for all the rents he receives. He is bound to keep the Account, — and to be ready with it, to apply it regularly to pay his principal and interest, — and to be ready to surrender up the Pledge as soon as it has answered its purpose. All the cases treat the mtgee, as soon as he is paid, as becoming a mere Naked Trustee, holding the legal estate for the benefit of the cestui que trust, the mtgor" (per Plumer, V. C., *Quarrel* v. *Beckford*, 1 Mad. 278).

A mtge of Personal Effects "is a PLEDGE and more; for it is an absolute Pledge to become an absolute Interest if not redeemed at a certain time: a Pledge is a deposit of Personal Effects, not to be taken back, but on payment of a certain sum by express stipulation or the course of trade to be a LIEN upon them" (per Arden, M. R., *Jones* v. *Smith*, 2 Ves. 378).

"A Mortgage is a CONVEYANCE of Land or an Assignment of Chattels, as a Security for the payment of a debt or the discharge of some other obligation for which it is given: — the Security is redeemable on the payment or discharge of such debt or obligation, — any provision to the contrary notwithstanding. . . . If I give a mtge with a Condition that I am not to redeem, that is a repugnant condition, and is a Clog on the Equity of Redemption" which is invalid (per Lindley, M. R., *Santley* v. *Wilde*, 1899, 2 Ch. 474; 68 L. J. Ch. 686: *whcv* as to what is such a "Clog"; *Va*, *Salt* v. *Northampton*, 1892, A. C. 1; 61 L. J. Ch. 49; 40 W. R. 529: *Biggs* v. *Hoddinott*, 1898, 2 Ch. 307; 67 L. J. Ch. 540, which two last cases modify most of the previous decisions as to what is *Clogging the Equity*). A covenant in a mtge of LICENSED PREMISES "tying" its trade, is invalid after the mtge is paid off, and cannot prevent that paying off (*Rice* v. *Noakes*, 1900, 1 Ch. 213; 1900, 2 Ch. 445; 69 L. J. Ch. 43, 635; 82 L. T. 784; 48 W. R. 629). But, observe, that it has been said that the doctrine against Clogging the Equity of Redemption is entirely one of Equity and has no application to that *Legal* Right of Redemption which arises on the express agreement between the parties (per Buckley, J., *Lisle* v. *Reeve*, 49 W. R. 188); *Sothlc*, on appeal, 50 W. R. 231; 71 L. J. Ch. 42. *V.* EQUITY.

The ordinary meaning of a "Mortgage" is a conveyance of freehold,

Digitized by Google

copyhold, leasehold, or other property, with a proviso for redemption to secure an advance; and does not include a statutory charge on Turnpike Tolls (*Cavendish* v. *Cavendish*, 55 L. J. Ch. 144; 30 Ch. D. 227: *Poulett* v. *Hood*, 35 L. J. Ch. 253; L. R. 5 Eq. 115; 35 Bea. 234): *V.* Real Security.

A security created by a trust for sale, is a "Mortgage" within s. 28, Real Property Limitation Act, 1833, repld s. 7, 37 & 38 V. c. 57 (*Locking* v. *Parker*, 8 Ch. 30; 42 L. J. Ch. 257: *Re Alison, Johnson* v. *Mounsey*, 11 Ch. D. 284).

An Equitable Charge, is not a "Mortgage" within the Act against Clandestine Mortgages, 4 & 5 W. & M. c. 16 (*Kennard* v. *Futvoye*, 29 L. J. Ch. 553; 2 Giff. 81).

Compare the definition of "Mortgage" as given in the Conv & L. P. Act, 1881 (s. 2, vi), in Ld St. Leonards Act, 22 & 23 V. c. 35, s. 25, and in the Stamp Act, 1891, 54 & 55 V. c. 39, s. 86.

For the purposes of the Acts which, in an administration of a deceased's estate, throw the burden of mortgage debts on the mortgaged property, "the word 'Mortgage' shall be deemed to extend to any Lien for unpaid Purchase Money" (s. 2, 30 & 31 V. c. 69). *V.* Locke King's Acts: Contrary Intention.

Other Stat. Def. — 38 & 39 V. c. 89, s. 51; 47 & 48 V. c. 54, s. 3; Lunacy Act, 1890, s. 341; Trustee Act, 1893, s. 50; Mtgees Legal Costs Act, 1895, 58 & 59 V. c. 25, s. 4. — *Scot.* 37 & 38 V. c. 42, s. 6; 53 & 54 V. c. 70, s. 96. — *Ir.* 18 & 19 V. c. 69, s. 2; 20 & 21 V. c. 16, s. 2.

A Contributory Mortgage, is a mtge to several independent mtgees securing their several advances on the same property: for an example and form, *V.* 2 Key & Elph. Prec., 6 ed., 106. Unless expressly authorized, it is a Breach of Trust for a trustee to lend trust money on such a mtge (*Webb* v. *Jonas*, cited Real Security: *Re Massingberd*, 59 L. J. Ch. 107; 60 L. T. 620; 63 Ib. 296).

A bequest of "Mortgages" prior to the Conv & L. P. Act, 1881, and if uncontrolled by context, passed the legal estate in the mortgaged hereditaments (1 Jarm. 699: *Rippen* v. *Priest*, 13 C. B. N. S. 308; 32 L. J. C. P. 65); but *V.* s. 30 of that Act as regards a testator dying after 31st Dec 1881.

As to when mortgaged property will pass by words which, *primâ facie*, are applicable to a testator's own property; *V.* My.

"That the benefit of a mtge will pass by the word 'Mortgages,' collocated with other personal chattels, is perfectly clear" (1 Jarm. 692): *Cp*, Trust.

A Trustee's power of Investment in the "Mortgages or Bonds" of any Ry or other Co, includes Debenture Stock (s. 5 (2), Trustee Act, 1893); and, by subs. 5 of that section, a power to invest in the "Shares, Stock, Mortgages, Bonds, or Debentures," of any Incorporated Co, includes

Digitized by Google

Mortgage Debentures issued pursuant to the Mortgage Debenture Act, 1865, 28 & 29 V. c. 78. *V.* DEBENTURE, at end.

As to the difference between a Co's Debenture and a Mortgage, quà Stamp; *V. Rowell* v. *Inl. Rev.*, cited MARKETABLE SECURITY.

A Trust Deed of freeholds to secure the Debentures of a Co, is not a "COMPLETED" Mtge within Ord. 2 (*a*) and Sch 1, Part 1, Solrs Rem Ord, if in fact no debentures have been issued (*Re Bircham*, 1895, 2 Ch. 786; 64 L. J. Ch. 768; 43 W. R. 673); in *the* Lindley, L. J., doubted whether an ordinary mtge if for *future* advances, would be "completed" within the Order.

A Building Socy's Reconveyance is not liable to Stamp Duty, for it is not a "Mortgage" within the proviso at the end of s. 41, Bg Socy Act, 1874 (*Old Battersea Bg Socy* v. *Inl. Rev.*, 67 L. J. Q. B. 696; 1898, 2 Q. B. 294; 78 L. T. 746).

A power to mortgage, authorizes the inclusion in the mtge of a power of sale (*Bridges* v. *Longman*, 24 Bea. 27: *Cook* v. *Dawson*, 29 Ib. 128: *Vh*, Farwell, 447–450).

A covenant by a Lessee not to "mortgage, SELL, ASSIGN, or otherwise PART WITH, this present Indenture of Lease, or the premises hereby demised or any part or parcel thereof," is not broken by a Deposit of the Lease as a security for a loan, more especially if, by reason of the Lease containing a covenant against sub-letting, it may be inferred that the primary intention was to protect the Lessor from having a New Tenant imposed upon him (*M'Kay* v. *M'Nally*, 4 L. R. Ir. 438).

"Sale, Mtge, or other Disposition," of Land, quà Legacy Duty; *V.* DISPOSITION.

"Claiming under any Mortgage"; *V.* CLAIMING UNDER.

Vh. Fisher: Coote: Robbins on Mortgages: 2 White & Tudor, 1–149: 8 Encyc. 467–526: Co. Litt. 205 a.

V. CHARGE: CONVEYANCE: FORECLOSURE: FURTHER CHARGE: LEGAL MORTGAGE: MORTGAGE OR CHARGE: MONEY DUE: MONEY ON MORTGAGE: PUISNE.

MORTGAGE COMPANY. — A "Mortgage" or "Loan" Co, s. 17, Bills of Sale Act, 1882, includes a Co authorized to raise money on loan or mtge, *i.e.* a Co having borrowing powers (*Re Standard Manufacturing Co*, 1891, 1 Ch. 627; 60 L. J. Ch. 292).

MORTGAGE MONEY. — Quà Conv & L. P. Act, 1881, "'Mortgage Money,' means money, or MONEY'S WORTH, secured by a mortgage" (s. 2, vi).

MORTGAGE OR CHARGE. — The prohibition quà Charity Trustees making "any Sale, Mortgage, or Charge, of the CHARITY ESTATE," without the express authority prescribed by s. 29, 18 & 19

Digitized by Google

V. c. 124, extends to an over-draft at their bankers if recoupment be sought out of the estate (*Fell* v. *Official Trustee of Charity Lands*, 1898, 2 Ch. 44; 67 L. J. Ch. 385; 78 L. T. 474; 62 J. P. 804). In that case Lindley, L. J., said, —"Whether I sign a piece of paper and so create a Charge, or whether I do an act which creates a Charge, appears to me to be a piece of mere machinery"; and Rigby, L. J., said, —"No doubt those words 'Sale' and 'Mortgage,' in themselves, are special, but the word 'Charge' is a very general one indeed."

A clause in a Co's Articles or Debentures prohibiting a "Mortgage or Charge," does not embrace a lien or charge worked by Operation of Law (*Brunton* v. *Electrical Co*, 1892, 1 Ch. 434; 61 L. J. Ch. 256; 65 L. T. 745: *Robson* v. *Smith*, 1895, 2 Ch. 118; 64 L. J. Ch. 461). *Cp*, Assign: *V.* Charge or Incumber.

The Judgment Debt on an executed *Elegit*, is a sum charged "by way of Mortgage or other Equitable Charge," within s. 1, 40 & 41 V. c. 34, and is payable by a devisee of the land in exoneration of his testator's general personal estate (*Re Anthony*, 1892, 1 Ch. 450; 61 L. J. Ch. 434; 66 L. T. 181; 40 W. R. 316); *secus*, quà such exoneration, if the land descend by entail, though, by s. 13, 1 & 2 V. c. 110, such Elegit operates as a "Charge" (for the benefit of the Jdgmt Creditor) on the entire estate in the land (*Ib.*, 1893, 3 Ch. 498; 62 L. J. Ch. 1004; 69 L. T. 300; 41 W. R. 667). Broadly, it may be stated that whenever an instrument charges money on land it, at least, creates an "Equitable Charge" within 40 & 41 V. c. 34 (*Re Sharland*, 40 S. J. 514).

MORTGAGEE. —"For the Mortgagee" is a sufficient description of a Vendor; *V.* Proprietor.

A legatee of a Legacy charged on Realty, is not a "Mortgagee" within R. 1, Ord. 65, R. S. C. (*Thorold* v. *Thorold*, 35 S. J. 81).

Quà Ld St. Leonards' Act, 22 & 23 V. c. 35, "Mortgagee" includes, "every person to whom, or in whose favor, any such conveyance, assignment, pledge, or charge, as aforesaid, is made or transferred" (s. 25).

Quà Conv & L. P. Act, 1881, "'Mortgagee,' includes, any person from time to time deriving title under the Original Mortgagee"; and "Mortgagee *in Possession*" includes "a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property" (s. 2, vi): a conveyance "*as* Mtgee," implies a covenant against having made incumbrances (s. 7 (F), *Ib.*).

Quà Trustee Act, 1893, "Mortgagee" includes, "every person deriving title under the Original Mortgagee" (s. 50).

Other Stat. Def. —50 & 51 V. c. 43, s, 2. —*Ir.* 18 & 19 V. c. 69, s. 2; 20 & 21 V. c. 16, s. 2.

MORTGAGOR. —Quà Conv & L. P. Act, 1881, "'Mortgagor,' includes, any person from time to time deriving title under the Original Mortgagor, or entitled to redeem a mortgage, according to his estate,

Digitized by Google

interest, or right, in the mortgaged property" (s. 2, vi). *Cp*, def in 22 & 23 V. c. 35, s. 25.

MORTGAGOR ENTITLED TO REDEEM.—This phrase in s. 15, Conv & L. P. Act, 1881, means, the mortgagor, or other the person under him who has the right to a Reconveyance (*Teevan* v. *Smith*, 51 L. J. Ch. 621; 20 Ch. D. 724: *Va*, *Kinnaird* v. *Trollope*, 39 Ch. D. 636: *Alderson* v. *Elgey*, 26 Ch. D. 567: LIEN). But the section is modified by s. 12, Conv Act, 1882.

V. ENTITLED TO REDEEM.

MORTMAIN.—" 'Mortmaine,' signifies an alienation of lands and tenements to any Guild, Corporation, or Fraternity, and their successors, *e.g.* Bishops, Parsons, Vicars, &c" (Cowel: *V.* Termes de la Ley). The common modern use of "Mortmain" connotes land alienated to, or for the purposes of, a CHARITY: *V.* INTEREST IN LAND.

The chief Statutes of Mortmain are 7 Edw. 1; 9 G. 2, c. 36; Mortmain and Charitable Uses Act, 1888, 51 & 52 V. c. 42; 54 & 55 V. c. 73.

Vh, Tudor Char. Trusts: Jacob, *Mortmain*: 9 Encyc. 1.

MORTUARY.—" 'Mortuary,' is that beast, or other chattell moveable, which after the death of the owner (by the Custome of some places) became due unto the Parson, Vicar, or Priest, of the Parish, in lieu or satisfaction of Tithes or Offerings, forgot, or not well and truly paid, by him that is dead" (Termes de la Ley); but, in a larger sense, a Mortuary is "a Gift, left by a man at his death to his parish church, for the recompense of his personal Tythes and Offerings not duly paid in his lifetime" (Cowel). *Vf*, 2 Bl. Com. 425–427. *Cp*, HERIOT.

V. BURIAL.

MOSSES.—In a fee-farm grant it was held that the words "All Mosses," as used in the fee-farm grant and controlled by its context, meant all places in which turf, or matter in the course of becoming turf, was found, including the soil of such places (*Quinn* v. *Shields*, Ir. Rep. 11 C. L. 254). Though the word "Turbary" would *primâ facie* mean "a right to cut turf," qy, whether the word "Turbaries" might not, according to the context, more properly mean "places in which turf may be cut" (per Palles, C. B., *Ib.*). *V.* TURBARY.

MOSS-TROOPER.—*V.* BLACKMAIL.

MOST DESERVING.—*V.* NEAREST.

MOST PROPER AND EFFECTIVE MANNER.—*V.* WORKABLE.

MOST RENT.—*V. Doe* d. *Newnham* v. *Creed*, 4 M. & S. 371: Sug. Pow. 791. *Cp*, BEST RENT.

Digitized by Google

MOTHER. — As to whether the expression "Mother of my children," will, contextually, let in illegitimate children: *V. Beachcroft* v. *Beachcroft*, 1 Mad. 430, stated and discussed 2 Jarm. 234–236. *Vf*, RELATIONS.

"Mother," "Grand-mother," in the statutes relating to maintenance of Poor Relations (43 Eliz. c. 2, s. 7; 59 G. 3, c. 12, s. 26), means, one not under COVERTURE (*Custodes* v. *Jinks*, Style, 283: *Coleman* v. *Birmingham*, 50 L. J. M. C. 92; 6 Q. B. D. 615; 29 W. R. 715; 45 J. P. 521; 44 L. T. 578). But a married woman having SEPARATE PROPERTY is now liable for maintenance of Children and Grandchildren (s. 21, M. W. P. Act, 1882). *V.* FATHER.

V. PARENT.

MOTHER'S SHARE. — In a substitutionary gift to children of their "Mother's Share," held, that what was meant was, the share which the mother would have taken had she survived the period of distribution (*Re Hunter*, L. R. 1 Eq. 295).

MOTIVE. — In nine cases out of ten "with THE View" (*V.* A) and "with the Motive" are synonymous (per Bowen, L. J., *Ex p. Hill*, *Re Bird*, 23 Ch. D. 704). *V.* VIEW: 9 Encyc. 14, 15. *Cp*, MALICE.

MOUNTAIN. — In Ireland, "Mountain" is descriptive of (1) Situation, or (2) Quality; "and is a sort of coarse land that yields little or no profit. For the English, upon settling there, called such land as they improved *Arable* (*Cp*, LAND), and the uncultivated part went by the name of *Mountain*. And the L. C. adds that it does not so much as necessarily include the Situation, for he has a great deal of coarse land which is called Mountain, and yet does not lie upon a hill, but is as low as the arable land about it; and that a boy can distinguish which is Arable and which is Mountain" (*Kildare* v. *Fisher*, 1 Stra. 71, 72: *Vf*, per Mansfield, C. J., *Cottingham* v. *King*, 1 Burr. 629). "'Mountain,' means, not the Situation but, the Quality of the land" (per Perrin, J., *Waterpark* v. *Fennell*, 5 Ir. Com. Law Rep. 131).

MOUNTEBANK. — *V.* QUACK.

MOUTH. — The Mouth of a RIVER "comprehends the whole space betwixt the lowest ebb and the highest flood mark" (*Horne* v. *Mackenzie*, 6 Cl. & F. 644).

Mouth of the Thames; *V.* THAMES.

MOVEABLE. — A bequest of all testator's "Moveables" "doth pass all his personal goods, both quick and dead, which either move themselves, — as horses, sheep, and the like; or may be moved by another, — as plate, household stuff, corn in the garners and barns or in the sheaf,

Digitized by Google

&c, also all bonds and especialties; and by a devise of *Immoveables* do pass leases, rents, grass, and the like, but not any of those things that do pass by the devise of Moveables: but Debts will not pass by either of these devises" (Touch. 447). It will be observed that here there is a difference drawn between "Bonds and Especialties" and "Debts" — the latter, *i.e.* as it would seem, Simple Contract Debts — not passing under "Moveables." The reason, possibly, may be because that which creates a Bond or Specialty Debt can be carried about, — *i.e.* is moveable. But that also is true of a Bill of Ex. or Pro. Note; yet the money secured by such a document would be a mere debt, and therefore, according to the definition in the Touch-Stone, would not be comprised in a bequest of "Moveables."

In *Steignes* v. *Steignes* (Moseley, 296) it was held that "Moveables" did not comprise a sum of South Sea Stock; but that was simply because the word was controlled by a context.

In citing that case it is stated at p. 755, 1 Jarm., that "the word, if unrestrained by the context, would take in the whole *purely* personal estate." What is meant by this is shewn in a note at p. 4, Ib., where it is shown that Leaseholds are not "Moveables," and where this word is discussed and distinguished from the large acceptation of "PERSONAL ESTATE." But even so, it is difficult to reconcile the statement that "the whole purely personal estate" is comprised in "Moveables," seeing that the Touch-Stone says that Debts are not within that word.

V. IMMOVEABLES.

Money is a "Moveable" (*Swinfen* v. *Swinfen*, 29 Bea. 207).

In Scotland, a man's "Moveable" property seems equivalent to the English phrase PERSONAL ESTATE (s. 4, 19 & 20 V. c. 79); "Moveable Estate," means and includes, "the whole free moveable estate on which the Deceased, if not subject to incapacity, might have tested, undisposed of by Will, and any portion thereof so undisposed of" (s. 9, 18 & 19 V. c. 23); or, as a later Act puts it, "all personal debts and obligations, and moveable or personal property or effects of every kind" (s. 4, 25 & 26 V. c. 85).

"Moveable Means and Estate"; *V. Re Caithness*, 7 Times Rep. 354.

"Moveable PROPERTY," bequest of; *V. Enohine* v. *Wylie*, 10 H. L. Ca. 1; 31 L. J. Ch. 402.

"Moveable Structure"; *V.* STRUCTURE.

MOVEMENT. — *V.* CAUSING.

MUIR'S ACT. — Public Houses Acts, Amendment (Scot) Act, 1862, 25 & 26 V. c. 35. *V.* FORBES MACKENZIE'S ACT.

MULE. — *V.* HORSE.

MULIER. — *V.* Co. Litt. 243 b: Termes de la Ley: Cowel: Jacob.

Digitized by Google

MULTIPLE. — "This term may be understood in a restricted sense so as to comprehend only multiples numerically expressed, such as 10 pounds, 100 pounds, &c; or generally all multiples, however expressed, such as a Stone, a Hundredweight, a Ton, or any other weight, such as a 'Weigh,' a 'Tod,' or a 'Hobbet,' supposing these words to be in use for expressing multiples of the pound avoirdupois" (per Maule, J., in delivering jdgmt of Ex. Cham., *Giles* v. *Jones*, 24 L. J. Ex. 261 ; 11 Ex. 393). *V.* Ton.

MULTIPLY. — "Repeat, Copy, Colourably Imitate, or otherwise Multiply," Works of Art, s. 6, Fine Arts Copyright Act, 1862; there "'copy,' implies one re-production; 'repeat,' implies more than one; and 'multiply,' implies many" (per FitzGibbon, L. J., *Green* v. *Irish Independent Co*, 1899, 1 I. R. 391). *V.* Reproduction.

MULTITUDE. — "Multitude of people," Litt. s. 431, — "a multitude here spoken of (as some have said) must be ten or more. *Multitudinem decem faciunt.* And so (say they) it is said *de grege hominum.* But I could never read it restrained by the common law to any certaine number, but left to the discretion of the judges" (Co. Litt. 257 a). *Cp,* Assembly.

MUNICIPAL. — "Municipal Authority"; *V.* 38 & 39 V. c. 86, s. 14; 46 & 47 V. c. 4, s. 5. — *Scot.* 38 & 39 V. c. 86, s. 18. — *Ir.* Ib. s. 21; 51 & 52 V. c. 47, s. 3.

"Municipal Borough"; *V.* s. 15 (1, 2), Interp Act, 1889; 36 & 37 V. c. 68, s. 8; 48 & 49 V. c. 23, s. 23. — *Scot.* 35 & 36 V. c. 68, s. 15; 46 & 47 V. c. 51, s. 68; 48 & 49 V. c. 10, s. 2; 52 & 53 V. c. 69, s. 8. — *Ir.* 48 & 49 V. c. 10, s. 2: *Lingard* v. *Brennan*, Ir. Rep. 3 C. L. 203.

"Municipal Corporation," quà Mun Corp Act, 1882, 45 & 46 V. c. 50, "means the Body Corporate constituted by the incorporation of the inhabitants of a Borough" (s. 7). *Vh,* Arnold on Municipal Corporations: Rawlinson, Ib.: 9 Encyc. 16–29. *V.* Rate.

Municipal *Corporation Acts*; *V.* 46 & 47 V. c. 51, s. 68.

"The Municipal Corporations (Ireland) Acts, 1840 to 1888"; *V.* Sch 2, Short Titles Act, 1896.

"Municipal Election"; *V.* 35 & 36 V. c. 33, s. 29; 45 & 46 V. c. 50, s. 7; 47 & 48 V. c. 70, ss. 35, 36; 48 & 49 V. c. 9, s. 3, c. 10, s. 2. — *Scot.* 57 & 58 V. c. 58, s. 54; 60 & 61 V. c. 34, s. 1.

"Municipal *Election Court,*" "Municipal *Election List,*" "Municipal *Election Petition*"; *V.* 47 & 48 V. c. 70, s. 36.

"Municipal Electors"; *V.* 57 & 58 V. c. 58, s. 54.

"Municipal *Polling District*"; *V.* Polling.

"Municipal Register"; *V.* 50 & 51 V. c. 42, s. 2; 57 & 58 V. c. 58, s. 54.

"Municipal Wards"; *V.* 57 & 58 V. c. 58, s. 54.

Digitized by Google

MUNIMENT. — " 'Muniments,' are evidences or writings concerning a mans possession or inheritance, whereby he is able to defend the estate which he hath " (Termes de la Ley).

MUNITION. — " Munition and Furniture "; *V. Gale* v. *Laurie*, 5 B. & C. 156: FURNITURE.

" Munitions of War "; *V.* ARMS.

MURAGE. — " 'Murage' is a toll or tribute levied for the repayring or building of publike walls " (Termes de la Ley). *Vf*, Jacob.

MURDER. — " Murder is when one is slaine with a man's will, and with malice prepensed or forethought. . . . Murder commeth of the Saxon word *mordreu* " (Co. Litt. 287 b: *Vf*, Termes de la Ley). But the person slain must be another person than the slayer (4 Bl. Com. 195); therefore Suicide is not Murder (*R.* v. *Burgess*, 32 L. J. M. C. 55); but if two agree to kill each other and one only is killed, the survivor is guilty of Murder (*R.* v. *Alison*, 8 C. & P. 418: *R.* v. *Dyson*, Russ. & Ry. 523).

" Murder is unlawful homicide with malice aforethought " (Steph. Cr. 158; *Vf*, Ib. ch. 24, 362–383).

" Murder " is a Term of Art (4 Bl. Com. 307: *Holford* v. *Bailey*, 18 L. J. Q. B. 113; 13 Q. B. 430, 446: *R.* v. *Gray*, 33 L. J. M. C. 78; L. & C. 365). *Cp*, PERJURY.

Vf, Arch. Cr. 742–790: Rosc. Cr. 641–693: 9 Encyc. 31–37.

Quà Coroners Act, 1887, 50 & 51 V. c. 71, " 'Murder,' includes, the offence of being an ACCESSORY before the Fact to a Murder " (s. 42).

V. HOMICIDE: KILL: MALICE AFORETHOUGHT: SUICIDE.

MUSEUM. — *V.* PUBLIC MUSEUM.

MUSIC. — " Public Music "; *V.* PUBLIC BALL: PUBLIC MUSIC.

" Sheet of Music "; *V.* COPY.

MUSICAL COMPOSITION. — *V.* DRAMATIC.

Note. To protect a Musical Composition from public representation, Notice, reserving that right, must appear on the title-page of each copy (ss. 1 and 2, 45 & 46 V. c. 40). Damages for illegal representation may be less than 40*s.*; and costs are " in the absolute discretion of the Judge " (51 & 52 V. c. 17).

MUSSELS. — *V.* OYSTER: SEA FISH.

MUST. — The direction that a Complete Specification of a Patent " must end with a distinct statement of the Invention claimed," s. 5 (5), Patents, &c, Act, 1883, is directory only, and the absence of such statement does not void the Patent (*Vickers* v. *Siddell*, cited DESCRIBE). *Cp*, SHALL: MAY.

MUST NOT. — " If the landlord of a house let out in separate tenements lives in the house, he *must not* return the names of the

Digitized by Google

occupiers of tenements in that house" (last par of Form A, Sch 2, Part ii, Registration Act, 1885, 48 V. c. 15). "Must not" means the same as "Need not" in the corresponding Form provided for Ireland, i.e. Form No. 34, 48 V. c. 17 (per Porter, M. R., *Hogan* v. *Sterrett*, 20 L. R. Ir. 349).

V. NEED NOT.

MUSTER.—"'To muster,' is to make a shew of souldiers well armed and trained in some open field; ubi se ostendentes præludunt prælio" (Co. Litt. 71 a); "to shew men and their armes, and to inroll them in a booke, as appeares by 18 H. 6, c. 19" (Termes de la Ley).

MUTILATION.—*V.* MAIM.

MUTUAL ACCOUNTS.—"'Mutual Accounts,' by which are meant not where one only of two parties has received money and made payments on account of the other, but where each of two parties has received and paid on account of the other" (Seton, 1358: *Phillips* v. *Phillips*, 9 Hare, 473: *Padwick* v. *Hurst*, 18 Bea. 579).

MUTUAL CREDITS.—"Mutual Debts between the plaintiff and defendant," s. 13, 2 G. 2, c. 22; *V. Rees* v. *Watts*, 11 Ex. 410; 25 L. J. Ex. 30.

When the Bankry Act of 5 G. 2, c. 30, spoke (s. 28) of "Mutual Credit" given by, or "Mutual Debts" between, a bankrupt and any other person, "the legislature must have intended something more than would have been expressed by 'Mutual Debts' only," and "where there is a Trust between both parties there is a Mutual Credit" (per Kenyon, C. J., *Atkinson* v. *Elliott*, 7 T. R. 380). *Vf, Easum* v. *Cato*, 5 B. & Ald. 861.

"Mutual Debts and Credits," s. 50, 6 G. 4, c. 16; *V. Rose* v. *Sims*, 1 B. & Ad. 521: *Alsager* v. *Currie*, 12 M. & W. 756; 13 L. J. Ex. 203.

"Mutual Credits, Debts, and Dealings," s. 38, Bankry Act, 1883, replacing s. 39, Bankry Act, 1869; *V. Re Daintrey, Ex p. Mant*, 1900, 1 Q. B. 546; 69 L. J. Q. B. 207; 82 L. T. 239: *Palmer* v. *Day*, 1895, 2 Q. B. 618; 64 L. J. Q. B. 807: *Ex p. Morier*, 12 Ch. D. 491; 49 L. J. Bank. 9, explaining *Bailey* v. *Finch*, 41 L. J. Q. B. 83; L. R. 7 Q. B. 34, and *Bailey* v. *Johnson*, 41 L. J. Ex. 211; L. R. 7 Ex. 263: *Jack* v. *Kipping*, 9 Q. B. D. 113; 51 L. J. Q. B. 463: *Peat* v. *Jones*, 8 Q. B. D. 147; 51 L. J. Q. B. 128: *Re Winter*, 47 L. J. Bank. 52; 8 Ch. D. 225: *Booth* v. *Hutchinson*, L. R. 15 Eq. 30; 42 L. J. Ch. 492. *Vh*, 26 S. J. 575. Quà Joint Stock Co, *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.

MUTUAL INSRCE CO.—*V. Last* v. *London Assrce*, *New York Insrce* v. *Styles*, and *Equitable Assrce* v. *Bishop*, cited PROFITS.

Digitized by Google

MY. — If a testator refers to his possessing any particular and definite thing, — *e.g.* "My Estate at A.," "My ring," "My horse," — it seems that the CONTRARY INTENTION referred to by the Wills Act, 1837, is manifested, and the Will, quà such bequest, speaks from its date and the gift is specific: but where the bequest is generic, of that which may be increased or diminished, — *e.g.* Consols, — the Act requires something more to indicate such contrary intention than that the subject-matter should be preceded by "My"; and accordingly, quà such a bequest, the Will would speak from the death of the testator (*Goodlad* v. *Burnett*, 1 K. & J. 341: *Re Gibson*, L. R. 2 Eq. 669; 35 L. J. Ch. 596: *Vh*, 1 Jarm. 329–332, and as to the old rule, Ib. 320–329). But on the authority of *Miles* v. *Miles* (L. R. 1 Eq. 462; 35 L. J. Ch. 315; 13 L. T. 697; 14 W. R. 272) it has been stated that "the use of the pronoun 'My,' in the description of the thing given, is not sufficient evidence of an intention that the Will shall not speak as from the date of the death" (Dart, 309). "The word 'My' is evidence of a gift being Specific, when the particular Stock is also referred to; but it is not enough alone" (per Plumer, M. R., *Parrott* v. *Worsfold*, 1 Jac. & W. 602), in *whc* it was held that a legacy of "All my Stock that I may be possessed of at my decease," was not Specific; but a legacy of "All my Stock in the Midland Ry" is Specific (*Bothamley* v. *Sherson*, cited SPECIFIC). *Cp*, Now: HAVE.

A bequest of the MONEY "at my BANKERS," will not include money deposited with a Bank at interest and as an investment, but which Bank the testator had not employed to do his general banking business and which business had been done for him by another Bank (*Re Waddilove*, 91 Law Times, 176).

"ALL I hold in the N. Bank"; held, to pass a Deposit Receipt and Cash (*Townsend* v. *Townsend*, 1 L. R. Ir. 180).

"My Debentures"; *V.* DEBENTURE, towards end.

"My PROPERTY at R.'s bank"; *V. Re Prater*, 37 Ch. D. 481; 57 L. J. Ch. 342; 58 L. T. 784; 36 W. R. 561: *Vth*, *Re Robson*, cited CONTENTS.

"All my Land at S."; *V. Re Portal and Lamb*, 27 Ch. D. 600; 30 Ib. 50; 54 L. J. Ch. 1012; 53 L. T. 650; 33 W. R. 859. *Vf*, ALL.

So as regards the objects of the gift. "My Son" of a particular name, means the son of that name at the date of the Will, and him only (1 Jarm. 323).

"My Brother's Son"; *V. Doe* d. *Westlake* v. *Westlake*, 4 B. & Ald. 57.

"My Estate of"; *V.* OF.

"My Family"; *V. Wright* v. *Atkyns*, cited FAMILY.

"My Grand-daughter"; *V.* GRAND-DAUGHTER.

"My *House*," where there are two answering the description given; *V. Gardiner* v. *Jewers*, W. N. (72) 35.

Digitized by Google

"My Nephew"; *V.* NEPHEW.

"Per My"; *V.* PER MY ET PER TOUT.

"My *own Heirs* whatsoever"; *V. Gordon* v. *Gordon,* 7 App. Ca. 713.

"My *own Right Heirs*"; *V. De Beauvoir* v. *De Beauvoir,* cited HEIRS: *Boydell* v. *Golightly,* 14 Sim. 327.

"My *Wife,*" "My *Children,*" as a *designatio personæ*; *V. Pratt* v. *Mathew,* 25 L. J. Ch. 409; 22 Bea. 328: *Re Petts,* 29 L. J. Ch. 168; 27 Bea. 576: *Vf,* CHILD. "My Sons," as a Class; *V.* SON.

"In my Possession"; *V. Re Egan,* cited POSSESSION.

Bequest of "All My" PROPERTY will pass property subject to a General Power of Appointment (*Chandler* v. *Pocock,* 50 L. J. Ch. 380; 16 Ch. D. 648: *Re Harman,* 1894, 3 Ch. 607; 63 L. J. Ch. 822); but, *semble,* not property the subject of a Special Power (*Cooke* v. *Cunliffe,* 17 Q. B. 245; 21 L. J. Q. B. 30: *Wildbore* v. *Gregory,* L. R. 12 Eq. 482; 41 L. J. Ch. 129: *Re Huddleston,* 1894, 3 Ch. 595; 64 L. J. Ch. 157; 43 W. R. 139), unless accompanied by a strong context (*Re Richardson,* 17 L. R. Ir. 442). *V.* POWER.

A devise of "all My REAL ESTATE," or equivalent words, would, in the absence of a controlling context, pass Trust, as well as Beneficial, estates (*Lysaght* v. *Edwards,* 45 L. J. Ch. 554; 2 Ch. D. 499); *vthc,* and also Jarm. ch. 21, as to what is such a context: *Sv,* s. 30, Conv & L. P. Act, 1881, which however is not applicable to Copyholds (s. 45, 50 & 51 V. c. 73, on *whv, Re Mills,* 37 Ch. D. 312; 40 Ib. 14; 57 L. J. Ch. 466; 37 W. R. 81).

A devise of "My" Realty, will pass property of which the testator is *Mtgee in Possession* (*Re Carter,* 1900, 1 Ch. 801; 69 L. J. Ch. 426; 82 L. T. 526; 48 W. R. 555); but where there was a specific devise of freeholds which the testator, after making his Will, sold, taking a mtge for part of the purchase-money, and of which freeholds he had not possession at his death, it was held that the mtge debt passed under a Residuary Bequest, and not under the devise (*Re Clowes,* 1893, 1 Ch. 214).

"My Stock"; *V.* STOCK.

"My Stock in Trade and Trade Debts"; *V.* STOCK IN TRADE, at end.

V. Watson Eq. 1330.

A BOTTOMRY BOND so many days "after My *Arrival,*" is good because it does not mean the personal arrival of the Master, but means his arrival with the Ship (*Simonds* v. *Hodgson,* 1 L. J. K. B. 51; 3 B. & Ad. 50).

"My," in an agreement for Sale of Land, may render a description certain which otherwise would be uncertain (*Owen* v. *Thomas,* 3 My. & K. 353: *Cowley* v. *Watts,* 22 L. J. Ch. 591); and this word may, for that purpose, be imported into the agreement (*Plant* v. *Bourne,* 1897, 2 Ch. 281; 66 L. J. Ch. 643; 76 L. T. 820; 46 W. R. 59).

Indorsement of Bill "for my Use"; *V.* USE.

MYSTERY. — *V.* ART.

Digitized by Google

NAKED—NAME

NAKED.—*V.* Bare Trustee: Nude Contract.

A Bare Naked *Lie*, is "saying a thing which is false, knowing or not knowing it to be so, and without any design to injure, cheat, or deceive, another person" (per Buller, J., *Pasley* v. *Freeman*, 3 T. R. 56). *Cp*, Deceit: Liar.

A picture of a Woman naked only to the waist, is not a picture of a "Naked" woman (*Commonwealth* v. *Dejardin*, 126 Mass. 46).

NAME.—"Sometimes it is made part of the description or qualification of a devisee or legatee, that he be of the testator's *Name*. The word 'name' so used, admits of either of the following interpretations:—

"1. As designating one whose name answers to that of the testator (which seems to be the more obvious sense);

"2. As denoting a person of the testator's family,—the word 'name' being, in this case, synonymous with 'Family' or 'Blood.'

"The former, as being the more natural construction, prevails in the absence of an explanatory context; and such is most indisputably its meaning when found in company with some other term or expression which would be synonymous with 'name' if otherwise construed" (2 Jarm. 141, *whv*, to p. 146, for discussion of the cases).

In *Leigh* v. *Leigh* (15 Ves. 92), the Remainder was to the "First and Nearest of my Kindred, being Male and of my *Name and Blood*"; held (15 Ves. 107, 109, following Hardwicke, C., *Pyot* v. *Pyot*, 1 Ves. sen. 335) that by "Blood" the testator meant, the Stock or Family to which he himself belonged; and by "Name" he meant to exclude the Female Line, and, further, that taking the Name by Royal License was not being of the testator's "Name."

A woman losing the "Name" by marriage, loses her right to be classed as one of the "Name"; but not so a person who assumes another name by License or Act of Parliament (2 Jarm. 144).

"Descendants who shall Bear the Name of"; *V. Re Roberts*, 19 Ch. D. 520; 50 L. J. Ch. 265.

A *Name and Arms Clause* will be construed (1) "most strictly," and (2) "the Cesser and the Limitation Over must fit in with one another" (per Pearson, J., *Re Brooke, Musgrave* v. *Brooke*, 54 L. J. Ch. 102; 26 Ch. D. 792; 33 W. R. 211, citing *Re Catt*, 33 L. J. Ch. 495; 2 H. & M. 46). *Vh, Bevan* v. *Mahon-Hagan*, 31 L. R. Ir. 342: Butler's note Co. Litt. 327 a: Vaizey, 1268: 9 Encyc. 41, 42: Usual, towards end. If the added Name is to be taken "alone or *together with*" the person's own

Digitized by Google

Surname, the person who has to adopt it may, at his option, put it either before or after his own Surname (*Re Eversley*, 1900, 1 Ch. 96; 69 L. J. Ch. 14); but if the direction is that he is to take "the Surname" indicated, he must add it after his own (*D'Eyncourt* v. *Gregory*, 45 L. J. Ch. 205; 1 Ch. D. 441).

A *Power of Investment* "in the Name of" the Trustees, does not authorize Bearer Securities (*Re Roth*, W. N. (96) 16; 74 L. T. 50). To embrace these, the phrase should be "in the Name, or under the Control, of" the Trustees.

Quà Trade-Mark, the "Name of an Individual, or Firm," s. 10 (1 *a*), Patents, &c, Act, 1888, is not given by putting it in the genitive case, *e.g.* "Pirie's" Parchment Bank (*Pirie* v. *Goodall*, 1892, 1 Ch. 35; 61 L. J. Ch. 79; 65 L. T. 640; 40 W. R. 81); but a person's "Own Name," s. 10 (3), Ib., need not be his whole name; a part suffices if that part is such that it fairly indicates the person (*Re Colman*, 1894, 2 Ch. 115; 63 L. J. Ch. 403; 70 L. T. 398; 42 W. R. 555); and quà Merchandize Marks Act, 1887, "'Name,' includes any abbreviation of a Name" (subs. 1, s. 3).

So, when a *Voting Paper* has to be signed with "the Name" of the Voter, s. 32, 5 & 6 W. 4, c. 76, that is complied with if he sign his Surname and the initials of his Christian names (*R.* v. *Avery*, 21 L. J. Q. B. 428; 18 Q. B. 576). *V.* Christian Name: Signed.

So, the "Name" of a *Seller of Coal*, s. 21 (1) and Sch 3, Weights and Measures Act, 1889, is given either by his real name, or by the name under which he carries on business (*Cameron* v. *Tyler*, 1899, 2 Q. B. 94; 68 L. J. Q. B. 759; 80 L. T. 764; 47 W. R. 559; 63 J. P. 567).

So, the direction in s. 1, Engraving Copyright Act, 1734, 8 G. 2, c. 13, that a Copyrighted Engraving "shall be truly engraved with the Name of the Proprietor," is complied with if the Proprietors give the Name of their Firm (*Blackwell* v. *Harper*, 2 Atk. 93: *Graves* v. *Ashford*, cited Copy: *Rock* v. *Lazarus*, 21 W. R. 215; L. R. 15 Eq. 104; 42 L. J. Ch. 105; 27 L. T. 744).

So, quà Revenue Act, 1883, 46 & 47 V. c. 55, "'Name,' as applied to a Manufacturer, shall include, any abbreviation or imitation of a Name" (subs. 6, s. 2).

Quà Mer Shipping Act, 1894, "'Name,' includes a Surname" (s. 742).

V. Christian Name: Individual: Junior: Word: Trade-Mark.

"Name, Address, and Description," of an Attesting Witness to a Bill of Sale; *V. Re Wood*, 48 L. J. Bank. 26: Address: Description.

To give a false "Name and Address" is no better than giving none at all (per Bruce, J., *Knights* v. *L. C. & D. Ry*, 62 L. J. Q. B. 378).

NAMED. — "The strict and accurate meaning of this word 'named' is (as stated by Kindersley, V. C., *Re Holmes*, 1 Drew. 321; 22 L. J. Ch. 393), 'mentioned *nominatim*, if not by all their names, by some at

Digitized by Google

least, either their Christian or their Surnames'" (per Stirling, J., *Re Jodrell*, W. N. (89), 230; 34 S. J. 129); it "is also used, and used in no unnatural sense, as synonymous with 'specified' or 'mentioned'" (per Ld Herschell, *S. C.* nom. *Seale-Hayne* v. *Jodrell*, cited RELATIONS), or "designated" (per Ld Hannen, *Ib.*). In that case "Relatives *herein-before named*" was held to include those which the testator had previously indicated in his Will.

A Power to be exercised by Exors "herein named"; *V. Crawford* v. *Forshaw*, cited EXECUTOR.

V. EXPRESSLY NAMED: HEREIN: HEREINBEFORE: NOMINATE.

NAMELY. — "A difference, in grammatical sense, in strictness exists between the words 'namely' and 'including.' 'Namely' imports interpretation, *i.e.* indicates what is included in the previous term; but 'Including' imports addition, *i.e.* indicates something not included" (2 Jarm. 229). But, observe, that "if a *videlicet* is repugnant to what has gone before, it shall be rejected; but if it can be reconciled and made restrictive, it shall be so" (*Wilson* v. *Mount*, 3 Ves. 194: *Eccard* v. *Brooke*, 2 Cox Ch. 213, is important because Arden, M. R., at first thought the "viz" in *thc* was not interpretative, but his decision was the other way). As to how far a *videlicet* is restrictive, *V. Fisher* v. *Hepburn*, 14 Bea. 626; 1 Jarm. 753, 759: as to its antecedent, *V. Harrington* v. *Pole*, Dyer, 77 b, pl. 38; cited Hob. 173.

In *Smith* v. *Walton* (1 L. J. C. P. 85; 8 Bing. 235; 1 Moore & S. 380), the explanatory phrase was "*To Wit*"; and it was there held, on a Pleading, that the phrase "Martinmas, to wit, on the 23rd November, 1830," meant Martinmas, the 11th November, according to the New Style, and that the *videlicet* did not enable the Court to read the date as the 23rd Nov. *V.* MICHAELMAS.

V. THAT IS TO SAY: COMPRISING.

NARROW CHANNEL. — *V. The Florence Nightingale*, 8 L. T. 34: *The Leverington* and *The Pekin*, cited CROSSING: *The Clydach*, 5 Asp. 336: *The Minnie*, 1894, P. 336: 1 Maude & P. 603, *n* (*y*).

NATIONAL DEBT. — National Debt Commrs; *V.* s. 12 (17), Interp Act, 1889.

"The National Debt Acts, 1870 to 1893"; *V.* Sch 2, Short Titles Act, 1896.

V. PERMANENT: PERPETUAL ANNUITY: STOCK.

NATIVE. — There is no distinction between "Native-Born" as used in the French Extradition Treaty, and "Natural-Born" as used in the Extradition Act, 1870 (*Re Guerin*, 37 W. R. 269; 58 L. J. M. C. 42; 60 L. T. 538): generally, the two phrases are synonymous. *Vh*, 9 Encyc. 56–59.

Native of India; *V.* INDIA.

Native Oyster; *V. Whitstable Free Fishers* v. *Elliott*, W. N. (88) 27.

Digitized by Google

NATURAL BORN.—*V.* NATIVE.

NATURAL CHILDREN.—As to when illegitimate children are sufficiently designated by the words "Natural Children"; *V. Bentley* v. *Blizard*, 4 Jur. N. S. 652: *Worts* v. *Cubitt*, 2 W. R. 633: 19 Bea. 421: *Vf*, CHILD.

NATURAL HEIRS.—It has been decided in America that, in a Will, "Natural Heirs" is synonymous with "HEIRS OF THE BODY" (*Smith* v. *Pendell*, 19 Conn. 112).

NATURAL NECESSITY.—*V.* "Necessary Implication," sub NECESSARY.

NATURAL PERSON.—*V.* PERSON.

NATURAL REPRESENTATIVES.—A gift to a Class or their "Natural Representatives" if dead; held to mean, Lineal Descendants to the exclusion of the WIDOW whose position is contractual and not "natural" (*Re Bromley*, 83 L. T. 315; W. N. (1900) 187). *Cp*, WIFE: NEAR RELATIONS.

NATURAL RIGHTS.—"Natural Rights of Property, must be Rights which attach to property in its primitive state; and cannot, without a contradiction in terms, be applied to an artificial subject-matter, like a house" (per Thesiger, L. J., *Angus* v. *Dalton*, 4 Q. B. D. 169; 48 L. J. Q. B. 228).

NATURAL STATE.—*V.* PLANTATION.

NATURALIZATION.—Is the making an ALIEN a DENIZEN. *V.* BRITISH SUBJECT.

NATURALLY.—"Naturally dead"; *V.* DEAD.

NATURE.—"Nature of the *Action*"; *V. Smith* v. *Hailey*, 42 L. J. Ex. 5; L. R. 8 Ex. 16.

"Specifying the Nature *and Detail* of such other Expenses," s. 14, Regulation of Railways Act, 1873; these words require a Ry Co to state what terminal charges they undertake to perform with regard to the particular traffic, and how much they charge for each of such services; and this obligation is not discharged by merely giving a list of services performed and the total amount of the charge therefor (*Colman* v. *G. E. Ry*, 4 Ry & Can Traffic Ca. 108).

Change of the Nature of *Goods*; *V.* SPECIE.

The Notice to be given under s. 68, Lands C. C. Act, 1845, of the "Nature of the *Interest*" of a Claimant, must state its Quantity as well as its Quality (*Healey* v. *Thames Valley Ry*, 5 B. & S. 769; 34 L. J. Q. B. 52; 13 W. R. 44; 11 L. T. 268).

"Interest in the Nature of Real Estate"; *V.* REAL ESTATE.

The "Nature" of an *Invention* which has to be stated in the provisional

Digitized by Google

specification; this does not confine the complete specification to minute agreement with the provisional specification the object of which is to set forth fairly, though it may be roughly, the "Nature" of the Invention for which a patent is sought (*United Telephone Co* v. *Harrison*, 51 L. J. Ch. 705; 21 Ch. D. 720, in which the prior cases are collected: *Vf, Siddell* v. *Vickers*, 39 Ch. D. 92). *V.* DESCRIBE.

V. JOINT STOCK COMPANY.

"Of what Nature and Kind soever"; *V. Campbell* v. *Prescott*, cited EFFECTS: EVERY THING ELSE.

The "Nature of *Qualification*," entitling a person to be on an Electoral List, means, those facts which bring him within some one of the qualifying franchises, *i.e.* the legal nature and character of the qualification; therefore, a SUCCESSIVE Occupation is a qualification of a nature different from an occupation of one property during the whole of the qualifying period (*Foskett* v. *Kaufman*, 55 L. J. Q. B. 1; 16 Q. B. D. 279; 54 L. T. 64; 34 W. R. 90; 50 J. P. 484; 1 Colt, 466, following *Bartlett* v. *Gibbs*, 13 L. J. C. P. 40; 5 M. & G. 81: *Hurcum* v. *Hilleary*, 1894, 1 Q. B. 579; 63 L. J. Q. B. 306; 70 L. T. 505; 42 W. R. 321: *Sv*, inf). The distinction between the substantial "Nature" of the Qualification (which the Revising Barrister has not a power to amend as a MISTAKE) and the verbal "*Description*" of it (within such power), is shown by a comparison between the cases just cited and *Friend* v. *Towers* (52 L. J. Q. B. 109; 10 Q. B. D. 87), *Dashwood* v. *Ayles* (55 L. J. Q. B. 8; 16 Q. B. D. 295: 53 L. T. 588; 34 W. R. 53; 50 J. P. 132; 1 Colt, 486), and *Minifie* v. *Banger* (55 L. J. Q. B. 10; 16 Q. B. D. 302; 53 L. T. 590; 50 J. P. 131; 1 Colt, 493). In the first of these latter cases "house" was amended into "dwelling-house," and in the last two cases "tenement" was amended into "dwelling-house." *Vf, Wilson* v. *Buchanan*, 20 L. R. Ir. 213: *Melaugh* v. *Chambers*, Ib. 286: *Alexander* v. *Burke*, 22 L. R. Ir. 595: *Birks* v. *Allison*, 32 L. J. C. P. 51; 13 C. B. N. S. 12: *Howitt* v. *Stephens*, 28 L. J. C. P. 105; 5 C. B. N. S. 30. "House" was formerly a sufficient description of Houses in Succession, if the 4th Column of Claim showed that to be the fact (*Hitchins* v. *Brown*, 15 L. J. C. P. 38; 2 C. B. 25); but now the description should be "Dwelling-house (Successive)" (Registration Ord. 1895, Sch 2, Part 1, s. 19, subs. 1 *b*); still if "Successive" be omitted, the Barrister may and ought to amend by adding that word if the 4th Column sets forth the houses forming the Successive Occupation (*Soutter* v. *Roderick*, 1896, 1 Q. B. 91; 65 L. J. Q. B. 145; 73 L. T. 576; 44 W. R. 205). But the Barrister cannot amend by substituting "leasehold" for "freehold" (*Plant* v. *Potts*, 1891, 1 Q. B. 256; 60 L. J. Q. B. 33; 63 L. T. 730). On the other hand, he may correct a wrong number of a house (*Kitchen* v. *Johnson*, 1899, 1 Q. B. 95; 68 L. J. Q. B. 11; 79 L. T. 422; 47 W. R. 110).

"Nature, Substance, and *Quality*, of the Article demanded," s. 6, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63, means, the Nature or

Digitized by Google

Quality according as the Article is ordinarily understood in the trade dealing with it; therefore when Tincture of Opium was demanded and a tincture was supplied one-third less in strength than the article according to the recognized standard (*i.e.* the British Pharmacopœia); held, that the Article supplied was not of the "Nature or Quality" demanded (*White* v. *Bywater*, 19 Q. B. D. 582; 51 J. P. 821; 3 Times Rep. 631); but skimmed milk has been held to be a good supply for a demand of "milk" within this section (*V.* MILK). *V.* ARTICLE DEMANDED: PREJUDICE OF PURCHASER: SELLER.

"Money in the Nature of a Fine"; *V.* FINE.

"Any Writing in the Nature of a *Will*," means the same as a Will (Sug. Pow. 230: *Longford* v. *Eyre*, 1 P. Wms. 741); but, probably, a wider meaning would be given to the phrase "PURPORTING to be a Will," if the document relied on is entire (*Gullan* v. *Grove*, 26 Bea. 64).

Business of a "Like Nature"; *V.* LIKE.

Goods of a "Like" Nature; *V.* SIMILAR.

Act of Parliament of a "Local and Personal Nature"; *V.* LOCAL ACT OF PARLIAMENT.

Book or Document of a "Public Nature"; *V.* PUBLIC BOOK; PUBLIC DOCUMENT.

NAVAL ENLISTMENT.—"The Naval Enlistment Acts, 1835 to 1884"; *V.* Sch 2, Short Titles Act, 1896.

NAVAL FORCES.—*V.* MILITARY FORCES.

NAVAL SERVICE.—Quà Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, "'Naval Service' shall, *as respects a Person*, include, service as a Marine, employment as a Pilot in piloting or directing the course of a Ship of War or other Ship when such Ship of War or other Ship is being used in any Military or Naval Operation, and any employment whatever on board a Ship of War, Transport, Store-ship, Privateer or Ship under Letters of Marque; and, *as respects a Ship*, include, any user of a ship as a Transport, Store-ship, Privateer or Ship under Letters of Marque" (s. 30). "Naval Service of a FOREIGN State," s. 8 (4), of that Act, does not merely mean a service in or directly connected with some warlike naval operation, but includes, *e.g.* the employment of an English tug to tow a prize to the captor's waters (*R.* v. *Elliott*, *The Gauntlet*, 41 L. J. Adm. 65; nom. *Dyke* v. *Elliott*, L. R. 4 P. C. 184). *Cp*, MILITARY SERVICE.

NAVIGABLE.—Land may properly be said to be covered with "Navigable" Water although, at different times of short duration, dry portions of the land may be seen. When, however, such portions of the land are dry for days together, this excludes the notion of navigability. The legal and technical meaning of "Navigable," requires not only that

Digitized by Google

navigation should be possible, but also that there should be ebb and flow of the tide (*Ilchester* v. *Raishley*, 38 W. R. 104; 61 L. T. 477). *V.* EBB AND FLOW.

But, *semble*, "Navigable RIVER, in the United States, does not connote Ebb and Flow but rather means, a River which, in its natural state and ordinary volume of water, is capable of and suited to the usual purposes of navigation by such vessels as are ordinarily employed for the purpose of transporting merchandize or other goods (*Sigler* v. *The State*, 7 Baxter, 496: *The Daniel Ball*, 10 Wallace, 563); so, of "Navigable STREAM" (*Morgan* v. *King*, 35 N. Y. 459). In the United Kingdom, "the authorities seem to demonstrate that a 'Navigable River' in which the public have a general right to fish, must be a TIDAL RIVER in which the Sea ebbs and flows" (per O'Hagan, J., *Murphy* v. *Ryan*, Ir. Rep. 2 C. L. 149, 150).

"Navigable THING," means, a thing capable of being navigated, including one only temporarily disabled (*Chandler* v. *Blogg*, cited COLLISION).

"Navigable WATERS"; *V.* NAVIGATION: *Commonwealth* v. *Vincent*, 108 Mass. 447.

NAVIGATED. — "Worked and Navigated"; *V.* WORKED.

NAVIGATING. — *V.* NAVIGATION.

"Navigating" steamboat "on the River"; *V. Rolles* v. *Newell*, cited WORKED.

NAVIGATING WITHIN. — "The words 'Navigating within' in the Mer Shipping Act, 1854, s. 379 (repld, s. 625, Mer Shipping Act, 1894), mean, 'BEING within'; and, therefore, a vessel belonging to the Port of London, not carrying passengers and coming from the west, is not bound to employ a licensed pilot when she is within the limits of the Port of London" (1 Maude & P. 278, citing *The Stettin*, Brown & Lush. 199; 31 L. J. P. M. & A. 208). In that case Dr. Lushington said, — "Though I do not deny that the word 'Navigating,' alone, is a doubtful expression, yet, coupled with the word 'within,' it appears to me to negative voyages beyond the limits, and to be confined to those within the limits." *Vf, General Steam Nav. Co* v. *British & Colonial Steam Nav. Co*, 37 L. J. Ex. 194; 38 Ib. 97; L. R. 3 Ex. 330; 4 Ib. 238.

NAVIGATION. — "Navigation," is, "the science or art of conducting a ship from one place to another. This includes the supply of necessary implements and skilful mariners. The instruments are useless without the skilful mariners, and conversely, navigation includes two things, — the supply of the instruments or organs of the ship, and the

Digitized by Google

living instruments, or seamen. If either of these is wanting by the negligence of the owner, or of those for whom he is responsible, there is Improper Navigation" (per Fry, L. J., *The Warkworth*, 53 L. J. P. D. & A. 66; 9 P. D. 145: *Vf, Good* v. *London S. S. Assn*, L. R. 6 C. P. 563; 20 W. R. 33: *Carmichael* v. *Liverpool Sailing-Ship Assn*, cited IMPROPER NAVIGATION).

"Cases have decided that the word 'Navigation,' for some purposes, includes a period when the ship is not in motion; as, for instance, when she is at anchor" (per Denman, J., *Hayn* v. *Culliford*, 3 C. P. D. 417; 47 L. J. C. P. 759; affd, 4 C. P. D. 182; 48 L. J. C. P. 372).

V. WORKED.

Canting over in port is a "Danger or Accident of Navigation" (*Laurie* v. *Douglas*, 15 M. & W. 746); so, damage "caused by the bad navigation of another ship, is a 'Danger of Navigation.' Where, however, the loss is brought about by the ship-owner's own servants, that is not a 'Danger of Navigation,' for the danger there is a danger arising from the ship-owner having employed inefficient or negligent servants" (per Esher, M. R., *Garston Co* v. *Hickie*, 56 L. J. Q. B. 40; 18 Q. B. D. 17; 55 L. T. 879; 35 W. R. 33). *V.* STEAM NAVIGATION.

"FAULTS or Errors in Navigation," primarily applies "to faults or errors in sailing the Vessel DURING the voyage" (per Kay, L. J., *Dobell* v. *S. S. Rossmore Co*, 1895, 2 Q. B. 408; 64 L. J. Q. B. 777: *Va, The Accomac*, 59 L. J. P. D. & A. 91; 15 P. D. 208: 63 L. T. 118; 39 W. R. 133: *Sv, The Carron Park*, 59 L. J. P. D. & A. 74; 15 P. D. 203: *The Southgate*, 1893, P. 329: *The Glenochil*, 1896, P. 10; 65 L. J. P. D. & A. 1; 73 L. T. 416). *V.* MANAGEMENT: NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS.

"Vessel used in Navigation," s. 2, Mer Shipping Act, 1854; *V.* SHIP.

"Navigation," as used in 7 & 8 G. 4, c. lxxv, "seems to be used as synonymous with rowing" (per Coleridge, J., *Tisdell* v. *Combe*, 7 L. J. M. C. 48).

The (Dominion) "Act respecting certain works constructed in or over NAVIGABLE Waters" (1886), Revised Statutes of Canada, c. 92, is clearly Legislation relating to "Navigation," within s. 91, British North America Act, 1867 (*A-G. Canada* v. *A-G. Ontario*, cited EXCLUSIVE).

"Navigation," sometimes connotes an INCORPOREAL HEREDITAMENT; *V. R.* v. *Aire & Calder Navigation*, 9 B. & C. 820; 4 M. & R. 728; 8 L. J. O. S. M. C. 9. Sometimes it is synonymous with CANAL.

V. IMPROPER NAVIGATION: NAVIGATED: NAVIGATING: NEGLECT OR DEFAULT: PERIL OF THE SEA: DANGERS.

NEAP.—"Ordinary Tides or Nepe Tides" are used by Ld Hale as synonyms (per Cranworth, C., *A-G.* v. *Chambers*, cited SHORE).

Exception of "Neaps" in a Charter-Party; *V. Allerton Co* v. *Falk*, 6 Asp. 287.

Digitized by Google

NEAR.—"'Near' has no precise meaning" (per Pollock, C.B., *Chamberlaine* v. *Chester, &c, Ry*, 18 L. J. Ex. 494; 1 Ex. 870).

By 1 G. 4, c. liii, a Toll was imposed on the exported coals of any Colliery "near the River Tyne"; a Colliery 10 miles from Tyne is within that provision (*Tyne Keelmen* v. *Davison*, 16 C. B. N. S. 612).

"In or near," in the Grant of a Market; *V. A-G.* v. *Horner*, 54 L. J. Q. B. 227; 55 Ib. 193; 14 Q. B. D. 245; 11 App. Ca. 66. In his judgment in that case, Brett, M. R., is reported (54 L. J. Q. B. 230) to have said,—"A distinction was attempted to be drawn between the words 'next' and 'near'; but I can see none"; *Sv, R.* v. *Harvey*, 1 Bl. W. 19; and as "Next" is synonymous with NEAREST, can it also be said that "near" is the equivalent of "nearest"?

"In or near the Parish or Division," 43 Eliz. c. 2, is directory (*R.* v. *Loxdale*, 1 Burr. 447).

"As near as"; *V.* So FAR AS.

V. AT OR NEAR: IN SIVE JUXTA: ON OR NEAR.

"Too near"; *V.* Too.

V. NEXT.

NEAR RELATIONS.—*V.* RELATIONS.

Quà Allotment Notes under Mer Shipping Act, 1894, "'Near Relative,' means, one of the following persons, viz., the WIFE, FATHER, Mother, Grandfather, Grandmother, CHILD, Grandchild, Brother, or Sister, of the SEAMAN" (s. 141, subs. 4).

V. NEAREST.

NEAR THERETO AS SHE MAY SAFELY GET.—"It appears from *Parker* v. *Winlo* (27 L. J. Q. B. 49; 7 E. & B. 942), *Bastifell* v. *Lloyd* (31 L. J. Ex. 413; 1 H. & C. 388; 10 W. R. 721), and *Dahl* v. *Nelson* (50 L. J. Ch. 411; 12 Ch. D. 568; 6 App. Ca. 38) that when the Charter-Party provides that a ship shall go to a harbour named, or 'as near thereto as she can safely get,'—the primary object is to get to the place named, and the alternative condition does not arise unless the cause which prevents the immediate arrival of the ship at the place named, is such that it cannot be got rid of by the ship-owner by reasonable means and within a reasonable time, having regard to the nature and object of the voyage; and further, that if the cause of detention be the arrival of the vessel during the low tides, her having to wait for the tides to increase is one of the ordinary incidents of navigation, and the ship-owner must submit to the delay so occasioned" (per North, J., *Horsley* v. *Price*, 52 L. J. Q. B. 605; 11 Q. B. D. 244: *Vf, Schilizzi* v. *Derry*, 24 L. J. Q. B. 193; 4 E. & B. 873: *Shield* v. *Wilkins*, 19 L. J. Ex. 238; 5 Ex. 305: *Metcalfe* v. *Britannia Co*, 46 L. J. Q. B. 443; 2 Q. B. D. 423: *The Alhambra*, 50 L. J. P. D. & A. 36; 6 P. D. 68: *Castel* v. *Trechman*, 1 Cab. & El. 276: 1 Maude & P. 296, 317, 320, n. *f*). "The words 'as near thereto as she can safely get,' must receive

Digitized by Google

a reasonable, and not a literal, application" (per Pollock, B., *Nielsen* v. *Wait*, 14 Q. B. D. 522; affd 16 Q. B. D. 67). *Vf*, *Whitwell* v. *Harrison*, cited PORT: *Capper* v. *Wallace*, 49 L. J. Q. B. 350; 5 Q. B. D. 163, *Sthe*, per Day, J., *Reynolds* v. *Tomlinson*, 65 L. J. Q. B. 499: *Pyman* v. *Dreyfus*, 24 Q. B. D. 152; 59 L. J. Q. B. 13: *Nobel Co* v. *Jenkins*, cited RESTRAINTS OF KINGS: *Jaques* v. *Wilson*, 7 Times Rep. 119: *Milverton S. S. Co* v. *Cape Town Gas Co*, 13 Ib. 548.

V. ALWAYS AFLOAT: AT ALL TIMES OF TIDE: SAFE PORT: SUFFICIENT WATER.

NEARER.—In estimating whether a proposed new Highway is "nearer" than an old one which is proposed to be diverted (s. 89, Highway Act, 1835), "nearer" does not mean nearer as between two arbitrary points, but as between the terminus *à quo* and the terminus *ad quem*,—*i.e.* the point where the proposed diversion begins, and the point where it ends (*R.* v. *Shiles*, 10 L. J. M. C. 157; 1 Q. B. 919; *vthe*, dissented from *R.* v. *Phillips*, L. R. 1 Q. B. 648).

NEAREST.—"Nearest" is synonymous with NEXT (*Smith* v. *Campbell*, 19 Ves. 400). In *Griffiths* v. *Evan* (11 L. J. Ch. 219; 5 Bea. 241), a Power of Appointment of realty to the "Nearest Family" of the donee of the Power, was held to mean his heir-at-law.

"Nearest of Blood," "Nearest of Kin"; *V.* NEXT OF KIN: NAME.

"Nearest of Kindred," with reference to the Statute of Distribution, is synonymous with "Next of Kin" (*Markham* v. *Ivatt*, 20 Bea. 579).

"Nearest of Kin in the Male Line, in preference to the Female Line"; *V.* MALE LINE.

