THE

JUDICIAL DICTIONARY.

THE

Judicial Dictionary,

OF

WORDS AND PHRASES JUDICIALLY INTERPRETED,

TO WHICH HAS BEEN ADDED

STATUTORY DEFINITIONS.

BY

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THE

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P—PACKET

P.—*V.* PER PROCURATION.

P. A.—*V.* PARTICULAR AVERAGE.

P. P. I.—"P. P. I." Policy; *V.* HONOUR.

PACIFIC.—In a SLIP, "the Pacific" does not mean all Ports on the West Coast of North, Central, or South, America; what it means in any particular case depends on the circumstances and course of dealing (*Royal Ex. Assrce* v. *Tod*, 8 Times Rep. 669); in *thc* it meant, all the Ports on the west coast of *South* America.

PACK.—"Pack of Cards"; *V.* CARDS.

PACKAGE.—*V.* PACKET: PARCEL.

That which is a "PAPER WRAPPER" within s. 6, Margarine Act, 1887, cannot also be a "Package" within the same section (*Toler* v. *Bischop*, 65 L. J. M. C. 4; 73 L. T. 403; 60 J. P. 9). *V.* MARGARINE.

Quà Salmon and Freshwater Fisheries Acts, 1861 to 1892, "'Package,' shall mean and include, any box, basket, barrel, case, receptacle, sack, bag, wrapper, or other thing, in which fish is placed for the purpose of carriage consignment or exportation" (s. 6, 55 & 56 V. c. 50).

Similar Package; *V.* SIMILAR.

PACKER.—"This is a term well understood in London, and means, a person employed by merchants to receive, and (in some instances) to select, goods for them from manufacturers, dyers, calenderers, &c, and pack the same for exportation" (Arch. Bank., 11 ed., 37).

PACKET.—*V.* PACKAGE: PARCEL: POST LETTER.

Quà Post Office Offences Act, 1837, 1 V. c. 36, "Packet" includes LETTER (s. 47); *V.* same section for interp of "Packet Postage," "Packet Letter," "Packet Boats," and "Post Office Packets."

Quà Post Office Act, 1875, 38 & 39 V. c. 22, "*Postal* Packet," "means, a letter, post-card, newspaper, book-packet, pattern or sample packet, circular, legal and commercial document, packet of photographs, and

every packet or article which is not, for the time being, prohibited by or in pursuance of the Post Office Acts from being sent by post: Every Postal Packet shall be deemed to be a Post Letter within," 1 V. c. 36 (s. 10): *Vf*, 47 & 48 V. c. 76, s. 20; 54 & 55 V. c. 46, s. 12. "A REPLY Post Card, or any part thereof, which may be again transmitted through the post without further payment, shall be deemed to be a 'Postal Packet,' within the meaning of" the Post Office (Duties) Acts (s. 2, 45 & 46 V. c. 2). *V.* POST OFFICE.

"INLAND" Postal Packet, means a Postal Packet "posted within the UNITED KINGDOM and addressed to some place in the United Kingdom" (s. 11, 38 & 39 V. c. 22), and quà that Act, "United Kingdom" includes, "the Channel Islands and the Isle of Man" (s. 12).

PAID. — "Paid," like "PAYMENT," is, generally, satisfied by something being given or done which is MONEY'S WORTH, *e.g.* of the payment of a Legacy as in *Coombe* v. *Trist* (1 My. & C. 69) and *A-G.* v. *Loscombe* (5 H. & N. 564; 29 L. J. Ex. 305); or of an "estate" for which at least £30 shall be "*bonâ fide* paid" so as to obtain a Pauper Settlement, s. 5, 9 G. 1, c. 7 (*R.* v. *Belford*, 3 B. & S. 662; 32 L. J. M. C. 156).

A testamentary direction that all legacies are to be "paid" free of Legacy Duty, will be read as including the idea of satisfaction, transfer, or delivery, so that chattels, stock, or shares, the subject of a specific legacy, will, like payment of a pecuniary legacy, have to be delivered or transferred free of duty to the legatee (*Ansley* v. *Cotton*, 16 L. J. Ch. 55: *Re Johnston, Cockerell* v. *Essex*, 53 L. J. Ch. 645; 26 Ch. D. 538; 32 W. R. 634).

A testamentary direction that Debts are to be "paid" (whether Legacies are also mentioned or not) prevents the presumption that a legacy to a Creditor is in satisfaction of his claim (*Re Huish, Bradshaw* v. *Huish*, 59 L. J. Ch. 135; 43 Ch. D. 260; disapproving *Edmunds* v. *Low*, 3 K. & J. 318; 26 L. J. Ch. 432).

V. PAY.

Articles of a Co which empower the declaration of Dividends "to be paid" to Members, do not authorize the issue of Bonds for Dividends (*Wood* v. *Odessa W. W. Co*, 42 Ch. D. 636; 58 L. J. Ch. 628: *Hoole* v. *G. W. Ry*, 3 Ch. 262).

V. TO BE PAID: PAYABLE: PAYMENT.

A Bill of Sale "truly sets forth its consideration" (s. 8, Bills of S. Act, 1882), if the money therein stated to be "paid" did not actually pass in cash, but was a sum owing by the grantor to the grantee for unpaid purchase-money of the chattels therein comprised (*Ex p. Bolland*, 52 L. J. Ch. 113; 21 Ch. D. 543; 31 W. R. 102). *V.* TRULY SET FORTH: Now, p. 1296.

In a Charter-Party agreeing to pay the highest sum proved to have

been paid, "paid" should be read as meaning "contracted to be paid" (*Gether* v. *Capper*, 24 L. J. C. P. 69; 15 C. B. 701: *Vf*, PROVE).

So, in a Re-Insrce Policy, "*to pay as may be paid* thereon" does not imply an actual payment by the re-insurer as a Condition Precedent, but means that payment under such re-insrce is to be regulated by that to be made on the Original Policy (*Re Eddystone Insrce*, cited PAY).

Stamp on Security for money to be "lent, advanced, or paid," 55 G. 3, c. 184, Sch; *V. Wroughton* v. *Turtle*, 11 M. & W. 561; 13 L. J. Ex. 57.

"Money paid," s. 1, Gaming Act, 1892, 55 V. c. 9 (*V.* GAMING CONTRACT), does not apply to a revocable deposit (*O'Sullivan* v. *Thomas*, 1895, 1 Q. B. 698; 64 L. J. Q. B. 398; 72 L. T. 285; 43 W. R. 269: *Burge* v. *Ashley*, 1900, 1 Q. B. 744; 69 L. J. Q. B. 538; 82 L. T. 518; 48 W. R. 438). *V.* IN RESPECT OF.

"Commission paid by the Client"; *V.* BY.

"Unless he shall have paid all such Rates"; *V.* UNLESS.

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

V. PAYMENT: I WILL SEE YOU PAID: RECEIPT.

PAID OFFICER. — "Paid Officers" may be appointed, s. 46, Poor Law Amendment Act, 1834, and any Paid Officer deemed UNFIT or Incompetent may be discharged, s. 48, Ib.; by s. 109, Ib., "OFFICER" extends to "any CLERGYMAN, Schoolmaster, person duly licensed to practise as a Medical Man, Vestry Clerk, Treasurer, Collector, Assistant Overseer, Governor, Master or Mistress of a Workhouse, or any other person who shall be employed . . . in carrying the laws for the Relief of the Poor, into execution"; a Workhouse Chaplain is a "Paid Officer" within ss. 46, 48 (*Ex p. Molyneux*, 11 W. R. 233; 7 L. T. 599; 27 J. P. 56).

PAID UP. — Paid-up Capital; *V.* CAPITAL.

Paid-up Shares; *V.* FULLY PAID UP.

PAIN. — "Under pain of forfeiting Body and Goods"; *V.* FELONY.

"'Paine fort et dure,' is an especiall punishment for such as being arraigned for Felony, refuse to put themselves upon the common tryall of God and the Countrey, and thereby are mute, or as mute in law" (Termes de la Ley); *Vh*, 4 Bl. Com. 325–329, where the phrase is "Peine forte et dure." Abolished by 12 G. 3, c. 20.

PAINT. — A covenant to "paint" premises at the end of a period, does not include distempering (per Cave, J., *Perry* v. *Chotzner*, 9 Times Rep. 488).

PAINTING. — A "Painting," is a pictorial work in colours the object and value of which are artistic. Hence original trade models and Working designs, though carefully painted by hand and skilfully designed, are not "Paintings" within the Carriers Act, 1830 (*Woodward* v. *Lond.*

& N. W. Ry, 47 L. J. Ex. 263; 3 Ex. D. 121). Nor (per Hawkins, J., *Ib.*) would such models or designs be "Original Paintings" within the Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68: *Sv, Hildesheimer* v. *Dunn*, 35 S. J. 365; 64 L. T. 452.

When it is doubtful whether a pictorial work is a "Painting" or not, the question is for the jury, just as it is on the other things enumerated in the Carriers Act, *e.g.* SILK.

V. PICTURE: ENGRAVING: COPY: PLATE.

PAIS. — ASSURANCE of land "by matter *in pais*, or deed; which is an assurance transacted between two or more private persons *in pais*, in the country; that is (according to the old common law) upon the very spot to be transferred" (2 Bl. Com. 294).

ESTOPPEL "by matter *in paiis*, as by liverie, by entry, by acceptance of rent, by partition, and by acceptance of an estate, as here in the case that Littleton putteth (s. 667); whereof Littleton maketh a special observation that a man shall be estopped by matter in the countrey, without any writing" (Co. Litt. 352 a).

Trial by Jury, "called also the trial *per pais*, or by the country" (3 Bl. Com. 349; 4 Ib. 341).

PALACE. — *V.* ROYAL PALACE.

PALMER ACT. — The Central Criminal Court Act, 1856, 19 & 20 V. c. 16. This Act does not derive its popular name from a legislator, but because its need was shown by the trial of Palmer, the Rugeley murderer.

Roundell Palmer's Act; Sales of Reversions Act, 1867, 31 & 32 V. c. 4. *V.* HINDE PALMER'S ACT.

PALMISTRY. — "Is a kind of divination, practised by looking upon the lines and marks of the hands and fingers" (Jacob). *Vh, Monck* v. *Hilton*, 46 L. J. M. C. 163; 2 Ex. D. 268; 25 W. R. 373; 41 J. P. 214: 9 Encyc. 344.

Cp, DECEIVE: FORTUNES.

PANEL. — "'*Pannell*' is an English word, and signifieth a little part; for a pane is a part, and a pannell is a little part; as a pannell of wainscot, a pannell of a saddle, and a pannell of parchment wherein the jurors names be written and annexed to the writ. And a jury is said to be impannelled, when the sherife hath entered their names into the pannell, or little peece of parchment, *in pannello assisæ*" (Co. Litt. 158 b). *Vf*, Termes de la Ley, *Pannell*: Cowel, *Panell*.

PANNAGE. — All the definitions "agree that the Right of Pannage is simply a right granted to an owner of pigs (he is generally entitled to

some land; as a rule it was granted to the owners of land of some kind who kept pigs) to go into the wood of the grantor of the right, and to allow the pigs to eat the acorns or beech mast which fell upon the ground. That is what the right has always been defined to be. The pigs have no right to take a single acorn or any beech mast off the tree, either by themselves or by the hands of those who drive them, who might reach them or knock them down. There is not even a right to shake the tree. It is only a right to eat those things which fell" (per Jessel, M. R., *Chilton* v. *London*, 47 L. J. Ch. 435; 7 Ch. D. 562: *Vf*, Termes de la Ley: Cowel: Jacob: Elph. 606). *V.* PASTURES.

As to the rateability of Herbage and Pannage; *V. Bute* v. *Grindall*, 1 T. R. 338: *Jones* v. *Maunsell*, 1 Doug. 302.

PANNELL. — *V.* PANEL.

PANTOMIME. — *V.* arg. *Wigan* v. *Strange*, cited STAGE PLAY: DRAMATIC.

PAPER. — "Paper," is a manufactured substance composed of fibres, — (whether vegetable or animal), — adhering together, in form consisting of sheets of various sizes and of different thicknesses, used for writing or printing or other purposes to which such sheets are applicable (*A-G.* v. *Barry*, 28 L. J. Ex. 211; 4 H. & N. 470: *Vf*, *Coles* v. *Dickinson*, 16 C. B. N. S. 604; 33 L. J. M. C. 235). Paper can, generally, be now used as a substitute for parchment (*Ex p. Carr*, 5 C. B. 496); and on and from 1st Jan 1901, paper (of a special kind) has been substituted for parchment for engrossments of Wills for Probate (45 S. J. 91).

Nomination Paper; *V.* NOMINATION.

V. SHIP PAPERS.

PAPER MILL. — *V.* NON-TEXTILE FACTORIES.

PAPER-STAINING. — "Paper-staining Works"; *V.* NON-TEXTILE FACTORIES.

PAPER WRAPPER. — A Cardboard Wrapper is a "Paper Wrapper" within s. 6, Margarine Act, 1887, but the "Paper Wrapper," however manufactured, should be the external wrapper, or if enclosed in another wrapper that should be at the purchaser's request (*Toler* v. *Bischop*, cited PACKAGE).

PARALLEL. — In the Specification of a Patent for a horse-clipping machine, "Parallel" was construed in its popular sense of going side by side, and not in its purely mathematical sense (*Clarke* v. *Adie*, 2 App. Ca. 423; 46 L. J. Ch. 598).

PARAMOUNT. — "'Paramount' is a word compounded of two French words (*par* and *monter*), and it signifies in our law, the highest Lord of the Fee" (Termes de la Ley, referring to Fitz. N. B. 135). *Vf*, Cowel: 2 Bl. Com. 59, 91.

PARAPHERNALIA. — A Wife's paraphernalia (in which she takes a qualified ownership, *V.* Wms. P. P. 302) consist of her apparel and ornaments suitable to her station (2 Bl. Com. 435, 436: *Mangey* v. *Hungerford*, 2 Eq. Ca. Ab. 156) including gifts from her husband (*Graham* v. *Londonderry*, 3 Atk. 393: *Jervoise* v. *Jervoise*, 17 Bea. 566). Such gifts are not affected by the M. W. P. Act, 1882, and may still be made; but it is a question of fact whether gifts of ornaments from a husband to his wife are absolute or only as paraphernalia (*Tasker* v. *Tasker*, 1895, P. 1; 64 L. J. P. D. & A. 36; 71 L. T. 779; 43 W. R. 255).

Cp, SEPARATE PROPERTY: SEPARATE USE: PIN MONEY.

PARAVAIL. — "'Paravaile,' . . . signifies in our law, the lowest tenant of the fee, who is tenant to one that holdeth over of an other" (Termes de la Ley).

PARCEL. — Paintings, exceeding the value of £10, laid upon one another without any covering or tie in a waggon which has sides but no top, are a "Parcel or Package" within ss. 1, 2, Carriers Act, 1830 (*Whaite* v. *Lanc. & Y. Ry*, 43 L. J. Ex. 47; L. R. 9 Ex. 67; 22 W. R. 374).

Quâ Post Office (Parcels) Act, 1882, 45 & 46 V. c. 74, "'Parcel,' means, all such postal packets as by the regulations of the Treasury, made in pursuance of the Post Office Acts, are defined to be Parcels" (s. 17). *V.* PACKET: "Foreign Parcel," sub FOREIGN: "Inland Parcels," sub INLAND.

"Packed Parcel" as contrasted with "Enclosure" or "Enclosed Parcel," for the purpose of carriage; *V. Crouch* v. *G. N. Ry*, 25 L. J. Ex. 137; 11 Ex. 742.

"Parcel *Rates*" of Carriage; *V. Parker* v. *G. W. Ry*, 11 C. B. 545; 21 L. J. C. P. 57; 6 E. & B. 77; 25 L. J. Q. B. 209.

V. PACKAGE.

The "Parcels" of a Conveyance usually begin with the words "All that," and contain a description of the property conveyed; *V.* 2 Bl. Com. Appx. ii.

"'*Parcella terræ*,' a small piece of land" (Cowel).

PARCENERS. — "Many times parceners are called coparceners" (Co. Litt. 164 b). As to description and division of Parceners, *V.* Ib. 163 a, *et seq*: Termes de la Ley: Jacob.

"None are called Parceners by the Common Law but females, or the heires of females, which come to lands or tenements by descent; for if sisters purchase lands or tenements, of this they are called joyntenants, and not parceners" (Litt. s. 254); and so co-heiresses who take as such under words of PURCHASE are joint tenants (*Berens* v. *Fellowes*,

56 L. T. 391; 35 W. R. 356; 3 Times Rep. 425: *Re Baker, Pursey* v. *Holloway*, 79 L. T. 343: *Vf*, HEIR: RIGHT HEIRS).

Vh, 2 Cru. Dig. Title 19: 9 Encyc. 349–352.

PARDON. — Pardon, is the remitting or forgiving of a CRIME; and is *ex gratia Regis* (Cowel: Jacob). *Vf*, *R.* v. *Harrod*, 2 C. & K. 294: *Re Moseley*, cited CRIME.

A Pardon, is a remission of guilt; an Amnesty, is oblivion (*Ex p. Law*, 35 Georgia, 296).

V. FREE PARDON: THINK FIT.

PARENT. — The ordinary sense of the word "Parent" is, father or mother (*Sibley* v. *Perry*, 7 Ves. 530: *Vf*, ISSUE: 2 Jarm. 103–105); but it may mean any lineal ancestor (*Ross* v. *Ross*, 20 Bea. 645: "I have tried hard to understand that part of the judgment in *Ross* v. *Ross* that deals with the shifting meaning of the word 'Parent'"; per Brett, L. J., *Ralph* v. *Carrick*, 48 L. J. Ch. 809).

Where there is a Condition in Restraint of Marriage without the consent of "Parents," a surviving parent may give the consent (*Dawson* v. *Oliver-Massey*, 45 L. J. Ch. 519; 2 Ch. D. 753; 34 L. T. 120: *Booth* v. *Meyer*, 38 L. T. 125. *Vh*, *Re Brown*, 18 Ch. D. 61: CONSENT).

"Parents," s. 5, Matrimonial Causes Act, 1859, 22 & 23 V. c. 61, means, parents personally, *i.e.* the Husband or Wife; the word does not include their respective representatives (*Thomson* v. *Thomson*, 1896, P. 263; 65 L. J. P. D. & A. 80; 74 L. T. 801; 45 W. R. 134); and if there is no child alive there can be no "parents" (*Bird* v. *Bird*, 14 W. R. 1023; 35 L. J. P. & M. 102; 14 L. T. 860). *Vf*, *Dormer* v. *Ward*, cited PROPERTY.

Quà Elementary Education Act, 1870, 33 & 34 V. c. 75, "'Parent,' includes, Guardian and every person who is liable to maintain, or has the ACTUAL custody of, any CHILD" (s. 3); but this does not prevent "Parent" from bearing its obvious meaning of Father, or (failing him) Mother, if there be one on whom an Order can be made (*London School Bd* v. *Jackson*, 50 L. J. M. C. 134; 30 W. R. 47).

The def of "Parent" in 33 & 34 V. c. 75, is prescribed for, —

Canal Boats Act, 1877, 40 & 41 V. c. 60; *V.* s. 14:

Education (Scot) Act, 1872, 35 & 36 V. c. 62; *V.* s. 1:

Irish Education Act, 1892, 55 & 56 V. c. 42; *V.* s. 13:

Welsh Intermediate Education Act, 1889, 52 & 53 V. c. 40; *V.* s. 17.

Quà Factory and Workshop Act, 1901, "'Parent,' means, a Parent or Guardian of, or person having the LEGAL custody of or the control over or having direct benefit from the wages of, a YOUNG PERSON or Child" (s. 156).

The def provided for the Act for Prevention of Cruelty to Children (52 & 53 V. c. 44, s. 17) has been replaced by s. 23, Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41.

Quà Custody of Children Act, 1891, 54 & 55 V. c. 3, "Parent," includes "any person *at law* liable to maintain such child or *entitled to* his custody" (s. 5); but quà Industrial Schools (Scot) Act, 1861, 24 & 25 V. c. 132, the def includes "any person *legally* liable to maintain a child" (s. 3); whilst quà the Vaccination Act, 1871, 34 & 35 V. c. 98, the def broadly includes "any person having the custody of a child" (s. 4).

Quà Fatal Accidents Act, 1846, 9 & 10 V. c. 93, "Parent" includes, "father and mother, and grandfather and grandmother, and stepfather and stepmother" (s. 5).

The Putative Father of an Illegitimate child is not its "Parent"; *V.* CARE.

V. CHILD: FATHER: MOTHER.

PARENTAL DUTY.—"Unmindful of his Parental Duties," s. 3, 54 V. c. 3; *V. Re O'Hara*, cited ABANDONMENT.

PARI PASSU.—"Save as aforesaid, ALL Debts provable under the bankry shall be paid *pari passu*," s. 32, Bankry Act, 1869, repld s. 40 (4), Bankry Act, 1883, includes *bonâ fide* VOLUNTEER Debts, as well as those for VALUABLE consideration (*Re Stewart, Ex p. Pottinger*, 47 L. J. Bank. 43; 8 Ch. D. 621).

Although s. 133 (1), Comp Act, 1862, says that the ASSETS of a Co in Voluntary Liquidation are to be "applied in satisfaction of its liabilities *pari passu*," yet, as the Crown is not mentioned, its right to priority is not affected (*Re Henley*, 9 Ch. D. 469; 48 L. J. Ch. 147; 26 W. R. 885: *Re Oriental Bank*, 28 Ch. D. 643; 54 L. J. Ch. 327: *Sv, Re Regent Stores*, 38 L. T. 130; W. N. (78) 21).

Where a Co's Debentures state that they are to rank "*pari passu*," the power given by them to appoint a Receiver is a fiduciary power and must be fairly exercised in the interests of all the debenture-holders (*Re Maskelyne Typewriter, Lim.*, 1898, 1 Ch. 133; 67 L. J. Ch. 125; 77 L. T. 579; 46 W. R. 294).

PARISH.—A Parish, "is the circuit of ground in which the people who belong to one Church do inhabit, and the particular charge of a Secular Priest" (Jacob: *V. Re Sandbach School*, 1901, P. 20; 70 L. J. Ch. 604). *Vf*, Shaw's Parish Law: Steer, Ib.: 9 Encyc. 373–378. As to the Division of Parishes, *V.* Phil. Ecc. Law, Part 9, ch. 6.

In all Acts of Parliament passed since 1866, "'Parish,' shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate Poor Rate is or can be made, or for which a separate Overseer is or can be appointed" (s. 5, Interp Act, 1889): that def is taken from s. 18, 29 & 30 V. c. 113, which made more precise the def contained in s. 52, 15 & 16 V. c. 85, on *whv, R.* v. *Sudbury*, 6 W. R. 551; 27 L. J. Q. B. 232.

"Parish," s. 109, 4 & 5 W. 4, c. 76; *V. R.* v. *Ferncett, St. Mary*, 12 Q. B. 160; 18 L. J. M. C. 125.

Residence for 3 years "in any Parish," so as to confer a Pauper Settlement under s. 34, 39 & 40 V. c. 61, means, "any one Parish," not two or more Parishes in the same Union (*Plomesgate* v. *West Ham*, 50 L. J. M. C. 51; 6 Q. B. D. 576; 44 L. T. 610; 29 W. R. 630).

"Parish . . . not under any Local Authority," s. 32, Elementary Education Act, 1876, 39 & 40 V. c. 79; *V. R.* v. *Vane*, 51 L. J. M. C. 114.

"Parish" in Hobhouse's Act, 1 & 2 W. 4, c. 60, does not include a separate portion of a divided ancient parish (*R.* v. *Basset*, 17 Q. B. 332).

"Parish *or Place*," s. 1, Beerhouse Act, 1840, 3 & 4 V. c. 61; *V. Preston* v. *Buckley*, 39 L. J. M. C. 105; L. R. 5 Q. B. 391: and as to same phrase in s. 15, same statute; *V. R.* v. *Charlesworth*, 20 L. J. M. C. 181: *Smith* v. *Redding*, 35 L. J. M. C. 202; 7 B. & S. 360; L. R. 1 Q. B. 489: *Rice* v. *Slee*, L. R. 7 C. P. 378.

"Parishes *or Places*," s. 20, Church Building Act, 1822, 3 G. 4, c. 72; *V. Craven* v. *Sanderson*, 7 A. & E. 880; 7 L. J. Q. B. 81; 2 N. & P. 641.

"Parish *or Place*," s. 34, County Rates Act, 1852, 15 & 16 V. c. 81; *V. A-G.* v. *Deeping, St. Nicholas*, 68 L. T. 278; 62 L. J. Ch. 188; 57 J. P. 196.

"Parish separately maintaining its own Highways," s. 32, 25 & 26 V. c. 61; *V. R.* v. *Central Wingland*, 46 L. J. M. C. 282; 2 Q. B. D. 349.

EXTRA-PAROCHIAL places, deemed Parishes, for rating purposes, by 20 V. c. 19.

"Parish" has received statutory definition in and for the following Acts; —

Allotments Act, 1887, 50 & 51 V. c. 48; *V.* s. 14:

Annual Turnpike Acts Continuance Act, 1863, 26 & 27 V. c. 94; *V.* s. 1:

Bishoprics Act, 1878, 41 & 42 V. c. 68; *V.* s. 10:

Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82; *V.* s. 9:

Compulsory Church Rate Abolition Act, 1868, 31 & 32 V. c. 109; *V.* s. 10:

Ecclesiastical Buildings and Glebes (Scot) Act, 1868, 31 & 32 V. c. 96; *V.* s. 1:

Education (Scot) Act, 1872, 35 & 36 V. c. 62; *V.* s. 1:

Highway Act, 1862, 25 & 26 V. c. 61; *V.* s. 3:

Inclosure Act, 1836, 6 & 7 W. 4, c. 115; *V.* s. 56:

Loc Gov Act, 1888, 51 & 52 V. c. 41; *V.* s. 100 (that def does not apply to Loc Gov Act, 1894, V. s. 75):

Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50; *V.* s. 105:
Loc Gov (Scot) Act, 1894, 57 & 58 V. c. 58; *V.* s. 54:
Marriage Notice (Scot) Act, 1878; 41 & 42 V. c. 43; *V.* s. 1:
Poor Law (Scot) Act, 1898, 61 & 62 V. c. 21; *V.* s. 9:
P. H. Scotland Act, 1897, 60 & 61 V. c. 38; *V.* s. 3:
Public Libraries Consolidation (Scot) Act, 1887, 50 & 51 V. c. 42; *V.* s. 2:
Public Worship Regn Act, 1874, 37 & 38 V. c. 85; *V.* s. 6:
Redistribution of Seats Act, 1885, 48 & 49 V. c. 23; *V.* s. 23:
Revenue Act, 1884, 47 & 48 V. c. 62; *V.* s. 7:
Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51; *V.* s. 3:
Sale of Exhausted Parish Lands Act, 1876, 39 & 40 V. c. 62; *V.* s. 7:
School Sites Act, 1851, 14 & 15 V. c. 24; *V.* s. 1:
Taxes Management Act, 1880, 43 & 44 V. c. 19; *V.* s. 5:
Tithe Act, 1836, 6 & 7 W. 4, c. 71; *V.* s. 12:
Valuation (Ir) Act, 1852, 15 & 16 V. c. 63; *V.* s. 45.

"Parish or District"; Stat. Def., Church Building Act, 1851, 14 & 15 V. c. 97, s. 29.

"Parish, District, or Place"; Stat. Def., New Parishes Act, 1856, 19 & 20 V. c. 104, s. 33.

"Parish or Place"; Stat. Def., Beerhouse Act, 1830, 11 G. 4 & 1 W. 4, c. 64, s. 32; Revenue (No. 2) Act, 1861, 24 & 25 V. c. 91, s. 44.

"Burghal Parish"; *V.* BURGH.

"Ecclesiastical Parish"; Stat. Def., 41 & 42 V. c. 68, s. 14.

"Highway Parish"; *V.* HIGHWAY.

"Land Tax Parish"; *V.* LAND TAX.

"United Parish"; Stat. Def., Union of Benefices Act, 1860, 23 & 24 V. c. 142, s. 2.

"PART of a Parish"; Stat. Def., Pluralities Act, 1887, 50 & 51 V. c. 68, s. 1.

"Poor Law Parish"; *V.* POOR LAW.

V. NEW PARISH: PLACE: RURAL: TOWNSHIP: VILL.

Property "belonging" to a Parish; *V.* BELONGING.

PARISH BEADLE.—*V.* CONSTABLE: BEADLE.

PARISH CLERK.—"A Parish Clerk, in the ordinary acceptation of the word, is not a Spiritual Person, and so it was decided generations ago, and by Holt, C. J., in particular in *Parker* v. *Clerk*, Holt, 599" (per Dr. Robertson, *Kemp* v. *Attenborough*, 30 L. T. O. S. 211); "it appears to be well settled that the Office of Parish Clerk is a Temporal Office" (per Chitty, J., *Lawrence* v. *Edwards, No. 2*, 1891, 2 Ch. 72). He is appointed by the Minister for the time being (*V. Pinder* v. *Barr*, and *Lawrence* v. *Edwards*, cited MINISTER).

PARISH COUNCIL. — For England; *V.* Loc Gov Act, 1894, 56 & 57 V. c. 73, Part 1: for Scotland; *V.* Loc Gov (Scot) Act, 1894, 57 & 58 V. c. 58, Part 2.

PARISH SCHOOL. — Stat. Def., Education (Scot) Act, 1872, 35 & 36 V. c. 62, s. 1.

PARISHIONER. — "'Parishioner' is a very large word, and takes in not only Inhabitants of the PARISH, but persons who are occupiers of land, that pay the several rates and duties, though they are not resiant, nor do contribute to the ornaments of the church" (per Hardwicke, C., *A-G.* v. *Parker*, 3 Atk. 577: *Vf, Etherington* v. *Wilson*, 45 L. J. Ch. 153; 1 Ch. D. 160: *Batten* v. *Gedye*, 41 Ch. D. 507). *Cp*, INHABITANT.

"Parishioners *and Inhabitants*" of a parish, — "*i.e.* the Parishioners being Inhabitants of the parish" (Lewin, 88).

In regard to persons to execute a Trust, "the expression '*Parishioners and Inhabitants*' is, in itself, extremely vague, and has never acquired any very exact and definite meaning" (Lewin, 89); but even without qualifying words, — *e.g.* CHIEFEST AND DISCREETEST, — "Parishioners and Inhabitants" would be generally confined to those paying scot and lot; yet, if the phrase stand alone, it may easily, and with no better warrant than constant usage, be read as *Housekeepers*, whether paying scot and lot, or not (Lewin, 90).

"By 'Parishioners and Inhabitants *in Vestry assembled*,' are meant the persons who by the existing law constitute the Vestry" (Lewin, 89, citing *Re Hayle*, 31 Bea. 139; 31 L. J. Ch. 612: *Va, Etherington* v. *Wilson*, sup).

V. cases on this word discussed, Tudor, Char. Trusts, 867–870: 40 J. P. 225.

Stat. Def. — City of London Burial Act, 1857, 20 & 21 V. c. 35, s. 8; Public Worship Regulation Act, 1874, 37 & 38 V. c. 85, s. 6.

PARK. — "*Parke*, this should be written *parque*, which is a French word, and signifieth that which we vulgarly call a Parke, of the French word *parquer*, to imparke, to inclose. It is called in *Domesday*, *Parcus*. In law it signifieth a great quantity of ground inclosed, priviledged for wild beasts of chase by prescription or by the King's grant. . . . A forest and a chase are not, but a parke must be, inclosed" (Co. Litt. 233 a: *Vf*, 2 Bl. Com. 38, 416). "To a lawful park three things are required: (1) a Liberty either by grant or prescription; (2) Inclosure by pale, wall, or hedge; (3) Beasts savage of the park: 2 Inst. 199" (Elph. 606). The right of a Parker to kill unyielding trespassers in his Park (21 Edw. 1, De Malefactoribus in Parcis), was only incident to a strictly legal Park (1 Hale, 491: 3 Dyer, 326 b). *V.* BEASTS. *Cp*, CHASE: WARREN.

By the grant of a "Park," "not onely the priviledge, but the land itselfe passes" (Co. Litt. 5 b).

Semble, the modern def of "Park," is an enclosed (private or public) space of ground set apart for ornament, or to afford the benefit of air exercise or amusement (*Perrin* v. *N. Y. Central Ry*, 36 N. Y. 126).

Quà County Dublin Grand Jury Act, 1844, 7 & 8 V. c. 106, "Park" or "House" is "to include and be construed to mean, a Courtyard, Garden, or Orchard" (s. 156).

The Royal Parks and Gardens which (in 1872) were under the management of the Commrs of Works were,— Hyde Park; St. James' Park; The Green Park; Kensington Gardens; Parliament Square Garden; Regent's Park; Kennington Park; Primrose Hill; Victoria Park; Battersea Park; Greenwich Park; Kew Gardens, Pleasure Grounds, and Green; Hampton Court Park, Hampton Court Gardens and Green; Richmond Park and Green; Bushy Park; Holyrood Park; Linlithgow Peel or Park (Preamble, Sch 2, and s. 2, Parks Regn Act, 1872, 35 & 36 V. c. 15); *Sv*, as to Linlithgow Peel or Park, s. 5, 37 & 38 V. c. 84. On 1st Nov 1887, Victoria Park, Battersea Park, and Kennington Park, together with Bethnal Green Museum Garden and Chelsea Embankment, were transferred from the Commrs of Works to the Metropolitan Bd of Works (50 & 51 V. c. 34, ss. 2, 7); the successors of which Board is the London County Council (s. 40 (8), Loc Gov Act, 1888).

V. PUBLIC PARK: TOWN PARK.

PARK BOTE. —*V.* BOTE.

PARK KEEPER. — Stat. Def., Parks Regn Act, 1872, s. 3.

PARKE'S ACT. — The Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42: *Va*, WENSLEYDALE'S ACT.

PARLIAMENT. — "Parliament is the highest and most honourable and absolute Court of Justice in England, consisting of the King, the Lords of Parliament, and the Commons" (Co. Litt. 109 b). The constituent parts of Parliament are, "the King's Majesty, sitting there in his royal political capacity, and the Three Estates of the Realm, *i.e.* the Lords Spiritual, the Lords Temporal (who sit together with the King in one house), and the Commons, who sit by themselves in another. And the King and these Three Estates, together, form the great corporation or body politic of the kingdom, of which the King is said to be *caput, principium, et finis*" (1 Bl. Com. 153). *V.* SUPREME COURT.

Land "purchased with money provided by Parliament in consideration of PUBLIC SERVICES," s. 58 (1, i), S. L. Act, 1882, includes Strathfieldsaye (54 G. 3, c. 161), but not Blenheim (*Re Marlborough*, 8 Times Rep. 179, 582). *Cp*, PUBLIC MONEY.

PARLIAMENTARY. — "Parliamentary *Borough*"; *V.* BOROUGH.

"Parliamentary *Boundary*"; Stat. Def., 34 & 35 V. c. 61, s. 5. — *Scot.* 25 & 26 V. c. 101, s. 3.

"Parliamentary *Burgh*"; *V.* BURGH.

"The Parliamentary *Costs* Acts, 1847 to 1879"; *V.* Sch 2, Short Titles Act, 1896.

"Parliamentary COUNTY," in England, "means, a County returning a Member or Members to serve in Parliament; and, where a County is divided for the purpose of such return, means a Division of such County" (48 & 49 V. c. 15, s. 19, c. 23, s. 33; Loc Gov Act, 1888, s. 100).

"Parliamentary ELECTION," on and since 1st Jan 1890; *V.* s. 17 (1), Interp Act, 1889: for prior Stat. Def., *V.* Mun Corp Act, 1882, s. 7; 48 & 49 V. c. 10, s. 2, c. 23, s. 24; Loc Gov Act, 1888, s. 100. "Law relating to Parliamentary Elections," *V.* 48 & 49 V. c. 23, s. 24.

"Parliamentary *Election Petition*"; Stat. Def., 45 & 46 V. c. 50, s. 77. — *Scot.* 53 & 54 V. c. 55, s. 2.

"Parliamentary ELECTORS"; Stat. Def., 31 & 32 V. c. 41, s. 2.

Parliamentary *Estate*; *V.* PARLIAMENT.

"Parliamentary *Grant*"; Stat. Def., Elementary Education Act, 1870, 33 & 34 V. c. 75, s. 3; Education (Scot) Act, 1872, 35 & 36 V. c. 62, s. 1.

"Parliamentary *Polling District*"; Stat. Def., 48 & 49 V. c. 23, s. 23.

"Parliamentary *Register of Electors*"; *V.* s. 17 (2), Interp Act, 1889.

"Parliamentary STOCK": "In order to come within the description 'Government or Parliamentary Stocks or Funds,' a fund ought to be either managed by Parliament, or paid out of the revenues of the British Government, or, at least, guaranteed by that Government" (per Wood, V. C., *Brown* v. *Brown*, 4 K. & J. 706; 6 W. R. 613; 31 L. T. O. S. 297). *V.* GOVERNMENT SECURITIES.

"A 'Parliamentary' *Tax*, is one that is imposed *directly* by Act of Parliament" (per Parke, B., *Palmer* v. *Earith*, 14 L. J. Ex. 257; 14 M. & W. 428: *Svthc, R.* v. *Kent Jus.*, 2 E. & E. 911; 29 L. J. M. C. 191; 8 W. R. 496; 2 L. T. 353). Land Tax is a "parliamentary" tax (*Manning* v. *Lunn*, 2 C. & K. 13: *Christ's Hospital* v. *Harrild*, 2 M. & G. 707; 3 Sc. N. R. 126): but a Sewers Rate is not (*Waller* v. *Andrews*, 3 M. & W. 312; 7 L. J. Ex. 68: *Palmer* v. *Earith*, sup); nor a Local Improvement Rate (*Bedford Union* v. *Bedford Imp. Commrs*, 21 L. J. M. C. 229; 7 Ex. 777); nor a rate made, under a Local Act, for Repair of a Bridge *ratione tenuræ* (*Baker* v. *Greenhill*, 11 L. J. Q. B. 161; 2 G. & D. 435; 3 Q. B. 148); nor a County Rate which, by statute, was to be levied and paid out of the Poor Rate (*R.* v. *Aylesbury*, 9 Q. B. 261). *Vf*, Woodf. 591: *Cp*, PAROCHIAL RATE: PAROCHIAL TAX. *V.* TAXES.