A Public Ferry (even though useable on payment of a Toll, *e.g.* at Southampton Water) is a Public Thoroughfare; and where a Ferry intervenes between a person's house and a Public-house at which he gets Exciseable Liquor on a Sunday, the distance across the Ferry has to be measured as the "Nearest PUBLIC THOROUGHFARE" for the purpose of ascertaining whether he was a *bonâ fide* Traveller when obtaining the liquor (*Coulbert* v. *Troke*, cited TRAVELLER); so, a Navigable ARM of the Sea, though not crossed by a Ferry, is a "Public Thoroughfare" within that enactment (*Parker* v. *The Queen*, 1896, 2 I. R. 404).

"Nearest Relation" of a particular Stock; *V.* *Pyot* v. *Pyot*, 1 Ves. sen. 335: NAME.

"Nearest Relations"; *V.* RELATIONS: NEAR RELATIONS.

"Nearest Relative in the Male Line"; *V.* *Woolmore* v. *Burrows*, 1 Sim. 529.

"Nearest and Most Deserving Male Cousin, and a regular Power of the Family"; *V.* *Power* v. *Quealy*, 2 L. R. Ir. 227; 4 Ib. 20.

Nearest "Common SEWER," s. 61, 11 & 12 V. c. clxiii., means, the one

Digitized by Google

practicably nearest, not the one literally nearest (*Bathard* v. *London Sewers Commrs,* 54 J. P. 135).

V. NEAR: NEXT OF KIN.

NEARLY AS POSSIBLE.—"As nearly as possible," *e.g.* in a Charter-Party "as nearly as possible a Steamer a month," is only an approximate phrase (per Lindley, L. J., *Potter* v. *Burrell,* 66 L. J. Q. B. 63; 1897, 1 Q. B. 97; 75 L. T. 491).

NEARLY EQUAL.—"Nearly equal to Freehold,"—as to the effect of this representation on the sale of Leaseholds; *V. Fenton* v. *Browne,* 14 Ves. 144: Dart, 110.

NEATLAND.—"'Neatland,' *terra villanorum,* is land let or granted out to the Yeomanry" (Cowel).

NECESSARIES.—"Necessaries," in a Master's covenant in an *Apprentice Indenture,* includes Clothing and Washing (*Abbott* v. *Bates,* 45 L. J. C. P. 117); and in that case it was found that there was no custom with Horse Trainers giving the word a restricted meaning, and, held, that had there been such a custom it would be inapplicable because inconsistent with the terms of the contract.

The "Necessaries" for which an *Infant* may contract liability are not confined to such articles as are necessary for the support of life; but extend to such articles as are reasonably fit to maintain the particular person in his state, station, and degree (Add. C. 382, 383, and cases there cited), and are suitable to his fortune and circumstances (Rosc. N. P. 666, and cases there cited); and (among such circumstances) regard must be had as to whether he was already sufficiently supplied with the kind of article in respect of which the liability was contracted (*Barnes* v. *Toye,* 53 L. J. Q. B. 567; 13 Q. B. D. 410; 33 W. R. 15: *Johnstone* v. *Marks,* 35 W. R. 806; 19 Q. B. D. 509; 57 L. J. Q. B. 6). "Likewise, his good teaching or instruction, whereby he may profit himselfe afterwards" (Co. Litt. 172 a), *e.g.* a covenant in an Apprenticeship Indenture (*Walter* v. *Everard,* 1891, 2 Q. B. 369; 60 L. J. Q. B. 738; 65 L. T. 443; 39 W. R. 676; 55 J. P. 693: *Vh,* TURN OUT) is an Infant's Necessary; and so, probably, of "Literary Instruction likely to lead to success in a learned profession" (per Fry, L. J., *Ib.*). But, *semble,* the employment of an agent to obtain an engagement at a Music Hall, is not a Necessary (*Lofthouse* v. *Brown,* W. N. (98) 52). A Racing Bicycle, partly used for exercise and costing £12:10:0, held by a Co. Co. Judge as a Necessary for an apprentice to a scientific-instrument maker, receiving 21*s.* a week, a finding which the Divisional Court (Russell, C. J., and Ridley, J.) refused to disturb (*Clyde Cycle Co* v. *Hargreaves,* 78 L. T. 296). A Bill or Note is not a Necessary, even

Digitized by Google

though given for Necessaries (*Re Soltykoff*, 1891, 1 Q. B. 413; 60 L. J. Q. B. 339; 39 W. R. 337).

Quà, and by, s. 2, Sale of Goods Act, 1893, "Necessaries" means, "goods suitable to the condition in life of such Infant or Minor or other person, and to his actual requirements at the time of the sale and delivery."

The "'Necessaries' for which a *Husband* is liable, means such things as are necessary for the Sustenance or Protection of the Wife" (per Abinger, C. B., *Ladd* v. *Lynn*, 2 M. & W. 267), *e.g.* "Meat, Drink, Clothes, Physick, &c, suitable to the husband's degree, estate, or circumstances" (per Hale, C. J., *Manby* v. *Scott*, Bac. Ab. *Baron and Feme* (H). cited by Park, J., *Hunt* v. *De Blaquiere*, 5 Bing. 559: *Vf*, as to Clothes, *Shoolbred* v. *Baker*, 16 L. T. 359: *Jolly* v. *Rees*, 33 L. J. C. P. 177; 15 C. B. N. S. 628; 10 L. T. 299; 12 W. R. 473: *Debenham* v. *Mellon*, 6 App. Ca. 24; 50 L. J. Q. B. 155; 43 L. T. 673; 29 W. R. 141: *Bazeley* v. *Forder*, 37 L. J. Q. B. 237; L. R. 3 Q. B. 559; 18 L. T. 756, on *whlev*, *Mecredy* v. *Taylor*, Ir. Rep. 7 C. L. 256:—As to Physic, *Vf*. *Harrison* v. *Grady*, 14 W. R. 139; 13 L. T. 369: *Beale* v. *Arabin*, 36 L. T. 249).

A House to live in and Furniture therefor (instead of furnished lodgings) may be a Wife's "Necessaries" (*Hunt* v. *De Blaquiere*, sup).

The Costs of Legal Proceedings necessary for a Wife's protection against her husband's Violence or Misconduct, are "Necessaries" (per Deasy, B., *Mecredy* v. *Taylor*, sup, citing *Shepherd* v. *Mackoul*, 3 Camp. 326); but that does not include costs of a Prosecution against him for an Assault (*Grindell* v. *Godmond*, 5 A. & E. 755), or of a Defence to his application for a *Habeas Corpus* to recover possession of his child (*Mecredy* v. *Taylor*, sup), or the costs of a Separation Deed (*Ladd* v. *Lynn*, sup); but it does include the legal expenses of a Deserted Wife (1) preliminary and incidental to a suit for Restitution of Conjugal Rights, (2) in obtaining counsel's opinion on an ante-nuptial agreement for a Settlement, (3) in obtaining professional advice as to dealing with pressing tradesmen and as to avoiding a distress (*Wilson* v. *Ford*, L. R. 3 Ex. 63; 37 L. J. Ex. 60; 17 L. T. 605; 16 W. R. 482).

Note. A wife's authority to pledge her husband's credit for "Necessaries" ceases if she ELOPES (*Todd* v. *Stokes*, 1 Raym. Ld, 444), or, generally and where there is no DESERTION, if he revokes such authority (*Jolly* v. *Rees* and *Debenham* v. *Mellon*, sup). *Vf*, Lush on Husband and Wife, 2 ed., 351–353.

Shipping Necessaries:—

"The general rule is, that the Master may bind his Owners for necessary repairs done, or supplies provided, for the ship. It was contended that this liability of the owners was confined to what was absolutely necessary. I think that rule too narrow, for it would be extremely difficult to decide, and often impossible in many cases, what is absolutely necessary. If, however, the jury are to enquire only what is necessary,

Digitized by Google

there is no better rule to ascertain that, than by considering what a prudent man, if present, would do under circumstances in which the agent, in his absence, is called upon to act. I am of opinion, that whatever is fit and proper for the service on which a vessel is engaged, whatever the owner of that vessel as a prudent man would have ordered, if present at the time, comes within the meaning of the term 'Necessary,' as applied to those repairs done or things provided for the ship by order of the Master for which the Owners are liable" (per Abbott, C. J., *Webster* v. *Seekamp*, 4 B. & Ald. 354).

"The expression 'Necessaries Supplied' in 3 & 4 V. c. 65, s. 6, which gave the Admiralty Court jurisdiction over foreign ships, though it is not to be restricted to things absolutely and immediately necessary for a ship in order to put to sea (*The Perla*, Swabey, 354), must still be confined to things directly belonging to the ship's equipment necessary at the time, and under the existing circumstances, for the service on which the ship is engaged (*The Alexander*, 1 Rob. W. 361). But the insurance of a vessel is something quite extraneous to its equipment for sea; and however prudent it may be for an owner to insure, it is prudence exercised for his own protection, and not for the requirements of the vessel, which is the sense in which the word 'Necessaries' is used in the statute" (per Hannen, P., *The Henrich Bjorn*, 52 L. J. P. D. & A. 84; 8 P. D. 151; revd on app. without, *semble*, affecting the dictum just cited, 10 P. D. 44; 11 App. Ca. 270; 54 L. J. P. D. & A. 33; 55 Ib. 80).

"I shall hold that 'Necessaries' means primarily, indispensable Repairs, — Anchors, Cables, Sails, when immediately necessary; and also Provisions; but, on the other hand, does not include things required for the Voyage, as contra-distinguished from things necessary for the ship" (per Dr. Lushington, *The Comtesse de Frègeville*, Lush. 332). The latter part of this definition was not followed by Sir R. Phillimore in *The Riga* (41 L. J. Adm. 39; L. R. 3 A. & E. 516), where he held (citing opinion of Abbott, C. J., sup), that there was no distinction between Necessaries for the Ship and Necessaries for the Voyage.

Coals and a Screw Propeller, for a steamer, are Necessaries (*The West Friesland*, Swabey, 454: *The Flecha*, 1 Spinks, 441), so is Insurance of Freight and, *semble*, Brokerage Charges (*The Riga*, sup); *secus*, of Brokerage Charges on a Charter-Party for a future voyage (*The Marianne*, 1891, P. 180; 60 L. J. P. D. & A. 39; 64 L. T. 539), or expenses of witnesses (*The Bonne Amélie*, L. R. 1 A. & E. 19; 35 L. J. Adm. 115: *Va*, *Gunn* v. *Roberts*, L. R. 9 C. P. 331; 43 L. J. C. P. 233), or payments for Averages (*The Aaltje*, L. R. 1 A. & E. 107).

Vf, 1 Maude & P. 99, 157: Abbott, Part 2, ch. 3: 9 Encyc. 73–77: Disbursements: Necessary.

NECESSARILY. — Moneys "necessarily" *expended* in the performance of Duties; *V*. Wholly.

Digitized by Google

Justices' Clerks Fees, held "Expenses necessarily INCURRED" in carrying out 5 & 6 W. 4, c. 76, within s. 92, Ib. (*R.* v. *Gloucester*, 13 L. J. Q. B. 233; 5 Q. B. 862); so, of repairs to a Corporation Pew in the Parish Church (*R.* v. *Warwick*, cited BUILDING, towards end); but not the Costs of opposing a Water Bill in Parliament, or such like (*R.* v. *Sheffield*, 40 L. J. Q. B. 247; L. R. 6 Q. B. 652; nom. *Roberts* v. *Sheffield*, 24 L. T. 659). *Vf*, "Rights, Privileges, and Duties," sub RIGHTS.

A Damage "necessarily *resulting*" from Works by a Local Authority, includes, damage resulting from their defective construction of such works, if such construction were adopted in the *bonâ fide* exercise of their powers (*Raleigh* v. *Williams*, 1893, A. C. 540; 63 L. J. P. C. 1; 69 L. T. 506).

NECESSARY.—It may, probably, as a general rule be broadly stated that those things are "Necessary" to the doing of a thing which are reasonably required, or legally ancillary, to its accomplishment (*V.* jdgmt Pollock, C. B., *A-G.* v. *Walker*, 18 L. J. Ex. 179; 3 Ex. 242); but in that case Parke, Alderson, and Rolfe, BB. (diss. Pollock, C. B.), held, that the exemption from the then duty on bricks (given by s. 18, 2 & 3 V. c. 24) if used "in constructing the Necessary Drains, Gouts, Culverts, Arches, and Walls, of the brickwork proper, and necessarily required, for effecting and maintaining the Drainage" of wet and marshy lands, included only such bricks as were absolutely and physically necessary in the very works of Drainage, and did not include bricks used in works which would not have been needed but for the Drainage, *e.g.* parapets to protect highways alongside which drains ran, or bridges to carry highways over drains.

"Necessary and convenient"; *V.* CONVENIENT.

"Necessary *Apparatus*"; *V.* REGULATE.

An obligation of a Ry Co (on buying land which effects a severance of the vendor's property) to provide "Necessary *Approaches*," connotes that the Approaches shall be convenient and proper (*Sanderson* v. *Cockermouth Ry*, inf: *Lytton* v. *G. N. Ry*, 2 K. & J. 394). *V.* APPROACH.

A Ry Co which buys land only to be used for the construction of "a Station-house, and other Works and Conveniences Necessary and CONVENIENT for passenger and goods TRAFFIC," may devote a reasonable part of it as gardens for their Station Master and Porters, or for sheds for their Customers (*Harris* v. *Lond. & S. W. Ry*, 60 L. T. 392).

A necessary *Easement* is one necessary for the enjoyment of the property as it stood at the time when such property was acquired under the title in virtue of which the easement is claimed (*Pyer* v. *Carter*, 1 H. & N. 916; 26 L. J. Ex. 258, commented on in *Morland* v. *Cook*, L. R. 6 Eq. 252; dissented from in *Wheeldon* v. *Burrows*, 12 Ch. D. 31; and approved in *Watts* v. *Kelson*, 6 Ch. 166: *Vf*, MAINTAIN: (as to Light)

Digitized by Google

Corbett v. *Jonas*, 1892, 3 Ch. 137; 62 L. J. Ch. 43: Gale on Easements, 5 ed., 131: Elph. 189, 190). *Cp*, APPARENT EASEMENT.

" *Expenses* (if any) necessary to maintain hereditaments in a state to command such rent," in definition of " ANNUAL VALUE," s. 1, 6 & 7 W. 4, c. 96, include Drainage Works for a Farm (*R.* v. *Gainsborough*, 41 L. J. M. C. 1; L. R. 7 Q. B. 64): as regards Tithe Rent-Charge, *V. St. Asaph* (*Dean*) v. *Llanrhaiadr-yn-Mochnant*, 1897, 1 Q. B. 511; 66 L. J. Q. B. 267; 76 L. T. 42; 45 W. R. 374; 61 J. P. 213, following *R.* v. *Goodchild*, 27 L. J. M. C. 233; E. B. & E. 1.

" With regard to that expression 'Necessary *Implication*,' I will repeat what I have before stated from a note of Ld Hardwicke's jdgmt in *Coryton* v. *Helyar* (2 Cox Ch. 348), that, in construing a Will, Conjecture must not be taken for Implication; but 'Necessary Implication,' means, not Natural Necessity but, so strong a Probability of Intention that an intention contrary to that which is imputed to the testator cannot be supposed" (per Eldon, C., *Wilkinson* v. *Adam*, 1 V. & B. 466: *Vf*, *Wykham* v. *Wykham*, 18 Ves. 421: *Key* v. *Key*, 22 L. J. Ch. 647; 4 D. G. M. & G. 85). Citing this dictum, Ld Chelmsford (*Hill* v. *Crook*, 42 L. J. Ch. 711; L. R. 6 H. L. 276, 277) said, the words "Natural Necessity" "are, perhaps, not happily chosen, but I understand them to mean, that the intention need not be expressed in language which is, necessarily, susceptible of only one interpretation, but that it is sufficient if it is indicated in a way that excludes the probability of an opposite intention having existed in the mind of the testator." Quà Acts of Parliament, "I take a 'Necessary Implication' to be, not guess nor probability but, an inference which by no reasonable INTENDMENT can be otherwise. It is a state of things excluding any reasonable conclusion but the one" (per Ball, J., *Dickson* v. *Pape*, 7 Ir. L. R. 123). *Vf*, *Andrew* v. *Andrew*, cited DEFAULT. *Cp*, JUDICIAL PERSUASION: PRESUMPTION.

"By 'Necessary INTENDMENT' I do not mean that the words used can by no possibility be misinterpreted or perverted"; if a particular meaning is conveyed to a rational mind, there is a Necessary Intendment in favour of such meaning (per Erle, J., *R.* v. *Anderson*, cited SERVED).

An exception, in a contract for sale of an estate, of "Necessary *Land* for making a Railway," renders the contract void for uncertainty (*Pearce* v. *Watts*, 44 L. J. Ch. 492; L. R. 20 Eq. 492).

"Necessary and Legal Measures"; *V.* LEGAL MEASURES.

A fund applicable to the "Reparations, Ornaments, and other Necessary *Occasions*," of a Parish Church may be applied (probably under either of the words "Reparations" or "Ornaments," and certainly under "Necessary Occasions") in the building of a spire to the Church, although the Church has not previously had a spire (*Re Palatine Estate Charity*, 39 Ch. D. 54; 36 W. R. 732; 57 L. J. Ch. 751; 58 L. T. 925; 4 Times Rep. 499). So, a gift for the "Reparation" of a building may

Digitized by Google

be applied in erecting a new one (*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).

"Necessary *Outgoings*" deductible from the annual value of a Succession (s. 22, 16 & 17 V. c. 51) means, "permanent charges made on the occupier of the property, — such as repairs, poor rates, highway sewer and county rates, drainage-rates, and the like"; but Income Tax or Commission to agent is not included (*Re Elwes*, 28 L. J. Ex. 46; 3 H. & N. 719: *Re Cowley*, L. R. 1 Ex. 288). *V.* OUTGOING.

"Necessary *or Proper Party*," R. 1 (*g*), Ord. 11, R. S. C.; The party to be served hereunder if "proper," need not also be "necessary" (*Sykes* v. *Scholfield*, 28 S. J. 477); but he must be a real, and not a mere dummy, defendant (*Witted* v. *Galbraith*, 1893, 1 Q. B. 433, 577; 62 L. J. Q. B. 248; 68 L. T. 421; 41 W. R. 395). *Vh, Massey* v. *Heynes*, 57 L. J. Q. B. 521; 21 Q. B. D. 330; 36 W. R. 834: *Williams* v. *Cartwright*, 1895, 1 Q. B. 142; 64 L. J. Q. B. 92; 71 L. T. 834; 43 W. R. 145: *The Elton*, 1891, P. 265; 60 L. J. P. D. & A. 69; 65 L. T. 232; 39 W. R. 703: *Bawtree* v. *Great N. W. Central Ry*, 14 Times Rep. 448: Ann. Pr. A "Necessary" Party may get Costs when, if he were only a "Proper" Party, he would not (*Merry* v. *Pownall*, 1898, 1 Ch. 306; 67 L. J. Ch. 162; 78 L. T. 146).

"Necessary or Usual" *Powers*, in a Mining Lease; *V. Morris* v. *Rhydydefed Co*, cited USUAL.

"Necessary for the *Purposes of Justice*," R. 5, Ord. 37, R. S. C.; *V. Re Mysore Mining Co*, 58 L. J. Ch. 731; 42 Ch. D. 535; 61 L. T. 453; 37 W. R. 794: *Re Shaw and Ronaldson*, cited IRREVOCABLE.

"Necessary," in the phrase "Necessary *Repairs*," neither adds to nor takes away from the meaning (per Jessel, M. R., *Truscott* v. *Diamond Rock Co*, 51 L. J. Ch. 260; 20 Ch. D. 251); but in the same case, Brett, L. J., said, "I think the phrase must mean, All such Repairs as would be necessary to enable the landlord to hand over the property to a new tenant in substantial and TENANTABLE REPAIR."

Necessary Repairs to a *Ship*; *V.* NECESSARIES.

Necessary *Sale of Cargo* by a Master of a Ship; *V. Australasian Nav. Co* v. *Morse*, cited NECESSITY.

"Necessary *Wayleave*"; *V.* WAY.

"Necessary for the beneficial *Winding-up*" of a Co, s. 95, Comp Act, 1862; *V. Re Wreck Recovery Co*, 15 Ch. D. 353; 43 L. T. 190; 29 W. R. 266.

"Necessary *Work* connected therewith," s. 46, Ry C. C. Act, 1845; *V. Waterford Ry* v. *Kearney*, 12 Ir. C. L. Rep. 224: *City & S. London Ry* v. *London Co. Co.*, inf.

The power given by s. 96, P. H. Act, 1875, enabling justices to order the doing of *Works* "necessary" for the abatement of a nuisance, does not extend "to whatever the Local Sanitary Authority thinks necessary" (per Stephen, J., *Ex p. Whitchurch*, 50 L. J. M. C. 42; 6 Q. B. D. 545);

Digitized by Google

and accordingly it was there held that an Order to supply a particular kind of closet was bad (*V.* SUFFICIENT PRIVY). But an Order to do such specified things as may be necessary to prevent the recurrence of the nuisance, — *e.g.* to remove a closet from the middle to the outside of a house, or specifying the works necessary to be done to abate a nuisance, — is within the power (*Ex p. Saunders,* 52 L. J. M. C. 89; 11 Q. B. D. 191: *R.* v. *Llewellyn,* 13 Q. B. D. 681; 55 L. J. M. C. 9: *R.* v. *Kent,* 55 L. J. M. C. 9; 49 J. P. 404: *Whitaker* v. *Derby,* 55 L. J. M. C. 8); and, indeed, unless the Order does specify what is required to be done it will be bad (*R.* v. *Wheatley,* 55 L. J. M. C. 11; 16 Q. B. D. 34; 54 L. T. 680; 34 W. R. 257; 50 J. P. 424), and that applies where the proceedings are under s. 105 (*R.* v. *Horrocks,* 82 L. T. 767; 69 L. J. Q. B. 688; 64 J. P. 661).

"Necessary" Works, s. 46, P. H. Act, 1848; *V. Swanston* v. *Twickenham,* 48 L. J. Ch. 623; 11 Ch. D. 838.

"Necessary *Works of Repair,*" s. 3, Metrop Man. Act, 1890, 53 & 54 V. c. 66, are such as are necessary in the opinion of the Local Authority (*Stroud* v. *Wandsworth Bd,* 1894, 2 Q. B. 1; 63 L. J. M. C. 88; 70 L. T. 190; 58 J. P. 652: *Vthc* per Kay, J., *Metrop District Ry* v. *Fulham,* 65 L. J. Q. B. 32). *Sv, R.* v. *Marsham,* 1892, 1 Q. B. 371; 61 L. J. M. C. 52; 65 L. T. 778; 40 W. R. 84; 56 J. P. 164.

The Surveyor is the proper person to determine what Sewers and Water Mains are "necessary" under ss. 16, 54, P. H. Act, 1875 (*Lewis* v. *Weston-super-Mare,* 58 L. J. Ch. 39; 40 Ch. D. 55; *whv,* for a discussion of "Necessary" in this connection).

"Necessary" Works for supplying Water; *V.* SUPPLY.

A contractual right to demand such things as "may be necessary," "must receive a reasonable interpretation having regard to the circumstances and situation of both sides" (per Langdale, M. R., *Sanderson* v. *Cockermouth Ry,* 11 Bea. 497; 7 Ry. Ca. 613, 617, cited *Lewis* v. *Weston-super-Mare,* sup).

Where a party has a contractual right to demand such things as he may "*think necessary,*" — *e.g.* to ask for further proof or information, — this does not enable him to act capriciously, it only embraces such things as he may reasonably require (*Braunstein* v. *Accidental Insrce,* 31 L. J. Q. B. 17; 1 B. & S. 782).

An act is not "necessary" within s. 16, Ry C. C. Act, 1845, merely because it would be economical to the Company or its Contractor (*R.* v. *Wycombe Ry,* L. R. 2 Q. B. 310; 36 L. J. Q. B. 121: *Fenwick* v. *East London Ry,* L. R. 20 Eq. 544; 44 L. J. Ch. 602; 23 W. R. 901: *Pugh* v. *Golden Valley Ry,* 12 Ch. D. 274; 15 Ib. 330; 28 W. R. 44: *Morris* v. *Tottenham Ry,* 1892, 2 Ch. 47; 61 L. J. Ch. 215: *A-G.* v. *Metrop Ry,* 1894, 1 Q. B. 390). *Vf,* as to this section generally, *Emsley* v. *N. E. Ry,* 1896, 1 Ch. 418; 65 L. J. Ch. 385; 74 L. T. 113. "Necessary" work, in this and such like provisions, means, Necessary, in the honest

Digitized by Google

and *bonâ fide* judgment of the undertakers, for the Undertaking or Works which the statute authorizes (*City and S. London Ry* v. *London Co. Co.*, 1891, 2 Q. B. 513; 60 L. J. M. C. 149; 65 L. T. 362; 40 W. R. 166; 56 J. P. 6). *Vf*, REQUIRED.

"Necessary to be dug or carried away or used," s. 77, Ry C. C. Act, 1845; *V.* per Fry, J., *Loosemore* v. *Tiverton Ry*, 51 L. J. Ch. 574, 575; 22 Ch. D. 33, 34; 30 W. R. 628; 47 L. T. 151: *Jamieson* v. *North Brit. Ry*, 6 Scot. L. R. 188.

"Necessary to make a *Separate Valuation*," s. 76, 32 & 33 V. c. 67; *V. A-G.* v. *Westminster Chambers Assn*, 45 L. J. Ex. 886; 1 Ex. D. 469.

V. IF NECESSARY: NECESSITY: REASONABLY NECESSARY.

NECESSITOUS. — *V.* RELATIONS.

"'Necessitous,' does not, necessarily, mean persons in extreme poverty" (per Hawkins, J., *Cowen* v. *Kingston-upon-Hull*, cited ALMS).

NECESSITY. — Baking rolls on a Sunday is not a "Work of Necessity" within the exception in s. 1, Sunday Observance Act, 1677, 29 Car. 2, c. 7 (*Crepps* v. *Durden*, 2 Cowp. 640), nor is baking bread in the ordinary course of a baker's business (*R.* v. *Younger*, 5 T. R. 451: *Va*, 34 G. 3, c. 61), nor is Shaving (*V.* HOLIDAY); but baking dinners for customers is (*R.* v. *Cox*, 2 Burr. 787: *R.* v. *Younger*, 5 T. R. 449). Whether haymaking (and indeed it should seem any other work not covered by authority) is of "necessity" is a question of fact on which the finding of Justices is conclusive (*R.* v. *Cleworth*, 4 B. & S. 927). *Vh*, PENALTY.

Necessity, justifying a Deviation in a Voyage; *V. Phelps* v. *Hill*, cited DEVIATION.

The "Necessity," which justifies the Termination of a Voyage elsewhere than at the Port of Destination, must be "the occurrence of circumstances beyond the control of the contractors and such as renders the completion of the voyage, on the terms originally agreed upon, physically impossible or so clearly unreasonable as to be impossible in a business point of view" (per Lindley, J., *Hill* v. *Wilson*, 4 C. P. D. 333, 334; 48 L. J. C. P. 764; 41 L. T. 412).

"Necessity" which authorizes a Master of a Ship to sell cargo; *V. Australasian Nav. Co* v. *Morse*, L. R. 4 P. C. 222; 27 L. T. 357; 20 W. R. 728, criticized in *Atlantic Mutual Insrce* v. *Huth*, 16 Ch. D. 474; 44 L. T. 67; 29 W. R. 387: *Vthc* and others compared and discussed, Abbott, 423–428.

Natural Necessity; *V.* "Necessary Implication," sub NECESSARY.

"Sudden and urgent Necessity"; *V.* SUDDEN.

V. IMPRACTICABLE: POSSIBLE.

AGENT of Necessity; *V.* per Parke, B., *Hawtayne* v. *Bourne*, 7 M. &

Digitized by Google

W. 598; 10 L. J. Ex. 224: per Eyre, C. J., *Nicholson* v. *Chapman*, 2 Bl. H. 254: *Gwilliam* v. *Twist*, 1895, 2 Q. B. 84; 64 L. J. Q. B. 474; 72 L. T. 579; 43 W. R. 566; 59 J. P. 484.

"Temporary Necessity"; *V.* TEMPORARY.

Way of Necessity; *V.* WAY.

NECKLACES. — Where a testatrix gave her "Necklaces of every description" to A. and her "Pearls" to B.; held, that a Pearl Necklace passed to A. (*A-G.* v. *Harley*, 5 Russ. 173; 7 L. J. O. S. Ch. 31). *V.* JEWELS.

NEED. — *V.* IN CASE.

NEED NOT. — This phrase does not mean "must not"; and therefore though by s. 1 (2), M. W. P. Act, 1882, a husband "need not" be joined in actions by or against his wife, yet he *may* be joined, especially so where the wife is a defendant in an action of tort (*Seroka* v. *Kattenburg*, 17 Q. B. D. 177; 55 L. J. Q. B. 375; 54 L. T. 649; 34 W. R. 542); and his liability for her tort remains, except where the tort is part and parcel of her own contract and is also the means of effecting (in the sense of obtaining) such contract (*Earle* v. *Kingscote*, 1900, 2 Ch. 585; 69 L. J. Ch. 725; 83 L. T. 377; 49 W. R. 3).

In such a phrase as "no further Particulars *need be* delivered," "the words 'need be' rather suggest that the party may deliver other Particulars if he chooses" (per Campbell, C. J., *Fromant* v. *Ashley*, 1 E. & B. 725).

V. MUST NOT.

NEEDFUL. — *V.* DO THE NEEDFUL.

NEGATIVE PREGNANT. — "'Negative pregnant' is a Negative implying also an Affirmative" (Cowel).

"*Negativa pregnans*, is when an Action or Information, or such like, is brought against one, and the Defendant pleadeth in barre of the Action, or otherwise a negative Plee, which is not so speciall an answere to the Action but that it includeth also an affirmative: As for example; If a Writ of *entre en casu proviso*, brought by him in the reversion upon Alienation by the Tenant for Life supposing that he hath aliened in fee (which is a forfeiture of his estate) and the Tenant to the Writ saith, that he hath not aliened in fee, this is a Negative wherein is included an Affirmative: for although it be true that he hath not aliened in fee, yet it may be that he hath made an Estate in Tayle (which is also a forfeiture) and then the entrie of him in the reversion is lawfull, &c" (Termes de la Ley, which gives further examples). A simpler example is where plt claims (say) £100 for money lent, and deft pleads that the plt did not lend him £100; that is a Negative Pregnant, for it denies the precise £100, but may imply that a greater or lesser sum was lent.

Digitized by Google

The phrase "Negative Pregnant" is preserved in the marginal note to R. 19, Ord. 19, R. S. C., which Rule (without itself using the phrase) forbids the pleading of a Negative Pregnant (*V.* SPECIFIC). The phrase was in use at least as long ago as the time of Henry IV (*V.* margin Year Book, 2 H. 4, 18 b). *Vh,* with a citation of several cases and examples, per Pollock, C. B., *Jones* v. *Jones*, 16 M. & W. 708, 709; 16 L. J. Ex. 301, 302.

NEGLECT. — To "neglect" doing, "is the omission to do some DUTY which the party is *able* to do" (per Patteson, J., *King* v. *Burrell*, 12 A. & E. 468), whether he gets a demand to do it, or not (*East London W. W. Co* v. *Kyffin*, 1895, 1 Q. B. 55; 64 L. J. M. C. 32; 71 L. T. 615; 59 J. P. 405); *e.g.* an Arbitrator not making his Award in due time (*Willoughby* v. *Willoughby*, 16 L. J. Q. B. 251; 9 Q. B. 923). *Cp,* OMISSION: OMIT.

A prisoner was convicted on an Indictment charging him with Neglect to provide food and clothing for his child, but omitting to allege ability; held, that the ability to provide was implied in the word "neglect" (*R.* v. *Ryland*, 37 L. J. M. C. 10; L. R. 1 C. C. R. 99).

A Solicitor does not "neglect" to apply for his Certificate, s. 25, Solrs Act, 1843, during the time he is under sentence of Suspension, because he could not then get it if he applied for it (*Anon.*, 80 L. T. 720; 47 W. R. 575).

A Gas Co does not "neglect or refuse" to supply gas, s. 36, 34 & 35 V. c. 41, when prevented from doing so by *vis major*, *e.g.* an extraordinary frost (*Re Richmond Gas Co and Richmond*, 1893, 1 Q. B. 56; 62 L. J. Q. B. 172; 67 L. T. 554; 41 W. R. 41; 56 J. P. 776: *Va, Blyth* v. *Birmingham W. W. Co*, cited NEGLIGENCE): *Cp,* REFUSAL.

So, a Poor Vicar does not, within a Forfeiture Clause, "neglect" to read Morning Prayer every Wednesday, Friday, and Holy-Day, if no one will come to hear him; in such a connection, "neglect" "amounts to a moral delinquency" (per Wood, V. C., *Re Conington*, 8 W. R. 445).

Mere Non-attendance (even for a long time) at Board Meetings is not Neglect in a Director of a Co (*Re Forest of Dean Co*, 10 Ch. D. 450: *Re Denham*, 25 Ib. 752); so, such non-attendance by a Trustee or Manager of a Savings Bank is not, of itself, "Neglect or Omission" within s. 11 (2), 26 & 27 V. c. 87 (*Re Cardiff Savings Bank*, 1892, 2 Ch. 100; 61 L. J. Ch. 357; 66 L. T. 317; 40 W. R. 538), *secus*, when coupled with irregularities of which he has knowledge or of which he ought to have knowledge or suspicion (*Ib.* 59 L. J. Ch. 450; 45 Ch. D. 537).

"Neglect," implicating a Ship or Boat in an offence against the Customs Acts, includes "cases where goods unowned by any of the crew, are discovered in a place or places in which they could not reasonably have been put if the RESPONSIBLE Officer or Officers having supervision of

Digitized by Google

such place or places had exercised proper care at the time of the loading of the ship or subsequently" (s. 3, 53 & 54 V. c. 56).

"Neglect to attend"; *V.* ABSENT.

Where there is a real dispute as to liability, a Co does not "neglect *to pay*" by not complying with a Demand under s. 80 (1), Comp Act, 1862 (*Re London and Paris Banking Corp*, L. R. 19 Eq. 444; 23 W. R. 643).

Where a Husband and Wife had parted for many years, and then the husband called at the wife's house and resumed COHABITATION for 2 or 3 days, about two months after which the wife went to the husband's house and asked for admission, but the husband sent her away saying, "Get thee home, and never come here again: go and drown thyself"; held, that he was guilty of WILFUL NEGLECT, causing his wife "to leave and live separately and apart from him" within s. 4, 58 & 59 V. c. 39 (*Snape* v. *Snape*, 64 J. P. 793): but how can a wife "leave" a home that she has relinquished and to which she has not been re-admitted? *V.* CAUSE: *Cp*, SEPARATE: LIVING APART.

V. FORGETFULNESS: NEGLECT OR DEFAULT: REFUSAL: NON-USER.

NEGLECT OR DEFAULT.—"A 'NEGLECT' and a 'DEFAULT' (in a Covenant for QUIET ENJOYMENT) seems to imply something more than the mere want of discretion with respect to the covenantor's own interests; something like the breach of a duty or legal obligation existing at the time; those words, in their proper sense, implying the not doing some act to secure his title which he ought to have done, and which he had the power to do; and the not preventing or avoiding some danger to the title which he might have prevented or avoided" (per Tindal, C. J., *Woodhouse* v. *Jenkins*, 9 Bing. 441, 442). *Vf*, Sug. V. & P. 602–604.

"Neglect or Default of Master"; *V.* MASTER: NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS.

As to the construction of Exception from liability for PERILS OF THE SEA, even when caused "by the Neglect, Default, or Error in Judgment," of Pilot, Master, &c; *V.* NEGLIGENCE: *The Cressington*, 1891, P. 150; 60 L. J. P. D. & A. 25. *Cp*, *Shaw* v. *G. W. Ry* (cited LOSS) on loss "occasioned by the Neglect or Default" of a Ry Co or its Servants.

NEGLECT OR MISCONDUCT.—*V.* CONDUCE.

NEGLIGENCE.—"Negligence" is not an affirmative word; "it is a negative word; it is the absence of such care, skill, and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed" (per Willes, J., *Grill* v. *General Iron Screw Collier Co*, 35 L. J. C. P. 330). *Cp*, SKILL: ORDINARY CARE.

"Negligence is the omitting to do something that a reasonable man

Digitized by Google

would do, or the doing something which a reasonable man would not do" (per Alderson, B., *Blyth* v. *Birmingham W. W. Co*, 25 L. J. Ex. 212; 11 Ex. 784). Accordingly it was there held that a Water Works Co was not liable for injuries occasioned by one of its plugs bursting through an extraordinary frost. *Va*, *Re Richmond Gas Co and Richmond*, cited NEGLECT.

Where in a Bill of Lading, or Contract for Towage, the owners of the vessel contract themselves out of liability for "negligence or default" of themselves or their servants, they will be protected from the consequences of breaking any express statutory rule in the same way as they would be for the breach of the general law (*The United Service*, 52 L. J. P. D. & A. 18).

"Negligence," s. 1, Employers' Liability Act, 1880; *V. Wild* v. *Waygood*, 1892, 1 Q. B. 783; 61 L. J. Q. B. 391; 66 L. T. 309; 40 W. R. 501.

Vh. Beven on Negligence: Rosc. N. P. 762 *et seq*: 9 Encyc. 82–99.

CONTRIBUTORY Negligence, — which deprives a person who is injured by the negligence of another of the right to recover damages from that other, — is such Negligence by the person injured as that but for it the misfortune would not have happened, and the consequences of which could not have been prevented by the exercise of reasonable care and diligence on the part of the other (*Butterfield* v. *Forrester*, 11 East, 60: *Bridge* v. *Grand Junction Canal Co*, 3 M. & W. 244: *Tuff* v. *Warman*, 26 L. J. C. P. 263; 27 Ib. 322; 2 C. B. N. S. 740; 5 Ib. 585: *The Bernina*, 56 L. J. P. D. & A. 17; 12 P. D. 58; nom. *Mills* v. *Armstrong*, 57 L. J. P. D. & A. 65; 13 App. Ca. 1). *Vh*, Beven, Bk. 1, ch. 5: Rosc. N. P. 768, 769, 773, 774: PROXIMATE: REASONABLE DILIGENCE.

V. GROSS.

"Negligence," quà an ADVOWSON exerciseable in TURN, "means merely, Omission to present; or, in other words, missing the Turn" (per Chitty, J., *Keen* v. *Denny*, 64 L. J. Ch. 59; 1894, 3 Ch. 169).

Quà Benefices Act, 1898, 61 & 62 V. c. 48, "'Negligence' in the performance of Ecclesiastical Duties" includes, "WILFUL DEFAULT in the performance of such duties" (subs. 3, s. 13).

NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS.—*V.* 1 Maude & P. 358, citing *The Duero*, L. R. 2 A. & E. 393; 38 L. J. Adm. 69: *Steel* v. *State Line Co*, 3 App. Ca. 72; 37 L. T. 333: Abbott, 499–502, discussing *Steel* v. *State Line Co* and *Hayn* v. *Culliford*, 48 L. J. C. P. 372; 4 C. P. D. 182; 40 L. T. 536; 27 W. R. 541: *Vf*, *Norman* v. *Binnington*, cited OTHERWISE: *The Carron Park*, cited NAVIGATION: *Barker* v. *McAndrew*, cited SAIL: *Bruce* v. *Nicolopulo*, cited DURING: *The Accomac*, cited NAVIGATION: *The Undaunted*, 55 L. J. P. D. & A. 24: *The United Service*, 52 L. J. P. D. & A. 18; 9 P. D. 3; 48 L. T. 486; 31 W. R. 614.

Digitized by Google

NEGLIGENTLY. — When "Negligently" is a part of the definition of an offence, it implies that the act constituting the offence shall have been done, or caused, by the alleged offender himself; proof that it was done by the alleged offender's servant, without more, will not bring the charge home (*Chisholm* v. *Doulton*, 58 L. J. M. C. 133; 22 Q. B. D. 736; 60 L. T. 966; 37 W. R. 749; 53 J. P. 550). *Cp*, KNOWINGLY.

NEGOTIABLE. — "It may be laid down as a safe rule that where an INSTRUMENT is, by the Custom of the Trade, transferable, like Cash, by delivery, *and* is also capable of being sued upon by the person holding it *pro tempore*, there it is entitled to the name of a Negotiable Instrument, and the property in it passes to a *bonâ fide* transferee for value, though the transfer may not have taken place in MARKET OVERT. But if either of the above requisites be wanting, — *i.e.* if it be either not accustomably transferable, or, though it be accustomably transferable yet, if its nature be such as to render it incapable of being put in suit by the party holding it *pro tempore*, — it is not a Negotiable Instrument; nor (apart from the question of Estoppel) will delivery of it pass the property of it to a vendee, however *bonâ fide*, if the transferor himself have not a good title to it and the transfer be made out of Market Overt" (1 Sm. L. C. 456, summarizing *Miller* v. *Race* and its cognate authorities, and quoted with approval by Blackburn, J., *Crouch* v. *Credit Foncier of England*, L. R. 8 Q. B. 381, 382; 42 L. J. Q. B. 188). *Vf*, *Taylor* v. *Kymer*, 3 B. & Ad. 320.

The Negotiable Instruments most commonly known are Bills of Exchange, Promissory Notes, and Bills of Lading. A Bill of Exchange or Promissory Note is negotiable if made payable "to Order," or contains no words prohibiting transfer (ss. 8, 89, Bills of Ex. Act, 1882: *V.* NEGOTIATE); *secus*, of a BILL OF LADING (*Henderson* v. *Comptoir D'Escompte*, cited ASSIGNS): *Vf*, as to the essentials of the negotiability of a Bill of Lading, Carver, 539–547.

Foreign Bonds (*Gorgier* v. *Mieville*, 2 L. J. K. B. O. S. 206; 3 B. & C. 45), and Debentures payable to BEARER (*Bechuanaland Exploration Co* v. *London Trading Bank*, 1898, 2 Q. B. 658; 67 L. J. Q. B. 986; 79 L. T. 270) or to Order (*Re General Estates Co*, 16 W. R. 919; 18 L. T. 894), are also Negotiable Instruments: *Vf*, 43 S. J. 435: and as to Foreign Bonds, *Picker* v. *London & County Bank*, 56 L. J. Q. B. 299; 18 Q. B. D. 515: SCRIP..

Vh, *London & County Bank* v. *London & River Plate Bank*, 21 Q. B. D. 535; 57 L. J. Q. B. 601: *Easton* v. *London Joint Stock Bank*, 34 Ch. D. 95: *Colonial Bank* v. *Hepworth*, 36 Ch. D. 36; 56 L. J. Ch. 1089: *Sheffield* v. *London Joint Stock Bank*, 13 App. Ca. 333; 57 L. J. Ch. 986: *Baker* v. *Nottingham Bank*, 60 L. J. Q. B. 542: *London Joint Stock Bank* v. *Simmons*, 1892, A. C. 201; 61 L. J. Ch. 723; 41 W. R. 108; 66 L. T. 625: *Venables* v. *Baring*, 1892, 3 Ch. 527; 61 L. J. Ch.

Digitized by Google

609; 40 W. R. 699; 67 L. T. 110: *Bentinck* v. *London Joint Stock Bank*, 1893, 2 Ch. 120; 62 L. J. Ch. 358; 42 W. R. 140; 68 L. T. 315: Cavanagh on Money Securities, 351–355: Willis on Negotiable Securities: Daniel on Negotiable Instruments: 9 Encyc. 105–109: 16 L. Q. Rev. 135.

"Negotiable instrument," s. 90, Com. L. Pro. (Ireland) Act, 1856, includes a Bank Note (*M'Donnell* v. *Murray*, 9 Ir. C. L. Rep. 495).

V. Not Negotiable.

NEGOTIATE.—"(1) A Bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the Holder of the Bill.

"(2) A Bill payable to Bearer, is negotiated by Delivery.

"(3) A Bill payable to Order (*V.* Negotiable), is negotiated by the Indorsement of the holder, completed by delivery" (s. 31, Bills of Ex. Act, 1882): and so of a Note (s. 89, Ib.): *V. Day* v. *Longhurst*, 68 L. T. 17; 62 L. J. Ch. 334; 41 W. R. 283: Transferor.

Vf, subs. 4 and 5, s. 31, Ib., and on subs. 4, *Good* v. *Walker*, 61 L. J. Q. B. 736; and as to requisites of an Indorsement ss. 32 to 37, Ib.

A Power of Attorney "to negotiate, make sale, dispose of, assign, and transfer," a Promissory Note, does not authorize its being pledged (*Jonmenjoy Coondoo* v. *Watson*, 53 L. J. P. C. 80; 9 App. Ca. 561); had the word "negotiate" stood alone it might have included a pledge (*S. C.*, 53 L. J. P. C. 84); and if a power to "indorse" be included in the enabling words, that would authorize a pledge (*Bank of Bengal* v. *Macleod*, 5 Moore Ind. App. 1).

House Agent's authority to "negotiate" a Sale; *V.* Procure, at end.

To "negotiate" a Sale by Private Contract, so as to earn the Scale Fee given by Sch 1, Part 1, Solrs Rem Ord and R. 11 thereto, is to "arrange" it, *i.e.* to obtain and finally settle all the terms and conditions, including the price (per Lindley and Bowen, L. JJ.), the negotiation ceasing "when the consent of the consenting party is given" (per Fry, L. J., *Re MacGowan*, 1891, 1 Ch. 105; 60 L. J. Ch. 118; 39 W. R. 227; 63 L. T. 793): as to what is a "Commission" to an Agent, *V.* Conducting. *Cp*, Loan, at commencement.

NEGOTIATION.—As to when contract documents amount to no more than Negotiation, *V.* Subject to.

NEIFE.—"'Niefe,' is a woman that is bound, or a Villeine woman; but if shee marry a free man shee is thereby made free, because that shee and her husband are but one person in law" (Termes de la Ley: *Vf*, Litt. ss. 186, 187: Cowel, *Neife*: 2 Bl. Com. 93, 94).

NEIGHBOUR.—Who is my neighbour? How ought he to behave to me? and, How ought I to behave to him? *V.* Mac S. chs. 14–17.

Digitized by Google

NEIGHBOURHOOD.—"According to the best rules of husbandry practised in the Neighbourhood"; *V. Meux* v. *Cobley*, 1892, 2 Ch. 253; 61 L. J. Ch. 449; 66 L. T. 86: CUSTOM OF THE COUNTRY.

An agreement by the Seller, on the Sale of a Business, *e.g.* a Milk Business, not to carry on a like business "in the Neighbourhood" of the places where the business sold is carried on, is not too vague to be specifically enforced,—"Neighbourhood," there, means, the immediate neighbourhood of the stated places, and is equal to a distance sufficient to prevent competition (*Stride* v. *Martin*, 77 L. T. 600).

NEIGHBOURING.—A covenant prohibiting anything that may be an ANNOYANCE, &c, to the "neighbouring or adjoining" property, means, the Owners or Occupiers of such property (*Bramwell* v. *Lacy*, cited ANNOYANCE), and is not restricted so as only to prevent annoyance to the occupiers of property belonging to the covenantee (*Tod-Heatley* v. *Benham*, 58 L. J. Ch. 83; 40 Ch. D. 80).

A power, in a Mining Lease, to distrain upon the lessee's chattels in the demised Colliery, or "any Adjoining or Neighbouring Collieries," "must be construed to apply to those neighbouring mines only which, though not actually adjoining the seam of coal demised, might be or become connected with it by underground workings" (per Lindley, L. J., *Re Roundwood Colliery Co*, 1897, 1 Ch. 373; 66 L. J. Ch. 194; 75 L. T. 641; 45 W. R. 324).

"Neighbouring" Borough; Stat. Def., 46 & 47 V. c. 55, s. 8.

V. ADJACENT: ADJOINING PROPERTY.

NEPE.—*V.* NEAP.

NEPHEW: NIECE.—Is the child of a person's brother or sister, whether such brother or sister be of the whole or only of the half blood (*Grieves* v. *Rawley*, 22 L. J. Ch. 625; 10 Hare, 63). "I have no doubt that the primary meaning, of 'Nephew' or 'Niece,' is 'Child of Brother or Sister'" (per Jessel, M. R., *Wells* v. *Wells*, 43 L. J. Ch. 681; L. R. 18 Eq. 504; 22 W. R. 893; 31 L. T. 16). *Vf*, RELATIONS.

Accordingly, a great-nephew or great-niece is not included in a testamentary gift to "nephews and nieces" (*Shelley* v. *Bryer*, Jac. 207: *Falkner* v. *Butler*, 1 Amb. 514: *Crook* v. *Whitley*, 26 L. J. Ch. 350; 7 D. G. M. & G. 490: *Re Blower*, 42 L. J. Ch. 24; 6 Ch. 351; 19 W. R. 666; 25 L. T. 181: *Williamson* v. *Moore*, 10 W. R. 536), nor a great grand-nephew in a gift to "grand-nephews" (*Waring* v. *Lee*, 8 Bea. 247): but these extended meanings may be gathered from a context (*Weeds* v. *Bristow*, 35 L. J. Ch. 839; L. R. 2 Eq. 333; 14 L. T. 587; 14 W. R. 726: *Va*, *Re Fish*, 1894, 2 Ch. 83; 63 L. J. Ch. 437; 70 L. T. 825; 42 W. R. 520), though not easily (*Thompson* v. *Robinson*, 29 L. J. Ch. 280; 27 Bea. 486: *Campbell* v. *Bouskell*, 27 Bea. 325). *Vf*, Wms. Exs. 962: 2 Jarm. 152.

Digitized by Google

A gift to Nephews and Nieces (like one to CHILDREN) includes such as are *en ventre sa mere* (*Re Hallett*, W. N. (92) 148).

"As regards the term 'Nephew' and 'Niece,' popular language has attached a meaning which includes nephews and nieces *by marriage*; but I do not think there is any such popular usage with regard to the term 'Cousin'" (per Bowen, L. J., *Re Taylor*, *Cloak* v. *Hammond*, 56 L. J. Ch. 173; 34 Ch. D. 255; 55 L. T. 649; 35 W. R. 186. *Vf*, *Grant* v. *Grant*, 39 L. J. C. P. 140, 272; 39 L. J. P. & M. 17; L. R. 2 P. & D. 8; L. R. 5 C. P. 380, 727; 18 W. R. 951. But in *Wells* v. *Wells*, sup, Jessel, M. R., questioned *Grant* v. *Grant*, adding however that it was "not a question of law, but of the English language." *Grant* v. *Grant* was also questioned by Malins, V. C., in *Merrill* v. *Morton*, 17 Ch. D. 382; 50 L. J. Ch. 249; 29 W. R. 394; 43 L. T. 750: *Va*, *Re Fish*, sup: *Re Ashton*, 1892, P. 83; 61 L. J. P. D. & A. 85; 67 L. T. 325). Of course, where a person is named but, being a Niece or Nephew by marriage only, is not quite accurately called "Niece" or "Nephew," such inaccuracy is immaterial (*Smith* v. *Lidiard*, inf).

If a testator has no nephews and nieces of his own and no possibility of any, his wife's nephews and nieces would take under a bequest to his "Nephews and Nieces" (*Sherratt* v. *Mountford*, 42 L. J. Ch. 688; 8 Ch. 928; 21 W. R. 818; 29 L. T. 284: *Hogg* v. *Cook*, 32 Bea. 641: *Adney* v. *Greatrex*, 38 L. J. Ch. 414; 17 W. R. 637; 20 L. T. 647); and so of a bequest to nephews and nieces "*on both sides*" (*Frogley* v. *Phillips*, 30 Bea. 168; 3 D. G. F. & J. 466; 3 L. T. 718). And where a testator having made separate gifts to the wife of his wife's nephew and to his (testator's) nephews and nieces by name (some of whom were his own, some his wife's, nephews and nieces), and then gave his residue to "All and every my Nephews and Nieces living at my decease, including my nephews and nieces to whom I have given legacies as aforesaid"; held, that nephews and nieces of testator's wife, and also the wife of his wife's nephew, were included in the residuary gift (*Re Gue*, 61 L. J. Ch. 510; 40 W. R. 553). *Vh*, *Smith* v. *Lidiard*, 3 K. & J. 252, on *whlcv*, *Hibbert* v. *Hibbert*, cited RELATIONS.

"*All and every* my Nephews and Nieces"; *V. Re Goodall*, W. N. (88) 69.

A Residuary bequest to "all my Nephews and Nieces," held (there being legitimate nieces), not to include an illegitimate niece who, in a previous part of the Will, had been spoken of as testator's "niece" (*Re Brown*, 58 L. J. Ch. 420. *Va*, *Bagley* v. *Mollard*, 1 Russ. & My. 581; 8 L. J. O. S. Ch. 145: *Re Hall*, 56 L. J. Ch. 780; 35 Ch. D. 551; 57 L. T. 42; 35 W. R. 797). But, without expressly over-ruling those cases, the modern view is against their conclusion; and when the testator has, by his Will, furnished a dictionary of his meaning from which it may be fairly gathered that, in speaking of Nephews and Nieces, he included illegitimate ones, then the illegitimate will take as well as the

Digitized by Google

legitimate (per Kekewich, J., *Re Parker*, 1897, 2 Ch. 208; 66 L. J. Ch. 509; 76 L. T. 421; 45 W. R. 536, relying on *Hill* v. *Crook*, cited CHILD, and *Seale-Hayne* v. *Jodrell* and *Re Deakin*, cited RELATIONS).

In a competition (over a gift by name) between two nieces or two nephews of the same name, one being legitimate and the other illegitimate, the legitimate one is to be preferred and evidence to the contrary is inadmissible (*Re Fish*, sup: *Sv*, *Re Ashton*, sup).

Devise to "MY Nephew"; held, a latent ambiguity explainable by parol to mean a particular nephew (*Phelan* v. *Slattery*, 19 L. R. Ir. 177). *Vf*, GRAND-DAUGHTER.

Note. — In his Will Shakespeare speaks of his Grand-daughter, Elizabeth Hall, as his "Neece." So, in *Richard 3*, Act 4, Sc. 1, the Duchess of York says, — "Who meets us here? My niece Plantagenet," the latter being the Duchess' grand-daughter; and in *Othello*, Act 1, Sc. 1, Iago, speaking derisively to Brabantio of the latter's possible grandchildren by Othello, says, — "You 'll have your Nephews neigh to you."

V. MALE NEPHEW.

NERVOUS. — As to difference between Nervous and Mental shock, *V. Dulieu* v. *White*, cited ACCIDENT, p. 15.

NET. — *V.* SNARE: MESH.

Quà Fisheries (Ir) Act, 1842, 5 & 6 V. c. 106, "'Net,' shall extend to all descriptions of tackle, trawl, trammel, stake, bag, coghill, eel, haul, draft, and seine, nets; and to all other engines or devices, of whatever construction or materials or by whatever name known, which shall be used for the like purposes as the nets in this Act referred to" (s. 113); so of the Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88 (s. 1).

"From very early times," Salmon Fishing in Scotland "by '*Net and Coble*,' was a well-understood description; and that a grant of 'Salmon Fishing,' without more, would entitle the grantee to this species of Fishing only" (per Ld Chelmsford, *Hay* v. *Perth*, 2 Paterson, 1194; 4 Macq. 535); but the proper and allowable use of Net and Coble does "not admit of the use of a Fixed Net" (per Ld Macnaghten, *Wedderburn* v. *Atholl*, 1900, A. C. 421: *V.* FIXED ENGINE: FIXED NET); yet "improvements upon the Net and Coble mode of fishing are lawful, so long as it is fair Net and Coble" (Ib., citing McNeill, L. P., in *Hay* v. *Perth*, sup), *i.e.* "used by a Fisherman in the act of fishing" (per Halsbury, C., *Wedderburn* v. *Atholl*), *e.g.* the *Bermoney Boat* system (*Hay* v. *Perth*). The *Toot and Haul* Net, the *Stell* Net, the *Drift* or *Hang* Net, the *Stent* Net, are not allowable, not being fairly within "Net and Coble" (*Wedderburn* v. *Atholl*, 1900, A. C. 403; 16 Times Rep. 413, *whv* for defs of the above-mentioned Nets). *Cp*, ROD AND LINE.

"Stop Nets," &c; *V.* STOP.

"*Annual* Net Value"; *V. R.* v. *Wistow*, 5 A. & E. 260; 5 L. J. M. C. 122.

Digitized by Google

"Net *Annual Value*"; *V. R.* v. *Liverpool,* 20 L. J. M. C. 35: ANNUAL VALUE: FULL ANNUAL VALUE: CLEAR: RACK RENT.

Quà, and by, s. 71, Diseases of Animals Act, 1894, "Net Annual Value of property" means, in Ireland, "the net annual value of property rateable to the relief of the poor according to the valuation in force for the time being."

. A direction to sell goods "at such a price as will *realize*" so much "Net *Cash*," does not mean that the goods are necessarily to be sold for ready money; though, possibly, in the absence of a trade custom, that might be the construction if the direction were simply to sell for so much "Net Cash" (*Boden* v. *French,* 20 L. J. C. P. 143; 10 C. B. 886).

"Net *Moneys*"; *V. Court* v. *Buckland,* 45 L. J. Ch. 214; 1 Ch. D. 605.

"Highest Net *Money Tender*"; *V.* TENDER.

A commission payable to an agent on "Net *Proceeds,*" is only payable on the actual sum which reaches the pocket of the principal after deducting all charges, expenses, and bad debts (*Caine* v. *Horsfall,* 17 L. J. Ex. 25; 1 Ex. 519: *Vf, Bower* v. *Jones,* 8 Bing. 65).

"Net *Profits*" of a Company; *V. Lambert* v. *Neuchatel Asphalte Co,* 51 L. J. Ch. 882. Net profits is the sum divisible after discharging, or making provision for, every outgoing properly chargeable against the period, whether a year or less, for which the profits are to be calculated (per Kekewich, J., *Glasier* v. *Rolls,* 42 Ch. D. 453: *Bishop* v. *Smyrna & Cassaba Ry,* 1895, 2 Ch. 596; 64 L. J. Ch. 619, 806; 73 L. T. 337). *V.* PROFITS.

When the Articles of a Co provide a Percentage to the Directors on the "Net Profits" of each year, that means, the "Net Profits" made by the Co as a going concern (including, probably, the profit on a sale of part, or possibly of the whole, of the Co's realty); but the phrase does not comprise a profit made by a sale of the whole undertaking and assets in a Winding-up for the purpose of a Reconstruction (*Frames* v. *Bultfontein Mining Co,* 1891, 1 Ch. 140; 60 L. J. Ch. 99; 64 L. T. 12; 39 W. R. 134, following *Rishton* v. *Grissell,* L. R. 5 Eq. 326). *V.* SERVICES.

Salary to a Manager of a Co and a moiety of "Net Profits" on stated contracts, means, that such profits are those arising on each contract, minus only the expenses thereon; but not deducting anything on account of the general management of the Co (*Re British Columbia, &c, Co,* 25 L. T. 653).

"Net Profits" of a PREBEND; *V. Repton* v. *Hodgson,* 3 H. L. Ca. 72.

"When a party stipulates to receive a 'Net RENT,' that means a rent clear of all deductions to which it would otherwise be liable; the covenant to pay land tax and sewers rate must, therefore, be a USUAL covenant in a lease reserving a certain Net rent" (per Tenterden, C. J., *Bennett* v. *Wormack,* 7 B. & C. 628; 3 C. & P. 96; 6 L. J. O. S. K. B. 175). The principle of that case would seem to extend to all landlord's

Digitized by Google

taxes, except property tax, where Net Rent is stipulated for. *Va*, *Barrett* v. *Bedford*, 8 T. R. 602: OUTGOING. Similarly a direction to Trustees to permit A. to receive "*Net* Rents and Profits" vests the LEGAL ESTATE in the trustees, for they must take the gross rents, and, after paying the charges thereon, hand over the net rents (*Barker* v. *Greenwood*, 8 L. J. Ex. 5; 4 M. & W. 421).

As regards a question of an equal mode of Rating, "Net Rent" is not equivalent to "Net Value" (*V.* ANNUAL VALUE); it does not include repairs and re-instatements: it means, "that part of the Rent which goes into the landlord's pocket, *i.e.* the rent paid by the tenant, after deducting taxes and charges of collection" (per Bayley, J., *R.* v. *Tomlinson*, 9 B. & C. 166, 167).

"Net *Rental*" simply means the profit rent,—*i.e.* the difference between the gross rent paid by under-tenants, and the head rents and annual fines (*Re Barnewall*, Ir. Rep. 1 Eq. 308).

"Net *Sum*" to be realized, frees from Succn Duty (*Re Saunders*, cited CLEAR, p. 322).

"Net VALUE of such Personal Estate," s. 6, Intestates' Estates Act, 1890, means, the Net Value of the *whole* personalty (*Re Twigg*, 1892, 1 Ch. 579; 61 L. J. Ch. 444).

Net Value of TITHES; *V. R.* v. *Lacy*, cited CLEAR.

"Net *Weight* delivered"; *V.* DELIVERED.

NEVER.—"Never been heard of"; *V.* HEARD OF.

"Never was indebted"; *V. Stockbridge* v. *Sussams*, 3 Q. B. 239. *Note*: such a Defence now inadmissible (R. 1 and 3, Ord. 21, R. S. C.).

NEW ASSIGNEE.—S. 53, Judgments Act, 1838, 1 & 2 V. c. 110; *V. Sladden* v. *De Lasaux*, 3 W. R. 499.

NEW ASSIGNMENT.—In the old forms of pleading, "the plt, who has alleged in his Declaration a general wrong, may in his Replication, after an evasive plea by the deft, reduce that general wrong to a more particular certainty by assigning the injury afresh with all its specific circumstances in such manner as clearly to ascertain and identify it, consistently with his general complaint; which is called a *new* or *novel assignment*" (3 Bl. Com. 311: *Vf*, Stephen on Pleading, 6 ed. 186–192). But now "no New assignment shall be necessary or used," its place being taken by an Amendment in the Statement of Claim or by way of Reply (R. 6, Ord. 23, R. S. C.).

NEW BOROUGH.—Stat. Def., Boundary Act, 1868, 31 & 32 V. c. 46, s. 3. *Cp*, OLD BOROUGH.

NEW BRICKWORK.—"New Brickwork," s. 64 (18), London Bg Act, 1894; *V. Aerated Bread Co* v. *Shepherd*, W. N. (97) 33; 13 Times Rep. 311.

Digitized by Google

NEW BUILDING.—Where a small building erected against the wall of a yard belonging to a house is taken down and re-erected in another part of the yard, the old materials being re-used, and portions of the old wall of the yard being used as two sides of the re-erection,—such a re-erection is a "New Building" within s. 34, Loc Gov Act, 1858, and of bye-laws made thereunder (*Hobbs* v. *Dance*, 43 L. J. M. C. 21; L. R. 9 C. P. 30). But where the proprietor of a house, yard, coach-house, and stable, pulled down the coach-house and stable and erected a building partly upon their site and partly upon the yard, with rooms over—the ground-floor opening into the yard and also into a back street, but the access to the rooms over the ground-floor was by a covered way from the old house—the object of the new works being to increase the accommodation of the old house which had been converted into an hotel;—this was held not to be a "New Building" within the meaning of the Act just cited (*Shiel* v. *Sunderland*, 30 L. J. M. C. 215; 6 H. & N. 796). *Vf*, *Worley* v. *St. Mary Abbotts*, cited NEW HOUSE.

Under s. 157 (2), P. H. Act, 1875, a moveable structure used as a butcher's shop was held a "New Building" (*Richardson* v. *Brown*, 49 J. P. 661). That subs. is explained by s. 159, under which a Building nearly all taken away and then re-built, is a "New Building"; *secus*, if the alteration or addition be not considerable (*James* v. *Wyrill*, 51 L. T. 237; 48 J. P. 725). *Cp*, TAKE DOWN.

In *Odwell* v. *Willesden* (Times, 2nd Nov 1891) Collins, J., held, that a newly erected Coffee Stall resting on wooden supports and intended to be kept open for some months, was a "New Building" used for Habitual Trade, within a Local Authority's Bye Law, and that it was none the less a "BUILDING" because made of wood and capable of being moved.

"New Building," s. 5 (6), London Bg Act, 1894; *V. Holland* v. *Wallen*, 70 L. T. 376; 10 Times Rep. 300: *Crow* v. *Redhouse*, 11 Times Rep. 563; 59 J. P. 663.

What is a "New Building" is chiefly a question of fact (*James* v. *Wyrill*, sup: *Slaughter* v. *Sunderland*, cited BUILDING).

A Local Authority Bye Law which requires a week's notice to its Surveyor with plans and sections of every floor of a "New Building," does not apply to a temporary building; if it does it is unreasonable and bad (*Fielding* v. *Rhyl*, 3 C. P. D. 272).

"New Building" as a verb; *V. Doe* d. *Dymoke* v. *Withers*, cited REBUILD.

V. BUILDING: OLD BUILDING.

NEW BURIAL GROUND.—*V.* BURIAL.

NEW CERTIFICATE.—Quà Publicans' Certificates (Scotland) Act, 1876, 39 & 40 V. c. 26, "a 'New Certificate,' means, a Certificate granted by the competent authority for a LICENSE for the sale of EXCISEABLE LIQUORS to any person in respect of any premises which are not

Digitized by Google

certificated at the time of the application for such grant; but shall not apply to the re-building of certificated premises which have been destroyed by fire, tempest, or other unforeseen and unavoidable calamity" (s. 4).

Cp, NEW LICENSE.

NEW DESIGN.—"'DESIGN,' signifies something in the nature of a picture, or drawing, or diagram,—something to be applied to a subject-matter of manufacture. It may be applied to pottery ware, to calico printing, to worsted, and to a great many other things" (per Crompton, J., *Harrison* v. *Taylor*, 29 L. J. Ex. 3; 4 H. & N. 815); "I apprehend the word 'Design' imports configuration" (per Byles, J., *Ib.*).