"Parliamentary *Voter*," quà Parliamentary and Municipal Registration Act, 1878, 41 & 42 V. c. 26, "means, a person entitled to be regis-

tered as a VOTER, and, when registered, to vote at the election of a Member or Members to serve in Parliament for a Parliamentary Borough" (s. 4). *Vf*, s. 19, 48 & 49 V. c. 15; s. 100, Loc Gov Act, 1888. *Cp*, "County Elector," sub COUNTY: PAROCHIAL ELECTOR.

PAROCHIAL. — *V.* EXTRAPAROCHIAL: PARISH.

PAROCHIAL BUILDING. — Quà Parochial Buildings (Scot) Act, 1862, 25 & 26 V. c. 58, "Parochial Building" means and includes, "church, manse, churchyard walls, schoolhouse, and schoolmaster's house respectively" (s. 1).

PAROCHIAL BUSINESS. — In country parishes, the Poor Rate Collector's Office will, generally, be the "Place for transacting Parochial Business," within the provision as to serving Notices in s. 101, 6 V. c. 18 (*Green* v. *Mepham*, 48 L. J. C. P. 92).

PAROCHIAL CHAPELRY. — *V.* CHAPELRY.

PAROCHIAL CHARITY. — Quà Loc Gov Act, 1894, "'Parochial Charity,' means, a CHARITY the benefits of which are, or the separate distribution of the benefits of which is, confined to INHABITANTS of a single Parish, or of a single ancient Ecclesiastical Parish divided into two or more parishes, or of not more than 5 neighbouring parishes" (s. 75): *Vh*, *Re Ross*, cited ECCLESIASTICAL CHARITY.

PAROCHIAL CHURCH. — An exemption from Turnpike Toll for persons "going to and returning from their PROPER Parochial Church, Chapel, or other place of religious worship, on Sundays" was, in all its terms, governed by "parochial," and was confined to Members of the Church of England who themselves were only exempt when attending worship in their own parish, any other not being their "proper" place (*Lewis* v. *Hammond*, 2 B. & Ald. 206). *Cp*, USUAL PLACE OF RELIGIOUS WORSHIP.

PAROCHIAL ELECTOR. — Quà Loc Gov Act, 1894, "'Parochial Elector,' when used with reference to a Parish in an URBAN District or in the County of London or any County Borough, means, any person who would be a Parochial Elector of the Parish if it were a RURAL Parish" (s. 75); this def is adopted quà the London County Council (63 & 64 V. c. 29, s. 3).

A Freeman, quà Freeman, is not a Parochial Elector within s. 2 (1), or s. 44 (1) of the Act (*Hart* v. *Beard*, 1896, 1 Q. B. 54; 65 L. J. Q. B. 157; 73 L. T. 535). *Vf*, SEX.

PAROCHIAL FUNDS. — *V.* PUBLIC PAROCHIAL FUNDS.

PAROCHIAL OFFICER. — Stat. Def., quà the Public Records Acts for Ireland, 38 & 39 V. c. 59, s. 4.

PAROCHIAL PURPOSE. — *V. R.* v. *St. Marylebone*, 1895, 1 Q. B. 771; 64 L. J. Q. B. 622; 72 L. T. 11: BELONGING.

PAROCHIAL RATE. — A General District Rate, under ss. 209–211, P. H. Act, 1875, which may or may not include several parishes, is not a "Parochial Rate" within s. 14, Bills of Sale Act, 1882 (per North, J., *Richards* v. *Kidderminster*, 65 L. J. Ch. 508 *n*: *Vf*, *Wimbledon* v. *Underwood*, cited DISTRESS).

An exemption from all "Parochial Rates or Assessments," does not exonerate from Land Tax (*Waterloo Bridge Co* v. *Cull*, cited PAROCHIAL TAX: *Sv*, *R.* v. *East Teignmouth*, 1 B. & Ad. 244).

V. RATE. *Cp*, PARLIAMENTARY.

PAROCHIAL RELIEF. — Parochial Relief, speaking generally and also as disqualifying a person from being an elector (s. 36, Rep People Act, 1832, 2 & 3 W. 4, c. 45), means, the receipt of any benefit, service, or needful thing, at the cost of, or by persons employed and paid by, the parish, to or for the presumptive voter, or his wife, or child under 16 not being blind or deaf or dumb (4 & 5 W. 4, c. 76, s. 56); and such relief to a wife or child would still be parochial relief to the husband or father though he did not at the time require parochial assistance and did not authorize his wife to apply for it (*Bewdley*, 1 O'M. & H. 176). Of course, the supply of nutriment is such relief. And so also is the supply of a coffin or the payment of funeral expenses (*Oldham*, 1 O'M. & H. 159, 160, 161: *Vf*, 1 Rogers, 212). So, charitable parish labour at a price exceeding the value of the work done, is parochial relief (*Magarill* v. *Whitehaven*, 55 L. J. Q. B. 38; 16 Q. B. D. 242; 53 L. T. 667; 34 W. R. 275; 49 J. P. 743).

Excusal from payment of poor-rate on the ground of poverty is not receiving parochial relief (*Mashiter* v. *Dunn*, 18 L. J. C. P. 13; 6 C. B. 30; 2 Lutw. 112), in which case Maule, J., said, — "a man is not receiving parochial relief because he does not pay the rate, any more than I receive money from a beggar, because I do not give him any when he asks me." Nor is relief by way of loan under s. 58, 4 & 5 W. 4, c. 76, disqualifying (*Oldham*, 1 O'M. & H. 161). And though Medicine from, or Medical Attendance by, the parish doctor is parochial relief (*Oldham*, sup), yet that kind of relief does not now disqualify a person from being registered as a parliamentary or municipal voter (48 & 49 V. c. 46, ss. 2, 4; *V.* MEDICAL; but s. 2 excludes its application to elections of guardians); and statutory exceptions from what would otherwise be parochial relief are also made, so that no "right or privilege" shall be lost by reason of Parochial Vaccination (30 & 31 V. c. 84, s. 26), and so that no

"franchise, right, or privilege" shall be lost by reason of School Fees being paid for poor persons by the guardians (39 & 40 V. c. 79, s. 10).

V. ALMS: RELIEF.

PAROCHIAL TAX. — Neither Land Tax (*Waterloo Bridge Co* v. *Cull*, 29 L. J. Q. B. 10; 1 E. & E. 213), nor a Sewers Rate (*Waller* v. *Andrews*, 3 M. & W. 312; 7 L. J. Ex. 68: *Palmer* v. *Earith*, 14 M. & W. 428; 14 L. J. Ex. 256), nor an Improvement Rate by virtue of a local act (*Bedford Union* v. *Bedford Imp. Commrs*, 21 L. J. M. C. 229; 7 Ex. 777), nor a rate made, under a Local Act, for Repair of a Bridge *ratione tenuræ* (*Baker* v. *Greenhill*, 11 L. J. Q. B. 161; 2 G. & D. 435; 3 Q. B. 148), is a "Parochial" Tax. But a County Rate, levied and paid out of the poor rate, is Parochial (*R.* v. *Aylesbury*, 9 Q. B. 261). *Vf*, Woodf. 591: *Cp*, PARLIAMENTARY: *V.* PAROCHIAL RATE: TAXES.

PAROL. — "All Contracts are, by the laws of England, distinguished into Agreements by SPECIALTY and Agreements by Parol"; therefore, a contract in writing not under seal, is said to be a "parol" contract (*Rann* v. *Hughes*, 7 T. R. 350–1, *n*).

Parol Demise, includes a Writing not under Seal as well as a demise by word of mouth (per Denman, C. J., *Gibson* v. *Kirk*, 1 Q. B. 856).

Parol Evidence of a Written Document, means EXTRINSIC evidence, whether verbal or otherwise (Best on Evidence, s. 223).

PARSON. — "'*Parson,*' *Persona.* In the legall signification it is taken for the rector of a church parochiall, and is called *persona ecclesiæ*, because he assumeth and taketh upon him the parson of the church, and is said to be seised *in jure ecclesiæ*" (Co. Litt. 300 a, b); he is "one that hath full possession of all the rights of a Parochial Church" (Jacob). "A Parson, *persona ecclesiæ*, is one that hath full possession of all the rights of a Parochial Church. He is called Parson, *persona*, because by his person the church (which is an invisible body) is represented; and he is, in himself, a Body Corporate, in order to protect and defend the rights of the church (which he personates) by a perpetual succession" (1 Bl. Com. 384).

"'Parson impersonee,' is he that is in possession of a Church Appropriate, or Presentative, for so it is used in both cases in Dyer, 40 b and 221 b" (Termes de la Ley). *Vf*, 1 Bl. Com. 391.

"Parson or VICAR, or, where there is no Parson or Vicar, by the Minister of that place for the time being," 91 Canons Ecc. 1604; *V. Pinder* v. *Barr*, cited MINISTER.

Vh, Phil. Ecc. Law, Part 2, ch. 9.

V. CLERGYMAN: RECTOR: REGULAR CLERGYMAN.

PARSONAGE. — *V.* RECTORY.

PART.—"Part" of a BOOK, Copyright Act, 1842; *V.* "Part of a Drama," inf: *Vf, Re Cooper*, 64 L. J. Ch. 403; 1895, 1 Ch. 567; 72 L. T. 390; 43 W. R. 444.

"Part" of a *Cause of Action* or *Claim*, s. 74, Co. Co. Act, 1888; *V.* CAUSE OF ACTION.

A "part" of a *Drama* within the Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15, s. 2, does not mean a particle of it, but a substantial or material part (*Chatterton* v. *Cave*, 47 L. J. C. P. 545; 3 App. Ca. 483: *Vf, Walter* v. *Steinkopff*, 1892, 3 Ch. 489; 61 L. J. Ch. 521). *V.* DRAMATIC.

"Part" of an *Estate*; *V. Re Fuller and Leathley*, cited ESTATE. *Vf*, ANY: Power of Sale of "any Part," inf.

Part of a "*House*" or "*Manufactory*" within s. 92, Lands C. C. Act, 1845; *V.* HOUSE: MANUFACTORY: *Caledonian Ry* v. *Turcan*, cited ROAD.

"Part" of "Houses, Walls, Buildings, Lands, Tenements, and Hereditaments," may be acquired compulsorily by a Metropolitan Local Authority under ss. 80, 81, 82, Michael Angelo Taylor's Act; but that only authorizes the taking of such a "Part" as will not so sensibly and substantially alter the character and condition of the property from which it is to be taken that such property could no longer be occupied and used for its existing purposes (*Gordon* v. *St. Mary Abbotts*, 1894, 2 Q. B. 742; 63 L. J. M. C. 193: *Gibbon* v. *Paddington*, 1900, 2 Ch. 794; 69 L. J. Ch. 746; 83 L. T. 136; 49 W. R. 8; 64 J. P. 727).

Part of a "House," quâ Rep People Act, 1832; *V.* HOUSE: DWELLING HOUSE: SEPARATE OCCUPATION.

"Any Part" of *Land*; *V.* ANY.

"Parts of the *Machinery*"; *V.* DANGEROUS.

"Part of a *Mine*," within the Coal Mines Regulation Act, 1872, 35 & 36 V. c. 76, means, "a part having a separate system of ventilation which, by the terms of the statute, is a separate mine" (per Day, J., *Wales* v. *Thomas*, 55 L. J. M. C. 61; 16 Q. B. D. 340; 55 L. T. 400; 50 J. P. 516; 2 Times Rep. 53).

"Part Ownership"; *V.* PARTNERSHIP.

"Part of a *Parish*"; *V.* PARISH, towards end.

Part *Payment*; *V.* EARNEST: PAYMENT.

"Part of a *Promissory Note*, Bill of Exchange, or Bank Post Bill, PURPORTING to be a Bank Note," &c, s. 16, Forgery Act, 1861, 24 & 25 V. c. 98, is not confined to the obligation contained in such a document but, means the thing as it is commonly regarded, including *e.g.* an engraved ornamental border (*R.* v. *Keith*, 24 L. J. M. C. 110; 3 W. R. 412; 25 L. T. O. S. 118).

Building "used in Part for PURPOSES of Trade or Manufacture and in Part as a Dwelling-house," s. 74 (2), London Bg Act, 1894, "applies to the case of a SHOP with living rooms above it" (per Lawrence, J.,

Carritt v. *Godson*, 1899, 2 Q. B. 193; 68 L. J. Q. B. 799; 80 L. T. 771; 63 J. P. 644), and does not apply to a PUBLIC HOUSE, because "a Publican carries on his business all through the Licensed Premises" (per Day, J., *Ib.*).

Services are rendered "in Part within British Waters in saving life" from a British or Foreign Vessel, s. 544, Mer Shipping Act, 1894, if the crew of a Foreign Vessel (in distress outside British Waters) are there taken off the vessel and are thence brought to an English Port where they are landed (*The Pacific*, 1898, P. 170; 67 L. J. P. D. & A. 65; 79 L. T. 125; 46 W. R. 686). *V.* SALVAGE.

As to "Part of a STREET"; *V. Mile-End Old Town* v. *Whitechapel Union*, 45 L. J. M. C. 75; 46 Ib. 138.

"Part of the UNITED KINGDOM," quà Medical Act, 1886, 49 & 50 V. c. 48, "means, according to circumstances, England, Scotland, or Ireland" (s. 27).

"A Codicil is in its nature part of the WILL" (per Hardwicke, C., *St. Alban's* v. *Beauclerk*, 2 Atk. 639: *Va, Fuller* v. *Hooper*, 2 Ves. sen. 242: *Crosbie* v. *Macdoual*, 4 Ves. 610). *V.* HEREIN.

A Power to apply the whole or part of *Income*; *V.* WHOLE.

A Power to Lease "*any Part*" of an Estate; *V.* ANY, p. 95.

A Power to resume Possession of "any Part" of demised premises; *V.* ANY, p. 92.

A Power of Sale of "any Part" of an Estate; *V.* ANY, p. 95.

V. Re Fuller and Leathley, cited ESTATE.

An Appointment under a Power of a sum "part of" a larger sum subject to the Power, only indicates the fund out of which the Appointment is to have effect, so that if the larger sum is not wholly realized the sum appointed will not have to abate (*Booth* v. *Alington*, 6 D. G. M. & G. 613; 26 L. J. Ch. 138; 5 W. R. 107; 28 L. T. O. S. 211: *Vthc, Re Saunders-Davies*, 34 Ch. D. 482; 56 L. J. Ch. 492; 35 W. R. 493; 56 L. T. 153). *Vf*, REMAINDER.

"Although it has been held that the words 'Part' or 'SHARE' will not carry an Accrued Share, it was laid down in *Douglas* v. *Andrews* (14 Bea. 347) that the words 'Part, Share, and INTEREST' would carry an accrued share" (per Jessel, M. R., *Re Henriques*, W. N. (75) 187, 188, following *Douglas* v. *Andrews*).

A Devise of "*my* Part," even before the Wills Act, 1837, would generally carry the fee (2 Jarm. 285: *Woodhouse* v. *Herrick*, 1 K. & J. 352; 24 L. J. Ch. 649; 3 W. R. 303).

"Part *thereof*"; *V. Hewitt* v. *George*, 18 Bea. 522.

"Wholly or in Part"; *V.* WHOLLY.

PART WITH.—*V.* ASSIGN: MORTGAGE: UNDERLEASE.

If donee in fee "shall not have disposed of and parted with" the property; *V. Doe* d. *Stevenson* v. *Glover*, cited DISPOSE OF.

PARTIAL ACCEPTANCE. — A Partial Acceptance is, "an Acceptance to pay part only of the amount for which the Bill is drawn" (s. 19 (2 *b*), Bills of Ex. Act, 1882).

PARTIAL INCAPACITY. — Compensation for Partial Incapacity, Sch 1 (1 *b*), Workmen's Comp Act, 1897; *V. Irons* v. *Davis*, 1899, 2 Q. B. 330; 68 L. J. Q. B. 673; 80 L. T. 673; 47 W. R. 616: *Pomphrey* v. *Southwark Press*, 45 S. J. 59; 70 L. J. Q. B. 48: Disable: Earnings.
Cp, Incapacitated.

PARTIAL LOSS. — "This expression includes both a deterioration of all or any part of, and a total destruction of a part of, the subject of insurance" (Wood, 359, citing 2 Phillips, No. 1422. *Vf*, Park, ch. 6, 215: Maude & P. 525 *et seq*: *Francis* v. *Boulton*, 73 L. T. 578; 65 L. J. Q. B. 153; 44 W. R. 222; 8 Asp. 79).
V. Total Loss: Loss: Transhipment.

PARTIALITY. — *V.* Impartiality.

PARTICATA TERRÆ. — A Rood (Elph. 606).

PARTICIPATE. — Where beneficiaries are to "participate" in a trust property, and there is no direction as to the shares to be taken, they take as tenants in common, in equal shares and proportions (*Liddard* v. *Liddard*, 29 L. J. Ch. 619; 28 Bea. 266). In *Robertson* v. *Fraser* (40 L. J. Ch. 776; 6 Ch. 696), Hatherley, C., said, "the word 'participate' clearly implied a sharing or division, and a tenancy in common was the natural consequence."
V. Share.

PARTICULAR. — "If a Condition of Sale provide compensation for any mistake in the description of the lots or for any error or misstatement 'in this particular,' the latter words will be construed 'in these particulars,' so as to embrace an error in the Particulars" (Sug. V. & P. 15, citing *White* v. *Cuddon*, 8 Cl. & F. 766; 4 Y. & C. Ex. 25: Sug. Real Prop. Law, 591). *V.* Error.
"Essential Particular"; *V.* Essential.
"Material Particular"; *V.* Corroborated.

PARTICULAR AVERAGE. — *V. Gt. Indian Peninsular Ry* v. *Saunders*, 30 L. J. Q. B. 218; 31 Ib. 206; 1 B. & S. 41; 2 Ib. 266: *Kidston* v. *Empire Mar Insrce*, 35 L. J. C. P. 250; 36 Ib. 156; L. R. 1 C. P. 535; 2 Ib. 357: 1 Maude & P. 426, *n* (*y*): Arn. Part 3, ch. 5.
V. General Average: Average: F. P. A.

PARTICULAR BREACH. — *V. Fletcher* v. *Nokes*, and *Penton* v. *Barnett*, cited Notice, p. 1293.

PARTICULAR CHARGES. — *V. Kidston* v. *Empire Mar Insrce*, 35 L. J. C. P. 250; 36 Ib. 156; L. R. 1 C. P. 535; 2 Ib. 357.

PARTICULAR CHURCH. — *V.* ECCLESIASTICAL CHARITY: CHURCH: FOUNDATION.

PARTICULAR DAMAGE. — *V.* "Special Damage," sub SPECIAL.

PARTICULAR ESTATE. — A Particular Estate is an Estate less than a FEE SIMPLE; thus it is said "a Reversion is where the residue of the estate always doth continue in him that made the Particular Estate, or where the Particular Estate is derived out of his estate," *e.g.* where a "tenant in fee simple maketh gift in taile" (Co. Litt. 22 b).

V. Contingent Remainders Act, 1877, 40 & 41 V. c. 33.

V. REMAINDER.

PARTICULAR MANNER. — *V.* DISTINCTIVE.

PARTICULAR PROVISION. — As to this phrase in s. 59, 6 G. 4, c. 125, and in s. 370 (3), Mer Shipping Act, 1854, repld s. 618 (1, iii), Mer Shipping Act, 1894; *V. The Killarney*, Lush. 427; 30 L. J. P. M. & A. 41: *Hadgraft* v. *Hewith*, L. R. 10 Q. B. 350; 44 L. J. M. C. 140: *The Hankow*, 4 P. D. 197; 48 L. J. P. D. & A. 29: *Vf*, 1 Maude & P. 261, *n* (*s*): TRINITY HOUSE OUTPORT DISTRICTS.

PARTICULAR SEARCH. — *V.* SEARCH.

PARTICULAR TRUST. — "Particular and Specific Trust"; *V.* per Romilly, M. R., *Sons of Clergy Corp* v. *Sutton*, 29 L. J. Ch. 393; 27 Bea. 651: and per North, J., *Sons of Clergy Corp* v. *Skinner*, 1893, 1 Ch. 178; 62 L. J. Ch. 148. *Cp*, "Express Trust," sub EXPRESS.

PARTICULARLY. — *V.* DESCRIBE.

PARTIES. — *V.* PARTY: PRIVY.

PARTITION. — "It is clear that a power to make Partition of an Estate will not authorize a Sale or Exchange of it; but it has frequently been a question amongst conveyancers, whether the usual Power of Sale and Exchange does not authorize a Partition, and several partitions have been made, by force of such powers, under the direction of men of eminence" (Sug. Pow. 856). The learned author proceeds to discuss *Abell* v. *Heathcote* (4 Bro. C. C. 278; 2 Ves. 98), *Re McQueen and Farquhar* (11 Ves. 467), *A-G.* v. *Hamilton* (1 Mad. 214), and *Bradshaw* v. *Fane* (3 Drew. 534; 2 Jur. N. S. 247; 25 L. J. Ch. 413); but his conclusion is (p. 857), — "Until the question shall receive further decision, it can scarcely be considered clear that a Power to Exchange will authorize a Partition." That further decision was, however, furnished in *Re Frith and Osborne* (3 Ch. D. 618; 45 L. J. Ch. 780), in which Jessel, M. R.,

reviewed all the authorities hereon, and, without hesitation, ruled that a Partition may be effected through a Power of Sale and Exchange.

On Partition generally, *V.* Partition Acts, 1868 and 1876, 31 & 32 V. c. 40; 39 & 40 V. c. 17: 1 White & Tudor, 181–222: Walker on Partition: Seton, 1853–1892: 9 Encyc. 437–451: SEVERANCE.

PARTNER. — The prohibition, in R. 316, Bankry Rules, 1886, that a Trustee or Member of a Committee of Inspection shall not purchase any part of a bankrupt's estate, either "by" himself or "any Partner, Clerk, Agent, or Servant," does not extend to such Partner, &c, who becomes such a purchaser on his own account (*Re Gallard*, 1897, 2 Q. B. 8; 66 L. J. Q. B. 484; 76 L. T. 327; 45 W. R. 556).

"Partner of a company" includes "the members of such bodies," quà Bankry (Scot) Act, 1856, 19 & 20 V. c. 79 (s. 4).

PARTNERSHIP. — "An agreement that something shall be attempted with a view to gain, and that the gain shall be shared by the parties to the agreement, is the grand characteristic of every partnership" (Lindley, P., 5 ed., 1); and "to use the word 'partnership' to denote a society not formed for gain, is to destroy the value of the word" (Ib. 2).

For a discussion of the various definitions of "Partnership"; *V. Pooley* v. *Driver*, 46 L. J. Ch. 466; 5 Ch. D. 458: *Badeley* v. *Consolidated Bank*, 34 Ch. D. 536; 38 Ib. 238: 40 S. J. 46.

The Partnership Act, 1890, 53 & 54 V. c. 39, provides that: —

I. "'Partnership' is the relation which subsists between persons carrying on a business in common, with a view of PROFIT"; but membership in a Registered or Incorporated Co does not create a partnership (s. 1).

II. "In determining whether a partnership does or does not exist, regard shall be had to the following rules: —

"(1) JOINT TENANCY, TENANCY IN COMMON, Joint Property, Common Property, or Part Ownership, does not, of itself, create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

"(2) The sharing of Gross Returns does not, of itself, create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

"(3) The receipt by a person of a Share of the Profits of a business is *primâ facie* evidence that he is a partner in the business; but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not, of itself, make him a partner in the business; and in particular —

"(*a*) The receipt by a person of a DEBT or other Liquidated

Amount by instalments or otherwise out of the Accruing Profits of a business does not, of itself, make him a partner in the business or liable as such:

"(*b*) A contract for the Remuneration of a Servant or Agent of a person engaged in a business by a Share of the Profits of the business does not, of itself, make the servant or agent a partner in the business or liable as such:

"(*c*) A person being the WIDOW or CHILD of a Deceased Partner and receiving by way of Annuity a portion of the profits made in the business in which the deceased person was a partner is not, by reason only of such receipt, a partner in the business or liable as such:

"(*d*) The advance of money by way of LOAN to a person engaged, or about to engage, in any business on a contract with that person that the lender shall receive a Rate of Interest varying with the Profits, or shall receive a Share of the Profits arising from carrying on the business does not, of itself, make the lender a partner with the person or persons carrying on the business or liable as such; Provided that the contract is IN WRITING and signed by or on behalf of all the parties thereto:

"(*e*) A person receiving by way of Annuity, or otherwise, a portion of the profits of a business in consideration of the sale by him of the GOODWILL of the business is not, by reason only of such receipt, a partner in the business or liable as such." (s. 2.)

On these subs. *d* and *e* *V.* s. 3; on all, *V. Re Young*, 1896, 2 Q. B. 484; 65 L. J. Q. B. 681; 75 L. T. 278; 45 W. R. 96: *Re Mason*, 1899, 1 Q. B. 810; 68 L. J. Q. B. 466; 80 L. T. 92; 47 W. R. 270.

Quà the postponement of loan until ordinary creditors are paid in full under s. 3, the Contract is not confined to one in writing (*Re Fort*, cited CONTRACT).

Vh, Lindley P.: 9 Encyc. 452–491.

V. COMPANY: COPARTNERSHIP: INVOLVE.

"During the Partnership"; *V.* DURING.

A bequest of all "my share, right, and interest" in a partnership, does not include a debt due to the testator from the partnership (*Re Beard*, 57 L. J. Ch. 887; 58 L. T. 629; 36 W. R. 519).

PARTY.—"They that make a DEED and they to whom it is made are called parties to the Deed" (Termes de la Ley). So, the persons by and between whom an Agreement is made are the Parties to it. *Cp*, PRIVY.

"Signed by the Party to be charged therewith," ss. 4, 17, Statute of Frauds, s. 4, Sale of Goods Act, 1893; — "Party" there is not to be construed *party* as to a deed, but person in general (Sug. V. & P. 129, citing 3 Atk. 503).

"Party" read "Person" in *Barlow* v. *Osborne*, 27 L. J. Ch. 308; 6 H. L. Ca. 556.

The word "Party" in the latter part of s. 40, Chancery Procedure Act, 1852, 15 & 16 V. c. 86, means "person"; so that when an affidavit by any "person" has been filed under that statute it cannot be withdrawn for the purpose of preventing the cross-examination of that person whether he be a "party" to the cause or not (*Re Quartz Hill Gold Mining Co*, 51 L. J. Ch. 940; 21 Ch. D. 642, upholding *Clarke* v. *Law*, 2 K. & J. 28; 4 W. R. 35; and setting at rest the doubt expressed by Ld Selborne in *Pike* v. *Dickinson*, 21 W. R. 862). But in s. 17, Com. L. Pro. Act, 1860, the word "Parties" means only the litigant parties and does not include the Sheriff (*Smith* v. *Darlow*, 53 L. J. Ch. 696; 26 Ch. D. 605; 32 W. R. 665).

For the purposes of the Judicature Acts and Rules, "Party," unless controlled by the context, "includes every person served with notice of, or attending, any proceeding, although not named on the record" (Jud. Act, 1873, s. 100; Jud. Act (Ir), 1877, s. 3; *Vth*, *Fraser* v. *Burrows*, 46 L. J. Q. B. 501; 2 Q. B. D. 624: *Burstall* v. *Fearon*, 31 W. R. 581: per Liudley, L. J., *Re Evans*, 1893, 1 Ch. 264): so, quà Co. Co. Act, 1888 (s. 186).

A Third-party, who has appeared, is a "Party" within R. 12, Ord. 31, R. S. C. (*MacAllister* v. *Rochester, Bp.*, 49 L. J. C. P. 443; 5 C. P. D. 194); but the Next Friend of an infant is not (*Re Corsellis*, 52 L. J. Ch. 399; 31 W. R. 414: *Dyke* v. *Stephens*, 55 L. J. Ch. 41; 30 Ch. D. 189; 33 W. R. 932, in *thlc*, Pearson, J., refused to follow *Higginson* v. *Hall*, 48 L. J. Ch. 250; 10 Ch. D. 235, because there the application was unopposed, or *Crowe* v. *Bank of Ireland*, 19 W. R. 910).

A co-plaintiff or co-defendant is within this Rule, and also within R. 3, Ord. 50, "so long as there is some right between" him and others on the same side of the record "which may be adjusted; but it does not so apply when there is no right to be adjusted" (per Esher, M. R., *Shaw* v. *Smith*, 56 L. J. Q. B. 175; 18 Q. B. D. 193; 56 L. T. 40; 35 W. R. 188, explaining *Brown* v. *Watkins*, 55 L. J. Q. B. 126; 16 Q. B. D. 125; 34 W. R. 293: *Vh*, *Whitham* v. *Whitham*, 28 S. J. 456). *V.* Opposite Party.

"Party," quà R. 26, Ord. 31, R. S. C. (which provides for security for Costs on asking for Discovery), is a noun of multitude meaning "Side," *e.g.* if Discovery be sought against either side and that side consists of more than one person, the deposit of only one sum of £5 can be insisted on as such security (*Eder* v. *Attenborough*, 58 L. J. Q. B. 311; 23 Q. B. D. 130; 60 L. T. 452; 37 W. R. 507: *Joyce* v. *Beall*, 1891,

1 Q. B. 459; 60 L. J. Q. B. 242; 64 L. T. 137; 39 W. R. 316). *Vf*, Ann. Pr.

A Co-Respondent in a Divorce action who. in an Intervention by the King's Proctor, is charged with COLLUSION, is a "Party" to the Intervention, even though he does not appear thereon, and he is liable as such to be ordered to pay the K. P.'s costs under s. 2, 41 V. c. 19 (*Taplin* v. *Taplin*, 1891, P. 283; 60 L. J. P. D. & A. 88; 64 L. T. 870, *whc* explains *Blackhall* v. *Blackhall*, 57 L. J. P. D. & A. 60; 13 P. D. 94).

A person merely cited under s. 7, Legitimacy Declaration Act, 1858, 21 & 22 V. c. 93, does not thereby become a "Party"; but he does so if he opposes (*Bain* v. *A-G.*, 1892, P. 261; 61 L. J. P. D. & A. 135; 67 L. T. 447).

"*Other* Party" to whom Notice of Appeal is to be given under s. 31 (2), Sum Jur Act, 1879, 42 & 43 V. c. 49, includes, in Licensing Appeals, the Superintendent of Police who serves the Notice of Objection on the applicant (*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: *R.* v. *Gloucestershire Jus.*, 41 W. R. 379; 68 L. T. 225; 57 J. P. 486). *V.* COURT OF SUMMARY JURISDICTION. *Cp*, OPPOSITE PARTY.

Justices who appear and actively oppose an Appeal from their decision in a Licensing case, *semble*, are a "Party" to the Appeal (*R.* v. *London Jus.*, 1895, 1 Q. B. 616; 64 L. J. M. C. 100; 72 L. T. 211; 43 W. R. 387; 59 J. P. 820: *Vf*, *R.* v. *Worcestershire Jus.*, cited REQUIRED). But an Objector to the Renewal of a License, which renewal was refused and which refusal is appealed, is not a "Party" to the appeal within s. 31 (5), 42 & 43 V. c. 49, and cannot be ordered to pay the costs of the appeal even, as it seems, though he appears at the hearing of the appeal (*Boulter* v. *Kent Jus.*, 1897, A. C. 556; 66 L. J. Q. B. 787; *Svthc*, *R.* v. *Yorkshire Jus.*, 67 L. J. Q. B. 279: *Vf*, *Tynemouth* v. *A-G.*, 68 L. J. Q. B. 752; 1899, A. C. 293; 80 L. T. 633; 63 J. P. 404). So, of the Licensing Justices who have refused to renew a license and who appear by counsel on the appeal (*R.* v. *Staffordshire Jus.*, 1898, 2 Q. B. 231; 67 L. J. Q. B. 931; 79 L. T. 142; 62 J. P. 741).

A Prosecutor who obtains a conviction which is appealed, though not appearing on the appeal, is a "Party" to the appeal and liable to an Order for costs under s. 5, Quarter Sessions Act, 1849, 12 & 13 V. c. 45, though the convicting Justices may be the formal respondents to the appeal (*R.* v. *Hants Jus.*, 1 B. & Ad. 659, *R.* v. *Smith*, 29 L. J. M. C. 216): the Justices are not "Parties" (*R.* v. *Purdey*, 34 L. J. M. C. 4; 5 B. & S. 909). *Vf*, "Party decided against," sub AGAINST.

"Both or either of the Parties," s. 525 (1), Mer Shipping Act, 1854, repld s. 683 (1), Mer Shipping Act, 1894; *V. Austin* v. *Olsen*, cited DURING.

"Party" to a BILL OF SALE, s. 10, Bills of S. Act, 1882; *V. Peace*

v. *Brookes*, 1895, 2 Q. B. 457; 64 L. J. Q. B. 747: *Baker* v. *Ambrose*, 1896, 2 Q. B. 372; 65 L. J. Q. B. 589.

"Party in Possession"; *V.* POSSESSION.

"Parties," s. 36, 9 G. 4, c. 22; *V. Ranson* v. *Dundas*, 6 L. J. C. P. 137; 3 Bing. N. C. 123, 180, 556.

"All parties," s. 24, Metropolis Water Act, 1871, 34 & 35 V. c. 113, means "all persons" (*East London W. W. Co* v. *St. Matthew, Bethnal Green*, 55 L. J. Q. B. 571; 17 Q. B. D. 475; 54 L. T. 919; 35 W. R. 37; 50 J. P. 820).

"Party," quà Leases Act, 1845, 8 & 9 V. c. 124, means and includes, "any Body politic or corporate or collegiate, as well as an Individual" (s. 5); a similar, but not identical, def is provided for the following Acts; —

Civil Bill Courts (Ir) Acts; *V.* 14 & 15 V. c. 57, s. 162; 27 & 28 V. c. 99, s. 3:

Com. L. Pro. Amendment Act (Ir), 1853, 16 & 17 V. c. 113; *V.* s. 4:

Landlord and Tenant Law Amendment Act (Ir), 1860, 23 & 24 V. c. 154; *V.* s. 1: *Va*, 33 & 34 V. c. 46, s. 70:

Lunacy Regulation (Ir) Act, 1871, 34 & 35 V. c. 22; *V.* s. 2.

Other Stat. Def. — Crown Suits, &c, Act, 1865, 28 & 29 V. c. 104, s. 5.

V. PARTY CONCERNED: PARTY INTERESTED: PARTY TO THE SUIT: PERSON, and succeeding defs: NECESSARY, p. 1254.

PARTY ABSOLUTELY ENTITLED. — *V.* ABSOLUTELY ENTITLED.

PARTY AGGRIEVED. — *V.* AGGRIEVED.

PARTY ARCH. — Quà London Bg Act, 1894, "Party Arch," "means, an Arch separating adjoining BUILDINGS, STOREYS, or Rooms, belonging to different owners, or occupied or constructed or adapted to be occupied by different persons, or separating a Building from a Public WAY or a Private Way leading to premises in other occupation" (subs. 19, s. 5).

PARTY BY LAW ENABLED TO DECLARE SUCH TRUST. — This phrase, in s. 7, Statute of Frauds, means the owner of the beneficial interest in the property to be affected (*Dye* v. *Dye*, 13 Q. B. D. 147; 53 L. J. Q. B. 442), whether such property be real (*Tierney* v. *Wood*, 19 Bea. 330; 23 L. J. Ch. 895: *Kronheim* v. *Johnson*, 7 Ch. D. 60; 47 L. J. Ch. 132: *Dye* v. *Dye*, sup), or personal (*Bridge* v. *Bridge*, 16 Bea. 315; 22 L. J. Ch. 189: *Ex p. Pye*, 18 Ves. 140): *Vh*, Lewin, 53. *V.* MANIFESTED.

PARTY CONCERNED. — A "PARTY concerned" in an Appeal against a Boundary Order under an Inclosure Act, means, a "person

directly interested in the soil who, by the boundary being either in one direction or the other, would be entitled to more or less land" (per Bayley, J., *R.* v. *Lancashire Jus.*, 1 B. & Ald. 637), *e.g.* the Lord of the Manor but not the Commoners (*S. C.*).

Cp, PARTY INTERESTED.

PARTY COSTS. — Costs as between Party and Party, are those taxable by a successful party against his antagonist: *V.* COSTS.

PARTY INTERESTED. — "PARTY interested," s. 39, Solicitors Act, 1843, 6 & 7 V. c. 73, means a party under a trust created by Deed, Will, or under an Intestacy (*Re Leadbitter*, 48 L. J. Ch. 242; 10 Ch. D. 388).

Money paid into Court to the account of the "Party interested" under Lands C. C. Act, 1845; *V. Re Winder*, 46 L. J. Ch. 572; 6 Ch. D. 696.

Incumbrancers upon the shares of persons entitled in common to real estate, are "Parties Interested" in the property within the Partition Act, 1868, so as to be able, adversely to the persons entitled to the equity of redemption, to claim a sale under s. 4 of the Act (*Davenport* v. *King*, W. N. (83) 133; 31 W. R. 911; 49 L. T. 92). So, a Tenant for Life, who has also a general Power of Appointment, is a "Party Interested" quà the Remainder as well as the life interest (*Parker* v. *Trigg*, W. N. (74) 27).

V. PERSON INTERESTED: INTERESTED IN. *Cp*, PARTY CONCERNED.

PARTY LIABLE. — As to this phrase in s. 5, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42; *V. Roddam* v. *Morley*, 1 D. G. & J. 1; 26 L. J. Ch. 438: *Toft* v. *Stephenson*, 1 D. G. M. & G. 28; 21 L. J. Ch. 129; 7 Hare, 1: *Pears* v. *Laing*, L. R. 12 Eq. 41; 40 L. J. Ch. 225: *Coope* v. *Cresswell*, 2 Ch. 112; 35 L. J. Ch. 496; 36 Ib. 114: *Forsyth* v. *Bristowe*, 8 Ex. 716; 22 L. J. Ex. 255: *Dibb* v. *Walker*, 1893, 2 Ch. 429; 62 L. J. Ch. 536; 68 L. T. 610; 41 W. R. 427: PAYMENT.

"Person liable"; *V.* DEMAND: LIABLE.

PARTY OR PRIVY. — Though a covenant that the covenantor has not done, permitted, or suffered, anything preventing him from conveying, is not broken by his having assented to what he could not prevent, yet if the words "or been party or privy to" were added, there would be a breach in such a case (*Hobson* v. *Middleton*, 6 B. & C. 295; 9 D. & R. 249. *Vh*, Elph. 490: Dart, 885, 886: Sug. V. & P, 603, 604). *Vf*, *Clifford* v. *Hoare*, 43 L. J. C. P. 225; L. R. 9 C. P. 362: PERMIT.