Whether a Design was "New *and* Original," s. 2, 5 & 6 V. c. 100, was a question for the jury; and not to be withdrawn from them because the Design was composed of a simple combination of two sizes of a previously well-known pattern (*Harrison* v. *Taylor*, sup). And so, under s. 47, Patents, &c, Act, 1883, 46 & 47 V. c. 57, for a Design to be "New *or* Original" it must be "either substantially novel, or substantially original, having regard to the nature and character of the subject-matter" (per Fry, L. J., *Le May* v. *Welch*, 54 L. J. Ch. 283; 28 Ch. D. 35: *Vf, Re Read and Greswell*, 58 L. J. Ch. 624: *Re Rollason*, 67 L. J. Ch. 100; nom. in H. L. *Heath* v. *Rollason*, cited DESIGN); but the Design, itself, need not be of something unseen before, if the application of it to the particular article be novel or original, *e.g.* a view of Westminster Abbey for the handles of spoons and forks (*Saunders* v. *Wiel*, 1893, 1 Q. B. 470; 62 L. J. Q. B. 341; 68 L. T. 183; 41 W. R. 356).

As to what is the essential part of a New Design; *V. Harper Co* v. *Wright Co*, 1896, 1 Ch. 142; 65 L. J. Ch. 161; 44 W. R. 274: *Re Clarke*, 1896, 2 Ch. 38; 65 L. J. Ch. 629; 74 L. T. 631: *Re Rollason*, sup: and as to its Imitation, *V.* OBVIOUS.

A Combination to be protected, must be one Design,—not several Designs (*Norton* v. *Nicholls*, 28 L. J. Q. B. 225; 1 E. & E. 761: *M'Crea* v. *Holdsworth*, 35 L. J. Q. B. 123; L. R. 1 Q. B. 264).

Vh, Edmunds on Designs, ch. 3.

NEW FOR OLD.—*V.* TOTAL LOSS.

NEW GOVERNING BODY.—"New GOVERNING BODY of a School"; Stat. Def., Public Schools Act, 1868, 31 & 32 V. c. 118, s. 3.

NEW HOUSE.—*V. Barlow* v. *St. Mary Abbotts*, 53 L. J. Ch. 899; 27 Ch. D. 362; 32 W. R. 966, revd on another point, 11 App. Ca. 257; 55 L. J. Ch. 680; 34 W. R. 521: *Worley* v. *St. Mary Abbotts*, 1892, 2 Ch. 404; 61 L. J. Ch. 601; 66 L. T. 747; 40 W. R. 566: NEW BUILDING.

V. HOUSE.

NEW INVENTION.—*V.* NEW MANUFACTURE.

Digitized by Google

NEW LICENSE. — Quà the Licensing Acts, "'New License,' means, a LICENSE for the sale of any INTOXICATING LIQUOR granted at a General Annual Licensing Meeting in respect of premises in respect of which a similar license has not theretofore been granted" (s. 32, 37 & 38 V. c. 49, replacing def in s. 74, 35 & 36 V. c. 94): *Vth, R.* v. *Smith*, 48 L. J. M. C. 38. A similar def (with a little addition) is provided for Ireland by s. 37, 37 & 38 V. c. 69: *Vth, R.* v. *Antrim Jus.*, 4 L. R. Ir. 230: *Va*, that lastly mentioned section for "New *Excise* License" and "New *Wholesale Beer Dealer's* License." *Cp*, NEW CERTIFICATE: *V.* RENEWAL: NEW PREMISES: IN FORCE: Paterson's Licensing Acts: 7 Encyc. 339, 340.

NEW LINE. — In an agreement between Railway Companies, "New Lines," held to mean, Lines proposed but not yet authorized by Parliament (*Mid. Ry* v. *G. W. Ry*, 2 Ry & Can Traffic Ca. 298).

NEW MANUFACTURE. — A new combination of materials previously in use, producing a new, better, or cheaper, article than that previously produced by the old method, is a "New Manufacture" or "Invention," within the Patent laws (*Crane* v. *Price*, 12 L. J. C. P. 81; 4 M. & G. 580; 5 Sc. N. S. 338: *Harrison* v. *Anderston Co*, 1 App. Ca. 574).

For an example of an Invention on the border-line of being New; *V. Vickers* v. *Siddell*, 60 L. J. Ch. 105; 15 App. Ca. 496.

V. ANTICIPATION: MANUFACTURE.

NEW MINE. — *V.* "Open Mine," sub OPEN.

NEW OCCUPIER. — A New Occupier, quà non-liability to pay Gas Arrears, does not include the Official Receiver under a Bankry Receiving Order (*Re Smith*, 1893, 1 Q. B. 323), nor a Receiver appointed by the Court in a Debenture-holder's Action (*Paterson* v. *Gas Light & Coke Co*, 1896, 2 Ch. 476; 65 L. J. Ch. 443, 709; 74 L. T. 640; 45 W. R. 39; 60 J. P. 532). *Vf*, INCOMING TENANT: "Cease to occupy," sub CEASE: OCCUPIER.

V. NEW TENANT.

NEW PARISH. — The Vestry of any "New Parish," s. 5, 20 & 21 V. c. 81; *V. Cronshaw* v. *Wigan*, 42 L. J. Q. B. 137; L. R. 8 Q. B. 217.

"The New Parishes Acts, 1843 to 1884"; *V.* Sch 2, Short Titles Act, 1896.

NEW PREMISES. — An addition to the structure of LICENSED PREMISES, if on the site of the premises included within the license, does not make the addition "New Premises" (*Deer* v. *Bell*, 64 L. J. M. C. 85; 43 W. R. 286; 11 Times Rep. 188); nor even a small addition from adjacent property, if the Justices find that the structure is substan-

Digitized by Google

tially the same as before the addition (*R.* v. *Raffles*, 45 L. J. M. C. 61; 1 Q. B. D. 207). Those cases show that the question is, generally, one of fact for the Justices; but that their decision may be reviewed when obviously wrong. *V.* Renewal: New License.

NEW QUARRY.—*V.* "Open Mine," sub Open.

NEW STREET.—For the purposes of s. 157, P. H. Act, 1875, a street becomes a "*New* Street" on its acquiring the character of a "Street" in the ordinary meaning of that word (*V.* Street); and therefore a way, which would not ordinarily be called a "Street" but which has been included in that word by force of s. 4 of the Act, becomes a "New" Street when buildings are erected by its side in such a mode as to give it a street character (*Robinson* v. *Barton*, 51 L. J. Ch. 467; 52 Ib. 5; 53 Ib. 226; 21 Ch. D. 621; 8 App. Ca. 798; 48 J. P. 276; 50 L. T. 57): and that ruling is applicable to "New Street" in the Towns Improvement Clauses Act, 1847 (*A-G.* v. *Rufford*, 1899, 1 Ch. 537; 68 L. J. Ch. 179; 80 L. T. 17; 47 W. R. 405; 63 J. P. 232).

As to when a street is laid out and is "new," reference may be made to the judgment of Brett, L. J., in the case just cited; for although the judgment of the learned judge was reversed by the H. L., that reversal proceeded on a ground that left untouched the value of the following observations:—

"New streets may be made under different circumstances. You may have the whole land on both sides belonging to one owner. Then he makes a plan; he has an intention in his mind, and he has a plan drawn. But that does not begin the street. To my mind that is not *laying out* the street within the meaning of the Act of Parliament. The Act of Parliament does not care what people do upon paper. It cares about what they do in point of fact, and upon the land. When would such an owner *begin* to lay out and form a street? To my mind he would do so when be built his first house, having the intention to go on to make a street. He would have begun to lay out and to form a street then; and it would then from that moment begin to be a street. But streets are formed in another way. Supposing that along the line of that which would eventually be considered a street there are a great many owners. There is not any one of them who would make a plan for the whole; but it may be clear that all of them are intending to build there, and to build, having regard to a roadway—if there is an existing roadway, certainly having regard to that. Then how will those people lay out and form a street? Why, each of them, by what he does on his own land, would be laying out and forming a street. Which of them begins? I should say the one who begins first in point of time begins to form a street; and if you find that there are several proprietors along a line each of whom is letting it be known, so that the tribunal comes to the conclusion that

Digitized by Google

each of them intends to build not absolutely in a line but in the same direction, why then the tribunal would have the right to say that there is a common intention amongst all these people to build in a particular course. When they have done so, that course will produce a street, and therefore the first of them who in virtue of that, not consensus but, common idea begins to build, and begins to form and lay out that street — he and all others are subject to the jurisdiction of the Board. There is another case which my Lord has alluded to, — where there shall be several proprietors along a long line, but no tribunal could say that there ever was at the same time an intention amongst them all to build, — that is to say, that one man at the end of the street may have that intent, but the others have not shown by any act that they have any intent at all; they have not laid out their land as building land, they have not advertised it as building land — they have done nothing to show that intent. Then the street really forms itself, as it were, by continuous action or successive action without any common intent. Then you have to wait until you can see by the course of building that there is that common intent. The moment you see *that*, you come to the conclusion that it is a street, and that it is begun to be formed."

As to commencing, or laying out, a New Street, *V. Gozzett* v. *Maldon*, 1894, 1 Q. B. 327; 70 L. T. 414; 58 J. P. 229: *Cp*, s. 8, London Bg Act, 1894, cited COMMENCEMENT).

Vf, CONSTRUCTION: *St. George's* v. *Ballard*, 1895, 1 Q. B. 702; 64 L. J. Q. B. 547; 72 L. T. 345; 59 J. P. 182; 43 W. R. 409.

Quà Metrop Man. Acts, " New Street," includes all Streets which, since 7th August, 1862, have been or shall be " formed or laid out, and a part of any such Street; and also all Streets the maintenance of the paving and roadway whereof had not " previously to that date " been taken into charge and assumed by " the Public Authority " having control of the pavements or highways in the Parish or Place in which such Streets are situate, and a part of any such Street; and also all Streets partly formed or laid out" (s. 112, Metrop Man. Act, 1862): *Vth*, *Pound* v. *Plumstead*, 41 L. J. M. C. 51; L. R. 7 Q. B. 183: *St. Mary, Islington* v. *Barrett*, L. R. 9 Q. B. 278; 43 L. J. M. C. 85: *Dryden* v. *Putney*, 1 Ex. D. 223; 40 J. P. 263: *Williams* v. *Powning*, 47 J. P. 486; 48 L. T. 672: *L. B. & S. Ry* v. *St. Giles, Camberwell*, 48 L. J. M. C. 184; 4 Ex. D. 239: *A-G.* v. *Wandsworth Bd*, 6 Ch. D. 539; 46 L. J. Ch. 771: *St. John's, Hampstead* v. *Hoopel*, 54 L. J. M. C. 147; 15 Q. B. D. 652: *St. John's, Hampstead* v. *Cotton*, 16 Q. B. D. 475: *Daw* v. *London Co. Co.*, 59 L. J. M. C. 112; 62 L. T. 937; 54 J. P. 502: *White* v. *Fulham*, 74 L. T. 425: *St. Mary, Battersea* v. *Palmer*, 75 L. T. 362; 45 W. R. 110: *Wilson* v. *St. Giles, Camberwell*, 1892, 1 Q. B. 1; 61 L. J. M. C. 3; 65 L. T. 790; 56 J. P. 167: *Arter* v. *Hammersmith*, 66 L. J. Q. B. 460; 1897, 1 Q. B. 646; 76 L. T. 390: *Crosse* v. *Wandsworth Bd*, 79 L. T. 351; 62 J. P. 807: *Allen* v. *Fulham*, 1899, 1 Q. B. 681; 68 L. J. Q. B.

Digitized by Google

450; 80 L. T. 253; 47 W. R. 428; 63 J. P. 212: *Simmonds* v. *Fulham*, 1900, 2 Q. B. 188; 69 L. J. Q. B. 560; 82 L. T. 497.

As used in the Metrop Man. Acts, and (*semble*) as used in the P. H. Acts, "New Street" is not limited by the Stat. Def.; it includes a New Street in the popular sense of the term (*St. Giles, Camberwell* v. *Crystal Palace Co*, 1892, 2 Q. B. 33; 61 L. J. Q. B. 802; 66 L. T. 840; 40 W. R. 648; 57 J. P. 5: *Davis* v. *Greenwich*, 1895, 2 Q. B. 219; 64 L. J. M. C. 257; 72 L. T. 674). In s. 105, Metrop Man. Act, 1855, and s. 77, Metrop Man. Act, 1862, a road substantially without houses is not a "STREET" at all, and therefore not a "New Street" (*Battersea* v. *Palmer*, 1897, 1 Q. B. 220; 66 L. J. Q. B. 77; 75 L. T. 362; 45 W. R. 110; 60 J. P. 774).

Vh, generally, *Evans* v. *Newport*, 59 L. J. M. C. 8; 24 Q. B. D. 264.

NEW SUCCESSION.—"By ALIENATION, or by any Title not conferring a New Succession," s. 15, 16 & 17 V. c. 51; *V. A-G.* v. *Cecil*, L. R. 5 Ex. 263: *A-G.* v. *Wolverton*, 1897, 1 Q. B. 231; 66 L. J. Q. B. 202; nom. *Wolverton* v. *A-G.*, 1898, A. C. 535; 67 L. J. Q. B. 829; 47 W. R. 97.

NEW SUPPLY.—Of Gas; *V. Paterson* v. *Gas Light & Coke Co*, cited NEW OCCUPIER.

NEW TENANT.—"New Tenant or Occupier" of LICENSED PREMISES, s. 14, 9 G. 4, c. 61, is not restricted to a tenant next in succession to the licensed occupier, but embraces any succeeding tenant applying during the currency of the license (*Re Todd*, 47 L. J. M. C. 89; 3 Q. B. D. 407: *Baldwin* v. *Dover Jus.*, 1892, 2 Q. B. 421; 61 L. J. M. C. 215); but when such tenant has once obtained a transfer under the section he cannot again apply thereunder (*R.* v. *Powell*, 1891, 2 Q. B. 693: 60 L. J. Q. B. 594; 65 L. T. 210; 39 W. R. 630; 56 J. P. 52). *Vf, R.* v. *Swansea Jus.*, 7 Times Rep. 586.

V. NEW OCCUPIER.

NEW TRUSTEE.—A "New" Trustee, means, a person newly appointed; not an old one to whom power is given to act in the stead of another old trustee as well as for himself (*Re Gardiner*, 55 L. J. Ch. 714; 33 Ch. D. 590).

NEW ZEALAND.—Stat. Def., 15 & 16 V. c. 72, s. 80; 26 & 27 V. c. 23: *V.* PEACE.

NEWLY ESTABLISH.—A slaughter-house newly built, and afterwards let to butchers; held, "newly established" *by the Owners* within s. 64, P. H. Act, 1848 (*Liverpool Cattle Market Co* v. *Hodson*, 36 L. J. M. C. 30; L. R. 2 Q. B. 131; 8 B. & S. 184). *Cp*, FOUND.

NEWLY FORMED.—*V.* FORMED.

Digitized by Google

NEWRY. — For Custom-house purposes, "The Pool" is in the Port of Newry (*Caffarini* v. *Walker*, cited ALWAYS AFLOAT).

NEWS. — "Official News"; *V.* OFFICIAL.
V. FALSE NEWS.

NEWSPAPER. — The Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60, s. 1, contains, for its purposes (and, *semble*, it may be of general utility), the following definition; — "The word 'newspaper' shall mean, any paper containing public news, intelligence, or occurrences, or any remarks or observations therein, printed for sale, and published in England or Ireland periodically or in parts or numbers at intervals not exceeding 26 days between the publication of any two such papers, parts, or numbers; also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding 26 days, containing only or principally advertisements." This definition is a partial adoption of the definition in Sch A, 6 & 7 W. 4, c. 76, on *whc*, *A-G.* v. *Bradbury*, 21 L. J. Ex. 12; 7 Ex. 97; and is adopted for 51 & 52 V. c. 64 (s. 1).

Other Stat. Def. — 33 & 34 V. c. 65, s. 2. — *Ir.* 33 & 34 V. c. 9, s. 34.

V. BRITISH NEWSPAPER: COLONIAL: FOREIGN: LOCAL NEWSPAPER: REGISTERED.

Semble, that a statutory requirement that a Notice shall be given in "the Newspapers" of a stated locality, will be satisfied if the Notice is given in those newspapers which were published in the locality at the time when the requirement was enacted (*Tibbits* v. *Yorke*, 5 B. & Ad. 605; 3 L. J. K. B. 38).

Is a Newspaper a Book? *V.* BOOK.

NEXT. — "Next," "is only an abbreviation of the word 'NEAREST'" (per Knight-Bruce, V. C., *Booth* v. *Vicars*, 1 Coll. C. C. 9; 13 L. J. Ch. 147; *Vthc* and *Stockdale* v. *Nicholson*, 36 L. J. Ch. 793; L. R. 4 Eq. 359, for illustrations as to the effect of "next" in such a phrase as NEXT PERSONAL REPRESENTATIVES). "The word 'next' means, nearest or nighest; not in the sense of propinquity alone, as for example, three persons on three chairs, one in the midst, those on each side of the middle one are equally near, each 'next' to the centre one. But it signifies also order, or succession, or relation, as well as propinquity" (per Kindersley, V. C., *Southgate* v. *Clinch*, 27 L. J. Ch. 654). *Vf*, NEXT OF KIN.

"Next *Assizes*," in a Notice of Appeal from an Irish County Court Judge, held to mean, Next Assizes at which the appeal could be lawfully heard (*Burns* v. *Collum*, 4 L. R. Ir. 493).

"Next *Quarter Sessions*" for a Pauper Settlement Appeal, 13 & 14 Car. 2, c 12, s. 2, means, "next practically possible, in order that the appellants might have the possibility of exercising their right" (per Erle, C. J., delivering jdgmt of the Court, *R.* v. *Sussex*, 34 L. J. M. C. 71; 4 B. & S. 966: *Vf*, cases therein cited); so, of a Poor Rate Appeal, under

Digitized by Google

s. 4, 17 G. 2, c. 38 (*R.* v. *Surrey*, 50 L. J. M. C. 10; 6 Q. B. D. 100; 29 W. R. 260; 43 L. T. 500): As to Licensing Appeal, *V. R.* v. *Belton*, 17 L. J. M. C. 70; 11 Q. B. 379. As to what Sessions are "next practically possible"; *V. Liverpool Gas Co* v. *Everton*, 40 L. J. M. C. 104; L. R. 6 C. P. 414; 23 L. T. 813; 19 W. R. 412: *R.* v. *Peterborough*, 26 L. J. M. C. 153; 7 E. & B. 643: *R.* v. *Biggleswade*, 21 L. T. 494: *R.* v. *Herefordshire*, 8 Dowl. 638.

"Next Quarter Sessions," s. 24, Petty Sessions (Ir) Act, 1851, 14 & 15 V. c. 93; *V. R.* v. *Armagh Jus.*, 1895, 2 I. R. 503.

A Warrant to arrest and take prisoner before Justices to the end he may be bound to appear "at the Next *Sessions*," means, the next Sessions after the Arrest, not the Sessions next after the Date of the Warrant (*Mayhew* v. *Parker*, 8 T. R. 110).

"Next *Sitting* of the Petty Sessions Court," s. 103, Fisheries (Ir) Act, 1842, 5 & 6 V. c. 106, means, the next Sitting at which it is reasonably practicable to make the application under the section for the destruction of illegal nets (*R.* v. *Limerick Jus.*, 1898, 2 I. R. 135).

As to the phrase "day *next appointed*" for holding Brewster Sessions, in the Sunday Closing (Wales) Act, 1881, 44 & 45 V. c. 61, s. 3; *V. Richards* v. *Macbride*, 51 L. J. M. C. 15; 8 Q. B. D. 119. The Court in that case refused to read that phrase as though it ran the "next day appointed."

"Next Before some Suit or Action," s. 4, Prescription Act, 1832; *V. Parker* v. *Mitchell*, 11 A. & E. 788; 9 L. J. Q. B. 194; *Clayton* v. *Corby*, 2 Q. B. 813; 5 Ib. 415; 11 L. J. Q. B. 239: *Lowe* v. *Carpenter*, 6 Ex. 825; 20 L. J. Ex. 374: *Glover* v. *Coleman*, L. R. 10 C. P. 108; 44 L. J. C. P. 66.

Where a *Contract for Sale* of reversionary interests was signed on the 15th Dec 1885, and the day of completion was therein fixed for "the 28th of December *next*," and if not then completed interest to run on the unpaid purchase money from that day; it was held that the day appointed for completion was the 28th Dec 1885, —*i.e.* that "next" was, in that connection, equivalent to "instant," for that "the 28th of Dec *next*" was to be read as one noun substantive and meant the next 28th Dec following the 15th Dec 1885, —viz., the 28th Dec 1885 (*Dawes* v. *Charsley*, 30 S. J. 401; W. N. (86) 78, cited Dart, 142, 143, *n*). So also, where an Award, dated 13th Oct 1840, directed money to be paid "on the 28th Oct next," "next" was read "instant" (*Brown* v. *Smith*, 8 Dowl. 867).

"Next," without a context, in a Deed or other Writing, means, next after its execution if the execution be shown to be a day different from its apparent date (*Browne* v. *Burton*, cited From henceforth).

"The *29th February* next," means, the 29th February in the next Leap Year (*Chapman* v. *Beecham*, 3 Q. B. 723; 12 L. J. Q. B. 42; 3 G. & D. 71).

Digitized by Google

"On the of," any named month, "next ensuing" means, *semble*, some day of that month next happening (*Chapman* v. *Beecham*, sup). *V.* BLANKS.

"*The next two months*," in the Iron Trade; *V. Bissell* v. *Beard*, 28 L. T. 740.

V. NEAR.

NEXT AVOIDANCE.—The gift of the "Next AVOIDANCE" of a Living, was in *Hatch* v. *Hatch* (20 Bea. 105), construed as, the next at the testator's disposal.

The words "Next Avoidance of, or Presentation to, any Benefice," 12 Anne, st. 2, c. 12, s. 2, refer only to chattel interests and do not extend to freehold estates, and therefore the purchase of an estate for life in an Advowson is not SIMONY within the statute (*Walsh* v. *Lincoln, Bp*, 44 L. J. C. P. 244; L. R. 10 C. P. 518; 32 L. T. 471; 23 W. R. 829).

NEXT ENTITLED.—"Next ENTITLED in Remainder"; *V. Turton* v. *Lambarde*, 29 L. J. Ch. 361; 1 D. G. F. & J. 495.

NEXT FRIEND.—"Here (Litt. s. 123) *friend* (amy) is taken for the next of blood" (Co. Litt. 88 a).

"Next Friend," in Feudal times, was "commonly taken for Gardian in SOCAGE; and is where a man seised of land holden in Socage dyeth, his issue within age of 14 yeares, then the Next Friend or Next of Kinne to whom the lands cannot come or descend, shall have the keeping of the heire and of the land, to the only use of the heire untill he come to the age of 14 yeares" (Termes de la Ley, *Procheine amy*).

"Otherwise, Prochaine Amy is he which appeareth in any Court for an Infant which sueth any Action and aydeth the infant to pursue his suit" (Termes de la Ley). *Vh*, R. 16, Ord. 16, R. S. C., and notes thereon: Ann. Pr.: 9 Encyc. 139–147.

NEXT HEIR.—In an executory devise to the "Next Heir" of A., the person is meant who shall fill the character of true heir to A. (*Doe* d. *Knight* v. *Chaffey*, 17 L. J. Ex. 154; 16 M. & W. 664).

Under a bequest of personalty to testator's "next heir-at-law," the heir, and not the next of kin, is the person entitled (*Southgate* v. *Clinch*, 27 L. J. Ch. 651; 31 L. T. O. S. 263).

And so in a devise, "Next Heir" may mean a person, and not the heir general (*Baker* v. *Wall*, 1 Raym. 185, cited 2 Jarm. 76). And such a phrase would be one of purchase and not of limitation (*Re Parry*, 55 L. J. Ch. 239; 31 Ch. D. 130; 54 L. T. 229; 34 W. R. 353).

"Next Heir Male"; *V. Dormer* v. *Phillips*, 3 Drew. 39; 4 D. G. M. & G. 855; 24 L. J. Ch. 168; 3 W. R. 92: *Cp*, MALE.

V. HEIRS.

Digitized by Google

NEXT MALE KIN. — *V. Re Chapman*, cited KINDRED.

NEXT OF KIN. — "The expressions 'Nearest of Kin,' 'Nearest of Blood,' and 'Next of Kin,' are synonymous" (Seton, 1575, 1576); so of "Next of Kindred." So, of "Next of Kin in Blood" (*Re Gray*, 1896, 2 Ch. 802; 65 L. J. Ch. 858; 75 L. T. 407: *Sv, Re Fitzgerald*, cited IN BLOOD). *Vf*, NEAREST: FIRST AND NEAREST: KINDRED.

The primary and proper meaning of "Next of Kin" is, the nearest in proximity of blood (whether of the whole or half blood, and as distinguished from those who would be entitled under the Statute of Distribution), living at the death of the person whose next of kin are spoken of (*Elmsley* v. *Young*, 2 My. & K. 780: *Withy* v. *Mangles*, 10 L. J. Ch. 391; 4 Bea. 358; 10 Cl. & F. 215: *Collingwood* v. *Pace*, 1 Vent. 424: *Brown* v. *Wood*, Aleyn, 36: *Avison* v. *Simpson*, Johns. 43: *Moss* v. *Dunlop*, Ib. 490: *Bullock* v. *Downes*, 9 H. L. Ca. 1: *Re Webber*, 17 Sim. 221; 19 L. J. Ch. 445: *Halton* v. *Foster*, 3 Ch. 505; 37 L. J. Ch. 547: *Heron* v. *Stokes*, 4 Ir. Eq. Rep. 296: *Mortimore* v. *Mortimore*, 47 L. J. Ch. 134; 48 Ib. 470; 4 App. Ca. 449, nom. *Mortimer* v. *Slater*, 7 Ch. D. 322: *Re Rees*, 59 L. J. Ch. 305; 44 Ch. D. 484: Wms. Exs. 983–989: 2 Jarm. 108, 124, 129: Hawk. 95–103: Watson Eq. 1404). *Cp*, RELATIONS: last par of this Def: LEGAL REPRESENTATIVES.

Where however there is an express reference to the Statute of Distribution (or where such reference is implied, *e.g.* where a division is directed, or reference is made to intestacy, *Garrick* v. *Camden*, 14 Ves. 372: *Re Gray*, sup), or the word "heirs" is used as a limitation of personalty and is therefore construed as "next of kin," or the phrase "next of kin" is coloured by association with the word "heirs," — *e.g.* a gift of realty and personalty to the "heirs or next of kin" of A., — in those cases the *statutory* next of kin are entitled (*Doody* v. *Higgins*, 25 L. J. Ch. 773; 2 K. & J. 729; 27 L. T. O. S. 281: *Re Thompson*, 48 L. J. Ch. 135; 9 Ch. D. 607: *Vf*, 2 Jarm. 109); but "as if she had died unmarried" will not import the statute (*Halton* v. *Foster*, sup). *Cp*, STATUTE OF DISTRIBUTION.

A gift to "next of kin" creates a Joint Tenancy, PER CAPITA (2 Jarm. 107); but where the *statutory* next of kin take, they take their respective statutory shares as Tenants in Common PER STIRPES (Ib. 109: *Sv, Re Gray*, sup: *Re Greenwood*, 31 L. J. Ch. 119, *whlc* was not followed in *Re Ranking*, L. R. 6 Eq. 601: *Re Rees*, sup).

A Husband is obviously not of kin to his Wife nor a Wife to her Husband; and, further, neither would be entitled under a limitation to the statutory "Next of Kin" of the other (*Garrick* v. *Camden*, sup: *Bailey* v. *Wright*, 18 Ves. 49; 1 Wils. Ch. 15: *Lee* v. *Lee*, 8 W. R. 443: *Re Parry, Leak* v. *Scott*, 32 S. J. 645: *Milne* v. *Gilbert*, 23 L. J. Ch. 828; 2 D. G. M. & G. 715; 5 Ib. 510: IN BLOOD. *Cp*, LEGAL REPRESENTATIVES. *Vf*, 2 Jarm. 125).

Digitized by Google

A child Illegitimate by the law of England but having the status of legitimacy in a foreign country where his or her parent is domiciled, is one of the "next of kin" of such parent within the Statute of Distribution, 22 & 23 Car. 2, c. 10 (*Re Goodman*, 50 L. J. Ch. 425; 17 Ch. D. 266; disapproving *Boyes* v. *Bedale*, 33 L. J. Ch. 283; 1 H. & M. 798: *Vf*, *Re Grove*, 40 Ch. D. 216: *Re Andros*, 24 Ib. 637).

Bequest to Next of Kin of an Illegitimate child; *V. Re Standley*, L. R. 5 Eq. 303.

Under a bequest to next of kin "*ex parte Maternâ*," a person who is next of kin on the father's, as well as the mother's, side will be entitled (*Gundry* v. *Pinniger*, 21 L. J. Ch. 405; 14 Bea. 94; 1 D. G. M. & G. 502), unless expressly excluded (*Say* v. *Creed*, 5 Hare, 580); and a direction that one line is to take "in preference" to another, does not exclude the latter, but only postpones it (*Boys* v. *Bradley*, 10 Hare, 399; 4 D. G. M. & G. 58; nom. *Sayer* v. *Bradly*, 5 H. L. Ca. 892, 900; nom. *Sayers* v. *Boys*, 25 L. J. Ch. 593).

A devise to "nearest of kin *by way of heirship*," means, the heir though he be not next of kin (*Williams* v. *Ashton*, 1 J. & H. 115). But a gift of personalty to "the heirs or next of kin" of A., goes to his statutory next of kin (*Re Thompson*, 48 L. J. Ch. 135; 9 Ch. D. 607), because, as was pointed out in that case by Jessel, M. R., "next of kin" was there used in connection with "heirs," and as "heirs" (as regards succession to personalty) means statutory next of kin, and as the testatrix meant both descriptions to apply to the one class, that class was the statutory next of kin. *V.* HEIRS.

Lineal DESCENDANTS of children, — *e.g.* grandchildren, — are not comprised in "Next of Kindred" as that phrase is used in ss. 6 & 7, Statute of Distribution, for such descendants are provided for in the phrase "legal representatives" of children in s. 6, and the phrase "no child," in s. 7, should be read "no child either in person or in its descendants"; therefore, where such descendants take (even where they are all in the same degree) they take by representation, *per stirpes* (per North, J., *Re Natt, Walker* v. *Gammage*, 57 L. J. Ch. 797; 37 Ch. D. 517; 58 L. T. 722; 36 W. R. 548, following Ld Hardwicke's last opinion in *Lockyer* v. *Wade*, Barnard. Ch. 444; 1 Hargrave's Jurisconsult Exercitationes, 271; Burton's Compendium, 7 ed., 438; Joshua Williams' *n.* on Watkins on Descents, 4 ed., 259; and *Re Ross*, 41 L. J. Ch. 130; L. R. 13 Eq. 286: and rejecting the text of Watkins on Descents; Toller on Exors 375; Wms. Exs. 1367). Where, however, collaterals take under the phrase "Next of Kindred," they take *per capita* (*Davers* v. *Dewes*, 3 P. Wms. 40: *Lloyd* v. *Tench*, 2 Ves. sen. 213).

"Legal or Next of Kin"; *V. Harris* v. *Newton*, 46 L. J. Ch. 268.

In construing a Limitation (common in a *Settlement of a Wife's Property*), to Wife for life, remainder to Husband for life, remainder to *Wife's statutory Next of Kin*, the exact words of each case will have to

Digitized by Google

be considered to determine at whose death the Next of Kin are to be ascertained, in the event of the Husband surviving. Romilly, M. R., favoured the death of the Husband as the proper period (*Pinder* v. *Pinder*, 28 Bea. 44; 29 L. J. Ch. 527: *Chalmers* v. *North*, 28 Bea. 175), and so, apparently, did Kay, J. (*Re Beach, Clarke* v. *Hayne*, 42 Ch. D. 529; 59 L. J. Ch. 195; 37 W. R. 667); but Pearson, J. (*Druitt* v. *Seaward*, 31 Ch. D. 234; 55 L. J. Ch. 239; 34 W. R. 180) and Stirling, J. (*Re Bradley*, 58 L. T. 631) favoured the death of the Wife as the proper period for ascertaining the class: *Vh*, 33 S. J. 697.

"According to *Philps* v. *Evans* (4 D. G. & S. 188), a bequest to the Next of Kin of a person who is *dead at the date of the Will* must, under ordinary circumstances, receive an interpretation analogous to that adopted in the case of a bequest to the testator's own Next of Kin, as regards the period of ascertaining who are the persons intended; and if there be nothing in the context to make the words applicable to a Class to be ascertained at any other time than that of the testator's death, those who at *the testator's death* are the Next of Kin of the deceased person named in the Will would naturally be the persons to take" (per Wood, V. C., *Wharton* v. *Barker*, 4 K. & J. 502). "This view of the law appears to be in accordance with the decision of Sir Wm. Grant in *Vaux* v. *Henderson* (1 Jac. & W. 388), and of Ld Romilly in *Re Philps* (L. R. 7 Eq. 151)" (per Stirling, J., *Re Rees*, 59 L. J. Ch. 305; 44 Ch. D. 484, in *whc*, however, the learned judge found a controlling context). *Cp*, 2nd par of this Def. *Vf*, 2 Jarm. 130 *et seq.*

A Power of Appointment amongst "Next of Kin," *semble*, enables the donee of the Power to appoint to any or either of them (*Snow* v. *Teed*, cited Family: *Cp*, Relations, towards end).

Vf, *Re Parsons*, cited Contingent.

Quà Lunacy Act, 1890, "'Next of Kin' includes, heir at law and the persons entitled under the statutes for the distribution of the estates of intestates" (s. 341): *Va*, Lunacy Regn (Ir) Act, 1871, 34 & 35 V. c. 22, s. 2.

V. Chitty Eq. Ind. 7729–7739.

"In the Common Law of Scotland, 'Next of Kin' and 'Heirs in Mobilibus' meant one and the same thing; but another meaning might, of course, be impressed upon the term 'Next of Kin' if the context showed, either expressly or by reasonable implication, that the testator or settlor used it in a different sense" (per Ld Watson, *Hood* v. *Murray*, 14 App. Ca. 135, citing for such a context *Connell* v. *Grierson*, 5 Sess. Ca. 3rd Ser. 379: *Scott* v. *Scott*, 14 Sess. Ca. 2nd Ser. 1057). At the next page the same learned lord proceeded to remark on the Intestate Moveable Succession (Scot) Act, 1855, 18 & 19 V. c. 23, saying, — "The effect which these enactments may have upon the significance of 'Nearest of Kin' was discussed in *Young's Trustees* v. *Janes* (8 Sess. Ca. 4th Ser. 242), but the circumstances of the case made it unnecessary

Digitized by Google

to give any decision on the point. One thing is clear that the expression is no longer equivalent to legal 'Heirs in Mobilibus' inasmuch as it does not include all the members of that Class. In its legal sense, the expression is still applicable to those members of the Class who would have been the Sole Heirs before the passing of the Act, and are now preferably entitled to administer the succession of the intestate. There may be a question whether, and how far, the surviving Parent of the defunct ought to be regarded as one of his Next of Kin."

Cp, Heir: *V.* Lawful Heirs.

NEXT PERSONAL or LEGAL REPRESENTATIVES. — Under a gift to a person's "next Personal Representatives," or "next Legal Representatives," his nearest of kin, in blood, will take (*Booth* v. *Vicars*, 13 L. J. Ch. 147; 1 Coll. C. C. 6: *Withy* v. *Mangles*, 10 L. J. Ch. 391; 10 Cl. & F. 215: *Stockdale* v. *Nicholson*, 36 L. J. Ch. 793; L. R. 4 Eq. 359).

NEXT PRESENTATION. — *V.* Next Avoidance: Presentation: 2 Vin. Ab. *Advowson* (B).

NEXT QUARTER SESSIONS. — *V.* Next.

NEXT SURVIVING SON. — *V. Eastwood* v. *Lockwood*, 36 L. J. Ch. 573; L. R. 3 Eq. 487.

NEXT TENANT. — *V.* New Occupier.

NIECE. — *V.* Nephew.

NIEFE. — *V.* Neife.

NIGHEST. — *V.* First and Nearest: Nearest: Next.

NIGHT. — "As to what is reckoned Night, and what Day, for this purpose (Burglary): antiently the day was accounted to begin only at sun-rising, and to end immediately upon sunset; but the better opinion seems to be, that if there be daylight or *crepusculum* enough, begun or left, to discern a man's face withal, it is no burglary (*Vf*, *R.* v. *Tandy*, 1 C. & P. 297). But this does not extend to moonlight; for then many midnight burglaries would go unpunished: and besides the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night; when all creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless" (4 Bl. Com. 224: *Vf*, Co. Litt. 135 a).

But now for all purposes relating to Larceny or other similar offences including Burglary, "Night" means from 9 p.m. to 6 a.m. (Larceny Act, 1861, 24 & 25 V. c. 96, s. 1); and a similar definition applies as regards the phrase "in the night," in s. 11, 14 & 15 V. c. 19 (s. 13).

Digitized by Google

But under the Night Poaching Act, 1828, 9 G. 4, c. 69, s. 12, Night-time begins the first hour after sunset, and ends the last hour before sunrise; so, of the Hares (Scot) Act, 1848, 11 & 12 V. c. 30 (s. 5).

What is the definition of "Night" as used in s. 56, Highway Act, 1835, and in s. 10, Gasworks Clauses Act, 1847? Under the first, Night, *semble*, begins at least as early as 7 o'clock in the evening in the month of November (*Hardcastle* v. *Bielby*, cited ALLOW).

Quà Factory and Workshop Act, 1901, "'Night,' means, the period between 9 o'clock in the evening and 6 o'clock in the succeeding morning" (s. 156).

Quà Inland Revenue Acts, "'Night,' shall be deemed to begin at 11 of the clock in the evening of each day and to end at 5 of the clock in the morning of the next succeeding day" (s. 38 (2), 53 & 54 V. c. 21).

Cp, DAY.

NIGHT-CAP.—A man having "some Infirmity" may during Divine Service "wear a Night-cap or Coif" (No. 18, Canons Ecc. of 1604), "which word 'Night-cap' is not to be understood as a covering worn in bed, but as a kind of close-fitting cap, as is shown by the words in the Latin Canons 'pileolo aut ricâ'" (per Sir R. Phillimore, *Elphinstone* v. *Purchas*, L. R. 3 A. & E. 95).

NIGHT-WALKER.—"A woman walking up and down the streets to pick up men" (per Lawrence, J., *Lawrence* v. *Hedger*, 3 Taunt. 15). But Dalton (Countrey Justice, 189) speaks of Night-Walkers as of either sex, and as being such "that be suspected to bee pilferers or otherwise liketo disturbe the peace, or that be persons of evill behaviour," or be EAVES-DROPPERS by night, or as "shall cast mens gates or carts &c into ponds, &c, or shall commit other like misdemeanors or outrages in the night time."

It is Slander, without special damage, to say of a woman that she "walks the streets" for a living (*Wilby* v. *Elston*, 18 L. J. C. P. 320; 8 C. B. 142: 54 & 55 V. c. 51). *Sv*, WALK.

NISI.—A decree or judgment *Nisi*, is one that is conditional and requires something more to be done to make it absolute, *e.g.* a Decree Nisi for a DIVORCE, which cannot be made absolute until after 6 calendar months from its being pronounced, unless the court shall fix a shorter time (s. 3, 29 & 30 V. c. 32).

Court of *Nisi Prius*. *V.* 3 Bl. Com. 58–60: Termes de la Ley, *Nisi Prius*.

NITRO GLYCERINE.—Stat. Def., Nitro Glycerine Act, 1869, 32 & 33 V. c. 113, s. 2.

NO EVIDENCE.—"No Evidence" to go to a Jury, means, "No Reasonable Evidence" (per Pollock, C. B., *Avery* v. *Bowden*, 6 E. & B.

Digitized by Google

973; 26 L. J. Q. B. 4; *Vf*, per Cresswell, J., *Ib.*: *Cross* v. *Williams*, 31 L. J. Ex. 147). V. EVIDENCE.

NO HOPE.—V. HOPE.

NO INJURY.—V. COMPULSORY POWERS: INJURY.

NO INSTRUCTIONS.—A TENDER to a clerk whose reply is, he has "No Instructions" and his master is out, is good (*Finch* v. *Boning*, 4 C. P. D. 143); *secus*, had the reply been, "No Authority" (*Ib.*: *Bingham* v. *Allport*, 1 N. & M. 398).

NO ORDER.—Where a Trustee is, as such, a litigant and the Judge, in giving jdgmt, expressly says "No Order as to COSTS," not only does the Trustee get no costs from his adversary but his right of retainer against the trust estate is gone (*Re Hodgkinson*, 1895, 2 Ch. 190; 64 L. J. Ch. 663; 72 L. T. 617; 43 W. R. 594).

On a Summons, "No Order" means, "Summons dismissed" (*Meredith* v. *Gittens*, 18 Q. B. 257).

NO OTHER.—V. SECURITIES.

NOBLEMEN.—V. MAGNATES: GREAT MEN.

NOISE.—V. DISAGREEABLE: NUISANCE.

NOISOME.—V. OFFENSIVE: NOXIOUS.

NOISY.—*Semble*, a private individual may institute the proceedings for enforcing the Bye-Law of the London County Council against keeping "any Noisy ANIMAL which shall be, or cause, a Serious NUISANCE to residents in the neighbourhood" (*Anon.*, 43 S. J. 71).

A Concertina is a "Noisy INSTRUMENT" within a Municipal Bye-Law (*Booth* v. *Howell*, 5 Times Rep. 449).

V. OFFENSIVE.

NOKA.—A half virgate, generally 7½ acres (Elph. 605).

NOLLE PROSEQUI.—Only puts the deft *sine die* (*Goddard* v. *Smith*, 6 Mod. 261).

NOMINAL.—"Nominal Amount of Stock"; Stat. Def., 32 & 33 V. c. 102, s. 46 (2).

The "Nominal Share CAPITAL" of a Co, is the face value of its shares; and a "splitting" operation whereby Ordinary Shares are extinguished and in lieu Preferred and Deferred Shares are created of a greater nominal face value, is an "INCREASE of the amount of Nominal Share Capital" of the Co, within s. 113, Stamp Act, 1891, although no increase of dividend can result (*A-G.* v. *Mid. Ry*, 1900, 2 Q. B. 353; 69 L. J. Q. B. 669; 82 L. T. 716; affd 70 L. J. Q. B. 254).

Digitized by Google

NOMINATE. — In an Agreement for Reference, a provision that each party shall "nominate" a referee means, not only naming him, but also the communication of the nomination to the other party (*Tew* v. *Harris*, 17 L. J. Q. B. 2; 11 Q. B. 7).

V. ACKNOWLEDGE: APPOINT.

The power to "nominate" who is to take the money (not exceeding £100) payable on the death of a Member of a FRIENDLY SOCIETY (s. 15, Friendly Soc. Act, 1875, repld s. 56, Friendly Soc. Act, 1896) may, possibly, be exercised by Will if the document be delivered, sent, or made, in the prescribed manner, but not otherwise; a Nomination duly delivered, sent, or made, cannot, generally, be revoked by a Will, though, possibly, a Will might have that effect if it contained an express revocation and were delivered or sent to the Society (*Bennett* v. *Slater*, 1899, 1 Q. B. 45; 68 L. J. Q. B. 45; 79 L. T. 324): *Vf, Re Griffin*, 71 L. J. Ch. 112; 1902, 1 Ch. 135; 86 L. T. 38; 50 W. R. 250, which decides that (when there is no Nomination) a Friendly Socy Policy is assignable; herein over-ruling *Caddick* v. *Highton*, 68 L. J. Q. B. 281; 80 L. T. 527; 47 W. R. 668.

NOMINATED. — The person nominated by an instrument creating a trust, as the person to appoint new trustees, is the person "nominated" for the purposes of s. 31, Conv & L. P. Act, 1881, repld s. 10, Trustee Act, 1893, though the event on which such new appointment becomes necessary was not contemplated at the date of the instrument (*Re Walker*, 53 L. J. Ch. 135; 24 Ch. D. 698: *Sv, Re Wheeler and De Rochow*, 1896, 1 Ch. 315; 65 L. J. Ch. 219; 73 L. T. 661; 44 W. R. 270).

NOMINATION. — "'Nomination,' is where one may in right of his manor, or otherwise, nominate and appoint a worthy clerke or man to a Parsonage, Vicarage, or such like Spirituall Promotion" (Termes de la Ley). *Vh*, Phil. Ecc. Law, 277. *V.* INTRUSTED.

V. NOMINATE: DAY OF NOMINATION: CANDIDATE, last par.

The objections to a "Nomination *Paper*" at a Municipal Election which the Mayor is to decide under Rules 9, 14, Part 2, Sch 3, 45 & 46 V. c. 50, are those only which relate to the Form of the Paper (*Howes* v. *Turner*, 45 L. J. C. P. 550; 1 C. P. D. 671). *Vh*, 9 Encyc. 154-161.

NOMINEE. — *V. Urquhart* v. *Butterfield*, 56 L. J. Ch. 938; 36 Ch. D. 55; 37 Ib. 357.

NONAGE. — "Nonage, in general understanding, is all the time of a person's being under the age of 21; and, in a special sense, where one is under 14 as to marriage" (Jacob). *Cp*, FULL AGE: INFANT.

NON-ARRIVAL. — Of a Ship; *V. Soames* v. *Lonergan*, 2 L. J. O. S. K. B. 106; 2 B. & C. 564: ARRIVE.

Digitized by Google

NON-ATTENDANCE. — *V.* Neglect.

NON-BUSINESS DAYS. — *V.* Business Days.

NON-COMMISSIONED OFFICER. — Stat. Def., 38 & 39 V. c. 69, s. 2; 44 & 45 V. c. 58, s. 190.

NON COMPOS MENTIS. — *V.* Unsound Mind.

NON CORPORATE. — *V.* District.

NON-CULTIVATION. — "'Non-Cultivation' will not let in evidence of bad cultivation" (Dwar. 688, citing no authority).

NON EST. — "*Non est factum*" was the old form of denying, and pleading the General Issue to, a Deed (3 Bl. Com. 305).

"*Non est inventus,*" was the old return of a sheriff to a Writ of Capias when he could not find the defendant (Ib. 283).

NON-EXISTING. — *V.* Fictitious.

NON-PERFORMANCE. — *V.* From Performance: Observance or Performance.

NON PROS. — The jdgmt of Non Pros (*non prosequitur*) was where the plaintiff delayed proceeding in his action more than the rules allowed, for then he was "adjudged not to follow or pursue his remedy as he ought to do," and jdgmt was entered against him, and he was said to be "nonpros'd" (3 Bl. Com. 295, 296).

Cp, Non-Suit.

NON-SUIT. — "'Non Suite,' is a renouncing of the suit by the Plaintiff or Demandant, most commonly upon the discovery of some Error or Defect, when the matter is so far proceeded in as the jury is ready at the bar to deliver their Verdict" (Cowel). *Vh, Stancliffe* v. *Clarke,* 7 Ex. 439; 21 L. J. Ex. 129: *Kershaw* v. *Chantler,* 26 L. T. 474: *Poyser* v. *Minors,* 7 Q. B. D. 329, 336; 50 L. J. Ex. 555, 559.

V. Discontinuance.

Cp, Non Pros.

NON-TESTAMENTARY DISPOSITION. — *V.* Evasion.

NON-TEXTILE FACTORIES. — The "Non-Textile Factories," as enumerated in Part 1, Sch 6, Factory and Workshop Act, 1901, are, — (1) Print Works; (2) Bleaching and Dyeing Works; (3) Earthenware Works; (4) Lucifer-Match Works; (5) Percussion Cap Works; (6) Cartridge Works; (7) Paper-staining Works; (8) Fustian-cutting Works; (9) Blast Furnaces; (10) Copper Mills; (11) Iron Mills; (12) Foundries; (13) Metal and India-rubber Works; (14) Paper Mills; (15) Glass Works; (16) Tobacco Factories; (17) Letter-press

Digitized by Google

Printing Works; (18) Book-binding Works; (19) Flax Scutch Mills; (20) Electrical Stations:—

"Non-Textile Factories *and* Workshops," as enumerated in Part 2 of the same Sch, are,—(21) Hat Works; (22) Rope Works; (23) BAKE-HOUSES; (24) Lace Warehouses; (25) SHIPBUILDING YARDS; (26) QUARRIES; (27) Pit-banks; (28) Dry-cleaning, Carpet-beating, and Bottle-washing Works.

All these (except Nos. 10, 19, and 28) are provided with definitions by the Sch.

NON-USER.—An OFFICE, public or private, may be forfeited "(1) By Mis-User, or abuse; as if a judge takes a bribe, or a park-keeper kills deer without authority: (2) By Non-User, or neglect; which in public offices that concern the administration of justice, or the commonwealth, is of itself a direct and immediate cause of forfeiture; but Non-User of a private office is no cause of forfeiture, unless some special damage is proved to be occasioned thereby" (2 Bl. Com. 153: *V.* ABANDONMENT, last par: USE). FRANCHISES, being regal privileges in the hands of a subject, "may be lost and forfeited either by Abuse or by Neglect" (2 Bl. Com. 153).

NON-VESTED NATIONAL SCHOOL.—Stat. Def., *Ir.* 38 & 39 V. c. 82, preamble; 47 & 48 V. c. 22, s. 5.

NONE.—"None" is less than SOME; *V.* LESS.

NONE EFFECT.—"Void and of None Effect"; *V.* VOID.

NORTH SEA.—"North Sea Limits"; *V.* North Sea Fisheries Act, 1893, 56 & 57 V. c. 17, s. 9.

NORTH SIDE.—"There can be no doubt that at the period when the Rubric in question (that prefixed to the Communion Office, in the Book of Common Prayer) was framed the TABLE was, at the time of the Holy Communion, placed in almost all parish churches length-wise in the body of the church or chancel,—the smaller sides or ends facing east and west, and the longer sides north and south, when the church stood, as it ordinarily did, east and west. And there can be as little doubt that the Rubric was framed with reference to this position of the Table. . . . Where a position at the 'North Side' was enjoined by the Rubric, one of the longer sides of the Table was in contemplation, and it was also in contemplation that all the acts prescribed which were to be done at the Table should be done at that side. . . . It is not an ecclesiastical offence to stand at the northern part of the side which faces westward" (per Halsbury, C., delivering jdgmt of P. C., *Read* v. *Lincoln, Bp.*, 1892, A. C. 663, 665; 62 L. J. P. C. 13, 14, 15; 67 L. T. 128; 56 J. P. 725). *Vf, Ridsdale* v. *Clifton*, cited SIDE.

Digitized by Google

Stafford NORTHCOTE'S ACT.—The Poor Law (Certified Schools) Act, 1862, 25 & 26 V. c. 43; amended by 31 & 32 V. c. 122.

NOT ABLE.—*V.* ABLE.

NOT AMOUNTING.—*V.* LESS.

NOT AS COMMON CARRIERS.—"We hold not as Common Carriers, but as Warehousemen, at Owner's sole risk, and subject to usual warehouse charges"; *V. Mitchell* v. *Lanc. & Y. Ry,* cited OWNER'S RISK.

V. COMMON CARRIER.

NOT ASSIGNABLE.—A Wife's Endowment Policy one of the Conditions of which is "This Policy is not assignable," is, by that Condition, subjected to a RESTRAINT ON ALIENATION so that an attempted disposition of, or charge on, it by the wife is invalid (*Re Lavender,* 1898, 1 I. R. 175).

NOT BEFORE.—"A devise of lands, 'not before *devised,*' or 'not before *disposed of,*' carries the reversion in lands which the testator had previously devised for life" (1 Jarm. 655).

Where time for pleading shall "not *expire* before" a stated day, that means that the party has up to the close of that day for delivering the pleading (*Severin* v. *Leicester,* 12 Q. B. 949; nom. *Savery* v. *Lister,* 18 L. J. Q. B. 13).

V. BEFORE.

NOT ENTITLED.—*V. Viney* v. *Norwich Union Insrce,* cited ENTITLED.

NOT EXACTLY.—*V.* EXACTLY.

NOT EXCEEDING.—A sum "not exceeding"; *V.* per Bayley, J., *Cortis* v. *Kent W. W. Co,* 7 B. & C. 340: *Palmer* v. *Newell,* W. N. (72) 9: *Vf, R.* v. *St. George's, Southwark,* 56 L. J. Q. B. 652; 19 Q. B. D. 533; 35 W. R. 841; 52 J. P. 6. In *Cortis* v. *Kent W. W. Co* (7 B. & C. 314) the phrase was held, under the circumstances, as connoting a minimum. But it usually connotes a maximum (*Henry* v. *Antrim,* 1900, 2 I. R. 547).

V. LESS: NOT LESS.

A Guarantee for "not exceeding" a stated sum, without more, does not impose any condition or restriction against giving credit for a larger sum; it only limits the amount of the guarantor's liability (*Parker* v. *Wise,* 6 M. & S. 239: *Gordon* v. *Rae,* 27 L. J. Q. B. 185; 8 E. & B. 1065).

Penalties, &c, "not exceeding"; held, to mean, "not exceeding in the aggregate" (*Collins* v. *Hopwood,* 15 M. & W. 459; 16 L. J. Ex. 124).

V. TO THE EXTENT.

Digitized by Google

NOT INSURED. — "Please send the marbles not insured," in a direction to a Carrier; *V. North Staffordshire Ry* v. *Peek*, 10 H. L. Ca. 473; 32 L. J. Q. B. 241.

NOT LESS. — Where time is to be computed as "not less" than a given number of days, that means clear days (*Chambers* v. *Smith*, 13 L. J. Ex. 25; 12 M. & W. 2: *Re Railway Sleepers Co*, 54 L. J. Ch. 720; 29 Ch. D. 204: *Sv, Re Miller's Dale Co*, 31 Ch. D. 211).

V. Clear: Less: Period: Say.

Where a statute prescribes a Penalty for an Offence of "not less" than a stated amount, that is the minimum penalty that Justices can impose, notwithstanding that the section, prescribing the penalty, says that the offender "shall be liable" thereto; and the power to mitigate given by s. 4, 42 & 43 V. c. 49 is, in such a case, qualified so that mitigation cannot go below such minimum (*Osborn* v. *Wood*, 1897, 1 Q. B. 197; 66 L. J. Q. B. 178; 76 L. T. 60; 61 J. P. 118).

Where Articles of a Co prescribe that the business of the Co shall be conducted by "not less" $\frac{\text{and}}{\text{or}}$ "not more" than a stated number of Directors, that is imperative and not merely directory (*Re Alma Spinning Co*, cited Quorum).

Free Gap "not less than $\frac{1}{10}$th part of the Width of the Stream," s. 9 (4), Salmon Fishery (Ir) Act, 1863, 26 & 27 V. c. 114; *V. Westropp* v. *Commrs of Public Works*, 1896, 2 I. R. 93.

NOT LIABLE. — Bequest of Farming Effects to wife for life, remainder to children, with a direction that the wife should "not be liable to account for any diminution" in the effects; held, that the wife took absolutely (*Breton* v. *Mockett*, 47 L. J. Ch. 754; 9 Ch. D. 95).

NOT MORE. — *V.* Not Less.

NOT NEGOTIABLE. — "Where a person takes a Crossed Cheque which bears on it the words 'Not Negotiable,' he shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had" (s. 81, Bills of Ex. Act, 1882): *semble*, a cheque cannot be made "Not Negotiable" except by adding those words as prescribed by the Act (per Lindley, L. J., *National Bank* v. *Silke*, 1891, 1 Q. B. 435; 60 L. J. Q. B. 199). *Vh, G. W. Ry* v. *London & County Bank*, cited Customer.

The protection given to a Banker by the latter part of s. 12, Crossed Cheques Act, 1876, repealed by Bills of Ex. Act, 1882, was not confined to a cheque which, under the first part of the section, had "not negotiable" in its crossing (*Matthieson* v. *London & County Bank*, 48 L. J. C. P. 529; 5 C. P. D. 7). *Vh*, ss. 80, 82, Bills of Ex. Act, 1882.

V. Negotiable.

Digitized by Google

NOT OTHERWISE.—"Not otherwise charged"; *V.* Deed.
"Not otherwise occupied"; *V.* Occupied.

NOT SETTLED.—A devise of lands, "Not Settled," or "Out of Settlement," or "Not by him formerly settled or thereby disposed of," will pass an unsettled reversion in fee, of lands of which a lesser estate or interest is in settlement (1 Jarm. 654, 655).
V. Unsettled Estate.

NOT TO BE.—An agreement "*not to be* performed within the space of one year from the making thereof" (s. 4, Statute of Frauds), means, one which, you can see from its terms, *cannot* be so performed (*Peter* v. *Compton*, Skinner, 353; 1 Sm. L. C. 359: *Boydell* v. *Drummond*, 11 East, 142: *Souch* v. *Strawbridge*, 2 C. B. 808; 15 L. J. C. P. 170: *McGregor* v. *McGregor*, 57 L. J. Q. B. 591; 21 Q. B. D. 424; 37 W. R. 45; 52 J. P. 772). The last case shows that *Davey* v. *Shannon* (48 L. J. Ex. 459; 4 Ex. D. 81) was not well decided. *V.* Year: Exceed.
Vf, *McManus* v. *Cooke*, 56 L. J. Ch. 662; 35 Ch. D. 681; 56 L. T. 900; 35 W. R. 754; 51 J. P. 708.
V. To be.

NOT TO MY KNOWLEDGE.—Where a proper Requisition on Title is made on a question of fact, "an answer by the seller's solicitor, 'not to his knowledge,' is not satisfactory; he should apply to his client for information before he answers the inquiry, and, if necessary, search amongst the title deeds" (Sug. V. & P. 416).
Generally, such an answer would be unsatisfactory in reply to an Interrogatory in an Action when the party interrogated is put upon enquiry (*Bolckow* v. *Fisher*, 52 L. J. Q. B. 12; 10 Q. B. D. 161; 47 L. T. 724; 31 W. R. 235).

NOT UNDER COMMAND.—*V.* Command.

NOT WORTH THE EXPENSE.—*V.* Worth the expense.

NOTABILIA.—*V.* Bona.

NOTARY PUBLIC.—*Vh.* Brooke's Notary, by Cranstoun: Tennant's Notary's Manual.
Quà Infeffment Act, 1845, 8 & 9 V. c. 35, "Notary Public" means, "a Notary Public in Scotland duly admitted and practising there" (s. 10); so of, 31 & 32 V. c. 101 (s. 3); 54 & 55 V. c. 30 (s. 1); 59 & 60 V. c. 49 (s. 1).

NOTE.—*V.* Memorandum.
"Note or Memorandum in Writing," s. 17, Statute of Frauds, repld s. 4, Sale of Goods Act, 1893; For the numerous cases on this phrase,

Digitized by Google

V. Dart, ch. 6: Add. C. 35: Rosc. N. P. 527: Benj. 185–218: Blackb. 44–65. The form of the document is immaterial (*Welford* v. *Beazeley*, 3 Atk. 503); and it may be broadly stated that almost any document properly SIGNED (whether cotemporaneous or subsequent) suffices, *e.g.* an Affidavit which states the essential particulars of the transaction (*Barkworth* v. *Young*, 4 Drew. 1; 26 L. J. Ch. 153; 5 W. R. 156: *Sethc*, per Jessel, M. R., *Trowell* v. *Shenton*, 8 Ch. D. 324). A Recital in a Will (*Re Hoyle*, 1893, 1 Ch. 84; 62 L. J. Ch. 182), or a signed Resolution in the Minute Book of a Co (*Jones* v. *Victoria Dock Co*, 46 L. J. Q. B. 219; 2 Q. B. D. 314), or Letters from a Manager of a Co (*John Griffiths Corp* v. *Humber*, 68 L. J. Q. B. 959; 1899, 2 Q. B. 414), a letter which states, but repudiates, the terms of a transaction (*Bailey* v. *Sweeting*, 9 C. B. N. S. 843; 30 L. J. C. P. 150), or even a Telegram (*Godwin* v. *Francis*, L. R. 5 C. P. 295; 39 L. J. C. P. 121), is within the phrase. *Vh*, ANOTHER.

The document (whatever it is) that contains the "Note or Memorandum" must specify these essential particulars, — (1) The Names of both Seller and Buyer; (2) The Subject-matter of the contract; (3) The Price; and (4) Time of performance, — when such particulars respectively are actually part of the bargain.

As to connecting documents so as to make a Note or Memorandum; *V.* *Peirce* v. *Corf*, 43 L. J. Q. B. 52; L. R. 9 Q. B. 210: *Shardlow* v. *Cotterill*, 50 L. J. Ch. 613; 20 Ch. D. 90: *Oliver* v. *Hunting*, 59 L. J. Ch. 255: *Taylor* v. *Smith*, 67 L. T. 39; 40 W. R. 486; 61 L. J. Q. B. 331: *Coombs* v. *Wilks*, cited PROPRIETOR: *Warner* v. *Willington*, cited SIGNED: *Potter* v. *Peters*, 64 L. J. Ch. 357; 72 L. T. 624: *Pearce* v. *Gardner*, cited DEAR SIR: Blackb. 44: Leake, 149: Add. C. 35: Rosc. N. P. 527: Fry, 254.

As to imperfection of document in consequence of Uncertainty; *V.* *Ogilvie* v. *Foljambe*, 3 Mer. 53: MY: ET CETERA: THE.

"The only difference between an 'Agreement' and a 'Note' of an Agreement is that, in the one instance a formal agreement is meant; and in the other, something not so particular in form and technical accuracy, but still containing the essentials of the agreement" (per Cockburn, C. J., *Williams* v. *Lake*, 29 L. J. Q. B. 3). *V.* AGREEMENT.

V. IN WRITING: WRITING: SIGNED.

"Full Notes *of Evidence*," s. 76 (7), 43 V. c. 25 (Canada), may be well taken in short-hand (*Riel* v. *The Queen*, 10 App. Ca. 675).

V. PROMISSORY NOTE.

NOTICE. — "Notice," is a direct and definite statement of a thing, as distinguished from supplying materials from which the existence of such thing may be inferred (*Vh*, per Parke, B., *Burgh* v. *Legge*, 5 M. & W. 420; 8 L. J. Ex. 258: *Vallee* v. *Dumergue*, 18 L. J. Ex. 398; 4 Ex. 290). *V.* COME TO.

Digitized by Google

"Notice," s. 3, Conv Act, 1882, is used "in its strict legal sense" (per Chitty, J., *Re Cousins*, 55 L. J. Ch. 664; 31 Ch. D. 671; 54 L. T. 376; 34 W. R. 393).

"Notice," s. 38, Comp Act, 1867, means, Actual Notice as distinguished from what is called Constructive Notice, but includes a fair business-like statement of the facts (per Lindley, M. R., *Greenwood* v. *Leather Shod Wheel Co*, cited UNTRUE). Merely specifying the Date of and Names of Parties to a CONTRACT, is not a compliance with the section (*Aaron's Reefs* v. *Twiss*, cited FALSE REPRESENTATION).

But, Notice that the subject-matter of an Assignment is the subject-matter of an Action, amounts to Notice to the Assignee of the existence of the Solicitor's right to a Lien on property "RECOVERED OR PRESERVED," within s. 28, Solicitors Act, 1860, 23 & 24 V. c. 127 (*Faithful* v. *Ewen*, 47 L. J. Ch. 457; 7 Ch. D. 495: *Cole* v. *Eley*, 1894, 2 Q. B. 350; 63 L. J. Q. B. 682; 70 L. T. 892; 42 W. R. 561: *Shippey* v. *Grey*, 49 L. J. Q. B. 524: *The Paris*, 1896, P. 77; 65 L. J. P. D. & A. 42; 73 L. T. 736: *Dallow* v. *Garrold*, 54 L. J. Q. B. 76; 14 Q. B. D. 543).

So, Notice of an Act of Bankry, means, knowledge of it, or wilfully abstaining from acquiring such knowledge (*Bird* v. *Bass*, 6 M. & G. 143: *Vf*, Wms. Bank. 134, 246).

"Notice and Knowledge" of an infirmity in a NEGOTIABLE Instrument, means, not merely EXPRESS notice but, knowledge or the means of knowledge to which the party wilfully shuts his eyes, — a suspicion in the mind of the party and the means of knowledge in his power wilfully disregarded (per Parke, B., *May* v. *Chapman*, 16 M. & W. 355: *Vf*, *Raphael* v. *Bank of England*, 17 C. B. 161; 25 L. J. C. P. 33; 1 Sm. L. C. 519).

"Notice" and "Knowledge" contrasted; *V.* jdgmts of Ld Blackburn and Selborne, C., *Mildred* v. *Maspons*, 53 L. J. Q. B. 38, 40; 8 App. Ca. 888. *Cp*, MALICE AFORETHOUGHT.

Purchaser for value without Notice; *V.* PURCHASER: OUGHT.

The "Notice" prior to action, to be given under the Employers' Liability Act, 1880, 43 & 44 V. c. 42, must be IN WRITING, because the words of s. 7 are only appropriate to a written document (*Moyle* v. *Jenkins*, 51 L. J. Q. B. 112; 8 Q. B. D. 116; 30 W. R. 324); and such notice "should be one and single, delivered at one and the same time, containing in it at one and the same time all the incidents which the statute has made a condition precedent to the right to maintain an action" (per Coleridge, C. J., *Keen* v. *Milwall Dock Co*, 51 L. J. Q. B. 278; 8 Q. B. D. 482; so, by the other members of the Court). *Keen* v. *Millwall Dock Co* is an instance of an insufficient notice. *Clarkson* v. *Musgrave*, 51 L. J. Q. B. 525; 9 Q. B. D. 386: *Stone* v. *Hyde*, 51 L. J. Q. B. 452; 9 Q. B. D. 76: *Carter* v. *Drysdale*, 53 L. J. Q. B. 557; 32 W. R. 171, furnish instances of sufficient notices. *V.* Notice "of the Cause" of an action, inf.

Digitized by Google

The "Notice" to be given to a prisoner of an intention to take a deposition under s. 6, 30 & 31 V. c. 35, must be written (*R.* v. *Shurmer*, 55 L. J. M. C. 153; 17 Q. B. D. 323; 55 L. T. 126; 34 W. R. 656; 50 J. P. 743); so, of a Notice of Distress under 2 W. & M. sess. 1, c. 5, s. 2 (*Wilson* v. *Nightingale*, 15 L. J. Q. B. 309; 8 Q. B. 1034); though in neither case is writing expressly prescribed. *Va*, NOTICE TO QUIT.

Written Notice of Dispute, s. 257, P. H. Act, 1875; *V.* DISPUTE.

A Notice in Writing does not imply that it is to be SIGNED; it may be in the third person (*Brydges* v. *Dix*, Jan 1891).

"Notice" of Suspension, s. 4 *h*, Bankry Act, 1883, may be Oral (*Ex p. Nickoll*, *Re Walker*, 13 Q. B. D. 469: *Re Scott*, 1896, 1 Q. B. 619; 65 L. J. Q. B. 465: *Re Miller*, 45 S. J. 44; 70 L. J. Q. B. 1); but if oral it must be a definite statement, and mere casual talk by a Debtor about his inability to pay his debts in full will not suffice (*Ex p. Oastler*, 54 L. J. Q. B. 23; 13 Q. B. D. 471; 33 W. R. 126). But a Circular to Creditors stating the debtor's inability to pay them in full and offering a Composition, is a Notice of Suspension; for the test is, "What effect would the circular produce on the mind of a creditor receiving it as to the intention of the debtor with regard to his creditors ?" (per Bowen, L. J., *Ex p. Gibson*, *Re Lamb*, 4 Morr. 25, cited with approval by Ld Selborne, *Crook* v. *Morley*, 1891, A. C. 316; 61 L. J. Q. B. 97; 65 L. T. 389). So, a Circular convening a Meeting of Creditors in consequence of the debtor "being unable to meet his engagements as they fall due" (*Crook* v. *Morley*, sup), or which speaks of "financial difficulty which makes it desirable for him to consult with his creditors as to his position" (*Re Simonsen*, 1894, 1 Q. B. 433; 63 L. J. Q. B. 242; 70 L. T. 32: *Re Selwood*, 1 Manson, 66; 10 Times Rep. 418: *Re Waite*, 71 L. T. 778; 43 W. R. 208), is a Notice of Suspension. *Semble*, that, in view of these later decisions, *Ex p. Jones* (29 S. J. 357) and *Re Walsh* (52 L. T. 694; 2 Morr. 112) would not be followed: *Vf*, per Williams, J., *Re Dagnall*, 1896, 2 Q. B. 411; 65 L. J. Q. B. 666; 75 L. T. 142; 45 W. R. 79: *Re Wolstenholme*, 2 Morr. 213. On the other hand, it was held in *Hill* v. *Rowlands* (1896, 2 Q. B. 124; 65 L. J. Q. B. 542) that the following letter from a Debtor's Solrs was *not* a Notice of Suspension, — "As promised we send you herewith Statement showing the Income and Expenditure and the amount of the mortgages on the estates. We think it well to repeat what we stated to you at our interview, that a Receiving Order will be applied for immediately Execution is issued." *Vf*, *Re Phillips*, 41 S. J. 470; 76 L. T. 531. In *Re Scott* (sup) it was intimated that it is material, in this connection, to consider whether the statement was made by a Trader or a Non-Trader; but that a verbal statement by a lady who was a non-trader, — "I won't pay anybody now; it is too late. I am acting under advice, and refuse to see anybody at all," — was a Notice of Suspension. *V.* SUSPEND: WITHOUT PREJUDICE.

V. SERVED.

Digitized by Google

Notice of Appeal; *V.* APPEAL: COURT OF SUMMARY JURISDICTION, *Note.*

Notice of Poor Rate Appeal; *V. R.* v. *De Grey*, cited SIGNED.

Notice of ASSIGNMENT of a CHOSE IN ACTION has to be given to the Payer, in order to complete the Assignee's title (*Dearle* v. *Hall*, 3 Russ. 1, *Svthc*, per Ld Macnaghten, *Ward* v. *Duncombe*, 1893, App. Ca. 392; 62 L. J. Ch. 893: *Somerset* v. *Cox*, 33 L. J. Ch. 490; 33 Bea. 634; 12 W. R. 590). *Vh*, CONSENT: POSSESSION, ORDER, OR DISPOSITION: *Bridge* v. *Bridge*, 22 L. J. Ch. 189; 16 Bea. 315: Warren on Choses in Action, 86 *et seq.*

Notice "of the CAUSE" of an Action, in a statutory notice before action, connotes that the Time and Place of the act complained of must be given (*Martins* v. *Upcher*, 11 L. J. Q. B. 291; 1 Dowl. N. S. 555: *Breese* v. *Jerdein*, 12 L. J. Q. B. 234; 4 Q. B. 585). *Vf*, sup: CLEARLY. *Note*: As to computing the Time of Notice of Action, *V.* NOTICE TO QUIT: "Place of Abode" in a Notice of action, *V.* PLACE. *Vh*, PUBLIC AUTHORITY.

Notice of *Claim*, s. 24 (3), Jud. Act, 1873, includes Notice to a Defendant by including him in a Counter-Claim (*Dear* v. *Sworder*, 4 Ch. D. 482; 46 L. J. Ch. 100). *V.* CLAIM.

Notice to *Determine* a Lease; *V.* DETERMINE: *Vf*, "Notice to Quit," inf.

Notice of *Dissent*, s. 161, Comp Act, 1862; *V. Re London and Westminster Bread Co*, 59 L. J. Ch. 155. It has been said that this Notice "should not merely express dissent but should also require the Liquidators either to abstain from carrying the Resolution into effect or to purchase the member's interest" (Palm. Co. Prec. Part 1, 1132, citing *Re Union Bank of Hull*, 13 Ch. D. 808; 49 L. J. Ch. 264); that opinion, however, was obiter, the actual decision being that in that case there had been no Notice at all.

"EXPRESS Notice" of an Absolute Assignment; *V.* ABSOLUTE ASSIGNMENT.

Notice of Novation; *V.* NOVATION.

The Notice of Objection, s. 1, 27 & 28 V. c. 39 (the giving of which is a Condition Precedent to the hearing by an Assessment Committee of an Objection to a Valuation List) means, the Notice to be given, by the objecting party, to the Committee (*R.* v. *Langriville*, 54 L. J. Q. B. 124).

Notice to exercise an OPTION, *e.g.* to purchase in a Lease, which has to be of a prescribed length given by a certain day; *semble*, the whole of the prescribed period must elapse between the giving of the notice and the stated day; *V.* PREVIOUS.

The "Notice specifying PARTICULAR BREACH complained of," which, under s. 14, Conv & L. P. Act, 1881, must be given before an Action for Forfeiture of a Lease, must be by the person legally entitled, — as distinguished from one only equitably entitled, — to the property (*Matthews* v. *Usher*, cited ASSIGNS), and "must be such as to enable

Digitized by Google

the Tenant to see generally what he is required to do. The Landlord need not go through every room in detail; but he must give sufficient particulars to enable the Tenant to take advantage of the Act and avoid the action"; to say, "You have broken the covenants for repairing the inside and outside of the houses (naming them all) contained in your Lease" (giving the date of the Lease) is insufficient (per North, J., *Fletcher* v. *Nokes*, 1897, 1 Ch. 271; 66 L. J. Ch. 177; 76 L. T. 107; 45 W. R. 471). "Particular Breach," in this section, means, "that the Tenant should be informed of the particular condition of the premises which he is required to remedy. 'Breach,' means, the Neglect to deal with the condition of the premises so pointed out, and not merely failure to comply with the covenants of the lease. The common sense of the matter is, that the Tenant is to have Full Notice of what he is required to do" (per Collins, L. J., *Penton* v. *Barnett*, 1898, 1 Q. B. 281: *Vf, Re Serle*, 1898, 1 Ch. 652; 67 L. J. Ch. 344), and "the opportunity of considering his position before an action is brought against him" (*Horsey* v. *Steiger*, 68 L. J. Q. B. 751; 1899, 2 Q. B. 79; 80 L. T. 857; 47 W. R. 644: *vthc*, applied, *Jacob* v. *Down*, cited KEEP). *Note*: that in *Re Serle*, Kekewich, J., held that a Notice (proper as regards two Particular Breaches mentioned in it) was bad because it was insufficient as regards a third, —saying "I think that the Notice is not to be saved because it is good in part"; but though that case was cited in *Pannell* v. *City of London Brewery* (1900, 1 Ch. 496; 69 L. J. Ch. 245), yet Buckley, J., held that a Notice good in part but bad in part is valid as regards the good part, and "the rest is merely matter of defence": *Vf, Locke* v. *Pearce*, cited PROCEEDING.

When Notice demanding PAYMENT of the money secured by a BILL OF SALE is required to be given, it must give a reasonable time for a compliance therewith (*Brighty* v. *Norton*, 32 L. J. Q. B. 38; 3 B. & S. 305; 11 W. R. 167: *Vf*, IMMEDIATELY: REASONABLE).

Notice, quà Peace Preservation (Ir) Acts; *V.* 11 & 12 V. c. 2, s. 11; 33 & 34 V. c. 9, s. 4. *V.* THREATENING.

Notice, quà Telegraph Act, 1878, 41 & 42 V. c. 76; *V.* s. 12.

"Notice, Order, or other Document"; *V. R.* v. *Mead*, cited OTHER.

"Public Notice or Advertisement"; *V.* PUBLIC NOTICE:—"Advertisement or Notice"; *V.* "Foreign Lottery," sub FOREIGN.

NOTICE TO QUIT, as to construction of Inaccurate Words in; *V. Doe* d. *Robinson* v. *Dobell*, *Doe* d. *Richmond* v. *Morphett*, and *Wride* v. *Dyer*, cited CURRENT: *Vf, Doe* d. *Huntingtower* v. *Culliford*, 4 D. & R. 248: *Doe* d. *Williams* v. *Smith*, 5 L. J. K. B. 216; 5 A. & E. 350.

Notice to Treat; *V.* TREAT.

Note. As to the Equitable Doctrine of Notice; *V.* 2 White & Tudor, 150–249; 9 Encyc. 189–202.

V. LEGAL NOTICE: SHORT NOTICE: STOP.

NOTICE TO QUIT.—A "Notice to Quit" is a NOTICE (which generally speaking may be written or verbal) which on its expiry does,

Digitized by Google

of itself and in accordance with the subsisting contract, put an end to a relationship of Landlord and Tenant.

"Notice to Quit," in Notices to Quit (Ir) Act, 1876, 39 & 40 V. c. 63, includes, a Notice of Surrender by a Tenant (*Re O'Brien*, 19 L. R. Ir. 429).

Under R. 6, Ord. 3, R. S. C., a Writ may be specially indorsed where a tenancy has been determined "by Notice to Quit," though such tenancy be only created by an Attornment in a Mortgage Deed (*Daubuz* v. *Lavington*, 53 L. J. Q. B. 283; 13 Q. B. D. 347; 51 L. T. 206: *Hall* v. *Comfort*, 56 L. J. Q. B. 185; 18 Q. B. D. 11; 55 L. T. 550; 35 W. R. 48: *Mumford* v. *Collier*, 25 Q. B. D. 279: *Kemp* v. *Lester*, 1896, 2 Q. B. 162; 65 L. J. Q. B. 532; 74 L. T. 268; 44 W. R. 453); but a Notice demanding possession on a Forfeiture, is not a "Notice to Quit" under that Rule (*Burns* v. *Walford*, W. N. (84) 31: *Mansergh* v. *Rimell*, Ib. 34), though a Notice of that kind may now be given under the Rule as amended by R. S. C., Jan 1902: *V.* Expiration.

Nor is a Notice demanding possession on a Forfeiture, a "*Legal* Notice to Quit" within s. 50, Co. Co. Act, 1856, s. 138, Co. Co. Act, 1888 (*Friend* v. *Shaw*, 57 L. J. Q. B. 225; 20 Q. B. D. 374; 58 L. T. 89; 36 W. R. 236: *V.* Legal Notice); nor is it a "*Regular* Notice to Quit" within s. 1, 1 G. 4, c. 87 (*Doe* d. *Cundey* v. *Sharpley*, 15 L. J. Ex. 341; 15 M. & W. 558); nor would a Notice demanding possession of a tenant holding over after surrendering his term be within the last phrase (*Doe* d. *Tindal* v. *Roe*, 2 B. & Ad. 922; 1 Dowl. 143).

As to Form of Notice to Quit; *V.* Notice: Determine. As to the Notice generally, *V.* Redman, ch. 8, s. 7: Woodf. ch. 8, s. 7: Fawcett, 440: 9 Encyc. 216–223.

"A Notice required as a Condition Precedent to any Right or Claim, — *e.g.* Notice of Action, or Notice to Quit, — is computed exclusively of the day of the notice" (Leake, 729, citing *Young* v. *Higgon*, 6 M. & W. 49; 9 L. J. M. C. 29: *Freeman* v. *Read*, 4 B. & S. 174; 32 L. J. M. C. 226, approved by Esher, M. R., *Quartermaine* v. *Selby*, 5 Times Rep. 223).

NOTICE TO TREAT. — *V.* Treat.

NOTING. — Noting is a minute made by a Notary on a Bill of Exchange of its Dishonour by Non-Acceptance or Non-Payment (Byles, ch. 19): *Vh*, s. 51, Bills of Ex. Act, 1882: Liquidated Demand.

An intimation to the Drawer of a Bill of a charge for "Noting," implies Presentment to and Non-payment by the Acceptor (*Armstrong* v. *Christiani*, 5 C. B. 687; 17 L. J. C. P. 181).

V. Bank Charges.

NOTORIOUS. — *V.* Common and Notorious.

NOTOUR BANKRUPT. — *V.* Insolvent.

Digitized by Google

NOTWITHSTANDING.—"'Anything in this Act to the contrary notwithstanding'; is equivalent to saying that the Act shall be no impediment to the measure, and precisely corresponds to the words in the second saving of the Statute of Uses, 27 H. 8, c. 10, 'as if this Act had not been made'" (Dwar. 683, citing *Chenie's Case*; *Cecil's Case*, 7 Rep. 20).

NOVATION.—"'Novation,'—a term derived from the Civil Law,—means this, That, there being a Contract in existence, some new contract is substituted for it, either between the same parties (for that might be) or between different parties; the Consideration mutually being the discharge of the old contract. A common instance of it, in Partnership cases, is where, upon the Dissolution of the Partnership, the Persons who are going to continue in business agree and undertake, as between themselves and the retiring partner, that they will assume and discharge the whole liabilities of the business, usually taking over the assets; and if they give NOTICE of that arrangement to a creditor and ask for his accession to it, there becomes a contract, between the creditor who accedes and the new firm, to the effect that he will accept their liability instead of the old liability, and, on the other hand, that they promise to pay him for that consideration" (per Selborne, C., *Scarf* v. *Jardine*, 7 App. Ca. 351; 51 L. J. Q. B. 616). "In order that one liability may be extinguished by being replaced by another by agreement, it is essential that the person in whom the correlative right resides should be a party to the agreement, or should, at all events, show by some act of his own that he accedes to the substitution" (Lindley P. 246, *whv* to p. 260 for cases in illustration). *Vf*, Leake, 684–695: Buckl. 403–417: *Re Manchester & London Assrce*, L. R. 9 Eq. 643; 5 Ch. 640; 23 L. T. 332; 18 W. R. 1185: per Mellish, L. J., *Spencer's Case*, 6 Ch. 370; 40 L. J. Ch. 461: *Sugg* v. *Hill*, 10 Times Rep. 288: the following four cases in the European Assrce Liquidation, *Hort's Case*, 45 L. J. Ch. 321; 1 Ch. D. 307, *Cocker's Case*, 45 L. J. Ch. 822; 3 Ch. D. 1, *Dowse's Case*, 46 L. J. Ch. 402; 3 Ch. D. 384, and *Miller's Case*, 3 Ch. D. 391: s. 7, Life Assurance Companies Act, 1872, 35 & 36 V. c. 41: (Novation of Suretyship) *Wilson* v. *Lloyd*, L. R. 16 Eq. 60; 42 L. J. Ch. 559; 28 L. T. 331, distd in *Manchester & London Assrce*, sup, and disapproved *Ex p. Jacobs*, 10 Ch. 211; 44 L. J. Bank. 34: *Dane* v. *Mortgage Insrce*, 1894, 1 Q. B. 54; 63 L. J. Q. B. 144; 70 L. T. 83; 42 W. R. 227: *Provincial Bank* v. *Cussen*, 18 L. R. Ir. 388.

Cp, SUBROGATION.

NOW.—"The word 'Now,'—'any property I *now possess*'—would pass all the property possessed by the testator at *the time of his death*" (per Kay, J., *Re Portal to Lamb*, 53 L. J. Ch. 1163,—reversed without affecting this proposition, 54 L. J. Ch. 1012; 30 Ch. D. 50,—citing *Wagstaff* v. *Wagstaff*, 38 L. J. Ch. 528; L. R. 8 Eq. 229: *Re*

Digitized by Google

Ord, 12 Ch. D. 22: *Everett* v. *Everett*, 47 L. J. Ch. 367; 7 Ch. D. 428: *Goodlad* v. *Burnett*, 1 K. & J. 341: *Re Otley and Ilkley Committee*, 34 L. J. Ch. 596; 34 Bea. 525. *So*, Wms. Exs. 175). It will, however, be observed that this interpretation is based on the rule embodied in s. 24, Wills Act, 1837, which says that every Will "with reference to the *real estate and personal estate* comprised in it," shall speak from the death. *Vf*, note to Introductory Chapter, towards end: Have.

For other purposes, — *e.g.* ascertaining persons or classes, or for fixing a particular description of property, 1 Jarm. 332–334, — "It may be stated, as a general rule, that wherever a testator refers to an actually existing state of things, his language is referential to *the date of the Will*, — and not to his death, as this is then a prospective event. Such, it is clear, is the construction of the word 'Now,' or any other expressions pointing at present time" (1 Jarm. 318: *Va*, Ib. 154, where it is said that a testamentary "gift to children 'now *living*' applies to such as are in existence *at the date of the Will* and those only").

So "now *occupied by A.*" are words of description and relate to the date of the Will (*Hutchinson* v. *Barrow*, 30 L. J. Ex. 280; 6 H. & N. 583). So, of the phrase, "the house *I now live in*" (*Williams* v. *Owen*, 2 N. R. 585). *Vf*, *Cole* v. *Scott*, 19 L. J. Ch. 63; 16 Sim. 259; 1 Mac. & G. 518, on *whv* per Lindley, L. J., *Re Bridger*, 1894, 1 Ch. 297; 63 L. J. Ch. 186; 70 L. T. 204; 42 W. R. 179: and to the contrary of *Cole* v. *Scott*, *V.* Have. *Vf*, Occupation.

"I now *Possess*"; *V. Hepburn* v. *Skirving*, 4 Jur. N. S. 651.

But in the case of a *Residuary* Gift, "Now" does not always have the effect of making the gift speak from the date of the Will (*Miles* v. *Miles*, 35 L. J. Ch. 315; 35 Bea. 192; L. R. 1 Eq. 462; 14 W. R. 272; 13 L. T. 697: *Cox* v. *Bennett*, L. R. 6 Eq. 422: *Saxton* v. *Saxton*, 49 L. J. Ch. 128; 13 Ch. D. 359; 41 L. T. 648; 28 W. R. 294. *Vf*, Dart, 309).

"Now *and in future*"; *V. Weller* v. *Stone*, 54 L. J. Ch. 497.

"Now *are*," in a tenant's agreement "to leave the premises in the same state and condition as they now are," may properly be taken as referring to the commencement of the tenancy (*White* v. *Nicholson*, 11 L. J. C. P. 264; 4 M. & G. 95; 4 Sc. N. S. 707).

"Now *born*"; *V.* Born: 1 Jarm. 423, 2 Ib. 184, 222.

"Now *due*," or "Now *owing*," or "Now *paid*"; as to when this is a true setting forth of the consideration of a Bill of Sale (s. 8, B. of S. Acts, 1878, 1882); *V. Ex p. Allam*, *Re Munday*, 14 Q. B. D. 43; 33 W. R. 231: *Hamlyn* v. *Betteley*, 5 C. P. D. 327; 49 L. J. C. P. 465: *Ex p. Hunt*, *Re Cann*, 13 Q. B. D. 36. The last case distinguished *Ex p. Firth*, *Re Cowburn*, 19 Ch. D. 419; 51 L. J. Ch. 473. *Vf*, *Re Hockaday*, 4 Morr. 12: *Re Smith*, 43 W. R. 206; 72 L. T. 59: *Criddle* v. *Scott*, 11 Times Rep. 222: *Cochrane* v. *Moore*, 59 L. J. Q. B. 377; 25 Q. B. D. 57: *Re Moore*, 4 Manson, 51: *Darlow* v. *Bland*, 1897, 1 Q. B. 125; 66 L. J. Q. B. 157; 75 L. T. 537; 45 W. R. 177: *Re Wiltshire*,

Digitized by Google

1900, 1 Q. B. 96; 69 L. J. Q. B. 145; 81 L. T. 616; 48 W. R. 256; *Davies* v. *Jenkins*, cited SPECIFIC: Rosc. N. P. 1192: Watson Eq. 714: TRULY SET FORTH.

"Every Deed or Memorandum of Arrangement now or hereafter *entered into*," s. 224, Bankry Act, 1849; held, in view of the subject-matter, not to be retrospective (*Waugh* v. *Middleton*, 22 L. J. Ex. 109; 8 Ex. 352: *Larpent* v. *Bibby*, 5 H. L. Ca. 481; 24 L. J. Q. B. 301).

"Now last past"; *V.* LAST PAST.

"Now *let at*"; *V.* USUALLY.

"Now *payable*"; *V. Waterlow* v. *Sharp*, cited LOAN.

"Now *in the Port of A.*"; these words, in a Charter-Party, import a Warranty amounting to a Condition Precedent (*Behn* v. *Burness*, 32 L. J. Q. B. 204; 3 B. & S. 751); so do the words "Now *lying*" (*Glynn* v. *Margetson*, cited LIBERTY TO CALL, or "Now *at Sea*" (*Ollive* v. *Booker*, 17 L. J. Ex. 21; 1 Ex. 416), or "Now *on Passage*" (*Gorrisen* v. *Perrin*, 27 L. J. C. P. 29; 2 C. B. N. S. 681); so, of the words "Now *sailed, or about to sail*" (*Bentsen* v. *Taylor*, 1893, 2 Q. B. 274; 63 L. J. Q. B. 15; 69 L. T. 487; 42 W. R. 8: *V.* SAIL). *Vh*, Abbott, 331, 332.

An assignment of all household goods and other estate and effects of or to which the assignor is "now *possessed or entitled*," or "belonging or due" to him, will not pass a contingent interest under a Will (*Pope* v. *Whitcombe*, 3 Russ. 124: *Re Wright*, 15 Bea. 367: *Svthc*, *Ivison* v. *Gassiot*, 3 D. G. M. & G. 958).

Devise of messuage "wherein D. now *resides*"; *V. Re Otley and Ilkley*, sup.

"Now *residing*"; *V. Re Lyon*, W. N. (79) 20.

NOXIOUS. — "Noisome" and "Noxious" are synonyms (per Foster, J., *R.* v. *White*, 1 Burr. 334), — "'Noxious,' not only means hurtful and offensive to the smell, but it is also the translation of the very technical term 'nocivus'; it is not necessary that the smell should be unwholesome, it is enough if it renders the enjoyment of life and property uncomfortable" (per Mansfield, C. J., *Ib.*, 1 Burr. 337).

The penalty imposed by s. 64, P. H. Act, 1848, for newly establishing, without license, "the business of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle horses or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other *noxious or offensive* business, trade, or manufacture," was, on the *ejusdem generis* principle, restricted to trades that dealt with substances which are, or must necessarily become, in themselves, noxious or offensive; and brick-making was not necessarily prohibited (*Wanstead* v. *Hill*, 32 L. J. M. C. 135; 13 C. B. N. S. 479; 11 W. R. 368). In that case it was also pointed out that all the enumerated trades involve the collection of large quantities of animal matter, which brick-making does not. That section, in

Digitized by Google

language nearly identical, is replaced by s. 112, P. H. Act, 1875; but this latter section does not include a Fish-frying business, although, as carried on, the effluvium is perceptible 200 or 300 yards off (*Braintree* v. *Boyton*, 52 L. T. 99; 48 J. P. 582), nor does it include a Small-Pox Hospital (*Withington* v. *Manchester*, 1893, 2 Ch. 19; 62 L. J. Ch. 393; 68 L. T. 330; 41 W. R. 306. *Cp*, *Fleet* v. *Metropolitan Asylums Bd* and *Metropolitan Asylums District* v. *Hill*, cited NUISANCE); but it does include the business of a Bone Dealer (*Passey* v. *Oxford*, 43 J. P. 622). *Cp*, Offensive Trades, ss. 19–22, P. H. London Act 1891. *Vf*, *Bamford* v. *Turnley*, *Reinhardt* v. *Mentasti*, *Sanders-Clark* v. *Grosvenor Mansions* v. *Co* and *A-G*. v. *Cole*, cited NUISANCE.

V. OFFENSIVE.

A thing is "Noxious," ss. 58, 59, Offences against the Person Act, 1861, 24 & 25 V. c. 100, if capable of doing harm, and if noxious as administered; although innoxious if differently administered (*R.* v. *Cramp*, 49 L. J. M. C. 44; 5 Q. B. D. 307; 28 W. R. 701; 42 L. T. 442; 44 J. P. 70, 411: *R.* v. *Brown*, 63 J. P. 791. *Vf*, *R.* v. *Hennah*, 13 Cox C. C. 547: *R.* v. *Perry*, 2 Ib. 223: *R.* v. *Blakeman*, 12 Ib. 463: *R.* v. *Isaacs*, 32 L. J. M. C. 52; L. & C. 220). *V*. POISON: ADMINISTER.

"Noxious or Offensive *Gas*," quà Alkali, &c, Works Regn Act, 1881, 44 & 45 V. c. 37, "does not include sulphurous acid arising from the combustion of coal" (s. 29).

"Noxious *Matter*"; *V*. FILTHY WATER.

NUDE CONTRACT.—"Nude Contract, *nudum pactum*, is a bare promise of a thing without any CONSIDERATION; and, therefore, we say, *Ex nudo pacto non oritur actio*" (Cowel). *Cp*, PROMISE.

Vh, Add. C. 2: Leake, 6.

NUISANCE.—"'Nusauns' is where any man levieth any wall, or stoppeth any water, or doth any thing upon his owne ground, to the unlawfull hurt or annoyance of his neighbour" (Termes de la Ley: *Vf*, Cowel: Jacob).

"I do not think that the 'Nuisance' for which an action will lie is capable of any legal definition, which will be applicable to all actions and useful in deciding them. The question so entirely depends on the surrounding circumstances,—the place, where,—the time, when,—the alleged nuisance, what,—the mode of committing it, how,—and the duration of it, whether temporary or permanent, occasional or continual,—as to make it impossible to lay down any rule of law applicable to every case, and which will be also useful in assisting a jury to come to a satisfactory conclusion. It must at all times be a question of fact with reference to all the circumstances of the case. Most certainly, in my judgment, it cannot be laid down as a legal proposition, or doctrine,

Digitized by Google

that anything which, under any circumstances, lessens the comfort or endangers the health or safety of a neighbour, must necessarily be an actionable nuisance. That may be a nuisance in Grosvenor Square which would be none in Smithfield Market. That may be a nuisance at mid-day which would not be a nuisance at mid-night. That may be a nuisance which is permanant and continual, which would be no nuisance if temporary or occasional only. A clock striking the hour, or a bell ringing for some domestic purpose, may be a nuisance if unreasonably loud and discordant, of which the jury alone must judge; but although not unreasonably loud, if the owner, from some whim or caprice, made the clock strike the hour every ten minutes, or the bell ring continually, I think that a jury would be justified in considering it to be a very great nuisance. In general, a kitchen chimney, suitable to the establishment to which it belonged, could not be deemed a nuisance; but if built in an inconvenient place or manner, on purpose to annoy the neighbours, it might very properly be treated as one. The compromises that belong to social life, and upon which the peace and comfort of it mainly depend, will furnish an indefinite number of examples in which some apparent natural right is invaded, or some enjoyment abridged, to provide for the more general convenience or necessities of the whole community" (per Pollock, C. B., *Bamford* v. *Turnley*, 31 L. J. Q. B. 292; 3 B. & S. 62; 6 L. T. 721). In that case it was held that Brickmaking may be so carried on as to be an actionable Nuisance: *Va*, *Walter* v. *Selfe*, inf: *Beardmore* v. *Tredwell*, 31 L. J. Ch. 892; 3 Giff. 683; 7 L. T. 207: *Cavey* v. *Lidbetter*, 32 L. J. C. P. 104; 13 C. B. N. S. 470: *Boreham* v. *Hall*, W. N. (70) 57. *Sv*, *Wanstead* v. *Hill*, cited Noxious. A "Nuisance" is, "an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living but, according to plain and sober simple notions among the English people" (per Knight-Bruce, V. C., *Walter* v. *Selfe*, 4 D. G. & S. 322; 20 L. J. Ch. 435, approved *Tod-Heatley* v. *Benham*, inf, and *Pembroke* v. *Warren*, 1896, 1 I. R. 134, 135, 140). *Vf*, per Selborne, C., *Gaunt* v. *Fynney*, 42 L. J. Ch. 122; 8 Ch. 8; 21 W. R. 129: *Bendelow* v. *Wortley*, 57 L. J. Ch. 762; 57 L. T. 849; 36 W. R. 168: *Reinhardt* v. *Mentasti*, 42 Ch. D. 685; 58 L. J. Ch. 787, *Svthlc*, *Sanders-Clark* v. *Grosvenor Mansions Co*, 1900, 2 Ch. 373; 69 L. J. Ch. 579; 82 L. T. 758; 48 W. R. 570, on *whcv*, *A-G.* v. *Cole*, W. N. (1900) 272; 70 L. J. Ch. 148: *Truman* v. *L. B. & S. Ry*, 55 L. J. Ch. 354; 11 App. Ca. 45: *Fleet* v. *Metropolitan Asylums Bd*, 2 Times Rep. 361: *Metropolitan Asylums District* v. *Hill*, 6 App. Ca. 193; 50 L. J. Q. B. 353: *Harrison* v. *Southwark, &c, Water Co*, 1891, 2 Ch. 409; 60 L. J. Ch. 630: *Jeffery* v. *St. Pancras*, 63 L. J. Q. B. 618: *Wauton* v. *Coppard*, cited Disagreeable: Rosc. N. P. 748–761: Add. T. 362 *et seq.*

As to a Nuisance by, *e.g.*, —

A Brothel; *V.* per Denman, C. J., *Norris* v. *Smith*, 10 A. & E. 188:

Digitized by Google

Crowds of people; *V. Betterton's Case*, Holt, 538: *Bellamy* v. *Wells*, 60 L. J. Ch. 156: *Barber* v. *Penley*, 1893, 2 Ch. 447; 62 L. J. Ch. 623:

Crying Newspapers; *V. Innes* v. *Newman*, cited INHABITANT, p. 971:

Defective Fence or Ruinous House abutting on a Highway; *V. Harrold* v. *Watney*, 1898, 2 Q. B. 320; 67 L. J. Q. B. 771: *R.* v. *Watts*, 1 Salk. 357: *Barnes* v. *Ward*, 19 L. J. C. P. 195; 9 C. B. 392:

Deposit of Filth; *V. A-G.* v. *Tod-Heatley*, 1897, 1 Ch. 560; 66 L. J. Ch. 275:

Dog Show; *V. Churchill* v. *Pemberton*, 39 S. J. 332:

New and Unusual User; *V. Ball* v. *Ray*, 8 Ch. 467; 28 L. T. 346; 21 W. R. 282: *Howland* v. *Dover Harbour Bd*, 14 Times Rep. 355: *Cp*, HIGHWAY:

Night Noises; *V. Bellamy* v. *Wells*, sup: *Cp*, NOISY:

NOXIOUS Trades; *V. Bamford* v. *Turnley*, *Reinhardt* v. *Mentasti*, *Sanders-Clark* v. *Grosvenor Mansions Co*, and *A-G.* v. *Cole*, sup:

Overhanging Trees; *V. Lemmon* v. *Webb*, cited LOP: *Crowhurst* v. *Amersham*, inf.

Pigeon-Shooting Match; *V. R.* v. *Moore*, 1 L. J. M. C. 30; 3 B. & Ad. 184:

Smoke; *V. Salvin* v. *North Brancepeth Co*, 9 Ch. 705; 44 L. J. Ch. 149:

Snow-heaps in a Street melted by salt; *V. Ogston* v. *Aberdeen Tramways*, 1897, A. C. 111; 66 L. J. P. C. 1:

Spiked Wall abutting on a Highway; *V. Fenna* v. *Clare*, 1895, 1 Q. B. 199; 64 L. J. Q. B. 238:

Stables: *V. Rapier* v. *London Tramways Co*, cited, CONVENIENCE:

Urinal; *V. Chibnall* v. *Paul*, 29 W. R. 536.

A Ladies' School with its musical lessons is *not* a Nuisance (per North, J., *Christie* v. *Davey*, 1893, 1 Ch. 316; 62 L. J. Ch. 439: as to a Boys' School, *V. Wauton* v. *Coppard*, sup); nor is a Public Small-Pox Hospital, necessarily, a Nuisance (*Withington* v. *Manchester*, cited NOXIOUS: *A-G.* v. *Manchester*, 1893, 2 Ch. 87; 62 L. J. Ch. 459; 68 L. T. 608). So, making Rabbit Burrows is not a Nuisance, for rabbits, though mischievous to neighbours, are *feræ naturæ* (*Bowlston* v. *Hardy*, Cro. Eliz. 547; 5 Rep. 104 b); nor are Yew Trees placed near a boundary, unless placed there as a trap to cattle (*Ponting* v. *Noakes*, 1894, 2 Q. B. 281; 63 L. J. Q. B. 549: *secus*, if they overhang plt's land, *Crowhurst* v. *Amersham Bd*, 48 L. J. Ex. 109; 4 Ex. D. 5, distinguishing *Wilson* v. *Newberry*, 41 L. J. Q. B. 31; L. R. 7 Q. B. 31); nor is allowing Thistles to seed a Nuisance (*Giles* v. *Walker*, 59 L. J. Q. B. 416; 24 Q. B. D. 656).

V. ELIGIBLE.

Generally speaking, Annoyance and Injury occasioned by the due EXECUTION OF STATUTORY POWERS do not give rise to an Actionable Nuisance (*Vaughan* v. *Taff Vale Ry*, 29 L. J. Ex. 247; 5 H. & N. 679: *National Telephone Co* v. *Baker*, 1893, 2 Ch. 186; 62 L. J. Ch. 699;

Digitized by Google

68 L. T. 283; 57 J. P. 373, and cases therein referred to: *Shelfer* v. *City of London Electric Lighting Co*, 1895, 2 Ch. 388; 64 L. J. Ch. 216; 73 L. T. 42; 44 W. R. 198).

In the ordinary Covenant against "Nuisance, Injury, or Annoyance," it would seem that the words are used in the order of their relative extent; for a Nuisance is also an "Injury" and "Annoyance," whilst there may be an "Annoyance" without its constituting a "Nuisance," or creating any very definite "Injury." "Unless the nuisance complained of is one for which an indictment would lie, or an action could be maintained, it is no Nuisance within the terms" of such a covenant (per Bacon, V. C., *Harrison* v. *Good*, 40 L. J. Ch. 300; L. R. 11 Eq. 338; 24 L. T. 263; 19 W. R. 346); and, accordingly, it was there held that the establishment of a National School with playground for boys, in the immediate neighbourhood of valuable residential properties, was not a "Nuisance," though it would be an "Annoyance," and, probably, an "Injury." But in *Tod-Heatley* v. *Benham* (58 L. J. Ch. 83; 40 Ch. D. 80; 37 W. R. 38), Lindley, L. J., referring to *Harrison* v. *Good*, said, "I am not by any means sure that the V. C. did not put on the word 'Nuisance' in that covenant too restricted an interpretation"; and Bowen, L. J., said that that interpretation was "a matter that may be doubted." *Vf*, *Jenkins* v. *Jackson*, 58 L. J. Ch. 124; 40 Ch. D. 71: DETRIMENTAL: DISAGREEABLE.

Note. A Covenant of this kind, which enumerates several prohibited trades and concludes with general words, will not, as a rule, be construed on the *Ejusdem Generis* principle (*Tod-Heatley* v. *Benham*, and *Wauton* v. *Coppard*, sup).

V. ANNOYANCE.

Disturbance of Light is a "Nuisance," within the non-exoneration clauses of the Gas Works Clauses Acts, 1847 and 1871 (*Jordeson* v. *Sutton, &c, Gas Co*, 1899, 2 Ch. 217; 68 L. J. Ch. 457).

A "Nuisance," under s. 8, Nuisances Removal Act, 1855, 18 & 19 V. c. 121, must have been one that was injurious to health (*G. W. Ry* v. *Bishop*, 41 L. J. M. C. 120; L. R. 7 Q. B. 550). But, as used in the corresponding section in the P. H. Act, 1875 (s. 114), Stephen, J., was of opinion that the word "Nuisance" was not confined to something that was injurious to health (*Malton Local Bd* v. *Malton Manure Co*, 49 L. J. M. C. 90; 4 Ex. D. 302); which latter case was followed in *Bishop Auckland Sanitary Authy.* v. *Bishop Auckland Iron Co* (52 L. J. M. C. 38; 10 Q. B. D. 138) quà s. 91 (4), P. H. Act, 1875. Swine or pigstye not to be kept "so as to be a Nuisance" (s. 47 (1) Ib.), "Nuisance" is used in its general and popular sense, and as not necessarily implying injury to health (*Banbury* v. *Page*, 51 L. J. M. C. 21; 8 Q. B. D. 97).

Stat. Def. — Sanitary Act, 1866, 29 & 30 V. c. 90, s. 19: that def includes an overcrowded house, though occupied by one family only (*Rye* v. *Payne*, 44 L. J. M. C. 148). *Vf*, as to the section, *Barnes* v. *Akroyd*,

Digitized by Google

41 L. J. M. C. 110; L. R. 7 Q. B. 474: *Norris* v. *Barnes*, 41 L. J. M. C. 154; L. R. 7 Q. B. 537.

Nuisances, quà P. H. Act, 1875; *V.* s. 91, a def adopted by P. H. Ireland Act, 1878 (s. 107), and adopted but amplified by P. H. London Act, 1891, ss. 2–18, and by P. H. Scotland Act, 1897, ss. 16–31.

S. 2, P. H. London Act, 1891, "clearly contemplates 'Nuisances' arising from the actions of Owners of property, as distinguished from acts arising out of the construction of great public works" (per Day, J., *Fulham* v. *London Co. Co.*, 1897, 2 Q. B. 76; 66 L. J. Q. B. 515; 76 L. T. 691; 45 W. R. 620; 61 J. P. 440).

"Accumulation or Deposit, which is a Nuisance or injurious to health"; *V.* Accumulation.

"Acts relating to Nuisances," quà Artizans and Labourers Dwellings Improvement Act, 1879; *V.* s. 5: — quà Housing of the Working Classes Act, 1890; *V.* (for England) s. 2, (for Ireland) s. 98.

"Author of a Nuisance"; *V.* Author.

"Nuisance to a Highway"; Stat. Def., Barbed Wire Act, 1893, 56 & 57 V. c. 32, s. 2. *Cp,* Purpresture.

As to a *Quia Timet* action to prevent Nuisance; *V. A-G.* v. *Manchester*, sup.

V. Common Nuisance: Obstruct: Urinal: Garrett on Nuisances: 9 Encyc. 228–235.

NULL. — The power given by Art. 1034 of the Canadian Code of Civil Procedure to declare "Null" Letters Patent obtained by fraudulent suggestion, does not authorize a partial annulment; it must be entire (*La Banque D'Hochelaga* v. *Murray*, 59 L. J. P. C. 102; 15 App. Ca. 414).

"Null and void"; *V.* Void.

NULLA BONA. — The return of "Nulla Bona" to a *fi. fa.*, means, that there are no goods applicable to satisfy the claim (*Shattock* v. *Carden*, 21 L. J. Ex. 200; 6 Ex. 725).

NULLITY. — *V.* Error.

Nullity *of Marriage*, is when there has been no real marriage at all, *e.g.* when the parties are within the prohibited Degrees of Consanguinity, or when either is not of his or her supposed sex, or is so sexually malformed or impotent as to be incapable of living conjugally with the other, or has a wife or husband living, or is insane, or when the marriage has been brought about by fraud, or is in violation of a legal prohibition or in breach of an essential legal prescription: *Vh.* Dixon on Divorce, ch. 5.

NULLUM TEMPUS ACT. — 9 G. 3, c. 16, amended by 24 & 25 V. c. 62, so called because it modifies the maxim, *Nullum tempus aut locus occurrit regi*: *Vth,* 2 Inst. 273.

Digitized by Google

NUMBER.—When an elector has more votes than one, *e.g.* at a School Board Election, and has to mark on his Ballot Paper the "Number" of Votes he gives for each candidate, he is not to be presumed to have exhausted the whole of his voting power by putting a cross against the name of one candidate only; such cross will only count as one vote for that candidate, and will not cumulate all the votes of the elector for such candidate (*Morris* v. *Beves*, 1897, 1 Q. B. 449; 66 L. J. Q. B. 299; 76 L. T. 120; 45 W. R. 430; 61 J. P. 263, rejecting dictum of Coleridge, C. J., *Phillips* v. *Goff*, 55 L. J. Q. B. 512; 17 Q. B. D. 805).

Where a testator, desiring to benefit a Class of persons, *e.g.* Servants, or Children, uses a wrong number and, for example, speaks of two when there are three of such persons, the number will be rejected and will be read as "all" (*Sleech* v. *Thorington*, 2 Ves. sen. 560: *Garvey* v. *Hibbert*, 19 Ves. 124: *McKechnie* v. *Vaughan*, L. R. 15 Eq. 289).

As to effect of omitting the Number of a House in a devise; *V. Asten* v. *Asten*, cited BLANKS.

"Number of Scholars in schools," quà Voluntary Schools Act, 1897, 60 & 61 V. c. 5, "means, the number of scholars in average attendance as computed by the Education Department" (s. 4).

NUMMATA TERRÆ.—Is synonymous with DENARIATA TERRÆ (Elph. 605).

NUN.—Nuns in a Convent; *V. Bannon* v. *Hanrahan*, cited DWELLING-HOUSE, p. 590.

NUNCUPATIVE.—A Nuncupative Will is when a testator, without any writing, doth declare his Will before a sufficient number of witnesses (Swinburne, 24: 2 Bl. Com. 500: Wms. Exs. 103). Before the Statute of Frauds all kinds of Personalty might be bequeathed by a Nuncupative Will without restriction; but s. 19 of that Act (explained slightly by 4 Anne, c. 16, s. 14) imposed restrictions. Nuncupative Wills were abolished by Wills Act, 1837, except (as provided by s. 11) as regards a "SOLDIER, being in ACTUAL MILITARY SERVICE, or any MARINER or Seaman, being at Sea."

NURSE.—Quà Poor Law Officers Superannuation Acts, "'Nurse,' includes, any Assistant Nurse, and Attendant on the Sick or Insane" (s. 1, 60 & 61 V. c. 28).

A child under the age of seven years is accounted a "Nurse *Child*" (*Dumbleton* v. *Beckford*, 2 Salk. 470: *Cumner* v. *Milton*, Ib. 528). *Vf*, NURTURE.

NURSERY GROUND.—*V.* GARDEN: MARKET GARDEN.

NURTURE.—"Under 7, is sometimes called, the 'Age of Nurture' (*Cp*, "Nurse Child," sub NURSE); but this is the peculiar Nurture re-

Digitized by Google

quired by a Child from its Mother, and is entirely different from Guardianship for Nurture which belongs to the Father in his lifetime, even from the birth of the child. We can find no distinction in the books as to the rights and incidents of this species of guardianship from the time when it commences till the time when it expires. One of these incidents is, that the guardian shall be entitled to the custody of the person of the child. He is to 'nurture' the child; the legal sense of this word is its natural and common sense in the English language, which, Dr. Johnson says, is 'to educate; to train; to bring up.' Accordingly, from the case in the Year Book (Mich. 8 ed. 4, fo. 7 b, pl. 2) to the present time, it has ever been considered that the Father, or whoever else on his death may be the Guardian for Nurture, has by law a right to the custody of the child, and shall maintain an Action of Trespass against a stranger who takes the child: *V.* the authorities, Com. Dig. *Gardian* D" (per Campbell, C. J., *R.* v. *Clarke*, 7 E. & B. 192, 193; nom. *Re Race*, 26 L. J. Q. B. 172).

Vf, Guardianship of Infants Act, 1886, 49 & 50 V. c. 27, on *whe*, *Re A. & B., Infants*, 66 L. J. Ch. 592.

Digitized by Google

OATH—OBLIGATION

OATH.—"An Oath is a religious asseveration, by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth" (*R.* v. *White*, Leach, 430, 431). SACRAMENT.

In Acts of Parliament passed since the end of 1850, "the words 'Oath,' 'Swear,' and 'Affidavit,' shall include Affirmation, Declaration, Affirming, and Declaring, in the case of persons by law allowed to declare or affirm instead of swearing" (s. 4, 13 & 14 V. c. 21; *Vf*, s. 3, Interp Act, 1889). *Cp*, DECLARATION.

"Proof made upon Oath," s. 32, Solicitors Act, 1843, 6 & 7 V. c. 73,—"I think that admits proof on Affidavit, but is not confined to it" (per Esher, M. R., *Osborne* v. *Milman*, 56 L. J. Q. B. 264).

V. PERJURY. *Vh*, 9 Encyc. 248–258.

"Oath of Possession," quà Representation of the People in Scotland; *V.* 19 & 20 V. c. 58, s. 48; 31 & 32 V. c. 48, s. 59.

OBEDIENCE.—"In Obedience" to Rules, Bye Laws, or Particular Instructions, s. 1 (4), 43 & 44 V. c. 42; *V. Whately* v. *Holloway*, 6 Times Rep. 190.

V. ENFORCE.

OBJECT.—*V.* SCENE.

"With the object of"; *V.* VIEW.

"Objects" of a Company; *V.* PURPOSE.

OBJECTION.—*V.* REQUISITION: INVESTIGATING, *Note.*

"Objection made" to Renewal of License; *V.* MADE.

V. NOMINATION.

OBJECTS OF VERTU.—*V.* VERTU.

OBLATIONS.—*V.* OFFERINGS.

OBLIGATION.—"'Obligation,' is a word of his owne nature of a large extent: but it is commonly taken in the common law, for a bond containing a penalty, with condition for payment of money or to do or suffer some act or thing, &c, and a bill is most commonly taken for a single bond without condition" (Co. Litt. 172 a). The person bound is the "Obligor"; the other party is the "Obligee."

Digitized by Google

V. Ryland v. *Delisle*, 38 L. J. P. C. 67; L. R. 3 P. C. 17.

The word "Obligations," s. 9, Partnership Act, 1890, does not, it is submitted, import any larger obligations than those prior to the Act, and, at any rate, as regards the estate of a deceased partner the rule in *Devaynes* v. *Noble, Houlton's Case* (1 Mer. 616) applies, so that such estate is not responsible for acts done after such partner's death (*Re Friend*, 1897, 2 Ch. 421; 66 L. J. Ch. 737; 77 L. T. 50; 46 W. R. 139).

"Right, Privilege, Obligation, or Liability"; *V.* Right.

V. Liable.

OBLIGATORY.—"I can see no difference at all between enacting that certain words shall be 'Valid and obligatory' and saying that the agreement is to be 'confirmed and made Binding' on the several parties. I do not understand how an agreement which was not made 'binding' could be made 'obligatory.' The only meaning that I can attach to the word 'obligatory,' when so used, is that the parties to the agreement are bound by its contents; just as the meaning of a contract being 'binding' is that the different clauses are 'obligatory' upon the parties to the contract. Indeed, the only difference that I can see between 'binding' and 'obligatory,' is that the one uses an English word and the other a Latin word to express identically the same idea; because 'obligatory' means 'binding,' and 'binding,' I suppose, means an 'obligation' or 'tie'" (per Stephen, J., *Mid. Ry* v. *G. W. Ry*, 5 Ry & Can Traffic Ca., 274, 275; *S. C.* nom. *R.* v. *Mid. Ry*, cited Required).

"Writing Obligatory"; *V. R.* v. *Morton*, cited Deed.

OBLIGE.—*V.* Bind.

OBLITERATE: OBLITERATING.—As to revocation of a Will by "obliterating" the same under the Statute of Frauds, *V.* 1 Jarm. 133–139. Since the Wills Act, 1837, no obliteration, interlineation, or other alteration, in a Will is operative unless it be executed like a Will, or the words altered are no longer "Apparent." Pasting over a piece of paper is an "obliteration" (*Ffinch* v. *Combe*, 1894, P. 191; 63 L. J. P. D. & A. 117).

OBLIVION.—Act of Oblivion, 12 Car. 2, c. 11.

OBOLATA TERRÆ.—Half an acre, or half a square perch (Elph. 605, citing Spelm., *Fardella*; *Obolata*).

OBSCENE.—A book or other publication is not saved from being "obscene," within the Obscene Publications Act, 1857, 20 & 21 V. c. 83, because the professed Intention of it is, not to injure public morals but, to attack the iniquity of a particular religion; *e.g.* "The Confessional

Digitized by Google

Unmasked, shewing the depravity of the Romish Priesthood, the Iniquity of the Confessional, and the Questions put to Females in Confession" was "obscene," because it glaringly detailed impure and filthy acts words and ideas, and was indiscriminatingly published to all classes of persons (*R.* v. *Hicklin*, 37 L. J. M. C. 89; L. R. 3 Q. B. 360; 18 L. T. 395; 16 W. R. 801). *Vf, Steele* v. *Brannan*, 41 L. J. M. C. 85; L. R. 7 C. P. 261; 20 W. R. 607; 26 L. T. 509.

Cp, INFAMOUS CONDUCT. *V.* INDECENT.

Bye Law against obscene language; *V. Strickland* v. *Hayes* and *Thomas* v. *Sutters*, cited PEACE.

OBSERVANCE or PERFORMANCE.—"A negative cannot be *performed*" (Co. Litt. 303 b), referring to which proposition Fry, J., said, "the word 'performance' is not applicable to negative covenants" (*Evans* v. *Davis*, 48 L. J. Ch. 225), and in another report of that case (10 Ch. D. 757) that learned judge amplified his meaning thus,—"I have always understood that 'Non-Observance' refers to the negative covenants, and 'Non-Performance' to the affirmative covenants." And so Brett, L. J., in delivering the jdgmt of the Court of Appeal in *Hyde* v. *Warden* (47 L. J. Ex. 127; 3 Ex. D. 82) said that the Court were prepared to hold that the forfeiture there "being only in the event of the lessee wilfully failing or neglecting to *perform* any of the covenants, does not apply to a breach of a negative covenant."

That is all clear, but in support of that proposition, *West* v. *Dobb* (39 L. J. Q. B. 193; L. R. 5 Q. B. 460) was cited. But in *West* v. *Dobb* the words of forfeiture were, in case the lessee "should fail in the *observance* or performance of any or either of the covenants or agreements" on his part; and, assuming the correctness of the dictum of Fry, J., above stated, a negative covenant would be within the word "observance." This latter word seems, however, not to have been observed. Nor indeed was the point necessary for the decision in *West* v. *Dobb*. Kelly, C. B., speaking for himself and Channell, B., merely said, "the proviso *seems* to refer only to a failure in the performance of an affirmative covenant"; but Montague Smith, J., said, "I think it quite unnecessary to put a construction upon the words 'Observance or Performance of the covenant.'"

And, *semble*, a clause of forfeiture on "Non-Performance" of covenants, applies to "Non-Observance" of negative covenants (*Croft* v. *Lumley*, 6 H. L. Ca. 672).

OBSTACLE.—*V.* PERMANENT: UNAVOIDABLE.

OBSTRUCT.—To omit (after notice) to remove an obstruction is to "wilfully obstruct the free passage of a highway," within s. 72, Highway Act, 1835 (*Gully* v. *Smith*, 53 L. J. M. C. 35; 12 Q. B. D. 121; 48 J. P. 309: *Sv, R.* v. *Lordsmere*, 50 J. P. 388). So, *à fortiori*, is

Digitized by Google

it such an obstruction to leave unlighted at night large stones on a road under repair (*Fearnley* v. *Ormsby*, 4 C. P. D. 136; 27 W. R. 823; 43 J. P. 384); or to leave on the side of a highway anything calculated to frighten horses going along it (*Harris* v. *Mobbs*, 3 Ex. D. 268; 27 W. R. 154; 39 L. T. 164: *Wilkins* v. *Day*, 12 Q. B. D. 110; 48 J. P. 6). *V.* Allow.

But an obstruction within this section must involve an interference with the surface of the highway; and therefore trees and underwood growing over and across a road is not such an obstruction (*Walker* v. *Horner*, 45 L. J. M. C. 34; 1 Q. B. D. 4; 39 J. P. 773). But if trees or underwood grow *across* a road in such a way as to send a growth up from their roots through the surface of the road, then, *semble*, that would be within *Gully* v. *Smith*, sup. *V.* Lop.

A Custom, *e.g.* for a Fair, may justify such an obstruction (*R.* v. *Smith*, 4 Esp. 109: *Elwood* v. *Bullock*, 13 L. J. Q. B. 330; 6 Q. B. 383); but not a private user (*Gerring* v. *Barfield*, 28 J. P. 615; 11 L. T. 270).

An "obstruction in any thoroughfare," s. 60 (7), Metropolitan Police Act, 1839, 2 & 3 V. c. 47, is caused by a projecting moveable Show-board, which is none the less an "obstruction" because many persons are not incommoded by it (*Read* v. *Perrett*, 1 Ex. D. 349). *V.* Taylor's Act.

A Projection "so as to cause any annoyance or obstruction in any thoroughfare," s. 17 (7), Dublin Police Act, 1842, 5 V. c. 24, is not set up if it be on private land not part of the thoroughfare (*Dowling* v. *Byrne*, Ir. Rep. 10 C. L. 135: *Byrne* v. *Ring*, Ib. 192: *Grant* v. *Kavanagh*, 11 Ib. 27: *Secus*, *Dolan* v. *Kavanagh*, 10 Ib. 166).

Changing a Signal, or stretching out the arm as a Signal, so as to cause a Railway Train to go more slowly, is to "obstruct" it within s. 36, 24 & 25 V. c. 97 (*R.* v. *Hadfield*, 39 L. J. M. C. 131; L. R. 1 C. C. R. 253: *R.* v. *Hardy*, 40 L. J. M. C. 62; L. R. 1 C. C. R. 278). *Cp*, Prevent.

"Obstruction," 6 G. 4, c. 129; *Vth*, 22 V. c. 34: *Va*, Molest.

V. Interruption: Nuisance: Wilful Obstruction.

OBTAIN.—The primary meaning of "obtain" a Patent is the original obtaining from the Crown: but a context (*e.g.* as in s. 1, 5 & 6 W. 4, c. 83) may make it to mean "the becoming possessed, either by original grant, by assignment, or by any other title" (*Russell* v. *Ledsam*, 14 L. J. Ex. 357; 16 Ib. 145; 14 M. & W. 588; 16 Ib. 633; 1 H. L. Ca. 687: *Vf*, *Spilsbury* v. *Clough*, 11 L. J. Q. B. 109; 2 Q. B. 466).

"The word 'obtains' (in s. 88, 24 & 25 V. c. 96) means, an obtaining by the offender from the owner, with an intent on the part of the offender to deprive the owner permanently and entirely of the thing obtained; and it includes cases in which things are obtained by a contract which is obtained by a false pretence, unless the obtaining under the contract is

Digitized by Google

remotely connected with the false pretence" (Steph. Cr. 267). *Vf*, Rosc. Cr. 429–452.

"Obtains Credit"; *V.* Credit.

V. Procure.

OBTAINED. — A Final Judgment was not "obtained" (within s. 4 (*g*), Bankry Act, 1883), by anyone except the successful party to the action himself, or his personal representatives, who for this purpose are in fact the same *persona* (*Ex p. Woodall*, 53 L. J. Ch. 966; 13 Q. B. D. 479; 32 W. R. 774). Neither an assignee of a judgment debt (*Re Keeling, Ex p. Blanchett*, 55 L. J. Q. B. 327; 17 Q. B. D. 303; 34 W. R. 538), nor the jdgmt creditor's Trustee in Bankry (*Ex p. Harper, Re Goldring*, 22 Q. B. D. 87; 58 L. J. Q. B. 3; 37 W. R. 228), was within the phrase. But s. 1, Bankry Act, 1890, now enacts that "any person who is, for the time being, entitled to enforce a Final Jdgmt shall be deemed a creditor who has obtained" it, within s. 4, Bankry Act, 1883: *Vth*, *Re Palmer*, cited Creditor.

The assignee of a judgment debt is a person who has "obtained" the judgment for the purpose of getting a Garnishee Order under R. 1, Ord. 45, R. S. C. (*Goodman* v. *Robinson*, 18 Q. B. D. 332; 56 L. J. Q. B. 392; 55 L. T. 811; 35 W. R. 274).

OBVENTIONS. — *V.* Offerings.

OBVIOUS. — A "Fraudulent or Obvious" *Imitation* of a New Design, within s. 58, Patents, &c, Act, 1883, does not mean obvious to the uneducated or unskilled eye, but obvious to a judge or jury sitting as experts (*Mitchell* v. *Henry*, 15 Ch. D. 181: *Grafton* v. *Watson*, 50 L. T. 420; 51 Ib. 141: *Vh*, *Harper Co* v. *Wright Co*, 1896, 1 Ch. 142; 65 L. J. Ch. 161; 44 W. R. 274). *V.* Fraudulent Imitation.

A person exposes himself to "Obvious *Risk*" of injury within an Exception in an Accident Policy, (1) if the Risk is obvious to him at the time he exposes himself to it, or (2) if it would be obvious if he were paying reasonable attention to what he is doing (*Cornish* v. *Accident Insrce*, 58 L. J. Q. B. 591; 23 Q. B. D. 453; 38 W. R. 139). *Vh*, *Shilling* v. *Accidental Insrce*, 1 F. & F. 116.

V. Apparent.

OCCASION. — *V.* Inflict: Occasioned.

"Necessary Occasions" of a Church; *V.* Necessary.

"Special Occasion"; *V.* Special.

OCCASIONAL. — "Occasional *Court-house*"; Stat. Def., Sum Jur Act, 1879, s. 50.

"Occasional License," as well for Ireland as Great Britain, "means,

Digitized by Google

a License to sell Beer, Spirits, or Wine, granted in pursuance of" s. 13, 25 & 26 V. c. 22, and s. 5, 27 V. c. 18, and the Acts amending the same (s. 32, 37 & 38 V. c. 49; s. 37, 37 & 38 V. c. 69).

Occasional *Vacancy*; *V.* CASUAL.

OCCASIONED. — An injury to a horse is not "occasioned" by plunging (within a Carrier's exemption) if the animal is made to plunge by actionable negligence (per FitzGibbon, L. J., *Sheridan* v. *Mid. Great Western Ry*, 24 L. R. Ir. 173).

V. CAUSED BY: INFLICT.

OCCUPANT. — *V.* Co. Litt. 41 b: "Special Occupant," *V.* SPECIAL.

OCCUPATION. — The "Occupation" of the Grantor of a BILL OF SALE, as used in the Bills of Sale Acts, "means, the TRADE or CALLING by which he ordinarily seeks to get his LIVELIHOOD" (per Kelly, C.B., *Luckin* v. *Hamlyn*, 21 L. T. 366; 18 W. R. 43), "the BUSINESS in which he is usually engaged to the knowledge of his neighbours" (per Martin, B., *Ib.*), and in respect of which he contracts debts (*Ex p. National Mercantile Bank, Re Haynes*, 49 L. J. Bank. 62; 28 W. R. 848), and the statement of which would be "sufficient to identify him to persons who have had dealings with him" (per Coleridge, C. J., *Throssell* v. *Marsh*, 53 L. T. 321). Within that definition it has been held that a Coach-Builder openly carrying on business as such (the execution creditor's debt being contracted in respect of that business) but who was also a Parish Clerk from which Office he mostly got his living, was well described as "Parish Clerk" only, it being found as a fact that such description of his Occupation was not calculated to deceive his creditors (*Hosking* v. *Wood*, 25th Jan 1893: *Vf*, *Feast* v. *Robinson*, 70 L. T. 168; 63 L. J. Ch. 321: *Re Davies*, 77 L. T. 567). *À fortiori*, if a Grantor's principal employment be stated, a merely subsidiary employment need not be (*Ex p. National Deposit Bank, Re Wills*, 26 W. R. 624: *Ex p. National Mercantile Bank, Re Haynes*, sup: *Throssell* v. *Marsh*, sup: *Vf*, RESIDENCE). In Ireland, however, it has been held that *all* the Occupations of the Grantor must be given (*Re Fitzpatrick*, 19 L. R. Ir. 206: *Vf*, DESCRIPTION). As to stating Occupation of *Women*; *V. Luckin* v. *Hamlyn*, sup: *Usher* v. *Martin*, 61 L. T. 778: *Ex p. Chapman, Re Davey*, 45 Ib. 268: — A Married Woman living apart from her husband and engaged as a Milliner's Manager should be described as such Manager; to describe her as a "Married Woman" is fatal to the document (*Kemble* v. *Addison*, 1900, 1 Q. B. 430; 69 L. J. Q. B. 299; 82 L. T. 91; 48 W. R. 331). As to particular descriptions, *V.* ACCOUNTANT: BROKER: CLERK: ESQUIRE: GENTLEMAN: GOVERNMENT CLERK: MERCHANT: TUTOR: *Vf*, DESCRIPTION.

Quà Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60, "'Occupation,' when applied to any person, shall mean, his Trade or

Digitized by Google

Following; and if none, then his rank or usual title, as Esquire, Gentleman" (s. 1). *V.* FOLLOW.

"Industrial Occupation"; *V.* INDUSTRIAL EMPLOYMENT.

V. MANUAL OCCUPATION.

Occupation of a DWELLING-HOUSE, quà BURGLARY; *V.* Rosc. Cr. 323–331: Arch. Cr. 593–600: 2 Russ. Cr. 14–37.

Occupation, or Occupancy, is said to arise out of "the ACTUAL possession and manurance of the LAND" (Vin. Abr. "Occupancy," H. *Vf,* Co. Litt. 249 b: *Sv,* inf). *V.* TERRE TENANT. *Cp,* HOLDING: POSSESSION.

"Occupation includes Possession as its primary element, but it also includes something more. Legal Possession does not, of itself, constitute an Occupation. The owner of a VACANT house is in Possession, and may maintain Trespass against any one who invades it; but as long as he leaves it vacant he is not rateable for it as an Occupier" (per Lush, J., *R.* v. *St. Pancras,* 2 Q. B. D. 588; 46 L. J. M. C. 250; 37 L. T. 126). But "vacant" is not the same as "unused"; therefore, where, for example, a seaside tradesman completely shuts up his shop during non-season and clears out the stock but (having the legal possession and *animus revertendi*) leaves in the shop his trade fittings and utensils, the shop is not "unoccupied" within s. 211 (2), P. H. Act, 1875, and the rates are payable (*Southend-on-Sea* v. *White,* 83 L. T. 408: *Cp, Yates* v. *Chorlton,* cited OCCUPIER).

"Occupation" and "Possession" are used in contrast in ss. 18, 26, Rep People Act, 1832, 2 W. 4, c. 45; and whilst, under the latter section, an owner of a Rent-charge in fee would be entitled to qualify for a county vote after having been for the prescribed time in the ACTUAL "possession" of the rent-charge, yet if being only entitled for life he is, by the circumstances, driven to claim as for its "actual and *bonâ fide* occupation" under s. 18, then he will fail, because a rent-charge is incapable of such occupation (*Druitt* v. *Christchurch,* 53 L. J. Q. B. 177; 12 Q. B. D. 365).

"Occupation,"—even "ACTUAL Occupation,"—does not, necessarily, mean RESIDENCE (*R.* v. *West Riding Jus.*, 11 L. J. M. C. 80; 2 Q. B. 505), although "99 persons in 100 would so understand it" (per Patteson, J., *Ib.*). *Vf,* OWNER.