"Fraudulent Breach of Trust to which the Trustee was Party or Privy"; *V.* BREACH OF TRUST.

PARTY STRUCTURE. — *V. Major* v. *Park Lane Co*, L. R. 2 Eq. 453; 14 L. T. 543.

Quà London Bg Act, 1894, "Party Structure," "means, a PARTY-

WALL; and also a partition floor or other structure separating, vertically or horizontally, BUILDINGS, STOREYS, or Rooms, approached by distinct staircases or separate entrances from without" (subs. 20, s. 5); for the previous Stat. Def., *V.* Metrop Bg Act, 1855, s. 3.

PARTY TO THE SUIT. — "Generally speaking, the Crown is not bound under the terms 'Party to the suit'" (per Alderson, B., *A-G.* v. *Donaldson*, 11 L. J. Ex. 340; 10 M. & W. 117, citing *R.* v. *Tuchin*, 2 Raym. Ld, 1066).

A Next Friend is not a "Party to the Suit," and therefore was not within the proviso to Evidence Act, 1843, 6 & 7 V. c. 85, as a "Party" "individually named in the Record" (*Sinclair* v. *Sinclair*, 14 L. J. Ex. 109; 13 M. & W. 640). *V.* PARTY.

PARTY-WALL. — "'Party-wall' may be used in four different senses: —

"*First.* — A wall of which the two adjoining owners are tenants in common: *Wiltshire* v. *Sidford*, 1 M. & R. 404: *Cubitt* v. *Porter*, 8 B. & C. 257: *Stedman* v. *Smith*, 26 L. J. Q. B. 314; 8 E. & B. 1: *Standard Bank, British S. Africa* v. *Stokes*, 47 L. J. Ch. 554; 9 Ch. D. 68: *Watson* v. *Gray*, 49 L. J. Ch. 243; 14 Ch. D. 192. This is the most common and primary meaning of the term; per Fry, J., *Watson* v. *Gray*, sup.

"*Second.* — A wall divided longitudinally into two strips, one belonging to each of the neighbouring owners. In this case the owners are not tenants in common, even if the wall was erected at their joint expense (*Matts* v. *Hawkins*, 5 Taunt. 20); but where there has been a common user of the wall erected at the common expense, that, in the absence of any other evidence, is sufficient evidence for a jury to find that the wall is held by the two parties as tenants in common; *Cubitt* v. *Porter*, and *Standard Bank, B. S. Africa* v. *Stokes*, sup.

"*Third.* — A wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenants. The term is so used in the Metrop Bg Act, 1855, s. 3, which enacts that, quà that Act, '"Party-Wall" shall apply to every wall used, or built in order to be used, as a separation of any building from any other building with a view to the same being occupied by different persons' (*Knight* v. *Pursell*, 48 L. J. Ch. 395; 11 Ch. D. 412): *Vf*, 7 & 8 V. c. 84, s. 2. Such a wall may be a party-wall for some part of its height, and above that height the separate property of one of the adjoining owners (*Weston* v. *Arnold*, 43 L. J. Ch. 123; 8 Ch. 1084); and in the same way such a wall may be laterally a party wall for such distance as it is used by both owners and no further; *Knight* v. *Pursell*, sup.

"*Fourth.* — A wall divided longitudinally into two moieties, each

moiety being subject to a cross-easement in favour of the owner of the other moiety. This meaning is suggested in the note to *Wiltshire* v. *Sidford*, sup.

"The cases are collected in 5 Fisher Dig. 990 *et seq*; and *V.* Hunt on Boundaries, ch. 5" (Elph. 606, 607).

Quà London Bg Act, 1894, "'Party Wall' means, (*a*) a WALL forming part of a BUILDING and used, or constructed to be used, for separation of adjoining Buildings belonging to different owners, or occupied, or constructed or adapted to be occupied, by different persons; or (*b*) a Wall forming part of a Building and standing to a greater extent than the projection of the footings on lands of different owners" (subs. 16, s. 5). A wall may be a Party Wall, ss. 59, 75, 77, of this last Act, for a portion only of its height; s. 75 does not make it a Party Wall where it ceases to divide buildings (*Drury* v. *Army and Navy Stores*, 1896, 2 Q. B. 271; 65 L. J. M. C. 169; 74 L. T. 621; 44 W. R. 560; 60 J. P. 421). In these sections "Party Wall" is not used in a technical sense (per Wright, J., *Ib.*); *semble*, its meaning there is, *Parting* Wall, *i.e.* a wall which parts two buildings whether they belong to different owners or not.

Cp, EXTERNAL WALL.

Note: As to the Usage to pay for a proportionate part of the value of a Party Wall when used by an adjoining owner as a wall for his own house, *V. Robinson* v. *Thompson*, 89 Law Times, 137: As to implying a Contract to that effect, *V. Irving* v. *Turnbull*, 1900, 2 Q. B. 129; 69 L. J. Q. B. 593: As to Partition of Party Wall belonging to Tenants in Common, *V. Mayfair Co* v. *Johnston*, 63 L. J. Ch. 399; 1894, 1 Ch. 508.

"Party *Fence Wall*," quà London Bg Act, 1894, "means, a WALL used, or constructed to be used, as a separation of adjoining Lands of different owners and standing on Lands of different owners, and not being part of a Building; but does not include a Wall constructed on the land of one owner the footings of which project into the land of another owner" (subs. 18, s. 5).

PASCUUM.—*V.* PASTURES.

PASS.—"Every indorsee of a BILL OF LADING to whom the property in the goods shall *pass*," s. 1, 18 & 19 V. c. 111; *V. Sewell* v. *Burdick*, 54 L. J. Q. B. 156; 10 App. Ca. 74; 52 L. T. 445; 33 W. R. 461.

"Pass to the Exor, as such," s. 9 (1), Finance Act, 1894; *V.* AS SUCH.

V. PASSING.

PASS AND REPASS.—"Pass and Repass," in a local Turnpike Act, held to mean going and returning over the road once only (*Armstrong* v. *Hunt*, 34 J. P. 823, nom. *Hill* v. *Browning*, 22 L. T. 712).

PASSAGE. — "Passage," is "the hire that a man pays for being transported over Sea, or over any River" (Cowel), and that is its primary meaning (Jacob). *Cp*, VOYAGE.

"Now on Passage"; *V.* NOW.

V. PASSAGE BROKER.

"Passage Home"; *V.* HOME.

V. STEERAGE PASSAGE.

A Way communicating with the backs of houses and used for obtaining access to privies and ash-pits, is a "Passage" within the def of "Street" in s. 4, P. H. Act, 1875 (*R.* v. *Goole*, cited STREET).

Quà Dublin Improvement Act, 1849, 12 & 13 V. c. 97, "Passage" means, "any alley way or other place, not being a carriageway, not having the principal or only entrance of any dwelling-house therein" (s. 133).

"Passage *or Place* which now is, or hereafter may be, built upon or in building," in a Local Paving Act, 55 G. 3, c. XXV., s. 3, did not include a Bridge, forming part of a public highway, and which was built over a canal, and had walls 4 to 5 feet high on either side (*Arnell* v. *Regent's Canal Co*, 23 L. J. C. P. 155; 14 C. B. 564). *Vf*, BUILT UPON.

V. PUBLIC PASSAGE.

PASSAGE BROKER. — Quà Part 3, Mer Shipping Act, 1894, "Passage Broker," means, "any person who sells or lets, or agrees to sell or let or is anywise CONCERNED IN the sale or letting, of STEERAGE PASSAGES in any SHIP proceeding from the BRITISH ISLANDS to any place out of Europe not within the Mediterranean Sea" (s. 341; *Vf*, s. 342); "the selling or letting there referred to, means, a selling or letting of a Passage in a named ship to commence at a definite Time for a specified Voyage" (per Bruce, J., *Morriss* v. *Howden*, 1897, 1 Q. B. 378; 66 L. J. Q. B. 264; 76 L. T. 156; 45 W. R. 221; 61 J. P. 246). Accordingly, a person who (for a lump sum which, amongst other things, includes the cost of voyage) agrees to place, *e.g.*, Farm Pupils in the Colonies, is not such "Passage Broker"; nor is he a person who "receives money for or in respect of a Passage" within s. 320 (1) of the same Act (*Ib.*).

Cp, BROKER.

PASSENGER. — The wife and father-in-law of a Captain of a vessel, who were on the vessel and being carried by it to a place to which they wished to go, but who were being so carried by the captain's invitation without the knowledge of the owners; held, not "Passengers" within ss. 354, 379, Mer Shipping Act, 1854 (*The Lion*, L. R. 2 P. C. 525; 38 L. J. Adm. 51; 6 Moore P. C. N. S. 163; 17 W. R. 993). From the jdgmt of the P. C. in that case it would seem that payment of a fare is not an absolutely necessary test of such a "Passenger"; any one (other

than the officers and crew) being carried by a ship, and towards whom the owners have, quà the voyage, any obligation or duty, would, probably, have been such a "Passenger": *Va*, s. 303. In the Court below, Sir R. Phillimore said, "The payment of fare would appear to be a necessary incident for the constitution of a 'Passenger,' in the legal sense of the term, both as to his rights and duties" (L. R. 2 A. & E. 105; 37 L. J. Adm. 40; 18 L. T. 803, — a proposition adopted in Maude & P. 277, *n*, on the authority of *The Lion*, sup, and *The Hanna*, L. R. 1 A. & E. 283; 36 L. J. Adm. 1; 15 W. R. 263; 15 L. T. 334). But in neither of those cases was so absolute a proposition needful. An ordinary payment of fare would, of course, be clear proof that a voyager was a passenger; but it is submitted that a Voyager (other than the officers and crew) is a Passenger, though he pay no fare, if the owners of the ship carry him in pursuance of an obligation or duty (jdgmt of P. C., *The Lion*, sup).

On the other hand, a payment by a voyager of subsistence money to the MASTER for which the latter is not accountable to the owners, would not, of itself, make the voyager a Passenger within a proviso to an exemption from Light Dues (*Hay* v. *Trinity House*, 73 L. T. 471; 44 W. R. 188; 65 L. J. Q. B. 90).

"Distressed Seamen," s. 191 (1), Mer Shipping Act, 1894, are not "Passengers" within s. 625 of that Act (*The Clymene*, 1897, P. 295; 66 L. J. P. D. & A. 152; 76 L. T. 811; 46 W. R. 109). *V.* SEAMAN.

Quà Part 3 (relating to Passenger and Emigrant Ships), Mer Shipping Act, 1894, "Passenger" includes, "any person carried in a SHIP other than the Master and Crew, and the Owner his Family and Servants" (s. 267): that def is confined to Part 3 (per Barnes, J., *The Clymene*, sup).

V. STEERAGE PASSENGER.

Quà London Hackney Carriages Act, 1843, 6 & 7 V. c. 86, "Passenger" includes, "every person carried by any Hackney Carriage or by any Metropolitan Stage Carriage, except one Driver and (where there shall be a conductor to such metropolitan stage carriage) one Conductor" (s. 2).

V. PASSENGER TRAIN.

PASSENGER BOAT. — *V.* WATERMAN.

PASSENGER DECK. — *V.* DECK.

PASSENGER RAILWAY. — Quà Railway Regn Act, 1844, 7 & 8 V. c. 85, "Passenger Railway" extends "to railways constructed under the powers of any Act of Parliament upon which one third, or more, of the Gross Annual Revenue is derived from the conveyance of passengers by steam or other mechanical power" (s. 25). *V.* RAILWAY.

PASSENGER'S RISK. — *V. Stewart* v. *Lond. & N. W. Ry*, 33 L. J. Ex. 199. *V.* OWNER'S RISK.

PASSENGER SHIP. — "Passenger Ship," quà s. 52, Passengers Act, 1855, and s. 15, Act 1863, signified "every description of SEA-GOING Vessel carrying one or more passenger or passengers on any voyage from any place in Her Majesty's Dominions to any place whatever" (s. 2, 52 & 53 V. c. 29): *Vh*, Maude & P. 712: *Ellis* v. *Pearce*, E. B. & E. 431; 27 L. J. M. C. 257. These Acts repealed by Mer Shipping Act, 1894.

V. EMIGRANT: HOME-TRADE SHIP: PASSENGER STEAMER: SHIP.

PASSENGER STEAMER. — A "Passenger Steamer," within ss. 317, 318, Mer Shipping Act, 1854, must have been a "Vessel used in NAVIGATION" within s. 2 (*R.* v. *Southport*, 62 L. J. M. C. 47; 1893, 1 Q. B. 359). *V.* SHIP: PLY.

Quà Part 3, Mer Shipping Act, 1894, "Passenger Steamer" means, "every British STEAMSHIP carrying PASSENGERS to from or between any places in the UNITED KINGDOM (except steam ferry boats working in chains, — commonly called Steam Bridges), and every FOREIGN Steamship carrying Passengers between places in the United Kingdom" (s. 267).

V. HOUSE BOAT: "Pleasure Boat," sub PLEASURE: STEAM LAUNCH.

PASSENGER TRAIN. — "A 'Passenger TRAIN,' *primâ facie*, is a train advertised to take PASSENGERS generally, — people travelling from place to place, — upon the terms and in the manner *ordinarily* applicable to such passengers" (per Selborne, C., *Burnett* v. *G. N. of Scotland Ry*, 54 L. J. Q. B. 535; 10 App. Ca. 147).

Accordingly, in that case (the defendant company having agreed that all their passenger trains should regularly stop at Crathes), it was held that Queen's Messenger trains and Post Office trains, which ran only whilst the Queen was staying at Balmoral, but which were advertised in the Company's time-tables, and by which, to some extent, ordinary passengers could travel, were "Passenger Trains"; but (diss. Ld Bramwell) that Excursion trains were not.

Cp, ORDINARY TRAIN: "Special Train," sub SPECIAL.

PASSING. — "The date of the 'Passing'" of an Act "are common English words, which have a fixed meaning in our language and law, — they mean, the time when the Royal Assent is given to a Bill which has passed both Houses of Parliament" (per James, L. J., *Ex p. Rashleigh, Re Dalzell*, 45 L. J. Bank. 31; 2 Ch. D. 9), and that is also the date of its COMMENCEMENT where it provides no other commencement (33 G. 3, c. 13; s. 36 (1), Interp Act, 1889). *Vh*, *Hall* v. *L. B. & S. Ry*, 55 L. J. Q. B. 328; 17 Q. B. D. 233: *Ings* v. *Lond. & S. W. Ry*, 38 L. J. C. P. 8; L. R. 4 C. P. 20: *Wood* v. *Hunt*, 38 L. J. C. P. 10, *n* 8; L. R. 4 C. P. 18, *n* 2. But where there is a date named in the Act for it to

come into operation, and a thing prohibited by it is completed before that date, then the phrase "after the passing" would seem to mean, "after the Act shall come into operation" (*Wood* v. *Riley*, 37 L. J. C. P. 24; L. R. 3 C. P. 26). *Cp*, To BE PASSED.

Where an Act comes into operation on a stated DAY, it becomes law as soon as the clock begins to strike twelve on the previous night (*Tomlinson* v. *Bullock*, 48 L. J. M. C. 95; 4 Q. B. D. 230: s. 36 (2), Interp Act, 1889).

Debt "contracted after the passing" of the Act; *V.* CONTRACTED.

Estate Duty is by s. 1, Finance Act, 1894, payable on PROPERTY which *really* "passes on" Death; by s. 2, it is imposed on what shall be "*deemed*" to be property so passing; if any "case falls within s. 1, it cannot also come within s. 2. The two sections are mutually exclusive" (per Ld Macnaghten, *Cowley* v. *Inl. Rev.*, 1899, A. C. 212; 68 L. J. Q. B. 442); therefore, if it comes within s. 1, Duty is payable only on the principal value of the property after deducting the mortgages and charges subject to which it passes (*S. C.*, 1899, A. C. 198; 68 L. J. Q. B. 435; 80 L. T. 361; 47 W. R. 525; 63 J. P. 436). *Vh*, s. 22 *l* of the Act, which enacts that "'Property passing *on the Death*,' includes, property passing either immediately on the death, or after any interval, either certainly or contingently and either originally or by way of substitutive limitation; and the expression '*on the Death*' includes, 'at a period ascertainable only by reference to the death'": *V. A-G.* v. *Dodington*, cited UNDER: *A-G.* v. *Beech*, 1898, 2 Q. B. 147; 67 L. J. Q. B. 585; affd in H. L. 1899, A. C. 53; 68 L. J. Q. B. 130; 79 L. T. 565; 47 W. R. 257; 63 J. P. 116, the doctrine of *whlc* is further established by s. 11 (1), Finance Act, 1900: *A-G.* v. *Grey*, 67 L. J. Q. B. 76, 947; 1898, 2 Q. B. 534; nom. *Grey* v. *A-G.*, 1900, A. C. 124, 69 L. J. Q. B. 308: *A-G.* v. *De Preville*, 1900, 1 Q. B. 223; 69 L. J. Q. B. 283; 81 L. T. 690; 48 W. R. 193: BENEFIT: INTEREST: CESSER: PURCHASE: COMPETENT.

Property "passing UNDER" Voluntary Settlement, s. 38 (2 *c*), 44 & 45 V. c. 12, amended by s. 11, 52 & 53 V. c. 7; *V. A-G.* v. *Chapman*, 1891, 2 Q. B. 526; 60 L. J. Q. B. 602; 40 W. R. 79: *A-G.* v. *Gosling*, 1892, 1 Q. B. 545; 61 L. J. Q. B. 429; 66 L. T. 284; 40 W. R. 366.

"Passing OVER the same portion of the Line," s. 90, Ry C. C. Act, 1845; *V.* SAME.

Vehicle "passing UPON" a Highway, s. 78, Highway Act, 1835, means, "while the vehicle is on its way or journey; and whether the driver leaves his horses whilst they are moving and lets them go on, or stops them and then leaves them" for a brief while, "they are equally passing upon the highway" (*Phythian* v. *Baxendale*, 1895, 1 Q. B. 768; 64 L. J. M. C. 174; 72 L. T. 465; 43 W. R. 412; 59 J. P. 217).

V. PASS.

PAST. — "Past Act"; Stat. Def., Sum Jur Act, 1879, s. 49.

"Any Act, whether Past or Future," s. 19, Sum Jur Act, 1879, does not include that Act itself (*R.* v. *London Jus.*, 1892, 1 Q. B. 664; 61 L. J. M. C. 104; 66 L. T. 678; 40 W. R. 575; 56 J. P. 421). *Vthc*, CONSENT, at end.

Past MEMBERS of a Co liable to be Contributories, s. 38, Comp Act, 1862; *V. Webb* v. *Whiffin*, L. R. 5 H. L. 711; 42 L. J. Ch. 161: *Brett's Case*, 40 L. J. Ch. 497; 6 Ch. 800: *Morris' Case*, 41 L. J. Ch. 11; 7 Ch. 200.

PASTIME. — *V.* GAME, p. 796.

PASTOR. — *V.* BISHOP.

PASTORAL. — *V.* AGRICULTURAL.

PASTORAL LEASE. — The "Annual License Fee" which under s. 81, Crown Lands (New South Wales) Act, 1884, the Minister is to determine on the grant of a Pastoral Lease under the Act, cannot be higher than the appraisement of the Local Land Board under s. 78 (*Alison* v. *Burns*, 59 L. J. P. C. 34; 15 App. Ca. 44). The rent of such a Lease is payable from the date of its notification in the Government Gazette (*Reid* v. *Garrett*, 58 L. J. P. C. 74; 14 App. Ca. 94).

PASTURAGE. — A right of "Common Pasturage and Herbage," only authorizes taking what can be taken by the mouth or bite of cattle, and not to cut or carry away any part of the growth of the soil (*De la Warr* v. *Miles*, 50 L. J. Ch. 754; 17 Ch. D. 535). *V.* COMMON.

"Right of Pasturage usually enjoyed"; *V. Musgrave* v. *Inclosure Commrs*, L. R. 9 Q. B. 162; 43 L. J. Q. B. 80. *Vf*, HELD.

"Sole" is synonymous with "Several" right of Pasturage (*Hopkins* v. *Robinson*, 2 Lev. 2).

As to obtaining the right of pasturage by long user, *V. Neaverson* v. *Peterborough*, 83 L. T. 496.

PASTURE. — "Any Holding *let* to be used *wholly or mainly* for the purpose of Pasture," s. 58 (3), Land Law (Ireland) Act, 1881, 44 & 45 V. c. 49; *V. Westropp* v. *Elligott*, 9 App. Ca. 815; 52 L. T. 153; 14 L. R. Ir. 319: *Battersby* v. *Nicholson*, 22 L. R. Ir. 38: *Holmes* v. *Lauder*, Ib. 47: *Eivers* v. *Hamilton*, 28 Ib. 464: *Ball* v. *Maxwell*, Ib. 468: *Byrne* v. *Hill*, 30 Ib. 603, 609, 610. *Vf*, AGRICULTURAL: TILLAGE: *Cp*, MARKET GARDEN, at end.

V. COMMON: SUFFICIENT PASTURE.

PASTURES. — "If a man doth grant all his pastures, *pasturas*, the land itselfe imployed to the feeding of beasts doth passe, and also such pastures or feedings as he hath in another man's soile. *Leswes* or *lesues*,

is a Saxon word, and signifieth pastures. Between *pastura* and *pascuum*, the legall difference is, that *pastura* in one signification containeth the ground itselfe called pasture. *Pascuum*, feeding, is wheresoever cattell are fed, of what nature soever the ground is" (Co. Litt. 4 b: *Vh*, *Doe* d. *Kinglake* v. *Beviss*, 7 C. B. 483, 484, 504; 18 L. J. C. P. 128: *Mogg* v. *Yatton*, 50 L. J. M. C. 17; 6 Q. B. D. 10; 29 W. R. 74: Elph. 607–615). *Cp*, GOING: HERBAGE: *V.* MEADOWS.

"Pasture"; — "Pasture is a general name for herbage, acorns, mast, and nuts, and for leaves and flowers, and for all things comprised under the name of Pannage" (Britton, l. 2, ch. 24, 1 Nichols' Ed. 371: *Va*, Bracton, l. 4, c. 38, fol. 222: Fleta, l. 4, c. 19: Cowel). *V.* PANNAGE.

V. COMMON.

PATENT. — Quà Patent Acts, "'Patent' means, Letters Patent for an INVENTION" (s. 46, 46 & 47 V. c. 57).

Vh, Edmunds on Patents: Terrell, Ib.: Robinson, Ib.: Gordon, Ib.: 9 Encyc. 515–538: FRANCHISE: USE: VEND.

Rights of Co-Owners of a Patent; *V. Steers* v. *Rogers*, 1893, A. C. 232; 62 L. J. Ch. 671.

"The Patents, Designs, and Trade Marks Acts, 1883 to 1888"; *V.* Sch 2, Short Titles Act, 1896.

"No doubt, a man may use the word 'Patent' so as to deceive no one. It may be used so as to mean, that which was a Patent but is not so now. But if you suggest (*i.e.* untruly) that it is protected by an existing Patent, you cannot obtain the protection of that representation as a Trade-Mark" (per Jessel, M. R., *Cheavin* v. *Walker*, 5 Ch. D. 862; 46 L. J. Ch. 686: *Vf*, per Ld Kingsdown, *Leather Cloth Co* v. *American Leather Cloth Co*, 11 H. L. Ca. 543, 544). And, now, if a person sells an article with the word "Patent" or "Patented," or like phrase, on it, that is a representation that it is a Patented Article within subs. 1, s. 105, Patents, &c, Act, 1883 (subs. 2, Ib.): As to penalty for unauthorized use of "Patent," "Letters Patent," &c, s. 7, 5 & 6 W. 4, c. 83, *V. Myers* v. *Baker*, 28 L. J. Ex. 90; 3 H. & N. 802. *Vf*, REGISTERED.

V. PATENTEE: THREAT.

PATENT AGENT. — Quà, and by, s. 1, Patents, &c, Act, 1888, "'Patent Agent,' means, exclusively an Agent for obtaining patents in the United Kingdom."

PATENT AMBIGUITY. — "There are two kinds of Ambiguity: —

"*First*, where the ambiguity arises from the fact that the parties have expressed inconsistent intentions on the face of the deed. An ambiguity of this class is apparent to any person perusing the deed, even if he be unacquainted with the circumstances of the parties; and is called a '*Patent* Ambiguity.'

"*Second*, where no ambiguity is apparent to a person perusing the

deed until, on obtaining evidence of the circumstances of the parties, it is discovered that there are several persons or things, or classes of persons or things, to each of which a name or description contained in the deed seems to be equally applicable. An ambiguity of this class is called a '*Latent* Ambiguity,' or an 'Equivocation'" (Elph. ch. 8, *whv*, for cases and obs in illustration).

PATENT DEFECT. — *V.* DEFECT.

PATENT MEDICINE. — *V.* POISON.

PATENTEE. — Quà the Patent Acts, "'Patentee' means, the person for the time being entitled to the benefit of a PATENT" (s. 46, 46 & 47 V. c. 57); but an Assignee of a Patent is not on the same favourable footing as regards its Prolongation under s. 25, Ib., as the Inventor (*Re Bower-Barff*, 1895, A. C. 675: *Re Hopkinson*, 1897, A. C. 249; 66 L. J. P. C. 38; 75 L. T. 462). *V.* FIRST INVENTOR.

A description on a manufacturer's label as "Patentee," held to be equivalent to describing the article as "patent" (*Nixey* v. *Roffey*, W. N. (70) 227).

PATERNA. — "Ex parte Paternâ"; *V.* NEXT OF KIN.

PATIENT. — "Patient in a HOSPITAL," s. 1, 9 & 10 V. c. 66, means, one who has "resided" in, not one who has been compulsorily "confined" in, a Hospital (*St. Olave's* v. *Canterbury*, 1897, 1 Q. B. 682; 66 L. J. Q. B. 471; 76 L. T. 517; 45 W. R. 529).

Quà Inebriates Acts, "Patient," means, "a person who has been admitted into a Retreat, and whose term of detention has not expired or been concluded by his discharge" (s. 27, 61 & 62 V. c. 60).

"Patients' Expenses"; *V.* EXPENSES.

"Private Patient," quà Lunacy Act, 1890, "means, a Patient who is not a PAUPER" (s. 341).

V. AGENT AND PATIENT.

PATRIMONY. — "Patrimony" is not, necessarily, restricted to property derived directly from a father (*Green* v. *Giles*, 5 Ir. Ch. Rep. 25).

PATRON. — "Is hee that hath the ADVOWSON of a Parsonage, Vicarage, Free-Chappell, or such like Spirituall Promotion" (Termes de la Ley).

Quà Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43 (and by its s. 3), "'Patron' shall, with reference to any BENEFICE, mean the person or persons or corporation who, in case such benefice were vacant, would be entitled to present thereto; but if the right to present to such Benefice shall be vested in different persons or corporations, whether jointly or by way of alternate presentations, the term 'Patron' shall

(unless the context requires otherwise) comprehend both or all such different persons or corporations in whom such right of joint or alternate presentations shall for the time being be vested"; and ss. 126, 127, 128, Pluralities Act, 1838, 1 & 2 V. c. 106, shall be applicable.

Incumbents Resignation Act, 1871, 34 & 35 V. c. 44, provides a like def (s. 2); which def is also made applicable to Glebe Lands Act, 1888, 51 & 52 V. c. 20 (s. 12).

V. PRIVATE PATRON.

PATRONAGE. — Quà Bishops Resignation Act, 1869, 32 & 33 V. c. 111, "Patronage," includes, "all Advowsons, Rights of Presentation to benefices, and any ecclesiastical or cathedral preferment or dignity, and all other appointments to office exerciseable by an Archbishop or Bishop by reason of his office" (s. 14).

PATTERN. — Where novelty of design registered for "Pattern" is in question, "Pattern" includes, SHAPE and Ornamentation, in which accordingly novelty or originality may be found as distinguished from Pattern (*Re Rollason*, 1898, 1 Ch. 237; 67 L. J. Ch. 100, diss. Williams, L. J., affd in H. L. nom. *Heath* v. *Rollason*, cited DESIGN). *Cp*, CHART.

PAUPER. — "Pauper," quà Lunacy Act, 1890, "means, a person wholly or partly chargeable to a Union, County, or Borough" (s. 341): for the prior defs in the Lunacy Acts, *V.* 8 & 9 V. c. 100, s. 114, c. 126, s. 84; 16 & 17 V. c. 97, s. 132. "Pauper LUNATIC"; *V.* Lunacy (Scot) Act, 1862, 25 & 26 V. c. 54, s. 1.

Other Stat. Def. — Divided Parishes and Poor Law Amendment Act, 1876, 39 & 40 V. c. 61, s. 44.

V. CASUAL: INDOOR.

"Pauper *removed*," s. 36, 39 & 40 V. c. 61, means, a person who was a pauper at the time of the passing of the Act and had been removed (*Brighton* v. *Strand*, 60 L. J. M. C. 105; 1891, 2 Q. B. 156; 64 L. T. 722; 39 W. R. 581; 55 J. P. 743).

Pauper Costs; *V.* DIVES' COSTS: FORMÂ PAUPERIS.

PAVE. — Quà Metrop Man. Acts, "'Pave,' shall apply to and include, the formation of the ROADWAY or FOOTWAY of any STREET" (s. 112, 25 & 26 V. c. 102); and "'paved,' shall include, asphalted or other similar paved work" (s. 4, 53 & 54 V. c. 54).

"Paving, Metalling, and Flagging," quà Private Street Works Act, 1892, 55 & 56 V. c. 57, includes "macadamizing, asphalting, gravelling, kerbing, and every method of making a Carriageway or Footway" (s. 5).

Semble, a Wood Pavement would not satisfy the word "paved" as used in s. 152, P. H. Act, 1875 (*A-G.* v. *Bidder*, 47 J. P. 263).

V. FLAG: PAVEMENT.

PAVEMENT. — A "Pavement" is, probably, a paved footway (s. 112, 3 G. 4, c. 126, on *whv, R.* v. *Manchester*, 2 L. T. 280).

A footway made up with gravel and kerbed, though not paved with stone or flagged, is a "Pavement" within s. 78, Metrop Man. Act, 1855 (*St. John's, Hampstead* v. *Hoopel*, 15 Q. B. D. 652; 54 L. J. M. C. 147; 1 Times Rep. 584; 33 W. R. 903).

Vh, per Tenterden, C. J., *Loveridge* v. *Hodsoll*, 2 B. & Ad. 608, 609.

Cp, PAVE: FLAG. *V.* FOOTPATH. FRONTING, *n*: SOIL.

PAWN. — *V.* PLEDGE: FORFEITED.

Quà Pawnbrokers Act, 1872, 35 & 36 V. c. 93, "'*Pawnbroker*,' includes, every person who carries on *the business of taking goods and chattels in pawn*" (s. 5); within which italicised words are included "every person who keeps a SHOP for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, *and* who purchases or receives or takes in goods or chattels and pays or advances or lends thereon any sum of money (not exceeding £10) with or under an agreement or understanding (expressed or implied, or to be, from the nature and character of the dealing, reasonably inferred) that those goods or chattels may be afterwards redeemed or repurchased on any terms; And every such transaction, article, payment, advance, and loan, shall be deemed a 'Pawning, Pledge, and Loan,' respectively, within this Act" (s. 6; *Vf*, s. 10).

"*Pawner*," quà Pawnbrokers Act, 1872, "means, a person delivering an article for pawn to a Pawnbroker" (s. 5). *Vf*, PLEDGE.

PAY. — "To pay Money" is, not to pay over any particular coins but, to satisfy the Amount by PAYMENT (per Esher, M. R., *Re Miller*, 1893, 1 Q. B. 327; 62 L. J. Q. B. 324).

Quà Trustee Act, 1893, "'Pay' and 'PAYMENT,' as applied in relation to stocks and securities and in connection with the expression 'into Court,' include the deposit or transfer of the same in or into Court" (s. 50).

A direction "to pay and DIVIDE" will not postpone the vesting of a Gift (*Re Pickworth*, cited EITHER); sometimes, when aided by a context, these words will work a vesting (*Pearman* v. *Pearman*, 33 Bea. 394). Such a direction may imply a Power, but not a Trust, for sale (per North, J., *Re Wintle*, 65 L. J. Ch. 868; explaining *Mower* v. *Orr*, 18 L. J. Ch. 361; 7 Hare, 473).

As a context, "pay" may sometimes work a Tenancy in Common; *V.* EACH.

"*To pay as may be paid* thereon," in a Marine Re-Insrce, does not bind the re-insurer to pay what the insurer has paid unless the latter shows that he was liable to pay it (*Chippendale* v. *Holt*, 73 L. T. 472; 65 L. J. Q. B. 104; 44 W. R. 128); but actual payment is not a Con-

dition Precedent (*Re Eddystone Insrce.*, 1892, 2 Ch. 423; 61 L. J. Ch. 362; 66 L. T. 370; 40 W. R. 441). *Vf*, ORIGINAL POLICY.

The "*Annual* Pay" of a POLICE Constable, quà Pension under the Police Act, 1890, 53 & 54 V. c. 45, is 365 times his Daily Pay, not 52 times his Weekly Pay (*Upperton* v. *Ridley*, 1900, 1 Q. B. 680; 69 L. J. Q. B. 475; 82 L. T. 233; 48 W. R. 494; 64 J. P. 469; affd 70 L. J. Q. B. 249); but his "Pay" does not include Special Allowances, *e.g.* that of 7*s.* a week for being in attendance at the House of Lords (*Ib.*, 70 L. J. Q. B. 249): *Vf*, *Goodwin* v. *Sheffield*, 71 L. J. K. B. 492; 1902, 1 K. B. 629. *Cp*, EMOLUMENT.

V. PAID: ADVANCE: RETIRED PAY.

PAY TO. —*V.* APPLY.

A devise to A. upon trust to pay to B. the rents, or to pay taxes, or to apply the rents for B.'s maintenance, gives the LEGAL ESTATE to A. (2 Jarm. 292, 293). *V.* PERMIT.

"Pay to Order"; *V.* ORDER.

"Raise and pay"; *V.* SEVERANCE.

PAYABLE. — Where there is a gift to a remainderman on attaining 21 or marrying, but to go over in case of his death before his share becomes "payable," this word will generally be read as "vested" (*Emperor* v. *Rolfe*, 1 Ves. sen. 208: *vthc*, *Walker* v. *Main*, 1 Jac. & W. 1: *Mendham* v. *Williams*, L. R. 2 Eq. 399: *Day* v. *Radcliffe*, 3 Ch. D. 657; 24 W. R. 961). *Vf*, *Hallifax* v. *Wilson*, 16 Ves. 168: *Mocatta* v. *Lindo*, 9 Sim. 56: *Haydon* v. *Rose*, 39 L. J. Ch. 688; L. R. 10 Eq. 224. *Cp*, DIE.

It frequently happens that "a money fund is given to a person for life, and after his decease, to his children at majority or marriage, with a gift over in the event of any of the objects dying before their shares become *payable*. In such cases it becomes a question whether the word 'payable' is to be considered (1) as referring to the age or marriage (or any other such circumstance affecting the personal situation of the legatee), on the arrival or happening of which the shares are made 'payable,' or (2) to the actual period of distribution; in other words, whether the shares vest absolutely at the majority or marriage of the legatees, — *in the lifetime of the legatee for life*; or whether the vesting is postponed to the period of such majority or marriage, *and the death of the legatee for life*. As the latter construction exposes the legatees to the risk of losing the testator's provision in the event of their dying in the lifetime of the legatee for life, — although they may have reached adult or even advanced age and may have left numerous descendants, — the Courts have strongly inclined to hold the word 'Payable' to refer to the majority or marriage of the legatees, especially if the testator stood towards the legatees in the parental relation.

"And where (as often happens) the question has arisen under Marriage Settlements, the leaning to this construction is strongly aided by the occasion and design of the instrument, whose primary object obviously is to secure a provision for the issue of the marriage. In Wills, the point, like all others, depends solely upon the intention to be collected from the context" (2 Jarm. 799, *whv*, to p. 808, for cases illustrating and qualifying these propositions: *Vf*, *Wakefield* v. *Maffet*, 55 L. J. Ch. 4; 10 App. Ca. 422; 53 L. T. 169: *Partridge* v. *Baylis*, W. N. (81) 81).

"It is presumed that if upon the true construction of the Will 'payable' applies to the age or marriage of the legatee, the construction will not be varied by the accident of the legatee for life dying before the majority or marriage of the legatee in remainder; but that the interest of the latter will remain liable to defeasance during minority or until marriage.

"But if no time is specified — (or, can be collected as specified ?) — for payment, the word 'payable' in the gift over will be held to refer to the death of the tenant for life, and the legatee in remainder must survive him in order to take.

"If an *immediate* legacy is given without specifying a time for payment, and is given over in case the legatee dies before it becomes payable, the word 'payable' can only have reference to the death of the testator. And even where a legacy (whether immediate or after a prior life estate) is directed to be paid at a particular age, and is given over in case the legatee dies before it becomes 'payable,' the gift over takes effect if the legatee dies before the testator, although he may have attained the age" (2 Jarm. 808, 809). *Vf*, Watson Eq. 1228–1230. *Cp*, VESTED.

"A PORTION is not properly said to be 'payable' by Trustees until two things have occurred, *i.e.* when the time appointed for raising it has arrived, *and* the person entitled is able to give a discharge for it; but a Portion is often said to be 'payable' *to a Child* so soon as the event has happened which gives the child a Vested Interest in it, and, in the latter case, the word 'payable' denotes only that the child is entitled or enabled to receive such Share or Portion" (per Westbury, C., *Massy* v. *Lloyd*, 10 H. L. Ca. 268).

"Would become payable" to any other person, in a FORFEITURE clause; *V.* WOULD.

"Due and Payable"; *V. Re Willmott*, cited DUE.

"RENT PAYABLE" from which TITHES are deductible, s. 80, 6 & 7 W. 4, c. 71, means, the current rent next payable (*Dawes* v. *Thomas*, 1892, 1 Q. B. 414; 61 L. J. Q. B. 482; 66 L. T. 451). So, of "Rent," in s. 17, 38 G. 3, c. 5 (*Andrew* v. *Hancock*, 1 Brod. & B. 37: *Spragg* v. *Hammond*, 2 Ib. 59). So, quà deduction of Income Tax (*Denby* v. *Moore*, 1 B. & Ald. 123· *Cumming* v. *Bedborough*, 15 M. & W. 428: *Sv*, s. 15, 27 V. c. 18). But when the full rent is paid under protest to avoid distress, the charge or tax deductible therefrom may be recovered

(*Baker* v. *Greenhill*, 11 L. J. Q. B. 161; 3 Q. B. 148; 2 G. & D. 435).

"Money charged upon, or payable OUT OF, land," s. 42, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V.* CHARGED UPON.

An Acknowledgement of Arrears of Rent or Interest so charged or payable, "by the person by whom the same was *payable*," has to be made, not so much by the person compellable to pay but, by the person whose property or right to property would be affected if such arrears are payable and which arrears would not be payable without an Acknowledgement, *e.g.* an Acknowledgement by a Mtgor does not prejudice a Puisne Mtgee, nor, quà realty devised in trust, does an acknowledgement avail which is not signed by all the trustees (*Bolding* v. *Lane*, and *Astbury* v. *Astbury*, cited ACKNOWLEDGEMENT. *Vh*, 42 S. J. 738, 739).

As to the contextual effect of "payable"; *V. Tennant* v. *Smith*, cited PERQUISITE.

V. OWING: RECEIVED: TO BE PAID.

PAYEE. — A Payee means, ordinarily, a person to whom payment is made, but in the phrase "Purchaser, Payee, or Incumbrancer," at end of s. 92, Bankry Act, 1869, it meant, "person receiving payment as a Creditor" (per Cairns, C., *Butcher* v. *Stead*, 44 L. J. Bank. 132; L. R. 7 H. L. 839). In the corresponding section (subs. 2, s. 48) of the Bankry Act, 1883, this phrase is varied to "any person making title through or under a creditor of the bankrupt."

A "Payee," *e.g.* of a BILL OF EXCHANGE, or PROMISSORY NOTE, is the person to whom the money is, or will become, payable: *V.* HOLDER.

PAYING. — The usual preface in a Lessor's Covenant for Quiet Enjoyment, — viz., the Lessee "paying the rent hereby reserved and performing the covenants on his part herein contained," — does not make such payment or performance a Condition Precedent to the performance by the lessor of his covenant (*Hays* v. *Bickerstaffe*, 2 Mod. 34; Vaugh. 118: *Dawson* v. *Dyer*, 5 B. & Ad. 584; 2 N. & M. 559: *Edge* v. *Boileau*, 55 L. J. Q. B. 90; 34 W. R. 103. *Vh*, Woodf. 722). In his successful argument in *Hays* v. *Bickerstaffe*, Pemberton, Serjt., said, "The words 'Paying and Yielding' make no Condition, nor was it ever known that for such words the Lessor entered for non-payment of rent; and there is no difference between these words and 'Paying and Performing,' *Bennet's Case* in B. R.: *Duncomb's Case*, Owen, 54." In a previous part of his argument he admitted that "the word 'Paying,' in some cases, may amount to a Condition; but that is where, without such construction, the party could have no remedy."

V. YIELDING AND PAYING.

"Paying a DIVIDEND"; *V.* STOCKS.

"Paying FREIGHT and all other CONDITIONS AS PER CHARTER-PARTY,"

or "Paying for the said Goods as per Charter-Party," in a Bill of Lading, will not make the consignee liable for Demurrage at the Port of Loading over which he has no control (*Smith* v. *Sieveking*, 24 L. J. Q. B. 257; 4 E. & B. 945; 5 Ib. 589: *County of Lancaster S. S.* v. *Sharpe*, 59 L. J. Q. B. 22; 24 Q. B. D. 158); *secus* of, "for Demurrage accruing from his own delay in the Port of Discharge" (per Jervis, C. J., *Smith* v. *Sieveking*, 5 E. & B. 591, referring to *Jesson* v. *Solly*, 4 Taunt. 52, and *Wegener* v. *Smith*, 24 L. J. C. P. 25; 15 C. B. 285). If it is shown that any part of the goods has been received under the Bill of Lading, that is evidence that the consignee undertook to pay for Demurrage even at the Port of Loading (*Wegener* v. *Smith*, sup: per Mathew, J., *County of Lancaster S. S.* v. *Sharpe*, sup); but such evidence is not conclusive and may be rebutted by a repudiation of the claim before accepting delivery, especially when the shipowner knows that the consignee is only an Agent (*County of Lancaster S. S.* v. *Sharpe*, sup). *Vf*, *East Yorkshire S. S. Co* v. *Hancock*, 5 Com. Ca. 266. *V.* HE OR THEY PAYING FREIGHT: ON PAYMENT: SANS RECOURS.

PAYMASTER. — "Paymaster of *Civil Services*," quà Landed Property Improvement (Ir) Act, 1847, 10 & 11 V. c. 32, means, "the Paymaster of Civil Services in Ireland for the time being" (s. 66).

"Paymaster *General*"; Stat. Def., 30 & 31 V. c. 98, s. 3; National Debt Act, 1883, 46 & 47 V. c. 54, s. 11; Lunacy Act, 1890, s. 341. — *Scot.* 55 & 56 V. c. 27, s. 3. — *Ir.* 55 & 56 V. c. 27, s. 4.

PAYMENT. — A "payment ought to be reall, and not in shew or appearance" (Co. Litt. 209 b).

"'Payment' is not a technical word; it has been imported into law proceedings from the Exchange and not from law treatises. It does not necessarily mean payment in satisfaction and discharge, but may be used in a popular sense" (Dwar. 675, citing *Maillard* v. *Argyle*, 6 M. & G. 40, adopted in *Turney* v. *Dodwell*, 3 E. & B. 141; 23 L. J. Q. B. 139: *Va*, FOR).

A Cheque or Bill, if duly honoured, is Payment as from the time of its being given (*Belshaw* v. *Bush*, 22 L. J. C. P. 24; 11 C. B. 191: per Cockburn, C. J., *Bridges* v. *Garrett*, 39 L. J. C. P. 251; L. R. 5 C. P. 451: *Currie* v. *Misa*, 44 L. J. Ex. 94; L. R. 10 Ex. 153: per Ld Blackburn, *McLean* v. *Clydesdale*, 9 App. Ca. 95: *Hadley* v. *Hadley*, 1898, 2 Ch. 680; 67 L. J. Ch. 694). Therefore, an agreement for the sale of a business with all its "DEBTS DUE" and the "benefit of all Securities for such Debts," does not pass any debt for which a Cheque or Bill has been given, if such cheque or bill is duly honoured although such honouring is subsequent to the agreement (*Hadley* v. *Hadley*, sup). So, NOTICE of an Assignment of a Debt is too late after a cheque for it has been given to the assignor (*Bence* v. *Shearman*, cited ABSOLUTE ASSIGN-

MENT). But quà the Statute of Limitation a Loan for which the lender gives his cheque, dates from the time when the cheque is cashed (*Garden* v. *Bruce*, L. R. 3 C. P. 300; 37 L. J. C. P. 112).

A Banker "receives payment" of a Crossed Cheque for his CUSTOMER, within the protection of s. 82, Bills of Ex. Act, 1882, when he has collected it and placed the proceeds to the customer's account, although such account is overdrawn and the effect of the transaction is to pay off the overdraft (*Clarke* v. *London and County Bank*, 1897, 1 Q. B. 552; 66 L. J. Q. B. 354; 76 L. T. 293; 45 W. R. 383: *Sythe*, per Collins, M. R., *Gordon* v. *London City Bank*, 71 L. J. K. B. 228; 1902, 1 K. B. 270, 271).

A payment may, generally, be made by the mere transfer of figures in an account without any money passing (*Eyles* v. *Ellis*, 4 Bing. 112: *Bodenham* v. *Purchas*, 2 B. & Ald. 39: *Hills* v. *Mesnard*, 16 L. J. Q. B. 306; 10 Q. B. 266); or, by giving receipts pursuant to an arrangement (*Amos* v. *Smith*, 31 L. J. Ex. 423; 1 H. & C. 238); or, sometimes, by an agreement (*Page* v. *Meek*, 32 L. J. Q. B. 4); or, by payment to a third person (*Waller* v. *Andrews*, 3 M. & W. 312: *Bramston* v. *Robins*, 4 Bing. 11); or, by acceptance of goods (*Cannan* v. *Wood*, 2 M. & W. 465; nom. *Canning* v. *Wood*, 6 L. J. Ex. 112: *Hooper* v. *Stephens*, 4 A.. & E. 71); or, by a service rendered (*Bodger* v. *Arch*, 24 L. J. Ex. 19; 10 Ex. 333); or (conditionally) by bill or note (*V.* cases collected Rosc. N. P. 692); or, by sending a cheque by post in compliance with a request for a cheque (*Norman* v. *Ricketts*, 31 S. J. 124): But sending the Half of a Bank Note is not a Payment (*Smith* v. *Mundy*, 29 L. J. Q. B. 172).

Vh, *Commercial Bank of Australia* v. *Wilson*, 1893, A. C. 181; 62 L. J. P. C. 61: *Re Cronmire*, 1898, 2 Q. B. 383; 67 L. J. Q. B. 620.

"Payment," s. 41, Solicitors Act, 1843, 6 & 7 V. c. 73; *V. Re Street*, 39 L. J. Ch. 495; L. R. 10 Eq. 165: *Re Stogdon*, 56 L. J. Ch. 420; 56 L. T. 355; 51 J. P. 565: *Re West*, 1892, 2 Q. B. 102; 61 L. J. Q. B. 639; 67 L. T. 57; 40 W. R. 644: *Re Romer*, 62 L. J. Q. B. 610; 1893, 2 Q. B. 286; 69 L. T. 547; 42 W. R. 51: *Re Thompson*, 1894, 1 Q. B. 462; 63 L. J. Q. B. 187; 70 L. T. 238; 42 W. R. 462: — The payment must be after the delivery of a proper BILL (*Re Baylis*, 1896, 2 Ch. 107; 65 L. J. Ch. 418, 612; 74 L. T. 506; 44 W. R. 533; explaining *Hitchcock* v. *Stretton*, 1892, 2 Ch. 343; 61 L. J. Ch. 529; 66 L. T. 707; 40 W. R. 555: *Re Street*, sup: *Re West*, sup). As to what are a Solicitor's "Disbursements"; *V.* DISBURSEMENTS.

A receipt for a Peppercorn Rent is not a receipt for a "Payment" within s. 3 (4), Conv & L. P. Act, 1881 (*Re Moody and Yates*, 54 L. J. Ch. 886; 30 Ch. D. 344; 33 W. R. 785). In that case, Brett, M. R., said that the subsection was not applicable where rent is reserved in kind; "the words, 'the receipt for the last payment due for rent under the lease,' apply only when there is to be a payment of Money."

A payment to take a case out of a Statute of Limitation must be BY,

or by an AGENT on behalf of, the PARTY LIABLE, or entitled or bound, to make it (*Chinnery* v. *Evans*, 11 H. L. Ca. 115; 11 L. T. 69: *Cockburn* v. *Edwards*, 51 L. J. Ch. 46; 18 Ch. D. 449: *Harlock* v. *Ashberry*, 51 L. J. Ch. 394; 19 Ch. D. 539: *Lewin* v. *Wilson*, 11 App. Ca. 639; 55 L. T. 410: *Bradshaw* v. *Widdrington*, 71 L. J. Ch. 627; 1902, 2 Ch. 430: *Re Frisby*, 59 L. J. Ch. 94; 43 Ch. D. 106: *Re Hale*, 1899, 2 Ch. 107; 68 L. J. Ch. 517; 80 L. T. 827; 47 W. R. 579: *Barnes* v. *Glenton*, 1899, 1 Q. B. 885; 68 L. J. Q. B. 502: *Re England*, 1895, 2 Ch. 820; 65 L. J. Ch. 21: *Re Allen*, 1898, 2 Ch. 499; 67 L. J. Ch. 614: *Re Clifden*, cited MEANTIME, dissenting from *Re Conlan*, 29 L. R. Ir. 199); and it must be made to the Creditor or to some person on his behalf (*Stamford Banking Co* v. *Smith*, 1892, 1 Q. B. 765; 61 L. J. Q. B. 405; 66 L. T. 306; 40 W. R. 355), but that includes money recovered by the Creditor by a *fi. fa.* (*Brew* v. *Brew*, 1899, 2 I. R. 163). *Vf*, ACKNOWLEDGMENT.

V. PAY.

Quà Settled Land Act, 1882, "Payment," "in relation to RENT, includes Delivery" (subs. 10 ii, s. 2).

Quà Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, "'Payment' includes, any Pecuniary or other Reward" (s. 64). *V.* MONEY, p. 1217.

Order "for Payment of Money"; *V. R.* v. *Ravenscroft*, Russ. & Ry. 161: *R.* v. *Richards*, Ib. 193.

An Order to deposit money in Court to abide a subsequent Order, is not one for the "Payment of a Sum of Money" within s. 4, Debtors Act, 1869, and, on DEFAULT IN PAYMENT, it may be enforced by Attachment (*Lynch* v. *Lynch*, 54 L. J. P. D. & A. 93; 10 P. D. 183: *Bates* v. *Bates*, 58 L. J. P. D. & A. 85; 14 P. D. 17; 60 L. T. 125: *Va*, *Preston* v. *Etherington*, 57 L. J. Ch. 176; 37 Ch. D. 104); *Secus*, as regards an Order to pay Taxed Costs (*Hewitson* v. *Sherwin*, L. R. 10 Eq. 53), or an Order on an Undertaking, in an Interpleader, to make good a deficiency on sale of the goods (*Buckley* v. *Crawford*, 1893, 1 Q. B. 105; 62 L. J. Q. B. 87; 67 L. T. 681; 41 W. R. 239). "The words 'Sum of Money' were advisedly used as a substitute for the word 'DEBT' in order to include cases which do not properly come under 'Debt,' *e.g.* Costs on a Jdgmt of Nonsuit or on a Rule of Court, or Unliquidated Damages in a Tort" (per Lush, J., *R.* v. *Pratt*, 39 L. J. M. C. 73; L. R. 5 Q. B. 182). Observe, that in these cases MEANS must be proved. *Cp*, FIDUCIARY CAPACITY: SOLICITOR.

Appropriation of Payments; *V. Clayton's Case*, 1 Mer. 572, 585: *The Mecca*, 1897, A. C. 286; 66 L. J. P. D. & A. 86: *Mutton* v. *Peat*, 1900, 2 Ch. 79; 69 L. J. Ch. 484: Rosc. N. P. 689 *et seq.*

"Reduced by Payment or otherwise," s. 65, Co. Co. Act, 1888; *V.* OTHERWISE: REDUCED BY PAYMENT.

The deduction of Fines from the WAGES of an ARTIFICER is not a

"Payment otherwise than in the CURRENT Coin of the Realm," within s. 9, Truck Acts, 1 & 2 W. 4, c. 37; 50 & 51 V. c. 46 (*Redgrave* v. *Kelly*, 37 W. R. 543); so, of agreed payment to a Sick or Accident Fund (*Hewlett* v. *Allen*, 1894, A. C. 383; 63 L. J. Q. B. 608; 42 W. R. 670): *secus*, of a merely colourable payment (*Gould* v. *Haynes*, 59 L. J. M. C. 9). *Vh*, *Archer* v. *James*, 31 L. J. Q. B. 153; 2 B. & S. 61; 1 L. T. 26: *Chawner* v. *Cummings*, cited ARTIFICER: *Smith* v. *Walton*, 3 C. P. D. 109; 47 L. J. M. C. 45.

"In payment"; *V.* FOR, towards end.

Part payment; *V.* EARNEST.

"Periodical Payments"; *V.* PERIODICAL.

V. ON PAYMENT: PAID: TO BE PAID: UNPAID: IN CASH: PAYMENT IN DUE COURSE: RENTS AND PROFITS: VOLUNTARY PAYMENT.

PAYMENT FOR HONOUR.—Payment for Honour, supra protest; *V.* s. 68, Bills of Ex. Act, 1882.

PAYMENT IN CASH.—*V.* IN CASH.

PAYMENT IN DUE COURSE.—"Payment in Due Course," of a Bill or Note, means, payment made at or after the maturity of the Bill or Note, to the Holder thereof in GOOD FAITH, and without notice that his title to the Bill or Note is defective (ss. 59, 89, Bills of Ex. Act, 1882): *Vf*, s. 59: ORDINARY COURSE.

PEACE.—"Peace," particularly connotes "a quiet and harmless behaviour towards the King and his people" (Cowel). *Vf*, GOOD BEHAVIOUR: SURETY OF THE PEACE.

A Colonial Rule which (under reasonable conditions) enables a plaintiff, in an Action FOUNDED ON contract, to proceed against an ABSENT defendant, is for the "*Peace, Order, and Good Government,*" of the Colony and, as such, is within the powers of the New Zealand legislature given by s. 53 of the Act of 1852 for granting a Representative Constitution to New Zealand, 15 & 16 V. c. 72 (*Ashbury* v. *Ellis*, 1893, A. C. 339; 69 L. T. 159; 62 L. J. P. C. 107). So, a Colonial Act to REGULATE, or even prohibit, the Liquor Traffic, relates to "Peace, Order, and Good Government" (*Russell* v. *The Queen*, cited CIVIL RIGHTS: *Ontario* v. *Canada*, 1896, A. C. 348; 65 L. J. P. C. 26). *Vf*, *A-G., Canada* v. *A-G., Ontario*, cited EXCLUSIVE.

"Good Rule and Government" of BOROUGHS for which BYE LAWS may be made under s. 23, Mun Corp Act, 1882; *V.* note on the section in Arnold on Municipal Corporations: *Vh* (the leading case), *Kruse* v. *Johnson*, 1898, 2 Q. B. 91; 67 L. J. Q. B. 782; 78 L. T. 647; 46 W. R. 630; 62 J. P. 469, which weakens, if it does not over-rule, such cases as, *Strickland* v. *Hayes*, 1896, 1 Q. B. 290; 65 L. J. M. C. 55; 44 W. R. 398, and *Munro* v. *Watson*, 57 L. T. 366. *Strickland* v. *Hayes* was com-

mented on in *Burnett* v. *Berry*, 1896, 1 Q. B. 641; 65 L. J. M. C. 118; 74 L. T. 494; 44 W. R. 512 and in *White* v. *Morley*, 1899, 2 Q. B. 34; 68 L. J. Q. B. 702; and all these three cases were considered in *Thomas* v. *Sutters*, 1900, 1 Ch. 10; 69 L. J. Ch. 27; 81 L. T. 469; 48 W. R. 133; 63 J. P. 724. *Vf*, as to what is a good Bye Law under the section, *Walker* v. *Stretton*, 44 W. R. 525: *Simmons* v. *Malling*, cited BUILDING: *Gray* v. *Sylvester*, 46 W. R. 63; 61 J. P. 807: *Godwin* v. *Walker*, 40 S. J. 481; 12 Times Rep. 367: *Brownscombe* v. *Johnson*, 78 L. T. 265; 62 J. P. 326: *Scott* v. *Glasgow*, 1899, A. C. 470; 68 L. J. P. C. 98; 81 L. T. 302.

A *County Council* (*V.* COUNTY) has a like power, quà so much of its area as is not within a Borough (s. 16, Loc Gov Act 1888): *Vh*, *Mantle* v. *Jordan*, 1897, 1 Q. B. 248; 66 L. J. Q. B. 224; 75 L. T. 552; 61 J. P. 119).

Bye Laws by LOCAL AUTHORITY; As to approving *Building Plans*, *V. Cook* v. *Hainsworth*, 1896, 2 Q. B. 85; 65 L. J. M. C. 190; 75 L. T. 51; 44 W. R. 541; 60 J. P. 439: As to *Cesspools*, *V. Simmons* v. *Malling*, sup: Under *Weights and Measures* Act, 1889, *V. Alty* v. *Farrell*, 1896, 1 Q. B. 636; 65 L. J. M. C. 115; 74 L. T. 492; 60 J. P. 373.

RAILWAY Bye Laws; *V. Bentham* v. *Hoyle*, 47 L. J. M. C. 51; 3 Q. B. D. 289: *Huffam* v. *N. Staffordshire Ry*, 1894, 2 Q. B. 821; 63 L. J. M. C. 225; 71 L. T. 517; 43 W. R. 28; 59 J. P. 23: *Dyson* v. *Lond. & N. W. Ry*, 50 L. J. M. C. 78; 7 Q. B. D. 32: *Saunders* v. *S. E. Ry*, 49 L. J. Q. B. 761; 5 Q. B. D. 456: — "These authorities relate to cases of variation between the offence as created by Act of Parliament and as set out in the Bye Laws, or to the omission in the Bye Laws of material words given by the section of the Act creating the offence so that the one was repugnant to the other" (per Lindley, L. J., *Lowe* v. *Volp*, inf).

Under s. 46, TRAMWAYS Act, 1870, Tramway Companies may make Bye Laws to REGULATE "the travelling in or upon any Carriage belonging to them"; *V. Heap* v. *Day*, 51 J. P. 213; *Hanks* v. *Bridgman*, 1896, 1 Q. B. 253; 65 L. J. M. C. 41; 74 L. T. 26; 44 W. R. 285; 60 J. P. 312: *Lowe* v. *Volp*, 1896, 1 Q. B. 256; 65 L. J. M. C. 43; 74 L. T. 143; 44 W. R. 442; 60 J. P. 232.

"Peace OFFICER"; *V.* CONSTABLE.

PEACEABLE. — The words of the Certificate of Justices required in Ireland on the Renewal of the license of LICENSED PREMISES as "to the Peaceable and Orderly Manner in which such house has been conducted in the past year," s. 11, Spirits (Ir) Act, 1854, 17 & 18 V. c. 89, "INVOLVE" that the house "has been *conducted* as a Licensed House; and consequeutly that if the house has not been *so* conducted, there is no subject-matter to which 'Peaceable and Orderly Manner' can be applied"

(per Palles, C. B., *R.* v. *Antrim Jus.*, 1900, 2 I. R. 499). A house conducted as a Licensed House must be held out to the public *as such, i.e.* for the sale of spirituous liquors intended to be consumed "on," as well as those intended to be consumed "off," the premises; and where, in substance, what is done is the carrying on the trade of a Family Wine Merchant, that is not the kind of "conducting" a Licensed premises that is required, not even though a few glasses of liquor are sold during the year for consumption "on" the premises, nor though such a mode of conducting is in accordance with an undertaking given to the Justices (*S. C.*: *R.* v. *Dublin Recorder*, 16 L. R. Ir. 424), *à fortiori*, if it is shown that there has been a refusal to supply for consumption "on" the premises (*R.* v. *Armagh Jus.*, 1897, 2 I. R. 57). *Cp*, PUBLIC HOUSE.

PEACEABLY AND QUIETLY. — In a covenant for quiet enjoyment "'Quietly' does not mean 'undisturbed by noise.' When a man is quietly in possession it has nothing whatever to do with noise. 'Peaceably and Quietly' means, without interference, — without interruption of the possession" (per Kekewich, J., *Jenkins* v. *Jackson*, 58 L. J. Ch. 124; 40 Ch. D. 71: *whv* for discussion of *Shaw* v. *Stenton*, 27 L. J. Ex. 253; 2 H. & N. 858, as explained by *Sanderson* v. *Berwick*, 53 L. J. Q. B. 559; 13 Q. B. D. 547; 33 W. R. 67. *Vf*, *Robinson* v. *Kilvert*, 41 Ch. D. 88). *V.* QUIET ENJOYMENT.

PEARLS. — *V.* NECKLACES.

PECK. — A Peck is 2 GALLONS (s. 15, 41 & 42 V. c. 49).

PECULIAR. — "Peculiar Circumstances for" enlarging time for enrolling a Decree; *V. Hooper* v. *Gumm*, 26 L. T. 537.

Cp, "Special Circumstances," sub SPECIAL.

An Ecclesiastical "Peculiar" "signifies a particular Parish or Church, that hath jurisdiction within its self, for *probat* of Wills, &c, exempt from the Ordinary, and the bishops Courts. The Kings Chappel is a Royal *peculiar*, exempt from all Spiritual Jurisdiction, and reserved to the Visitation and immediate Government of the King himself, who is Supreme Ordinary" (Cowel). The Court for Peculiars was the Court of Arches (3 Bl. Com. 65). The independent jurisdiction of Benefices "exempt or peculiar" was abolished by s. 108, 1 & 2 V. c. 106. *Vf*, Phil. Ecc. Law, Part 2, ch. 7.

PECUNIA. — *V.* MONEY.

PECUNIARY CONSIDERATION. — The exemption from registration of annuities contained in s. 8, 17 G. 3, c. 26 (repealed) for "any Voluntary Annuity granted without regard to Pecuniary Consideration" was held to comprise the case of a grantee giving up his business to the grantor (*Crespigny* v. *Wittenoom*, 4 T. R. 790: *Hutton* v. *Lewis*, 5 T. R.

639), or, the assignment of a leasehold interest (*James* v. *James*, 2 Brod. & B. 702), or, where the consideration was a transfer of stock (*Cumberland* v. *Kelley*, 1 L. J. K. B. 172; 3 B. & Ad. 602), or, the giving a better security for an existing debt (*Frost* v. *Frost*, 3 B. & Ad. 612, *n*). But Bank Notes (*Wright* v. *Reed*, 3 T. R. 554: *Cousins* v. *Thompson*, 6 T. R. 335: *Morris* v. *Wall*, 1 B. & P. 208), Cheques (*Pool* v. *Cabanes*, 8 T. R. 328), and Bills of Exchange or Promissory Notes (*Rumball* v. *Murray*, 3 T. R. 298), were held to be "Pecuniary Consideration" within the section.

Under 53 G. 3, c. 141 (which replaced 17 G. 3, c. 26), it was held that the surrender of a life interest in a sum of money and of a contingent interest in the corpus, was not a "Pecuniary Consideration" within s. 2, and was "without regard to Pecuniary Consideration or MONEY'S WORTH" within s. 10 (*Evatt* v. *Hunt*, 22 L. J. Q. B. 348; 2 E. & B. 374, following *Blake* v. *Attersoll*, 2 L. J. O. S. K. B. 193; 2 B. & C. 875). So, of an Annuity on the Conveyance of property (*Mestayer* v. *Biggs*, 3 L. J. Ex. 292; 1 Cr. M. & R. 110). Referring to some of the foregoing cases, the Court (*A-G.* v. *Wolverton*, 65 L. J. Q. B. 616; affd 66 Ib. 202; revd on another point in H. L., 1898, A. C. 535; 67 L. J. Q. B. 829) said, "This Act (53 G. 3, c. 141), excepted 'Annuities granted without regard to Pecuniary Consideration or Money's Worth' from the operation of the statute; and it was held, in several instances, that Annuities granted in consideration of the Conveyance of an estate, or as part of a Family Arrangement, or in consideration of Marriage, were granted without regard to 'Money's Worth,' within the meaning of the Act, and consequently did not require enrolment." But the cancellation of an ACCEPTANCE and the extinguishment of the debt thereby secured, come within "Money's Worth" (*Burgess* v. *Richardson*, 9 W. R. 512; 4 L. T. 316).

PECUNIARY INTEREST. — If a salary is attached to the office of Mayor, that is a "Pecuniary Interest" within s. 22 (3), Mun Corp Act, 1882, which prevents a member of the Council from voting for himself (*Re Louth*, 1894, 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499).

V. INTEREST: INTERESTED IN.

PECUNIARY LEGACY. — "If you find simply the word 'LEGACY' used, and a direction to apportion property amongst the legatees, there, — unless there be something apparent on the face of the Will which shows that the testator has not used the word in its ordinary legal signification, — it will include Annuitants. The expression 'Pecuniary Legatees' in itself, I do not think, would go further than this — it would exclude specific legatees, that is, legatees of mere chattels, but it would have no effect in excluding, *primâ facie*, annuitants from taking the same

benefit as they would have taken if the word had been 'Legatees' instead of 'Pecuniary Legatees'" (per Wood, V. C., *Gaskin* v. *Rogers*, L. R. 2 Eq. 291, in *whc*, however, Annuitants were excluded, by a context, from participating in a residue given to persons "taking pecuniary legacies"). *Cp*, LEGACY: LEGATEE.

A direction relating to "Pecuniary Legacies" does not apply to the Residue (*Re Elcom*, 1894, 1 Ch. 303; 63 L. J. Ch. 392; 70 L. T. 54; 42 W. R. 279). *V.* REST.

PECUNIARY REWARD. — *V.* MONEY, p. 1217.

PEDIGREE. — "The term 'Pedigree' embraces not only general questions of descent and relationship, but also the particular facts of *birth*, *marriage*, and *death*, and the *times* when, either absolutely or relatively, these events happened, provided such facts are required to be proved for some genealogical purpose" (Taylor on Evidence, s. 642).

PEDLAR. — Quà the Pedlars' Acts, "'Pedlar,' means, any HAWKER, Pedlar, Petty Chapman, Tinker, Caster of Metals, Mender of Chairs, or other person, who, *without* any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any GOODS WARES OR MERCHANDIZE, or procuring orders for goods wares or merchandize, immediately to be delivered, or selling or offering for sale his skill in HANDICRAFT" (s. 3, 34 & 35 V. c. 96). *Vth*, *Gregg* v. *Smith*, 42 L. J. M. C. 121; L. R. 8 Q. B. 302; 28 L. T. 555; 21 W. R. 737.

Observe, a Pedlar works "without" a horse or beast; and though (by s. 6 of the Act) his Certificate gives him the same exemption from Market Tolls as a "Licensed Hawker" has under s. 13, 10 & 11 V. c. 14 (*V. Llandudno* v. *Hughes*, 1900, 1 Q. B. 472; 69 L. J. Q. B. 303; 82 L. T. 147; 64 J. P. 357), yet that is only so while he is acting as a Pedlar, and he is not exempt from Toll when exposing for sale in a Market goods in a cart drawn by a horse (*Woolwich* v. *Gardiner*, 1895, 2 Q. B. 497; 64 L. J. M. C. 248; 73 L. T. 218; 44 W. R. 46; 59 J. P. 597, *whc* shows that *Howard* v. *Lupton*, 44 L. J. M. C. 150, is no longer of authority). *V.* EXPOSE.

PEEL'S ACTS. — 7 & 8 G. 4, c. 27, which repealed numerous Criminal Statutes; 7 & 8 G. 4, cc. 29, 30, which reformed the Criminal Law quà Larceny and Malicious Injuries; 9 G. 4, c. 31. The three lastly named Acts, and much subsequent criminal legislation, were repealed by 24 & 25 V. c. 95, and were replaced by the Criminal Law Consolidation and Amendment Acts of 1861, namely, Accessories and Abettors Act, 1861; Larceny Act, 1861; Malicious Damage Act, 1861; Forgery Act, 1861; Coinage Offences Act, 1861; and Offences against the Person Act, 1861: on the history of these Acts, *V.* Preface to 2 ed.

of Greaves on those Acts, of which Acts Mr. Greaves was the draughtsman:

The Sliding Scale Act, 9 G. 4, c. 60: *V.* BOUGHT:

New Parishes Act, 1843, 6 & 7 V. c. 37; New Parishes Act, 1844, 7 & 8 V. c. 94.

PEER. — "'Peeres, *Pares*,' signifie in our Common Law those that are impannelled in an Enquest upon any man, for the convicting or clearing him of any Offence for which he is called in question; and the reason thereof is, because the course and custome of our Nation is to try every Man in such case by his Equals or *Peers*. . . . . But this word is most principally used for those that be of the Nobility of the Realm and Lords of the Parliament, the reason whereof is, that although there be a distinction of degrees in our Nobility, yet in all publick actions they are equal, as in their Votes in Parliament, and in passing in Tryal upon any Noble-man, &c" (Cowel).

The Peers of Parliament are the Lords Spiritual and the Lords Temporal: *V.* PARLIAMENT: 1 Bl. Com. 155–158: "The number of Lords Spiritual, sitting and voting as Lords of Parliament, shall not be increased by the foundation of a New Bishopric in pursuance of this Act" (s. 5, Bishoprics Act, 1878, 41 & 42 V. c. 68).

Trial by Peers of Parliament; *V.* 4 Bl. Com. 259 *et seq*, 348: the other trial "by his peers" is the same as Trial by JURY (*Vf*, 4 Bl. Com. 349).

V. PROHIBITED.

PEERAGE. — "Peerage," Clause 5, Art. 4, Act of Union between Great Britain and Ireland, means, the Status and Condition of a Peer; therefore, in the case of an Irish Peer holding many titles (by any one of which he could have sate in the Irish House of Peers), there is no "extinction" of a Peerage so long as either of those titles remains in him or his descendants (*Fermoy's Case*, 5 H. L. Ca. 716; 28 L. T. O. S. 15).

PEINE. — *V.* PAIN.

PEN. — *V.* HOWE.

PENAL. — "A penal LAW is a statute which imposes a penalty" (per Parke, B., *Spencer* v. *Swannell*, 7 L. J. Ex. 75; 3 M. & W. 162). In that case it was held that an action of debt upon 2 & 3 Edw. 6, c. 13, was a Penal Action within 21 Jac. 1, c. 4, s. 4. An action for treble damages for Pound Breach under 2 W. & M. c. 5, s. 4, is a Penal Action (*Jones* v. *Jones*, 58 L. J. Q. B. 178; 22 Q. B. D. 425; 60 L. T. 421; 37 W. R. 479: *Sv*, *Castleman* v. *Hicks*, C. & M. 266); so, of an action under 11 G. 2, c. 19, s. 3, to recover double value of goods fraudulently removed to avoid Distress for rent (*Hobbs* v. *Hudson*, 59 L. J. Q. B. 562; 25 Q. B. D. 232; 63 L. T. 215; 38 W. R. 682); so, of an action by a Common Informer (*Martin* v. *Treacher*, cited OFFENCE).

Actions for "Penalties, DAMAGES, or Sums of Money given to the Party grieved by any statute now or hereafter to be in force" which by s. 3, Civil Procedure Act, 1833, are to be brought within 2 years of the CAUSE OF ACTION, are "what are popularly called 'Penal Actions,'" and do not include an action against Directors or Promoters of a Co under Directors Liability Act, 1890, 53 & 54 V. c. 64 (*Thomson* v. *Clanmorris*, 1900, 1 Ch. 718; 69 L. J. Ch. 337; 82 L. T. 277; 48 W. R. 488).

"In its ordinary acceptation 'Penal' may embrace penalties for infractions of general law which do not constitute Offences against the State; it may, for many legal purposes, be applied with perfect propriety to penalties created by Contract; and it, therefore, when taken by itself, fails to mark that distinction between Civil Rights and Criminal Wrongs which is the very essence of the international rule" that no country executes the Penal Laws of another, — "Penal," quà such rule, comprising "not only prosecutions and sentences for crimes and misdemeanors, but all suits in favour of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and all judgments for such penalties" (*Huntington* v. *Attrill*, 1893, A. C. 150; 62 L. J. P. C. 47, 48, citing for the latter proposition, *Wisconsin* v. *Pelican Insrce*, 8 Supreme Court Rep. 1370).

"Penal *Servitude*"; *V.* Penal Servitude Act, 1853, 16 & 17 V. c. 99, ss. 4, 6: this Act, with s. 2, 20 & 21 V. c. 3, abolished TRANSPORTATION. As to the power of a Colonial Court to order Penal Servitude, *V. R.* v. *Mount*, 44 L. J. P. C. 58; L. R. 6 P. C. 283. "The Penal Servitude Acts, 1853 to 1891"; *V.* Sch 2, Short Titles Act, 1896. *Vf*, PRISONER.

"Penal *Sum*"; *V.* LIQUIDATED DAMAGES: PENALTY.

PENALTY. — "'Penalty' is an ambiguous word. A Penalty may be the subject-matter of an INFORMATION, or of a COMPLAINT" (per Wright, J., *R.* v. *Lewis*, 1896, 1 Q. B. 665; 65 L. J. M. C. 126).

Where an Act imposes a Penalty for anything done (*Crepps* v. *Durden*, cited NECESSITY) or omitted to be done (*Llewellyn* v. *Glamorgan Vale Ry*, cited OWNER, p. 1390) on a day, that, generally, means only one penalty for the entire day; *e.g.*, a man may "exercise his Ordinary Calling on a Sunday" on any number of times on a particular Sunday but will only be liable to one penalty therefor under 29 Car. 2, c. 7 (*Crepps* v. *Durden*). So, only one penalty can be recovered for each day that a Ry Co offends against s. 54, Ry C. C. Act, 1845, by not making a substituted road for an existing road which the Co has interrupted (*Llewellyn* v. *Glamorgan Vale Ry*). *Note*: As to when there is only one penalty where there are two or more offenders, *V.* Maxwell, 238–242.

"Penalty," quà Beerhouse Act, 1830, includes "any Fine, Penalty, or Forfeiture, of a Pecuniary Nature" (s. 32); quà Post Office (Offences) Act, 1837, it includes "every Pecuniary Penalty or Forfeiture" (s. 47); quà Exchequer Court (Scot) Act, 1856, 19 & 20 V. c. 56, it comprehends

"Fine and Forfeiture" (s. 47): other Stat. Def., for Scotland, Summary Procedure Act, 1864, 27 & 28 V. c. 53, s. 2; 35 & 36 V. c. 93, s. 56.

"Penalty," quà Small Penalties (Ir) Act, 1873, 36 & 37 V. c. 82, includes "any sum of money recoverable in a summary manner" (s. 3); *Vth, R.* v. *Kildare Jus.*, 1895, 2 I. R. 577.

Where an Act gives a power to inflict a "Penalty or FORFEITURE," such words "clearly relate to a sum inflicted" (per Groves, J., *Ex p. Elsdon*, inf); and a power to appeal with respect to any "Penalty or Forfeiture" does not embrace an Order for demolition of buildings (*Ex p. Elsdon*, 51 L. J. M. C. 94; 9 Q. B. D. 41: *Va, Bermondsey* v. *Johnson*, 42 L. J. M. C. 67; L. R. 8 C. P. 441).

Notwithstanding what was said by Parke, B., in *Chilton* v. *London & Croydon Ry* (16 L. J. Ex. 89; 16 M. & W. 212), a liability created by a Ry Co's Bye Law for non-production by a passenger of his ticket is, *semble*, a "Penalty or Forfeiture" under Ry C. C. Act, 1845, s. 145 (*Brown* v. *G. E. Ry*, 46 L. J. M. C. 231; 2 Q. B. D. 406); and certainly that is so of a liability under a Bye Law for travelling without a ticket (*L. B. & S. Ry* v. *Watson*, 48 L. J. C. P. 316; 4 C. P. D. 118); *secus*, of an ordinary liability for using a ticket for another station than that named contrary to the conditions of the ticket but where there is no Bye Law applicable (*G. N. Ry* v. *Winder*, 1892, 2 Q. B. 595; 61 L. J. Q. B. 608; 67 L. T. 422; 56 J. P. 775).