"Occupation," as a CONDITION in a devise, "is not living and residing" (per Ld Eldon, *Fillingham* v. *Bromley,* T. & R. 536); and if in any given case it means "residing," that does not involve a continual personal living in the house (*V.* RESIDENCE). And so a devise of the "Free Use" (*Cook* v. *Gerrard,* 1 Saund. 181, 186 *e*), or of the "Use and Occupation" (*Whittome* v. *Lamb,* 13 L. J. Ex. 205; 12 M. & W. 813: *Rabbeth* v. *Squire,* 24 L. J. Ch. 203; 19 Bea. 70; 4 D. G. & J. 406; 7 W. R. 657: *Mannox* v. *Greener,* L. R. 14 Eq. 456) of land, or a permission to "Occupy" land for life, or as long as wished (*Re Eastman,*

Digitized by Google

43 S. J. 114; W. N. (98) 170; 68 L. J. Ch. 122, *n*: *Re Carne*, 1899, 1 Ch. 324; 68 L. J. Ch. 120; 79 L. T. 542; 47 W. R. 352), passes an estate, *i.e.* that of Tenant for Life, with the right to let or assign the property, and is not confined to a personal use and occupation, unless the context clearly calls for that limited construction (*Maclaren* v. *Stainton*, 27 L. J. Ch. 442; 4 Jur. N. S. 199: *Stone* v. *Parker*, 29 L. J. Ch. 874). *Vh*, 1 Jarm. 798: *R.* v. *Eatington*, 4 T. R. 181, cited Elph. 605: Occupy: Occupied: Reside: Use and Occupation: Personal Occupation. *Note.* A Condition of personal use and occupation is (by s. 51, S. L. Act, 1882), rendered nugatory when it interferes with the exercise by a Tenant for Life of his powers under the Act (*Re Paget*, 55 L. J. Ch. 42; 30 Ch. D. 161; 33 W. R. 898: *Re Haynes*, 57 L. J. Ch. 519; 37 Ch. D. 306: *Re Edwards*, 1897, 2 Ch. 412; 66 L. J. Ch. 658): *Vf*, Induce: Reside.

"Occupation" as a Description of property is, frequently, not a word restricting the meaning, and then it has little more effect than to indicate the property in a general way. Therefore, a devise of "my Farm called Blackacre *in the Occupation* of A.," may easily include such parts of Blackacre Farm as are not in A.'s occupation (*Goodtitle* v. *Southern*, 1 M. & S. 299: *White* v. *Birch*, 36 L. J. Ch. 174, *whlc* questions *Doe* d. *Parkin* v. *Parkin*, 5 Taunt. 321: *Sv*, *Homer* v. *Homer*, 8 Ch. D. 758; 47 L. J. Ch. 635: *Morrell* v. *Fisher*, 19 L. J. Ex. 273; 4 Ex. 591. *Cp*, Set Forth). So, where an expired lease to A. had reserved the flat roof of the premises to the lessor, and on its expiration the lessor leased the premises to B. without making the reservation, but such second lease (after describing the premises) added "as the same was late in the Occupation of A."; held (by Turner, L.J., affg Wood, V. C., diss. Knight-Bruce, L. J.) that B.'s lease passed the premises without the reservation (*Martyr* v. *Lawrence*, 2 D. G. J. & S. 261). But, on the other hand, a devise of a house "and premises thereto, as the same are now occupied by me," was held not to include stables formerly occupied by the testator with the house but which, at the date of the Will, he had severed therefrom (*Re Seal*, 1894, 1 Ch. 316; 63 L. J. Ch. 275; 70 L. T. 329: *Va*, *Mocatta* v. *Mocatta*, 49 L. T. 629; 32 W. R. 477). But when the testator has added lands to his occupation, *V. Re Champion*, 1893, 1 Ch. 101; 62 L. J. Ch. 372.

A devise of house "as now in the Occupation of A.," will not pass an Easement, not used of necessity but, occasionally used by A. on testator's adjoining land, *e.g.* an easement to use a pump (*Polden* v. *Bastard*, 32 L. J. Q. B. 372; L. R. 1 Q. B. 156; 4 B. & S. 258); if the words were "as now enjoyed by A." the Easement might pass (per Erle, C. J., *Ib.*, citing *Bodenham* v. *Pritchard*, cited Enjoyed). *V.* Live In: *Fox* v. *Clarke*, cited Wall.

Building, &c, "vested in and in the occupation of Her Majesty"; *V.* Vested.

Digitized by Google

"Occupation," quà Inhabited House Duty; *V. Bent* v. *Roberts*, 3 Ex. D. 66; 47 L. J. Ex. 112.

"Occupation," quà Parliamentary Franchise; *V.* "as Tenant," sub TENANT: s. 5, Rep People Act, 1884, on *whv*, *Hall* v. *Metcalfe*, 1892, 1 Q. B. 208; 61 L. J. Q. B. 53; 66 L. T. 496: *Vf*, on such an Occupation apart from the lastly cited section, *R.* v. *Eye*, 2 P. & D. 348.

"Occupation," quà Pauper Settlement; "The meaning of the word 'Occupied' may vary according to the occasion or the subject-matter. The meaning which it has received in considering what Occupation was necessary to constitute a mansion-house in which BURGLARY might be committed, or to give a Right of Voting, or to make a party Rateable to the Relief of the Poor, is no test of its meaning in this particular case (of Pauper Settlement). A new distinction is introduced by 1 W. 4, c. 18. Under the former statute, 6 G. 4, c. 57, a Constructive Occupation was sufficient (*R.* v. *Ditcheat*, 9 B. & C. 176). This statute requires an Occupation *in fact*. It recites the former Act and that doubts have arisen with respect to the intentions of the legislature concerning the Occupation of such house, building, or land, by the person hiring the same, and enacts, that 'no person shall acquire a Settlement in any Parish by reason of such yearly hiring of a dwelling-house or building or of land or of both, as in the said Act expressed, unless such house or building or land shall be *actually* occupied under such yearly hiring by the person hiring the same.' A Constructive Occupation will not satisfy these words. The statute requires, in terms, an Actual Occupation" (per Denman, C. J., *R.* v. *St. Nicholas*, *Rochester*, 5 B. & Ad. 226, 227; 3 L. J. M. C. 45; 3 N. & M. 21), *e.g.* as in *R.* v. *St. Giles in the Fields*, 4 A. & E. 495. *V.* Arch. P. L. 563.

"Occupation" quà Poor Rate; *V.* BENEFICIAL: CEASE: EXCLUSIVE OCCUPATION: NEW OCCUPIER: TENEMENT: Arch. P. L. Part 5: Boyle & Davies Principles of Rating: *R.* v. *Sinclair*, 12 Times Rep. 466.

Occupation to confer a Vestryman's qualification; *V.* RATED OR ASSESSED.

V. CONTINUOUS OCCUPATION: OCCUPY.

OCCUPATION LEASE.—An "Occupation Lease" of "LAND," s. 18, Conv & L. P. Act, 1881, as distinct from an AGRICULTURAL Lease or a BUILDING LEASE, "may well apply to a Lease of an INCORPOREAL HEREDITAMENT" (per Williams, L. J., *Browne* v. *Peto*, 69 L. J. Q. B. 874). Certainly, the phrase is in no way to be narrowed by the authority of *Dayrell* v. *Hoare* (cited ANY, p. 95); and, probably, an "Occupation Lease" may be defined as, a Lease which, according to the nature and situation of the property and the common experience of mankind, is made for the convenience and comfort of Personal Occupation, including such amenities and advantages as not infrequently go with the kind of property; *e.g.* a Mortgagor in Possession may, under the section cited,

Digitized by Google

grant a lease of a Country House and therewith the Sporting Rights over the land comprised in the mortgage, especially if those rights have been severed from the land before the mortgage (*Browne* v. *Peto*, 1900, 2 Q. B. 653; 69 L. J. Q. B. 869; 83 L. T. 303).

OCCUPATION VOTER.—Quà Registration Act, 1885, 48 & 49 V. c. 15, "'Occupation Voter,' means, as regards a Parliamentary *County*, a person entitled to vote in respect of any qualification conferred by the Representation of the People Act, 1884; and, as regards a Parliamentary *Borough*, means, a person entitled to vote in respect of any qualification conferred by s. 5 of the Representation of the People Act, 1884, or in respect of a Household Qualification or a Lodger Qualification as defined by that Act" (s. 19).

"Occupation Voters," s. 92 (2), Loc Gov Act, 1888, means, County Occupation Voters, and not Voters for a Borough (*Weller* v. *Collins*, 54 J. P. 441). *Vf*, "County Occupation Franchise," sub COUNTY.

Cp, "Ownership Voter," sub OWNERSHIP: "Parliamentary Voter," sub PARLIAMENTARY.

OCCUPIED.—Permitting persons to use small portions of land, for growing potatoes, is a breach of a stipulation in a lease of a Farm not to "suffer to be occupied by any other person," without consent (*Greenslade* v. *Tapscott*, 3 L. J. Ex. 328; 1 Cr. M. & R. 59; 4 Tyr. 566).

"Premises occupied" by a grantor of a Bill of Sale, s. 7, 17 & 18 V. c. 36, meant, not merely premises of which he was tenant, but also premises actually under his control (*Robinson* v. *Briggs*, 40 L. J. Ex. 17; L. R. 6 Ex. 1).

"Land lawfully occupied by building"; *V.* LAWFULLY OCCUPIED.

"Occupied therewith"; *V.* THEREWITH.

Premises "belonging to and occupied with" DWELLING-HOUSE, 48 G. 3, c. 55, Sch B, R. 2; 14 & 15 V. c. 36; *V.* BELONGING.

Land "not otherwise occupied," s. 3, Advertising Stations (Rating) Act, 1889, 52 & 53 V. c. 27; *V. Chappell* v. *St. Botolph*, 1892, 1 Q. B. 561; 65 L. T. 581; 40 W. R. 192; 56 J. P. 310: EXCLUSIVE OCCUPATION.

V. OCCUPATION: HELD: INHABIT: ONE OCCUPATION.

OCCUPIER.—The tenant, though absent, is, speaking generally, the "Occupier" of premises (*R.* v. *Poynder*, 1 B. & C. 178), but a servant, or other person who may be there *virtute officii*, is not an Occupier (*Clarke* v. *St. Mary, Bury St. Edmunds*, 26 L. J. C. P. 12; 1 C. B. N. S. 23: *Bent* v. *Roberts*, 47 L. J. Ex. 112; 3 Ex. D. 66: *R.* v. *Spurrell*, 35 L. J. M. C. 74; L. R. 1 Q. B. 72: *Tennant* v. *Smith*, cited INCOME).

If an owner is driving his cattle, or if, *with his consent*, his cattle are being driven, along a road leading to a Level Crossing on a Railway,

Digitized by Google

such an owner is an "Occupier" of the road, and therefore of "*Adjoining Land*" to the Railway within s. 68, Ry C. C. Act, 1845 (*Vh*, s. 47); but if the cattle are being driven *without the owner's consent* he is not such an "Occupier" (per Esher, M. R., *Charman* v. *S. E. Ry*, 57 L. J. Q. B. 598; 21 Q. B. D. 524; 37 W. R. 8: *Manchester S. & L. Ry* v. *Wallis*, 14 C. B. 213; 23 L. J. C. P. 85). So, a mere Licensee is an "Occupier" within the section (*Dawson* v. *Mid. Ry*, L. R. 8 Ex. 8; 42 L. J. Ex. 49: *Sv*, *Luscombe* v. *G. W. Ry*, 1899, 2 Q. B. 313; 68 L. J. Q. B. 711; 81 L. T. 183). *V.* ADJOINING OWNER.

"Occupier," quà Agricultural Rates Act, 1896, 59 & 60 V. c. 16; *V.* s. 9.

For cases on Betting Houses Acts; *V.* PLACE.

"Occupier," quà Births and Deaths Registration Acts; *V.* 37 & 38 V. c. 88, s. 48. —*Scot.* 17 & 18 V. c. 80, s. 76. —*Ir.* 26 & 27 V. c. 11, s. 3; 43 & 44 V. c. 13, s. 38.

"Occupier," quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55; *V.* ss. 4, 120.

"Occupier," quà Explosives Act, 1875, 38 & 39 V. c. 17; *V.* s. 108.

Occupier of a Factory; *V.* FACTORY.

An "Occupier," ss. 11, 39, Gasworks Clauses Act, 1871, 34 & 35 V. c. 41, remains Occupier notwithstanding that a Receiving Order be made against him (*Re Smith, Ex p. Mason*, 1893, 1 Q. B. 323; 67 L. T. 596).

"Occupier," Ground Game Act, 1880, 43 & 44 V. c. 47, is to be read by the light of "the governing intention of the Act, which is that there shall be no land in the kingdom over which the person *in Occupation* has not the right to kill and take the GROUND GAME with a view to preserving his crops, and that, so far as this right is concerned, the *Owning* Occupier shall be in the same position as any other Occupier" (per Wright, J., *Anderson* v. *Vicary*, 1899, 2 Q. B. 436; 68 L. J. Q. B. 970). It was accordingly there held that an Occupying Owner whose predecessor in title had granted the Sporting Rights over the land, was nevertheless the "Occupier" and, as such, entitled to kill and take the Ground Game concurrently with the grantee of the sporting rights (*S. C.* affd 1900, 2 Q. B. 287; 69 L. J. Q. B. 713, Smith, L. J., diss.). Such an Occupying *Owner* is, however, not subject to s. 6 of the Act (*Smith* v. *Hunt*, 54 L. T. 422), though Tenant Occupiers are, even those to whom the sporting rights are expressly granted (*Saunders* v. *Pitfield*, 58 L. T. 108; 4 Times Rep. 233). *Vh*, *Sherrard* v. *Gascoigne*, cited DIVEST: VOID, towards end.

"Occupier," quà Infectious Diseases (Notification) Act, 1889, 52 & 53 V. c. 72; *V.* s. 16.

A License to take minerals or stones from a MINE or QUARRY, does not make the licensee an "Occupier" of the Mine or Quarry, within s. 41, 35 & 36 V. c. 77; s. 2, 57 & 58 V. c. 42 (*Foster* v. *Newhaven Harbour Trustees*, 61 J. P. 629; 13 Times Rep. 292).

Digitized by Google

"Occupier," quà Poor Rate; *V.* BENEFICIAL: CEASE: EXCLUSIVE OCCUPATION: NEW OCCUPIER. *Semble*, but doubtfully, by putting in a mere Care-taker in an empty house the Owner is not the Rateable Occupier (*Yates* v. *Chorlton*, 48 L. T. 872; 47 J. P. 630: *Cp*, *Southend-on-Sea* v. *White*, cited OCCUPATION); *secus*, if Care-taker is paid, or if there be the relationship of Master and Servant between him and the Owner, and especially so if goods of the owner are there being cared for (*Hicks* v. *Dunstable*, 48 J. P. 326: *Bursledon* v. *Clarke*, 61 J. P. 261). *Note*: Before issuing Distress for the Rate, Justices may enquire whether the person rated was really the "Occupier" (*R.* v. *Bagshawe*, 75 L. T. 513).

"Person in Actual Occupation," s. 71, "Occupier," s. 124, Poor Relief (Ir) Act, 1838, 1 & 2 V. c. 56; *V. Midleton* v. *M'Donnell*, 1896, 2 I. R. 228: IMMEDIATE USE OR ENJOYMENT.

"Occupier," quà P. H. Scotland Act, 1897; *V.* s. 3.

"Occupier," quà Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48; *V.* s. 42:—quà Salmon Fishery Act, 1873, 36 & 37 V. c. 71; *V.* s. 4:—quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103; *V.* s. 1.

V. INCOMING TENANT: INHABITANT: NEW OCCUPIER: OCCUPATION: OCCUPIED: OUTGOING OCCUPIER: REAL RESIDENT HOLDER: SUCCESSIVE: TENANT.

OCCUPY.—"To occupy" property is the co-relative verb of OCCUPATION, which commonly denotes a physical possession; but "'occupy' is a word which in one form and another is not infrequently used of an INCORPOREAL HEREDIT" (per Williams, L. J., *Browne* v. *Peto*, cited OCCUPATION LEASE).

"Cease to Occupy"; *V.* CEASE.

Power "to occupy"; *V.* OCCUPATION: RESIDE. Such a power for life creates an equitable tenancy for life; but, *semble*, the rent (if the property is leasehold), the repairs, and insurance may be payable by the trustees out of the general estate; but the fines and expenses of renewal of leaseholds ought to be borne by the beneficiaries rateably (*Re Baring*, 1893, 1 Ch. 61; 62 L. J. Ch. 50; 41 W. R. 87; 67 L. T. 702, applying *Re Courtier*, 56 L. J. Ch. 350; 34 Ch. D. 136; 55 L. T. 574; 35 W. R. 85. *Sv*thc, *Re Redding*, 1897, 1 Ch. 876; 66 L. J. Ch. 460: *Re Tomlinson*, 1898, 1 Ch. 232; 67 L. J. Ch. 97; 78 L. T. 12; 46 W. R. 299: *Re Betty*, 1899, 1 Ch. 821; 68 L. J. Ch. 435; 80 L. T. 675: *Re Gjers*, 1899, 2 Ch. 54; 68 L. J. Ch. 442; 80 L. T. 689; 47 W. R. 535).

OCTOBER.—A representation, on the faith of which a Marine Insrce was effected, stated that the Ship would sail from St. Domingo "in the month of October," and she sailed on the 11th Oct; held, that the Policy was void, for it was proved that, in that connection, "October" was well understood to mean some time between 25th Oct and 2nd Nov, and, certainly, not before 15th Oct, and to sail before that latter date would make a difference of 15% in the premium (*Chaurand* v. *Angerstein*, 1 Peake, 61).

Digitized by Google

OF. — "Of," as meaning "belonging to," *e.g.* "Burial Ground *of* any Parish," s. 18, 18 & 19 V. c. 128, means, one that is parish property, not one that is merely *in* the parish (*R.* v. *St. John, Westgate*, 31 L. J. Q. B. 205; 2 B. & S. 703).

"Of" a place, imports dwelling; and is ordinarily taken to mean that the person spoken of dwells at the place named (Dwar. 675: *R.* v. *West Riding Jus.*, 2 Dowl. N. S. 707: *Saunders* v. *Jones*, 3 Dowl. & L. 770: *R.* v. *Rotherham*, 12 L. J. M. C. 17; 3 Q. B. 776; 2 G. & D. 523: *Sv*, per Littledale, J., *R.* v. *Toke*, 8 A. & E. 232; 7 L. J. M. C. 74; 3 N. & P. 323: *R.* v. *Flockton*, 12 L. J. M. C. 70; 2 Q. B. 535).

The statutory form of a Bill of Sale says that the document must run as between "A. B. of , of the one part, and C. D. of , of the other part"; if the address of the grantee (though a Registered Co) is omitted, the Bill of Sale is void (*Altree* v. *Altree*, cited In Accordance with the Form).

A Contract for the Goods "of" a person means, *primâ facie*, goods of his manufacture, and not merely that they will come out of his hands (*Powell* v. *Horton*, 2 Bing. N. C. 668). "If I speak of the literary work 'of' a given author, I imply that it was written by that author; that the picture 'of' a given artist was painted by that artist; and that manufactured articles stamped with a name are the manufacture of the party whose name they bear" (per Bosanquet, J., *Ib.*).

"My estate of A."; — In a devise in these words it was held, that "of" was equivalent to "At," and that the devise could not, by extrinsic evidence, be extended to property out of, though contiguous to, A. (*Doe* d. *Chichester* v. *Oxenden*, 3 Taunt. 147; 4 Dowl. 65). But hereon it has been suggested that "the distinction between a devise of 'my estate *of* A,' and a devise of 'my estate *called* A.' is not very perceptible" (1 Jarm. 428: Called).

"Of my Name"; *V.* Name.

"Of" is sometimes the equivalent of After, — *e.g.* "within 21 days *of* the execution," s. 3, 17 G. 3, c. 26 (*Ex p. Fallon*, 5 T. R. 283: *Williams* v. *Burgess*, 10 L. J. Q. B. 10; 12 A. & E. 635).

OF AND CONCERNING. — "Of and concerning the premises," in an Arbitrator's Award; *V. Dunn* v. *Warlters*, 9 M. & W. 296; 11 L. J. Ex. 188: *Perry* v. *Mitchell*, 12 M. & W. 802; 14 L. J. Ex. 88.

As to the importance of this phrase in an Indictment for Libel, *V. R.* v. *Marsden*, 4 M. & S. 164: as to its exigency in a Statement of Claim for Libel, *V.* per Bayley, J., *May* v. *Brown*, 3 B. & C. 127–130.

OF COURSE. — *V.* Precatory Trust.

OF RIGHT. — *V.* Right.

OF THE BODY. — "The distinction between heirs *of* the body, and heirs *on* the body, must be attended to: where 'heirs *of* the body of

Digitized by Google

the husband begotten by him *on* the body of the wife' are spoken of, the heirs intended are the heirs of the body of the husband, but they are restricted by the words 'on the body of the wife' to a particular class of the heirs of the body of the husband, namely, those that he has by her. 'Heirs begotten by the husband *of* the body of the wife,' means 'heirs of the body of the wife,' but they are restricted to the heirs begotten by the husband. On the other hand, 'heirs begotten by the husband *on* the body of the wife,' means the heirs of their two bodies, because the word 'heirs' is not applied to the one more than the other" (Elph. 235, *schr*). *V.* HEIRS OF THE BODY.

OF THE CLOCK.—This expression indicates "Mean as opposed to Solar Time, but a question might arise as to whether it means Local Mean Time or the Mean Time commonly observed at any given place. London Time, or, as it is called, Railway Time, is now very generally observed, and there is a difference of more than 20 minutes between London and Cornwall. Local Mean Time is the natural meaning" (Steph. Cr. 247, *n* 2). *Vh*, *Curtis* v. *Marsh*, 28 L. J. Ex. 36; 3 H. & N. 866; 4 Jur. N. S. 1112: TIME.

OFF.—A ship's arrival "at or off the Berth," quà DEMURRAGE, means, that the time allowed for discharging cargo only begins to run when the ship gets alongside and can discharge (per Mathew, J., *Thomson* v. *London & Grays Co*, 12 Times Rep. 99).

OFF LICENSE.—*V. R.* v. *Thornton*, cited LICENSE.

OFFENCE.—"*Primâ facie*, an 'Offence' is equivalent to a CRIME" (per Collins, J., *Derbyshire Co. Co.* v. *Derby*, 65 L. J. Q. B. 488; 1896, 2 Q. B. 57, 58; *S. C.* affd, 1896, 2 Q. B. 297; 1897, A. C. 550; 65 L. J. Q. B. 557; 66 Ib. 701: *Va*, per Littledale, J., *Mann* v. *Owen*, 9 B. & C. 601: DECEIT: INDICTMENT: *Sv*, 6 H. & N. 254), giving rise to a CRIMINAL CAUSE, and (if a Civil Action be brought to recover its penalty) preventing a plaintiff from obtaining Interrogatories or Discovery of Documents (*Martin* v. *Treacher*, 55 L. J. Q. B. 209; 16 Q. B. D. 507; 54 L. T. 7; 34 W. R. 315). "I do not deny that the use of such words as 'Offence' or 'Offender' or 'FORFEIT' is not, of itself, conclusive to show that the sum to be recovered is a PENALTY, if there are other words which show that such is not their meaning. I think, however, that the use of such words is strong *primâ facie* evidence as to what was the intention of the legislature" (per Esher, M. R., *Saunders* v. *Wiel*, 1892, 2 Q. B. 321; 62 L. J. Q. B. 37; 67 L. T. 207). Thus, the refusal to pay Costs awarded under s. 90, 5 & 6 W. 4, c. 50, is not an "Offence," within s. 103 of the same Act (*Sellwood* v. *Mount*, 10 L. J. M. C. 121; 1 Q. B. 726). So, the "Offender" who infringes a Copyright in a Musical Composition, s. 2, 3 & 4 W. 4, c. 15, is not liable criminally,

Digitized by Google

because the prescribed mulct is referred to as "DAMAGES" (*Adams* v. *Batley*, 56 L. J. Q. B. 393; 18 Q. B. D. 625; 56 L. T. 770; 35 W. R. 437). So, the "Offence" of River Pollution, s. 10, 39 & 40 V. c. 75, is not a crime, because its penalty is only a means of enforcing an Order thereunder and is only then recoverable "as any DEBT" (*Derbyshire Co. Co.* v. *Derby*, sup).

On the other hand, the "FORFEIT" for the "Offence" of infringing a Copyright Design, s. 58, 46 & 47 V. c. 57, is a PENAL matter although recoverable "as a Simple Contract Debt," because the following section calls it a "Penalty" and provides a quite separate right of action for "Damages" (*Saunders* v. *Wiel*, sup). So, an action under P. H. Act, 1875, to recover a penalty against a Member of a Local Board for acting without qualification, is a penal action (*Martin* v. *Treacher*, sup). So, the "Offence" of travelling to avoid paying fare, s. 51, 33 & 34 V. c. 78, is a crime, and for wrongfully charging it an action will lie for Malicious Prosecution (*Rayson* v. *South London Tram Co*, 1893, 2 Q. B. 304; 62 L. J. Q. B. 593; 69 L. T. 491): *Vf*, *Biggs* v. *G. E. Ry*, W. N. (68) 173.

A statutory "Offence," generally, connotes MENS REA in the individual charged; it is not committed if the thing be only done accidentally; nor, generally, does the maxim *Respondeat Superior* apply, *e.g.* a SHERIFF is not liable to the fine and punishment prescribed by s. 29, Sheriff's Act, 1887, if (without his concurrence or knowledge) his officer is guilty of EXTORTION (*Lee* v. *Dangar*, 1892, 2 Q. B. 337; 61 L. J. Q. B. 780; 66 L. T. 548; 40 W. R. 469; 56 J. P. 678: *Bagge* v. *Whitehead*, 1892, 2 Q. B. 355; 61 L. J. Q. B. 778; 66 L. T. 815; 40 W. R. 472; 56 J. P. 548). *Vf*, KNOWINGLY.

V. ARISE: CONTINUING OFFENCE: SECOND OFFENCE.

Semble, that in an Indictment "Offence," unlike "MISDEMEANOR," is not *nomen collectivum* (*R.* v. *Salomons*, 1 T. R. 249).

Non-payment of Rates is an "Offence," within s. 31, 7 W. 4 & 1 V. c. 78 (*R.* v. *Sutcliffe*, 13 Q. B. 833). On the other hand, *semble*, that the non-payment by an Overseer of a sum certified by the Poor Law Auditor as due from him, is *not* an "Offence," within s. 99, 4 & 5 W. 4, c. 76 (*R.* v. *Master*, 38 L. J. M. C. 73; L. R. 4 Q. B. 285; 10 B. & S. 42; 19 L. T. 733; 17 W. R. 442). *V.* CRIME.

Contempt of Court in a civil action, is not an "Offence" within s. 19, Extradition Act, 1870, 33 & 34 V. c. 52 (*Pooley* v. *Whetham*, 50 L. J. Ch. 236; 15 Ch. D. 435). *V.* POLITICAL.

"Offence," s. 15, Copyright Act, 1842, 5 & 6 V. c. 45, is not coextensive with "Offence" in s. 26 (*Hogg* v. *Scott*, 43 L. J. Ch. 705; L. R. 18 Eq. 444).

Quà Prevention of Crimes Act, 1871, 34 & 35 V. c. 112, "Offence" "means, any act or omission which is not a CRIME as defined by this Act, and is punishable on Indictment or Summary Conviction" (s. 20):

Digitized by Google

Cp, def in s. 7, Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73.

Other Stat. Def.—Bail (Scot) Act, 1888, 51 & 52 V. c. 36, s. 9.

"Offence punishable on Indictment" quà Fugitive Offenders Act, 1881, "means, as regards India, an Offence punishable on a Charge or otherwise" (s. 39).

"Offence," sometimes only means, an offensive Act (*Hipkins* v. *Birmingham Gas Co*, 5 H. & N. 84; 6 Ib. 254).

OFFENDER.—*V.* "Cease to occupy," sub CEASE, p. 282.

OFFENDING.—"Found Offending"; *V.* FOUND.

OFFENSIVE.—In construing a covenant not to carry on any "Offensive" TRADE or BUSINESS on premises demised, much will depend on the situation of the premises; and in construing such a covenant it is particularly worthy of consideration, whether such trade as that complained of was carried on there at the time of the demise; and, *semble*, that a trade carried on there at the time of the demise would not be within the covenant (per Tindal, C. J., *Gutteridge* v. *Munyard*, 7 C. & P. 129); and the words "any other offensive trade" must be read as *ejusdem generis* with those they follow (*Doe* d. *Wetherell* v. *Bird*, 4 L. J. K. B. 52; 2 A. & E. 161; 4 N. & M. 285; *V. S. C.* sub TRADE: *Sr*, *Pembroke* v. *Warren*, inf). Neither a Private Lunatic Asylum (*Doe* d. *Wetherell* v. *Bird*, sup), nor a Hospital for curing diseases which may be infectious (*V.* per Lindley, L. J., *Tod-Heatley* v. *Benham*, 58 L. J. Ch. 91; 40 Ch. D. 80; 37 W. R. 38), nor the business of a Licensed Victualler (*Jones* v. *Thorne*, 1 B. & C. 715), nor that of a Lucifer Match Deposit (*Hickman* v. *Isaacs*, 4 L. T. 285), nor that of a Slaughter-house Keeper (*Rapley* v. *Smart*, 38 S. J. 129; W. N. (94) 2; 10 Times Rep. 174, on *whcv*, per Fitzgibbon, L. J., *Pembroke* v. *Warren*, 1896, 1 I. R. 119: *Sv*, *Gutteridge* v. *Munyard*, 7 C. & P. 132 and *Cleaver* v. *Bacon*, inf), is an "Offensive" Business within such a covenant. In *Hickman* v. *Isaacs* the words were "*Noisome* or Offensive"; and Cockburn, C. J., asked if the word "Dangerous" were in the covenant, and, getting a negative reply, said to counsel arguing for a breach, "then you cannot make anything of your point."

The business of a Butcher, though in carrying it on beasts are slaughtered on the premises, is not, necessarily, an "Offensive, *Noisy, or Noisome*" trade within such a covenant (*Cleaver* v. *Bacon*, 4 Times Rep. 27); and though the business of Fish-frying may not be, necessarily, "Offensive" within the Acts relating to Public Health (*Braintree* v. *Boyton*, cited NOXIOUS), yet it is within a Restrictive Covenant relating to such a place as Cavendish Place, Eastbourne (*Devonshire* v. *Brookshaw*, 81 L. T. 83).

Digitized by Google

A covenant prohibiting any business which should be "Noisy, Noxious, Dangerous, or Offensive, . . . or in anywise INJURIOUS," was held by Romer, J., not to include a Laundry, even though the ocality be residential (*Knight* v. *Simmonds*, 1896, 1 Ch. 653; 65 L. J. Ch. 307; affd, 1896, 2 Ch. 294; 65 L. J. Ch. 583).

It is difficult to reconcile the decision of the majority of the Court of Appeal in Ireland with some of the foregoing cases. In *Pembroke* v. *Warren* (1896, 1 I. R. 76) the words of the restrictive covenant were, that the covenantor would not carry on or permit or suffer to be carried on "the business of a tavern, ale-house, soap-boiler, chandler, baker, butcher, distiller, sugar-baker, brewer, druggist, apothecary, tanner, skinner, lime-burner, hatter, silversmith, coppersmith, pewterer, blacksmith, or any other Offensive or Noisy trade, business, or profession, whatsoever"; held (by Chatterton, V. C., and by O'Brien, C. J., and Walker, L. J., diss. Fitzgibbon, L. J.), that a Private Hospital in which every description of patient was received, except those suffering from contagious and infectious diseases or actual insanity, was a breach of the covenant, the property being in Fitzwilliam Square, Dublin. To reach that conclusion the V. C. held that the *Ejusdem Generis* rule did not apply, and therein he was not over-ruled by the majority of the Court of Appeal. Dealing with "Offensive," O'Brien, C. J. (p. 111) said, "It would appear to me to reach any business which would be so annoying and hurtful as materially to diminish the comfort and enjoyment, and thereby the value, of the residences in the Square, — any business, in fact, that would produce such a sense of discomfort as prejudicially to affect the residential character of the Square and the value of the property and houses therein." At p. 112, the learned judge illustrated his position by saying that having sick people next door, would be "Offensive" to a person of ordinary humanity, for "he would not use his house for the purpose of giving practically any entertainment. He would not give a ball or musical party, which I assume it is the privilege of those living in Fitzwilliam Square to give, — both would be attended with considerable noise, not alone from the music and dancing but, from the crowding of carriages and conveyances and people outside the house. If he abstained from giving entertainments which would be attended with noise through regard for the sufferers next door, he would certainly be restricted in the use of his own house, and, if he did not abstain, his feelings would not be of the most enviable description. I think the very fact of having a number of persons next door in an ailing condition, which may result in a severe struggle for existence sometimes ending in death, is eminently calculated to develope in any ordinary average citizen a very considerable sense of discomfort and annoyance." Not so sweeping or pointed but to a like effect was the decision of Walker, L. J.; but this reasoning, as well as the ruling of the V. C. that the *Ejusdem Generis* rule did not apply, was powerfully combated by Fitzgibbon, L. J.

Digitized by Google

Note. Where "Offensive" "Noisome" or such like classes of trade are prohibited, trades not within the prohibition are impliedly permitted (*Bonnett* v. *Sadler*, 14 Ves. 526).

V. ANNOYANCE: NOXIOUS: NUISANCE.

Offensive *Noise*; *V.* DISAGREEABLE.

Offensive *Trades*, quà P. H. London Act, 1891; *V.* ss. 19–22: GUT.

Whether a Stick or a Bat (*i.e.* the smuggler's long pole) was an "Offensive *Weapon*" within s. 56, 6 G. 4, c. 108, or s. 9, 9 G. 4, c. 69, was a question for the Jury; *primâ facie* it would not be so, and it would lie on the prosecution to establish that that was its intended purpose (*R.* v. *Palmer*, 1 Moo. & R. 70: *R.* v. *Fry*, 2 Ib. 42: *R.* v. *Noakes*, 5 C. & P. 326). Under 7 G. 2, c. 21, a Stick was held an "Offensive Weapon" though not of extraordinary size and might be used as a walking-stick (*R.* v. *Johnson*, Russ. & Ry. 492). Large Stones were "Offensive Weapons" within s. 9, 9 G. 4, c. 69 (*R.* v. *Grice*, 7 C. & P. 803).

OFFER. — An "Offer" or "Promise" of REWARD for a Vote is constituted by any assurance of a reward which would not otherwise be obtained; a binding contract is not necessary: therefore, a statement by a canvasser that the voter "would be remunerated for loss of time" is such an "Offer" or "Promise" (*Simpson* v. *Yeend*, 38 L. J. Q. B. 313; L. R. 4 Q. B. 626; 10 B. & S. 752: *Vh*, *Cooper* v. *Slade*, 27 L. J. Q. B. 449; 6 H. L. Ca. 746).

Offer of a Contract; *V.* SUBJECT TO.

Offer by Post; *V.* BY POST.

Foreign MARKETABLE SECURITY "ISSUED" or "offered for Subscription" in the United Kingdom, s. 82 (1) Stamp Act, 1891; *V.* *Brown* v. *Inl. Rev.* 84 L. T. 71.

"Less sum than shall have been offered by the Promoters," s. 34, Lands C. C. Act, 1845; *V.* *Lascelles* v. *Swansea School Bd*, 69 L. J. Q. B. 24. "Previously offered," s. 51, Ib.; *V.* PREVIOUSLY.

V. ESTIMATE.

OFFERINGS. — "'Offerings,' are personal tithes payable by Custom to the Parson or Vicar of the parish; either occasionally, as at Sacraments, Marriages, Christenings, Churching of Women, Burials, &c, — or at constant times as at Easter, Christmas" (Jacob). "Oblations, Obventions, and Offerings, are generally the same thing, though Obvention has been esteemed the most comprehensive" (Jacob, *Obvention*).

Offerings, Oblations, Obventions; explained in Phil. Ecc. Law, 1242, citing Com. Dig. *Prohibition*, G. 11: Ayliffe's Parergon, 392–395: *Va*, 16 Vin. Ab. 77, *Offerings*: 9 Encyc. 271, 272: *Ayrton* v. *Abbott*, 18 L. J. Q. B. 314; 14 Q. B. 1.

OFFICE. — An Office is "a right to exercise a Public or Private Employment, and to take the fees and emoluments thereunto belonging" (2 Bl. Com. 36: *Vf*, 3 Cru. Dig. Title, 25: 9 Encyc. 276–278).

Digitized by Google

But sometimes that def is too narrow. Thus, in *R.* v. *Charretie* (13 Q. B. 447; 18 L. J. M. C. 100), it was held that a Director's Nomination to a Cadetship in the East India Co's service was an "Office, Commission, Place, or Employment," within s. 3, 49 G. 3, c. 126 (amplifying 5 & 6 Edw. 6, c. 16), although such Nomination only gave the nominee the right to present himself for examination and when examined and passed to proceed to India, at his own expense, where on landing he would obtain a commission, and then, but not till then, be entitled to pay. *Note*, that the statutes on which that decision proceeded were to prevent corrupt bargains for the sale of patronage in matters of public concernment.

So, on the other hand, Blackstone's def is sometimes too wide,— "Office" being sometimes confined to a public employment *regulated by law*. In this restricted sense it has not infrequently been interpreted in America (*Jackson* v. *Healy*, 20 Johnson, N. Y. 493: *Platt* v. *Beach*, 2 Benedict, 306: *People* v. *Pinckney*, 32 N. Y. 726: *Smith* v. *New York*, 37 N. Y. 520).

So, whilst "Office" in ss. 18, 26, Rep People Act, 1832, seems clearly to include a Parish Clerk (*Huntingdon*, *Rowledge's Case*, W. & D. 199: *Jackson* v. *Courtenay*, 27 L. J. Q. B. 37; 8 E. & B. 8), yet, *semble*, it does not include a Wesleyan Minister (*Foster* v. *Mulhall*, 10 Ir. Com. Law Rep. 532).

In any case "an Office necessarily implies that there is some duty to be performed" (per Cockburn, C. J., *Heartley* v. *Banks*, 5 C. B. N. S. 55). Accordingly, the Military Knights of Windsor do not hold an "Office" within the Rep People Act, 1832 (*S. C.* 5 C. B. N. S. 40; 28 L. J. C. P. 144; 7 W. R. 342; 33 L. T. O. S. 203), nor does one who is only a Bedesman (*Faulkner* v. *Boddington*, 3 C. B. N. S. 412; 27 L. J. C. P. 20; 6 W. R. 101; 30 L. T. O. S. 168): *Vf*, *Freeman* v. *Gainsford*, 31 L. J. C. P. 33; 11 C. B. N. S. 68: *Sv*, distinguishing the foregoing cases, *Roberts* v. *Percival*, 18 C. B. N. S. 36; 34 L. J. C. P. 84; 13 W. R. 265; 11 L. T. 603: *Fryer* v. *Bodenham*, L. R. 4 C. P. 529; 38 L. J. C. P. 185; 19 L. T. 645.

"Office" disqualifying a Director of a Co under its Articles; *V. Iron Ship Coating Co* v. *Blunt*, 37 L. J. C. P. 273; L. R. 3 C. P. 484; 16 W. R. 868.

"Office," quà Loc Gov Act, 1888, "includes any Place, Situation, or Employment" (s. 100); for Ireland the def is "any Office, Situation, or Employment" (s. 109, Loc Gov (Ir) Act, 1898).

"Office," quà the Universities; Stat. Def., 34 & 35 V. c. 26, s. 2; 36 & 37 V. c. 21, s. 2; 40 & 41 V. c. 48, s. 2.

Other Stat. Def.—*Ir.* 35 & 36 V. c. 60. s. 28; 45 & 46 V. c. 70, s. 2.

"Accepted Office"; *V.* Accepted.

V. Church Offices.

An Office Copy, is a Copy of a document vouched as accurate by an Office or Officer thereunto duly authorized, *e.g.* a copy of a document

Digitized by Google

sealed with the seal of the Central Office of the Royal Courts of Justice is an Office Copy (R. 7, Ord. 61, R. S. C.).

"Corporate Office"; *V.* CORPORATE.

"Divine Service, Rite, or Office"; *V.* DIVINE SERVICE.

"Office or EMOLUMENT"; Stat. Def., 31 & 32 V. c. 32, s. 4.

"Office *found*" is the affirmative finding of a jury on an "Inquisition or Inquest of Office: which is an enquiry made by the King's officer, his sheriff, coroner, or escheator, *virtute officii* or by writ to them sent for that purpose, or by commissioners specially appointed, concerning any matter that entitles the King to the possession of lands or tenements, goods or chattels" (3 Bl. Com. 258: Cowel, *Office*).

V. HIGH JUDICIAL OFFICE: JUDICIAL OFFICE.

"Office of PROFIT" does not connote that its incumbent actually makes a profit from it; if "it might reasonably be expected that a man would make a profit of it, it must be considered an Office of Profit" (per Bayley, J., *Delane* v. *Hillcoat*, 9 B. & C. 313).

"Office," or "Office of Profit," entitling its holder to *Compensation* on its abolition; *V. R.* v. *Loc Gov Board*, L. R. 9 Q. B. 148; 43 L. J. Q. B. 49; 22 W. R. 315: *R.* v. *Carmarthen*, 9 L. J. Q. B. 25; 11 A. & E. 9; 3 P. & D. 35: *R.* v. *Bridgewater*, 6 A. & E. 339; 6 L. J. M. C. 78. *Vf*, OFFICER.

"Place of Profit"; *V.* PLACE.

A person appointed the Chemist to a Town Council, holds an "Office, or Place of Profit" in the gift of the Council, s. 12 (1 *a*), 45 & 46 V. c. 50, and, within that section, has a "Contract or Employment," although his only emolument has been the profit on four pennyworth of oil supplied by him to the Council's fire brigade (*Re Louth*, 1894, 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499: *Sv*, *Woolley* v. *Kay*, cited INTERESTED IN).

"Office under Her Majesty the Queen"; Stat. Def., Official Secrets Act, 1889, 52 & 53 V. c. 52, s. 8.

An officer of a Friendly Socy who properly receives its money, though only for the purpose of handing it over to the treasurer, has such money "in his possession BY VIRTUE of his Office," within s. 15 (7), 38 & 39 V. c. 60 (*Re Welch*, 70 L. T. 691; 63 L. J. Q. B. 524; 42 W. R. 320). But an officer whose proper duties do not include the receipt of money but who does in fact receive it, does not receive it "by Virtue of his Office" (*Ex p. Fleet*, 4 D. G. & S. 52; 19 L. J. Bank. 10: *Re Aberdein*, W. N. (96) 154; 31 L. J. N. C. 705). *V.* POSSESSION.

V. OFFICER: PENSIONABLE OFFICE: PUBLIC OFFICE.

An "Office," as used in the sense of a *place* for transacting business, is not, necessarily, a completed building, *e.g.* in s. 3, Malicious Damage Act, 1861, 24 & 25 V. c. 97 (*R.* v. *Manning*, cited BUILDING). *Cp*, COUNTING-HOUSE.

"Office" for Betting, s. 3, Betting Act, 1853, 16 & 17 V. c. 119; *V.*

Digitized by Google

Shaw v. *Morley*, 37 L. J. M. C. 105; L. R. 3 Ex. 137; 19 L. T. 15: *Bows* v. *Fenwick*, 43 L. J. M. C. 107; L. R. 9 C. P. 339: PLACE.

An "Office," though a place of business as a SHOP is, must be distinguished from "Shop"; thus, a Lease to a Wine Merchant "for Offices, and the storage of wines and spirits," precluded the lessee (a Free Vintner of the City of London) from selling there wine by the glass and so making it a Wine-shop (*Randell* v. *Block*, 38 S. J. 141).

"Office," quà Industrial and Provident Societies Act, 1893, means "the Registered Office for the time being of a Society" (s. 79).

"Hall or Office"; *V.* HALL.

V. PRINCIPAL OFFICE: RECORD.

"*Registered* Office of a Co"; Stat. Def., Comp Winding-up Act, 1890, s. 32 (3).

"Registry Office"; Stat. Def., Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60, s. 1.

"Offices," quà 35 & 36 V. c. 27, includes "all necessary conveniences and appurtenances" (s. 3).

OFFICER.—*V.* OFFICE.

Neither a Banker (*Re Imperial Land Co*, 39 L. J Ch. 331; L. R. 10 Eq. 298), nor a Solicitor (*Re Great Wheal Polgooth Co*, 53 L. J. Ch. 42: *Re Great Western Coal Co*, 55 L. J. Ch. 494; 31 Ch. D. 496; 54 L. T. 531; 34 W. R. 516, explaining *Ex p. Valpy & Chaplin*, 7 Ch. 289: *Va*, *Brown* v. *Thames & Mersey Insrce*, 43 L. J. C. P. 112), is an "Officer" of a Joint Stock Co, within either s. 165, Comp Act, 1862 (repld s. 10, Comp Winding-up Act, 1890), or, *semble*, s. 38, Comp Act, 1867. But if special circumstances show that the Solr was really an Officer, he is none the less an Officer because he is also the Solr (*Re Liberator Bg Socy*, 71 L. T. 406: *A-G.* v. *Carlton Bank*, cited RECEIPT). A Trustee is not an "Officer" within the latter section (*Cornell* v. *Hay*, 42 L. J. C. P. 137; L. R. 8 C. P. 328), but he may be within the former (*Re British Guardian Co*, W. N. (80) 63). A formally appointed Auditor is an "Officer" within the sections (*Re Kingston Cotton Mill Co*, 1896, 1 Ch. 6; 65 L. J. Ch. 145, 673; 44 W. R. 210; following *Re London & Gen. Bank*, 1895, 2 Ch. 166; 72 L. T. 611; 43 W. R. 481: 64 L. J. Ch. 866); *secus*, of an Accountant simply employed to audit the accounts on a particular occasion (*Re Western Counties Bakeries Co*, 1897, 1 Ch. 617; 66 L. J. Ch. 354; 76 L. T. 239; 45 W. R. 418).

Its Solicitor is not an "Officer" of a Body Corporate within s. 50, Com. L. Pro. Act, 1854 (*Brown* v. *Thames & Mersey Insrce*, sup).

Default by Solicitor in paying Costs when ordered to pay same "as an Officer of the Court making the Order," s. 4 (4), Debtors Act, 1869; *V.* *Re Rush*, L. R. 9 Eq. 147: *Re Hope*, 41 L. J. Ch. 797; 7 Ch. 523: *Re A Solicitor*, 64 L. J. Ch. 467.

A Union Chaplain or Doctor, is an "Officer" within s. 46, Poor Law

Digitized by Google

Amendment Act, 1834, 4 & 5 W. 4, c. 76, *Va*, s. 109 (*R.* v. ***Braintree Union***, 10 L. J. M. C. 76; 1 Q. B. 130: *R.* v. ***Haslehurst***, 53 L. J. M. C. 127; 13 Q. B. D. 253; 51 L. T. 95; 32 W. R. 877; 48 J. P. 774); so, a Chaplain was an "Officer" within s. 30, 9 G. 4, c. 40 (*R.* v. ***Middlesex Asylum***, 2 Q. B. 433).

An Architect to a School Board, is an "Officer" within R. 7, Sch 3, Elementary Education Act, 1870, 33 & 34 V. c. 75 (***Scott*** v. ***Clifton School***, Cab. & El. 435).

By the Act for dividing the parishes Plumstead and Hackney (56 & 57 V. c. 55, s. 11) ***Compensation*** was to be awarded to all "Officers" of the parishes as originally constituted whom the Act should throw out of employment. In argument reference was made to s. 100, Loc Gov Act, 1888, defining an "Officer," quà that Act, as one who holds "any Place, Situation, or Employment." But it was contended that whilst "Officer" quà 56 & 57 V. c. 55, s. 11, would admittedly include a Medical Officer, yet that it did not include a Hall-Porter, or Messenger, and still less an Office Boy. But Day, J., held that all these were included, his reason being,—"We are now in 1893, and not 1855. This is an age of exaggeration and humbug; we do not now, even in Acts of Parliament, use the same language as we did 100 years ago. No doubt, in those days, these plaintiffs would have been called 'Servants' and not 'Officers'; and very properly so too. I must, however, read this Act in the sense of our time; and I think it clearly means to compensate any of the servants who by its operation have suffered any pecuniary loss" (***Legg and others*** v. ***Stoke Newington***, Times, 28th May 1895). *Vf*, Office.

"Officer" of a Borough, County, or Division of a County, entitled to Compensation under s. 2, 5 & 6 V. c. 111, did not include the Clerk to a Stipendiary Magistrate appointed under 53 G. 3, c. 72 (*R.* v. ***Manchester***, 16 L. J. Q. B. 27; 9 Q. B. 458).

Officers of a Ry Co entitled to Compensation on an Amalgamation; *V.* ***Bruff*** v. *Cobbold*, 30 L. T. 597.

The Bankry Act, 1849, s. 113, which imposed a penalty on "any Officer" detaining a bankrupt after production of his protection; held, not to apply to the Gaoler, or Governor, of a prison, but only to the Officer who actually arrested the bankrupt (***Myers*** v. ***Veitch***, 38 L. J. Q. B. 316; L. R. 4 Q. B. 649).

Stat. Def.—Army Act, 1881, s. 190 (4); Friendly Soc Act, 1896, s. 106; Illicit Distillation (Ir) Act, 1857, s. 8; Lunacy (Ir) Act, 1867, s. 1 (*Cp*, "Medical Officer," inf); Naval and Marine Pay and Pensions Act, 1865, 28 & 29 V. c. 73, s. 2; Poor Law Officers Superannuation Act, 1896, 59 & 60 V. c. 50, s. 19; Prison Officers Superannuation (Ir) Act, 1873, 36 & 37 V. c. 51, s. 2; Record of Title Act (Ir), 1865, 28 & 29 V. c. 88, s. 2; Revenue Act, 1898, 61 & 62 V. c. 46, s. 14 (4).

"Officer in the Consular Service of Her Majesty," "Officer in the Diplomatic Service of Her Majesty"; Stat. Def., 33 & 34 V. c. 14, s. 17.

Digitized by Google

"Officer of the COURT," s. 58, Jud. Act, 1873; *V. Re Palmer*, 63 L. T. 302. *V.* SUMMARY JURISDICTION.

"Chief Officer of Customs"; *V.* CHIEF.

"Officer of the Fishery"; Stat. Def., Herring Fisheries (Scot) Acts, 1860, and 1867, 23 & 24 V. c. 92, s. 2; 30 & 31 V. c. 52, s. 11.

"*Head* Officer," R. 8, Ord. 9, R. S. C., does not include the London Agent of a Foreign Co (*Nutter* v. *Messageries Maritimes*, 54 L. J. Q. B. 527: *Haggin* v. *Comptoir d'Escompte*, 23 Q. B. D. 519; 58 L. J. Q. B. 508: *Golding* v. *La Sainte Union*, 67 L. T. 309, 605; 9 Times Rep. 1). *Vf, Mackreth* v. *Glasgow & S. W. Ry*, 42 L. J. Ex. 82; L. R. 8 Ex. 149, on same phrase in s. 16, Com. L. Pro. Act, 1852: *Cp*, PRINCIPAL OFFICER.

Officer of Justice; *V.* MALICE AFORETHOUGHT.

"Medical Officer"; *V.* MEDICAL.

"Constable, Headborough, or OTHER Officer," s. 6, 24 G. 2, c. 44, includes a Churchwarden, or a Gaoler (*Butt* v. *Newman*, Gow, 97, cited by Lindley, L. J., 21 Q. B. D. 367).

V. PAROCHIAL OFFICER: POLICE.

"Officer of the POST OFFICE"; Stat. Def., Post Office (Offences) Act, 1837, 1 V. c. 36, s. 47.

"Postal Officer"; Stat. Def., Mail Ships Act, 1891, 54 & 55 V. c. 31, s. 9.

V. PRINCIPAL OFFICER.

"*Proper* Officer"; Stat. Def., Inland Revenue Act, 1880, 43 & 44 V. c. 20, s. 2; Spirits Act, 1880, 43 & 44 V. c. 24, s. 3: "Proper Officer of Inland Revenue," *V.* 39 & 40 V. c. 36, s. 284: "Proper Officer of the Recorder's Court," *V.* Petty Sessions (Ir) Act, 1851, 14 & 15 V. c. 93, s. 44.

"QUALIFIED Officer"; Stat. Def., Army Act, 1881, s. 122 (6).

"Registration Officer"; Stat. Def., Corrupt and Illegal Practices Prevention Act, 1883, s. 64, 68.

"Responsible Officer"; *V.* RESPONSIBLE.

V. RETURNING OFFICER.

"Officer of a SHERIFF," s. 20 (2), 50 & 51 V. c. 55, means, an Officer acting on a Sheriff's behalf; a Sheriff's Officer is not entitled to sue in his own name for expenses under the section (*Smith* v. *Broadbent*, 1892, 1 Q. B. 551; 61 L. J. Q. B. 490; 66 L. T. 260; 40 W. R. 332).

"Officers and Crew," quà Naval Agency and Distribution Act, 1864, 27 & 28 V. c. 24, includes, "all flag officers, commanders, and other officers, engineers, seamen, marines, soldiers, and others, on board any of Her Majesty's Ships of War" (s. 2); so, of the Naval Prize Act, 1864, 27 & 28 V. c. 25 (s. 2). *V.* CREW.

"Officers and Troops of Her Majesty's Army," in the Indian Prize Money Act, 1866, 29 & 30 V. c. 47, does not include "officers and soldiers of Her Majesty's European or Native Indian Forces" (s. 4).

V. COMMANDING OFFICER: NON-COMMISSIONED OFFICER: SUPERIOR OFFICER: PAID OFFICER: PUBLIC OFFICER: SEA FISHERY.

Digitized by Google

OFFICIAL. — "Official *Administrator*"; Stat. Def., 56 & 57 V. c. 5, s. 29.

"Official *House*," quà Westminster Abbey Act, 1888, 51 & 52 V. c. 11, "means, any house, building, and premises, to the exclusive occupation of which a person is entitled by reason of his being a Dean, Canon, or Member, of the collegiate establishment of the Dean and Chapter of Westminster" (s. 8).

"Official House of a Marriage Officer"; Stat. Def., Foreign Marriage Act, 1892, 55 & 56 V. c. 23, s. 24.

"Official *Import Lists*, and Official *Export Lists*"; Stat. Def., Customs Consolidation Act, 1876, 39 & 40 V. c. 36, s. 284.

The entry of a Capture or Embargo in Lloyd's Loss-Book is sufficient proof of the "receipt of Official *News*" of the occurrence, quà a Marine Insrce (*Fowler* v. *English & Scottish Mar. Insrce*, 18 C. B. N. S. 818; 34 L. J. C. P. 253).

Official Receiver in Bankry, was established, and his duties prescribed, by Part 4, Bankry Act, 1883; *Vh*, R. 321–339, Bankry Rules, 1886: Wms. Bank. 277, 470–476: Robson, 65–73: — Official Receiver in the Winding-up of Companies; *V.* s. 26, Comp Winding-up Act, 1890, and the Rules of Nov 1890 made pursuant thereto; he alone is entitled to be styled "Official Liquidator" (s. 4, Comp Winding-up Act, 1890).

"Official *Referee*," established by s. 83, Jud. Act, 1873, and his duties prescribed by Part 8, Ord. 36, R. S. C.; *V.* Ann. Pr.

Official *Solicitor*; *V.* 23 & 24 V. c. 149, ss. 2–6: Dan. Ch. Pr. 723, 724: *Moutrie* v. *Mitchell*, 1901, 1 K. B. 596; 70 L. J. K. B. 401.

"Official *Trustees*"; Stat. Def., Mun Corp Act, 1883, s. 27: "Official Trustee of Charity Lands," *V.* s. 15, 18 & 19 V. c. 124; "Official Trustees of Charitable Funds," s. 18, Ib., s. 4 (1), 50 & 51 V. c. 49. *Cp*, Judicial Trustee.

OFFICIATE. — To "Officiate as a Clergyman" means, the *public* performance of the service of the Established Church, *in accordance with the laws regulating it* (per Hardwicke, C., *Trebec* v. *Keith*, 2 Atk. 498). "The ordinary meaning," — and also as used in s. 48, 1 & 2 V. c. 56, — "of 'officiate' is 'to do the duty of his Office,' and the extent of the duty will be exactly in proportion to the sphere of that duty" (per Crampton, J., *R.* v. *Poor Law Commrs*, 3 Ir. Com. Law Rep. 160: *Vf*, *Ib.* 2 Jebb & Sy. 721 on "Officiating Clergyman"). *V.* Fit.

V. Regular Clergyman.

OFFICIOUS. — *V.* Inofficious.

OFFSPRING. — "When a man uses the terms 'Offspring,' 'Issue,' or 'Descendants,' they are vague expressions which no doubt, on the particular context, may mean 'children,' or remote descendants; but, *primâ facie*, it can hardly be supposed to mean 'Children' when that

Digitized by Google

simple word is so obvious a one to use. The word 'Offspring,' in its proper and natural sense extends to any degree of lineal descendants and has the same meaning as 'Issue'" (per Kindersley, V. C., *Young* v. *Davies*, 32 L. J. Ch. 373; 2 Dr. & Sm. 167; 9 Jur. N. S. 399: *Va*, *Thompson* v. *Beasley*, 24 L. J. Ch. 327; 3 Drew. 7; 2 Jarm. 101, *n*). *V.* ISSUE: DESCENDANTS.

In *Lister* v. *Tidd* (29 Bea. 618), "Offspring" was construed "Children," to the exclusion of grandchildren; so, per Byrne, J., *Tabuleau* v. *Nixon*, W. N. (99) 115; 107 Law Times, 324. *V.* CHILD.

OFTEN.—*V.* AS OFTEN AS.

OIL.—"Oil," s. 4, Tobacco Act, 1842, 5 & 6 V. c. 93, means, "Olive Oil and Essential Oil only" (s. 27, 42 & 43 V. c. 21).

OLD AGE.—As regards relief by a FRIENDLY SOCIETY, "Old Age," means, "any age after 50" (s. 8 (1 *a*), Friendly Soc. Act, 1896).

OLD AND WORN-OUT.—*V.* SICK.

OLD BOROUGH.—Stat. Def., Boundary Act, 1868, 31 & 32 V. c. 46, s. 3: *Cp*, NEW BOROUGH.

OLD BUILDING.—In Metrop Management and Building Acts; *V. Tear* v. *Freebody*, 4 C. B. N. S. 228.

V. NEW BUILDING.

OLD CORPORATION.—Stat. Def., 36 & 37 V. c. 41, s. 2.

OLD INCLOSURES.—This phrase is, ordinarily, equivalent to "Old Inclosed Land," or "Old Closes"; and in that ordinary sense it is used in s. 62, Inclosure Act, 1845, 8 & 9 V. c. 118 (*Hornby* v. *Silvester*, 57 L. J. Q. B. 558; 20 Q. B. D. 797; 59 L. T. 666; 36 W. R. 679; 52 J. P. 468). "I find the term, 'ANCIENT INCLOSURES' and 'Old Inclosures' almost invariably used in private Inclosure Acts to denote inclosed lands in the ordinary sense of the words" (per Lopes, L. J., *Ib.*).

V. INCLOSED LANDS.

OLD MARK.—*V. Richards* v. *Butcher*, and *Re Hopkinson*, cited TRADE-MARK, and *Birmingham Vinegar Co* v. *Powell*, cited TRADE NAME.

OLD METALS.—*V.* DEALER.

OLD RENT.—*V.* ACCUSTOMED RENT.

OLERON.—"Laws of Oleron" so called because they were made by King Richard 1 when he was in the Island of that name; they relate to maritime affairs (Co. Litt. 260 b: 1 Bl. Com. 418, 4 Ib. 423).

Digitized by Google

Coleman **O'LOCHLEN'S ACT.** — Policies of Assurance Act, 1867, 30 & 31 V. c. 144.

OMISSION. — An "Omission" to perform a duty involves the idea that the person to act is aware that performance is required or needful (*Lond. & S. W. Ry* v. *Flower*, 45 L. J. C. P. 54; 1 C. P. D. 77). V. DONE. *Cp, Somerset* v. *Wade*, cited SUFFER.

Omission, in a Bankry Proof of Debt, to value a Security; *V.* per Collins, L. J., *Re Piers*, cited INADVERTENCE.

"Omission," in Conditions of Sale; *V.* ERROR.

"Accidental Slip or Omission"; *V.* ACCIDENTAL.

"Omission, Misdescription, or MISTAKE," s. 232, 20 & 21 V. c. 60; *V. Darley* v. *M'Donnell*, Ir. Rep. 3 C. L. 260.

V. COMMITTED: ERROR: NEGLECT.

OMIT. — To "omit" performing a CONDITION to a gift is a wider word than to "refuse or NEGLECT" to do so (per North, J., *Partridge* v. *Partridge*, 1894, 1 Ch. 351; 63 L. J. Ch. 122; 70 L. T. 261). *V.* REFUSAL.

A Condition making an Insrce void if the insurer "omits to communicate" any material circumstance, relates to the circumstances existing at or before the execution of the Policy (*Pim* v. *Reid*, cited ALTERATION).

OMITTED. — An "Omitted" Interest in Lands, s. 124, Lands C. C. Act, 1845, is one (as the section says) omitted "by mistake"; *Vth. Thomas* v. *Barry Dock Co*, 5 Times Rep. 360.

Notwithstanding anything "omitted," as used in a Covenant for Title; *V. David* v. *Sabin*, cited TITLE.

OMNIBUS. — For the lengthy def of "Omnibus," quà Town Police Clauses Acts, 1847 and 1889, *V.* s. 3 of the latter Act. By its subs. 2 that def is adopted for s. 6, Finance Act, 1897, with the addition that there "Omnibus" shall also "include a 'STAGE CARRIAGE,' within the meaning of the Metropolitan Public Carriage Act, 1869."

V. HACKNEY CARRIAGE: CARRIAGE: DRIVE: TRAMWAY.

ON. — Where there is a devise to A. in fee, and if he "DIES WITHOUT ISSUE," then, "*at*," or "*on*," or "*upon*," his death, over; — A. takes an estate in fee with an executory devise over in case he leaves no issue living at his death (*Doe* d. *King* v. *Frost*, 3 B. & Ald. 546: *Ex p. Davies*, 21 L. J. Ch. 135; 2 Sim. N. S. 114: *Parker* v. *Birks*, 24 L. J. Ch. 117; 1 K. & J. 156: *Coltsmann* v. *Coltsmann*, L. R. 3 H. L. 121; in *thlc* the words were "die without heirs of the body"). But if the phrase is "*after*" his death, over, — that is not quite so strong (per Wood, V. C., *Parker* v. *Birks*, 1 K. & J. 165), pointing, as it does, less precisely to the moment of his death; and accordingly the construction,

Digitized by Google

in the latter case, will frequently give A. an estate tail (*Walter* v. *Drew*, 1 Comyn, 372: *Doe* d. *Cock* v. *Cooper*, 1 East, 229: *Jones* v. *Ryan*, 9 Ir. Eq. Rep. 249: *Vf*, 2 Jarm. 516–522).

"If an estate be vested in trustees upon trust for A. for life, and '*on the decease of A.*' to sell, — the trustees have no power to sell during the life of A., however beneficial it may be to the parties interested in the trust (*Johnstone* v. *Baber*, 8 Bea. 233: *Blacklow* v. *Laws*, 2 Hare, 40: *Mosley* v. *Hide*, 17 Q. B. 91; 20 L. J. Q. B. 539: *Want* v. *Stallibrass*, L. R. 8 Ex. 175; 42 L. J. Ex. 108). But if an estate be devised to A. for life and after her decease to trustees upon trust to sell 'as soon as conveniently may be after *the testator's decease*,' — the trustees, with the concurrence of A., can make a good title (*Mills* v. *Dugmore*, 30 Bea. 104)." Lewin, 492.

The power to grant Alimony "*On any such Decree*," s. 32, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85, "if not confined to the time of making the Decree, must mean shortly after" (per Jessel, M. R., *Robertson* v. *Robertson*, 8 P. D. 96; 48 L. T. 591; 31 W. R. 652).

Though "on," or "upon," a Date or Event may, *primâ facie*, have an inclusive meaning, yet either word will mean "before," "simultaneously with," or "after," according to the context and subject-matter (*V.* UPON).

"I can find no distinction ever drawn between tenancies commencing 'at' a particular time, or 'on' a particular day, or 'from' the same day. 'At,' 'on,' 'from,' or 'on and from,' are, for this purpose, equivalent expressions. Any distinction between them for such a purpose is far too subtle for practical use" (per Lindley, L. J., *Sidebotham* v. *Holland*, 1895, 1 Q. B. 378; 64 L. J. Q. B. 204; 72 L. T. 62; 43 W. R. 228; 11 Times Rep. 154). *V.* FROM.

Charged "on"; *V.* CHARGED.

Order made "on" a person; *V.* IN WRITING.

"Served on"; *V.* SERVED.

V. AFTER: AS AND WHEN: AT: IMMEDIATELY: IN RESPECT OF: ON OR BEFORE: PASSING: UPON: WHEN.

"On" is also frequently used, like "UPON," elliptically as expressing a Condition Precedent; *e. g.* several of the succeeding definitions.

ON ACCOUNT OF.—*V.* FOR: ON BEHALF: ON THE ACCOUNT.

ON ACTIVE SERVICE.—Quà Army Act, 1881, and "if not inconsistent with the context, the expression 'On Active Service,' as applied to a person subject to MILITARY LAW, means, whenever he is attached to or forms part of a Force which is engaged in operations against the ENEMY, or is engaged in Military Operations in a country or place wholly or partly occupied by an Enemy, or is in Military Occupation of any foreign country" (s. 189, subs. 1).

Cp, ACTUAL MILITARY SERVICE.

Digitized by Google

ON ALLOTMENT.—"'Allotment' is a popular term; it is not a technical term," and is not anywhere used in the Comp Act, 1862; it means, "generally, neither more nor less than the acceptance by the Co of the offer to take Shares" (per Chitty, J., *Nicol's Case*, 29 Ch. D. 426, 427). *Vh*, *Spitzel* v. *Chinese Corp*, 80 L. T. 349, 351.