V. PENAL: CRIME: DAILY PENALTY: OFFENCE.

A "Penalty," in a Contract, generally means, not a sum to be recovered *eo nomine* but, a provision for securing the due performance of the Contract; *secus*, of "LIQUIDATED DAMAGES."

Additional "Rent by way of Penalty" to secure the performance of stipulations of varying degrees of importance, is such a Penalty and not LIQUIDATED DAMAGES (*Willson* v. *Love*, 1896, 1 Q. B. 626; 65 L. J. Q. B. 474).

Sometimes, however, a "Penalty" will connote agreed Liquidated Damages (*Fletcher* v. *Dyche*, 2 T. R. 32: *Duckworth* v. *Alison*, 5 L. J. Ex. 171; 1 M. & W. 412: *Crux* v. *Aldred*, 14 W. R. 656: *Bonsall* v. *Byrne*, 16 W. R. 372; Ir. Rep. 1 C. L. 573).

Penalty for delay in a Bg Contract will be waived if additional works be ordered which cause the delay (*Dodd* v. *Churton*, 1897, 1 Q. B. 562; 66 L. J. Q. B. 477).

A Charter granting "Penalties" does not include money payable on Estreated Recognizances (*R.* v. *Dover*, cited CONTEMPT).

"Like Penalty"; *V.* LIKE.

"Right or Penalty"; *V.* RIGHT.

PENCIL. — *V.* WRITING.

PENDING. — A legal PROCEEDING is "pending" as soon as commenced (on *whv* 5 Rep. 47, 48; 7 Ib. 30), and until it is concluded, *i.e.*

so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

The issue of a citation, for Dissolution of a voidable Marriage, though only issued 7 days before the 5 & 6 W. 4, c. 54 received the royal assent, constituted a suit "depending" at the passing of the Act (*Sherwood* v. *Ray*, 1 Moore P. C. 353; 1 Curt. 173).

After decree nisi and before decree absolute, a Divorce Suit is "pending" and ALIMONY *pendente lite* may be ordered (*Ellis* v. *Ellis*, 52 L. J. P. D. & A. 99; 8 P. D. 188).

An action is "pending" within s. 2, M. W. P. Act, 1893, after verdict and jdgmt if the application that the Costs be charged on Separate Estate restrained from alienation be made within (say) a fortnight of the trial (*Muirhead* v. *Day*, 12 Times Rep. 168, 169).

A Liquidation under the Bankry Act, 1869, was "pending" (within No. 292 of the Rules made in pursuance thereof) until the Receiver was discharged (*Ex p. Jefferey*, 43 L. J. Bank. 27; 9 Ch. 144; 22 W. R. 57: *Ex p. McHenry*, 53 L. J. Ch. 27; 24 Ch. D. 35: *Vh*, *Ex p. Hooper*, *re Elliott*, 8 Ch. D. 53); and Composition Proceedings were "pending" until the composition was fully paid (*Re Lund*, 18 S. J. 343). So, as regards the old Insolvent Debtors Court, a matter was "pending" within s. 4, 32 & 33 V. c. 83, if some proceeding therein might still have been taken (*Re Clagett*, *Fordham* v. *Clagett*, 20 Ch. D. 637; 30 W. R. 857). *Vf*, *Graham* v. *Robinson*, L. R. 2 Q. B. 387: *R.* v. *Smith*, 31 L. J. M. C. 105; 9 Cox C. C. 110.

"Pending," s. 169 (3), Bankry Act, 1883; *V. Ex p. Pratt*, 53 L. J. Ch. 613; 12 Q. B. D. 334.

Action "pending," s. 42, Patent Law Amendment Act, 1852, 15 & 16 V. c. 83; *V. Holland* v. *Fox*, 3 E. & B. 977; 23 L. J. Q. B. 211.

"Pending" Appeal; *V. Taylor* v. *Greenhalgh*, 24 W. R. 311.

As to what is a *Cause or Proceeding* "pending" within s. 24 (5), Jud. Act, 1873; *V. Hart* v. *Hart*, 50 L. J. Ch. 697; 18 Ch. D. 670; 30 W. R. 8: *Marshall* v. *Marshall*, 48 L. J. P. D. & A. 49; 5 P. D. 19: *Va*, Ann. Pr. Quà s. 24 (7), Jud. Act, 1873, a Cause is "pending," even after final judgment, so long as such judgment remains unsatisfied (*Salt* v. *Cooper*, 50 L. J. Ch. 529; 16 Ch. D. 544); but after Foreclosure Absolute, a Foreclosure action is at an end (*Wills* v. *Luff*, 57 L. J. Ch. 563; 38 Ch. D. 197).

So, an *Action* may be "pending" within s. 514, Mer Shipping Act, 1854, repld s. 504, Mer Shipping Act, 1894, although an adverse claimant has obtained jdgmt condemning the ship (*Leycester* v. *Logan*, 3 K. & J. 446; 26 L. J. Ch. 306).

So, speaking generally, an Unsatisfied Judgment is a "Depending Suit" (*Howell* v. *Bowers*, 2 Cr. M. & R. 621).

So, the Quebec Act, 43 & 44 V. c. 49, saving suits then "pending,"

applies to proceedings taken in execution of a final judgment (*Redfield* v. *Wickham*, 57 L. J. P. C. 94; 13 App. Ca. 467; 58 L. T. 455).

An action for Infringement of a Patent is not, after judgment, a "pending" action within s. 18 (10), Patents, &c, Act, 1883, although an appeal from the judgment is pending (*Cropper* v. *Smith*, 54 L. J. Ch. 287; 28 Ch. D. 148). As to pending "legal proceeding" in the same section; *V. Re Hall*, 21 Q. B. D. 137; 57 L. J. Q. B. 494; 59 L. T. 37; 36 W. R. 892.

"Suit or Matter *actually* pending," s. 17, Charitable Trusts Act, 1853, means, pending at the time of the application (*Re Lister's Hospital*, 6 D. G. M. & G. 187; 26 L. T. O. S. 192; 4 W. R. 156); and when a Final Order has been made, the Petition is no longer "actually pending" (*Re Jarvis' Charity*, 1 Dr. & Sm. 97; 5 Jur. N. S. 724; 7 W. R. 606. *Va*, *Re Ford's Charity*, 3 Drew. 324). *Vh*, Tudor's Char. Trusts, 336, 480.

As to a "pending" *Election*; *V. Davies* v. *Stone*, 36 J. P. 390: *R.* v. *Pyne*, 37 Ib. 363.

V. Impending: Lis Pendens: Stage.

PENSION. — Surplus moneys of a Pension which (by an Order under s. 53, Bankry Act, 1883) are in the hands of a Trustee in Bankruptcy, are "Pension" within s. 141, Army Act, 1881; *secus*, of Commutation Money (*Crowe* v. *Price*, 58 L. J. Q. B. 215; 22 Q. B. D. 429; 37 W. R. 424, *whv* for the other authorities as to Sequestration of a Pension). *V.* Income.

"Pension," quà Pensions Commutation Act, 1871, 34 & 35 V. c. 36, "includes any half-pay, compensation allowance, superannuation or retirement allowance, or other payment of the like nature" (s. 2); quà Pensions and Yeomanry Pay Act, 1884, 47 & 48 V. c. 55, it "includes any allowance in the nature of a pension" (s. 7): *Va*, 50 & 51 V. c. 13, s. 8.

"Pension," quà Loc Gov Act, 1888, "includes any superannuation allowance, gratuity, or other payment, made on the retirement of any Officer" (s. 100); so, of Loc Gov (Scot) Act, 1889 (s. 105).

Other Stat. Def. — Jud. Act, 1873, s. 100: Jud. Act (Ir), 1877, s. 3.

As to calculation of Police Constable's Pension; *V.* Pay, at end.

PENSIONABLE OFFICE. — Quà Loc Gov (Ir) Act, 1898, "'Pensionable Office,' means, an Office coming within the provisions of any Act authorizing the grant of a superannuation allowance" (s. 109).

PENSIONER. — *V.* Out-Pensioner.

PEOPLE. — In a Marine Insurance, "People," means, the People of all nations in their respective collective capacities; and not bodies of insurgents acting in opposition to their rulers. It means, the governing power of the country; therefore if a corn vessel is seized and detained

by a hungry mob, or a party of rebels, that is not a detention by "the People" (*Nesbitt* v. *Lushington*, 4 T. R. 783: *Va, Rotch* v. *Edie*, 6 Ib. 413: 1 Maude & P. 487).

Vf, RESTRAINTS OF KINGS.

PEPPERCORN. — *V.* MONEY VALUE: PAYMENT, p. 1436.

PER. — *V.* per Ld Selborne, *Pryce* v. *Mon. Ry*, 49 L. J. Q. B. 141; 4 App. Ca. 216.

PER ANNUM. — A. covenanted that if B. married his (A.'s) daughter, he would pay B. £20 "per annum," without saying for how long; held, that that meant more than for one year only (*Hookes* v. *Swaine*, 1 Sid. 151; 1 Lev. 102; 1 Keble, 511, 517, 555). The report in Siderfin says, that the covenant was by A. to pay "his son-in-law *and* daughter," and that the ruling was that the £20 was payable "pur lour vies, et que le maintenance serra cy lasting que le marriage." But the other reporters state that the covenant was to pay the son-in-law; and even so, Keble says (p. 555) that the conclusion was that the sum was payable "for life; and whichsoever of them that survived shall have it, it being apparent on the record that it was for their maintenance"; Levinz does not report the conclusion: *Vh*, Platt Cov. 141, 142.

A woman, on marriage, covenanted with her intended husband that he should enjoy her lands during their joint lives, he covenanting with her trustees to pay them £20 "annually"; held that such sum was payable during their joint lives, "as the covenant on the other part was for the enjoyment of the wife's lands" (*Death* v. *Benns*, 1 Lev. 103, *n*).

Rent "at the rate of" so much per annum; *V.* RATE.

Directors' remuneration at so much "per annum"; *V. Central De Kaap Co*, cited YEAR.

"Per Annum" means, "YEARLY; not *in* the year" (per Bramwell, B. *Easton* v. *Alce*, cited RATE); *Vf*, *Bateman* v. *Faber*, cited INCOME.

V. ANNUALLY.

PER AUTRE VIE. — *V.* PUR AUTRE VIE.

PER CAPITA. — A distribution *per capita* is when a number of individuals, *e.g.* a CLASS, even though in different degrees of relationship, take the fund distributable among them in equal shares. Its opposite is PER STIRPES.

PER CENT. — As to this phrase, *V. Re McGarel*, cited EACH.

PER CWT. — In the Hop Trade, a contract for the sale of a stated number of pockets of hops at so many shillings, means, that that is the price "per cwt." (*Spicer* v. *Cooper*, 1 Q. B. 424; 10 L. J. Q. B. 241; 1 G. & D. 52).

V. CWT.

PER DAY. — *V.* DAY.

PER HOUR.—*V.* HOUR: DESPATCH.

PER HUNDRED.—*V.* HUNDRED: PER CWT.

PER MIE.—*V.* PER MY ET PER TOUT.

PER MILE.—*V.* MILE.

PER MONTH.—An agreement to pay so much "per Month" for a stated service, means, that such payment is to be made "each month, or monthly; and gives a cause of action as each month accrues which, once vested, is not subsequently lost or divested by the service-giver's desertion or abandonment of his contract" (per Pollock, C. B., *Taylor* v. *Laird*, 1 H. & N. 273; 25 L. J. Ex. 329).

V. MONTH.

FREIGHT "monthly in advance"; *V.* ADVANCE.

PER MY ET PER TOUT.—JOINT TENANTS hold "per my et per tout" (Litt. s. 288);—"*Et sic totum tenet et nihil tenet*, scil. totum conjunctim, et nihil per se separatim" (Co. Litt. 186 a).

"In 2 Bl. Com. 182, it is stated that 'Joint Tenants are said to be seised *per my et per tout*; by the half, or MOIETY, and by all.' It is true, that, for certain purposes, joint-tenants are *potentially* seised of aliquot parts of the land held by them in jointure; as, for the purpose of alienation in severalty, either by grant (Litt. s. 288), or by demise (*Doe* v. *Errington*, 3 N. & M. 647); so, for the purposes of merger (Preston on Merger, 447). And where the joint-tenancy happens to be between *two* persons only, their potential aliquot parts may, without impropriety, be termed *moieties*. But this is not, as the learned Commentator, followed by numerous subsequent writers, has supposed, implied in the terms 'per *my* et per tout'; the term '*my*' signifying, not 'a moiety,' but 'not in the least': See the Epitaph on *La Fontaine's*, *Picard* wolf, cited 7 M. & G. 172, *n*. And, therefore, Lord Coke gives the exact force of the expression 'seised *per* my *et per tout*' by describing the party so seised as one *qui* nihil *habet et* totum *habet*.

"Littleton was rightly understood by Howard, who translates or modernizes Litt. s. 288 thus,—'On dit communément que chacque jointenant n'a la propriété de *rien* et est propriétaire de tout; ce qui veut dire qu'il tient tout conjointement, et ne tient *rien* en particulier. En effet, la terre, considérée en sa totalité ou dans chacune de ses parties, ne lui appartient que conjointement avec son associé,'—Anciennes Loix des François, Vol. 1, p. 362" (*Note* to *Murray* v. *Hall*, 7 C. B. 455).

This phrase is sometimes written "per mie et per tout" (1 Watkins on Copyholds, 4 ed., 338).

V. MOIETY.

PER PROCURATION.—Probably, it may in strictness be said "that a simple 'p,' 'pro,' or 'for,' expresses an authority generally; and 'per pro,' or 'p. p.' expresses an authority created by procuration or power of attorney" (per Chatterton, V. C., *Ulster Bank* v. *Synnott*, Ir. Rep. 5 Eq. 612): sometimes the latter abbreviation is "per proc."

The expression "Per Procuration" does not always and necessarily mean that the act is done under procuration. All that it means is this, "I am an agent, not acting on any authority of my own in the case, but authorized by my principal to enter into this contract" (per Pollock, C. B., *Smith* v. *M'Guire*, 27 L. J. Ex. 468; 3 H. & N. 554, citing and commenting on *Attwood* v. *Munnings*, 7 B. & C. 278, and *Alexander* v. *Mackenzie*, 18 L. J. C. P. 94; 6 C. B. 766).

A signature of a Bill of Exchange or Promissory Note "by Procuration, operates as notice that the Agent has but a limited authority to sign, and the Principal is only bound by such signature if the Agent, in so signing, was acting within the actual limits of his authority" (ss. 25, 89, Bills of Ex. Act, 1882, codifying *Stagg* v. *Elliott*, 31 L. J. C. P. 260; 12 C. B. N. S. 373: *Vh*, *Re Land Credit Co of Ireland*, 39 L. J. Ch. 27; 4 Ch. 460: *National Bank of Scotland* v. *Dewhurst*, 1 Com. Ca. 318); but though not liable on the document, the Principal may be liable as for money had and received (*Reid* v. *Rigby*, 1894, 2 Q. B. 40; 63 L. J. Q. B. 451), and, *semble*, a Bill or Note may be indorsed "per pro" so as to give a title to the document although such indorsement may not be in such a mode or under such authority as to render liable the person in whose name the indorsement is made (*Smith* v. *Johnson*, cited INDORSED).

V. s. 26, Bills of Ex. Act, 1882, as to when an Agent is personally responsible on his signature; *vth*, *Nicholls* v. *Diamond*, 23 L. J. Ex. 1; 9 Ex. 154: *Mare* v. *Charles*, 25 L. J. Q. B. 119; 5 E. & B. 978; 4 W. R. 267; 26 L. T. O. S. 238.

An Acceptance of a Bill of Ex. "for" A. is not equivalent to "per proc" A.; "for" does not, like "per proc," import a special and limited authority to sign, nor does it put the drawer upon discovery as to whether the agent has exceeded his authority; an Acceptance "for" another is governed by the general law of Principal and Agent in which the course of dealing by the Agent is evidence showing the extent of his authority (*O'Reilly* v. *Richardson*, 17 Ir. Com. Law Rep. 74: *Va*, *Mare* v. *Charles*, sup).

PER STIRPES.—A distribution of property "per Stirpes and not per Capita," means, that all the beneficiaries will not, necessarily or probably, take equal shares but, that the property is to be divided into as many parts as there are Stocks and each Stock will have one, and only one, of such parts though such Stock may consist of many persons whilst another may only consist of one person; *e.g.* a gift to A. for life, Re-

mainder to his children living at his death and the issue then living of his then deceased children "per stirpes and not per capita"; A. had 6 children, 5 of whom died in his lifetime each leaving issue living at A.'s death, and one child survived him; the stirpital distribution is into 6 parts, one of which goes to A.'s surviving child, and one to and among the issue (however numerous) of each of the 5 deceased children. *Cp*, PER CAPITA.

Where a distribution of property amongst a CLASS embracing descendants " is to be *per stirpes*, the principle of representation will be applied through all degrees, children never taking concurrently with their parents (*Ralph* v. *Carrick*, 11 Ch. D. 873; 48 L. J. Ch. 801). In a case (*Robinson* v. *Shepherd*, 32 Bea. 665, on app. 10 Jur. N. S. 53), where the gift was 'to the descendants of A. and B. per stirpes,' Romilly, M. R., thought A. and B. were the stirpes in the first instance to be considered, so that the primary division should be into two parts. But Westbury, C., held that you must look to the number of families or stirpes descended either from A. or B., and existing at the testator's death, and divide the fund primarily into a corresponding number of parts. However, in a subsequent case, the M. R. acted on his own opinion, which appears to have been acquiesced in (*Gibson* v. *Fisher*, L. R. 5 Eq. 51; 37 L. J. Ch. 67: *Va*, *Booth* v. *Vicars*, 1 Coll. 6; 13 L. J. Ch. 147). If the gift were to the descendants of *one* person per stirpes, it must necessarily be dealt with on Ld Westbury's principle" (2 Jarm. 100). In *Re Wilson* (53 L. J. Ch. 130; 24 Ch. D. 664), North, J., endeavoured to reconcile *Gibson* v. *Fisher* with *Robinson* v. *Shepherd*; but added, " if I had to choose between them I should follow *Robinson* v. *Shepherd* in preference to *Gibson* v. *Fisher*." In *Re Wilson* the bequest was upon the determination of a prior estate to such cousins (children of 6 named aunts and uncles), and such issue of predeceased cousins, living at the period of distribution, as should attain the age of 21 years, or should die under that age, leaving issue, " to take if more than one in a course of distribution, *according to the stocks*, and not to the number of individuals," and it was held that under that phrase the property was not divisible into 6 parts, but into 16; because the cousins (16 in number), and not the aunts and uncles, were the " stocks."

Vh, Theobald, ch. 23, s 4: Watson Eq. 1409: 10 Encyc. 16, 17.

Vf, as to when a distribution is to be made *per stirpes*, and when *per capita*, 2 Jarm. 101, 107, 112, 122, 194: Wms. Exs. 1384.

There is no presumption against a Per Capita distribution of the Corpus because the Income has to be distributed Per Stirpes (*Re Stone*, 1895, 2 Ch. 196; 64 L. J. Ch. 637; 72 L. T. 815).

PER TESTES. — *V.* TESTE.

PER TON. — " Per Ton per Mile "; *V.* MILE.

PERCH. — *V.* ROD.

PERCUSSION. — "Percussion-cap Works"; *V.* NON-TEXTILE FACTORIES.

PEREMPTORY. — "Peremptory," "signifies a final and determinate act, without hope of renewing or altering" (Cowel).

A Peremptory CHALLENGE of a Juror is "used onely in matters criminal, and alledged without other cause than barely the prisoners fancy" (Cowel, *Challenge*); but the Crown has also in some cases the right of peremptory challenge; *Vh*, Arch. Cr. 178: Rosc. Cr. 184.

"A Peremptory DAY, is when business is to be spoke to at a precise day; but if it cannot be spoken to then, the Court, at the prayer of the party concerned, will give a farther day without prejudice to him" (Jacob).

A Peremptory MANDAMUS, requires the thing to be done absolutely, and to it nothing but a certificate of perfect obedience can be a proper Return: *Vh*, Short & Mellor's Crown Office Practice, 57.

A Peremptory *Order* for time to plead, means, that the Order is final, unless varied by a subsequent Order on special circumstances being shown for a further extension (*Falck* v. *Axthelm*, 24 Q. B. D. 176; 59 L. J. Q. B. 161).

Peremptory *Sale*; *V.* WITHOUT RESERVE.

PERFECT. — A Warranty, on sale of a thing to perform a specific work, that it shall be "complete and perfect," implies, at least under the word "perfect," that it shall be efficient for that work (*Mallan* v. *Radloff*, 17 C. B. N. S. 588).

Perfect Abstract; *V.* ABSTRACT.

Perfect Documents of Title; *V.* DOCUMENT.

"Perfect Repair," *semble*, does not mean more than "REPAIR" (*Mosse* v. *Killick*, 50 L. J. C. P. 300). *V.* TENANTABLE REPAIR: GOOD REPAIR.

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

PERFORM. — A Theatrical or Music Hall agreement by an Actor or Singer not to "perform" elsewhere than at the place for which the agreement engages him, generally, connotes such a performance as he would give at such place, and does not prevent him from exercising his talents amongst friends gathered together on a Sunday evening for their mutual companionship and entertainment (*Kelly* v. *London Pavilion*, 77 L. T. 215; 14 Times Rep. 234).

V. REPRESENTING OR PERFORMING: KEEP.

Quà International Copyright Act, 1886, 49 & 50 V. c. 33, "'performed' and 'performance,' and similar words, include, REPRESENTATION and similar words" (s. 11).

PERFORMANCE. — *V.* DRAMATIC: FROM PERFORMANCE: IMPOSSIBLE: OBSERVANCE OR PERFORMANCE: PERFORM: PERFORMED: REPRESENTING OR PERFORMING.

"Default in Performance"; *V.* DONE.

Part Performance of a Contract to take case out of the Statute of Frauds; *V. Miller* v. *Sharp*, 1899, 1 Ch. 622; 68 L. J. Ch. 322, and cases there cited: Fry, s. 578 *et seq*: Leake, 259.

Specific Performance; *V.* SPECIFIC.

PERFORMED. — No agreement "that is not to be performed" within one year from its making is valid unless evidenced by a signed writing (s. 4, Statute of Frauds, 29 Car. 2, c. 3). This means, (1) a complete performance; (2) by one of the parties. A contract which contemplates more than a year for its performance is within the statute, though it may be defeasible within the year; and, on the other hand, a contract which does not in terms contemplate more than a year for its performance is not within the statute because it may exceed that limit (*Vh*, Add. C. 33: Rosc. N. P. 520: Leake, 218).

PERFORMING. — *V.* DOING: HAVING: PAYING: REPRESENTING OR PERFORMING.

PERIL. — *V.* ACCIDENT: RIVER.

"Excepted Perils"; *V.* EXCEPTION.

"Other Perils"; *V.* OTHER, p. 1363.

PERIL OF THE ROAD. — *V.* DANGERS.

PERIL OF THE SEA. — "I am of opinion that 'Perils of the Sea' is a phrase having the same meaning in Bills of Lading and Charter Parties, as in Policies of Insurance" (per Ld Bramwell, *Hamilton* v. *Pandorf*, 12 App. Ca. 527; 57 L. J. Q. B. 28, 29; 6 Asp. 212; 57 L. T. 726; 36 W. R. 369: *Va*, *Wilson* v. *The Xantho*, 56 L. J. P. D. & A. 116; 12 App. Ca. 503; 57 L. T. 701; 36 W. R. 353; 6 Asp. 207).

"I think the definition of 'Perils of the Sea,' of Lopes, L. J., in this case very good: — 'It is a Sea Damage, occurring at Sea, and nobody's fault.' What is the 'Peril'? It is that the ship or goods will be lost or damaged, but it must be 'Of the Sea'" (per Ld Bramwell, *Hamilton* v. *Pandorf*, 12 App. Ca. 526, 527; 57 L. J. Q. B. 24).

But in view of the decision of the H. L. in *Wilson* v. *The Xantho* (sup), it is suggested, with the greatest diffidence in a matter on which the greatest authorities have differed, that the def of Lopes, L. J., should be thus amended, — "A 'Peril of the Sea' is a Sea Damage, *undesignedly* occurring at Sea."

For, the broad principle of *Wilson* v. *The Xantho* seems to be that, a Collision, which popularly would be called accidental, is a "Peril of the

Sea," though brought about by the negligence of one of the vessels, or even (possibly) of both of them. The consequences, indeed, would vary according as there might be negligence; but those varying consequences would arise not from a varying interpretation of "Perils of the Sea," but because other, and varying considerations would come into play. Thus, *e.g.*, as regards a Bill of Lading, the ship-owner, in the case of a Collision, could rely on the Exception if his vessel were not in fault, because he and those for whom he is answerable would have done nothing to deprive him of its benefit; but if his vessel were in fault, he could not so rely, not because "Perils of Sea" would have changed meaning, but because something else (his vessel's negligence), by a paramount obligation, would have rendered him liable on the ground that the author of a mischief cannot avail himself of his own wrong. *Note.* — *Woodley* v. *Michell* (11 Q. B. D. 47; 52 L. J. Q. B. 325; 31 W. R. 651) is over-ruled by *Wilson* v. *The Xantho*.

Vf, as to COLLISIONS, *Lloyd* v. *Gen. Iron Screw Collier Co*, 33 L. J. Ex. 269; 3 H. & C. 284: *Grill* v. *Gen. Iron Screw Collier Co*, 35 L. J. C. P. 321; 37 Ib. 205; L. R. 1 C. P. 600; 3 Ib. 476; H. & R. 654.

As to whether a loss by Sea-Worms or Barnacles is a "Peril of the Sea," *V.* jdgmt of Esher, M. R., *Pandorf* v. *Hamilton*, 17 Q. B. D. 679; 55 L. J. Q. B. 550. A Snow-Storm is not (*V.* ACCIDENT).

Vh, Abbott, 460–466, 481–490: Carver, 98–110: 10 Encyc. 23–27: DANGERS: RISKS OF THE SEA.

Loss by Pirates is a Peril of the Sea (*V.* jdgmt of Bowen, L. J., *Pandorf* v. *Hamilton*, 55 L. J. Q. B. 553). So are losses "by the Swell of the Tide in a dry harbour (*Fletcher* v. *Inglis*, 2 B. & Ald. 315: *Cp*, *Thompson* v. *Whitmore*, inf); by the Wilful but not barratrous Act of the Crew in throwing the ballast overboard (*V.* BARRATRY); or by a STRANDING rendered necessary by leakage produced by the careless loading of the cargo" (1 Maude & P. 355, and cases there cited); and, *semble*, that every Accidental Stranding is a Peril of the Sea (per Ld Herschell, *Wilson* v. *The Xantho*, 12 App. Ca. 509: *Va*, per Ld Bramwell, *Hamilton* v. *Pandorf*, 12 App. Ca. 527). But damage to a ship by her being hove down on a beach to repair, is not a Peril of the Sea (*Thompson* v. *Whitmore*, 3 Taunt. 227). Neither Fire, nor Lightning, is a Peril of the Sea (per Ld Bramwell, *Hamilton* v. *Pandorf*, 12 App. Ca. 527).

Direct damage done to cargo by Rats is not a Peril of the Sea (*Laveroni* v. *Drury*, 22 L. J. Ex. 2; 8 Ex. 166: *Vthc*, *Kay* v. *Wheeler*, L. R. 2 C. P. 302; 36 L. J. C. P. 180); but damage caused by the incursion of sea-water through a Rat-hole, or a strained Rivet-hole, is a Peril of the Sea, and, if the ship-owner has not been guilty of NEGLECT OR DEFAULT he may rely on the Exception (*Hamilton* v. *Pandorf*, sup: *The Cressington*, 1891, P. 152; 60 L. J. P. D. & A. 25). Damage to cargo from the Heat of the Engines, confined through the ventilators being necessarily

closed because of exceptionally bad weather, is an "Accident of the Sea" (*The Thrunscoe*, 1897, P. 301; 66 L. J. P. D. & A. 172; 77 L. T. 407); *secus*, of damage arising from the nature or collocation of the cargo, or from want of due ventilation not caused by stress of weather (*The Freedom*, L. R. 3 P. C. 594; 38 L. J. Adm. 25; 24 L. T. 452).

Loss by Unseaworthiness, *e.g.* through insufficiency of coal, is not a loss by a "Peril of the Sea" (*Ballantyne* v. *Mackinnon*, 1896, 2 Q. B. 455; 65 L. J. Q. B. 616; 75 L. T. 95; 45 W. R. 70). *V.* SEAWORTHY.

In view of recent decisions, before referred to, the following can now hardly be regarded as a perfectly accurate statement of English law: —

"The phrase 'Perils of the Sea,' whether understood in its most limited sense as importing a loss by natural accidents peculiar to that element, or whether understood in its more extended sense as including inevitable accidents occurring upon that element, must still in either case be understood to include such losses only to the goods on board as are of an extraordinary nature or arise from some irresistible force, or from inevitable accident or some overwhelming power which cannot be guarded against by the ordinary exertions of human skill and prudence. Hence it is that if the loss occurs by a Peril of the Sea which might have been avoided by the exercise of any reasonable skill or diligence at the time when it occurred, it is not deemed to be, in the sense of the phrase, such a loss by the Perils of the Sea as will exempt the carrier from liability, but rather a loss by the gross negligence of the party" (Story on Bailments, s. 512 a).

A damage whilst a vessel is in Port is not covered by an insrce against "Perils of the SEA" (*V. Phillips* v. *Barber*, 5 B. & Ald. 161).

The general words, in a Marine Insurance, whereby "all *other* Perils," &c, are insured against, do not cover such a thing as the bursting of the air-chamber of a donkey-pump, whether it occur negligently or accidentally, for such a peril is not *ejusdem generis* with those enumerated (*Thames & Mersey Insrce* v. *Hamilton*, 12 App. Ca. 484; 56 L. J. Q. B. 626; disapproving *West India & Panama Telegraph Co* v. *Home & Col. Mar Insrce*, 50 L. J. Q. B. 41; 6 Q. B. D. 51).

As to the Damages recoverable on the happening of a Peril of the Sea; *V. Field S. S. Co* v. *Burr*, cited HULL: *Bensaude* v. *Thames & Mersey Insrce*, cited Loss.

PERIOD. — A Period, means, a time that runs continuously, *e.g.* a Superannuation or other Allowance if an employé has been in the service "for a less Period" than 10 years, means 10 continuous years (*Tyler* v. *London and India Docks*, 9 Times Rep. 11). *Cp*, NOT LESS: TIME.

"Period of QUALIFICATION"; Stat. Def., 41 & 42 V. c. 26, s. 7.

"Period of the *Tenure*"; Stat. Def., 19 & 20 V. c. 65, s. 9.

PERIODICAL. — A "Periodical *Work*" within the *Copyright Act*, 1842, 5 & 6 V. c. 45, is "a work that comes out from time to time and is miscellaneous in its articles" (*Brown* v. *Cooke*, 16 L. J. Ch. 142); but a Newspaper was held not a "Periodical" within ss. 18, 19, of that Act (*Cox* v. *Land & Water Journal Co*, 39 L. J. Ch. 152; L. R. 9 Eq. 324); but in *Walter* v. *Howe* (50 L. J. Ch. 621; 17 Ch. D. 708), *Cox* v. *Land, &c, Co* was not followed, and the "Times" newspaper was held to be a "Periodical Work" within the sections. *V.* BOOK: FIRST PUBLICATION: SEPARATELY.

A work published at uncertain intervals by subscription and the principal cost of which was defrayed by funds bequeathed for that purpose, was not a "Periodical *Publication*" within the proviso to s. 5, 54 G. 3, c. 156 (*British Museum* v. *Payne*, cited VOLUME).

"Periodical *Payments*," apportionable under the *Apportionment Act*, 1870, 33 & 34 V. c. 35, s. 2, "must be payments occurring periodically, that is, at fixed times from some antecedent obligation, and not at variable periods at the discretion of individuals" (per Selborne, C., *Jones* v. *Ogle*, 42 L. J. Ch. 337; 8 Ch. 192; 21 W. R. 239); therefore, it was held in that case that profits in a private trading partnership were not within the phrase. *Vf*, DIVIDEND. The Act "has no application to an ANNUITY payable *in advance* where the instalment is already in the hands of the annuitant" (per Charles, J., *Trevalion* v. *Anderton*, 66 L. J. Q. B. 230; affd, Ib. 489); or to RENTS agreed to be paid in advance (*Ellis* v. *Rowbotham*, 1900, 1 Q. B. 740; 69 L. J. Q. B. 379; 82 L. T. 191; 48 W. R. 423).

"Periodical Payments," s. 2, 47 & 48 V. c. 68; *V. Theobald* v. *Theobald*, 15 P. D. 26; 59 L. J. P. D. & A. 21.

"Annuities or Periodical *Sums* charged upon land," s. 1, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V. Payne* v. *Esdaile*, cited CHARGED UPON.

"Annuity" or *Sum* payable "at stated Periods," Stamp Act, 1891, Sch, *Bond, Covenant, or Instrument*; *V. Clifford* v. *Inl. Rev.*, 1896, 2 Q. B. 187; 65 L. J. Q. B. 582; 74 L. T. 699; 45 W. R. 14; approving and distinguishing *Sweetmeat Co* v. *Inl. Rev.*, cited INSTRUMENT, and *Jones* v. *Inl. Rev.*, 1895, 1 Q. B. 484; 64 L. J. Q. B. 84. *Note*: *Clifford* v. *Inl. Rev.*, distd in *Lewis* v. *Inl. Rev.*, 1898, 2 Q. B. 290; 67 L. J. Q. B. 694; 78 L. T. 745: *Jones* v. *Inl. Rev.*, approved in *National Telephone Co* v. *Inl. Rev.*, cited INSTRUMENT.

PERISHABLE. — Shares in a Co, though GOODS, are not "perishable" within 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). *V.* PRESERVATION.

In *Buckler* v. *Wilson* (1896, 1 Q. B. 83; 65 L. J. M. C. 18; 73 L. T. 580; 44 W. R. 220; 60 J. P. 118) the Justices found that MARGARINE is not "a perishable article" within s. 10, Sale of Food and Drugs Act,

Amendment Act, 1879, 42 & 43 V. c. 30, and the Divisional Court refused to set aside that finding.

Vh, *Maclean* v. *Dunn*, 4 Bing. 728.

Bona Peritura from a WRECK, are such as will not endure for a year and a day (3 Edw. 1, c. 4).

PERJURY.—"Perjury, is an assertion upon an OATH duly administered in a judicial proceeding, before a competent Court, of the truth of some matter of fact, material to the question depending in that proceeding, which assertion the assertor does not believe to be true when he makes it, or on which he knows himself to be ignorant.

"In this definition, the word '*Oath*' includes every Affirmation which any class of persons are by law permitted to make in place of an oath.

"The expression '*duly administered*,' means administered in a form binding on his conscience, to a witness legally called before them, by any Court, Judge, Justice, Officer, Commissioner, Arbitrator, or other person who by the law for the time being in force, or by consent of the parties, has authority to hear, receive, and examine evidence. The fact that a person takes an oath in any particular form is a binding admission that he regards it as binding on his conscience.

"The expression '*Judicial Proceeding*,' means a proceeding which takes place in or under the authority of any Court of Justice, or which relates in any way to the administration of justice, or which legally ascertains any right or liability. A proceeding may be judicial although the person accused in it was brought before the Court, by which the proceeding is held, by an irregular warrant.

"The word '*Fact*,' includes the fact that the witness holds any opinion or belief.

"The word '*Material*' means of such a nature as to affect in any way, directly or indirectly, the probability of any thing to be determined by the proceeding, or the credit of any witness, and a fact may be material although evidence of its existence was improperly admitted" (Steph. Cr. 93–94): *Vf*, *R.* v. *Baker*, 1895, 1 Q. B. 797; 64 L. J. M. C. 177; 72 L. T. 631; 43 W. R. 654.

Vf, Arch. Cr. 992–1023: Rosc. Cr. 717–741.

Cp, FALSE SWEARING: FORSWORN.

"'Perjury' is not a Word of Art like 'MURDER'" (*Ryalls* v. *The Queen*, 11 Q. B. 794). *Va*, FELONY.

PERMANENT.—"'The Permanent *Annual Charge* of the NATIONAL DEBT,' means, the permanent annual charge of the National Debt within the meaning of the Sinking Fund Act, 1875 (38 & 39 V. c. 45), and the Acts amending the same" (47 & 48 V. c. 23, s. 9).

"Permanent BUILDING," quà Land Law (Ir) Act, 1896, 59 & 60 V. c. 47, includes, "permanent structures, and sea and river embankments having a permanent character" (s. 48).

Permanent *Building Society*; *V.* TERMINATING.

"Permanent *Civil Service* of the *State*," "Permanent Civil Service of *Her Majesty*," "Permanent Civil Service of the *Crown*," in Acts relating to Salaries and Pensions, "have the same meaning" (s. 8, 50 & 51 V. c. 13). *V.* CIVIL SERVANT: IMPERIAL: MAJESTY.

"Permanent COMMON"; the Governor of New South Wales (under that Colony's Acts, 25 V. No. 1, and 18 V. No. 33) dedicated 490 acres of land near Sydney as "Permanent Common," which meant "that the land was to go for ever for the Common or Public Enjoyment," and created no Common of Pasturage (*Sydney* v. *A-G. New South Wales*, 1894, A. C. 444; 63 L. J. P. C. 116; 71 L. T. 30).

Permanent *Curate*; *V.* PERPETUAL CURATE.

"Permanent *Improvements*," is the phrase adopted in the Crofters Holdings (Scot) Act, 1886, 49 & 50 V. c. 29, for the Improvements for which compensation is to be made thereunder, and a list of them is given in its Sch, but they resemble, in kind, the "Improvements" to which the consent of the Landlord is required under the Agricultural Holdings Acts of 1883: *V.* IMPROVEMENT.

"Permanent *Investment*," R. 2 (7), Ord. 55, R. S. C.; *V. Ex p. Jesus College*, W. N. (84) 37: *Ex p. Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541; 54 L. J. Ch. 1143.

Permanent OBSTACLE, entitling a Shipowner to insist on an alternative place of Delivery, "means, that it is an obstacle which cannot be overcome by the shipowner by any reasonable means except within such a time as, having regard to the objects of the adventure of both charterers and shipowner, is, as a matter of business, wholly unreasonable" (per Brett, L. J., *Nelson* v. *Dahl*, 12 Ch. D. 593). *Cp*, IMPRACTICABLE.

"Permanent SICKNESS, or other Permanent Infirmity," — justifying the reception of a deposition of a witness, s. 10, Evidence on Commission Act, 1831, 1 W. 4, c. 22, — does not, quà "Sickness," mean an incurable one, but imports such a state of disability as to preclude the hope of the deponent being able, in any reasonable time, to attend the trial (*Beaufort* v. *Crawshay*, L. R. 1 C. P. 699; 35 L. J. C. P. 342).

"Permanent SOLICITOR," agreement appointing; *V.* RETAIN.

"Permanent *Staff*," quà Militia (Voluntary Enlistment) Act, 1875, 38 & 39 V. c. 69, "means, the adjutant and such other commissioned officers and such non-commissioned officers and drummers as may, for the time being, be commissioned or attested thereto" (s. 2).

"Permanent WAY" of a RAILWAY, quà 30 & 31 V. c. 80 (and, *semble*, generally) means and includes "the line or lines of railway, bridges under and over the same, viaducts, tunnels, fences and ditches along the said lines, signals and apparatus connected therewith" (s. 2).

"Permanent WORKS"; Stat. Def., 35 & 36 V. c. 79, s. 40.

PERMISSION. — Generally, a required Permission involves the idea that the person to grant it may impose limitations, *e.g.* the "permission" of a Committee of Inspection (s. 57, Bankry Act, 1883) or, there being none, of the Board of Trade (s. 22 (9), Ib.), to employ a Solicitor, may impose a maximum on the amount to be paid him (*Re Duncan*, 1892, 1 Q. B. 879; 61 L. J. Q. B. 712; 66 L. T. 508; 40 W. R. 409). Such a "permission" by a Committee of Inspection must, in some way or other, specify the work to be done; a Resolution empowering a Trustee to employ a Solr "where necessary" is too vague (*Re Vavasour*, 1900, 2 Q. B. 309; 69 L. J. Q. B. 685; 82 L. T. 622; 48 W. R. 543). *Cp*, SANCTION.

"Act, Default, Permission, or Sufferance"; *V. Draper* v. *Sperring*, 30 L. J. M. C. 225; 10 C. B. N. S. 113: BY WHOSE: PERMIT: SUFFER: DEFAULT.

"Consent and Permission of the True Owner"; *V.* CONSENT.

"Special Permission"; *V.* SPECIAL.

PERMISSIVE WASTE. — "Permissive Waste, is WASTE by reason of omission or not doing, — as, for want of reparation" (2 Inst. 145).

V. VOLUNTARY WASTE.

PERMIT. — A Devise of FREEHOLDS to A. to "permit," or to "permit and suffer," B. to receive the rents, gives the LEGAL ESTATE to B. (*Right* d. *Phillips* v. *Smith*, 12 East, 455: *Doe* d. *Noble* v. *Bolton*, 11 A. & E. 188; 3 P. & D. 135). And even a devise to A. to PAY TO B. { or, / and } "permit and suffer, B. to receive the rents" gives the legal estate to B. (*Doe* d. *Leicester* v. *Biggs*, 2 Taunt. 109: *Baker* v. *White*, L. R. 20 Eq. 166; 44 L. J. Ch. 651: *Re Adams and Perry*, cited LEGAL ESTATE: *Sv*, *Re Lashmar*, 1891, 1 Ch. 258; 60 L. J. Ch. 143: *Vf*, 2 Jarm. 293: Lewin, 225. *Sv*, Lewin, 226, as to the difference between "pay to *and* permit" and "pay to *or* permit"). But the rule does not apply where the direction is to permit the receipt of the "CLEAR," or "NET," rents (*White* v. *Parker*, 4 L. J. C. P. 178; 1 Bing. N. C. 573; *Barker* v. *Greenwood*, 8 L. J. Ex. 5; 4 M. & W. 421), or where the trustees have to exercise control or have duties to perform regarding the legal estate; for in such cases the legal estate will be in the trustees (*Harton* v. *Harton*, 7 T. R. 652: *Gregory* v. *Henderson*, 4 Taunt. 772: *Re Tanqueray-Willaume to Landau*, 51 L. J. Ch. 434; 20 Ch. D. 465: *Van Grutten* v. *Foxwell*, 1897, A. C. 658; 66 L. J. Q. B. 745: *Re Adams and Perry*, sup, in *whlc* the trustees did not take the legal estate because they had no active duties): *Vf*, 2 Jarm. 294. Nor, *semble*, does the rule apply to COPYHOLDS, because in the case of Copyholds "you lose the reason for construing the Will with reference

to the Statute of Uses" (per Jessel, M. R., *Baker* v. *White*, sup). *Cp*, CONVEY.

Semble, the opposite rule obtains as regards a DEED (Elph. 273, citing *Doe* d. *Leicester* v. *Biggs*, and *Baker* v. *White*, sup).

In a clause of Forfeiture on alienation, the word "Permit" means the same as SUFFER (per James, L. J., *Ex p. Eyston*, 47 L. J. Bank. 63; 7 Ch. D. 145; 26 W. R. 181; 37 L. T. 447).

"'Permitting and Suffering' (in a Covenant) do not bear the same meaning as '*Knowing of and being Privy to*'; the meaning of them is that the covenantor should not concur in any act over which he had control" (per Bayley, J., *Hobson* v. *Middleton*, 6 B. & C. 303; *Vth*, Sug. V. & P. 603, 604: *Vf*, Dyer, 255, pl. 4); nor does that phrase mean "to hinder and forbid" (per Lopes, L. J., *Hall* v. *Ewin*, 36 W. R. 86; 37 Ch. D. 74; 57 L. J. Ch. 95; 57 L. T. 831). So, in the phrase "Do or SUFFER," "suffer" is used in a passive sense as contra-distinguished from "do" (*Roffey* v. *Bent*, L. R. 3 Eq. 759). *Vf*, *Re Ryan*, 19 L. R. Ir. 24: Elph. 490: PARTY OR PRIVY.

A Licensed Person who "permits Drunkenness"; *V.* SUFFER.

An Advertising Agent, merely as such, is not rateable for the HOARDING exhibiting his advertisements, because he is not the person who "permits" the land to be so used within s. 3, 52 & 53 V. c. 27 (*Burton* v. *St. Giles*, 1900, 1 Q. B. 389; 69 L. J. Q. B. 184; 82 L. T. 24; 48 W. R. 222; 64 J. P. 213). *Vf*, EXCLUSIVE OCCUPATION.

"Will not permit any *Sale by Public Auction*"; *V. Toleman* v. *Portbury* (41 L. J. Q. B. 98; L. R. 7 Q. B. 344; 26 L. T. 292; 20 W. R. 441), where it was held that a sale in which the lessee took no part, but which was made under a Bill of Sale he had given, was not "permitted" by him, and accordingly there was no breach of the covenant.

"So much of any Act as permits" the *Sale of Beer*, &c, without a license is hereby repealed, s. 12, 25 & 26 V. c. 22; *V. Huxham* v. *Wheeler*, 3 H. & C. 75; 33 L. J. M. C. 153.

A Slaughterer "permits" the *Slaughtering of Animals* within Public View, &c, contrary to a Bye Law, if his servant does it, though such servant has no general authority to manage his master's business and does the act without his master's knowledge and disobediently (*Collman* v. *Mills*, 1897, 1 Q. B. 396; 66 L. J. Q. B. 170; 75 L. T. 590; 61 J. P. 102): *Sv*, *Somerset* v. *Hart*, cited SUFFER. *Vh*, KNOWINGLY.

. The phrase "permit and suffer" the hirer of a cabin in a ship to *Stow Baggage* in the hold, imports that the hirer shall make some request for space (*Corbyn* v. *Leader*, 6 C. & P. 32; 10 Bing. 275; 3 Moore & S. 751).

"So far as the law will permit"; *V.* SO FAR AS.

V. CAUSE OR PERMIT: PERMISSION: SUFFER: USE OR PERMIT: ALLOW: PROVIDED THE FUNDS PERMIT: WILFULLY.

PERMITTING. — "Wind, Weather, and Tide, permitting"; *V. Hawes* v. *S. E. Ry*, 54 L. J. Q. B. 174; 52 L. T. 514.

V. AT ALL TIMES OF TIDE.

"Weather permitting," effect of in construing a DESPATCH Clause; *V. The Glendevon*, 1893, P. 269; 62 L. J. P. D. & A. 123.

PERNOR. — A pernor of the profits of land, is one who enjoys the profits and is the same as a CESTUI *que use* (*Chudleigh's Case*, 1 Rep. 123).

PERPETRATE. — *V.* COMMIT.

PERPETUAL. — *V.* PERMANENT: PERPETUITY.

PERPETUAL ADVOWSON. — A devise of a "Perpetual Advowson," prior to the Wills Act, 1837, only passed a life estate (*Pocock* v. *Lincoln, Bp.*, 3 Brod. & B. 27). *Cp*, LIVING.

PERPETUAL ANNUITY. — Quà National Debt Act, 1881, 44 & 45 V. c. 55, "'Perpetual Annuities,' means 3½% Bank Annuities; 3% Consolidated Bank Annuities; 3% Reduced Bank Annuities; New 3% Bank Annuities; or, 2¾% Bank Annuities" (s. 6); and so, quà National Debt Act, 1883, 46 & 47 V. c. 54 (s. 11). This def, with the addition of the 2¾% Bank Annuities, is adopted for National Debt and Local Loans Act, 1887, 50 & 51 V. c. 16 (s. 19 and Sch); and subsequently it was made to "include the New Stock created under the National Debt (Conversion) Act, 1888" (s. 4, 51 & 52 V. c. 15).

V. ANNUITY: NATIONAL DEBT. *Cp*, GOVERNMENT ANNUITIES: GOVERNMENT STOCK: TERMINABLE.

PERPETUAL CURATE. — "Permanent, or Perpetual, Curates, are Clerks who officiate in Parishes or Districts to which they are nominated by the Impropriators, and licensed by the Bishop" (Phil. Ecc. Law, 239).

Vh, *Greenslade* v. *Darby*, 37 L. J. Q. B. 137; L. R. 3 Q. B. 421, 9 B. & S. 428: *Mason* v. *Lambert*, 17 L. J. Q. B. 366; 12 Q. B. 795: 10 Encyc. 35, 36.

V. CURATE: MINISTER.

PERPETUAL INTEREST. — Quà Landlord and Tenant Law Amendment Act (Ir), 1860, 23 & 24 V. c. 154, "'Perpetual Interest,' shall comprehend (in addition to any greater interest) any Lease or Grant for one or more than one Life with or without a term of years, or for Years whether absolute or determinable on one or more than one Life, with a covenant or agreement by a party competent thereto in any of such cases (whether contained in the instrument by which such lease or

contract is made or in any separate instrument) for the *Perpetual Renewal* of such lease or grant" (s. 1); a def which is an enlarged version of that in s. 1, 18 & 19 V. c. 39.

Cp, "Lease in Perpetuity," sub LEASE: RENEWAL.

PERPETUITY.—The Rule against Perpetuities requires that gifts and limitations of property must *necessarily* vest in the beneficiaries during a life or any number of lives, in being at the time when the instrument becomes operative (*e.g.* in the case of a Will, the death of the testator), or within 21 years afterwards.

A gift or limitation the vesting of which may *possibly* be at a time beyond that period is void (as the phrase is) for Remoteness (1 Jarm. ch. 9, s. 2, *whv* for a full treatment of the authorities hereon). *Vh*, Lewis on Perpetuities: Marsden, Ib.: 10 Encyc. 37–45: *Jee* v. *Audley*, 1 Cox Ch. 324, followed in *Re Dawson*, 39 Ch. D. 155; 57 L. J. Ch. 1061, *Vf*, L. R. 5 Ind. App. 146: *Re Hocking*, 1898, 2 Ch. 567; 67 L. J. Ch. 662: *Re Mervin*, 1891, 3 Ch. 197; 60 L. J. Ch. 671: *Re Bence*, 1891, 3 Ch. 242; 60 L. J. Ch. 636: *Goodier* v. *Edmunds*, 1893, 3 Ch. 455; 62 L. J. Ch. 649: *Re Abbott*, 1893, 1 Ch. 54; 62 L. J. Ch. 46: *Re Stratheden and Campbell*, 1894, 3 Ch. 265; 63 L. J. Ch. 872: *Re Sudeley and Baines*, 1894, 1 Ch. 334; 63 L. J. Ch. 194: *Re Wood*, 1894, 3 Ch. 381; 63 L. J. Ch. 790: *Re Hollis' Hospital*, 1899, 2 Ch. 540; 68 L. J. Ch. 673; *Re Turney*, 1899, 2 Ch. 739: *Re Tyler*, 60 L. J. Ch. 686.

For the Rule of Construction when Remoteness is suggested; *V.* per Selborne, C., *Pearks* v. *Moseley*, 50 L. J. Ch. 59; 5 App. Ca. 719.

The Rule against Perpetuities applies to an indefinite OPTION to purchase land (*Lond. & S. W. Ry* v. *Gomm*, cited ABSOLUTELY SELL); but possibly that is not so quà such an Option to a Lessee if contained in his lease and to be exercised during the term: *Vth*, 42 S. J. 628, 650: *Vf*, *Manchester Ship Canal Co* v. *Manchester Racecourse Co*, cited FIRST REFUSAL.

For the source and origin of the Rule; *V.* per Kenyon, C. J., *Porter* v. *Bradley*, 3 T. R. 142, 146: per Jessel, M. R., *Re Ridley*, 48 L. J. Ch. 563; 11 Ch. D. 645.

V. POSSIBILITY.

"Lease in Perpetuity"; *V.* LEASE: RENEWAL.

PERQUISITE.—"Profits arising to the lord from his Court Baron above the yearly revenue, such as fines in respect of copyholds; Perkins, 20, 21. *Perquisitum* is also used in the sense of purchase: Spelm., *Perquisitum*: Bracton, l. 2, c. 30, num. 3" (Elph. 615, 616).

"'Perquisites,' are advantages and profits that come to a Manor by casualty, and not yearely, as Escheats, Hariots, Reliefes, Waifes, Estraies, Forfeitures, Amerciaments in Courts, Wards, Marriages, goods and lands purchased by villeines of the same manor, fines of copiholds, and divers

other like things that are not certaine, but happen by chance, sometimes more often than at other times. See Perkins, f. 20 and 21" (Termes de la Ley).

"Perquisites," as used in R. 1, Sch E (s. 146) Income Tax Act, 1842, might have included a gratis residence by an employé in his employer's house, although the employé could not sublet it, but for the fact that that construction is prevented by R. 4 of the same Sch which defines "Perquisites," for all purposes of the Act, to be "such PROFITS of Offices and Employments as arise from Fees and other EMOLUMENTS, and *payable* either by the Crown or by the Subject in the course of executing such Offices or Employments" (per Ld Watson, *Tennant* v. *Smith*, cited INCOME).

Cowel defines "Perquisite" as "anything gotten by a mans own industry or purchased with his own money, different from that which descends to him from his father or ancestors," citing Bracton, l. 2, c. 30, n. 3, and l. 4, c. 22.

PERRY. — *V.* CIDER.

PERSIST. — *V.* INSIST.

PERSISTENT. — "Persistent CRUELTY, or WILFUL NEGLECT to provide reasonable maintenance," causing a Wife to leave her Husband, s. 4, 58 & 59 V. c. 39, is not a CONTINUING OFFENCE, but is completed when the wife leaves (*Ellis* v. *Ellis*, 1896, P. 251; 65 L. J. P. D. & A. 124; 75 L. T. 390; 45 W. R. 144; 60 J. P. 823: *Vf*, *Medway* v. *Medway*, 1900, P. 141; 69 L. J. P. D. & A. 56; 82 L. T. 627; 48 W. R. 622; 64 J. P. 120). *Semble*, that a number of acts of cruelty in one day may amount to "Persistent Cruelty" (*Broad* v. *Broad*, 78 L. T. 687). *Cp*, DESERTED: RUNNING AWAY: SHALL HAVE BEEN.

PERSON. — *Primâ facie* the word "person," in a public statute, includes a Corporation as well as a natural person (per Selborne, C., *Pharmaceutical Socy* v. *London & Provincial Supply Assn*, 49 L. J. Q. B. 736; 5 App. Ca. 857: *Vf*, *R.* v. *Gardner*, Cowp. 79: *Cortis* v. *Kent W. W. Co*, 7 B. & C. 314: *Meath* v. *Winchester*, 3 Bing. N. C. 207: ss. 2, 19, Interp Act, 1889).

"The word 'Person' may very well include both a Natural person (a human being), and an Artificial person (a corporation). I think that in an Act of Parliament, unless there be something to the contrary, probably (I would not like to pledge myself to that), it ought to be held to include both. I have equally no doubt that in common talk, in the language of men (not speaking technically) a 'Person' does not include a corporation. Nobody in common talk, if he were asked who is the richest person in London, would answer, The London and North Western Ry Co. It is plain that in common speech 'Person' would mean a natural person. In

technical language it may mean the other, but which meaning it has in any particular Act, must depend on the context and the subject-matter. I do not think that the presumption that it includes an artificial person, a Corporation, — (*if the presumption does arise*) — is at all strong. Circumstances, and indeed very slight circumstances, in the context might show which way the word is to be construed in an Act of Parliament. And I am quite clear about this, that whenever you can see the object of the Act requires that 'Person' shall have the more extended sense or the less extended sense, then you should apply the word in that sense and construe the Act accordingly" (per Ld Blackburn, *Pharmaceutical Socy* v. *London, &c, Assn*, sup).

That case shows that "person" as used in ss. 1 and 15, Pharmacy Act, 1868, 31 & 32 V. c. 121, does not include a Corporation; so, of "person" in s. 30, Pharmacy (Ir) Act, 1875, 38 & 39 V. c. 57 (*Pharmaceutical Socy of Ireland* v. *Boyd*, 1896, 2 I. R. 394); *secus* of "person" in s. 6, Sale of Food and Drugs Act, 1875 (*Pearks* v. *Ward*, 1902, 2 K. B. 1; 71 L. J. K. B. 656). *V.* SELLER.

The Attorney-General, acting *ex officio*, is not a "person" within the Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; but an action by him on behalf of the poor of a parish may be statute barred, as these constitute "a class of persons" within s. 1 (*A-G.* v. *Magdalen College*, 23 L. J. Ch. 844; 18 Bea. 223: *Magdalen College* v. *A-G.*, 26 L. J. Ch. 620; 6 H. L. Ca. 189). The Ecclesiastical Commrs are "persons" within ss. 1, 2, of the Act just cited, except in cases where they claim (by virtue of s. 57, 3 & 4 V. c. 113) through an Ecclesiastical Corporation (*Ecclesiastical Commrs* v. *Rowe*, 49 L. J. Q. B. 771; 5 App. Ca. 736).

A Corporation is not a "person" within the Charitable Uses Act, 1735, 9 G. 2, c. 36, s. 1 (*Walker* v. *Richardson*, 6 L. J. Ex. 229; 2 M. & W. 882), nor so as to become a Common Informer (*St. Leonard's, Shoreditch* v. *Franklin*, 47 L. J. C. P. 727; 3 C. P. D. 377). *Va*, RESPONSIBLE.

The Royal Mail Steam Packet Co is a "person" within s. 19 (Jamaica) Supreme Court Procedure Law, 1872 (*Royal Mail Steam Packet Co* v. *Braham*, 46 L. J. P. C. 67; 2 App. Ca. 381).

By the Melbourne Harbour Trust Act a "person" includes a Corporation, and this was held to include Commissioners appointed under the Act (*Union Steamship Co* v. *Melbourne Harbour Commrs*, 53 L. J. P. C. 59; 50 L. T. 337; 9 App. Ca. 365).

So, where trustees of a Will had power to grant leases to "any person or persons" they should think fit, Chitty, J., held that this authorized them to grant a lease to a Limited Company (*Re Jeffcock*, 51 L. J. Ch. 507).

So, where a Railway Act provided that "any person" acting in pursuance of it should be entitled to Notice of Action, it was held the Company itself was included (*Boyd* v. *London & Croydon Ry*, 7 L. J. C. P.

241; 4 Bing. N. C. 669; 6 Sc. 461): *Vf, St. Helen's Tramway Co* v. *Wood*, 56 J. P. 71.

"ANY person," s. 1 (1), Land Transfer Act, 1897, does not include the Crown (*Re Hartley*, 1899, P. 40; 68 L. J. P. D. & A. 16).

Quà, and by, the following Acts, "Person" is defined so as to include a Corporation; —

Ecclesiastical Commissioners (Exchange of Patronage) Act, 1853, 16 & 17 V. c. 50; *V.* s. 3:

Ecclesiastical Leases Act, 1842, 5 & 6 V. c. 27; *V.* s. 15:

Exchequer Court (Scot) Act, 1856, 19 & 20 V. c. 56; *V.* s. 47:

General Pier and Harbour Act, 1861, 24 & 25 V. c. 45; *V.* s. 2:

Land Registry Act, 1862, 25 & 26 V. c. 53; *V.* s. 140:

Lunacy Regn (Ir) Act, 1871, 34 & 35 V. c. 22; *V.* s. 2.

Quà Trustee Act, 1850, "'Person,' used and referred to in the MASCULINE gender, shall include a FEMALE as well as a Male, and shall include a Body Corporate" (s. 2), *Va*, s. 1, Interp Act, 1889.

"Person," s. 20, Trustee Act, 1850, does not exclusively mean, person beneficially entitled (*Re Dickson*, W. N. (72) 223).

Other Stat. Def. — Custody of Children Act, 1891, 54 & 55 V. c. 3, s. 5; Inferior Courts Judgments Extension Act, 1882, 45 & 46 V. c. 31, s. 2; Legitimacy Declaration Act (Ir), 1868, 31 & 32 V. c. 20, s. 10; Sum Jur Act, 1879, s. 49.

"Person," s. 6, Companies Act, 1862, includes an INFANT (*Re Laxon*, 1892, 3 Ch. 555; 61 L. J. Ch. 667).

"Person," s. 9, Factors Act, 1889, means, *any* person, and is not confined to a MERCANTILE AGENT (*Shenstone* v. *Hilton*, 1894, 2 Q. B. 452; 63 L. J. Q. B. 584; 71 L. T. 339). *V.* BUY.

"ANY Person," s. 1, Public Authorities Protection Act, 1893, is not confined to a PUBLIC AUTHORITY; any Officer or Agent acting on behalf of a Public Authority is entitled to the benefits provided by the section (*Greenwell* v. *Howell*, cited PUBLIC DUTY).

Person absolutely entitled; *V.* ABSOLUTELY ENTITLED.

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

"Person aggrieved"; *V.* AGGRIEVED.

"Person BEING a CHILD or other Issue of the testator," s. 33, Wills Act, 1837, means, a person or persons *named*, as distinguished from a CLASS (*Olney* v. *Bates*, 3 Drew. 319: *Browne* v. *Hammond*, Johns. 210: *Re Harvey*, 1893, 1 Ch. 567; 62 L. J. Ch. 328; 68 L. T. 562; 41 W. R. 293).

"Persons belonging to a Ship"; *V.* BELONGING.

"Person by whose act," &c, Nuisance arises; *V.* BY WHOSE: PERMISSION.

"Persons *claiming through* a Member"; Stat. Def., Industrial and Provident Societies Act, 1893, 56 & 57 V. c. 39, s. 79; Friendly Societies Act, 1896, 59 & 60 V. c. 25, s. 106. *V.* CLAIMING UNDER: THROUGH.

Person *detained*; *V.* LAWFULLY DETAINED.

"Persons employed by or under the Post Office"; Stat. Def., Post Office (Offences) Act, 1837, 1 V. c. 36, s. 47.

"Every Person of FULL AGE," s. 22, Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, includes women, who are entitled to vote thereunder (*R.* v. *Crosthwaite*, 17 Ir. Com Law Rep. 157). *V.* LEGAL INCAPACITY: SEX.

"Person *liable*"; *V. Re McMurdo*, cited DEMAND: LIABLE: PARTY LIABLE.

Person *licensed*; *V.* LICENSED PERSON: RENEWAL.

"No Person unlicensed shall sell by retail Intoxicating Liquors," s. 3, Licensing Act, 1872, does not include one who is "merely an innocent servant," *e.g.* the Bar-Keeper of the Kitchen Committee of the House of Commons (*Williamson* v. *Norris*, 1899, 1 Q. B. 7; 68 L. J. Q. B. 31; 79 L. T. 415; 47 W. R. 94; 62 J. P. 790).

"Person *making* any Distress"; *V.* DISTRESS.

"Person *nominated*"; *V.* NOMINATED.

"Person residing"; *V.* RESIDING.

"Person" RUNNING AWAY and leaving children parochially chargeable, s. 4, Vagrancy Act, 1824, 5 G. 4, c. 83, does not include a married woman deserted by her husband, and, *semble*, does not include a married woman at all (*Peters* v. *Cowie*, 46 L. J. M. C. 177; 2 Q. B. D. 131).

"Person *supplied*"; *V.* SUPPLIED.

"Person who has *Superintendence*"; *V.* SUPERINTENDENCE.

"COURT or Person," s. 1 (5), Jud. Act, 1894, includes an Official Referee (*Daglish* v. *Barton*, 81 L. T. 551; 68 L. J. Q. B. 1044; 48 W. R. 50).

"In Person or by Proxy"; *V.* PROXY.

"OTHER Person," s. 6, Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68, means, any person (including the person photographed) other than the AUTHOR (*Melville* v. *Mirror of Life Co*, 1895, 2 Ch. 531; 65 L. J. Ch. 41; 73 L. T. 334).

V. ANY: EVERY: INDIVIDUAL: OTHER: PARTY, and succeeding defs: PERSON ENTITLED: PERSON IN CHARGE: PERSON INTERESTED: UNSOUND MIND.

PERSON ENTITLED.—"Persons entitled," 19 & 20 V. c. 120; *V.* ENTITLED.

Person "entitled to *Equity of Redemption*"; *V.* ENTITLED TO REDEEM.

"Person entitled to the *First Estate of Freehold*," quà Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, means, as regards Scotland, "OWNER" (subs. 5, s. 96).

"Person entitled to any REVERSION expectant on the determination" of a Tenancy for Life, s. 8, Prescription Act, 1832, 2 & 3 W. 4, c. 71, is not limited to an owner of the whole reversion, but includes a Tenant

at Will to such an owner (per Fry, J., *Laird* v. *Briggs*, W. N. (80) 205).

Person "entitled to vote"; *V.* ENTITLED TO VOTE.

V. ABSOLUTELY ENTITLED.

PERSON IN CHARGE. — A Pilot, by "compulsion of law," was not a "Person in Charge," within s. 33, Mer Shipping Act, 1862 (*The Queen*, L. R. 2 A. & E. 354; 38 L. J. Adm. 39). *Note*: This section was replaced by s. 16, Mer Shipping Act, 1873, which is now replaced by s. 422, Mer Shipping Act, 1894. *Vf*, 1 Maude & P. 286.

V. CHARGE OR CONTROL.

PERSON INTERESTED. — "Person interested," s. 14, Regulation of Railways Act, 1873, 36 & 37 V. c. 48, includes any person who makes out, by proper evidence, that the Rates which he seeks to have dissected are really and substantially competitive Rates with his own (per Wills, J., and Price, Commr); and (per Peel, Commr) includes all persons who have a *bonâ fide* interest in knowing how the particular Rates, which are the subject of their application, are made up (*Pelsall Co* v. *Lond & N. W. Ry*, 23 Q. B. D. 536; 61 L. T. 257; 7 Ry & Can Traffic Ca.). *Vf*, *Tomlinson* v. *Lond. & N. W. Ry*, 63 L. T. 86; 7 Ry & Can Traffic Ca. 22.

"Persons interested in such Lands," s. 68, Inclosure Act, 1845, 8 & 9 V. c. 118; *V. Crush* v. *Turner*, 47 L. J. Ex. 639; 3 Ex. D. 303; 26 W. R. 900.

"Persons interested in the Land"; Stat. Def., Land Drainage Act, 1847, 10 & 11 V. c. 38, s. 20.

"Person interested in the Minerals" of an abandoned Mine, and liable to fence the shaft (s. 13, 35 & 36 V. c. 77), includes owners in fee who have leased the Mine, reserving a royalty on the minerals produced (*Evans* v. *Mostyn*, 47 L. J. M. C. 25; 2 C. P. D. 547). So, of the owner of the soil of an abandoned Lead Mine which contains Calc-spar and Calk, although such owner only becomes entitled to such minerals after they have been raised and brought to the surface by persons working the mine for lead ore (*Stokes* v. *Arkwright*, 77 L. T. 400; 66 L. J. Q. B. 845; 61 J. P. 775).

The Trustees of a Friendly Society, held not comprised within "any Person interested" in the matter of an application for altering its Rules, within s. 41, 18 & 19 V. c. 63 (*Hull* v. *Macfarlane*, 27 L. J. C. P. 41; 2 C. B. N. S. 796).

A Trustee in Bankry is a "Person interested" in an OPTION belonging to the bankrupt, within R. 1, Ord. 54 *a*, R. S. C. (*Mason* v. *Schuppisser*, 81 L. T. 147): the phrase there "is a wide one and ought to extend to the claim of any person who has an INTEREST of any sort, — whether vested or contingent, absolute or defeasible, in possession or

reversion, — under an INSTRUMENT within the meaning of the Rule" (per Stirling, J., *Ib.*).

V. PARTY INTERESTED. *Cp*, AGGRIEVED.

PERSONAL. — For examples of this word qualifying the whole of a testamentary gift, so as to exclude realty therefrom; *V. 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.

"Special Cause *personal* to the LICENSED PERSON," s. 26, Licensing Act, 1874; *V. Sharpe* v. *Wakefield*, cited DISCRETION.

PERSONAL ACT OF PARLIAMENT. — *V.* LOCAL ACT OF PARLIAMENT: PUBLIC ACT OF PARLIAMENT.

PERSONAL ACTION. — "'Action Personal,' is such as one man brings against another on any contract for money or goods, or on account of any offence or trespass; and it claims a debt, goods, chattels, &c, or damages" (Jacob, *Action. Vf*, 3 Bl. Com. 117). *Cp*, REAL ACTION.

Vh, *A-G.* v. *Churchill*, 8 M. & W. 192; 10 L. J. Ex. 314.

An action for Infringement of a Patent is clearly a "Personal Action" within s. 56, Co. Co. Act, 1888 (per Pollock, B., *R.* v. *Halifax Co. Co.*, cited FRANCHISE: *Vf*, Ann. Co. Co. Pr. Part 2, ch. 1). So, of an action against a tenant for DOUBLE Value for holding over (*Wickham* v. *Lee*, 18 L. J. Q. B. 21; 12 Q. B. 521). But it has frequently been decided that FORECLOSURE is not a personal action (per Romer, J., *Kibble* v. *Fairthorne*, 64 L. J. Ch. 186).

PERSONAL CHATTELS. — "Personal Chattels" are CHATTELS which do "not savour of REAL ESTATE" (Wms. P. P. 2); to a large extent the leading part of the def of "Personal Chattels," quà a BILL OF SALE, given by s. 4, Bills of Sale Act, 1878, is of general application, *i.e.* "Goods, Furniture, and other Articles, capable of complete transfer by delivery"; and observe that this section expressly excepts CHOSES IN ACTION from its def of "Personal Chattels."

That def supersedes the one given by s. 7, Bills of S. Act, 1854, under which Growing Crops (unsevered, *Ex p. National Mercantile Bank*, 16 Ch. D. 104; 50 L. J. Ch. 231), were not "Personal Chattels" (*Brantom* v. *Griffits*, 46 L. J. C. P. 408; 2 C. P. D. 212); but they are in terms included in the full def provided by s. 4, B. of S. Act, 1878, "when separately assigned or charged"; and so of FIXTURES. But this def is modified by s. 6, Bills of S. Act, 1882, on *whv*, *Meux* v. *Jacob*, 44 L. J. Ch. 481; L. R. 7 H. L. 481: 23 W. R. 526; 32 L. T. 171: Reed, 72 *et seq*.

The fixed machinery and all the essential parts of the fixed machinery of a building were part of the realty, and were not "Personal Chattels," under Bills of S. Act, 1854 (*Longbottom* v. *Berry*, 39 L. J. Q. B. 37; L. R.

5 Q. B. 123: *Holland* v. *Hodgson*, 41 L. J. C. P. 146; L. R. 7 C. P. 328: *Sheffield Bg Socy* v. *Harrison*, 54 L. J. Q. B. 15; 15 Q. B. D. 358); *secus*, as respects machines only fixed for occasional convenience, and not for the permanent improvement of the building (*Waterfall* v. *Penistone*, 26 L. J. Q. B. 100; 6 E. & B. 876; 27 L. T. O. S. 252: *Vthc*, *Walmsley* v. *Milne*, 29 L. J. C. P. 97; 7 C. B. N. S. 115). And still a mtge of land into which land trade machinery is permanently fixed, is not an assurance of "Personal Chattels" within s. 4, Bills of S. Act, 1878, for the machinery passes with the land, and the assurance does not need to be IN ACCORDANCE WITH THE FORM prescribed by s. 9 (*Re Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563). *V.* FIXTURES.

Cp, Bills of Sale Acts for Ireland, 17 & 18 V. c. 55, s. 7; 42 & 43 V. c. 50, s. 4: PERSONAL ESTATE.

PERSONAL DELIVERY. — At a Town Council meeting for the Election of Aldermen the Chairman requested the Town Clerk to collect the voting papers and hand them to him; the Town Clerk walked round to the Councillors and received their voting papers which he immediately handed to the Chairman who could, and did, see what was done and that each Councillor was a person entitled to vote; held, that there was a "Personal Delivery" to the Chairman of the voting papers within s. 60 (4), Mun Corp Act, 1882 (*Baxter* v. *Spencer*, 72 L. T. 838; 64 L. J. Q. B. 644; 59 J. P. 376).

V. DELIVERY.

PERSONAL EARNINGS. — *V.* EARNINGS: PERSONAL LABOUR. *Cp*, AVERAGE WEEKLY EARNINGS.

PERSONAL ESTATE. — The "Personal Estate and Effects," or, its equivalent, the "PERSONAL PROPERTY" of an individual may, perhaps, be broadly defined to be, all his property other than that which, if he died intestate, would go to his heir. Either of these phrases includes all a person's Goods and Chattels, Moneys, Choses in Action, Leases for Years, Funded Property, and Shares (Wms. R. P. Introd. Ch.: Wms. P. P. Introd. Ch., and Part 4, on *whv*, *Witherby* v. *Rackham*, inf: Wms. Exs. Pt. 2, Bk. 2, chs. 1 and 2: *Va*, *Butler* v. *Butler*, 54 L. J. Ch. 197; 28 Ch. D. 66). New River Shares however are realty (*Drybutter* v. *Bartholomew*, 2 P. Wms. 127: *Buckeridge* v. *Ingram*, 2 Ves. 652: *Bligh* v. *Brent*, 6 L. J. Ex. Eq. 58; 2 Y. & C. Ex. 268). But Chelsea Water Works Shares have been held to be personalty (*Bligh* v. *Brent*, sup). Sometimes Canal Shares have been held to be realty (Wms. Exs. 720–722). *Cp*, REAL ESTATE: PERSONAL CHATTELS.

For the purposes of the Wills Act, 1837, "Personal Estate" extends to, "Leasehold estates and other chattels real, and also to moneys, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property

whatsoever which by law devolves upon the exor or admor, and to any share or interest therein" (s. 1).

As used in Malins' Act, 20 & 21 V. c. 57, "any Personal Estate whatsoever" is large enough to comprise a CHOSE IN ACTION, *e.g.* a Life Policy (*Witherby* v. *Rackham*, 60 L. J. Ch. 511; 39 W. R. 363).

"Personal Estate" in s. 2, Wills Act, 1861, 24 & 25 V. c. 114, is not confined to MOVEABLES, but comprises also leaseholds (*Re Watson*, 35 W. R. 711).

But the context may restrict the wide meaning of "Personal Estate." Thus in *Harrison* v. *Blackburn* (34 L. J. C. P. 109; 17 C. B. N. S. 678; 13 W. R. 135), a Bill of Sale of the grantor's household goods, stock in trade, and all other goods chattels and effects, in or about his dwelling-house, "and all other his *personal estate* whatsoever," did not pass the term he had in his dwelling-house (*Cp*, *Ringer* v. *Cann*, inf).

So, "where a testator shows by his Will that he uses the term 'Personal Estate' as contradistinguished from 'Leaseholds,' occurring in the same bequest, and he afterwards, by a codicil, directs a charitable legacy to be payable out of his 'personal estate,' the expression is considered as used in the same restricted and peculiar sense as in his Will; and the legacy is payable out of the pure personalty and is therefore good" (1 Jarm. 239, citing *Wilson* v. *Thomas*, 3 My. & K. 549; 3 L. J. Ch. 144). But it has been said (Elph. 178), "no general rule can be laid down as to whether leaseholds will pass by a general description of 'Personal Property.' The principal cases are *Ringer* v. *Cann*, 3 M. & W. 343; 7 L. J. Ex. 108: *Doe* d. *Farmer* v. *Howe*, 9 L. J. Q. B. 352: *Hopkinson* v. *Lusk*, 34 Bea. 215: *White* v. *Hunt*, L. R. 6 Ex. 32; 40 L. J. Ex. 23." *Vf*, *Debenham* v. *Digby*, 21 W. R. 359; 28 L. T. 170, in *whc*, *Harrison* v. *Blackburn*, sup, was distd.

On the other hand, the expression "Personal Estate" may be widened by a context so as to include Realty (*Doe* d. *Tofield* v. *Tofield*, 11 East, 246, stated 1 Jarm. 748: *Vf*, *Cadman* v. *Cadman*, 41 L. J. Ch. 468; L. R. 13 Eq. 470). But in such phrases as "Personal Estate and Property," or "Personal Property, Estate, and Effects," the word "Personal" will generally over-ride the whole (1 Jarm. 748 *n* and cases there cited: *Vf*, per Mansfield, C. J., *Hogan* v. *Jackson*, 1 Cowp. 306: *Va*, *Jones* v. *Robinson*, 47 L. J. C. P. 673; 3 C. P. D. 344); thus, Wood, V. C., held that a gift of "all my Personal Estate and Property whatsoever and wheresoever" did not pass realty (*Buchannan* v. *Harrison*, cited PROPERTY).

So, "if a testator direct his *lands to be sold*, and afterwards add a general bequest of all his 'Personal Estate' (*Maugham* v. *Mason*, 1 V. & B. 410: *Smith* v. *Harding*, W. N. (74) 101: *Va*, *Gibbs* v. *Rumsey*, 2 V. & B. 294), or appoint a person '*Residuary Executor*' (*Berry* v. *Usher*, 11 Ves. 87), any part of the proceeds of the sale that is undisposed of will not form part of the residuary fund in the first case, or pass to the residuary

executor in the second; for nothing, properly speaking, is a testator's 'Personal Estate' but what possesses that character at the moment of his decease" (Lewin, 170, *whv*, as to cases where the special language employed requires a different construction).