Payment on Shares "on Allotment," means, "as and when allotted" (*Browne* v. *Pickering*, 4 Times Rep. 726).

The "Allotment" of Shares, in a contract to UNDERWRITE, refers to the day on which the Co proceeds to allotment, although notices of allotment are not sent out till afterwards (per North, J., *Re Consort Deep Level Co*, 66 L. J. Ch. 122; a ruling unaffected by the reversal of the decision, 1897, 1 Ch. 575; 66 L. J. Ch. 297).

ON AND AROUND.—*V.* AROUND.

ON AND FROM.—*V.* ON.

ON ATTAINING.—*V.* ATTAIN.

ON BEHALF.—If an Agreement be made "On behalf" of A., he alone is entitled to its benefit and liable on its obligations; the actual signatory, however, impliedly warrants that he has authority to sign and is liable on that warranty if he was not authorized (*Lewis* v. *Nicholson*, 18 Q. B. 503; 21 L. J. Q. B. 311). *Cp*, FOR.

Where security is to be given "On behalf" of a person,—*e.g.* for costs that may become payable by an Election Petitioner, s. 6 (4), Parliamentary Elections Act, 1868, 31 & 32 V. c. 125,—it cannot be given by the person himself (*Pease* v. *Norwood*, L. R. 4 C. P. 235; 38 L. J. C. P. 161). *V.* INSUFFICIENT.

"For and on behalf"; *V.* FOR.

A contract by a member of a body "on behalf of" the body, is joint, and the member signing cannot alone sue on it (*Lucas* v. *Beale*, 20 L. J. C. P. 134; 10 C. B. 739).

Cp, ON THE ACCOUNT.

ON BOARD.—*V.* FIRE ON BOARD: F. O. B.: CLEARANCE.

A Bequest of Goods "on Board" a ship, may pass goods on board at the date of the Will, but removed thence at the testator's death (*Chapman* v. *Hart*, 1 Ves. sen. 271).

Seaman "employed or engaged on Board"; *V.* SEAMAN.

V. TAKE ON BOARD.

ON CONDITION.—*V.* IF.

ON CONVICTION.—*V.* RECOVERY.

ON DEMAND.—"In general, where money is payable *on demand*, the law holds that the debtor is bound to find out the creditor and pay

Digitized by Google

him" (per Blackburn, J., *Toms* v. *Wilson*, 32 L. J. Q. B. 37: *Va, Jackson* v. *Ogg*, Johns. 397); and this the debtor is liable to do at once. Therefore a Promissory Note payable "on demand" is payable the instant the note is made; no demand is necessary prior to bringing an action, and the Statute of Limitations will run from its date (*Norton* v. *Ellam*, 6 L. J. Ex. 121; 2 M. & W. 461: *Va, Maltby* v. *Murrells*, 29 L. J. Ex. 377: *Re Bethell*, 34 Ch. D. 566: *Re George*, 59 L. J. Ch. 709; 44 Ch. D. 627; 38 W. R. 617). *Vf*, MATURE.

But the reason of the above rule seems (in some measure, at least) to come from the Law Merchant by which "the debtor is bound to have the money ready on demand" (per Blackburn, J., *Brighty* v. *Norton*, 32 L. J. Q. B. 40). The rule is otherwise "on a promise to pay a *collateral* sum *On Request*, for there an actual request ought to be made before action brought" (*Birks* v. *Trippet*, 1 Saund. 33); and, therefore, on a joint and several covenant by a principal debtor and his surety to pay "on Demand," the Statute of Limitations does not run, quà the surety, until demand on him (*Brown* v. *Brown*, 1893, 2 Ch. 300; 62 L. J. Ch. 695; 69 L. T. 12; 41 W. R. 440).

So, in cases other than debts, the general rule is, that where a right or duty arises on demand of something else, an actual demand must be made and a reasonable time given for compliance before that right or duty will arise. Thus if, by a Bill of Sale or other document, a power to seize goods be given, if the grantor or other donor of the power does not "immediately upon demand" pay a certain sum, such power will not arise until demand made and subsequent default be made after a reasonable time given to get the money and make the payment; and the word "IMMEDIATELY," or such a phrase as "INSTANTLY on demand, and without delay on any pretence whatsoever," will not alter that construction (*Toms* v. *Wilson*, 32 L. J. Q. B. 33, 382; 4 B. & S. 442; 11 W. R. 117: *Brighty* v. *Norton*, 32 L. J. Q. B. 38; 3 B. & S. 305; 11 W. R. 167: *Massey* v. *Sladen*, 38 L. J. Ex. 34; L. R. 4 Ex. 13: *Moore* v. *Shelley*, 52 L. J. P. C. 35; 8 App. Ca. 285; 48 L. T. 918); and a premature seizure will give rise to a claim for substantial damages (*Massey* v. *Sladen*, and *Moore* v. *Shelley*, sup). *Vf*, STIPULATED.

So, though, on a Receiving Order being made against an execution debtor, the Sheriff has to deliver goods seized to the Official Receiver, yet he has only to do so "On Request," s. 11 (1), Bankry Act, 1890 (replacing s. 46 (1), Bankry Act, 1883), and, until request, there is no duty on the sheriff to so deliver the goods and he must proceed to sell (*Woolford's Trustee* v. *Levy*, 1892, 1 Q. B. 772; 61 L. J. Q. B. 546; 66 L. T. 812; 40 W. R. 483); *Vthc* applied *Re Thomas*, 1899, 1 Q. B. 460, cited EXECUTION.

So, even in the case of a Promissory Note, if it be payable at a certain time *after* demand, an actual demand must be made before action brought, and the Statute of Limitations will only run from such demand (*Thorpe*

Digitized by Google

v. *Booth*, Ry. & Moo. 388); and even when payable *on* demand, a Bill or Note (not expressly giving interest on its face) only carries INTEREST "from the time of presentment for payment" (s. 57 (1 *b*), Bills of Ex. Act, 1882, consolidating cases cited Byles, 445). *Vf*, as to when Bills and Notes are payable "On Demand," ss. 10, 86, 89, Bills of Ex. Act, 1882.

A Bill of Sale as a security for money payable "on Demand," is bad, because it is not "in accordance with the Form" prescribed by s. 9, Bills of Sale Act, 1882 (*Melville* v. *Stringer*, *Hetherington* v. *Groome*, and *Hughes* v. *Little*, cited IN ACCORDANCE WITH THE FORM. *Vf*. STIPULATED).

V. AT SIGHT: IMMEDIATELY.

If a power of distress be given on default of payment of rent "if demanded," the demand need not be accompanied with the formalities required for re-entry on non-payment of rent (*Maund's Case*, 7 Rep. 28 b); and a like rule obtains where such a power is made conditional on the rent being "legally demanded" (*Thorp* v. *Hart*, 30 S. J. 469). From the citation, in the judgment in the last case, of Bac. Ab. (Rent, I), it would seem doubtful whether a power of distress may not be exercised without a prior demand even though the Lease makes it conditional on a demand being made.

V. LAWFULLY DEMANDED.

Officer distraining for Rates to return overplus "On Demand," s. 2, 27 G. 2, c. 20, implies that a demand must, before action, be made by the plt himself or by some person whose authority is fairly notified to the officer (*Charinton* v. *Johnson*, 14 L. J. Ex. 299; 13 M. & W. 856).

Note to Bearer on Demand; *V*. BEARER.

ON DUTCH TERMS.—Marine Policy "to pay all claims and losses on Dutch terms, and according to statement made up by official dispacheur in Holland"; *V*. *Hendricks* v. *Australasian Insrce*, 43 L. J. C. P. 188; L. R. 9 C. P. 460.

ON GOODS.—In a Marine Insurance; *V*. *Mackenzie* v. *Whitworth*, cited GOODS.

ON, IN, OR ABOUT.—*V*. IN OR ABOUT.

ON MARRIAGE.—Read "at 21 or marriage" (*Lang* v. *Pugh*, 1 Y. & C. Ch. 718: *Vf*, 1 Jarm. 488, and cases there cited).

ON OR BEFORE.—When a thing has to be done "on or before" a day, it is sufficient to say it was not done "on" the day (per Holt, C. J., *Harman* v. *Owden*, Raym. Ld, 620: *Sv*, *Wattnough* v. *Holgate*, 3 Lev. 293).

An obligation to pay "on or before" a named day at a stated place, is not discharged by tender of the money at the place before the day, if the obligee be not there to receive it (*Hawley* v. *Simpson*, Cro. Eliz. 14).

Digitized by Google

A stipulation in a Charter-Party that the ship shall sail "on or before" a named day, is, probably, of the ESSENCE of the contract; *secus*, if the phrase is "with all despatch," or "IMMEDIATELY," for then a certain amount of elasticity is introduced, and the remedy for a breach is damages (*Forest Oak S. S. Co* v. *Richard*, 5 Com. Ca. 105). *Vf*, CONVENIENT SPEED.

V. STIPULATED.

ON OR NEAR.—The weighing of coal "on or near" whence it is brought, s. 22 (1), 52 & 53 V. c. 21, is to be at the seller's premises previously to the coal being sent out, and not on delivery (*Knowles* v. *Sinclair*, cited CORRECT: *Svthc*, *Edwards* v. *Purnell*, 1899, 1 Q. B. 449; 68 L. J. Q. B. 272; 79 L. T. 737; 47 W. R. 380).

V. NEAR.

ON PASSAGE.—"Now on Passage"; *V.* NOW.

ON PAYMENT.—"The meaning of the words 'on Payment of FREIGHT,' in Bills of Lading and Charter Parties, is not that freight is to be paid either immediately before or immediately after the delivery of the cargo, but that the two acts are to be concurrent, and the Master may demand payment of the freight each day on the cargo delivered" (1 Maude & P. 153, citing *Black* v. *Rose*, 2 Moore P. C. N. S. 277: *Paynter* v. *James*, L. R. 2 C. P. 348). *V.* PAYING.

Further Credit "on your paying INTEREST"; held, that payment of interest was not a Condition Precedent to the further credit (*Dodd* v. *Ponsford*, 6 C. B. N. S. 324).

V. PAYMENT.

ON PRESENTATION.—*V.* PRESENTATION.

ON PROFIT ON CHARTER.—*V.* PROFIT.

ON RECOVERY.—*V.* RECOVERY.

ON REQUEST.—*V.* ON DEMAND.

ON SALE.—"On Sale on Trial," "On Sale or Return"; *V.* SALE ON TRIAL.

"Conveyance on Sale"; *V.* CONVEYANCE.

ON SHORE.—"On Shore," s. 15, 24 G. 3, c. 47, means, "on Land"; so, that an Excise Officer seizing smuggled goods at an inland place (at any distance from the Sea) was within the statutory protection (*R.* v. *Brady*, 1 B. & P. 187). *Cp*, ON THE SHORE.

ON THE ACCOUNT.—"On the Account of his master or employer," s. 68, 24 & 25 V. c. 96; *V. R.* v. *Cullum*, 28 L. T. 571: *R.* v.

Digitized by Google

Gale, 46 L. J. M. C. 134; 2 Q. B. D. 143; 41 J. P. 119: *R.* v. *Beaumont*, 2 W. R. 235; Dears. 270, with *whc cp*, *R.* v. *Thorpe*, 6 W. R. 502; 8 Cox C. C. 29.

Cp, On Behalf.

ON THE BODY.—*V.* Of the Body.

ON THE CONTRARY.—*V.* But: Contrary.

ON THE DEATH.—*V.* Death.

"Property passing on the Death"; *V.* Passing.

ON THE EXECUTION.—*V.* Execution.

ON THE FOOTING.—An Order or Terms of Arrangement "on the Footing, and by way of Continuation, of the old account," means, "on the same principle as"; "on the Footing of," is not equivalent to "from the Foot of" (per Lindley, L. J., *Wilding* v. *Sanderson*, 66 L. J. Ch. 686; 1897, 2 Ch. 534).

ON THE HIGH SEAS.—*V.* High Seas.

ON THE MERITS.—*V.* Merits.

ON THE PREMISES.—A Beer Retailer, having only an Off License, placed a bench just outside his street door and his customers sat on the bench whilst drinking the ale he supplied; held, that the ale was sold "to be consumed on the premises" (*Cross* v. *Watts*, 32 L. J. M. C. 73; 13 C. B. N. S. 239; 27 J. P. 7, 18); but ale handed through a window to a customer who called for it and drank part of it whilst standing on the highway, was held not to have been sold "to be consumed on the premises," though he drank the remainder of the ale whilst sitting on the window-sill of the house (*Deal* v. *Schofield*, 37 L. J. M. C. 15; L. R. 3 Q. B. 8; 8 B. & S. 760; 31 J. P. 724). *Sv* now hereon, s. 6, 35 & 36 V. c. 94.

ON THE SHORE.—The phrase "on the shore of any sea or tidal water" in the United Kingdom, s. 458, Mer Shipping Act, 1854, means, according to its nautical interpretation, near the shore, not hard and fast on the shore (*The Leda*, Swabey, 40: *The Mac*, 51 L. J. P. D. & A. 81): the phrase in s. 546, Mer Shipping Act, 1894, is "on or near the *Coasts* of the United Kingdom, or any tidal water within the limits of the U. K." *Cp*, On Shore.

V. Kelp-shore.

ONCE.—"If a statute requires some act to be done periodically and recurrently once in a certain space of time,—*e.g.* the inspection of the boilers of steamers 'once in 6 months,'—it would, probably, be

Digitized by Google

understood to mean that not more than six months should elapse between the two acts. It would not be satisfied by dividing the year into two equal periods and doing the act once in the beginning of the first, and once at the end of the second, period (*Virginia and Maryland Steam Nav. Co* v. *U. S.*, Taney & Campbell's Maryland Rep. 418)." Maxwell, 423.

V. At once.

ONE. — "It has often been laid down that if a devise be to '*one*,' of the sons of J. S. (*he having several sons*) the devise is void for uncertainty, and cannot be made good" (1 Jarm. 370: *So*, Watson Eq. 1298). So, an appointment of "either one" of testator's three sisters as sole executrix (*Re Blackwell*, 46 L. J. P. D. & A. 29; 2 P. D. 72), or of "any two" of his sons as exors (*Re Baylis*, 31 L. J. P. M. & A. 119; 2 Sw. & Tr. 613), is void.

But a devise "to *one* of my cousin A.'s daughters that shall marry with a Norton within 15 years," has been held to mean the daughter who shall *first* marry a Norton, and consequently a good devise (*Bate* v. *Amherst*, Raym. T. 82: *Vth*, *Smithwick* v. *Hayden*, 19 L. R. Ir. 497); and in *Ashburner* v. *Wilson* (19 L. J. Ch. 330; 17 Sim. 204), a remainder, after certain estates for life, "to *a* son of James Wilson, in marriage, his heirs and assigns," was construed as giving an estate in fee to the first-born son of James Wilson. *Vf*, 1 Jarm. 433, *n* (*x*).

"If there be *one* such child"; held, to mean "if there be *no* such child" (*Moore* v. *Beagley*, 33 L. T. 198).

If "either one" should die; *V.* Either.

"When an Act of Parliament gives Power or Interest to one person certain, by that express designation of *one*, all others are excluded, although such statute be in the affirmative" (*Foster's Case*, 11 Rep. 59 a; *Vf*, Ib. 64).

V. A: Any.

"Where a statute appoints a conviction to be 'on the Oath of one Witness,' this ought not to be by the single oath of the Informer; for if the same person shall be allowed to be both prosecutor and witness, it would induce profligate persons to commit perjury for the sake of the reward" (Dwar. 672, citing 2 Raym. Ld, 1545). *Vf*, Witness.

"By one *Broker* or more," 57 G. 3, c. 93, Sch; here the singular number does not repeal s. 2, 2 W. & M. c. 5, requiring the employment of two sworn appraisers (*Allen* v. *Flicker*, 9 L. J. Q. B. 42; 10 A. & E. 640): *So*, as to the latter Act, 35 & 36 V. c. 92, s. 13.

"One of Her Majesty's Principal *Secretaries of State*," is sometimes interpreted for Ireland to mean, "the Chief Secretary of the Lord Lieutenant of Ireland," *e.g.* 35 & 36 V. c. 33, Sch 1, s. 66; 35 & 36 V. c. 60, s. 28 (8).

"One of Her Majesty's *Ships*," quà 52 & 53 V. c. 73, "includes, any

Digitized by Google

Vessel being under the command of an Officer of Her Majesty's Navy on full pay" (s. 4).

"One Year's *Stipend*," quà Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82, means, "the sum which, on an average of the 3 preceding years, the Minister has received in name of Stipend out of the Teinds of the parish" (s. 9).

ONE ACCIDENT.—"One ACCIDENT,"—*e.g.* in an Accident Policy limiting the amount of insurance against personal injury in respect of "any One Accident,"—does not mean one cause producing an accident irrespective of the number of persons injured by the occurrence; on the contrary, where several persons are injured by one occurrence there is an Accident to each (*South Staffordshire Tramways Co* v. *Sickness and Accident Assrce*, 1891, 1 Q. B. 402; 60 L. J. Q. B. 260; 64 L. T. 279).

ONE BUILDING.—The Lowther Arcade was not "One Building only," within the def of DRAIN in s. 250, Metrop Man. Act, 1855 (*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; 60 J. P. 52). *Cp*, ONE MESSUAGE: A.

ONE CAUSE OF ACTION.—*V.* CAUSE OF ACTION.

ONE DAY.—Notice of Taxation given before 9 o'clock, P. M. of one day for the day following at 12, held "One Day's Notice" within the Rule of Trinity Term, 1 W. 4, s. 12 (*Edmunds* v. *Cates*, 4 M. & W. 66). *V.* DAY.

ONE INVESTMENT.—A direction in a Co's Articles that not more than a stated proportion of Capital "shall be invested in *any one* Stock, Share, or Obligation," is not disregarded by investing less than that proportion in each of two classes of Stocks, &c, of the same Undertaking but the aggregate of which exceeds the proportion (*Re Imperial and Foreign Investment Corp*, 9 Times Rep. 69).

ONE MAN.—Craft UNDER-WAY in Thames to have "at least one Competent Man" on board, and, if above 50 tons burden, to have "one Man in ADDITION"; "one Man" in the latter phrase, means, one Competent Man in addition, so that if the craft is above 50 tons burden she must have, at least, two Competent Men,—a man and a boy will not suffice (*Perkins* v. *Gingell*, 50 J. P. 277: *Goldsmith* v. *Slattery*, 63 L. T. 273).

ONE MESSUAGE.—*V. Rogers* v. *Hosegood*, cited HOUSE. *Cp*, ONE BUILDING.

ONE MONTH.—"One month after"; *V. Blunt* v. *Heslop*, cited AFTER.

Digitized by Google

ONE OCCUPATION. — Building constructed for One Occupation; *V.* CONSTRUCTED.

ONE TIME. — A covenant to settle property which may "at any one time" be acquired, means, "from one and the same source" (Elph. 526, citing *Hood v. Franklin*, L. R. 16 Eq. 496; 21 W. R. 724: *Re Hooper*, 13 W. R. 710; 11 Jur. N. S. 479). But it is added, "In neither of these cases had the wife any interest in either fund at the date of the Settlement. But in *Mackenzie's Settlement* (2 Ch. 345; 36 L. J. Ch. 320), where the wife was entitled at the date of the Settlement to two different reversions which fell into possession at the same instant, it was held that, in estimating the *value* for the purpose of the covenant, the aggregate value of the two shares, and not the value of each share separately, must be taken." So in *St. Leger* v. *Magniac* (W. N. (80) 183), it was held that "at one time" included sums of money coming from different sources, but falling into possession at the same time, *e.g.* the death of the wife's mother. *Cp, Bower* v. *Smith*, cited LESS.

The Tippling Act, 24 G. 2, c. 40, s. 12 (as amended by 25 & 26 V. c. 38), prevents the recovery of sums under 20*s.* for "SPIRITUOUS LIQUORS" had "at one time," unless the same are "to be consumed elsewhere than on the premises where sold, and delivered at the residence of the purchaser thereof in quantities not less at any one time than a reputed quart"; but that minimum amount may be made up of the prices of two or more lots of spirits had at the same time (*Owens* v. *Porter*, 4 C. & P. 367). *Vf,* ITEM. *Cp,* SITTING.

ONEROUS. — "Onerous Act," "Onerous Covenant," s. 55 (1), Bankry Act, 1883; *V. Re Maughan, Ex p. Monkhouse*, 54 L. J. Q. B. 128; 14 Q. B. D. 956: *Re Cock, Ex p. Shilson*, 57 L. J. Q. B. 169; 20 Q. B. D. 343; 36 W. R. 187: *Re Gee*, 59 L. J. Q. B. 16; 24 Q. B. D. 65. *Vf,* INTEREST.

ONLY. — ACCEPTANCE of Bill of Ex "in Favor of A. only"; *V. Meyer* v. *Decroix & Co*, cited FAVOUR.

ACCUMULATION "for the purchase of Land only," 55 & 56 V. c. 58; *V. Re Danson*, cited LAND.

"ACKNOWLEDGMENT or Promise by Words only," s. 1, 9 G. 4, c. 14; *V. Bevan* v. *Gething*, 3 Q. B. 740; 12 L. J. Q. B. 37.

"Costs only"; *V.* COSTS.

"LAND used only as a Canal or Towing-path for the same, or as a Railway," s. 211 (1 *b*), P. H. Act, 1875, — "only" governs both members of that phrase (per Wills, J., *Swansea Improvements Co* v. *Swansea*, cited RAILWAY). *V.* PROPERTY OTHER THAN LAND.

Actions "where the plaintiff *seeks only* to recover a debt or liquidated demand," R. 6, Ord. 3, R. S. C.; *V.* Ann. Pr.

"Eldest or only *Son*"; *V.* ELDEST.

Digitized by Google

"In *trust* only for E. W. (a married woman), her exs, ads, and assns," is not a trust for her SEPARATE USE (*Spirett* v. *Willows*, 34 L. J. Ch. 365; 1 Ch. 520): *Sc*, *Re Molyneux*, cited SOLE.

ONUS. — The Onus Probandi, or Burden of Proof, "lies on the party who substantially asserts the affirmative of the issue. This rule is in the Roman law thus expressed, *Ei incumbit probatio, qui dicit, non qui negat*" (Taylor on Evidence, s. 364). "The best tests for ascertaining on whom the burthen of proof lies are, to consider first which party would succeed if no evidence were given on either side; and, secondly, what would be the effect of striking out of the record the allegation to be proved. The onus lies on whichever party would fail, if either of these steps were pursued" (Ib. s. 365). *Vh*, Ib. Part 2, ch. 3: Best on Evidence, Book 3, ch. 2.

V. BURDEN.

OPEN. — An Open V. & P. *Contract*, is one where the respective rights of the parties are not interfered with by express stipulation.

"In Open COURT," s. 5 (1 *a*), Debtors Act, 1869, means, "what any one would take to be a Court, with the usual accompaniments of the jury-box, the witness-box, the judge's seat, and seats for solicitors counsel and others" (per Coleridge, C. J.), and does not include the private room of a County Court Judge, though often used by him for hearing causes (*Kenyon* v. *Eastwood*, 57 L. J. Q. B. 455).

"Open Court," s. 19, 11 & 12 V. c. 42, means, that the room where Justices are sitting to take Examinations and Statement under the two preceding sections "is not to be deemed an Open Court, so that it cannot be closed; but if it is not closed then it is 'open'" (per Esher, M. R., *Kimber* v. *Press Assn*, 1893, 1 Q. B. 65; 62 L. J. Q. B. 154).

An "Open COVER," is a proposal to insure before the goods to be insured are shipped (*Bhugwandass* v. *Netherlands Insrce*, 14 App. Ca. 83; L. R. 16 Ind. App. 60): for examples, *V. Home Marine Insrce* v. *Smith*, cited SHIP: *Royal Ex. Assrce* v. *Tod*, 8 Times Rep. 669.

Open Fields; *V.* COMMON FIELDS: COMMON LAND.

Open Market; *V.* MARKET OVERT: PRINCIPAL VALUE.

Open MINE; a TENANT FOR LIFE, though not expressly made unimpeachable for Waste, may work an Open Mine for his own benefit (*Re Ridge*, 55 L. J. Ch. 268; 31 Ch. D. 508: per Bowen, L. J., *Dashwood* v. *Magniac*, 1891, 3 Ch. 360; 60 L. J. Ch. 819); — A Mine may be "open" though it has not been worked for 20 or 30 years (*Bagot* v. *Bagot*, 33 L. J. Ch. 116; 32 Bea. 509), or has temporarily become "dormant" (*Greville-Nugent* v. *Mackenzie*, 1900, A. C. 83; 69 L. J. P. C. 1; 81 L. T. 793), and whether opened by the Settlor or Testator, or not, is immaterial (*Ib.*). "When a Mine or QUARRY is once 'open,' — so that the owner of an estate impeachable for waste may work it, — I do not consider that the sinking a new pit on the same vein, or breaking ground in a new place

Digitized by Google

on the same rock, is, necessarily, the 'opening' of a New Mine or a New Quarry" (per Ld Selborne, *Elias* v. *Snowdon Co*, 48 L. J. Ch. 818; 4 App. Ca. 454, citing *Clavering* v. *Clavering*, 2 P. Wms. 388: *Bagot* v. *Bagot*, sup: *Cowley* v. *Wellesley*, 35 Bea. 635; L. R. 1 Eq. 656). But that rule does not apply where two properties, owned by the same owner and underneath which the same vein runs, are separated from one another by land belonging to a different owner; in such a case, the Court, in directing (under S. L. Act, 1882) a Lease of the property which has not been worked, will direct ¾ths of the rent to be set aside and invested under s. 4 (iii), Settled Estates Act, 1877 (*Re Maynard*, 1899, 2 Ch. 347; 68 L. J. Ch. 609; 81 L. T. 163; 48 W. R. 60): *Vf*, *Re Chaytor*, cited IMPEACHABLE: *Campbell* v. *Wardlaw*, 8 App. Ca. 641.

An "Open *Place*," for the sale of goods, means, "open" to the PUBLIC, not to the sky (per Bowen, arg. *Hooper* v. *Kenshole*, 46 L. J. M. C. 162; 2 Q. B. D. 130). *V*. KEEP OPEN.

"Open and Public Place"; *V*. PLACE.

Open Policy; *V*. POLICY.

An Overt or (as otherwise called) an open POUND, is "called 'open' because the owner may give his cattle meat and drinke without trespasse to any other, and then the cattle must be sustained at the perill of the owner" (Co. Litt. 47 b): *Sv*, IMPOUND OR CONFINE. *Cp*, MARKET OVERT.

By "'Open PRAYER,' in and throughout this Act, is meant, that Prayer which is for others to come unto or hear, either in Common Churches or Private Chapels or Oratories, commonly called the Service of the Church" (s. 1, Act of Uniformity of Service, 2 & 3 Edw. 6, c. 1). *Vf*, PUBLIC READING.

Open SEA; *V*. TERRITORIAL WATERS.

"Open SHOP"; *V*. KEEP OPEN.

"Open *Space*," quà "The Open Spaces Acts, 1877 to 1890" (*V*. Sch 2, Short Titles Act, 1896), means, "any land (whether inclosed or uninclosed) which is not built on, *and* which is laid out as a GARDEN, or is used for purposes of RECREATION, or lies waste and unoccupied" (s. 1, 44 & 45 V. c. 34, the further words of the def therein being repealed by 50 & 51 V. c. 32); but if not more than a twentieth part of an area of land is covered with building, the land may be an "Open Space" (s. 7, 53 & 54 V. c. 15). *V*. "Burial Ground," sub BURIAL: PARK.

A covenant that a "Garden or Open Space" shall be kept "open *and unbuilt upon*," means, that the surface shall not be built upon, — a building excavated below the surface is not prohibited (*Graham* v. *Newcastle-upon-Tyne*, 67 L. T. 260, 790; 9 Times Rep. 130).

"Open *Water*" describes a state of things the opposite of ICE-BOUND, and means, Water so far open as to allow the ship to move away, or, quà SALVAGE, to allow of operations (*Re Sunderland S. S. Co and North of England S. S. Insrce*, 10 Times Rep. 663; 11 Ib. 106). *V*. F. O. W.

Digitized by Google

To "open, keep, or use," a place for Betting; *V.* OPENED: USE: PLACE.

"Open for Inspection"; *V.* INSPECTION.

To "open" LICENSED PREMISES for the Sale of drink; *V. Cates* v. *South*, 1 L. T. 365; 23 J. P. 823: *Overton* v. *Hunter*, 1 L. T. 366; 23 J. P. 808: 37 & 38 V. c. 49, s. 30. There is such an "opening" when the premises are opened for carrying out a material part of the transaction of Sale, *e.g.* delivering the drink (*Saunders* v. *Thorney*, 62 J. P. 404; 78 L. T. 627). *V.* KEEP OPEN.

Power to "open *and break up* Soil and Pavement of Streets, Bridges," &c; *V. Glasgow* v. *Glasgow & S. W. Ry*, 1895, A. C. 376; 64 L. J. P. C. 171; 72 L. T. 809; 59 J. P. 788.

Factory not to be "open for Traffic on Sunday"; *V.* TRAFFIC.

V. OPENLY: PUBLIC TRAFFIC.

OPENED. — PLACE "opened, kept, or used," for illegal betting, s. 1, 16 & 17 V. c. 119; *V. R.* v. *Cook*, 13 Q. B. D. 377: *Reid* v. *Wilson*, cited KEEPER: KEEP: USE.

V. OPEN: DISCOVERED.

OPENING. — A bequest for "Opening New Schools" is not against the Mortmain Acts (*Crafton* v. *Frith*, 20 L. J. Ch. 198).

OPENLY. — Where a statute directs that certain commodities shall be sold "openly and publicly," every one is entitled to become a buyer (*Eagleton* v. *East India Co*, 3 B. & P. 55).

V. OPEN.

OPERA. — *V.* DRAMATIC.

OPERATION. — If a Company is not dissolved, it is "in Operation" within s. 7 (5), Comp Act, 1880, although it is not carrying on business (*Re Financial Corporation*, 27 S. J. 199). *Vh, Re Outlay Assrce*, 56 L. J. Ch. 448; 34 Ch. D. 479; 56 L. T. 477; 35 W. R. 343.

"By operation of Law"; *V.* BY LAW: DEVOLUTION: MERGER: SURRENDER.

OPERATIVE. — Operative Machinery; *V.* MACHINERY.

OPINION. — "In the Opinion of the Court or a Judge," s. 57, Jud. Act, 1873, means, according to the *judgment* of the Court or Judge, which judgment is subject to appeal (*Ormerod* v. *Todmorden Co*, 51 L. J. Q. B. 348; 8 Q. B. D. 664). So, a decision that it is "desirable" to try without a jury under R. 4, Ord. 36, R. S. C., is appealable (*Re Martin*, 51 L. J. Ch. 683; 20 Ch. D. 365, explaining jdgmt of James, L. J., *Ruston* v. *Tobin*, 10 Ch. D. 558, 565, and approving *Golding* v. *Wharton Co*, 1 Q. B. D. 374). *Cp*, JUDGMENT: ORDER.

Digitized by Google

Where a statutory power is given, — *e.g.* to Quarter Sessions, in s. 29, Alehouse Act, 1828, — to order such Costs as "in the Opinion of" the Court is proper, that means that, the Court must exercise its own opinion, and cannot make an Order in blank and delegate it to the Taxing Master to tax and then fill in the amount of costs allowed by him on taxation (*R.* v. *Winder*, 1900, 2 Q. B. 666; 69 L. J. Q. B. 729; 83 L. T. 171; 48 W. R. 605). *Cp,* INCURRED: REASONABLE COSTS: SUM ADJUDGED.

The "Opinion" of a Bishop that proceedings should not be taken under the Public Worship Regulation Act, 1874, 37 & 38 V. c. 85, has to be stated with "the Reason of his Opinion" (s. 9); this does not deprive him of an absolute discretion; his Reasons cannot be examined on an application for a Mandamus (*R.* v. *London, Bp.*, 24 Q. B. D. 213; 59 L. J. Q. B. 160: *Allcroft* v. *London, Bp.*, 1891, A. C. 666; 61 L. J. Q. B. 62; 65 L. T. 92; 55 J. P. 773. *Cp, Julius* v. *Oxford, Bp.*, 49 L. J. Q. B. 577; 5 App. Ca. 214; 42 L. T. 546; 28 W. R. 726). "If a man is to form an Opinion and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him" (per Ld Bramwell, *Allcroft* v. *London, Bp.*, sup). *Vf,* CIRCUMSTANCES.

V. DISCRETION.

"Religious Opinions"; *V.* RELIGIOUS.

OPPORTUNITY. — A prisoner, present when a statement is taken down against him under s. 6, 30 & 31 V. c. 35, and who is not in any way hindered from cross-examining the witness, has "full opportunity" to do so within the meaning of the section, even though he be not told he may do so (*R.* v. *Shurmer*, 55 L. J. M. C. 153; 17 Q. B. D. 323; 55 L. T. 126; 34 W. R. 656; 50 J. P. 743).

OPPOSING. — Claims by rival Agents for Commission for selling or letting the same property, are not an Interpleader Matter, and are not "Opposing or Conflicting Claims" within R. 13, Ord. 27, Co. Co. R., nor "Adverse Claims" within R. 1 (*a*), Ord. 57, R. S. C. (*Greatorex* v. *Shackle*, 1895, 2 Q. B. 249; 64 L. J. Q. B. 634; 72 L. T. 897).

OPPOSITE. — A. conveyed to B. a piece of land with a house (No. 7, Windsor Terrace) on the west side of a road, and covenanted that no building (except monuments and tombs) should be erected on any part of the land belonging to him (A.) "lying on the east side of the said Terrace *and opposite* to the plot of land thereby conveyed"; held, that the covenant applied only to that part of A.'s land which was "opposite" to, and of the same width as, — *i.e.* "immediately opposite," — the piece conveyed (*Patching* v. *Dubbins*, 23 L. J. Ch. 45; Kay, 1). Wood, V. C., in his affirmed jdgmt, said, — "The word 'Opposite' is not, *ex vi termini*, necessarily confined to land precisely opposite, between parallel lines drawn from the sides of the plot conveyed. If the words had been

Digitized by Google

'the land opposite' only, it would have been merely a word of description, showing the particular position of the land in question."

Signature "opposite to the End of the Will," s. 1, 15 & 16 V. c. 24; *V. Royle* v. *Harris*, 1895, P. 163; 64 L. J. P. D. & A. 65; 72 L. T. 474; 43 W. R. 352: *Vf*, FOOT.

OPPOSITE PARTY.—Even without an Issue between them, a Party on the other side of the Record is an "Opposite Party" to an Applicant for Interrogatories under R. 1, Ord. 31, R. S. C. (*Spokes* v. *Grosvenor Hotel Co*, 1897, 2 Q. B. 124; 66 L. J. Q. B. 598; 76 L. T. 677; 45 W. R. 545); so, the phrase extends to a Party having an interest in the action antagonistic to the applicant although ranged with him as a co-plt or co-deft (*Molloy* v. *Kilby*, inf: *Shaw* v. *Smith*, cited PARTY: *Alcoy* v. *Greenhill*, 74 L. T. 345).

A Third-party, who has obtained leave to resist the plaintiff's claim under R. 53, Ord. 16, R. S. C., is an "Opposite Party" to the plaintiff within R. 1, Ord. 31, and is liable to be interrogated (*MacAllister* v. *Rochester, Bp.*, 49 L. J. C. P. 443; 5 C. P. D. 194: *Eden* v. *Weardale Co*, 56 L. J. Ch. 178; 34 Ch. D. 223; 35 W. R. 235); but as to when he becomes a "Defendant," within such Rule, so as to be entitled to deliver Interrogatories, *V.* DEFENDANT.

A defendant to a Counter-claim, who was not a party to the original action, is not an "Opposite Party" to his co-defendant to the Counter-claim who was the plaintiff in the original action (*Molloy* v. *Kilby*, 15 Ch. D. 162; 29 W. R. 127: *Marshall* v. *Langley*, W. N. (89) 222). *Vf*, PARTY.

A Married-woman deft who sets up a Counter-claim is, quà that Claim, an "Opposite Party," within s. 2, M. W. P. Act, 1893 (*Hood-Barrs* v. *Cathcart*, 1895, 1 Q. B. 873; 64 L. J. Q. B. 520; 72 L. T. 427; 43 W. R. 560). *V.* INSTITUTED.

OPPOSITION FERRY.—*V. Dixon* v. *Curwen*, W. N. (77) 4. *V.* FERRY.

OPPRESSION.—*V.* EXACTION: EXTORTION.

OPPRESSIVE.—To write of a Poor Law Guardian that he is guilty of "Oppressive Conduct" to the paupers, is Libel (*Woodard* v. *Dowsing*, 2 M. & R. 74).

OPTION.—*V.* FIRST REFUSAL: SALE ON TRIAL.

When an Option has been declared it is irrevocable; *e.g.* where goods are to be delivered or ready for delivery "at Seller's Option" in August *or* September and he gives notice electing August, the Option has been exercised and the contract must be completed in August (*Gath* v. *Lees*, 3 H. & C. 558).

Digitized by Google

A Bankrupt's Option passes to the trustee of his estate (*Mason* v. *Schuppisser*, cited PERSON INTERESTED).

V. CASH WITH OPTION OF BILL.

Option of Charterer as to Port of Discharge; *V. Bulman* v. *Fenwick*, cited STRIKE.

Option by Hire-Purchase agreement; *V. Helby* v. *Matthews*, cited BUY.

Lease "with the Option of Renewal"; *V.* RENEWAL.

As to the person *by whom* an Alternative, or an Option, is to be exercised; *V.* OR, p. 1347.

Option in a Lease to purchase the Freehold, by whom exerciseable; *V. Friary* v. *Singleton*, cited ASSIGNS.

Option to purchase Land, as to *when* exerciseable; *V.* PERPETUITY: *Dibbins* v. *Dibbins*, 1896, 2 Ch. 348; 65 L. J. Ch. 724; following *Holland* v. *King*, 6 C. B. 727; and distinguishing *Bolton* v. *Lambert*, 58 L. J. Ch. 425; 41 Ch. D. 295.

"Previous Notice" for; *V.* PREVIOUS.

As to effect of a breach of the contract containing Option; *V. Rafferty* v. *Schofield*, 1897, 1 Ch. 937; 66 L. J. Ch. 448.

"At the Option of the TENANT FOR LIFE," S. L. Act, 1882, ss. 22, 33, means, "at his direction," and not merely "with his consent" (*Re Gee*, 64 L. J. Ch. 606: *Re Mundy*, 1891, 1 Ch. 399; 60 L. J. Ch. 273; *Vthlc*, *Re Byng*, 1892, 2 Ch. 219; 61 L. J. Ch. 511). *Vh, Re Fisher and Grazebrook*, 1898, 2 Ch. 660; 67 L. J. Ch. 613: *Re Tesseyman*, W. N. (97) 168; 77 L. T. 484.

A Yearly Hiring with an "Option" to one of the parties to require its continuance for a stated number of years, does not enable that party to determine the hiring at will; his right is to insist on the hiring continuing for the stated time, or to determine it (probably, by giving a reasonable notice) at the end of a year of the hiring (*Down* v. *Pinto*, 23 L. J. Ex. 103; 9 Ex. 327).

OR.—"Or" is, *primâ facie*, an Alternative word (Litt. s. 732: per Parke, B., *Elliott* v. *Turner*, 15 L. J. C. P. 49; 2 C. B. 446). It is, however, "not always disjunctive. It is sometimes Interpretative, or Expository, of the former word; '*balivam, vel jurisdictionem*.' See stat. Marlbridge" (Dwar. 689: *Vf, Hills* v. *London Gas Co*, 5 H. & N. 312; 29 L. J. Ex. 409: *Bristol W. W. Co* v. *Bristol*, cited STREET. *Sv, Hills* v. *Evans*, 31 L. J. Ch. 466). In the power in the Infant Settlements Act, 1855, 18 & 19 V. c. 43, s. 1, to make a Settlement "upon *or* in contemplation of" marriage, the words "in contemplation of" are not expository of "upon"; for the "or" has its natural disjunctive effect of presenting to the view two distinct things (per Selborne, C., *Re Sampson and Wall*, 53 L. J. Ch. 460; 25 Ch. D. 482: *Vth, Seaton* v. *Seaton*, 13 App. Ca. 68: *Sv, Re Borrowes*, cited PREVIOUSLY.

Digitized by Google

A bequest to be applied "to any Charitable *or* Benevolent purpose," or to be expended "in acts of Hospitality *or* Charity," is void, for the vice of uncertainty taints so much of the bequest as is not charitable, whilst the alternative "or" contra-distinguishes that part from so much of the bequest as is charitable (*Morice* v. *Durham, Bp.*, 9 Ves. 399; 10 Ves. 522: *Hunter* v. *A-G.*, 1899, A. C. 309; 68 L. J. Ch. 449; 80 L. T. 732; 47 W. R. 673, espy jdgmt of Ld Davey: *Ellis* v. *Selby*, 4 L. J. Ch. 69; 5 Ib. 214; 7 Sim. 352; 1 My. & C. 286: *Re Jarman*, 47 L. J. Ch. 675; 8 Ch. D. 584: *Re Hewitt*, 53 L. J. Ch. 132: *Re Sutton*, 54 L. J. Ch. 613; 28 Ch. D. 446: 1 Jarm. 215–217). *V.* AND: CHARITY: RELIGIOUS.

A bequest for the Protestant Alliance "*or* some one or more Kindred Institutions"; held, a good charitable bequest, and that the gift was alternative, and not substitutional (*Re Delmar*, 1897, 2 Ch. 163; 66 L. J. Ch. 555; 76 L. T. 594; 45 W. R. 630).

"If a man give lands to one, to have and to hold to him *or* his heires, he hath but an estate for life, for the uncertaintie" (Co. Litt. 8 b; *Fo*, Touch. 106).

But, on the other hand, "'Or' is often a connecting term of synonymous words, as in the common expression 'piece or parcel of land'" (per Taunton, J., *Ross* v. *Smith*, 1 B. & Ad. 911).

Sometimes "Or" is used as an introduction to a Substitutional Bequest, and then it is synonymous with "IN CASE of" (per Wigram, V. C., *Salisbury* v. *Petty*, 3 Hare, 93: *Vf*, 2 Jarm. 758: DIE).

In a testamentary gift to a person or a class "or" his or their heirs, issue, children, or descendants, the word "or" is substitutionary (*Turner* v. *Moor*, 6 Ves. 557: *Longmore* v. *Broom*, 7 Ves. 124: *Montague* v. *Nucella*, 1 Russ. 165: *Carey* v. *Carey*, 6 Ir. Ch. Rep. 255: *Re Sibley*, 46 L. J. Ch. 387; 5 Ch. D. 494: *Re Webster*, 52 L. J. Ch. 767; 23 Ch. D. 737: *Re Delmar*, sup).

In a bequest *in Remainder* to a person or persons, or a class, "or" his or their issue, &c, the bequest confers a vested interest in the person or persons named or the class, which is only to be divested as regards those dying before the period of distribution leaving issue; therefore, the exors or admors, of any such person or member of a class as may die before such period without issue, will be entitled (*Hervey* v. *McLaughlin*, 1 Price, 264: *Salisbury* v. *Petty*, sup: *Gray* v. *Garman*, 2 Hare, 268; 12 L. J. Ch. 259: *Smither* v. *Willock*, 9 Ves. 233: *Vh*, Hawk. 266, 267). But this is an exception (1 Jarm. 870), and the general rule is that a gift dependent on the happening of an event is not rendered absolute by the gift over becoming impossible or otherwise void (*Doe* d. *Blomfield* v. *Eyre*, 5 C. B. 713; 18 L. J. C. P. 284: *O'Mahoney* v. *Burdett*, L. R. 7 H. L. 388; 44 L. J. Ch. 56, *n*: 1 Jarm. 867–870).

"It appears to be now established that where there is a bequest 'to A. *or* his personal representatives,' or 'to A. *or* his heirs,' the word 'or,

Digitized by Google

generally speaking, implies a substitution, so as to prevent a lapse" (Wms. Exs. 1076); *secus*, where the gift is "to A. *and* his exors, admors, and assns" (Wms. Exs. 1074); but, *semble*, when "to A. *and his heirs*," there is no lapse (Ib. 1075).

An Alternative Bequest is good, *e.g.* a gift to A. B. "of £50 *or* £100," the OPTION being with the legatee (1 Jarm. 359, citing *Seale* v. *Seale*, 1 P. Wms. 290: *Haggar* v. *Neatby*, 23 L. J. Ch. 455; Kay, 379: *Phillipps* v. *Chamberlaine*, 4 Ves. 50). But qy where the *person* to take is in the alternative (*V.* 1 Jarm. 372, 375, 376).

Where there are alternative Times or Modes for the performance of an act, and nothing is said as to the person who is to exercise the OPTION, that option is with the person by whom the act is to be performed. Thus, on a Sale at 6 "or" 9 months' credit, the purchaser, by not paying at the end of the 6 months, elects not to pay till the expiration of 9 months, and the price cannot be recovered till then (*Price* v. *Nicholson*, 5 Taunt. 333); so, of a loan (*Reed* v. *Kilburn Socy*, 44 L. J. Q. B. 126; L. R. 10 Q. B. 264). *Vf*, *Alexander* v. *Vanderzee*, L. R. 7 C. P. 530: *Ashworth* v. *Redford*, 43 L. J. C. P. 57; nom. *Ashforth* v. *Redford*, L. R. 9 C. P. 20.

So, a Lease for 7, 14, "or" 21, years is not void, but gives the *lessee* an OPTION to determine the lease at the end of the 7th or 14th year (*Dann* v. *Spurrier*, 3 B. & P. 399: *Doe* d. *Webb* v. *Dixon*, 9 East, 15: *Price* v. *Dyer*, 17 Ves. 356: *Goodright* d. *Hall* v. *Richardson*, 3 T. R. 462: *Powell* v. *Smith*, 41 L. J. Ch. 734; L. R. 14 Eq. 85). *Cp*, *Lewis* v. *Stephenson*, cited RENEWAL. But a lease for 21 years "DETERMINABLE if the parties shall so think fit" at an earlier period, is determinable only by both (*Fowell* v. *Franter*, 34 L. J. Ex. 6; 3 H. & C. 458; 13 W. R. 145).

A Power to Appoint to certain persons "or" their children, gives a discretion (*Longmore* v. *Broom*, 7 Ves. 124).

In a clause enabling a Vendor (of part of a Building Estate) "his heirs *or* assigns" to waive Restrictive Covenants, Romer, J., said, "It is worthy of notice that the phrase is not '*and* assigns'" (*Everett* v. *Remington*, cited ASSIGNS).

The power given to Justices by s. 3, Licensing Act, 1872, 35 & 36 V. c. 94, to inflict a fine "or" to imprison, is in the alternative; and "or" is not to be read "or in default of paying the fine"; therefore, a conviction imposing a fine or, in default of payment, imprisonment, is bad (*Re Brown*, 47 L. J. M. C. 108; 3 Q. B. D. 545: *Re Clew*, 51 L. J. M. C. 140; 8 Q. B. D. 511). *Cp*, CASE OR CANISTER: RATED OR ASSESSED.

The power to Justices to order a person to comply with specified health requisitions, "*or otherwise to abate the nuisance*," gives the Justices the alternative, and does not compel them to make an Order in the alternative (*Whitaker* v. *Derby*, 55 L. J. M. C. 8; 50 J. P. 357; 2 Times Rep. 68; dissenting from *Ex p. Whitchurch*, 6 Q. B. D. 545; 50 L. J. M. C. 41.

Digitized by Google

Va, *Ex p. Saunders*, 11 Q. B. D. 191; 52 L. J. M. C. 89: *R.* v. *Llewellyn*, 13 Q. B. D. 681).

As to the part of a clause where "or" becomes operative; *V. Randwick* v. *Australian Cities Investment Corp*, 1893, A. C. 322; 62 L. J. P. C. 116; 68 L. T. 771.

"Or," as used in a Patent Specification; *V. Elliott* v. *Turner*, sup: *Hills* v. *London Gas Co*, and *Hills* v. *Evans*, sup: *Beard* v. *Egerton*, 3 C. B. 97; 8 Ib. 165; 15 L. J. C. P. 270; 19 Ib. 36.

Cp, AND.

OR read as AND, and vice versâ.—"You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and.'" (So also 'and' never does mean 'or.') "There is a context which shows that 'or' is used for 'and,' by mistake. Suppose a man said, 'I give the black *cow* on which I usually ride to A. B.,' and he rode on a black *horse*. Of course the horse would pass, but I do not think even a modern annotator of cases would put in the marginal note 'cow' means 'horse.' You correct the wrong word by the context" (per Jessel, M. R., *Morgan* v. *Thomas*, 51 L. J. Q. B. 557; 9 Q. B. D. 643).

Still, "it is an ancient rule of construction (the principle of which, however, would not be extended at the present day) to avoid disinheriting issue, that if real estate be devised to A. in fee simple with a limitation over in the event of A. dying under 21 *or* without issue, the word 'or' will be read 'and,' and the gift over will be construed to take effect only in the event of A. dying under twenty-one *and* without issue (*Soulle* v. *Gerrard*, Cro. Eliz. 525: *Fairfield* v. *Morgan*, 2 B. & P. N. R. 38: *Right* v. *Day*, 16 East, 69: *Eastman* v. *Baker*, 1 Taunt. 174)": Hawk. 203. *Vf*, 1 Jarm. 505–507: *Johnson* v. *Simcox*, 31 L. J. Ex. 38; 7 H. & N. 344. But if the first estate is less than the fee simple, the rule just stated will not apply (*Mortimer* v. *Hartley*, 20 L. J. Ex. 129; 6 Ex. 47: *Cooke* v. *Mirehouse*, 34 Bea. 27). The rule applies to personalty (*Wright* v. *Marsom*, W. N. (95) 148; 40 S. J. 67).

Besides that rule there is probably no other general rule which could with practical utility be relied on, for sanctioning the change of "Or" to "And," or the converse (*Sv*, 1 Jarm. 505–524, where this change of words is elaborately treated: *Va*, Watson Eq. 1316–1318). Whenever such a construction is adopted there must be some violence done to the language which only a context can justify.

In the following cases, "OR" *read as* "AND":—*Richardson* v. *Spraug*, 1 P. Wms. 434: *Read* v. *Snell*, 2 Atk. 645: *Wright* v. *Kemp*, 3 T. R. 470: *Fowler* v. *Padget*, 7 T. R. 509: *Denn* v. *Kemeys*, 9 East, 366: *Grant* v. *Dyer*, 2 Dowl. 87, 88: *Horridge* v. *Ferguson*, Jac. 583: *Miles* v. *Dyer*, 8 Sim. 330: *Harris* v. *Davis*, 1 Coll. 416: *Morris* v. *Morris*, 17 Bea. 198: *Shand* v. *Kidd*, 19 Bea. 310: *Maude* v. *Maude*, 22 Bea. 290: *Bentley* v. *Meech*, 25 Bea. 197: *Maynard* v. *Wright*, 26 Bea. 285: *Greated* v. *Greated*, 26 Bea. 621; 28 L. J. Ch. 756: *Hawksworth*

Digitized by Google

v. *Hawksworth*, 27 Bea. 1: *Cooke* v. *Mirehouse*, 34 Bea. 27: *Greenway* v. *Greenway*, 29 L. J. Ch. 601; 2 D. G. F. & J. 128; 1 Giff. 131: *Parkin* v. *Knight*, 15 L. J. Ch. 209; 15 Sim. 83: *G. W. Ry* v. *Bishop*, 41 L. J. M. C. 120; L. R. 7 Q. B. 550 (*Svthlc, Malton Local Bd* v. *Malton Manure Co*, 49 L. J. M. C. 90; 4 Ex. D. 302, and *Bishop Auckland Local Board* v. *Bishop Auckland Iron Co*, 52 L. J. M. C. 38): *Metrop Bd of Works* v. *Steed*, 51 L. J. M. C. 22; 8 Q. B. D. 445: *Re Philps*, L. R. 7 Eq. 151: *Holland* v. *Wood*, L. R. 11 Eq. 91: *Re Flemyng*, 15 L. R. Ir. 363.

Vf, Wms. Exs. 936: Co. Litt. 99 b: Rated or Assessed.

In the following cases "Or" *not read as* "And":—*Barry Ry* v. *Taff Vale Ry*, 1895, 1 Ch. 128; 64 L. J. Ch. 238, 239: *Mersey Docks* v. *Henderson*, 4 Times Rep. 703: *Prim* v. *Smith*, 20 Q. B. D. 643; 57 L. J. Q. B. 336; 58 L. T. 606; 36 W. R. 530: *Re Huggins*, 58 L. J. Q. B. 207; 22 Q. B. D. 277: *Re Clew*, 51 L. J. M. C. 140; 8 Q. B. D. 511: *Finlason* v. *Tatlock*, 39 L. J. Ch. 422; L. R. 9 Eq. 258: *Re Sanders*, L. R. 1 Eq. 675: *Simpson* v. *Holliday*, 35 L. J. Ch. 811; L. R. 1 H. L. 315: *Wingfield* v. *Wingfield*, 47 L. J. Ch. 768; 9 Ch. D. 658: *Re Stroud*, W. N. (75) 148: *Girdlestone* v. *Doe*, 2 Sim. 225: *Benson* v. *Dunn*, 23 L. T. 848: *Wright* v. *Frant*, 32 L. J. M. C. 204; 4 B. & S. 118: *R.* v. *Phillips*, 35 L. J. M. C. 217; 7 B. & S. 593; L. R. 1 Q. B. 648 (over-ruling *R.* v. *Shiles*, 10 L. J. M. C. 157; 1 Q. B. 919): *Harrington* v. *Ramsay*, 22 L. J. Ex. 326; 8 Ex. 879: *R.* v. *Pocock*, 15 L. J. M. C. 132; 8 Q. B. 729: *Green* v. *Wood*, 14 L. J. Q. B. 217; 7 Q. B. 178: *Carey* v. *Carey*, 6 Ir. Ch. Rep. 255: *Re Cleland*, 7 L. R. Ir. 74.

In the following cases "And" *read as* "Or":—*Chapman* v. *Dalton*, Plowd. 289: *Brownsword* v. *Edwards*, 2 Ves. sen. 243: *Maberly* v. *Strode*, 3 Ves. 450: *Bell* v. *Phyn*, 7 Ves. 458: *Losh* v. *Townley*, Cooper t. Brougham, 372: *Stubbs* v. *Sargon*, 2 Keen, 255; 6 L. J. Ch. 254, affd 3 My. & C. 507; 7 L. J. Ch. 95: *Waterhouse* v. *Keen*, 4 B. & C. 200; 6 D. & R. 257: *Townsend* v. *Read*, 30 L. J. M. C. 245; 10 C. B. N. S. 317: *Stapleton* v. *Stapleton*, 21 L. J. Ch. 434; 2 Sim. N. S. 212: *Gonne* v. *Cook*, 15 W. R. 576: *Townsend* v. *Kingston*, 6 Ir. Eq. Rep. 118: *Long* v. *Lane*, 17 L. R. Ir. 11: *Re Brittlebank*, 30 W. R. 99.

Vf, Wms. Exs. 936: So, where a conjunctive Condition of a Bond, &c, is not possible of performance (1 Rol. Ab. 444: *Baldwin* v. *Cock*, 1 Leon. 74; nom. *Cooke* v. *Baldwin*, Owen, 52).

In the following cases "And" *not read as* "Or":—*Twyne's Case*, 3 Rep. 80 a: *Doe* d. *Usher* v. *Jessop*, 12 East, 288: *Grey* v. *Pearson*, 26 L. J. Ch. 473; 6 H. L. Ca. 61: *Day* v. *Day*, Kay, 703: *Seccombe* v. *Edwards*, 28 Bea. 440: *Malmesbury* v. *Malmesbury*, 31 Bea. 407: *Reed* v. *Braithwaite*, L. R. 11 Eq. 514; 40 L. J. Ch. 355: *Re Kirkbride*, L. R. 2 Eq. 400: *Barker* v. *Young*, 33 L. J. Ch. 279; 33 Bea. 353: *Oldfield* v. *Dodd*, 22 L. J. Ex. 144; 8 Ex. 578: *Re Sanders*, L. R. 1 Eq. 675.

Where both Words used.

When a contract specifies that it is to be performed during "$\frac{\text{and}}{\text{or}}$" two or more months, that means during either both or all those months (*Bowes* v. *Shand*, 46 L. J. Q. B. 564).

Vh, Chitty Eq. Ind. 7647–7658.

Digitized by Google

OR, read as NOR.—*V. Metrop Bd of Works* v. *Steed*, 51 L. J. M. C. 22; 8 Q. B. D. 445.

ORAL.—*V.* PAROL.

ORATORY.—"An Oratory differs from a CHURCH; for in a church there is appointed a certain Endowment for the minister and others; but an Oratory is that which is not built for saying Mass nor endowed, but ordained for PRAYER" (Phil. Ecc. Law, 1451, citing Linwood's Provinciale, 233 *n*).

ORCHARD.—*V.* TILLAGE: GARDEN.

ORDEAL.—Trial by; *V.* 4 Bl. Com. 342–344.

ORDELF.—"'Ordelfe' is where any claimes to have the Ore that is found in the soile or ground" (Termes de la Ley).
V. DELF.

ORDER.—An Order (as contrasted with a JUDGMENT, or FINAL JUDGMENT) is a judicial or ministerial direction or conclusion on matters outside the record; "a 'Judgment' is a decision obtained in an Action, and every other decision is an 'Order'" (per Esher M. R. *Onslow* v. *Inl. Rev.* inf). *Cp*, OPINION.

An Opinion by the Q. B. D. (under s. 11, 12 & 13 V. c. 45), on a Case stated from Quarter Sessions, though not a "Judgment," is an "Order" within s. 19, Jud. Act, 1873, and it is interlocutory (*Walsall* v. *Lond. & N. W. Ry*, 48 L. J. M. C. 65; 4 App. Ca. 30: *Peterborough* v. *Wilsthorpe*, 53 L. J. M. C. 33; 12 Q. B. D. 1: *Holborn* v. *Chertsey*, 15 Q. B. D. 76; 54 L. J. Q. B. 137: *Dewsbury W. W.* v. *Penistone*, 2 Times Rep. 375: *Lodge* v. *Huddersfield*, 67 L. J. Q. B. 571; 1898, 1 Q. B. 859; 62 J. P. 515); so, of a decision on a Special Case under s. 19, Stamp Act, 1870, repld s. 13, Stamp Act, 1891 (*Onslow* v. *Inl. Rev.* 59 L. J. Q. B. 556; 25 Q. B. D. 465; 38 W. R. 728). *Secus*, as regards an Opinion on a Special Case stated by an Arbitrator when in the reference (made by consent before the Jud. Acts) the parties agreed that neither party should bring Error (*Jones* v. *Victoria Dock Co*, 2 Q. B. D. 314). An Order for a Habeas Corpus is an "Order" under s. 19, Jud. Act, 1873 (*Barnardo* v. *Ford*, 1892, A. C. 326; 61 L. J. Q. B. 728; 67 L. T. 1; 56 J. P. 629). *V.* DECISION: "Balance Order," sub BALANCE.
V. DETERMINATION.

A refusal to transfer Bankry Proceedings under R. 16, Bankry Rules, 1883, is an appealable "Order" under s. 104, Bankry Act, 1883 (*Ex p. Gillibrand, Re Walker*, W. N. (84) 159); so, of the Disallowance by a Judge (s. 21 (2), Bankry Act, 1883) of an objection by the Board of Trade to an appointment of a trustee (*Re Lamb*, 1894, 2 Q. B. 805; 64 L. J. Q. B. 71; 71 L. T. 312); but a Refusal to give Leave to Appeal is not an "Order or Jdgmt" within s. 3, 39 & 40 V. c. 59 (*Lane* v. *Esdaile*, cited LEAVE, at end).

Digitized by Google

The settlement by Justices of Compensation under s. 22, Lands C. C. Act, 1845, is not an "Order," or Conviction within Sum Jur Act, 1848, 11 & 12 V. c. 43, s. 1 (*R.* v. *Edwards*, 53 L. J. M. C. 149; 13 Q. B. D. 586; over-ruling *Re Edmundson*, 21 L. J. M. C. 193; 17 Q. B. 67). So, the refusal (or the granting) a License by Licensing Justices, is not a "Conviction or Order" within s. 31, Sum Jur Act, 1879 (*Boulter* v. *Kent Jus.*, cited COURT: *R.* v. *Sharman*, 1898, 1 Q. B. 578; 67 L. J. Q. B. 460; 78 L. T. 320; 62 J. P. 296). *Cp*, ACT: COMPLAINT: LEGAL PROCEEDINGS.

The mere entry by a County Court Registrar of an Order of Commitment, is not an "Order" (*Harris* v. *Slater*, 57 L. J. Q. B. 539; 21 Q. B. D. 359; 37 W. R. 56).

"All Decrees and Orders of Courts of Equity," s. 18, 1 & 2 V. c. 110, includes an Interlocutory Order for Costs (*Taylor* v. *Roe*, 1894, 1 Ch. 413; 63 L. J. Ch. 282; 70 L. T. 232; 42 W. R. 426).

"Order," quà Bankry Act, 1883, includes, in Scotland, "Deliverance or Decree" (s. 6 (2), 47 & 48 V. c. 16); quà Jud. Acts, and Co. Co. Acts, it includes "Rule" (s. 100, Jud. Act, 1873; s. 3, Jud. Act (Ir), 1877; s. 186, Co. Co. Act, 1888); quà Petty Sessions (Ir) Act, 1851, 14 & 15 V. c. 93, it includes "Conviction" (s. 44).

"Order of a Court"; Stat. Def., Yorkshire Registries Act, 1884, 47 & 48 V. c. 54, s. 3.

V. ENFORCE: FINAL JUDGMENT: JUDGMENT: NO ORDER: ORDER OF ADJUDICATION: ORDER OF COURSE: ORDERED: RECEIVING ORDER.

"Order of the *Board of Agriculture*"; Stat. Def., 57 & 58 V. c. 57, s. 59.

"Order" of *Guardians*, s. 114, Poor Relief (Ir) Act, 1838, 1 & 2 V. c. 56; *V. R.* v. *Sheehan*, 1898, 2 I. R. 683.

"Order of the *Land Commissioners*"; Stat. Def., 47 & 48 V. c. 54, s. 3.

"Orders and Regulations," quà *Poor Law* Amendment Act, 1834, 4 & 5 W. 4, c. 76; *V.* s. 109.

"Order," s. 11, P. H. London Act, 1891, includes "Notice" (*Gebhardt* v. *Saunders*, 1892, 2 Q. B. 452: *Andrew* v. *St. Olave*, 1898, 1 Q. B. 775; 67 L. J. Q. B. 592, explained and followed *North* v. *Walthamstow*, 67 L. J. Q. B. 972).

V. PROVISIONAL ORDER: PROTECTION.

"*Reception* Order"; Stat. Def., Lunacy Act, 1890, s. 341.

"*Standing* Orders," quà Private Legislation Procedure (Scot) Act, 1899, 62 & 63 V. c. 47, "means, the Standing Orders of the House of Lords and the House of Commons respectively" (s. 18).

V. ORDER IN COUNCIL: ORDINANCE: SPECIAL: STOP.

"By whose Order"; *V.* EXTRAORDINARY TRAFFIC.

"To whose Orders workman bound to conform"; *V.* CONFORM.

In a commercial sense, "Order,"—*e.g.* in an agreement to pay commission on "Orders,"—means, a binding contract to take a commodity (*Field* v. *Manlove*, 5 Times Rep. 614).

Digitized by Google

Bill of Exchange, or Promissory Note, or Bill of Lading, payable to a person's "Order" is a Negotiable Instrument: *V.* BILL OF EXCHANGE: NEGOTIABLE. A Bill of Exchange directing payment "to Order" is a good Bill, for it means "pay to my Order" (*Chamberlain* v. *Young*, 1893, 2 Q. B. 206; 63 L. J. Q. B. 28; 69 L. T. 332; 42 W. R. 72).

In a Charter-Party "the provision to deliver the Cargo to the 'Order' of the merchants or their agents, gives to the Charterers the option of designating the particular wharf or store at which they desire the ship to unload" (per Collins, J., *Sanders* v. *Jenkins*, cited ARRIVE, sub "Arrived Ship"). *Cp*, AS ORDERED.

"Order for the delivery of goods," s. 10, 1 W. 4, c. 66, includes an Order to taste wines (*R.* v. *Illidge*, 2 C. & K. 871).

Order "for payment of money": *V.* PAYMENT.

V. POSSESSION, ORDER, OR DISPOSITION.

"Peace, Order, and Good Government"; *V.* PEACE.

"In *any* Order"; *V.* LIBERTY TO CALL.

"Good Order and Condition"; *V.* GOOD ORDER.

"Keep in order"; *V.* KEEP.

V. IN ORDER.

ORDER AND DIRECT. — *V.* PRECATORY TRUST.

ORDER IN COUNCIL. — Probably, as of general acceptation, "Order in Council" means, an Order of the Monarch acting by and with the advice of the Privy Council, *e.g.* International Copyright Act, 1844, 7 & 8 V. c. 12, s. 20; but quà Ireland it will generally mean an Order of the Lord Lieutenant made by and with the advice and consent of the Privy Council in Ireland, *e.g.* 51 & 52 V. c. 44, s. 3; *Va*, 35 & 36 V. c. 94, s. 77.

Where it is provided by statute that an Order in Council is to have the effect of an Act of Parliament, it is to be read as one with the Act under which it is made (*Patent Agents' Institute* v. *Lockwood*, 1894, A. C. 347; 63 L. J. P. C. 74; 71 L. T. 205: *Baker* v. *Williams*, cited VENTILATION).

"Order of Council"; Stat. Def., 57 & 58 V. c. 57, s. 59.

"Order of a County Council"; Stat. Def., 58 & 59 V. c. 32, s. 1 (2).

"By Order of the Council," s. 140 (3 *b*), Mun Corp Act, 1882; *V.* *A-G.* v. *Tynemouth*, cited LEGAL PROCEEDINGS.

ORDER OF ADJUDICATION. — "Order of Adjudication," as defined by s. 42 (2), Bankry Act, 1883, to include "an Order for the Administration of the estate of a deceased person," is confined to Orders made under s. 125, and does not include a Chancery Administration Order (*Re Fryman*, 57 L. J. Ch. 862; 38 Ch. D. 468; 58 L. T. 872; 36 W. R. 631).

V. PETITION.

Digitized by Google

ORDER OF COURSE.—"An Order of Course, means an Order made on an *ex parte* application, and to which a party is entitled as of right on his own statement, and at his own risk" (Ann. Pr., note to R. 18, Ord. 62, R. S. C.).

ORDERED.—Goods "ordered to be given in Parochial Relief," s. 77, 4 & 5 W. 4, c. 76; *V. Davies* v. *Harvey*, 43 L. J. M. C. 121; L. R. 9 Q. B. 433.

Parliamentary Co "ordered to be Wound-up," s. 1 (2), 55 & 56 V. c. 27, includes a Co which by an Act of Parliament is directed to be wound-up (*Re Uxbridge, &c, Ry*, 59 L. J. Ch. 409; 43 Ch. D. 536; 62 L. T. 347; 38 W. R. 644). *Cp*, ORDER.

"Decreed or ordered"; *V.* DECREE.

V. AS ORDERED.

ORDERLY. — Licensed Premises conducted in a "peaceable and orderly manner"; *V.* PEACEABLE.

ORDINANCE.—A University Statute or Order is the same thing as an "Ordinance"; therefore, an Order under s. 16, Universities (Scot) Act, 1889, for effecting a union between St. Andrews Univ. and Univ. College, Dundee, is an "Ordinance," and must, under ss. 19, 20, be laid before Parliament and approved by the Crown (*Metcalfe* v. *Cox*, 1895, A. C. 328; 64 L. J. P. C. 148; 72 L. T. 511).

ORDINARILY.—*V.* ORDINARY RESIDENCE.

ORDINARY.—"'Ordinarie.' *Ordinarius*, is hee that hath ordinarie jurisdiction in causes ecclesiasticall, immediate to the King and his Courts of Common Law, for the better execution of justice, as the Bishop, or any other that hath exempt and immediate jurisdiction in causes ecclesiasticall" (Co. Litt. 344 a: *Vf*, Termes de la Ley). In Westm. 2, c. 19, the word "is not onely taken for a Bishop, but every one that is *in loco episcopi*," including usurpers (2 Inst. 398). *V.* BISHOP. *Vh*, Phil. Ecc. Law, 166.

"Ordinary" as compared with "Extraordinary"; *V.* EXTRAORDINARY.

ORDINARY AGRICULTURAL FARM.—*V. Daly* v. *Wright*, 32 L. R. Ir. 9: AGRICULTURAL.

ORDINARY CALLING.—Enlisting is not part of the "Ordinary Calling" of a soldier within s. 1, Sunday Observance Act, 1677, 29 Car. 2, c. 7; for the ordinary duty of a soldier is to attend drill and fight the battles of his country (*Wolton* v. *Gavin*, 16 Q. B. 48; 20 L. J. Q. B. 73); nor is the giving by a tradesman of a guarantee for the fidelity of an intended employé (*Norton* v. *Powell*, 4 M. & G. 42; 11 L. J. C. P. 202). Nor is it within a farmer's "ordinary calling" to hire out a stallion to

Digitized by Google

cover a mare (*Scarfe* v. *Morgan*, 7 L. J. Ex. 324; 4 M. & W. 270); or to employ labourers (*R.* v. *Whitnash*, 7 B. & C. 596; 6 L. J. O. S. M. C. 26; 1 M. & R. 452). Selling horses is not within the "ordinary calling" of any one except he be a horse-dealer (*Drury* v. *Defontaine*, 1 Taunt. 131: *Fennell* v. *Ridler*, 5 B. & C. 406; 8 D. & R. 204: as to these cases, *V.* per Park, J., *Smith* v. *Sparrow*, 4 Bing. 88). *V.* WORLDLY LABOUR.

V. CALLING: OTHER, *Ejusdem Generis.*

ORDINARY CARE.—Ordinary Care means, that care which may reasonably be expected from a person old enough to be responsible for his conduct (*Lynch* v. *Nurden*, 10 L. J. Q. B. 75; 1 Q. B. 36); want of it is NEGLIGENCE. *Cp*, "Ordinary Skill," sub SKILL.

Cp, DUE DILIGENCE: REASONABLE DILIGENCE.

ORDINARY CIVIL CAUSE.—*V.* CAUSE.

ORDINARY COURSE.—An Execution on the goods of a Company is not a "DEALING" therewith by the Co "in the Ordinary Course *of Business*," within an Exception in a Debenture by the Co creating a FLOATING SECURITY; it is not a "Dealing" at all; it is a compulsory legal process against the Co (*Davey* v. *Williamson*, 1898, 2 Q. B. 194; 67 L. J. Q. B. 699; 78 L. T. 755; 46 W. R. 571). It is in the "Ordinary Course of Business" of a Co which has given a Floating Security to sell one of its Branches, if the Directors *bonâ fide* think such sale will be advantageous to the Co (*Re Vivian*, 1900, 2 Ch. 654; 69 L. J. Ch. 659; 82 L. T. 674; 48 W. R. 636); *secus*, to sell the Whole of its property (*Foster* v. *Borax*, 1899, 2 Ch. 130; 68 L. J. Ch. 410; 80 L. T. 637). *Semble*, "if done *bonâ fide*, it is within the 'Ordinary Course of Business' of a Co to issue Debentures as security for the costs of an action brought against it which might result in the destruction of its Undertaking" (per Wright, J., *Re Hubbard*, 68 L. J. Ch. 57; 79 L. T. 665).

"Ordinary Course of Business of a Mercantile Agent"; *V.* MERCANTILE AGENT.

A PAYMENT IN DUE COURSE of a Trader's Bill of Exchange is in the Ordinary Course of Business, and is not a FRAUDULENT PREFERENCE within s. 48, Bankry Act, 1883, even though made when the Trader was conscious of his insolvency (*Re Clay*, 3 Manson, 31); *secus*, if payment was made after the Bill had been held over at the Trader's Request (*Re Eaton*, 1897, 2 Q. B. 16; 66 L. J. Q. B. 491). *V.* VIEW.

SALE "in the Ordinary Course of Business"; *V. Re Old Bushmill's Co*, 1897, 1 I. R. 488.

"TRANSFERS of goods in the Ordinary Course *of Business*," s. 4, Bills of Sale Act, 1878; *V. Re Hall*, 54 L. J. Q. B. 43; 14 Q. B. D. 386; 51 L. T. 795; 33 W. R. 228· *Re Cunningham, Ex p. Attenborough*, 28 Ch. D. 682.

Digitized by Google

When a Notice is to be considered as served when "in the Ordinary Course *of Post*" it would be delivered, the onus is on the sender to show that there is an Ordinary Course of Post at the place and to the person addressed (*Lewis* v. *Evans*, 44 L. J. C. P. 41; L. R. 10 C. P. 297: *Hudson* v. *Louth*, 6 L. R. Ir. 69: *Doogan* v. *Colquhoun*, 20 L. R. Ir. 361: *Chillis* v. *Cox*, 4 Times Rep. 114); but where it is shown that there is an Ordinary Course of Post within the district to which the Notice is addressed, that Course is the one to be regarded, and the sender, *e.g.* under s. 100, 6 V. c. 18, has nothing to do with an extraordinary postal delivery to a particular body of persons, *e.g.* soldiers in barracks (*Kemp* v. *Wanklyn*, 1894, 1 Q. B. 583; 63 L. J. Q. B. 520; 70 L. T. 478; 42 W. R. 369; 58 J. P. 605; over-ruling *Childs* v. *Cox*, 20 Q. B. D. 290). *Vf*, s. 26, Interp Act, 1889.

"Ordinary *Way of his Trade*," s. 11 (14, 15), Debtors Act, 1869; *V. Ex p. Brett*, 45 L. J. Bank. 17; 1 Ch. D. 151.

ORDINARY LUGGAGE.—As regards the contract of carriage, this has the same meaning as PERSONAL LUGGAGE. *Vf*, LUGGAGE.

ORDINARY OUTGOINGS.—The Cost of Drainage Works under s. 73, Metrop Man. Act, 1855, is within a direction to deduct "Ordinary Outgoings" from the income of a tenant for life; and is certainly so if such outgoings be expressed to be for "taxes *or otherwise*" (*Re Crawley, Acton* v. *Crawley*, 54 L. J. Ch. 652; 28 Ch. D. 431).

V. OUTGOING.

ORDINARY PRISON.—Stat. Def., General Prisons (Ir) Act, 1877, 40 & 41 V. c. 49, s. 3; Prisons (Scot) Act, 1877, 40 & 41 V. c. 53, s. 71.

V. PRISON.

ORDINARY RESIDENCE.—A man who has frequently stayed in London with friends or at a lodging-house or an hotel for some weeks or a month at a time, is not thereby shown to have "ordinarily resided" there, within s. 6 (1 *d*), Bankry Act, 1883 (*Re Erskine*, 10 Times Rep. 32; 38 S. J. 144). *Vf*, DOMICIL: RESIDE.

ORDINARY RESOLUTION.—*V.* RESOLUTION.

ORDINARY SKILL.—*V.* SKILL. *Cp*, ORDINARY CARE.

ORDINARY TENANCY.—Quà Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, "'Ordinary Tenancy,' means, a tenancy to which this Act applies, and which is not a tenancy subject to statutory conditions or a judicial lease or a fixed tenancy" (s. 57).

V. TENANCY.

Digitized by Google

ORDINARY TIDE. — *V.* Shore: Neap.

ORDINARY TRAIN. — A Train having a special object other than the ordinary traffic and purposes of the particular Railway, going faster and stopping much less frequently than the usual trains thereon, is not an "Ordinary Train" within a Special Act (*Turner* v. *Lond. & S. W. Ry*, 43 L. J. Ch. 430; L. R. 17 Eq. 561). *Va*, "Special Train," sub Special. *Cp*, Passenger Train.

ORDINARY WAY OF. — *V.* Ordinary Course.

ORDINATION. — "The rite through which the Bishop transmits to his clerical assistants a portion of his authority, is Ordination (*ordinatio*). Through Ordination the ordained person receives the privileges and powers necessary for the execution of sacerdotal functions in the Church" (Phil. Ecc. Law, 88).

ORDNANCE MAP. — *V.* s. 25, Interp Act, 1889.

ORE. — *Semble*, "Ore," is Metal in its crude state separated from the rock (per Kay, L. J., *A-G.* v. *Morgan*, 1891, 1 Ch. 462; 60 L. J. Ch. 130: *Vf*, per North, J., *Ib.*, 1891, 1 Ch. 449; 59 L. J. Ch. 779).

ORIGINAL. — "Where there are a great number of persons who produce the same article, 'Original' means that the article so called is that made by the first inventor" (per Romilly, M. R., *Cocks* v. *Chandler*, L. R. 11 Eq. 449; 40 L. J. Ch. 575; 19 W. R. 593; 24 L. T. 379). *V.* Duplicate: Primary.

ORIGINAL CLIENTS. — Where Articles of Partnership between Solicitors restricted each partner from being concerned for the "Original Clients" of the other if and when the partnership was dissolved; held, that the phrase included, not only the clients of the other at or before the date of the Articles but also, those for whom (by the terms of the Articles) he was authorized to be concerned separately from the firm (*Badham* v. *Williams*, 44 S. J. 575; 83 L. T. 141). *V.* Client.

ORIGINAL COMPOSITION. — *V.* Author: Compose.

ORIGINAL DESIGN. — *V.* New Design.

ORIGINAL HOLDER. — *V. Re Oriental Bank* (54 L. J. Ch. 481; 1 Times Rep. 273), in which it was held, on the construction of a clause in the Charter of that Bank, that "Original Holder" of shares did not mean the first allottee, but meant the immediate transferor to the person holding the shares at the time when the phrase became operative, — *i.e.* in that case, the winding-up of the Company.

Digitized by Google

ORIGINAL PAINTING.—*V.* Painting.

ORIGINAL PHOTOGRAPH.—*V.* Photograph.

ORIGINAL POLICY.—"Subject to same terms as Original Policy, and to Pay as may be paid thereon," in a Marine Re-Insrce; *V. Lower Rhine, &c, Insrce* v. *Sedgwick,* 1898, 1 Q. B. 739; 67 L. J. Q. B. 330; 78 L. T. 496; 46 W. R. 380; 8 Asp. 380, revd on app., 1899, 1 Q. B. 179; 68 L. J. Q. B. 186; 80 L. T. 6; 47 W. R. 261; 8 Asp. 466; 4 Com. Ca. 14.

ORIGINAL PROCEEDING.—*V.* Cause: Action: Proceeding.

ORIGINAL STATES.—*V.* States.

ORIGINAL SUBJECT.—"Original Subject of the cause or matter," s. 24 (3), Jud. Act, 1873; *V. Barber* v. *Blaiberg,* 51 L. J. Ch. 509; 19 Ch. D. 473; 30 W. R. 362.

ORIGINALLY.—By the Blackheath Court of Requests Act (6 & 7 W. 4, c. 120, s. 22), that Court had no jurisdiction over debts "for any sum being the balance of an account *originally exceeding*" £5. "The meaning of the term 'originally' in this clause is somewhat obscure and has not been judicially decided; but we think it is to be understood to apply to a case where credit was given at one time for an amount exceeding £5, either in one or different sums, although afterwards the credit might have been reduced under that sum by part payments before the commencement of the suit in the superior Court" (per Parke, B., *Pope* v. *Banyard,* 7 L. J. Ex. 183; 3 M. & W. 424). And under another statute (2 W. 4, c. lxv. s. 10), it was settled that a claim which at its inception exceeded the stated amount, "originally" exceeded it, though reduced by payment below such amount before action brought (*Green* v. *Bolton,* 4 Bing. N. C. 308: *Elsley* v. *Kirby,* 12 L. J. Ex. 96; 9 M. & W. 536). *Cp,* Reduced by payment.

When passengers, travelling upon branch lines to the termini of the main line, have to await the arrival of a train upon the main line to reach their destination, the terminus of the main line from which the train started is "the place from which the Train *originally started*" (*Barry* v. *Midland G. W. Ry,* Ir. Rep. 1 C. L. 130).

ORIGINATE.—*V. Best* v. *Stonehewer,* 34 L. J. Ch. 349; 34 Bea. 66; 2 D. G. J. & S. 537.

ORIGINATING.—Damage originating; *V. Marsden* v. *City & County Assrce,* 35 L. J. C. P. 60; L. R. 1 C. P. 232.

An "Originating *Summons,*" means, "a Summons by which an Action is commenced otherwise than by Writ" (per Esher, M. R., *Re Holloway,* 1894, 2 Q. B. 163; 63 L. J. Q. B. 672; 70 L. T. 615; 42 W. R.

Digitized by Google

433); accordingly it was there held that a Summons under s. 37, Solrs Act, 1843, to a Solr to deliver up papers, is not an Originating Summons, and is unaffected by Rules 4 b, 4 c, and 4 d, Ord. 54, R. S. C.

ORNAMENT. — As to what are the proper "Ornaments" and "Ceremonies" of the Church, Minister, and Services; *V. Westerton* v. *Liddell*, Moore, Special Rep. 187: *Martin* v. *Mackonochie*, 38 L. J. Ecc. 1; L. R. 2 P. C. 365; L. R. 2 A. & E. 116; 4 Ib. 279: *Sumner* v. *Wix*, 39 L. J. Ecc. 25; L. R. 3 A. & E. 58; *Clifton* v. *Ridsdale*, 1 P. D. 316: *Ridsdale* v. *Clifton*, 46 L. J. P. C. 27; 2 P. D. 276: *Masters* v. *Durst*, 45 L. J. P. C. 51; 1 P. D. 123, 373: *Elphinstone* v. *Purchas*, 39 L. J. Ecc. 28; L. R. 3 A. & E. 66; nom. *Hebbert* v. *Purchas*, 40 L. J. Ecc. 33; L. R. 3 P. C. 605: *Boyd* v. *Phillpotts*, 44 L. J. Ecc. 1; L. R. 4 A. & E. 297: *Phillpotts* v. *Boyd*, L. R. 6 P. C. 435: *White* v. *Bowron*, 43 L. J. Ecc. 7; L. R. 4 A. & E. 207; *Fuller* v. *Bishop*, 14 Times Rep. 103: *Re St. Mark's*, 1898, P. 114: *Kensit* v. *St. Ethelburga*, 1900, P. 80. *Vf*, Phil. Ecc. Law, 711–736; 9 Encyc. 323–325: Rite.

"Ornaments and other Necessary Occasions"; *V.* Necessary.

Bequest of "Ornaments"; *V.* Personal Ornaments.

Articles of "Household Use or Ornament"; *V.* Household, towards end.

V. Design: Pattern.

ORNAMENTAL TIMBER. — "As the Court cannot determine what is Ornamental Timber, it being merely a matter of taste, they therefore say that what was planted for ornament must be considered as ornamental" (per Grant, M. R., *Mahon* v. *Stanhope*, 3 Mad. 523, *n*).

"If the object (of a proprietor having the absolute power of disposition) in planting Timber, or in leaving Timber standing, is Ornament, — whether that object is effected, whether the effect is truly ornamental or the most absurd exhibition that ever was produced, — this Court will protect that Timber; and the protection is not confined to trees planted, or left standing, as ornamental to a House or Park; nor does it depend on the distance from the Mansion. . . . If such a proprietor had even the bad taste to plant, or leave standing, a couple of yew trees cut in the shape of peacocks on the road-side, I do not shrink from what I laid down in *Downshire* v. *Sandys* (6 Ves. 107, 111) that they must be protected until some person (having the same absolute power of disposition) with more correct taste comes into possession" (per Eldon, C., *Wombwell* v. *Belasyse*, 6 Ves., 2 ed., 110 a, 110 b).

Vf, *Bewick* v. *Whitfield*, 3 P. Wms. 267: *Marker* v. *Marker*, 9 Hare, 1; 20 L. J. Ch. 246: *Newdigate* v. *Newdigate*, 2 Cl. & F. 601: *Ford* v. *Tynte*, 2 D. G. J. & S. 127: *Magennis* v. *Fallon*, 2 Molloy, 590: *Ashby*

Digitized by Google

v. *Hincks*, 58 L. T. 557: *Stafford* v. *Sutherland*, 92 Law Times, 390: TIMBER.

Vh, Equitable Waste, sub WASTE.

ORPHAN. — Though Johnson defines an Orphan as "a child who has lost father, or mother, or both"; yet where there was a bequest to A. until 21, "provided she be left an Orphan, unprovided for, and lives with part of my family," it was held, by Wood, V. C., that though A.'s mother was dead, yet as her father was alive and as on him lay the obligation of providing for A., she was not an "Orphan" as contemplated by the bequest (*Guilmette* v. *Mossop*, 7 L. T. 190).

A gift for the "Orphans" of a place is a good CHARITY (*A-G.* v. *Comber*, 2 Sim. & St. 93: *Russell* v. *Kellett*, 3 Sm. & G. 264; 26 L. T. O. S. 193; 2 Jur. N. S. 132).

ORPHAN ASYLUM. — *V.* ASYLUM.

OSBORNE MORGAN'S ACT. — Burial Laws Amendment Act, 1880, 43 & 44 V. c. 41.

OSTIARY. — "The Ostiary is he who keeps the doors of the church and tolls the bell" (Phil. Ecc. Law, 90). *Cp*, SEXTON.

OTHER. — "'Other' always implies something additional" (per Erle, C. J., *Ayrton* v. *Abbott*, 14 Q. B. 17).

"'Other,' ought to be other in Nature, Quality, and Person" (*Mildmay's Case*, 1 Rep. 177); "You do not use the word 'other' unless there is some relation between the classes of things" (per North, J., *Re Miller*, 61 L. T. 367). Yet it is frequently a differentiating word, and a power to appoint "any other Person" a New Trustee, excludes the donee of the power who 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).

"Where general words follow particular ones, the rule is to construe them as applicable to persons *ejusdem generis*" (per Tenterden, C. J., *Sandiman* v. *Breach*, 7 B. & C. 99). This rule has been "acted upon in all times, but nowhere more clearly stated than by Lord Tenterden in *Sandiman* v. *Breach*" (per Denman, C. J., *Kitchen* v. *Shaw*, 7 L. J. M. C. 16; 6 A. & E. 729); and it is therefore sometimes called Lord Tenterden's Rule, which quà the word "Other" may perhaps be more fully stated thus: — Where a statute, or other document, enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces "other" persons or things, — the word "other" will generally be read as "other such like," so that the persons or things therein comprised may be read as *ejusdem*

Digitized by Google

generis with, and not of a quality superior to, or different from, those specifically enumerated. The principle of this rule as regards statutes was explained by Kenyon, C. J., in *R.* v. *Wallis* (5 T. R. 379), wherein he said that if the legislature had meant the general words to be applied without restriction it "would have used only one compendious word." Yet, on the other hand, though "it is very likely that in former days the doctrine was applied strictly, there are cases which show that the modern tendency is to reject a restricted construction" (per Esher, M. R., *Anderson* v. *Anderson*, 64 L. J. Q. B. 458; 1895, 1 Q. B. 749), and very frequently the word receives its wide and larger interpretation of "every other sort or kind."

It is perhaps impossible to lay down any workable rule to determine which of these two interpretations the word should receive in any case not already covered by authority. Therefore, it would seem to be the most practically useful way to range, as far as possible, the cases into their two classes of interpretation:—

I. *Ejusdem generis*;

II. Unrestrictedly Comprehensive.

Ejusdem Generis.

I. The Sunday Observance Act, 1677, 29 Car. 2, c. 7, from the readiness with which it may be apprehended, and because it was in *Sandiman* v. *Breach* (decided upon that statute) that Tenterden, C. J., gave his celebrated expression to the rule, may well be placed as the leading example of the application of the *ejusdem generis* interpretation of "Other." That Act enacts that "no tradesman, artificer, workman, laborer, or other *Person* whatsoever," shall exercise his ORDINARY CALLING on the Lord's Day; but neither an Attorney nor Solicitor (*Peate* v. *Dickin*, 4 L. J. Ex. 28; 1 Cr. M. & R. 422; 5 Tyr. 116), Farmer (*R.* v. *Silvester*, 33 L. J. M. C. 79; nom. *R.* v. *Cleworth*, 4 B. & S. 927), nor a Stage-Coachman (*Sandiman* v. *Breach*, 7 B. & C. 96; 5 L. J. O. S. K. B. 298), is comprised within the phrase "other person" in that enactment. *Note*: This construction of the Sunday Observance Act is not only remarkable because it stands at the head of the numerous modern cases on the word "Other," but also because the words in that Act are "or other person *whatsoever*," and it might well have been held that "whatsoever" would have widened the meaning of "other," so as to give the latter word an unrestrictedly comprehensive meaning. Nor can the narrowing of the word "other" in that Act be attributed to any judicial unwillingness to enforce the statute; for *Sandiman* v. *Breach* was decided only three years after the Court which decided it had declared that that statute "ought to receive a liberal construction, being for the better observance of the Lord's Day": per Cur., *Ex p. Middleton*, 3 B. & C. 164. *Cp*, *Harris* v. *Jenns*, cited inf, p. 1368.

Digitized by Google

Ejusdem Generis:—

So, "any other *Person*," s. 1, 22 G. 3, c. 45, "must mean, 'other persons acting as the Agents of Government'" (per Richardson, J., *Thompson* v. *Pearce*, cited PUBLIC SERVICE).

So, the power to examine a judgment debtor or "any other *Person*," in aid of Execution (R. 32, Ord 42, R. S. C.), does not authorize the examination of a stranger to the record; and the phrase only means that if the judgment debtor be a corporation, any of its officers may be examined (*Irwell* v. *Eden*, 56 L. J. Q. B. 446; 18 Q. B. D. 588; 56 L. T. 620; 35 W. R. 511; 3 Times Rep. 535).

So, the words "other *Person* having the Management of the Road," s. 57, Ry C. C. Act, 1845, includes only a person *ejusdem generis* with the preceding words "Trustees, Commissioners, Surveyor" (*R.* v. *Wilson*, 21 L. J. Q. B. 281; 18 Q. B. 348).

So, the words "or other *Agent*," s. 75, Larceny Act, 1861, had to be read as *ejusdem generis* with "Banker, Merchant, Broker, Attorney," with which they are there associated (*R.* v. *De Portugal*, 55 L. J. Q. B. 567; 34 W. R. 42): *Note*, this section repealed and replaced by Larceny Act, 1901.

Abstracts of Title are not, nor are the Deeds abstracted, within the scale of fees for "perusing Deeds, Wills, and other *Documents*," provided by Part 1, Sch 2, Solrs Rem Ord (*Re Parker*, 54 L. J. Ch. 959; 29 Ch. D. 199; 52 L. T. 686; 33 W. R. 541: *Re Bann Navigation, Ex p. Olpherts*, 17 L. R. Ir. 168). But *Cases for Counsel* are "other Documents" within the phrase cited (*Re Mahon*, 1893, 1 Ch. 507: held otherwise in Ireland, *Ex p. O'Hagan*, 19 L. R. Ir. 99); so is an *Agreement* with a Local Authority for the execution of Sewage Works (*Ex p. Caruth*, 25 L. R. Ir. 478).

A *Conveyance* of described lands "and all other the Freehold Heredits" of the grantor "in the several parishes of D., W., & C., in the county of York"; held, not to pass an Advowson of a church at D. (*Crompton* v. *Jarratt*, 54 L. J. Ch. 1110; 30 Ch. D. 298: *Svthc*, *Early* v. *Rathbone*, 57 L. J. Ch. 652). So, a mortgage by the Secretary of a Building Society to the Society to secure subscriptions (on an advance), fines, "and other Moneys," does not secure moneys embezzled (*Bailes* v. *Sunderland Bg Socy*, 55 L. T. 808; 51 J. P. 310; 3 Times Rep. 97).

A *Bill of Sale* by a yearly tenant of a dwelling-house, of all his household goods, furniture, and other household effects, in and about the house, "and *all other his Personal Estate whatsoever*," does not pass his interest in the house (*Harrison* v. *Blackburn*, 34 L. J. C. P. 109; 17 C. B. N. S. 678). But, probably, if the Bill of Sale had included growing crops (per Byles, J., *S. C.*), or without that, if the document

Digitized by Google

Ejusdem Generis:—

had been an Assignment for the benefit of Creditors, the interest in the tenancy of the premises would have passed (*Ringer* v. *Cann*, 7 L. J. Ex. 108; 3 M. & W. 343).

"Rents and other *Moneys* held upon the trusts of the deed"; held, that "other Moneys" meant Income only (*Clifford* v. *Arundell*, 1 D. G. F. & J. 307).

"Stock-in-Trade, Materials, and other *Articles*" in or about a Business; held, to include a Horse and Gig used in the business (*Dean* v. *Brown*, 5 B. & C. 336).

As to Wills and Settlements; *V. Unrestrictedly Comprehensive*, pp. 1366, 1367.

"Other Fixtures and Articles in the nature of Fixtures," in a Lessee's covenant to deliver up at the end of the term, connotes Fixtures of a kind previously enumerated, and if those be only of a kind usually called "Landlord's Fixtures" the covenant will not include Trade, or even Tenant's, Fixtures (*Elliott* v. *Bishop*, *Bishop* v. *Elliott*, cited FIXTURES).

A Proviso for Reduction of Rent in case of fire, flood, storm, tempest, or other *Inevitable Accident*," does not apply to damage arising from faulty construction of the premises (*Saner* v. *Bilton*, 47 L. J. Ch. 267; 7 Ch. D. 815: *Manchester Bonding Warehouse Co* v. *Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507). *V.* INEVITABLE.

"Sickness or other *Sufficient Cause*"; *V.* SICKNESS.

The sale of a British ship by licitation is not a Transmission of it "by any lawful means *other than a Transfer*," within s. 58, Mer Shipping Act, 1854, repld s. 27, Mer Shipping Act, 1894, as the word "other," in that phrase, comprehends only transmissions of the same nature as those previously enumerated in that section (*Chasteauneuf* v. *Capeyron*, 51 L. J. P. C. 37; 7 App. Ca. 127).

"Other *Causes beyond Charterer's Control*," in a Charter-Party Exception, refers only to matters *ejusdem generis* with the preceding words (*Re Richardsons and Samuel*, 1898, 1 Q. B. 261; 66 L. J. Q. B. 868; 77 L. T. 479; 8 Asp. 330; 3 Com. Ca. 79: *Shamrock S. S. Co* v. *Storey*, 4 Com. Ca. 80; 5 Ib. 21; 81 L. T. 413).

"All other CONDITIONS AS PER CHARTER-PARTY," in the Exceptions in a Bill of Lading, will be read *ejusdem generis*, and will not incorporate from the Charter the Negligence Clause as per Baltic Bill of Lading, 1885 (*Serraino* v. *Campbell*, 1891, 1 Q. B. 283; 60 L. J. Q. B. 303: *Manchester Trust* v. *Furness*, 1895, 2 Q. B. 539; 64 L. J. Q. B. 766, following *Russell* v. *Niemann*, 34 L. J. C. P. 10; 17 C. B. N. S. 163).

"Other *Legal Merchandize*," in a Charter-Party, means, that the char-

Digitized by Google

Ejusdem Generis: —

terer may ship any lawful article he pleases, but must pay Freight as though such articles were *ejusdem generis* with those specified (*Capper* v. *Forster*, 6 L. J. C. P. 332; 3 Bing. N. C. 938: *Cockburn* v. *Alexander*, 18 L. J. C. P. 74; 6 C. B. 791: *Furness* v. *Tennant*, 8 Times Rep. 336). *V.* LEGAL MERCHANDIZE.

"All other *Perils*," &c, in a Marine Insurance, covers only such perils as are *ejusdem generis* with the enumerated perils (*Thames & Mersey Mar Insrce* v. *Hamilton*, 12 App. Ca. 484; 56 L. J. Q. B. 626. *Vf*, the cases there cited). *Note*: as to what are such "other Perils," &c, *V. The Knight of St. Michael*, 1898, P. 30; 67 L. J. P. D. & A. 19; 78 L. T. 90; 46 W. R. 396, and cases there cited.

"Other *Proceeding* whatsoever," in a power to release contained in a Power of Attorney, meant, Proceedings of the same kind as those enumerated (*Solomon* v. *Graham*, 5 E. & B. 323). *Vf*, PROCEEDING.

The Act (11 G. 2, c. 19, ss. 8, 9), for extending the Common Law right of Distress, and which enables a landlord to distrain upon "all sorts" of growing "corn and grass, hops, roots, fruits, pulse, or other *Product* whatsoever," does not include trees, shrubs, and plants growing in a nursery garden (*Clark* v. *Gaskarth*, 8 Taunt. 431: *Clark* v. *Calvert*, 3 Moore C. P. 114: *Va*, *R.* v. *Hodges*, Moo. & M. 341, which is a similar decision, as regards the offence created by 7 & 8 G. 4, c. 29, s. 42, repld s. 36, Larceny Act, 1861).

"Any Way or other *Easement*" in the Prescription Act, 1832, 2 & 3 W. 4, c. 71, s. 2, does not include a right of wind or air (*Webb* v. *Bird*, 30 L. J. C. P. 384; 31 Ib. 335; 10 C. B. N. S. 268; 13 Ib. 841), or light (*Perry* v. *Eames*, 1891, 1 Ch. 658; 60 L. J. Ch. 345; 64 L. T. 438: *Wheaton* v. *Maple*, 1893, 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677).

"Other Agent"; *V.* AGENT.

"Other *Building*" to qualify for the parliamentary franchise under Rep People Act, 1832, 2 & 3 W. 4, c. 45, s. 27 (repealed by 48 & 49 V. c. 3) must have been something substantial and *ejusdem generis* with the preceding words, "house, ware-house, counting-house, shop" (*Powell* v. *Boraston*, 34 L. J. C. P. 76; 18 C. B. N. S. 175; H. & P. 170: *Morrish* v. *Harris*, L. R. 1 C. P. 155; nom. *Norrish* v. *Harris*, 35 L. J. C. P. 101: *Powell* v. *Farmer*, 34 L. J. C. P. 71); and so, of the same phrase in s. 3, Prescription Act, 1832 (*Harris* v. *De Pinna*, 33 Ch. D. 238). *Vf*, BUILDING.

"House or other *Building*," s. 92, Lands C. C. Act, 1845; *V.* HOUSE.

"Dwelling-house, workshop, or other bg"; *V.* BUILDING.

"Other *Place*"; *V.* PLACE: PUBLIC DANCING.

In Rating Acts, where power is given to rate enumerated classes of

Digitized by Google

Ejusdem Generis:—

corporeal property (*e.g.* lands, houses) and "other *Tenements or Hereditaments*," these latter words will generally be confined to *corporeal* tenements or hereditaments, and will not extend to Tithes (*R.* v. *Neville*, 15 L. J. M. C. 33; 8 Q. B. 452: *semble, the* over-rules *Powell* v. *Bull*, 1 Comyn, 265, and *R.* v. *Skingle*, 1 Stra. 100); or Market-Tolls (*R.* v. *Mosley*, 2 B. & C. 226; 3 D. & R. 385: *Colebrooke* v. *Tickell*, 5 L. J. K. B. 180; 4 A. & E. 916); or the Street Mains of a Gas, or Water, Company (*R.* v. *Manchester W. W. Co*, 1 B. & C. 630; 3 D. & R. 20: *East London W. W. Co* v. *Mile End Old Town*, 17 Q. B. 512: *Chelsea W. W. Co* v. *Bowley*, 17 Q. B. 358; 20 L. J. Q. B. 520: *Sr*, *R.* v. *Shrewsbury Gas Co*, p. 1368, *post*: *Metrop Ry* v. *Fowler*, 1893, A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270). So, where (by s. 33, 3 & 4 W. 4, c. 90) the rating of "houses, buildings, and *Property* (other than land)" was to be triple that of land, it was held that "property" did not include a canal and towing-path (*R.* v. *Neath Canal Nav.*, 40 L. J. M. C. 193; L. R. 6 Q. B. 707). *V.* PROPERTY OTHER THAN LAND: TENEMENT.

"High Constable, or other *Proper* Officer," s. 62, 13 G. 3, c. 78, means, an Officer analogous to a High Constable in a Hundred (*R.* v. *Surrey Jus.*, 5 B. & C. 241).

The duties on metals exported or imported into the port of Arundel and imposed by the Schedule to 6 G. 4, c. clxx., which enumerated copper, iron, lead, brass, pewter, and tin, and concluded with an assessment "on all other *Metals* not enumerated," were held not to apply to gold or silver (*Casher* v. *Holmes*, 9 L. J. O. S. K. B. 280; 2 B. & Ad. 592).

The penalty imposed by the Turnpike Roads Act, 1822, 3 G. 4, c. 126, s. 121, for hauling "any timber or stone, or other *Thing*, otherwise than upon wheeled carriages," is confined to heavy substances injurious to roads, like timber or stone, and does not extend to straw (per Crompton and Mellor, JJ., Cockburn, C. J., dub., *Radnorshire* v. *Evans*, 33 L. J. M. C. 100; 3 B. & S. 400).

The Act (7 & 8 G. 4, c. lxxv., s. 37) imposing a penalty for the navigation of the Thames by unqualified persons with "any wherry, lighter, or other *Craft*," does not include a steam-tug carrying neither passengers nor goods (*Reed* v. *Ingham*, 23 L. J. M. C. 156; 3 E. & B. 889). But s. 57 of the same statute, enabling the Corporation to make bye-laws for the navigation "of boats, vessels, and other *Craft*," does extend to steam vessels (*Tisdell* v. *Combe*, 7 L. J. M. C. 48; 7 A. & E. 788).

The penalty imposed by s. 64, P. H. Act, 1848, for newly establishing, without a license, "the business of a blood-boiler, bone-boiler, fell-monger, slaughterer of cattle horses or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other *Noxious or Offensive business, trade, or manufacture.*" was restricted to trades that dealt with substances

Digitized by Google

Ejusdem Generis:—

which are or must necessarily become, in themselves, noxious or offensive; and brick-making, *per se*, was not prohibited (*Wanstead* v. *Hill*, cited Noxious).

"Notice, Order, or other *Document*," s. 128 (1), P. H. London Act, 1891, includes a Summons (*R.* v. *Mead*, 1894, 2 Q. B. 124; 63 L. J. M. C. 128; 70 L. T. 766; 42 W. R. 442; 58 J. P. 448).

The penalty imposed by s. 3, Hosiery Manufacture (Wages) Act, 1874, 37 & 38 V. c. 48, for making deductions from wages "for frame rent and standing, or other *Charges*," does not include fines for misconduct (*Willis* v. *Thorp*, 44 L. J. Q. B. 137; L. R. 10 Q. B. 383).

The penalties for fishing without license in the Severn Fishery District, — (defined by the Secretary of State's certificate to be "So much of the River Severn and of the Rivers Vyrynw and Teme, and of all other *Tributaries* of the said River Severn as is situate" in certain counties, &c), — were only applicable to such tributaries of the Severn as are like Vyrynw and Teme, *i.e.* those that are *direct* tributaries (*Merricks* v. *Cadwallader*, 51 L. J. M. C. 20). *Vf*, Tributary.

"Snare, spear, gaff, strokehall, snatch, or other *Like Instrument*," for catching salmon, s. 8, Salmon Fisheries Act, 1861, as amended by s. 18, Salmon Fisheries Act, 1873, does not include a net having a smaller mesh than that prescribed by s. 10 of the Act of 1861 (*Jones* v. *Davies*, 1898, 1 Q. B. 405; 67 L. J. Q. B. 294; 78 L. T. 44; 62 J. P. 182).

A builder employed by a building owner was not entitled to notice of action under s. 108, Metrop Bg Act, 1855 (repealed by London Bg Act, 1894), which required such a notice to be given to "any district surveyor or other *Person*" (*Williams* v. *Golding*, 35 L. J. C. P. 1; L. R. 1 C. P. 69; H. & R. 18: *Cp*, *R.* v. *Doubleday*, p. 1367, *post*: Treasurer).

A Ragged Industrial and Reformatory School is not within the proviso to s. 62, Charitable Trusts Act, 1853, which enacts that "cathedral, collegiate, chapter, or other *Schools*" shall not have exemption from the jurisdiction of the Charity Commrs (*Re Stockport Schools*, 1898, 2 Ch. 687; 68 L. J. Ch. 41; 79 L. T. 507; 47 W. R. 166). *V.* School.

It has been stated that when words descriptive of the rank of persons or things are used in a descending order according to rank, and general words (such as "other" persons or things) are superadded, that word will not include persons or things of a higher rank or importance than the highest named, if there be any lower species to which they can apply (Maxwell, 417, 418: *Va*, Wilberforce, 183, 184, for cases on early statutes illustrating this rule). The case of *Ex p. Hill* (3 C. & P. 225), which decided that the 3 G. 4, c. 71, which punished cruelty to any "horse, mare, gelding, mule, ass, ox, cow, heifer, sheep, or other *Cattle*," did not include a Bull, was certainly a remarkable decision; but it may be

Digitized by Google

Ejusdem Generis:—

doubted whether it, or the rule just stated which it is supposed to illustrate, is of much practical value at the present day. It may however be noticed that this rule receives illustration from at least one Stat. Def., for the Naval Discipline Act, 1861, 24 & 25 V. c. 115, provides that "'other Punishment,' shall be deemed to comprise any one or more of the punishments *inferior in degree* to the specified punishment according to the scale hereinbefore mentioned" (s. 48).

"Other *Place*"; *V.* PLACE.

For other cases of the application of the *ejusdem generis* interpretation of the word "Other"; *V. Lowther* v. *Radnor*, 8 East, 113: *Kitchen* v. *Shaw*, 7 L. J. M. C. 14; 6 A. & E. 729: *Bramwell* v. *Penneck*, 6 L. J. O. S. M. C. 47; 7 B. & C. 536, on 20 G. 2, c. 19, s. 1; 6 G. 3, c. 25, s. 4, and 4 G. 4, c. 34, s. 3: — *Midgley* v. *Richardson*, 15 L. J. Ex. 257; 14 M. & W. 595: *Hedley* v. *Fenwick*, 3 H. & C. 349, on Enclosure Acts: — *R.* v. *Hall*, 1 B. & C. 237, on 9 Anne, c. 20: — *R.* v. *Spratley*, 25 L. J. Q. B. 257; 6 E. & B. 363, on Municipal Act, 5 & 6 W. 4, c. 76, ss. 32, 142, and *R.* v. *Dickenson*, 26 L. J. M. C. 204; 7 E. & B. 831, on a Bye-law made under that Act: — and *Ward* v. *Folkestone W. W. Co*, 59 L. J. M. C. 65; 24 Q. B. D. 334, on a Local Waterworks Act.

Va, ACCIDENT: ALMS.

Unrestrictedly Comprehensive.

II. It seems the better opinion, in view of modern authorities, that the *ejusdem generis* principle of construing the word "other" is not, in general, applicable in the construction of *Wills*. No doubt, in *Hotham* v. *Sutton*, 15 Ves. 326 (which was a Will case), Ld Eldon said, "The doctrine appears now to be settled in this Court, that the words 'other effects,' in general, mean effects *ejusdem generis*"; but he did not in that case apply the doctrine, but rather seized upon an exception of money out of "other effects" as a reason for giving that latter phrase its full meaning after allowing the express exception. And so although in Wms. Exs. (p. 1046) it is stated that the *ejusdem generis* rule is applicable even to Wills, yet, it is added, "this rule is not of universal application"; whilst at p. 757, 1 Jarm., it is said that the rule "seems scarcely to accord" with the recent decisions there, *et seq*, very elaborately stated (*Va*, Theobald, 206). If, indeed, the rule exists at all for the purpose of construing Wills, it is at least subject to so many exceptions and may so easily be displaced by very small expressions, that it is probably safe to say that the *ejusdem generis* principle has practically so slender a value, quà Wills, as to be inappreciable; and that therefore when general words such as "other," occur in a Will they must be construed according to the

Digitized by Google

Unrestrictedly Comprehensive:—

circumstances of each case. Thus in *Hodgson* v. *Jex* (45 L. J. Ch. 388; 2 Ch. D. 122), it was held that a bequest of "all my furniture, plate, linen, and other *Effects*," comprised all the residuary personal estate of the testator; so, after similar words of enumeration, of "all other the rest and residue of my personal estate" (*Martin* v. *Glover*, 1 Coll. 269); and so, of a bequest of "All my wines and other *Property*" (*Arnold* v. *Arnold*, 4 L. J. Ch. 123; 2 My. & K. 365: *Vf*, *Bernard* v. *Minshull*, 28 L. J. Ch. 649; Johns. 276: 1 Jarm. 751, 754, *n*: ET CETERA). So, of Settlements: therefore, where a Post-Nuptial Settlement assigned "all the household furniture, plate, linen, china, glass, and tenant's fixtures, wines, spirits, and other consumable stores, and other *Goods Chattels and Effects*," in or upon a messuage with its coach-houses and stable-buildings; held, that the italicised words passed carriages, horses, harness, and stable furniture, in the coach-houses and stable-buildings (*Anderson* v. *Anderson*, 1895, 1 Q. B. 749; 64 L. J. Q. B. 457; 72 L. T. 313; 43 W. R. 322); but a Bequest of "household furniture, books, pictures, paintings, engravings, plate, linen, china, and other *Effects*" was held by Stirling, J., not to pass jewellery (*Re Hammersley*, 81 L. T. 150). *Cp*, *Harrison* v. *Blackburn*, and *Ringer* v. *Cann*, cited *ante*, pp. 1361, 1362.

It would also seem that the *ejusdem generis* rule of interpretation has but little, if any, value in statutes conferring discretionary powers on the judiciary or such like public functionaries. Thus, the power to remit to the County Court actions for "Malicious Prosecution, Illegal Arrest, Illegal Distress, Assault, False Imprisonment, Libel, Slander, Seduction, or other *Action of Tort*," in cases where the plaintiff has no visible means of paying costs (s. 10, Co. Co. Act, 1867), seems to have applied to all actions of tort without limitation (*Clapham* v. *Oliver*, 30 L. T. 365; 22 W. R. 655): *Note.* The section is replaced by s. 66, Co. Co. Act, 1888.

So, the power given by s. 7 of the County Rates Act, 1852, 15 & 16 V. c. 81, to a County Assessment Committee to summon "overseers, constables, assessors, collectors, and any other *Persons* whomsoever," to produce documents relating to values of property, &c, is not confined to officials, but extends to all persons whomsoever (*R.* v. *Doubleday*, 3 E. & E. 501). *Cp*, *Williams* v. *Golding*, p. 1365, *ante*.

The words "any other *Article or Thing*," s. 37, Prison Act, 1865, 28 & 29 V. c. 126, which makes it felony to facilitate the escape of a prisoner by conveying to the prison "any mask, dress, or other disguise, or any letter, or any other Article or Thing," mean, any other article or thing of any kind, sort, or description, whatsoever, *e.g.* a crow-bar (*R.* v. *Payne*, 35 L. J. M. C. 170; L. R. 1 C. C. R. 27). *Note.*—The Court in that case gave as a reason for its judgment that all the prior statutes on the subject had included a crow-bar; but its omission should, it is submit-

Digitized by Google

Unrestrictedly Comprehensive:—

ted, have rather had a contrary effect. The decision would, perhaps, be better based if the word "or," after the word "letter," were construed as altogether disconnecting "article or thing" from the preceding enumerations.

"Any other *Building* whatsoever," 4 G. 2, c. 32, comprises all buildings, *e.g.* a summer-house half a mile away from the house using it (*R.* v. *Norris*, Russ. & Ry. 69).

"Other *Officer*"; *V.* Officer.

A power to rescind a Contract, "from any other *Cause* whatever," includes any reasonable cause (*Sun Fire Office* v. *Hart*, 58 L. J. P. C. 69; 14 App. Ca. 98).

"Tonnage, timber, stores, or other *Goods*," s. 23, 39 & 40 V. c. 80, repld s. 85, Mer Shipping Act, 1894, includes horses and cattle (*V.* Goods).

A ship-owner is entitled to limit his liability for the loss of passenger's personal effects wearing apparel and luggage, under the phrase "goods, merchandize, or other *Things* whatsoever," in s. 503, Mer Shipping Act, 1894 (*The Stella*, 81 L. T. 235).

The penalty imposed by s. 3, 26 & 27 V. c. 117, for preventing the Medical Officer or Inspector from entering any "slaughter-house, shop, building, market, or other *Place*," extended to "every species of premises," *e.g.* a yard (*Young* v. *Gattridge*, 38 L. J. M. C. 67; L. R. 4 Q. B. 166). *Note*: s. 118, P. H. Act, 1875, replaces that section, but avoids question by simply imposing the penalty for preventing the entry of "any premises."

"Other *Place*"; *V.* Place.

"Licensed Victualler or person licensed to sell beer," &c, "or other *Person*," s. 1, 11 & 12 V. c. 49, includes all the world other than the persons specified (*Harris* v. *Jenns*, 9 C. B. N. S. 152; 30 L. J. M. C. 183). *Cp*, *Sandiman* v. *Breach*, *ante*, pp. 1359, 1360.

By a Private Town Act the Trustees were empowered to rate occupiers of all "shops, malt-houses, granaries, warehouses, coach-houses, yards, gardens, garden-ground, stables, cellars, vaults, wharfs, and other Buildings and *Hereditaments*" within certain limits, "*meadow and pasture-ground excepted.*" This exception was held to take the words "other hereditaments" out of the *ejusdem generis* rule, so that the mains of a Gas Company were rateable (*R.* v. *Shrewsbury Gas Co*, 1 L. J. M. C. 18; 3 B. & Ad. 216: *Va*, as to the value of an exception in controlling the construction, *Hotham* v. *Sutton*, 15 Ves. 326: Alms: and *Cp*, *R.* v. *Manchester W. W. Co*, and other cases, p. 1364, *ante*).

"Other *Incorporated Company*"; *V.* Company.

"Other *Rate*"; *V. Carr* v. *Fowle*, cited Rate.

Digitized by Google

Vh, Cork and Bandon Ry v. *Goode*, 22 L. J. C. P. 198; 13 C. B. 826.
Note, that in *Leicester* v. *Brown* (cited BUILDING), the absence of "other" was used by Pollock, B., as a reason for excluding an *ejusdem generis* construction.

OTHER CIRCUMSTANCES.—*V.* CIRCUMSTANCES.

OTHER CONDITIONS.—*V.* CONDITIONS AS PER CHARTER-PARTY.

OTHER DAUGHTERS.—"Other daughters surviving"; *V. Beckwith* v. *Beckwith*, 25 W. R. 282; 36 L. T. 128.

OTHER MANNER.—*V.* MANNER.

OTHER PARTY.—*V.* PARTY: OPPOSITE PARTY.

OTHER PERSON.—*V.* OTHER: PERSON.

OTHER SONS.—In a gift to second, third, fourth, and all and every "other Sons" of A., the first son though not mentioned is not excluded, but rather the word "other," "*ex vi termini*, includes the first" (per Ld Brougham, *Langston* v. *Langston*, 8 Bligh, N. S. 167; 2 Cl. & F. 194, cited 2 Jarm. 215, 216). In *Locke* v. *Dunlop* (39 Ch. D. 387; 57 L. J. Ch. 1010; 3 Times Rep. 628), Stirling, J., held, on the context, that "other son" had reference to futurity, and included only those sons who should be born after his sons who were in existence at the date of his Will; and that learned judge distinguished *Galley* v. *Barrington* (2 Bing. 387; 10 Moore, 21). *Cp*, ELDEST.

OTHER THAN.—"Other than" creates an Exception (*Wrotesley* v. *Adams*, Plowd. 195).
V. BESIDES: PROPERTY OTHER THAN LAND.

OTHER THE ISSUE.—In *Allgood* v. *Blake* (41 L. J. Ex. 217; 42 Ib. 101; L. R. 7 Ex. 339; 8 Ib. 160), the words (at the end of a series of limitations in Tail Special) "to the use of all and every Other the Issue," were read, not as excluding those before mentioned but rather, as completing a provision for all the issue and as thus creating a vested remainder in tail general.

OTHER TRUSTEE.—"Where four Trustees were appointed originally, and the power was to the surviving, or continuing, or *other* Trustee, to appoint new Trustees, it was held that the survivor of the four trustees who desired himself to be discharged, could, by force of the words 'other Trustee,' appoint four new trustees in the place of himself and three others" (Lewin, 786, citing *Camoys* v. *Best*, 19 Bea. 414).

Digitized by Google

OTHERS and/or OTHER.—"Others and other of them"; *V. Re Chaston*, 50 L. J. Ch. 716; 29 W. R. 778; 45 L. T. 20.

"Others or other," not read as "Survivors or Survivor"; *V. Re Hagen*, 46 L. J. Ch. 665. *V.* SURVIVOR.

OTHERWISE.—Speaking generally, "Otherwise" when following an enumeration, should receive an *ejusdem generis* interpretation much in the same way as OTHER. As to this general rule "no authority is necessary" (per Cleasby, B., *Monck* v. *Hilton*, 46 L. J. M. C. 167), and Pollock, B., said (Ib. 168) "the principle upon which this rule is founded is thoroughly established." *Va*, per Dowse, B., *Haren* v. *Archdale*, 12 L. R. Ir. 318. But it is a general rule which, in the case of "Otherwise," is not unfrequently found inapplicable. Indeed, Russell, C. J., is reported to have said, "the doctrine of *ejusdem generis* does not apply to the words 'or otherwise'" (*Sutton* v. *L. C. & D. Ry*, 12 Times Rep. 425. *Va*, per Jessel, M. R., *Lowther* v. *Bentinck*, p. 1372, post).

Vernon's Case (4 Rep. 1 a) is the leading authority on this word; and there it was decided that the proviso, contained in s. 9, Statute of Uses, 27 Hen. 8, c. 10, enabling a wife to take or reject hereditaments given to her "for term of her life *or otherwise in jointure*," extended to an estate in fee simple; but the judgment says, "for *nota*, this word 'otherwise' is not indefinite, but 'otherwise *in jointure*'" (4 Rep. 3 b).

By s. 1, Sum Jur Act, 1848, 11 & 12 V. c. 43, Justices may issue a summons in cases where they have authority to make "any Order for the payment of any Money *or otherwise*"; an Order for the demolition of a building under a local Improvement Act is within these words and must therefore (by s. 11) be made within 6 months after the completion of the building (*Morant* v. *Taylor*, 45 L. J. M. C. 78; 1 Ex. D. 188; 40 J. P. 101). *Vf*, ARISE.

S. 4, Vagrancy Act, 1824, 5 G. 4, c. 83, makes it an offence "pretending or professing to tell FORTUNES, or using any subtle craft means or device by Palmistry *or otherwise* to deceive." "Reading this as a whole I should take the word 'otherwise,' not as limiting the earlier words, but as enlarging the word 'palmistry,' and providing against the professing to tell fortunes or using craft means or devices to deceive, whether by palmistry or by contrivance to deceive other than palmistry, *provided they are of the same general character as is indicated by the earlier words of the section*" (per Pollock, B., *Monck* v. *Hilton*, 46 L. J. M. C. 169). Accordingly, pretended spiritualism is within the offence (*Monck* v. *Hilton*, 46 L. J. M. C. 163; 2 Ex. D. 268; 25 W. R. 373; 41 J. P. 214). But a trick of legerdemain is not (*Johnson* v. *Fenner*, 33 J. P. 740); for, "in such a case no peculiar power is pretended, like telling fortunes or palmistry, to impose upon the credulous" (per Cleasby, B., in *Monck* v. *Hilton*, 46 L. J. M. C. 167). *Vf*, *Ex p. A-G.*, 41 J. P. 118: *R.* v. *Middlesex Jus.*, Ib. 629: *Re Slade*, 36 L. T. 402.

Digitized by Google

Though under the County Courts Act, 1867, 30 & 31 V. c. 142, s. 7, an action in the High Court for an amount exceeding £50, but reduced by payment *after action brought*, could not be remitted to the Co. Co. under the words of the section "reduced by payment, an admitted set-off, or otherwise" (*Osborne* v. *Homburg*, 45 L. J. Ex. 65; 1 Ex. D. 48; 24 W. R. 161: *Walesby* v. *Gouldstone*, 35 L. J. C. P. 302; L. R. 1 C. P. 567; 14 W. R. 899; 14 L. T. 662: *Foster* v. *Usherwood*, 47 L. J. Ex. 30; 3 Ex. D. 1; 37 L. T. 389; 26 W. R. 91: *Va*, Co. Co. Act, 1888, s. 65, and thereon *Hodgson* v. *Bell*, 59 L. J. Q. B. 231; 24 Q. B. D. 525; 38 W. R. 325; 62 L. T. 481), yet, after issue joined, such an action, however subsequently reduced below £50, could be remitted under s. 26, Co. Co. Act, 1856, 19 & 20 V. c. 108, because in that section the words are "reduced by payment *into Court*, payment, an admitted set-off, or otherwise," and as "payment into Court" must refer to something after action brought, the words "or otherwise" received their natural meaning (*Gray* v. *Hopper*, 36 W. R. 746; 21 Q. B. D. 246; 57 L. J. Q. B. 505). By s. 65, Co. Co. Act, 1888, the words are "reduced by payment, an admitted set-off, or otherwise." *V.* Reduced by Payment: Admitted Set-off.

A Provision in a Private (Borough) Improvement Act that nothing therein contained should affect any right which the Corporation might have "under the Municipal Corporation Acts, or otherwise," is not confined to Acts similar in kind to the Municipal Corporation Acts, but extends to all Acts (*Taylor* v. *Oldham*, 46 L. J. Ch. 108; 4 Ch. D. 395). *Va*, on s. 169, 11 & 12 V. c. clxiii., *Sion College* v. *London Corp*, 1900, 2 Q. B. 581; 69 L. J. Q. B. 766.

"A Married Woman shall be capable of entering into, and rendering herself liable in respect of and to the extent of her Separate Property on, any Contract, and of suing and being sued either in Contract or in Tort, or otherwise, in all respects as if she were a Feme Sole," s. 1 (2), M. W. P. Act, 1882; that is not to be read only in connection with the power to contract, but has a general application and gives her the power of suing, and imposes the liability of being sued, just as though she were unmarried, — *e.g.* she may be sued by an exor to refund assets paid to her in ignorance of a debt which afterwards the exor is called on to pay and which if known would have been paid out of such assets (*Re Kershaw*, 60 L. J. Ch. 9; 45 Ch. D. 320; 63 L. T. 203; 39 W. R. 23).

"A *Power to Appoint*, 'by Will or otherwise,' of course, authorizes an appointment by Deed" (Sug. Pow. 211, citing *Irwin* v. *Farrer*, 19 Ves. 86: *Van* v. *Barnett*, Ib. 110).

A *Condition of Sale* empowered a vendor to vacate the sale if any Objection were made "as to the abstract of title, or the evidence thereof, or the conveyance, or as to compensation, or indemnity, or otherwise"; and Westbury, C., held that the word "otherwise" would comprehend all other subjects as to which there might be an objection or a claim

Digitized by Google

made by the purchaser (*Cordingley* v. *Cheesebrough*, 31 L. J. Ch. 621; 3 Giff. 496; 4 D. G. F. & J. 379: *Vf*, jdgmt of Esher, M. R., *Re Terry to White*, 55 L. J. Ch. 347; 32 Ch. D. 14; 34 W. R. 379).

So, in the ordinary Power to Trustees to apply capital in or towards "the advancement, or preferment, *or otherwise for the benefit*" of a person, the words italicised are not restricted by "advancement" or "preferment" (*V.* ADVANCEMENT: *Lowther* v. *Bentinck*, 44 L. J. Ch. 197; L. R. 19 Eq. 167: in *thc* Jessel, M. R., said, "When I find the words 'or otherwise,' I am bound to say I don't know what is *ejusdem generis*"). So, a direction to make Deductions, from the income of a tenant for life, for all ordinary outgoings for "taxes, or otherwise," was held to include cost of drainage works under s. 73, 18 & 19 V. c. 120 (*Re Crawley*, 54 L. J. Ch. 652; 28 Ch. D. 431).

A Lessee's covenant to pay expenses of "reparation, pulling down, rebuilding, or raising, or in or about any drainage or sewerage, or otherwise BY VIRTUE of any Act of Parliament," includes structural works under the Factory and Workshop Act (*Arding* v. *Economic Printing Co.*, 79 L. T. 622).

A Gift of Real Estate, to hold "*for ever, or otherwise*," according to the respective natures and tenures thereof; held to include leaseholds for years (*Swift* v. *Swift*, 29 L. J. Ch. 121; 1 D. G. F. & J. 160).

Where a party to an Action has to satisfy the Court of any matter "by Affidavit, or otherwise," that means, by affidavit or any other sufficient means (*Shelford* v. *Louth Ry*, 4 Ex. D. 317; 28 W. R. 407).

An Admission "either on the Pleadings, or otherwise," R. 6, Ord. 32, R. S. C., may be in an affidavit (*Freeman* v. *Cox*, 47 L. J. Ch. 560; 8 Ch. D. 148: *Porrett* v. *White*, 55 L. J. Ch. 79; 31 Ch. D. 52: *Laudergan* v. *Feast*, 55 L. J. Ch. 505; 54 L. T. 369), or in a letter before action (*Hampden* v. *Wallis*, 54 L. J. Ch. 1175; 27 Ch. D. 251; 32 W. R. 977), "Jessel, M. R., used to say that one admission is as good as another" (per Chitty, J., *Ib.*); it may even be oral (*Re Beeny*, 1894, 1 Ch. 499; 63 L. J. Ch. 312; 70 L. T. 160; 42 W. R. 377).

"Though an Indictment will not lie for an offence newly created by statute where another method of prosecution is appointed, yet if the statute gives a recovery by Action of Debt, Bill, Plaint, Information, 'or otherwise,' it authorizes a proceeding by way of Indictment" (Dwar. 673).

A Bill of Lading which exonerates the ship-owner from the negligence of his servants "in Navigating the ship, or otherwise," means, that the ship-owner is not to be responsible, "whether the negligence be in navigating the ship or not" (per Rigby, L. J., *Baerselman* v. *Bailey*, 1895, 2 Q. B. 301; 64 L. J. Q. B. 707; 72 L. T. 677; 43 W. R. 593, in *whc* was discussed, *Norman* v. *Binnington*, 59 L. J. Q. B. 490; 25 Q. B. D. 475; 38 W. R. 702; 63 L. T. 109). But where a Bill of Lading exonerated the ship-owners from claims arising from "Defects latent on beginning of

Digitized by Google

voyage, or otherwise"; held, that that did not cover a patent defect in ventilation nor the consequent damage (*Waikato* v. *New Zealand Shipping Co*, 1899, 1 Q. B. 56; 68 L. J. Q. B. 1; 8 Asp. 442; 3 Com. Ca. 109; 79 L. T. 326).

"Dividends, Profits, or otherwise," s. 38 (7), Comp Act, 1862; *V. Re Leicester Racecourse Co*, 55 L. J. Ch. 206; 30 Ch. D. 629; 53 L. T. 340; 34 W. R. 14.

THREAT by "Circulars, Advertisements, or otherwise," s. 32, Patents, Designs, and Trade-Marks Act, 1883, has a general interpretation (*Driffield & East Riding Linseed Co* v. *Waterloo Mills Co*, 31 Ch. D. 638; 55 L. J. Ch. 391; 54 L. T. 210; 34 W. R. 360: *Skinner* v. *Shew*, 1893, 1 Ch. 413; 62 L. J. Ch. 196). *Vf*, CIRCULAR.

On the other hand:—

Where a Settlement recited a Will under which A. was entitled to an interest in certain funds, and then settled all the share and interest of A. in those funds "to which she is now, or may become, entitled by accruer, survivorship, or otherwise"; held, that the share in the same funds to which A. afterwards became entitled by a *subsequent* Will of another person was not comprised in the Settlement (*Parkinson* v. *Dashwood*, 30 Bea. 49; 9 W. R. 493; 4 L. T. 41).

The provision in the Wills Act, 1837, for revoking a Will by "burning, tearing, *or otherwise destroying*" it, the words italicised have to be read as *ejusdem generis* with "burning, tearing"; *V.* DESTROY.

So, the phrase in s. 53, Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, relating to streets not theretofore paved and flagged, "or otherwise *made good*," refers to a process *ejusdem generis* with paving and flagging; *i.e.* otherwise made into an artificial road in a manner similar to that in which a road is made by paving and flagging (per Brett, M.R., *Portsmouth* v. *Smith*, 53 L. J. Q. B. 92; 13 Q. B. D. 184; in H. L., 54 L. J. Q. B. 473; 10 App. Ca. 364).

V. GUT.

So, the phrase "otherwise *engaged in Manual Labour*," s. 10, Employers and Workmen Act, 1875, 38 & 39 V. c. 90, following, as it immediately does, an enumeration of employments exclusively manual, embraces only "people who are ordinarily known in the English language as working people who exercise manual labour" (per Brett, L.J.), and does not include an omnibus conductor (*Morgan* v. *London Gen. Omnibus Co*, 53 L. J. Q. B. 352; 13 Q. B. D. 832: *Va*, per Smith, J., *Cook* v. *N. Metrop Tramways*, 18 Q. B. D. 684).

So, the requirement, s. 25, Comp Act, 1867, that shares in a Co must be paid for IN CASH unless "otherwise *determined* by a CONTRACT duly made IN WRITING," means, that a consideration other than cash may be accepted, but did not enable a Co to issue shares at a DISCOUNT (*Ooregum Co* v. *Roper*, 1892, A. C. 125; 61 L. J. Ch. 337; 66 L. T. 427; 41 W. R. 90: *Welton* v. *Saffery*, 66 L. J. Ch. 362; 1897, A. C. 299; 76 L. T. 505:

Digitized by Google

Re Eddystone Marine Insrce, 1893, 3 Ch. 9; 62 L. J. Ch. 742), even though they were taken with Debentures (*Re Railway Time Tables Co*, 62 L. J. Ch. 935); and the ruling also applied as between the shareholders *inter se* (*Ib.*): but the Court would not weigh-up such other consideration, if real and not illusory (*Re Theatrical Trust*, 1895, 1 Ch. 771; 64 L. J. Ch. 488; 72 L. T. 461; 43 W. R. 553: *Re Common Petroleum Engine Co*, 1895, 2 Ch. 759; 65 L. J. Ch. 76: *Re Wragg*, 1897, 1 Ch. 796; 66 L. J. Ch. 419; 76 L. T. 397; 45 W. R. 557: *Larocque* v. *Beauchemin*, cited In Cash). *Note*: the section is repealed by s. 33, Comp Act, 1900, and is replaced by s. 7 thereof.

Compliance with the Forest of Dean Rules may be enforced by "Injunction, . . . or otherwise," s. 29, 1 & 2 V. c. 43; words which "probably mean that if an injunction to restrain be not the proper remedy, a mandatory order may be made. In other words, they refer rather to prevention than to damages" (per Selborne, C., *Brain* v. *Thomas*, 50 L. J. Ex. 664: *Va*, per Bramwell, B., *Ross* v. *Price*, 45 L. J. Ex. 777; 1 Ex. D. 269).