"Personal Estate and Effects of any person deceased," quà PROBATE DUTY, means, Personal Estate and Effects which have belonged to the deceased in his lifetime; therefore, neither Probate Duty nor ESTATE DUTY is payable by the exors of the deceased in respect of property coming to his estate under a substitutional bequest to them in the event of the deceased dying before the donor of such property (*Lord Advocate* v. *Bogie*, 63 L. J. P. C. 85: *A-G.* v. *Loyd*, 1895, 1 Q. B. 496; 64 L. J. Q. B. 365).

The "Personal Estate" of a deceased person liable to Duty under the Act for Victoria No. 388 of 1870, only includes that which is in the local area of that Probate jurisdiction (*Blackwood* v. *Regina*, 8 App. Ca. 82; 52 L. J. P. C. 10; followed in *Commrs of Stamps* v. *Hope*, cited BONA, and in *Henty* v. *Regina*, cited REAL ESTATE).

V. ESTATE: MONEY: MOVEABLE: PERSONAL PROPERTY: PERSONALTY: REAL ESTATE, last par: REAL OR PERSONAL PROPERTY: OTHER.

PERSONAL EXPENSES. — "Personal Expenses" of a CANDIDATE at an ELECTION, quà Corrupt and Illegal Practices Prevention Act, 1883, "includes the reasonable Travelling Expenses of such Candidate, and the reasonable expenses of his living at Hotels or elsewhere, for the purposes of and in relation to such election" (s. 64).

PERSONAL GOODS. — For examination of this phrase as used Co. Litt. 185 b; *V. Re Butler*, 57 L. J. Ch. 643; 38 Ch. D. 286.

V. GOODS.

PERSONAL INJURY. — *V.* DAMAGE.

PERSONAL LABOUR. — "Personal Earnings" from Personal Labour (which do not vest in a Trustee in Bankry) "point to a limitation of 'Personal Earnings' to something analogous, both in its character and in the nature of its remuneration, to Personal DAILY LABOUR, — not, of course, manual or menial only" (per Wright, J., *Mercer* v. *Vans Colina*, 67 L. J. Q. B. 424; 78 L. T. 21). Therefore, a person who employs several persons under him and procures vans for removal of furniture — in other words, one who carries on business as a Furniture Remover, — is not one using merely his Personal Labour (*Crofton* v. *Poole*, 1 B. & Ad. 568: *Vf, Wadling* v. *Oliphant*, 1 Q. B. D. 145; 45 L. J. Q. B. 173; 24 W. R. 246; 33 L. T. 837: *Re Dowling*, 4 Ch. D. 689; 46 L. J. Bank. 74). So, *semble*, the earnings and profits of a Dentist are not such Personal Earnings (*Re Rogers*, 1894, 1 Q. B. 425; 63 L. J. Q. B. 178), nor are the fees and profits of a Surgeon and Apothecary (*Elliot* v.

Clayton, 20 L. J. Q. B. 217; 16 Q. B. 581), nor the fees of an Architect (*Emden* v. *Carte*, 51 L. J. Ch. 41; 17 Ch. D. 769), nor the commission, of a Commission Agent (*Mercer* v. *Vans Colina*, sup), nor money won in a contest of skill (*Shoolbred* v. *Roberts*, 1899, 2 Q. B. 560; 68 L. J. Q. B. 998; 81 L. T. 522), nor rewards given to a champion billiard player for playing with no other balls than those made by the person giving those rewards (*Re Roberts*, 1900, 1 Q. B. 122; 69 L. J. Q. B. 19; 81 L. T. 467; 48 W. R. 132). *Vf*, INCOME.

But, in Ireland, it has been held that the fee of an Election Agent, and the charges of a Solicitor in legal proceedings, are Personal Earnings (*Re Ebbs*, 19 L. R. Ir. 81).

Semble, that Patent Royalties may be Personal Earnings (*Re Graydon*, 1896, 1 Q. B. 417; 65 L. J. Q. B. 328; 44 W. R. 495; 74 L. T. 175).

Note. The exception of "Personal Earnings" from the property which vests in a Trustee in Bankry "is not to be found in the Act itself, but is said to be an implied exception based upon a long series of authorities and well recognized for the last 100 years" (per Lindley, L. J., *Re Roberts*, sup). *Vh*, per Willes, J., *Kitson* v. *Hardwick*, L. R. 7 C. P. 479.

V. EARNINGS: HANDICRAFT: LABOUR: MANUAL LABOUR: WAGES: WORKMAN.

PERSONAL LUGGAGE. *V.* LUGGAGE.

"Personal" means the same thing as "Ordinary" Luggage (*Hudston* v. *Mid. Ry*, 38 L. J. Q. B. 213; L. R. 4 Q. B. 366; 10 B. & S. 504; 17 W. R. 705).

"Whatever the passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or to the ultimate purpose of the journey, must be considered as Personal Luggage. This would include, not only all articles of apparel, whether for use or ornament, but also the gun-case or the fishing apparatus of the sportsman, the easel of the artist on a sketching tour, or the books of the student, and other articles of an analogous character the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journeying. On the other hand, the term 'Ordinary Luggage' being thus confined to that which is personal to the passenger, and carried for his use and convenience, it follows that what is carried for the purpose of business, such as merchandize or the like, or for larger or ulterior purposes such as articles of furniture or household goods, would not come within the description of Ordinary Luggage, unless accepted as such by the carrier" (per Cockburn, C. J., in delivering the jdgmt of the Court, *Macrow* v. *G. W. Ry*, 40 L. J. Q. B. 304; L. R. 6 Q. B. 612). *V.* BAGGAGE.

The cases of *Cahill* v. *Lond. & N. W. Ry* (31 L. J. C. P. 271; 13

C. B. N. S. 818; 10 W. R. 391), *G. N. Ry* v. *Shepherd* (21 L. J. Ex. 286; 8 Ex. 30), and *Belfast & Ballymena Ry* v. *Keys* (9 H. L. Ca. 556), establish that Articles of Merchandize cannot be considered as personal luggage; and, by a parity of reasoning, it has been held, at the Liverpool Co. Co., that samples and accounts are not personal luggage of a Commercial Traveller (*Bayley* v. *Lanc. & Y. Ry*, 18 S. J. 301), neither are documents carried by a Solicitor for use in a cause in which he is professionally engaged (*Phelps* v. *Lond. & N. W. Ry*, 34 L. J. C. P. 259; 19 C. B. N. S. 321; 13 W. R. 782); and though in *Macrow* v. *G. W. Ry*, sup, it was laid down that an easel of an Artist on a sketching tour would be his personal luggage, yet in *Mytton* v. *Mid. Ry* (28 L. J. Ex. 385; 4 H. & N. 615; 7 W. R. 737) it was held that the sketches of an artist are not such luggage. At the Newbury Co. Co. it has been held that a Bicycle is not such luggage (*G. W. Ry* v. *Edwards*, 41 S. J. 24), a view afterwards adopted by Channell, J. (*Britten* v. *G. N. Ry*, 1899, 1 Q. B. 243; 68 L. J. Q. B. 75; 79 L. T. 640). But a chronometer is, it seems, luggage for a Master Mariner (*Le Couteur* v. *Lond. & S. W. Ry*, 35 L. J. Q. B. 40; L. R. 1 Q. B. 54).

A child's rocking-horse is not personal luggage (*Hudston* v. *Mid. Ry*, sup), nor is an unpacked invalid's chair (*Cusack* v. *Lond. & N. W. Ry*, 7 Times Rep. 452); and though, probably, bedding for a passenger's own use on a journey might be held "personal luggage," yet bedding intended for the passenger's household when permanently settled, would not (*Macrow* v. *G. W. Ry*, sup).

Note: As to Carrier's duty quà a Passenger's Hand-Luggage; *V. G. W. Ry* v. *Bunch*, 13 App. Ca. 31 ; 57 L. J. Q. B. 361 ; 58 L. T. 128; 36 W. R. 785; 52 J. P. 147.

PERSONAL OCCUPATION. — A Condition of Personal Occupation in a devise, implies that the devisee must himself actually occupy the property (*Re Edwards*, cited OCCUPATION). *Cp*, RESIDE, *whv*, for *Note* on s. 51, S. L. Act, 1882.

V. REAL RESIDENT HOLDER.

PERSONAL ORNAMENTS. — A question arose on this phrase as used in the Will of Dr. John Willis (physician to George III.). He possessed an ivory Tooth-pick Case with a portrait of his father in the centre, a gold Pencil-Case, a silver Lip-salve Box, a gold Eye-glass, a Pocket-book, and a Case of Instruments which he usually carried about his person. Langdale, M. R., decided that the pocket-book and case of Instruments were not "Personal Ornaments." But as to the other things he said, — "The question seems to be whether a thing that is ornamental and capable of being applied to useful purposes, is, or is not, to be considered as an Ornament. There are some things of no personal use, a common ring, for instance, which may be set round with diamonds

and be of extreme value, and yet of no use, except as an ornament; but it may be said, if you convert that into a signet-ring and seal letters with it, in consequence of that useful purpose to which it is applied, it becomes an article of utility as well as of ornament. A shirt-pin is equally useful. A pencil-case certainly is useful as containing the pencil. The inclination of my opinion is, that though those things were capable of being connected with personal *use*, yet they were considered as personal ornaments in the sense in which the testator intended them. If you come to a minute definition, they may not be so; but at the same time they may be put in such a form and appearance that the ornamental part is paramount to the useful part, and consequently they might pass as 'Ornaments'" (*Willis* v. *Curtois*, 1 Bea. 196). In the report of this case in the Law Journal (8 L. J. Ch. 106) the learned M. R. is reported to have said, — "I do not think that the tooth-pick case or the silver lip-salve box passed under the Will." As the matter was settled between the parties, no decision was given except as to the pocket-book and case of instruments.

V. TRINKETS: WEARING APPAREL. *Cp*, ORNAMENT: PICTURE.

PERSONAL PROPERTY. — *V.* PERSONAL ESTATE: PERSONALTY: REAL OR PERSONAL PROPERTY.

"Personal Property," s. 38 (2), Customs and Inl. Rev. Act, 1881, 44 & 45 V. c. 12, amended by s. 11, 52 & 53 V. c. 7, includes Land of which there has been an Equitable Conversion (*A-G.* v. *Dodd*, 1894, 2 Q. B. 150; 63 L. J. Q. B. 319; 70 L. T. 660; 42 W. R. 524); so, of a mtgee's interest in the mortgaged realty, even after a Foreclosure Order until that interest becomes absolute by the expiry of the time fixed by the Order for Redemption and the non-payment of the mtge debt (*A-G.* v. *Worrall*, 1895, 1 Q. B. 99; 64 L. J. Q. B. 144; 71 L. T. 807).

Quà Sucn Duty Act, 1853, "'Personal Property,' shall not include Leaseholds, but shall include money payable under any engagement, and money secured on heritable property in Scotland, and all other property not comprised in the preceding definition of 'Real Property,'" *i.e.* "All freehold, copyhold, customary, leasehold, and other hereditaments and heritable property whether corporeal or incorporeal, in Great Britain and Ireland (except money secured on heritable property in Scotland); and all estates in any such hereditaments" (s. 1).

Quà Finance Act, 1894, "Personal Property," in Scotland, "means MOVEABLE Property" (subs. 8, s. 23).

"Personal Property SETTLED" before the Finance Act, 1894, s. 21 (1); *V. A-G.* v. *Dodington*, cited UNDER.

PERSONAL REPRESENTATIVES. — This phrase (except when otherwise controlled by a context) is synonymous with LEGAL REPRESENTATIVES. *Va*, REPRESENTATIVES: REAL REPRESENTATIVE.

An executor (though he has not taken probate) of a surviving trustee, is such trustee's "Personal Representative" within s. 25, 13 & 14 V. c. 60 (*Re Ellis*, 24 Bea. 426); so also one of the next of kin may be, though not an executor (*Re Stroud*, W. N. (74) 180).

The General (as distinguished from Special) Exors are the "Personal Representatives" of a Mtgee or Trustee within s. 30, Conv & L. P. Act, 1881, and s. 10, Trustee Act, 1893 (*Re Parker*, 1894, 1 Ch. 707; 63 L. J. Ch. 316; 70 L. T. 165).

Quà Copyright Act, 1843, 5 & 6 V. c. 45, "Personal Representative," means and includes, "every exor admor and next of kin entitled to administration" (s. 2).

Quà Land Transfer Act, 1897, "'Personal Representative,' means, an exor or admor" (subs. 2, s. 24); and throughout Part 1 of that Act, "Personal Representatives," in cases where exors are appointed, means, *all* the exors named in the Will, whether they have proved or not, except that the phrase would not include such nominated exors as by Renunciation or otherwise have made it impossible for them to obtain Probate (*Re Pawley and London & Provincial Bank*, 1900, 1 Ch. 58; 69 L. J. Ch. 6; 81 L. T. 507; 48 W. R. 107).

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "'Personal Representatives,' *means*, an exor or admor; and *includes*, a Special Exor, and an exor named in a Will in exercise of a Power by a woman married before 1883, unless and until a general administration of her estate and effects has been granted" (s. 95).

"Personal Representatives," held, contextually, to mean DESCENDANTS of Children of testatrix (*Rainford* v. *Knowles*, 59 L. T. 359), or the phrase may mean NEXT OF KIN (*V.* LEGAL REPRESENTATIVES), or sometimes give an absolute interest to the person spoken of (*Alger* v. *Parrott*, L. R. 3 Eq. 328).

V. NEXT PERSONAL REPRESENTATIVES.

A Conveyance "as Personal Representative of a deceased person" implies a covenant against having made, or been party or privy to, incumbrances (s. 7 (F), Conv & L. P. Act, 1881).

PERSONAL SECURITY. — A power to invest on "Personal Security," seems, obviously, to include a security on PERSONAL PROPERTY; but, *semble*, it also includes the security of somebody's personal obligation (*Forbes* v. *Ross*, 2 Bro. C. C. 430: *Pickard* v. *Anderson*, L. R. 13 Eq. 608; 26 L. T. 725: *Sv, Langston* v. *Ollivant*, Cooper, G. 33), including that of the Tenant for Life, if he (like any other person) is a person to whom the loan may prudently be made (*Re Laing*, 1899, 1 Ch. 593; 68 L. J. Ch. 230; 80 L. T. 228).

PERSONAL SERVICE. — "Personal Service" of a Writ, R. 2, Ord. 9, R. S. C.; *V.* Ann. Pr.

PERSONAL TITHES. — *V.* TITHES.

PERSONALLY. — *V.* APPEAR: CONTRACT OF SERVICE. "Personally or by Proxy"; *V.* VOTE.

PERSONALTY. — "Personalty" is, generally, only a shortened form of PERSONAL ESTATE or PERSONAL PROPERTY; but quà 40 & 41 V. c. 56, it does not "include Chattels Real, unless the contrary be expressed" (s. 31).

A direction to pay a Charitable Bequest out of the "Personalty" means, the PURE Personalty (*Nickisson* v. *Cockill*, 3 D. G. J. & S. 622; 11 W. R. 353, 1082: *Roberts* v. *Jones*, W. N. (80) 96).

PERSONATE. — To "personate" means, "to pretend to be a person" (per Crompton, J., *R.* v. *Hague*, inf); but, *semble*, the def should be "to pretend to be an *existing* person," because pretending to be a dead elector is not Personation (*Whiteley* v. *Chappell*, cited ENTITLED TO VOTE). The offence of personating a voter is complete as soon as a person has, to the proper officer, falsely represented himself as the person entitled to vote, even though he stop short of voting (*R.* v. *Hague*, 33 L. J. M. C. 81; 4 B. & S. 715). *Vh*, 35 & 36 V. c. 60, s. 3; 45 & 46 V. c. 50, s. 77; 53 & 54 V. c. 55, s. 2.

As to Personation,

1. To obtain money; *V.* 24 & 25 V. c. 98, s. 34:
2. Of Stock-holders; *V.* 33 & 34 V. c. 58, s. 21; of India Stock-holders, *V.* 26 & 27 V. c. 73, s. 111; and of holders of Joint-Stock Co's Stock, *V.* 30 & 31 V. c. 131, s. 35:
3. In giving recognizance, &c; *V.* 24 & 25 V. c. 98, s. 34:
4. In fraud of the Admiralty; *V.* 28 & 29 V. c. 124, s. 8.

Vf, Arch. Cr. 736–741: Rosc. Cr. 426–428.

PERSUASION. — *V.* JUDICIAL PERSUASION.

PERTINENTS. — *V.* FISHERY.

PERUSE. — The Scale Fee to Lessee's Solr for "perusing draft and completing," Sch 1, Part 2, Solrs Rem Ord, does not apply to a number of leases in a printed common form (*Welby* v. *Still*, 1895, 1 Ch. 524; 64 L. J. Ch. 495; 72 L. T. 108).

PERVERSE. — Perverse Delay; *V.* WILFUL DELAY.

A Perverse VERDICT may, probably, be defined as, one that is not only against the weight of evidence but is altogether against the evidence, *e.g.* like those referred to by Christian, L. J., in *Moffett* v. *Gough* (cited JUROR) as too frequently given by Irish juries in agrarian cases.

Cp, "Adverse Witness," sub ADVERSE.

PESAGE. — A customary duty for the weighing of merchandize other than Wool (Hale, De Portibus Maris, ch. 6).

Cp, TRONAGE.

PETITION. — "Bankry Petition," s. 11 (2), Bankry Act, 1890, includes an Administration Order under s. 125, Bankry Act, 1883 (*Watkins* v. *Barnard*, cited DECEASED: *Sv*, *Hasluck* v. *Clark*, cited DECEASED). *V.* ORDER OF ADJUDICATION.

"Petition of Bankry," "Petition of Insolvency"; Stat. Def., 20 & 21 V. c. 60, s. 4.

"Election Petition"; *V.* ELECTION.

"Petition questioning the Election or Return"; Stat. Def., Ballot Act, 1872, s. 20.

Petition of Right; 3 Car. 1, c. 1. *Cp*, BILL OF RIGHTS.

Petitions of Right Act, 1860, 23 & 24 V. c. 34; Petitions of Right (Ir) Act, 1873, 36 & 37 V. c. 69.

V. PLAINT.

PETITIONER. — Quà the Jud. Acts, "Petitioner," includes, "every person making any application to the Court, either by Petition Motion or Summons, otherwise than as against any defendant" (Jud. Act, 1873, s. 100; Jud. Act (Ir), 1877, s. 3). *Cp*, PLAINTIFF.

Parliamentary Costs Act, 1865, 28 & 29 V. c. 27, s. 2, provides that when the Committee of either House of Parliament on a Private Bill decides that the preamble is proved, and reports that the promoters have been vexatiously subjected to expense by the opposition of any petitioner against the same, then the Committee may order such Petitioner to pay costs to the promoters; there, "Petitioner" only includes the person appearing on the petition as the petitioner, and the Committee cannot go behind the petition and award costs against a person not appearing on the petition as Petitioner on the ground that he was in fact the real Petitioner (per Bowen and Fry, L. JJ., Esher, M. R., diss., *Mallet* v. *Hanly*, 18 Q. B. D. 787; 56 L. J. Q. B. 384; 35 W. R. 601; 3 Times Rep. 497).

Other Stat. Def. — 31 & 32 V. c. 101, s. 3.

PETITIONING CREDITOR. — Quà Bankry Act, 1861, "Petitioning Creditor" means, "the Creditor who files the Petition for Adjudication" (s. 229); no def of the term is included in the interp clause of the Bankry Act, 1883, but who the Petitioning Cr may be and what are the conditions on which he may petition thereunder are prescribed by s. 6.

Quà Irish Bankrupt and Insolvent Act, 1857, 20 & 21 V. c. 60, a def similar to that in the Bankry Act, 1861, is provided (s. 4).

PETO'S ACT. — Trustee Appointment Act, 1850, 13 & 14 V. c. 28: *Vh*, 10 Encyc. 68.

PETROLEUM. — Stat. Def., 25 & 26 V. c. 66, s. 1; 31 & 32 V. c. 56, s. 3; on *whv*, *Jones* v. *Cook*, 40 L. J. M. C. 179; L. R. 6 Q. B. 505. Those Acts were repealed by Petroleum Act, 1871, 34 & 35 V. c. 105, s. 3 of which has a def similar to that in 31 & 32 V. c. 56, but is amended by s. 2, 42 & 43 V. c. 47; *vth*, *London Co. Co.* v. *Holzapfels Co*, 68 L. J. Q. B. 886; 81 L. T. 190; 47 W. R. 622; 63 J. P. 615.

"The Petroleum Acts, 1871 to 1881"; *V.* Sch 2, Short Titles Act, 1896.

PETTIFOGGING. — To write of a lawyer that he is a "Pettifogging Shyster" is Libel, and needs no innuendo (Odgers, 112, citing *Bailey* v. *Kalamazoo Co*, 4 Chaney, 251).

PETTY CHAPMAN. — *V.* HAWKER: PEDLAR.

PETTY LARCENY. — Petty Larceny was at Common Law distinguished from THEFT in that "the Goods stollen exceed not the value of twelve pence" (Cowel, *Larceny*). The distinction was abolished by s. 2, Larceny Act, 1861.

PETTY SESSIONS. — Petty Sessions of the Peace, are the Courts in which the JUSTICES OF THE PEACE, or Stipendiary Magistrates, discharge their various judicial and ministerial functions: *Vh*, STONE: Petty Sessions Act, 1849, 12 & 13 V. c. 18; s. 2, Ib. prescribes the authority for determining the places where these Sessions are to be held.

"Petty *Sessional Court*"; Stat. Def., s. 13 (12), Interp Act, 1889. — *Scot.* 46 & 47 V. c. 51, s. 68; 57 & 58 V. c. 41, s. 26; 60 & 61 V. c. 43, s. 8. — *Ir.* 57 & 58 V. c. 41, s. 27.

"Petty *Sessional Court House*"; Stat. Def., s. 13 (13), Interp Act, 1889. — *Scot.* 46 & 47 V. c. 3, s. 9.

"Petty *Sessional Division*"; Stat. Def., 8 & 9 V. c. 10, s. 10; 41 & 42 V. c. 77, s. 38. — *Scot.* 60 & 61 V. c. 43, s. 8. — *Ir.* ("Petty Sessions District") 28 & 29 V. c. 50, s. 4.

"Petty Sessions"; *Vf*, 31 & 32 V. c. 22, s. 3. — *Scot.* 60 & 61 V. c. 43, s. 8. — *Ir.* 7 & 8 V. c. 106, s. 156; 14 & 15 V. c. 92, s. 25.

"Petty Sessions Clerk," in Ireland; *V.* 28 & 29 V. c. 50, s. 4; 44 & 45 V. c. 18, s. 4.

Cp, QUARTER SESSIONS. *V.* SESSIONS.

PETTY TREASON. — *V.* TREASON.

PEW. — *V.* FEE SIMPLE, towards end.

A freehold interest in a pew may be annexed to a house by a Faculty as well as by Prescription, for the latter supposes a faculty (*Philipps* v.

Halliday, 1891, A. C. 361; 61 L. J. Q. B. 210); as to what is sufficient proof of a Prescription, *V. Stileman-Gibbard* v. *Wilkinson*, 1897, 1 Q. B. 749; 66 L. J. Q. B. 215.

PHARMACY ACTS.—*V.* Poison.

PHILANTHROPIC.—A bequest for "Philanthropic," or for "Charitable *or* Philanthropic," purposes, is not a good Charity (*Re Macduff*, 1896, 2 Ch. 451; 65 L. J. Ch. 700; 74 L. T. 706; 45 W. R. 154). In that case Stirling, J., said,—"'Philanthropic' is no doubt a word of narrower meaning than 'Benevolent.' An act may be benevolent if it indicate goodwill to a particular individual only; whereas, an act cannot be said to be philanthropic unless it indicate goodwill to mankind at large. Still, it seems to me that 'philanthropic' is wide enough to comprise purposes not technically charitable." *V.* Or: Charitable Purpose.

PHILLIMORE'S ACT.—Ecclesiastical Courts Act, 1855, 18 & 19 V. c. 41.

PHOTOGRAPH.—"We can understand the difference between an Original Painting or Design and a Copy of it; but it is hard to say what an Original Photograph is. All photographs are copies of some object,—either picture, statue, piece of architecture, or the like. I think that the photograph of a picture is an 'Original Photograph'" within s. 1, 25 & 26 V. c. 68 (per Blackburn, J. *Ex p. Walker, Re Graves*, 10 B. & S. 691; 39 L. J. Q. B. 35).

V. Author: For: Painting: Picture: Portrait.

Note. A photograph is not, generally, sufficient evidence of identification in a Matrimonial cause (*Frith* v. *Frith*, 1896, P. 74; 65 L. J. P. D. & A. 53).

PHYSIC.—"The science of Physic doth comprehend include and contain, the knowledge of Surgery as a special member and part of the same" (s. 3, 32 H. 8, c. 40),—that is a direct recognition that "Physic," as also its equivalent "Medicine," embraced (at any rate, in the time of Henry 8) "the general art of healing, whether by drugs or surgery, and was not confined to the healing by drugs" (per Smith, L. J., *Royal College of Physicians* v. *Gen. Med. Council*, cited Medical Corporation).

V. Physician: Surgeon: Medicine.

PHYSICAL.—Physical Possession; *V.* Actual.

PHYSICIAN.—"Physician," in its technical sense, denotes a person "in the highest grade of medical practitioners" (per Channell, J.,

Hunter v. *Clare*, inf). A Licentiate of the Socy of Apothecaries, — registered under the Medical Act, 1886, 49 & 50 V. c. 48, and qualified to practise in Medicine and Surgery as well as an Apothecary, — is not entitled to describe himself as a "Physician"; but to support a conviction under s. 40, Medical Act, 21 & 22 V. c. 90, such description must have been adopted "wilfully" as well as "falsely" (*Hunter* v. *Clare*, 1899, 1 Q. B. 635; 68 L. J. Q. B. 278; 80 L. T. 197; 47 W. R. 394; 63 J. P. 308). *Vf*, *Pedgrift* v. *Chevallier*, cited WILFULLY AND FALSELY.

V. "Medical Practitioner," sub MEDICAL.

Cp, SURGEON: APOTHECARY: SCHOLAR.

"Royal College of Physicians of London"; *V.* Medical Act, 1860, 23 & 24 V. c. 66, ss. 1, 6: "Royal College of Physicians of Scotland"; *V.* 21 & 22 V. c. 90, s. 49: "Royal College of Physicians of Ireland"; *V.* Ib. s. 51.

PICKAGE. — *V.* STALLAGE AND PICKAGE.

PICKETTING. — *V.* BESET.

PICKPOCKET. — To call a person a "Pickpocket" is Slander *per se* (*Baker* v. *Pierce*, 2 Raym. Ld, 959: *Stebbing* v. *Warner*, 11 Mod. 255).

PICLE. — "Picle: Pickle: Pightel: Pitle: Pigtle. — A little close; Spelm. *Pictellum*" (Elph. 616).

"'Picle,' or 'Pitle,' seems to come from the Italian (*Piccolo*, *parvus*), and it signifies with us a little small close or inclosure" (Termes de la Ley).

PICTURE. — *Semble*, a Miniature Portrait, ordinarily worn, though richly framed will not pass under a bequest of "Pictures" (per Wood, V. C., *Tempest* v. *Tempest*, 2 K. & J. 644, 645). *Vf*, FURNITURE: HOUSEHOLD: VERTU. *Cp*, PERSONAL ORNAMENTS.

Its frame is part of a "Picture," as that word is used in the Carriers Act, 1830 (*Henderson* v. *Lond. & N. W. Ry*, L. R. 5 Ex. 90; nom. *Anderson* v. *Lond. & N. W. Ry*, 39 L. J. Ex. 55. *Sv*, *Treadwin* v. *G. E. Ry*, 37 L. J. C. P. 83; L. R. 3 C. P. 308).

V. PAINTING: ENGRAVING: FIXTURES: PHOTOGRAPH: PORTRAIT.

PIER. — Collision with "Piers or similar structures," in a Marine Insrce, includes the toe of a breakwater outside a harbour (*Union Mar Insrce* v. *Borwick*, cited COLLISION). *Vf*, DAMAGE BY COLLISION.

Quà Thames Conservancy Act, 1894, "'Pier,' includes, any floating pier and any jetty" (s. 3).

PIG IRON. — Parol evidence is inadmissible to explain "Pig Iron" in a written contract, but its meaning even there may be shown by a mercantile usage (*Mackenzie* v. *Dunlop*, cited F. O. B.).

PIGEON. — To say of one that he "pigeoned," even with an innuendo that he thereby obtained, *e.g.* a Bill of Exchange, by fraud,

held, not actionable (*Pemberton* v. *Colls*, 16 L. J. Q. B. 403; 10 Q. B. 461).

Pigeon-Shooting Match; *V.* NUISANCE.

PIGOT'S ACT.—The Debtors (Ir) Act, 1840, 3 & 4 V. c. 105.

PILOT.—Quà Mer Shipping Act, 1894, "'Pilot,' means, any person not belonging to a SHIP who has the conduct thereof" (s. 742).

"Qualified Pilot"; *V.* QUALIFIED.

An "*Under Book*" Pilot is one qualified to take charge of a vessel drawing not more than 14 feet water; an "*Upper Book*" Pilot is one authorized to pilot vessels of any draught (*The Carl-XV.*, 1892, P. 325).

As to Pilots generally, *V.* Abbott, Part 2, ch. 5: 10 Encyc. 77–94: ss. 606–610, Mer Shipping Act, 1894.

PILOTAGE.—"Pilotage *Authority*," quà Mer Shipping Act, 1894, "includes, all bodies and persons authorized to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage" (s. 573), a def identical with that in s. 2, 24 & 25 V. c. 47.

Compulsory Pilotage; *V.* ss. 603–605, 622–625, Mer Shipping Act, 1894: COASTING TRADE: TRADING.

The 10*s.* 6*d.* per day to which a licensed pilot, taken, without his consent, to sea or beyond the limits of his pilotage district, in any ship, is entitled by s. 357, Mer Shipping Act, 1854, repld s. 594, Mer Shipping Act, 1894, are not "Pilotage *Dues*" for which the ship-brokers are liable under s. 363, Mer Shipping Act, 1854, repld s. 591, Mer Shipping Act, 1894 (*Morteo* v. *Julian*, 4 C. P. D. 216; 48 L. J. M. C. 126).

Vh, generally, Part 10, Mer Shipping Act, 1894; "English Channel District," sub ENGLISH: LONDON DISTRICT: TRINITY HOUSE OUTPORT DISTRICTS.

PIN MONEY.—Pin Money is an allowance made to a Wife, generally upon marriage, "to save the trouble of a constant recurrence by the wife to the husband" for money to defray her ordinary personal expenses, *e.g.* milliner's bills, repair of jewels and trinkets, pocket money (*Howard* v. *Digby*, 8 Bligh, N. S. 265); its arrears cannot be recovered for more than one year (*Aston* v. *Aston*, 1 Ves. sen. 267).

Cp, PARAPHERNALIA.

PINCH.—*V.* HARD PINCH.

PINT.—Is $\frac{1}{8}$th of a GALLON (s. 15, 41 & 42 V. c. 49).

PIOUS.—*V.* GODLY.

PIOUS USES. — As to how the pre-Reformation phrase "Pious Uses" was supplanted by the post-Reformation "Godly Uses," *V.* jdgmt of Fry, L. J., *R.* v. *Income Tax Commrs,* 58 L. J. Q. B. 202; 22 Q. B. D. 296. *Vh,* GODLY.

PIPES. — "The Pipes," s. 35, W. W. C. Act, 1847, 10 & 11 V. c. 17, are the water *Mains,* and do not include Service-pipes by which water is conducted into houses (*Milnes* v. *Huddersfield,* 56 L. J. Q. B. 1; 11 App. Ca. 511; 55 L. T. 617; 34 W. R. 761; 50 J. P. 676).

V. MAIN.

PIRACY. — "'Piracy,' is only a sea term for ROBBERY" (*R.* v. *Dawson,* 13 State Trials, 454, cited and approved *A-G. Hong Kong* v. *Kwok-a-Sing,* L. R. 5 P. C. 199, 200).

"Piracy by the law of nations is, Taking a ship on the HIGH SEAS or within the jurisdiction of the Lord High Admiral from the possession or control of those who are lawfully entitled to it, and carrying away the ship itself, or any of its goods, tackle, apparel, or furniture, under circumstances which would have amounted to Robbery if the Act had been done within the body of an English County. It is doubtful whether persons cruising in armed vessels, with intent to commit piracies, are pirates or not" (Steph. Cr. 73, 74). *Vf,* Ib. 74–76, 78: 4 Bl. Com. 72: Arch. Cr. 507–513: Rosc. Cr. 743–747: 10 Encyc. 94–96: PIRATE.

In time of Peace, any act of depredation on a Ship is *primâ facie* an act of Piracy; but in time of WAR between two countries the presumption is that depredation by one of them on the ship of the other is an act of Legitimate Warfare (*Re Tivnan,* or *Ternan,* 5 B. & S. 645; 33 L. J. M. C. 201; 10 L. T. 499; 12 W. R. 858).

"Piracy," s. 1, 6 & 7 V. c. 76, does not mean Piracy by the law of nations, but Piracy according to the municipal law of the United Kingdom or the United States, as the case may be (*Re Tivnan,* sup).

By s. 9, Slave Trade Act, 1824, 5 G. 4, c. 113, the person or persons doing the acts of slave trading therein described "shall be deemed and adjudged guilty of Piracy, Felony, and Robbery."

Quâ Copyright; *V.* INFRINGEMENT.

PIRATE. — A Pirate "signifieth a rover at sea" (Co. Litt. 391 a), who commits Robbery or Forcible Depredation or Murder, on the HIGH SEAS (*The Magellan Pirates,* 1 Spinks, 83; 18 Jur. 18: *United States* v. *Smith,* 1 Spinks, 90, *n*; 5 Wheaton, 153). An independent state may be piratical; and insurgent subjects of an independent state who commit acts of piracy, are "Pirates" within s. 2, Piracy Act, 1850, 13 & 14 V. c. 26 (*The Magellan Pirates,* sup). *V.* ATTACK.

Pirates "certainly take by force and not by stealth" (per Pollock, C. B.,

Rothschild v. *Royal Mail Steam Packet Co*, 21 L. J. Ex. 276; 7 Ex. 734).

"Pirates, Rovers, and Thieves"; *V.* 1 Maude & P. 487: Carver, 111: 10 Encyc. 96–97.

V. PIRACY: ROBBERS: THIEVES: PERIL OF THE SEA.

PISCARY. — "'Piscary,' is a Liberty of Fishing in an other mans waters" (Termes de la Ley). *V.* FISHERY.

PISTOL. — *V.* GUN.

PIT-BANKS. — *V.* NON-TEXTILE FACTORIES.

PITS AND VEINS. — As to what would pass under a devise of "Pits and Veins"; *V. Brown* v. *Whiteway*, 8 Hare, 145, and *Vth*, MacS. 2, *n* 7.

PITTANSARY. — Is the person entrusted with the collection and distribution of the funds of a Dean and Chapter (*Shoubridge* v. *Clark*, 12 C. B. 335).

PLACARD. — *V.* BILL: BANNER.

"'Placard' is a word used in the statutes of 33 H. 8, c. 6, and 2 & 3 Mary, c. 9, and it signifies a license to use unlawfull games or to shoot in a gunne" (Termes de la Ley).

PLACE. — The word "Place" is generally found in conjunction with other words which give it a colour, and is usually controlled by its context.

In the Vagrancy Act, 1824, 5 G. 4, c. 83, s. 4, it is, *inter alia*, declared an act of vagrancy to play or bet "in any street, road, highway, *or other Open and* PUBLIC PLACE," and in the amplified version of that enactment contained in s. 3, Vagrant Act Amendment Act, 1873, 36 & 37 V. c. 38, the words defining the locality of the offence are identical with those just quoted; held, that a Railway Carriage in transit on a railway is an "Open and Public Place" within those sections (*Langrish* v. *Archer*, 52 L. J. M. C. 47; 10 Q. B. D. 44; 31 W. R. 183; 47 L. T. 548; 47 J. P. 295); but the conviction must show that the carriage was in actual transit at the time of the commission of the offence (*Ex p. Freestone*, 25 L. J. M. C. 121; 1 H. & N. 93; 20 J. P. 376). It has been held by a Police Magistrate that the inside of a four-wheeled cab, which cab was standing on a public rank and used by three waiting cabmen for a gamble with dice, was an "Open and Public Place" within the section last cited (*R.* v. *Weller*, Times, 18th April 1894).

"*Open* Place to which the PUBLIC have or are permitted to *have access*," s. 3, 36 & 37 V. c. 38; *V. Turnbull* v. *Appleton*, 45 J. P. 469: *Hirst* v. *Molesbury*, L. R. 6 Q. B. 130; 40 L. J. M. C. 76.

An Inn Skittle-alley, used for the sale of manufactured goods, is an "*Open* Place" within a Local Market Act prohibition against selling outside a Market, and is not a "Shop" within an exception thereto (*Hooper* v. *Kenshole*, 46 L. J. M. C. 160; 2 Q. B. D. 127). *V.* SHOP.

In the phrase "At some *Standing or Place* appointed," s. 33, 6 & 7 V. c. 86, "Place" means, "public street or road" (*Skinner* v. *Usher*, 41 L. J. M. C. 158; L. R. 7 Q. B. 423).

Vf, on "Public Place," *Re Birch*, 15 C. B. 743: PUBLIC PLACE: PLY.

"Place of *Abode*"; *V.* inf.