The direction in the Act, which is the foundation of the modern Poor Law (43 Eliz. c. 2), that the Poor Rate is to be raised "*weekly* or otherwise," means, "that it is to be raised, at the outside, annually" (per Esher, M. R., *R.* v. *Christopherson*, 55 L. J. M. C. 5; 16 Q. B. D. 7; 53 L. T. 804; 34 W. R. 86; 50 J. P. 212).

Perhaps one of the most instructive decisions as to the meanings of "Otherwise" is that of Cave, J., in *Ex p. Tidswell* (56 L. J. Q. B. 548; 57 L. T. 416; 35 W. R. 669), wherein he analysed the use of the word in several of the sections of the M. W. P. Act, 1882, and as a result held that in s. 3 a loan from a wife to her husband for the purpose "of any trade or business, carried on by him *or otherwise*," means, trade or business carried on by himself, or otherwise in partnership with others, or as agent, &c, and that therefore a wife is entitled to prove in competition with the general creditors of her husband for a loan advanced for private purposes wholly unconnected with trade or business. That case was followed in *Macintosh* v. *Pogose* (1895, 1 Ch. 505; 64 L. J. Ch. 274; 72 L. T. 251), notwithstanding the dictum to the contrary in *Alexander* v. *Burnhill* (24 L. R. Ir. 511), and the reading of Cave, J., having, on a review of the cases, received the approval of the Court of Appeal (*Re Clark*, 1898, 2 Q. B. 330; 67 L. J. Q. B. 759), it will, probably, be accepted as the true reading.

"Otherwise than under this Act"; *V.* Tenant, towards end.

"Or as she shall otherwise direct"; *V.* Direct.

"Except where otherwise provided"; *V.* Except.

"Not otherwise"; *V.* Distress.

OTTER.—*V.* Bitch.

"Otter lath or jack," quà the Salmon Fishery Acts, means and includes,

Digitized by Google

"any small boat or vessel, board, or stick, used for the purpose of running out baits (artificial, or otherwise) across any portion of any lake or river, and whether used with a hand-line or as auxiliary to a rod and line or in any other way" (s. 4, 36 & 37 V. c. 71).

Fishing with an "Otter," s. 40, Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88, connotes a fishing implement of that name, not the animal (*Alton* v. *Parker*, 30 L. R. Ir. 87).

OUGHT. — Contract "which, according to the TERMS thereof, ought to be performed WITHIN THE JURISDICTION," R. 1 *e*, Ord. 11, R. S. C., means, a Contract some part of which "was, by its terms, bound" to be so performed (per Ld Herschell, *Comber* v. *Leyland*, cited REMIT: *Vf*, *Bell* v. *Antwerp, &c, Line*, 1891, 1 Q. B. 103; 60 L. J. Q. B. 270; 64 L. T. 276; 39 W. R. 84). *Vf*, Ann. Pr.

"Ought fairly to be excused," s. 3, Judicial Trustees Act, 1896; *V.* REASONABLY.

Inquiries and Inspections which "ought reasonably" to be made by a Purchaser to prevent him from being affected by Constructive Notice, s. 3 (1), Conv Act, 1882, mean, such as "ought" to be made "as a matter of prudence, having regard to what is usually done by men of business under similar circumstances" (per Lindley, L. J., *Bailey* v. *Barnes*, 1894, 1 Ch. 35; 63 L. J. Ch. 77; 69 L. T. 542; 42 W. R. 66).

OUNCE. — An Ounce Avoirdupois, is $\frac{1}{16}$th of an Imperial Standard POUND (s. 14, 41 & 42 V. c. 49): an Ounce Troy, is 480 grains (Ib.), *i.e.* there are 14 ounces and $\frac{7}{12}$ths of an ounce Troy to a Pound.

OUR. — "Our Children," means, the children of us two; a bequest "to my wife" for life, remainder to "our children," will not operate in favour of the wife's children by a former marriage, even though she has had no children by the testator (*Re Baynham*, 7 Times Rep. 587).

OUSTER. — "'Ouster or Dispossession,' is a wrong or injury that carries with it the amotion of Possession: for thereby the wrong-doer gets into the actual occupation of the land or hereditament, and obliges him that hath a right to seek his legal remedy in order to gain possession and damages for the injury sustained" (3 Bl. Com. 167); Ouster is effected by ABATEMENT, INTRUSION, DISSEISIN, DISCONTINUANCE, or DEFORCEMENT (Ib.).

OUT AT INTEREST. — A bequest of money "Out at Interest" is not SPECIFIC (*Mytton* v. *Mytton*, cited SUM).

OUT OF. — Where a testator directed his legatees to contribute to A. a percentage "out of their legacies," Romilly, M. R., said, "I doubt whether the testator intended by the words 'out of' to point to any

Digitized by Google

particular description of legatees who were to contribute" (*Ward* v. *Grey*, 29 L. J. Ch. 75: 26 Bea. 485).

Where certain of a testator's liabilities are directed to be paid by a Tenant for Life under the Will "out of" a separate benefit thereby given to him, he is only liable to the extent of that benefit, and any excess of such liabilities will have to be borne by the residuary estate (*Re Cleveland*, 1894, 1 Ch. 164; 63 L. J. Ch. 115). *Vf*, OUT OF THE RENTS.

So, where there is a Contract to pay a stated sum (part of a larger agreed sum) "out of the *First Moneys*" the payer may receive from A., and the other part of that larger sum out of "any *Further* Moneys" he may receive from A., and the payer receives in one sum from A. much more than enough to pay the stated sum and receives nothing afterwards, he is only liable to pay the stated sum, for he has received no "further moneys" "out of" which the other part of the agreed sum is payable (*Cochrane* v. *Green*, 9 C. B. N. S. 448; 30 L. J. C. P. 97).

Where, for valuable consideration, a draft or order is given which is made payable "out of" a particular fund, that amounts to an Equitable Assignment of so much of such fund as will satisfy the draft or order (*Row* v. *Dawson*, 1 Ves. sen. 331; 1 White & Tudor, 93: *Rodick* v. *Gandell*, 1 D. G. M. & G. 763: *V. Re Sheward*, 1893, 3 Ch. 502, 507); on the other hand, words of similar import, in a Life Policy, will not, necessarily, create a Charge (*Re International Life Assrce, McIver's Claim*, 5 Ch. 424).

V. INTO.

OUT OF LAND.—"Money charged upon, or payable out of, Land," s. 42, 3 & 4 W. 4, c. 27; *V.* CHARGED UPON.

OUT OF SETTLEMENT.—*V.* NOT SETTLED: UNSETTLED ESTATE.

OUT OF THE BUSINESS.—A provision in Partnership Articles that moneys that might be due to a retiring partner shall be paid "out of the Business by the continuing or surviving partners" by annual instalments, does not mean that the source of such payment is to be restricted to the Business from time to time carried on by such continuing or surviving partners, but means that such moneys are to be paid by such partners as partners and becomes a personal obligation on them (*Beresford* v. *Browning*, 45 L. J. Ch. 36; 1 Ch. D. 30). "The word 'Business' there, is evidently the Capital" (per Jessel, M. R., *Ib.*).

V. BUSINESS: OUT OF THE PROFITS.

OUT OF THE EMPLOYMENT.—"Arising out of *and* in the Course of the Employment," s. 1 (1) Workmen's Comp Act, 1897; *V.* EMPLOYMENT.

OUT OF THE ESTATE.—*V.* ESTATE.

Digitized by Google

OUT OF THE PROFITS.—An agreement to pay an annual sum "out of the Profits" of a business, refers to NET profits (per Parke, B., *Bond* v. *Pittard*, 3 M. & W. 357; 7 L. J. Ex. 78).

V. PROFITS.

OUT OF THE REALM.—*V.* REALM.

OUT OF THE RENTS.—A devise of an Annuity for life to be paid "out of RENTS AND PROFITS" which prove insufficient to keep down the Annuity, does not entitle the annuitant to a continuing charge upon the rents and profits after his death until the arrears are satisfied, but only to the rents and profits during his life (*Wormald* v. *Muzeen*, 50 L. J. Ch. 776: *Stelfox* v. *Sugden*, Johns. 234: on *thlcv*, *Bell* v. *Bell*, Ir. Rep. 6 Eq. 239). *Vf*, *Re Forster*, Ir. Rep. 4 Eq. 152: OUT OF.

OUT OF THE RESIDUE.—Bequest by Will "out of the RESIDUE" and a like bequest by Codicil, were ordered to abate *pari passu*, there being a deficiency (*Eavestaff* v. *Austin*, 19 Bea. 591).

OUTCRY.—Sale "by Outcry," &c, s. 7, 50 G. 3, c. 41; *V. Allen* v. *Sparkhall*, 1 B. & Ald. 100.

Cp, HUE AND CRY.

OUTER.—*V.* EXTERNAL PARTS.

OUTER DOOR.—The "Outer Door" which must not be broken for a DISTRESS for rent, is the door which protects the building to be entered, whether such building be within the CURTILAGE of a larger premises or not (*American Must Co* v. *Hendry*, 68 L. T. 742; 62 L. J. Q. B. 388); but in executing a *fi. fa.* the Officer may break open the Outer Door of any building which is not a DWELLING-HOUSE (*Penton* v. *Browne*, 1 Keble, 698; Sid. 186: *Hodder* v. *Williams*, 1895, 2 Q. B. 663; 65 L. J. Q. B. 70; 73 L. T. 394; 44 W. R. 98).

OUTFANGTHEEFE.—"'Outfangtheefe,' that is, that theeves or felons of your Land or Fee, out of your land or fee, taken with felony or stealing, shall be brought backe to your Court, and there judged" (Termes de la Ley: *Vf*, Cowel). *Cp*, INFANGTHEEFE.

OUTFIT.—"'Outfit,' is, correctly speaking, that portion of the ship's furniture or apparel which ordinarily perishes, or is consumed in the course of her voyage, as provisions for the crew, spare ropes, and the like" (Lowndes on Insurance, 2 ed., 11). *V.* DISBURSEMENTS: SHIP.

"'Outfit' (in a fishing voyage) differs materially from what is comprehended under the term 'Goods'" (per Ellenborough, C. J., *Hill* v. *Patten*, 8 East, 375).

OUTFITTER.—*V.* LADIES' OUTFITTER.

Digitized by Google

OUTGOING.—"The precise meaning of 'Outgoing' may be open to doubt; but it is certainly a large word, and may fairly comprehend Rates and Taxes" (per Patteson, J., *R.* v. *Shaw*, 12 Q. B. 427; 17 L. J. M. C. 137), *e.g.* a statutory annual sum to a Rector in lieu of Tithes to be paid clear of "Outgoings," is not rateable to the Poor (*S. C.*); a like result was reached where the words were "free and clear of all Rates Taxes and Deductions whatsoever" (*Chatfield* v. *Ruston*, 3 B. & C. 863). *Cp, Mitchell* v. *Fordham*, cited DEDUCTION, towards end: *R.* v. *Lacy*, cited CLEAR.

The word "Outgoings," in a Covenant to bear burdens, "is of the largest possible signification" (per Brett, L. J., *Budd* v. *Marshall*, 50 L. J. Q. B. 26); but at the same page, Bramwell, L. J., speaks of the word as "an awkward one"; "but the word 'Outgoings' is certainly as strong as DUTIES" (per Grove, J., *Aldridge* v. *Ferne*, 55 L. J. Q. B. 588; 17 Q. B. D. 212: *Va, Tubbs* v. *Wynne*, inf). "'An Outgoing' means something that has gone out, an expense that some one has been at" (per Bramwell, B., *Crosse* v. *Raw*, 43 L. J. Ex. 144; L. R. 9 Ex. 209; 23 W. R. 6); and it was accordingly held in that case that the expense of sanitating a house, under s. 10, Sanitary Act, 1866, 29 & 30 V. c. 90, was an outgoing within a lessee's covenant to pay "taxes, rates, assessments, and outgoings": *Va, Re Bettingham*, 9 Times Rep. 48. So, the expenses of street paving under the Metrop Man. Acts are within a lessee's covenant to pay "outgoings of every description for the time being payable either by the landlord or tenant" in respect of the premises (*Aldridge* v. *Ferne*, 55 L. J. Q. B. 587; 17 Q. B. D. 212; 34 W. R. 578, in *whc*, *Hill* v. *Edward*, W. N. (85) 32; 1 Times Rep. 253, was doubted, but *this* was approved by Russell, C. J., in *Arding* v. *Economic Printing Co*, 79 L. T. 421). *Va, Batchelor* v. *Bigger*, 60 L. T. 416: *Antil* v. *Godwin*, 63 J. P. 441; 15 Times Rep. 462. *Cp*, BURDEN: IMPOSITION: "Net Rent," sub NET: TAXES.

So, under an agreement for a lease at a rent "free of all Outgoings," the tenant has to pay land tax and tithe rent-charge, and the landlord is entitled to have a covenant to that effect inserted in the lease (*Parish* v. *Sleeman*, 1 D. G. F. & J. 326; 29 L. J. Ch. 96; 1 L. T. 506; 8 W. R. 166; 6 Jur. N. S. 385. *Vf*, TAXES: SCOT); *secus*, quà Tithe Rent Charge, if the agreement only extends to "taxes and assessments" (*Jeffrey* v. *Neale*, cited ASSESSMENT). *Note*: a Landlord cannot now contract himself out of his liability to pay Tithe Rent Charge (s. 1 (1), 54 V. c. 8).

Semble, a general agreement by a Tenant to pay "all Outgoings" is not an "Agreement to the contrary" of a statute imposing the Rates upon the Landlord (*Mile End Old Town* v. *Whitby*, 78 L. T. 80).

A paving assessment under the Manchester General Improvement Act, 1851, is an "Outgoing" within a V. & P. Contract for *Sale of a House* which provides that "all rents, rates, taxes, and outgoings, shall be re-

Digitized by Google

ceived and discharged by the vendor up to the time of Completion" (*Midgley* v. *Coppock*, 4 Ex. D. 309; 48 L. J. Q. B. 674; 28 W. R. 161). So also is a liability for works done by a Local Board and chargeable on an owner by virtue of ss. 150, 257, P. H. Act, 1875, although the assessment by the Board may not be made until after the date fixed for completing the contract for sale (*Re Furtado and Jeffries*, 27 S. J. 466; *Secus*, of expenses of paving under s. 77, Metrop Man. Act, 1862, under vendor's implied covenant (*Egg* v. *Blayney*, 21 Q. B. D. 107). But where, in a *Deed of Gift*, the tenant for life was to pay all "Outgoings" during his life; held, that that word did not comprise expenses of making up a road abutting on the premises comprised in the deed, which work had been done by a Local Board in the lifetime of the tenant for life and on his non-compliance with their notice, but which expenses had not been assessed by the Local Bd until after his death (*Re Boor*, 58 L. J. Ch. 285: 40 Ch. D. 572; 60 L. T. 412: *Vh*, *Re Bettesworth and Richer*, 57 L. J. Ch. 749; 37 Ch. D. 535; 36 W. R. 544).

Reasoning on those cases and on *R.* v. *Swindon* (48 L. J. M. C. 119; 4 Q. B. D. 305; 27 W. R. 732; 43 J. P. 431) it has been urged (36 S. J. 782) that in Conditions of Sale, in a V. & P. contract, "Outgoings to be cleared by the Vendor" will not include the cost of works done by a Local Bd unless such works are completed by the day fixed for Completion of the purchase; but the contrary has since been held as regards works the liability for which has been incurred before the day for Completion (*Tubbs* v. *Wynne*, 1897, 1 Q. B. 78; 66 L. J. Q. B. 116); if, however, the Notice to do such works comes after the day for Completion and after the acceptance of Title though before actual Completion, the Outgoing will be on the Purchaser (*Barsht* v. *Tagg*, 1900, 1 Ch. 231; 69 L. J. Ch. 91; 81 L. T. 777; 48 W. R. 220). In *Stock* v. *Meakin* (1899, 2 Ch. 496; 68 L. J. Ch. 612; 81 L. T. 80; 48 W. R. 6; 63 J. P. 647; affd 1900, 1 Ch. 683; 69 L. J. Ch. 401; 82 L. T. 248; 48 W. R. 420), the Outgoing was on the Vendor, because the works had been completed before the date of the contract, on which reason *V. Re Waterhouse*, 44 S. J. 645. *Vf*, *Re Leyland and Taylor*, cited ERROR.

"All Rates and Outgoings to be adjusted as usual," means, "Outgoings which would enure to the benefit of the Purchaser" (*Country Estates Co* v. *Graves*, 1895, A. C. 113; 64 L. J. P. C. 44; 72 L. T. 31); therefore, a Land Tax (in Victoria) on owners of 640 acres and upwards, was not apportionable on a Purchaser buying less than that quantity which was part of an estate of more than that quantity (*S. C.*).

On a *Sale of Leaseholds* in which all "Outgoings" are to be cleared by the Vendor to date of Completion, the Vendor must pay a proportionate part of the rent reserved by the lease under which the premises are held (*Lawes* v. *Gibson*, 35 L. J. Ch. 148; L. R. 1 Eq. 135; 13 L. T. 316; 14 W. R. 25).

A *Bequest of Leaseholds* "free of all Outgoings and payments, except

Digitized by Google

the annual and other rent "payable in respect of it, means, that the testator's estate must pay the rent, taxes, and other payments, in respect of the property up to his death; and after that time the legatee takes the property subject to the rents and the liability to perform the covenants (*Re Taber, Arnold* v. *Kayess*, 51 L. J. Ch. 721; 46 L. T. 805; 30 W. R. 883).

Where a Tenant for Life of Leaseholds has to pay "all INCIDENTAL EXPENSES and Outgoings"; that would include re-constructing the drainage, unless it be an Improvement under the S. L. Acts (*Re Thomas*, cited IMPROVEMENT, p. 922).

Bequest to Tenant for Life of ARREARS of Rent and proportionate part of rents up to testator's death, but so that all unpaid "Outgoings *properly chargeable* against" such Arrears, &c, shall be paid thereout, includes, in such proviso, "all such expenses due and remaining unpaid at the testator's death as in the ordinary course of management, as carried on by him, would, at the time of his death, come into charge against such Arrears," *e.g.* repairs and agent's remuneration, as well as rates taxes and tithes (*Re Cleveland*, 1894, 1 Ch. 164; 63 L. J. Ch. 115; 69 L. T. 807). "By an 'Outgoing' is generally meant, some payment which must be made to secure the Income" (per Lindley, L. J., *Re Bennett*, 65 L. J. Ch. 424; 1896, 1 Ch. 778).

A bequest "CLEAR of TAXES and Outgoings," exonerates from Legacy Duty (*Louch* v. *Peters*, 1 My. & K. 489; 3 L. J. Ch. 167): "to deny that the Legacy Duty is an Outgoing surely seems strong, especially in reading a Will; but to doubt that it is a Tax appears really a subtlety that passes all understanding" (per Brougham, C., *Ib.*).

V. CHARGES: CURRENT: DEDUCTION: NECESSARY: ORDINARY OUTGOINGS: OUTLAY: WORKING EXPENSES.

OUTGOING ALDERMAN.—An "Outgoing Alderman" within s. 60 (3), Mun Corp Act, 1882, "applies to Aldermen whose turn it is to go out of office on November 9, unless that office has first become vacant, and been declared vacant, within the contemplation of s. 36 (2), *i.e.* one who retires on Nov 9" (per Wright, J., *Pease* v. *Lowden*, 68 L. J. Q. B. 240; 1899, 1 Q. B. 386; 79 L. T. 672; 63 J. P. 56). An Outgoing Alderman, though Mayor Elect and though he has done every thing to qualify himself to act as Mayor, is still "an Outgoing Alderman" and disqualified to vote in the election of Aldermen under sub 3, s. 60 (*Hounsell* v. *Suttill*, 56 L. J. Q. B. 502; 19 Q. B. D. 498; 57 L. T. 102; 36 W. R. 127; 51 J. P. 440).

OUTGOING OCCUPIER.—An "Outgoing Occupier," s. 16, 32 & 33 V. c. 41, does not become entitled to an abatement of Poor Rate under the section unless there be an INCOMING TENANT on whom that abatement may be assessed (*Werburgh* v. *Hutchinson*, 5 Ex. D. 19; 49 L. J. M. C. 23).

Digitized by Google

OUTGOING SURVEYOR.—"Outgoing Surveyor," s. 43, 25 & 26 V. c. 61; *V. Wrexham* v. *Hardcastle*, 19 C. B. N. S. 177.

OUTHOUSE.—"I apprehend that it has been settled from ancient times that an 'Outhouse' must be that which belongs to a DWELLING-HOUSE, and, in some respects, parcel of such dwelling-house" (per Taunton, J., *R.* v. *Haughton*, 5 C. & P. 559).

"House, barn, or outhouse," 9 G. 1, c. 22; a Paper Mill is not such an Outhouse (1 Hawk. P. C. ch. 18, s. 4): *Vf, R.* v. *Winter*, Russ. & Ry. 295: *Elsmore* v. *St. Briavells*, 8 B. & C. 461.

"Outhouse," s. 2, 7 & 8 G. 4, c. 30; *V. R.* v. *Ellison*, 1 Moody, 336: *R.* v. *Stallion*, Ib. 398: *R.* v. *Haughton*, 5 C. & P. 555: *R.* v. *Parrot*, 6 Ib. 402. A thatched Pig-stye in a yard adjoining the prosecutor's house, held an "Outhouse" within s. 3, 1 V. c. 89 (*R.* v. *Jones*, 2 Moody, 308).

Cp, OUTLET.

OUTLAND.—*V.* INLAND.

OUTLAW.—An Outlaw is "one deprived of the benefit of the law, and out of the Kings protection" (Cowel: *Cp*, LAWLESS MAN). In Alfred's time, and a good while after the Conquest, no man could be outlawed but for FELONY (Co. Litt. 128 b); its consequences were dreadful, for "an outlawed man had *caput lupinum*, because he might be put to death by any man as a wolfe, that hateful beast, might" (Co. Litt. 128 b, citing Fleta, l. 1, ch. 27; Bracton, l. 5, 421; Brit. 20 b; Mir. c. 4, s. 4). But a different rule was established in the second year of Edward 3 (Y. B. 25), viz., that "the Sheriffe onely (having lawful warrant therefor)" might kill an Outlaw, "and so from thenceforth the law continued until this day" (Co. Litt. 128 b). *Vf*, Jacob: 9 Encyc. 328: FRANK-LAW: WAIVE.

"FORFEITURE consequent upon Outlawry" is not affected by 33 & 34 V. c. 23 (*V.* s. 1).

OUTLAY.—Where a Will contained a trust for sale of realty and personalty with a discretionary power to postpone sale, and then gave powers of management during the interval and "to make out of the Income or Capital of my real and personal estate any outlay" the trustees might think proper for specified purposes; held, that the trustees had power, for those purposes, to mortgage or charge the unsold realty (*Re Bellinger*, 1898, 2 Ch. 534; 67 L. J. Ch. 580; 79 L. T. 54).

Cp, OUTGOING.

OUTLET.—"Garden . . . or Outlet BELONGING to any DWELLING-HOUSE or other Building," 4 G. 2, c. 32: *V. R.* v. *Richards*, Russ. & Ry. 28.

Cp, OUTHOUSE.

Digitized by Google

OUT-PENSIONER.—Quà Reserve Forces Act, 1882, 45 & 46 V. c. 48, "'Out-Pensioners of Chelsea Hospital,' includes, all persons whose claims for prospective or deferred pension have been registered in virtue of any warrant of Her Majesty" (s. 28).

OUTSTANDING.—Debentures "Outstanding"; *V.* ALREADY.

"Outstanding Debts owing"; *V. Phillips* v. *Eastwood*, L. & G. t. Sug. 270.

"Outstanding LEGAL ESTATE" in a V. & P. contract; *V. Re Williams and Parry*, 72 L. T. 869.

"Outstanding" Part of any Loan, quà and by s. 1, Poor Law Act, 1897, 60 & 61 V. c. 29, "means, not repaid by instalments, or by means of a sinking fund, or out of capital money properly applicable to the purpose of repayment other than money borrowed for that purpose"; so, quà and by s. 61, Loc Gov (Ir) Act, 1898, except that "applicable *for* the purpose," is substituted for "applicable *to* the purpose."

OUTSTROKE.—*V.* INSTROKE.

OUTWARD-BOUND.—*V.* INWARD-BOUND.

OUTWARD MARK.—For a tradesman to place on a wire-blind to a front window such letters as "H. B. & Co., late S. B. & Co.," with similar letters on a roller-blind and on a brass-plate fixed on the front railings, is to make an "Outward Mark or Show of Business" within a restrictive covenant in a lease (*Evans* v. *Davis*, 10 Ch. D. 747; 48 L. J. Ch. 223; 27 W. R. 285).

OUTWARDS.—"Outwards and Inwards Railway Stations," s. 3 (2), 45 & 46 V. c. 74; *V. R.* v. *Lond. & N. W. Ry*, 65 L. J. Q. B. 516.

"Trading Outwards"; *V.* TRADING.

OVER.—"*Primâ facie*, a BRIDGE 'over' a River, or 'over' a Street, means, a bridge with an arch which shall clearly span it; and if I covenant to build a bridge over a river or a road, I must not block up or obstruct any part of it with piers or abutments, but must make an arch which shall span completely over, without contracting, it" (per Wood, V. C., *Clarke* v. *Manchester S. & L. Ry*, 1 J. & H. 636, 637); *whc* also decided that a Ry Co cannot, quà such an agreement, claim the benefit of the Ry C. C. Act, 1845, if the contract does not so provide.

Projection "over or upon" a pavement; *V.* PROJECTION.

V. THROUGH.

OVER AND ABOVE.—Lessee, in an Irish Lease, to pay rent "over and above all taxes, charges, and impositions whatsoever"; *V. Greene* v. *Thornton*, 16 L. R. Ir. 381, 390: *Morrogh* v. *Hall*, 32 Ib. 216: *Re Bradford*, 31 Ib. 364: *Malton* v. *West*, Ir. Rep. 11 C. L. 525. *Vf*, TAXES, towards end.

Digitized by Google

OVERDRAFT. — A deposit of deeds with a Banker "to Cover overdraft," gives a charge as well for Overdue Bills charged to the depositor's account as for money drawn out by Cheque (*Re Williams*, Ir. Rep. 3 Eq. 346).

OVER-DRIVE. — Quà Cruelty to Animals Acts, "over-drive" includes "over-ride" (s. 29, 12 & 13 V. c. 92; s. 11, 13 & 14 V. c. 92).
Cp, DRIVE: RIDE.

OVERDUE. — A Bill of Exchange or Promissory Note payable on a stated day, is not "overdue" until the day after that day (*Hinton* v. *Duff*, 31 L. J. C. P. 199; 5. L. T. 797; 10 W. R. 295). *Cp*, MATURE.
A Bill or Note payable "ON DEMAND," or a Cheque, is "overdue" if not paid within a REASONABLE time (Byles, 284). "What is an unreasonable time for this purpose, is a question of fact" (s. 36 (3), Bills of Ex. Act, 1882),—six days (*Rothschild* v. *Corney*, 9 B. & C. 388), or eight days (*London & County Bank* v. *Groome*, 51 L. J. Q. B. 224; 46 L. T. 60; 30 W. R. 382), after date is not an unreasonable time.

OVERHANGING. — Overhanging Trees; *V.* NUISANCE: LOP.

OVERHAUL. — "Overhaul and repair"; *V. Inglis* v. *Buttery*, cited REPAIR.
V. OVERTAKING SHIP.

OVERPLUS. — "Overplus," 2 W. & M. sess. 1, c. 5, s. 2, means, what remains after payment of the rent and the reasonable charges of the Distress (*Lyon* v. *Tomkies*, 1 M. & W. 603: *Knight* v. *Egerton*, 7 Ex. 407).
A bequest of "Overplus" usually includes whatever shall turn out to be the Overplus (*Shaw* v. *Bull*, 12 Mod. 593, stated and commented on, 1 Jarm. 729: *Page* v. *Leapingwell*, 18 Ves. 463: *Beverley* v. *A-G.*, 27 L. J. Ch. 66; 6 H. L. Ca. 310). *Cp*, RESIDUE: REMAINDER: SURPLUS.

OVERRATE. — To "Over-rate," "in its strictest signification, means a rating by way of excess, and not one which ought not to have been made at all" (per Parke, B., *Allen* v. *Sharpe*, 17 L. J. Ex. 214; 2 Ex. 352); but that learned judge, and the Court, held that the word in s. 24, 43 G. 3, c. 99 (giving appeal for an "over-rating"), had a far wider interpretation.

OVER-REGULATION PRICE. — *V.* REGULATION.

OVERSEER. — *V. Burgess* v. *Boetefeur*, 13 L. J. M. C. 126; 7 M. & G. 481: *Caunter* v. *Addams*, 33 L. J. C. P. 68; 15 C. B. N. S. 512.
By virtue of Loc Gov Act, 1894, "Overseers" in s. 4, Poor Relief Act, 1743, 17 G. 2, c. 38, is to be read as "Parish Council" (*R.* v. *De Grey*, cited SIGNED): As to appointment of Overseer by Parish Council; *V. R.* v. *Powell*, 1899, 1 Q. B. 396; 68 L. J. Q. B. 274.

Digitized by Google

In the Lighting & Watching Act, 1833, 3 & 4 W. 4, c. 90, "Overseers" includes, Churchwardens (*R.* v. *Rye*, 13 W. R. 142).

As to what "Overseer" or "Overseers" means or includes under,

Burial Act, 1852, 15 & 16 V. c. 85; *V.* s. 52:

Juries Act, 1870, 33 & 34 V. c. 77; *V.* s. 5:

Militia Act, 1882, 45 & 46 V. c. 49; *V.* s. 52:

Metrop Man. Act, 1855, 18 & 19 V. c. 120; *V.* s. 250:

Mun Corp, 1882, 45 & 46 V. c. 50; *V.* s. 7:

Parish Constables Acts; *V.* 5 & 6 V. c. 109, s. 26; 35 & 36 V. c. 92, s. 14:

Parliamentary Voters Registration Act, 1843, 6 & 7 V. c. 18; *V.* s. 101, on *whv*, *Points* v. *Attwood*, 18 L. J. C. P. 19; 6 C. B. 38: *Green* v. *Mepham*, 48 L. J. C. P. 92; 39 L. T. 450:

Pawnbrokers Act, 1872, 35 & 36 V. c. 93; *V.* s. 56:

Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76; *V.* s. 109:

Poor Rate Assessment and Collection Act, 1869, 32 & 33 V. c. 41; *V.* s. 20:

Public Libraries Act, 1892, 55 & 56 V. c. 53; *V.* s. 27:

Public Works (Manufacturing Districts) Act, 1863, 26 & 27 V. c. 70; *V.* s. 22:

Railway C. C. Act, 1845, 8 & 9 V. c. 20; *V.* s. 3:

Rep People Act, 1884, 48 & 49 V. c. 3; *V.* s. 11:

Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67; *V.* s. 4.

V. SUCCEEDING: GUARDIANS.

Vh, Shaw's Parish Law: Steer's Ib.: 9 Encyc. 330–339.

OVERT. — An Overt Act is an OPEN Act, which must be manifestly proved (3 Inst. 12).

A Lease, under a Power requiring accustomed clauses, was objected to because its clause of re-entry did not follow previous leases in that it did not provide for re-entry if there were no "*Overt*" distress to be found on the premises; but the Court decided against the objection, and (per Denman, C. J.), said, — "The law recognizes a difference between a *Pound* Overt and a *Pound* Covert; but as to *Distress*, the law does not affix any meaning to the word 'Overt.' Is 'Overt' to be confined to what may be seen by walking over the lands and farm-yard, without going into any inclosed buildings? or does it extend to what may be seen by opening the outer doors of a house or other building, or what may be seen by opening inner doors, or by opening cupboards, chests, and boxes, which are not concealed and have no locks, or various other shades of being less 'Overt'?" (*Doe* d. *Douglas* v. *Lock*, 4 L. J. K. B. 119; 2 A. & E. 705).

V. MARKET OVERT.

A POUND Overt, is an open place made (or an open field used, *Castleman* v. *Hicks*, C. & M. 266) for the purpose of impounding distresses:

Digitized by Google

a Pound Covert, is a house, close, or place, to which the owner of the thing distrained may not come (Co. Litt. 47 a: Termes de la Ley, *Pounds*: Jacob: 10 Encyc. 262, 263). *Vf*, Open.

OVERTAKEN. — A ship is "being overtaken by another," within the Regulations for Preventing Collisions at Sea, when the other vessel is going faster than, and coming nearer to, her in such a position that her lights cannot be seen by the approaching ship (*The Main*, 55 L. J. P. D. & A. 70; 11 P. D. 132; 55 L. T. 15; 34 W. R. 678; 2 Times Rep. 689, and the cases there cited). *Vf*, *The Molière*, 1893, P. 217; 69 L. T. 263; 62 L. J. P. D. & A. 102.

V. Show a Light.

OVERTAKING SHIP. — If Ships are in such a position and are on such courses and at such distances that, if it were Night, the hinder ship could not see any part of the side lights of the forward ship, then they cannot be said to be Crossing Ships although their courses may not be exactly parallel; and if the hinder of two such ships is going faster than the other she is an Overtaking Ship (*The Franconia*, 2 P. D. 8; 25 W. R. 197; 35 L. T. 721); that may not be an exhaustive definition but it is a good working rule (per Herschell, C., and Esher, M. R., *The Main*, cited Overtaken), though at one time questioned in the Court of Appeal (*The Peckforton Castle*, 3 P. D. 11; 47 L. J. P. D. & A. 69). *Vf*, *The Seaton*, 9 P. D. 1: Art. 24, Regns for Prevn. Collisions at Sea, 1897.

OWELTY. — *V.* Termes de la Ley.

OWING. — A Call on shareholders of a Co is "Owing" from the day on which it is made, although "Payable" subsequently (*Re China S. S. Co*, 38 L. J. Ch. 512; L. R. 6 Eq. 232).

"In addition to sums owing"; *V.* Addition.

"Now owing"; *V.* Now, p. 1296.

V. Debt: Due: Money Due.

OWN CONSENT. — A person's "Own Consent in writing" without which he is not to be added as a Party to an Action, R. 11, Ord. 16, R. S. C., must be signed by himself; a Consent signed on his behalf and in his presence by his Solr is not sufficient (*Fricker* v. *Van Grutten*, 1896, 2 Ch. 649; 65 L. J. Ch. 823; 75 L. T. 117; 45 W. R. 53). In that case Lindley and Lopes, L. JJ., said that "Own" was an abbreviated way of saying "under his hand." *Cp*, *Morton* v. *Copeland*, cited In Writing. *V.* Himself: Signature.

OWN DWELLING-PLACE. — *V.* Dwelling-place.

OWN HAND. — *V.* Die by his own Hands: His hand.

OWN HEIRS. — *V.* My.

Digitized by Google

OWN NAME.—*V.* NAME.

OWN OCCUPATION.—*V. White* v. *Birch*, cited OCCUPATION.

OWN PROFIT.—GOODS are supplied by a Poor Law Guardian "for his Own Profit," 55 G. 3, c. 137, s. 6; 4 & 5 W. 4, c. 76, s. 77, if supplied by his partner, even though it be without his knowledge (*Davies* v. *Harvey*, 43 L. J. M. C. 121; L. R. 9 Q. B. 433).

"SEWER made by any person for his Own Profit," s. 13, P. H. Act, 1875, does not include a Sewer made for the benefit of the maker's own houses (*Acton* v. *Batten*, 54 L. J. Ch. 251; 28 Ch. D. 283: *Bonella* v. *Twickenham*, 57 L. J. M.C. 1; 20 Q. B. D. 63; 58 L. T. 299; 36 W. R. 50; 52 J. P. 356: *Ferrand* v. *Hallas Co*, 1893, 2 Q. B. 135; 62 L. J. Q. B. 479; 69 L. T. 8; 41 W. R. 580; 57 J. P. 692: *Vowles* v. *Colmer*, 64 L. J. Ch. 414; 72 L. T. 389): *So*, *Minhead* v. *Luttrell* (1894, 2 Ch. 178; 63 L. J. Ch. 497; 70 L. T. 446; 42 W. R. 667) where a direct money payment brought the case within the phrase. But "Profit" here is not restricted to such a payment; therefore, a Sewer for collecting and conveying sewage to be converted into manure (per Huddleston, B., *Bonella* v. *Twickenham*, sup), or for supplying water to a cattle pond (*Croysdale* v. *Sunbury-on-Thames*, 1898, 2 Ch. 515; 67 L. J. Ch. 585; 79 L. T. 26; 46 W. R. 667; 62 J. P. 520), or for diverting water from the owner's land (*Sykes* v. *Sowerby*, 1900, 1 Q. B. 584; 69 L. J. Q. B. 464; 82 L. T. 177; 64 J. P. 340), is within the phrase.

OWN PROPERTY.—A woman's "Own Property" respecting which "no restriction against ANTICIPATION" in a Settlement made by her is valid "against DEBTS contracted by her before marriage," s. 19, M. W. P. Act, 1882, includes a Chose in Action vested in her before marriage and reduced into possession after marriage (*Jay* v. *Robinson*, cited BEFORE MARRIAGE).

OWN RIGHT.—*V.* IN HIS OWN RIGHT.

OWN RISK.—Passenger travelling "at his Own Risk"; *V. Mc Cawley* v. *Furness Ry*, L. R. 8 Q. B. 57: RISK.
V. SANS RECOURS.

OWN SHOP.—*V.* SHOP.

OWN SOLE USE.—For the purpose of giving a married woman a SEPARATE USE, "own" does not seem to give any additional force to "sole" (*Re Tarsey*, 35 L. J. Ch. 452; L. R. 1 Eq. 561). *V.* SOLE.

OWN USE AND BENEFIT.—A limitation to A., "his exors or admors, *to and for his and their own use and benefit*," does not, under the italicised words, give the exors or admors any beneficial interest;

Digitized by Google

they simply take the property as part of A.'s estate (*Hames* v. *Hames*, 2 Keen, 646; 7 L. J. Ch. 123: *Meryon* v. *Collett*, 8 Bea. 386; 14 L. J. Ch. 369).

A Condition of a legacy to a Married Woman that it should be received by her for her "Own use and benefit"; held, satisfied by a receipt by her husband, — O'Hagan, C., observing that the phrase "could not mean, 'separate from any control of her husband,' for the testator uses the latter words, in their accurate legal sense, in the end of his Will" (*Foley* v. *Foley*, 18 W. R. 81). *V.* SEPARATE USE.

OWNER. — The "Owner" or "PROPRIETOR" of a property is the person in whom (with his or her assent), it is for the time being beneficially vested, and who has the occupation, or control, or usufruct, of it: *e.g.* a lessee is, during the term, the owner of the property demised (*V.* jdgmt of Bramwell, L. J., *Eglinton* v. *Norman*, 46 L. J. Q. B. 559: *Va, Chauntler* v. *Robinson*, 4 Ex. 163; 19 L. J. Ex. 170: *Russell* v. *Shenton*, 3 Q. B. 449: *Lister* v. *Lobley*, 6 L. J. K. B. 200; 7 A. & E. 124). So, in *Cook* v. *Humber* (31 L. J. C. P. 75), Erle, C. J., speaks of the "occupation" necessary to the franchise, under s. 27, Rep People Act, 1832, as equivalent to the "actual exercise of the rights of the Owner of a house in possession." But in *Re Crawley*, *Acton* v. *Crawley* (54 L. J. Ch. 654; 28 Ch. D. 431), Pearson, J., said, "the Owner — that is, the person entitled to the rack-rent." *Cp*, HERITOR.

"Owner $\frac{\text{and}}{\text{or}}$ Proprietor," does not, necessarily, import that the person spoken of is the actual occupier (*Chauntler* v. *Robinson*, *Russell* v. *Shenton*, and *Lister* v. *Lobley*, sup). *Vf*, OCCUPATION.

"Owner" is a sufficient description of a vendor of property, in a V. & P. contract; *V.* PROPRIETOR.

Quà *Metropolitan Building Act*, 1855, 18 & 19 V. c. 122, "Owner," applies "to every person in possession or receipt either of the whole, or of any part, of the rents or profits of any land or tenement; or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term or as a tenant at will" (s. 3). That Act is replaced by London Bg Act, 1894, s. 5 (29) of which prescribes therefor a like def. Under the Act of 1855, the lessee for years, and not the lessor, of a chapel or house, is its "owner," within s. 73 (*Mourilyan* v. *Labalmondiere*, 30 L. J. M. C. 95; 1 E. & E. 533: *Hunt* v. *Harris*, 34 L. J. C. P. 249; 19 C. B. N. S. 13: *V. Fillingham* v. *Wood*, cited ADJOINING OWNER); nor, under a building agreement, is the ground landlord the "owner" of the buildings, within s. 51 (*Evelyn* v. *Whichcord*, 27 L. J. M. C. 211; E. B. & E. 126: *Canwell* v. *Hanson*, 41 L. J. M. C. 8; nom. *Caudwell* v. *Hanson*, L. R. 7 Q. B. 55), the person in possession under such an agreement is the "Owner," and as such is entitled to the notices and rights under s. 90 of the Act of 1894 (*List* v. *Tharp*, 1897, 1 Ch.

Digitized by Google

260; 66 L. J. Ch. 175; 76 L. T. 45; 45 W. R. 243; 61 J. P. 248). So, the incumbent of a district church is not the "owner" of it within ss. 69–74 (*R.* v. *Lee*, 48 L. J. M. C. 22; 4 Q. B. D. 75; 27 W. R. 151: *Vf*, *Chorlton-upon-Medlock* v. *Walker*, 12 L. J. Ex. 88; 10 M. & W. 742). The "owner" who is liable for surveyor's charges, under s. 51, Act of 1855, is the person answering that description at the time the service is rendered (*Tubb* v. *Good*, 39 L. J. M. C. 135; L. R. 5 Q. B. 443).

Quà *Metropolis Management Acts*, a def is provided by s. 250, Metrop Man. Act, 1855, on *whv*, *London School Bd* v. *St. Mary, Islington*, 1 Q. B. D. 65; 45 L. J. M. C. 1: *Wright* v. *Ingle*, 55 L. J. M. C. 17; 16 Q. B. D. 379; 54 L. T. 511; 34 W. R. 220; 50 J. P. 436: *Plumstead* v. *Ecc. Commrs*, 1891, 2 Q. B. 361: *St. Giles, Camberwell* v. *London Cemetery Co*, 1894, 1 Q. B. 699; 63 L. J. M. C. 74; 70 L. T. 734; 42 W. R. 446: *Walford* v. *Hackney*, 43 W. R. 110; 11 Times Rep. 17; *Vf*, *Caiger* v. *St. Mary, Islington*, and *G. E. Ry* v. *Hackney*, cited HOUSE: INCUMBENT. A Vendor, entitled to the receipt of rents and profits until Completion, remains hereunder the "Owner" until that time (*Wix* v. *Rutson*, cited TAXES).

"Owner of land bounding or abutting on" a New Street, s. 77, *Metrop Man. Act*, 1862, s. 3, Metrop Man. Act, 1890; *V. Holland* v. *Kensington*, 36 L. J. M. C. 105; L. R. 2 C. P. 565: *Plumstead Bd of Works* v. *British Land Co*, L. R. 10 Q. B. 203; 44 L. J. Q. B. 38: *Williams* v. *Wandsworth Bd of Works*, 53 L. J. M. C. 187; 13 Q. B. D. 211; 32 W. R. 908; 48 J. P. 439: *Wright* v. *Ingle*, sup: *St. Mary, Islington* v. *Cobbett*, 1895, 1 Q. B. 369; 64 L. J. M. C. 36: *Vf*, HOUSE.

Other Stat. Def., relating to the Metropolis, — Metropolitan Fire Brigade Act, 1865, 28 & 29 V. c. 90, s. 33; Metropolitan Open Spaces Act, 1881, 44 & 45 V. c. 34, s. 1; Metropolis Water Act, 1871, 34 & 35 V. c. 113, s. 3.

Quà the *Public Health Acts*, the statutory definitions of "Owner" may, probably, be said to have taken form from that contained in the Nuisances Removal Act, 1855, 18 & 19 V. c. 121, by s. 2 of which it is provided that, quà that Act, "'Owner,' includes, any person receiving the rents of the property in respect of which that word is used from the occupier of such property, on his own account or as trustee or agent for any other person, or as receiver or sequestrator appointed by the Court of Chancery or under any Order thereof, or who would receive the same if such property were let to a tenant": *Vth*, *Blything* v. *Warton*, 32 L. J. M. C. 132; 3 B. & S. 352. "It may be that the rule introduced by the statute is a rough one" (per Blackburn, J., *Cook* v. *Montagu*, 41 L. J. M. C. 149; L. R. 7 Q. B. 418); at any rate the def quà P. H. Act, 1875 (which repealed 18 & 19 V. c. 121) is provided by s. 4, and runs thus, —

"'Owner,' means, the person for the time being receiving the RACK-RENT of the lands or premises in connection with which the word is

Digitized by Google

used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a Rack-rent."

Note. That def is very similar to, but not quite so wide as, the def in s. 3, Metropolis Water Act, 1871; whilst the first of this class of def of "Owner" is, probably, that contained in Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, by s. 109 whereof, "'Owner,' shall be construed to include, any person for the time being in the actual occupation of any property rateable to the relief of the poor and not let to him at Rack-rent; or any person receiving the rack-rent of any such property either on his own account or as mortgagee or other incumbrancer in possession." *Cp*, Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, s. 3; Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, s. 1; Salmon Fishery Act, 1873, 36 & 37 V. c. 71, s. 4.

On the def in *P. H. Act*, 1875; *V. Hornsey* v. *Smith*, 1897, 1 Ch. 843; 66 L. J. Ch. 476; 76 L. T. 431; 45 W. R. 581: *St. Helen's* v. *Kirkham*, 16 Q. B. D. 403: *Tottenham* v. *Williamson*, 69 L. T. 51; 62 L. J. Q. B. 322; 57 J. P. 614: *Broadbent* v. *Shepherd*, 45 S. J. 61; 83 L. T. 504: *Hornsey* v. *Brewis*, 60 L. J. M. C. 48, *cp* with *thlc*, *Caiger* v. *St. Mary, Islington*, and *G. E. Ry* v. *Hackney*, cited House: *Re Christchurch Enclosure Act*, 1894, 3 Ch. 209; 63 L. J. Ch. 657; 71 L. T. 122; 42 W. R. 614; 58 J. P. 556: *Re Barney*, 1894, 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. 180. Observe, that a "Receiver or Sequestrator," included in the def as given by the Nuisances Removal Act, 1855, is dropped out of the def in the P. H. Act, 1875, and the def in the latter Act does *not* include a Receiver or Sequestrator (*Bacup* v. *Smith*, 59 L. J. Ch. 518; 44 Ch. D. 395).

By its s. 141, the *P. H. London Act*, 1891, adopts the def of "Owner" contained in P. H. Act, 1875, except that for "lands or premises" it simply has "premises"; *V.* quà P. H. London Act, 1891, *Thames Conservators* v: *Port of London Sanitary Authority*, 1894, 1 Q. B. 647; 63 L. J. M. C. 121; 69 L. T. 803; 58 J. P. 335: *Truman* v. *Kerslake*, 1894, 2 Q. B. 774; 63 L. J. M. C. 222; 43 W. R. 111; 58 J. P. 766: *Re Lever*, 1897, 1 Ch. 32; 66 L. J. Ch. 66; 75 L. T. 383; 45 W. R. 172.

The def of "Owner" contained in P. H. Act, 1875, is adopted for;—

P. H. Ireland Act, 1878, 41 & 42 V. c. 52; *V.* s. 2:

P. H. Acts Amendment Act, 1890, 53 & 54 V. c. 59; *V.* s. 11:

P. H. Scotland Act, 1897, 60 & 61 V. c. 38; *V.* s. 3, which provides Scotch verbal equivalents in the def:

Advertising Stations (Rating) Act, 1889, 52 & 53 V. c. 27; *V.* s. 2:

Brine Pumping (Compensation for Subsidence) Act, 1891, 54 & 55 V. c. 40; *V.* s. 52:

Private Street Works Act, 1892, 55 & 56 V. c. 57; *V.* s. 5.

Note: "Owner In Default," quà *Public Health Acts*, means the person who is owner at the time of the completion by the Local Author-

Digitized by Google

ity of the works the expenses of executing which are sought to be recovered (*R.* v. *Swindon*, 48 L. J. M. C. 119; 4 Q. B. D. 305; 27 W. R. 732; 43 J. P. 431: *Vf*, PREMISES). *Vh*, *Bowditch* v. *Wakefield*, 40 L. J. M. C. 214; L. R. 6 Q. B. 567: *Peek* v. *Waterloo*, 33 L. J. M. C. 11; 2 H. & C. 709: *Wallsend* v. *Murphy*, 61 L. T. 777; 6 Times Rep. 29: *Re Betteswortk and Richer*, 57 L. J. Ch. 749; 37 Ch. D. 535; 58 L. T. 796; 36 W. R. 544; 52 J. P. 740.

Quà *Town Police Clauses Act*, 1847, 10 & 11 V. c. 89, s. 33, "Owner of Lands and Buildings," means the same as "Owner" as defined by s. 4, P. H. Act, 1875 (*Sale* v. *Phillips*, 1894, 1 Q. B. 349; 63 L. J. M. C. 79; 70 L. T. 559; 58 J. P. 460; over-ruling *Lewis* v. *Arnold*, 44 L. J. M. C. 68; L. R. 10 Q. B. 245).

Quà *Poor Rate Assessment and Collection Act*, 1869, 32 & 33 V. c. 41, "'Owner,' shall mean, any person receiving, or claiming, the rent of the hereditament for his own use; or receiving the same for the use of any corporation aggregate or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent" (s. 20).

Quà *Lands C. C. Act*, 1845, "'Owner,' shall be understood to mean, any person or corporation who, under the provisions of this or the Special Act, would be enabled to sell and convey lands to the promoters of the undertaking" (8 & 9 V. c. 18, s. 3); the def in s. 3, Lands C. C. (Scot) Act, 1845, is the same, except that, between "corporation" and "who," there is inserted "or trustees or others." *Vh*, *Chauntler* v. *Robinson*, 4 Ex. 163; 19 L. J. Ex. 170: *R.* v. *Kerrison*, 1 M. & S. 435: *Russell* v. *Shenton*, 11 L. J. Q. B. 289; 3 Q. B. 449; 2 G. & D. 573: *Mann* v. *G. Southern & Western Ry*, inf. As to "Owner" in s. 76, of the English Act; *V. Ex p. Winder*, 46 L. J. Ch. 572; 6 Ch. D. 696: *Douglass* v. *Lond. & N. W. Ry*, 3 K. & J. 173: *Wells* v. *Chelmsford*, 49 L. J. Ch. 827; 15 Ch. D. 108.

Quà *Ry C. C. Act*, 1845, 8 & 9 V. c. 20, "'Owner' shall be understood to mean any person or corporation who, under the provisions of this or the Special Act *or any Act incorporated therewith*, would be enabled to sell and convey lands to the company" (s. 3). "Owner," of a Private Road entitled to the penalty prescribed by s. 54, includes the owner of one half of the road usque ad medium filum, and if he recovers the penalty the owner of the other half of the road cannot, for only one penalty is recoverable (*Llewellyn* v. *Glamorgan Vale Ry*, 1898, 1 Q. B. 473; 67 L. J. Q. B. 305; 78 L. T. 70; 46 W. R. 290: *Vh*, PENALTY). *Vf*, *Mann* v. *G. Southern & Western Ry*, 9 Ir. Com. Law Rep. 105. "Owners or Occupiers," s. 68, Ib., and s. 11, 34 & 35 V. c. 41, *V.* OCCUPIER.

The def in Lands C. C. Act, 1845, is adopted for Land Drainage Act, 1861, 24 & 25 V. c. 133 (s. 3); Land Drainage Act (Ir) 1863, 26 & 27 V. c. 26 (s. 3); and also for Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, with the addition that it there "includes all lessees or

Digitized by Google

mortgagees of any premises required to be dealt with under this Part of this Act, except persons holding or entitled to the rents and profits of such premises for a term of years of which 21 years do not remain unexpired" (s. 29: *Vh, Osborne* v. *Skinners' Co*, 60 L. J. M. C. 156; 39 W. R. 715).

A def similar to that in Lands C. C. Act, 1845, is provided for Tramways (Ir) Act, 1860, 23 & 24 V. c. 152 (s. 49).

"Owner" has also received various statutory definitions in and for the following Acts;—

Alkali, &c, Works Regulation Act, 1881, 44 & 45 V. c. 37; *V.* s. 29:
Ancient Monuments Protection Act, 1882, 45 & 46 V. c. 73; *V.* s. 9:
Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55; *V.* s. 4:
Chief Rents Redemption (Ir) Act, 1864, 27 & 28 V. c. 38; *V.* s. 1:
Coal Mines Regulation Act, 1887, 50 & 51 V. c. 58; *V.* s. 75:
Defence Act, 1860, 23 & 24 V. c. 112; *V.* s. 47:
Dispensary Houses (Ir) Act, 1879, 42 & 43 V. c. 25; *V.* s. 2:
Fisheries (Ir) Act, 1850, 13 & 14 V. c. 88; *V.* s. 1:
Geological Survey Act, 1845, 8 & 9 V. c. 63; *V.* s. 6:
Inclosure Act, 1836, 6 & 7 W. 4, c. 115; *V.* s. 56:
Land Debentures (Ir) Act, 1865, 28 & 29 V. c. 101; *V.* s. 3:
Landed Estates Court (Ir) Act, 1858, 21 & 22 V. c. 72; *V.* s. 1, on *whv, Re Beckett*, 5 L. R. Ir. 43; on s. 64, *Grier* v. *Grier*, L. R. 5 H. L. 688:
Landed Property Imp. (Ir) Act, 1847, 10 & 11 V. c. 32; *V.* s. 66:
Landed Property (Ir) Imp. Act, 1860, 23 & 24 V. c. 153; *V.* s. 35:
Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50; *V.* s. 105:
Lunacy (Scot) Act, 1857, 20 & 21 V. c. 71; *V.* s. 3:
Metalliferous Mines Regulation Act, 1872, 35 & 36 V. c. 77; *V.* s. 41: *Vh, Evans* v. *Mostyn*, 47 L. J. M. C. 25; 2 C. P. D. 547: *Arkwright* v. *Evans*, 49 L. J. M. C. 82: *Devonshire* v. *Stokes*, cited INTERESTED IN: *Foster* v. *Newhaven Harbour Trustees*, 61 J. P. 629:
Poor Law (Scot) Act, 1845, 8 & 9 V. c. 83; *V.* s. 1:
Public Works Loans Act, 1888, 51 & 52 V. c. 39; *V.* s. 6:
Record of Title Act (Ir) 1865, 28 & 29 V. c. 88; *V.* s. 2:
Rep People Act, 1884, 48 & 49 V. c. 3; *V.* s. 9 (8):
Rep People (Scot) Act, 1868, 31 & 32 V. c. 48; *V.* s. 59:
Sale of Advowsons Act, 1856, 19 & 20 V. c. 50; *V.* s. 1:
School Sites Act, 1849, 12 & 13 V. c. 49; *V.* s. 7:
Tithe Act, 1891, 54 & 55 V. c. 8; *V.* s. 9: *semble*, does not include a Reversioner (*Peed* v. *King*, 11 Times Rep. 18). *V.* TITHE.

V. PROPRIETOR: LANDLORD.

"Owner," of a *Canal Boat*; *V.* 40 & 41 V. c. 60, s. 14.

"Owner," of a *Dog*, quà Dogs Act, 1865, 28 & 29 V. c. 60; *V.* s. 2, and *vth, Gardner* v. *Hart*, 44 W. R. 527.

"Owners of a *Dock or Canal*"; *V.* 63 & 64 V. c. 32, s. 2 (5).

Digitized by Google

"Owner" of *Fairs*, quà Fairs Acts; *V.* 34 & 35 V. c. 12, s. 2; 36 & 37 V. c. 37, s. 3. — *Ir.* 31 & 32 V. c. 12, s. 2.

"Owner" of Goods; *V.* Harbours Docks and Piers Clauses Act, 1847, 10 & 11 V. c. 27, s. 3. "Owner," quà Royal Charter granting duties on Goods brought from Beyond Seas into the Tyne, held to mean the Importer (*Newcastle Pilots* v. *Hammond*, 18 L. J. Ex. 417; 4 Ex. 285). Quà Part 7, Mer Shipping Act, 1894, "'Owner,' used in relation to Goods, means, every person who is for the time entitled, either as owner or agent for the owner, to the possession of the goods; subject in the case of a Lien (if any) to that lien" (s. 492, adopted from s. 66, 25 & 26 V. c. 63, on *whv*, *White* v. *Furness*, 1895, A. C. 40; 64 L. J. Q. B. 161: *Cp*, Factor: Mercantile Agent). "Owner" of goods *shipped*; *V. Ribble Nav. Co* v. *Hargreaves*, cited Shipped.

"Owner," quà *Highway Act*, 1835, 5 & 6 W. 4, c. 50, s. 65, means, the person in occupation, who may be either the actual owner or only the occupying tenant (*Woodard* v. *Billericay*, 48 L. J. Ch. 535; 11 Ch. D. 214; 27 W. R. 594; 43 J. P. 224).

"Owner of Land"; *V.* Landowner.

"Owner of Licensed Premises," quà the Licensing Act, 1872, "means, the person for the time being entitled to receive, either on his own account or as mortgagee or other incumbrancer in possession, the Rack-rent of such premises" (s. 74; *va*, s. 77).

"Owner of a *Limited Interest in Lands*"; *V. Landowners' West of England Co* v. *Ashford*, 50 L. J. Ch. 276; 16 Ch. D. 411.

"Owner of the *Prior Estate*," who is the Protector of a Settlement, s. 22, Fines and Recoveries Act, 1833, 3 & 4 W. 4, c. 74, is "the real, substantial, owner of the estate, *i.e.* the person who has the beneficial interest in the land" (per James, L. J., *Re Dudson*, 47 L. J. Ch. 632; 8 Ch. D. 8, 628: *Va*, *Re Ainslie*, 54 L. J. Ch. 8; 51 L. T. 780; 33 W. R. 148).

"Owner or Occupier" of premises is a sufficient description quà a Notice under s. 128 (1), P. H. London Act, 1891 (*R.* v. *Mead*, cited Other, p. 1365).

"Owner" of a Several Fishery, s. 11, Fresh Water Fisheries Act, 1878, 41 & 42 V. c. 39, does not include one who is merely an Occupier (*Swanwick* v. *Varney*, cited Catch).

"Owner" of a Ship, quà s. 169, Mer Shipping Act, 1854, and, probably, throughout that Act and the replacing Act of 1894, does not mean the Registered Owner if he has parted with all control over it, but "must be restrained to such actual owner for the time being of the ship as either himself or by his master or other authorized agent, manages and controls her" (*Meiklereid* v. *West*, 45 L. J. M. C. 91; 1 Q. B. D. 428; 40 J. P. 708; 34 L. T. 353; 24 W. R. 703: *Baumwoll Manufactur* v. *Furness*, 62 L. J. Q. B. 201; 1893, A. C. 8; 68 L. T. 1; 7 Asp. 263). A person who has contracted to buy and has paid a deposit on purchase

Digitized by Google

of a share in a ship, but who has not been registered, has a real, substantial, interest in the ship and is an "Owner," within the exception provided by s. 147 (1) of the Act of 1854 (*Hughes* v. *Sutherland*, 7 Q. B. D. 160; 50 L. J. Q. B. 567). *V.* SHIPOWNER: MANAGING OWNER.

"Owner" of *Tithe*; *V.* TITHE OWNER: TITHE RENTCHARGE.

"Owner" of a WRECK, s. 56, 10 & 11 V. c. 27, is the person who was the owner when the expense of removing it was incurred (*Arrow Co.* v. *Tyne Commrs*, 1894, A. C. 508; 63 L. J. P. D. & A. 146; over-ruling *Eglinton* v. *Norman*, 46 L. J. Ex. 557: *Vf*, *Barraclough* v. *Brown*, 1897, A. C. 615; 66 L. J. Q. B. 672; 76 L. T. 797; 2 Com. Ca. 249). But in the similar, but differently worded, provision of the Victoria Marine Act, 1890 (s. 13), "Owner," is the owner when the ship "sunk, stranded, or ran on shore," for in that section it is the owner of the ship that is made liable, — a liability not transferred by an ABANDONMENT (*Smith* v. *Wilson*, 1896, A. C. 579; 65 L. J. P. C. 66; 12 Times Rep. 505). *Vf*, REMOVE.

"Beneficial Owner"; *V.* BENEFICIAL.

"Successive Owner"; *V.* SUCCESSIVE.

"Owner who allows"; *V.* ALLOW.

V. ADJOINING OWNER: BUILDING OWNER: TRUE OWNER.

OWNER'S RISK. — Goods carried at "Owner's RISK," means, at the risk of the owner, *minus* the liability of the carrier for the misconduct of himself or servants (per Bramwell, L. J., *Lewis* v. *G. W. Ry*, 47 L. J. Q. B. 134; 3 Q. B. D. 195: *Pontifex* v. *Hartley*, 62 L. J. Q. B. 199); and a stipulation that goods shall be carried "at owner's risk," only exempts the carrier from the ordinary risks of the transit and does not cover the carrier's negligence (*Mitchell* v. *Lanc. & Y. Ry*, 44 L. J. Q. B. 107; L. R. 10 Q. B. 256), or his negligent delay (*Robinson* v. *G. W. Ry*, 35 L. J. C. P. 123); even though less than the usual freight be charged (*D'Arc* v. *Lond. & N. W. Ry*, L. R. 9 C. P. 325).

Vf, *McCawley* v. *Furness Ry*, L. R. 8 Q. B. 57: *Stewart* v. *Lond. & N. W. Ry*, 33 L. J. Ex. 199. *Cp*, DELAY IN TRANSIT.

Where a Bill of Lading provides that the goods are "to be forwarded at SHIP'S EXPENSE and Owner's Risk," "Owner's Risk," means, "that those risks which, ordinarily, the ship takes are to be taken by the shipper"; therefore, the clause does not relieve the ship-owner from liability for negligent transshipment, *secus*, for negligent stowage (*Allan* v. *James*, 3 Com. Ca. 10). *Vf*, SHIP'S RISK.

Cp, MERCHANT'S RISK: PASSENGER'S RISK.

OWNERSHIP. — Quà Small Dwellings Acquisition Act, 1899, 62 & 63 V. c. 44, "'Ownership,' shall be such interest, or combination of interests, in a house as (together with the interest of the purchaser of the ownership) will constitute either a Fee Simple in possession, or a Leasehold Interest in possession of at least 60 years unexpired at the date of the purchase" (subs. 2, s. 10); quà Scotland, "'Ownership' shall in-

Digitized by Google

clude a Leasehold Interest of at least 60 years unexpired at the date of the purchase" (subs. 3, s. 11).

Part Ownership; *V.* PARTNERSHIP.

Reputed Ownership; *V.* POSSESSION, ORDER OR DISPOSITION.

"Ownership VOTER," quà Registration Act, 1885, 48 & 49 V. c. 15, "means, a person entitled to vote in respect of the ownership of property, whether of freehold leasehold or copyhold tenure" (s. 19). *Cp,* OCCUPATION VOTER: PARLIAMENTARY.

OWNING OCCUPIER. — *V.* OCCUPIER.

OXGANGE. — "*Una bovata terræ,* an oxgange, or an oxgate of land, is as much as an ox can till"; but, like *carucata,* it "may containe meadow, pasture, and wood necessary for such tillage" (Co. Litt. 5 a: *Vf,* Cowel: Touch. 93: *Sv,* Elph. 564). *V.* HIDE: KNIGHT'S FEE.

OYER. — To have Oyer of a Record or Document, is a request "made in Court that the judges, for better proofs-sake, will be pleased to hear or look upon" it (Cowel: *Vf,* Termes de la Ley).

OYER AND TERMINER. — A Court or Commission of "Oyer and Terminer," is one to hear and determine (Termes de la Ley: Cowel: Jacob: 4 Bl. Com. 269, 270). *Vf,* HEAR: *Cp,* GAOL DELIVERY.

The Court of Queen's, or King's, Bench (lately the Q. B. D. and now the K. B. D.), is a Court of "Oyer and Terminer," *e.g.* in s. 20, 11 & 12 V. c. 42 (*R.* v. *Eyre,* 37 L. J. M. C. 159; L. R. 3 Q. B. 487).

OYSTER. — Quà Part 3, Sea Fisheries Act, 1868, 31 & 32 V. c. 45, "'Oysters' and 'Mussels' respectively, include the brood, ware, half-ware, spat, and spawn, of Oysters and Mussels respectively" (s. 28). *V.* OYSTER SPAT.

Oysters taken in Foreign Waters; *V.* TAKE.

V. FISH: SEA FISH.

Note. For a judicial hesitancy to hold that the common law right of the subject to take sea fish includes a right to take the shells, *V. Bagott* v. *Orr,* 2 B. & P. 472.

OYSTER LAYINGS. — "Perhaps, the words 'Oyster Layings' would not pass the privilege of getting oysters, because those words only import a privilege of laying oysters, and it might be doubtful whether they could give a right to take them" (per Littledale, J., *Scratton* v. *Brown,* 4 B. & C. 503, 504); but the association of this phrase with "SEA-GROUNDS" would not limit the force of the latter (*S. C.*).

OYSTER SPAT. — "Spat" or "Spawn" of Fish, is the same thing as "FRY or Brood"; "Oyster Spat," is the spawn or young brood of oysters cast by oysters and not fully grown or formed into oysters or fit for the food of man (*Maldon* v. *Woolvet,* 12 A. & E. 15).

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

This book should be returned to the Library on or before the last date stamped below.

A fine of five cents a day is incurred by retaining it beyond the specified time.

Please return promptly.

Digitized by Google

3 2044 089 223 077