By s. 4, Vagrancy Act, 1824, already cited, it is an act of vagrancy to indecently expose the person "in any street road or public highway, or in the view thereof, or in any Place of *Public Resort* with intent to insult a female," or for a suspected person or REPUTED THIEF to frequent any river, &c, "or any Place of *Public Resort.*" Within these words a private house in which a sale by Public Auction is being held, is a "Place of Public Resort" (*Sewell* v. *Taylor*, 29 L. J. M. C. 50; 7 C. B. N. S. 160; 1 L. T. 37; 23 J. P. 792); so is the Platform of a Railway Station (*Ex p. Davis*, 26 L. J M. C. 178; 21 J. P. 280); and so (probably) is the inside of an Omnibus (*R.* v. *Holmes*, 22 L. J. M. C. 122; Dears. 207); or a Public Urinal (*R.* v. *Harris*, 40 L. J. M. C. 67; L. R. 1 C. C. R. 282; 24 L. T. 74); or the roof of a house (*R.* v. *Thallman*, inf); or, indeed, any place where a number of persons may be affected by the criminal act (*R.* v. *Thallman*, 33 L. J. M. C. 58; 12 W. R. 88; L. & C. 326: *R.* v. *Saunders*, 45 L. J. M. C. 11; 1 Q. B. D. 15; *R.* v. *Wellard*, 54 L. J. M. C. 14; 14 Q. B. D. 63: Steph. Cr. 115); though, *semble*, even a PUBLIC HIGHWAY is not, necessarily, a "Place of Public Resort" (*Re Timson*, L. R. 5 Ex. 257; 39 L. J. M. C. 129; 18 W. R. 840; on *whcv*, *Clark* v. *Regina*, 14 Q. B. D. 99, where Hawkins, J., refers to the variation of language of s. 4, made by s. 15, 34 & 35 V. c. 112).

A curious contrast to *Sewell* v. *Taylor* (sup), and as showing how exactly similar words are controlled into a different meaning by the context, is furnished by s. 2, Theatres Act, 1843, 6 & 7 V. c. 68. It is thereby provided that it shall not be lawful "to have or keep any house or other Place of *Public Resort*" for the public performance of stage plays without a license; and it was held that a booth used by strolling players is not within those words (*Davys* v. *Douglas*, 28 L. J. M. C. 193; 4 H. & N. 180. *Va*, *Fredericks* v. *Howie*, 31 L. J. M. C. 249; 1 H. & C. 381). It will be observed that in the section just mentioned the phrase "place of public resort" occurs in conjunction with the word "house," and that both are controlled by the verbs "have *or keep.*" Accordingly the kind of "Place" intended is one of a permanent character. But in the very same Act (s. 11) it is provided that no person shall, for hire, act "in any Place, not being a patent theatre or duly licensed as a the-

atre"; and the Court held (apparently rejecting the force of the word "place" being found in conjunction with "patent theatre") that a booth used by strolling players is within s. 11 (*Fredericks* v. *Payne*, 32 L. J. M. C. 14; 1 H. & C. 584: *Tarling* v. *Fredericks*, 21 W. R. 785; 28 L. T. 814; 38 J. P. 197). The curious consequence is reached that whilst it is not unlawful to have or keep an unlicensed moveable booth in which, for hire, stage plays may be acted, yet it is unlawful for any one so to act therein. *Cp*, *Powell* v. *Kempton Park Co*, inf.

"Place of *Public Resort*," quà and by s. 36, P. H. Acts Amendment Act, 1890, 53 & 54 V. c. 59, "means, a building used, or constructed or adapted to be used, either ordinarily or occasionally, as a church, chapel, or other Place of PUBLIC WORSHIP (not being merely a dwelling-house so used), or as a theatre, public hall, public concert-room, public ball-room, public lecture-room, or public exhibition room, or as a public place of assembly for persons admitted thereto by tickets or by payment, or used, or constructed or adapted to be used, either ordinarily or occasionally, for any other PUBLIC PURPOSE; but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes."

A place to which the Public resort in fact, even though not of right, is a "place of *Public Resort*" within an authorized municipal Bye Law for the prevention of betting (*Kitson* v. *Ashe*, 1899, 1 Q. B. 425; 68 L. J. Q. B. 286; 80 L. T. 323; 63 J. P. 325).

"House, Shop, Room, or OTHER Place of *Public Resort*," s. 35, 10 & 11 V. c. 89, includes a licensed Alehouse (*Cole* v. *Coulton*, 29 L. J. M. C. 125).

V. RESORT.

A "Place of *Dramatic Entertainment*" within s. 2, Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15, is not confined to those places, — *e.g.* a regular theatre, — that are ordinarily or habitually used for representing the drama for profit; but means, a place adapted, for the time being, for the representation of a dramatic piece to an audience of a public, or quasi public, character, as distinguished from one that is merely domestic, internal, and private; and though a money charge for admission would, probably, conclusively show the audience to be a public one, yet such a charge is not an essential element in this definition (*Russell* v. *Smith*, 17 L. J. Q. B. 229; 12 Q. B. 217: *Duck* v. *Bates*, 53 L. J. Q. B. 97, 338; 13 Q. B. D. 843). It was accordingly held in the latter case that a room at Guy's Hospital fitted up for the play of "Our Boys," with theatrical scenery at the expense of the Governors, the actors being all unpaid, and the entertainment being for the amusement of the medical staff nurses and patients of the Hospital, and of the friends of the Governors and actors, all of whom were admitted by ticket obtained privately without payment, was not, — though it was very near the line, — a "Place of Dramatic Entertainment" within the lastly cited statute; for

though the place had been adapted for the drama, the audience was merely domestic.

In *Duck* v. *Bates* (sup), Brett, M. R., said that Patteson, J., must have been putting a jocular illustration in saying, — "When *Punch* is performed in the street, the street becomes a Place of Scenic Entertainment" (*Russell* v. *Smith*, 17 L. J. Q. B. 227).

V. DRAMATIC PIECE: REPRESENTING OR PERFORMING.

"House, Office, Room, or OTHER Place," prohibited from being kept or used for betting (*V.* BET), by Betting Act, 1853, 16 & 17 V. c. 119, ss. 1, 2, and 3: — "The statute is directed against betting *places*, — not against betting *persons*" (per Channell, J., *Brown* v. *Patch*, inf); "the legislature has not prohibited betting at all; but prohibited keeping a house for betting" (per Halsbury, C., *Powell* v. *Kempton Park Co*, 1899, A. C. 162; 68 L. J. Q. B. 399, whose jdgmt contains a luminous analysis of the language of the prohibition); "it is not betting, whatever be its kind, which, independent of locality, is struck at; but it is the providing of a locality for particular kinds of betting which is the mischief to be dealt with" (per Esher, M. R., *Ib.*, 1897, 2 Q. B. 256; 66 L. J. Q. B. 609). In *Powell* v. *Kempton Park Co*, it was held by the H. L., affg C. A., that ambulatory betting in Tattersall's Ring on Kempton Park Racecourse is *not* within this prohibition, because it is not in a "Place" "Kept or used" for betting (1899, A. C: 143; 68 L. J. Q. B. 392; 80 L. T. 538; 47 W. R. 585; 63 J. P. 260). The facts of that case were stated by Esher, M. R., as follows; "The Co are the owners of the Kempton Park Racecourse and of certain stands and enclosures on the racecourse. There are several stands, and each stand has an enclosure in front of it open to the stand but railed off from the rest of the racecourse by iron railings. One of these enclosures is known as the Reserved Enclosure. Admission is given to that enclosure and its stand to any one who applies and makes a payment of £1 for and in respect of such admission. Every person so admitted is entitled to walk and stand in the enclosure and in every part of it, and to sit in the stand. No part of the enclosure or stand can be, or is, reserved by any one for his own use when not actually there. Many persons pay for admission to such enclosure and stand upon such terms, and amongst them are many professional betting men called BOOKMAKERS, who pay the same amount as others for their admission and who are admitted on the same terms as the others. The Bookmakers, when in the enclosure, shout out the odds they are prepared to bet against each and every horse in a race, and, for a certain time, they bet such odds with every one who desires to bet and who is ready, if required, to deposit with the Bookmaker the amount which he bets against the Bookmaker, so that the latter, in case the horse against which he bets does not win, keeps the money he took on deposit; but, if the horse does win, he undertakes to pay the odds he bet against the horse. The Bookmaker goes to the races and into the

enclosure for the purpose of betting, in the way described, with every one who will bet with him. The Bookmaker bets as a matter of business. The businesses of the various bookmakers are, as against each other, rival and competing; and the business of each Bookmaker is independent of that of every other Bookmaker. No one of them assumes to exercise, or does exercise, any manner of exclusive user of any part of the enclosure, but walks or stands in the enclosure and every part of it in the same manner and on the same terms as every other person in the enclosure." To use the expression of Ld James of Hereford in the same case, there was there "no definite localization of the business of betting"; and therefore, no offence against the statute. As a consequence, *Eastwood* v. *Miller* (43 L. J. M. C. 139; L. R. 9 Q. B. 440), *Haigh* v. *Sheffield* (44 L. J. M. C. 17; L. R. 10 Q. B. 102), and *Hawke* v. *Dunn* (1897, 1 Q. B. 579; 66 L. J. Q. B. 364) were over-ruled; whilst *Snow* v. *Hill* (54 L. J. M. C. 95; 14 Q. B. D. 588; 33 W. R. 476; 49 J. P. 149), and *Henretty* v. *Hart* (13 Sess. Ca. 10), were established.

The question, then, apart from quite plain cases, will, generally, be, — Has there been such a localization of his business by the Betting Man as will convert its locality into a "Place" within the enactment? That question must be answered with due regard to the legal interpretation laid down by *Powell* v. *Kempton Park Co*, but it will, in very great measure, be one of fact in each case. "Speaking in general terms, whilst the 'Place' mentioned in the Act must be, to some extent, *ejusdem generis* with 'House, Room, or Office,' I do not think that it need possess the same characteristics; *e.g.* it need not be covered in or roofed. It may be, to some extent, an open space. There must be a defined area so marked out that it can be found and recognized as the 'Place' where the business is carried on and wherein (or whereat?) the bettor can be found. Thus, if a person betted on Salisbury Plain, there would be no 'Place' within the Act. The whole of Epsom Downs, or any other racecourse, where betting takes place, would not constitute a 'Place'; but directly a definite localization of the business of betting is effected, be it under a Tent or even a moveable Umbrella, it may be well held that a 'Place' exists, for the purposes of a conviction under the Act" (per Ld James, *Powell* v. *Kempton Park Co*, 1899, A. C. 194; 68 L. J. Q. B. 415).

Thus, a wooden Desk 5 feet high on which a bookmaker's name with the odds against the horses are exhibited and at which he transacts his business, is a "Place" within the enactment (*Shaw* v. *Morley*, 37 L. J. M. C. 105; L. R. 3 Ex. 137; 19 L. T. 15; 16 W. R. 763); so, of a space between the stays of an advertisement Hoarding used by a bookmaker for three consecutive race days (*Liddell* v. *Lofthouse*, 1896, 1 Q. B. 295; 65 L. J. M. C. 64; 74 L. T. 139; 44 W. R. 349; 60 J. P. 264); so, of a particular spot where a bookmaker takes up his standing with his back against the wall there (*M'Inany* v. *Hildreth*, 1897, 1 Q. B. 600; 66

L. J. Q. B. 376; 76 L. T. 463; 61 J. P. 325); or an Archway in a street (*R.* v. *Humphreys*, 1898, 1 Q. B. 875; 67 L J. Q. B. 534; 78 L. T. 360; 46 W. R. 543; 62 J. P. 409); or a large Umbrella temporarily fixed in the ground by means of its spiked telescopic handle so as to form a tent (*Bows* v. *Fenwick*, 43 L. J. M. C. 107; L. R. 9 C. P. 339; 22 W. R. 804; 30 L. T. 524); or a Box or Stool with a placard on it indicating, not merely that its owner is a bookmaker but, that he is using it for carrying on his business and at which bettors may find him (*Brown* v. *Patch*, 1899, 1 Q. B. 892; 68 L. J. Q. B. 588; 80 L. T. 716; 47 W. R. 623; 63 J. P. 421); but in *Galloway* v. *Maries* (51 L. J. M. C. 53; 8 Q. B. D. 275; 30 W. R. 151; 45 L. T. 763; 46 J. P. 326), "the Court, I think, went too far" (per Smith, L. J., *Powell* v. *Kempton Park Co*, 1897, 2 Q. B. 278; 66 L. J. Q. B. 620; *Va*, per Esher, M. R., *Ib.*, 1897, 2 Q. B. 259; 66 L. J. Q. B. 610: but Lindley, L. J., said he was not prepared to say so, *Ib.*, 1897, 2 Q. B. 262; 66 L. J. Q. B. 612): *Galloway* v. *Maries* was a case of a Bookmaker standing on a stool to bet, but it is no longer binding (*Brown* v. *Patch*, sup).

Vf, "Open, keep, or use," sub USE: BUSINESS, p. 237.

A "Place" within which the offence of bull-baiting, cock-fighting, &c, can be committed within s. 3, *Cruelty to Animals Act*, 1849, 12 & 13 V. c. 92, must be one kept or used for the purpose (*Clarke* v. *Hague*, 29 L. J. M. C. 105; 2 E. & E. 281: *Morley* v. *Greenhalgh*, 32 L. J. M. C. 93; 3 B. & S. 374: *Coyne* v. *Brady*, 12 Ir. Com. Law Rep. 577; 9 L. T. 30). *V.* AFORESAID. As to effect of s. 2, *V. Bridge* v. *Parsons*, 32 L. J. M. C. 95; 11 W. R. 424; 27 J. P. 231.

"House or OTHER Place"; *V.* BESET.

A "Place," s. 15, Beerhouse Act, 1840, 3 & 4 V. c. 61, must be *ejusdem generis* with the preceding words, "City," &c (*Scott* v. *Washington*, 13 W. R. 939).

"OTHER Place," s. 6 (2), Bills of Sale Act, 1882, is to be read *ejusdem generis* with the preceding words (*London & Eastern Counties Loan Co* v. *Creasy*, cited PLANT). *Va*, PUBLIC DANCING; and the cases already cited on the Betting Act, 1853.

Treasurer of the "County, Riding, Division, or Place," s. 9, Vagrancy Act, 1824, means a "Place" having a Court of Quarter Sessions (*R.* v. *Yorkshire Jus.*, 1900, 1 Q. B. 291; 69 L. J. Q. B. 13). *Cp*, BOROUGH OR PLACE.

A Warehouse is a "Place" within s. 10, 17 G. 3, c. 56 (*R.* v. *Edmundson*, 2 E. & E. 77; 28 L. J. M. C. 213). *V.* TENEMENT.

In Ireland it has been held that a *cart moving along the street* was within the phrase "ANY Place" as used in s. 116, P. H. Act, 1875, so as to justify the seizure of diseased meat therein (*Daly* v. *Webb*, Ir. Rep. 4 C. L. 309). This seems a strong order. *Vh*, *Young* v. *Gattridge*, L. R. 4 Q. B. 166; 38 L. J. M. C. 67. *Vf*, on "Any Place," *Ex p. Kippins*, cited PLY.

"Place"; Stat. Def., 14 & 15 V. c. 28, s. 2. — *Scot.* 20 & 21 V. c. 73, s. 14; 28 & 29 V. c. 102, s. 1. — *Ir.* 23 & 24 V. c. 26, s. 3.

"Place of *Abode*" usually means the Place of Residence; "in Johnson's Dictionary 'Abode' is defined to be 'Habitation, Dwelling, Place of Residence,' and 'Residence' is defined to be 'Place of Abode, Dwelling.' A man's residence, where he lives with his family and sleeps at night, is always his Place of Abode in the full sense of that expression" (per Campbell, C. J., *R.* v. *Hammond*, 21 L. J. Q. B. 153; 17 Q. B. 772). *Sv*, INMATE.

"Place of *Abode*" occurs frequently in the Forms provided by the Acts for the *Registration of Voters* (6 V. c. 18; 41 & 42 V. c. 26). What is a person's Place of Abode within the meaning of these Acts is "rather a question of fact than of law" (per Erle, C. J., *Courtis* v. *Blight*, 31 L. J. C. P. 48; 5 L. T. 450). That case related to an Objector's Place of abode: and *Vth*, *Sheldon* v. *Flatcher*, 17 L. J. C. P. 34; 5 C. B. 17: *Vf*, *Melbourne* v. *Greenfield*, 29 L. J. C. P. 81; 7 C. B. N. S. 1. The place of abode of a person entitled to vote, need only be described in an Overseer's List where the person has one, and it may be given as "travelling abroad" where the facts warrant that statement (*Walker* v. *Payne*, 15 L. J. C. P. 38; 2 C. B. 12; 1 Lutw. 324). In a *Notice of Action*, or other such like document, a Solicitor's "Place of Abode" would be sufficiently given by his business address (*Roberts* v. *Williams*, 5 L. J. M. C. 23; 2 Cr. M. & R. 561; 5 Tyr. 583; 4 Dowl. 486), but such a requirement would not be complied with by giving the Town in which the Solr practices, *e.g.* "given under my hand at Durham" (*Taylor* v. *Fenwick*, cited 7 T. R. 635, and referred to by Williams, J., *Martins* v. *Upcher*, 11 L. J. Q. B. 293).

V. RESIDE: USUAL PLACE OF ABODE: LAST: ADDRESS.

"Place of *Burial*"; *V.* BURIAL.

"Place of *Business*," R. 1, Ord. 48 *a*, R. S. C.; *V. Grant* v. *Anderson*, 1892, 1 Q. B. 108; 61 L. J. Q. B. 107; 66 L. T. 79.

"*Competitive* Place"; *V.* COMPETITIVE.

"*Contributory* Place"; *V.* CONTRIBUTORY.

V. CONVENIENT PLACE.

"Place of *Delivery*"; *V.* DELIVERY.

"Place of *Destination*"; *V.* DESTINATION.

"Place of *Discharge*"; *V.* PORT.

"Place of *Dramatic Entertainment*"; *V.* sup p. 1485.

"Place of *Entertainment*"; *V.* ENTERTAINMENT.

"Place of *Export*"; *V.* EXPORT.

"House or Place"; *V.* sup: HOUSE, towards end.

"Place having a *Known and Defined* BOUNDARY," s. 12, 21 & 22 V. c. 98, included, an Ecclesiastical District, under 6 & 7 V. c. 37, consisting of parts of two Townships each of which Townships separately maintained its own poor and its own highways (*R.* v. *Northowram*, 35

L. J. Q. B. 90; L. R. 1 Q. B. 110; 7 B. & S. 110). *Vf, R.* v. *Hardy*, 9 B. & S. 926; L. R. 4 Q. B. 117; 38 L. J. Q. B. 9: *R.* v. *Loc Gov Bd*, L. R. 8 Q. B. 227; 42 L. J. Q. B. 131.

"*Loading* Places," *e.g.* in par. 19, River Plate Charter, is not the same as Loading PORTS; it means, Loading Spots (per Russell, C. J., *Branckelow S. S. Co* v. *Lamport*, 66 L. J. Q. B. 382).

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

"*Open* Place," "Open and Public Place"; *V.* sup: "Opened, kept, or used"; *V.* KEEP: OPEN: USE.

"Place for transacting *Parochial Business*"; *V.* PAROCHIAL BUSINESS.

"Passage or Place"; *V.* PASSAGE.

Place of *Pleasure*; *V.* PLEASURE.

"*Polling* Place"; *V.* POLLING.

"*Populous* Place"; *V.* POPULOUS.

"Place of *Profit*"; a Trustee of a Trust Deed for securing the Debentures of a Co, who is appointed and paid, but not removeable by, the Co, holds a "Place of Profit UNDER the Co" (*Astley* v. *New Tivoli*, 1899, 1 Ch. 151; 68 L. J. Ch. 90; 79 L. T. 541; 47 W. R. 326). *V.* OFFICE.

"*Public* Place"; *V.* sup: PUBLIC PLACE.

"Place dedicated to Public Use"; *V.* PUBLIC USE.

"Place of *Religious Worship*"; *V.* s. 36, 53 & 54 V. c. 59, set out sup p. 1485: ENLARGE: PUBLIC RELIGIOUS WORSHIP: PUBLIC BUILDING: PAROCHIAL CHURCH: USUAL PLACE OF RELIGIOUS WORSHIP.

"Place of *Residence*"; Stat. Def., 44 & 45 V. c. 60, s. 1; 48 & 49 V. c. 54, s. 15: RESIDE.

"Place of *Safety*," quà Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41, "includes, any place certified by the Local Authority under this Act for the purposes of this Act; and also includes, any Workhouse or Police Station, or any Hospital Surgery, or place of the like kind" (s. 25): quà Infant Life Protection Act, 1897, 60 & 61 V. c. 57, "Place of Safety" of an Infant, means, "any suitable place the occupier of which is willing temporarily to receive such infant" (s. 15).

Place of *Sale* of Goods, &c; *V.* SALE.

"Place for *Slaughtering* horses or other cattle," s. 9, 12 & 13 V. c. 92, includes, private, as well as licensed, slaughter-houses (*Colam* v. *Hall*, L. R. 6 Q. B. 206; 40 L. J. M. C. 100). *V.* SLAUGHTER-HOUSE.

"Same Town or Place"; *V.* TOWN.

"Place for *Water*," includes, a Well (*Hipkins* v. *Birmingham Gas Co*, 5 H. & N. 74).

V. CITY: DIVISION: MARKET PLACE: PARISH: PLY: PORT OR PLACE: STREET OR PLACE.

To PLACE.—A Device for catching fish will be "placed," within the meaning of s. 15, Salmon Fishery Act, 1873, 36 & 37 V. c. 71, by merely raising the shuttles of a weir constructed in 1838, and so using

a grating, that had always been part of the weir, as a trap to catch fish, that being the intended use of such grating from the time of the construction of the weir (*Briggs* v. *Swanwick*, 52 L. J. M. C. 63; 10 Q. B. D. 510).

An agreement "to place" *Shares* in a Company, is not equivalent to an agreement to take them; and the contractor is thereby liable, not as a contributory, but only in damages for breach of contract (*Gorrissen's Case*, 42 L. J. Ch. 864; 8 Ch. 507). *V.* s. 8, Comp Act, 1900: UNDERWRITE.

PLACE OUT. — "Place out" a Parish Apprentice, recital to s. 9, 56 G. 3, c. 139; *V.* PUT AWAY, with which phrase "place out" seems synonymous.

"An Assignment imports a transfer of the services of the Apprentice for the residue of his term. But an Apprentice may be said to be 'placed out' when the master consents to the apprentice serving another individual, so as to become subject to the control of that other" (per Bayley, J., *R.* v. *Shipton*, 8 B. & C. 96).

PLAIN SPIRITS. — Quà Spirits Act, 1880, 43 & 44 V. c. 24, "'Plain Spirits' means, any BRITISH SPIRITS (except LOW WINES and FEINTS) which have not had any flavour communicated thereto, or ingredient or material mixed therewith" (s. 3).

PLAINT. — A "Plaint" is the process by which proceedings in the County Court are, generally, commenced (R. 1 *a*, Ord. 5, Co. Co. Rules, 1889); there are a few exceptions otherwise provided for which commence by Petition.

The Scotch equivalent, *semble*, is, "Petition, or Complaint, presented in a Sheriff's Court" (39 & 40 V. c. 75, s. 21); the Irish, "Civil Bill Process" (Ib. s. 22).

Cp, WRIT. *V.* PROCESS.

PLAINTIFF. — Quà the Jud. Acts this word includes "every person asking any relief (otherwise than by way of Counter-Claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise" (s. 100, Jud. Act, 1873; s. 3, Jud. Act (Ir), 1877, which adds "cause" before the word "action"). Therefore, as used in Ord. 31, R. S. C., it includes Petitioner, and a Petitioner for the revocation of a Patent is not an exception (*Re Haddan*, 54 L. J. Ch. 126; 51 L. T. 190; 33 W. R. 96). *V.* INSTITUTED. *Cp*, PETITIONER.

A deft Caveator in a Probate action is not a "plaintiff" within R. 4, Ord. 29, R. S. C. (Ir), 1891 (*Re Twomey*, 1900, 2 I. R. 560).

Semble, a Limited Co, pleading a Counter-Claim, is not a "plaintiff or pursuer" who can be ordered to give security for costs under s. 69,

Comp Act, 1862 (*Accidental & Mar. Insrce* v. *Mercati*, 37 L. J. Ch. 56; L. R. 3 Eq. 200: *Sv, Washoe Co* v. *Ferguson*, L. R. 2 Eq. 371: *Moscow Gas Co* v. *International Financial Socy*, 41 L. J. Ch. 350; 7 Ch. 225). *Vf*, REASON.

In Scotland, the equivalent of "Plaintiff" is "Pursuer"; *V.* 38 & 39 V. c. 90, s. 14; 41 & 42 V. c. 49, s. 74, c. 74, s. 74; 45 & 46 V. c. 49, s. 52; 53 & 54 V. c. 21, s. 39.

Other Stat. Def. — Inferior Courts Jdgmts Extension Act, 1882, 45 & 46 V. c. 31, s. 2; Sale of Goods Act, 1893, s. 62. — *Ir.* Chancery (Ir) Act, 1867, 30 & 31 V. c. 44, s. 2; Civil Bill Courts Procedure Amendment Act (Ir), 1864, 27 & 28 V. c. 99, s. 3; 11 & 12 V. c. 28, s. 18; 20 & 21 V. c. 60, s. 4.

"Plaintiff" is used in 12 G. 1, c. 29, "to signify a party who intends to become a plaintiff" (per Abinger, C. B., *Schletter* v. *Cohen*, 7 M. & W. 389; 10 L. J. Ex. 99); *whc* shows that such meaning may be attributed to the word in other connections.

PLAN. — The "Plan," to be submitted to a Local Authority, of Works to be done, does not mean something merely showing "method" or "manner," but means a "map" or its equivalent, which will enable the Authority to judge whether what is proposed shall be allowed to proceed; and therefore under s. 31, 10 V. c. 17, the position and depth of proposed pipes ought to form part of the "Plan" (*Edgeware* v. *Colne Valley Water Co*, 46 L. J. Ch. 889; W. N. (77) 154: *East Molesey* v. *Lambeth W. W. Co*, 1892, 3 Ch. 289; 62 L. J. Ch 82; 67 L. T. 493). But under s. 157, P. H. Act, 1875, a Local Authority is not entitled to reject Building Plans solely because they do not disclose a complete system of Sewage (*R.* v. *Tynemouth*, 1896, 2 Q. B. 451; 65 L. J. Q. B. 545). *Vf*, as to Plans under P. H. Acts, *Masters* v. *Pontypool*, 47 L. J. Ch. 797; 9 Ch. D. 677: *James* v. *Masters*, 1893, 1 Q. B. 355: *Fulford* v. *Blatchford*, 80 L. T. 627.

"Plans showing the extent of the previously existing Domestic Building in its several parts," s. 43 (i) London Bg Act, 1894, means, a complete set of Plans showing what the old building was; not a mere ground plan (*Paynter* v. *Watson*, cited DEVIATE).

"Plan" as used in a statute; *Vf, Edinburgh Tramways Co* v. *Black*, L. R. 2 Sc. App. 336.

Stat. Def. — Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, s. 75; Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, Sch, s. 1; Land Drainage Act, 1847, 10 & 11 V. c. 38, s. 20; Land Drainage (Scot) Act, 1847, 10 & 11 V. c. 113, s. 17; Metalliferous Mines Regn Act, 1872, 35 & 36 V. c. 77, s. 41.

As to the effect of a Plan quà the PARCELS in a Conveyance; *V. Brown* v. *Wales*, 42 L. J. Ch. 45; L. R. 15 Eq. 142; 27 L. T. 410; 21 W. R. 157: *Re Lindsay and Forder*, 72 L. T. 832: *Re Cadogan*, 11 Times

Rep. 477: *Laybourn* v. *Gridley*, 1892, 2 Ch. 53; 61 L. J. Ch. 352: *May* v. *Platt*, cited ESTATE AND INTEREST: Where there is a Variance, a plan will, generally, control the written description (*Nene Valley Commrs* v. *Dunkley*, 4 Ch. D. 1).

DEPOSITED Plans of a Ry Co, are not binding on the Co except so far as they are incorporated in the Special Act (*North British Ry* v. *Tod*, 12 Cl. & F. 722: *R.* v. *Caledonian Ry*, 16 Q. B. 19; 20 L. J. Q. B. 147). Errors therein may be corrected (s. 7, Ry C. C. Act, 1845).

V. CHART.

PLANT. — A bequest of "Plant and Goodwill," passes the house of business held at rack-rent, also trade fixtures, benches, presses, and implements of trade; but not stock-in-trade, or household furniture and effects of the ordinary kind (*Blake* v. *Shaw*, 8 W. R. 410; Johns. 732). *V.* GOODWILL.

The Employers' Liability Act, 1880, contains no def of "Plant," as therein used, "but, in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business, — not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed or moveable, alive or dead, which he keeps for permanent employment in his business" (per Lindley, L. J., *Yarmouth* v. *France*, 57 L. J. Q. B. 17; 19 Q. B. D. 647; 36 W. R. 281). In that case Esher, M. R., and Lindley, L. J., held that, a Wharfinger's horse was part of his "Plant"; so, of a Coal Merchant's ship (*Carter* v. *Clarke*, 78 L. T. 76). The carcase of a house is not part of a Builder's "Plant" (*Conway* v. *Clemence*, 80 Law Times, 44, 58; 2 Times Rep. 80), but scaffolding and ladders are (*Cripps* v. *Judge*, cited DEFECT). *Vf*, *Merrill* v. *Wilson*, cited DOCK.

But (whilst recognizing *Yarmouth* v. *France*) a Cab Proprietor's horses were held not part of his "Plant" within s. 6 (2), Bills of Sale Act, 1882, because there the context, — *e.g.* "TRADE MACHINERY" and "FIXTURES," — indicates that "Plant," as there used, refers to something connected with the premises (*London & Eastern Counties Loan Co* v. *Creasy*, 1897, 1 Q. B. 768; 66 L. J. Q. B. 503; 76 L. T. 612; 45 W. R. 497).

Quà, and by, s. 104, Factory and Workshop Act, 1901, "'Plant,' includes any gangway or ladder used by any person employed to load or unload or coal a SHIP."

"'Plant' and 'MACHINERY' are two quite different things" (per Kekewich, J., *Re Brooke*, 64 L. J. Ch. 27). On a contract for the sale of a Freehold Brewery which provided that its "Fixed Plant and Machinery" should be paid for by valuation, Kekewich, J., held that, "speaking generally, 'Machinery' includes everything which by its action produces or assists in production; and that 'Plant' might be regarded as that without which production could not go on . . . and included such things as, brewer's pipes, vats, and the like"; and that

therefore a Chimney Shaft, which was built just outside the boiler-house but formed no part of it, a double-boarded partition, forming a malt and grain store, and Staging, erected by placing joists on the stout bearers built into the walls, were not to be included in the valuation (*Re Nutley and Finn*, W. N. (94) 64).

"Plant, Root, Fruit, or Vegetable Production"; *V. R.* v. *Hodges*, cited PRODUCT.

To impute that a state of things has been created as a "Plant" (probably, without an innuendo) is actionable defamation, for it connotes an accusation of an artful and wicked plan and contrivance (*R.* v. *Holt*, 8 J. P. 212).

PLANTATION. — Is a District, Settlement, or COLONY (Jacob); *Vf*, 1 Bl. Com. 106, 107.

The devise of a "Plantation" will, *semble*, pass also the stock, implements, utensils, &c, upon it (*Lushington* v. *Sewell*, 1 Sim. 435, cited Wms. Exs. 1066).

Tho "natural and unimproved state" of land "used only for a Plantation or Wood," s. 4 (*a*), Rating Act, 1874, includes, the enhanced value of the land owing to game being preserved on it (*Eyton* v. *Mold*, 50 L. J. M. C. 39; 6 Q. B. D. 13). *V.* SALEABLE UNDERWOOD.

V. WOOD.

PLASTERING. — Gauging plastering, *i.e.* by mixing Plaster of Paris with the plaster to make it dry more quickly, is "wholly different from ordinary plastering" (per Martin, B., *Wallis* v. *Robinson*, 3 F. & F. 307).

"Where the specifications of a building contract contained a general heading or title called 'Plastering,' under which, in sub-titles called 'Deafening' 'Lathing' and 'Plastering,' the whole title is described, and a contractor undertook 'to do the plastering and stucco work' according to the specifications, — there is no ambiguity raised by the double use of the word 'plastering,' and it will be construed to mean, all included under the general title, and not that alone described under the sub-title 'plastering,' and this although the specifications require wire-lathing, and not the ordinary wooden slip: *Mellen* v. *Ford*, 28 Fed. Rep. 639; U. S. Dig. 125" (1 Hudson, 144).

PLATE. — "Plate," will not pass plated articles where the testator is possessed of solid silver ones (*Holden*, or *Holder* v. *Ramsbottom*, 4 Giff. 205; 11 W. R. 302; 7 L. T. 735).

In *Field* v. *Peckett* (30 L. J. Ch. 813; 29 Bea. 573), it was held that "Plate and China" would carry snuff-boxes of gold, silver, and china; and, under particular circumstances, a gold watch passed as "Plate" (*Spencer* v. *Spencer*, cited in *Tempest* v. *Tempest*, 2 K. & J. 644).

Vf, *Domvile* v. *Taylor*, 32 Bea. 604.

Bequest of Plate and Paintings as Heir-looms; *V. Re Johnston, Cockrell* v. *Essex*, cited SUCCESSORS.

Gold Plate, s. 1, 30 & 31 V. c. 90; *V.* GOLD.

PLAY. — "Haunting, resorting, and playing"; *V. Murphy* v. *Arrow*, cited FOUND.

V. DRAMATIC: THEATRE: STAGE PLAY.

PLAYING CARDS. — *V.* CARDS.

PLEADING. — Quà the Jud. Acts, "'Pleading' shall include any Petition or Summons, and also shall include the Statements in writing of the Claim, or Demand of any Plaintiff, and of the Defence of any Defendant thereto, and of the Reply of the Plaintiff to any Counter-claim of a Defendant" (s. 100, Jud. Act, 1873; s. 3, Jud. Act (Ir), 1877). But this does not repeal s. 9, 23 & 24 V. c. 38; and therefore though an ordinary "Pleading" does not now absolutely require signature of Counsel (R. 4, Ord. 19, R. S. C.), yet a Petition for the advice of the Court must be so signed (*Re Boulton*, 30 W. R. 596).

The endorsement on a Writ was not a "Pleading" within R. 11, Ord. 40, R. S. C. 1875 (*Wallis* v. *Jackson*, 52 L. J. Ch. 384; 23 Ch. D. 204); nor is a specially endorsed Writ a "Pleading" under R. 11, Ord. 64, R. S. C. 1883 (*Murray* v. *Stephenson*, 19 Q. B. D. 60; 56 L. J. Q. B. 647; 56 L. T. 720; 35 W. R. 666).

Semble, that Particulars are a "Pleading," within R. 1, Ord. 25, R. S. C. (*Davey* v. *Bentinck*, 1893, 1 Q. B. 185; 62 L. J. Q. B. 114; 67 L. T. 742; 41 W. R. 181).

"Mode of Pleading"; *V.* PRACTICE. *Vh*, 10 Encyc. 105–131.

V. POINT OF SUBSTANCE.

PLEASURE. — A devise to A. *to give and sell at his pleasure*, carries the fee (Sug. Pow. 104: *Vf*, DISCRETION).

A Head Master of a School to which the Public Schools Act, 1868, 31 & 32 V. c. 118, applies, holding his office "*at the pleasure*" of the Governing Body (s. 13), is dismissible without cause assigned; and such a dismissal, if *bonâ fide*, cannot be impeached (*Hayman* v. *Rugby School*, 43 L. J. Ch. 834; L. R. 18 Eq. 28); *semble*, if cause assigned, it may be enquired into. *Vf*, AT DISCRETION. "At his will" or "pleasure"; *V.* CONVENIENCE.

"Pleasure BOAT," quà Thames Conservancy Act, 1894, "includes, any ship, launch, HOUSE BOAT, boat, randan, wherry, skiff, dingy, shallop, punt, canoe, or yacht, however navigated, not being used solely as a tug or for the carriage of goods, and not being certified by the Board of Trade as a PASSENGER STEAMER to carry 200 or more passengers" (s. 3).

License of Pleasure; *V.* PROFIT À PRENDRE.

That which is a distinct PLACE of pleasure, is, *semble*, not part of a

HOUSE within s. 92, Lands C. C. Act, 1845 (*Fergusson* v. *L. B. & S. Ry*, 33 L. J. Ch. 29; 33 Bea. 103; 11 W. R. 1088: *Pulling* v. *L. C. & D. Ry*, 33 L. J. Ch. 505; 33 Bea. 644; 12 W. R. 969: *whcv* as to what are Pleasure GROUNDS); *semble*, otherwise quà rating for water supply (*Bristol W. W. Co* v. *Uren*, cited PREMISES).

A "Pleasure *Ground*," is a ground for recreation and enjoyment, including accessories conducive to that object; therefore, a Conservatory, a Museum, and a Library, "into which people may turn if the weather becomes unfavourable," come within "Public Walks and Pleasure Grounds," s. 74, P. H. Act, 1848, which a Local Authority may be authorized to provide; *secus*, of town buildings generally (*A-G.* v. *Sunderland*, 24 W. R. 991; 2 Ch. D. 634; 34 L. T. 921).

PLEDGE. — "The Contract of Pledge is a BAILMENT, or Delivery, of Goods and Chattels by one man to another to be held as a security for the payment of a debt or the performance of some engagement, and upon the express or implied understanding that the thing deposited is to be restored to the owner, as soon as the debt is discharged or the engagement has been fulfilled. The thing deposited as a security is called a PAWN or Pledge; the party making the deposit, the pawnor or pledgor; and the person who receives it into his possession, the pawnee or pledgee. The contract is to be distinguished from the contract of hypothecation by the transfer of the possession, or the ACTUAL delivery, of the thing intended to be charged to the creditor, and from the contract of MORTGAGE by the absence of a transfer of the ownership or right of property thereof to the pawnee during the continuance of the trust" (Add. C. 733): *Vf, Bristol & West of England Bank* v. *Mid. Ry*, 1891, 2 Q. B. 653; 61 L. J. Q. B. 115; 65 L. T. 234; 40 W. R. 148: Jacob: 9 Encyc. 540–545.

Quà Factors Act, 1889, "Pledge," "includes, any contract pledging, or giving a LIEN or Security on, Goods, — whether in consideration of an original advance or of any further or continuing advance, or of any pecuniary liability" (subs. 5, s. 2). For definitions relating to Pledges as affected by this Act, *V.* BOUGHT: BUY: DELIVERY: DISPOSITION: DOCUMENT: FACTOR: MERCANTILE AGENT: MORTGAGE: PERSON: SALE.

Quà Pawnbrokers Act, 1872, "'Pledge,' means, an article pawned with a PAWNBROKER" (s. 5).

A power of SALE or to purchase, does not include a power to pledge (*Jonmenjoy Coondoo* v. *Watson*, cited NEGOTIATE); *secus*, probably, of "negotiate" if standing alone (*Ib.*), and, certainly, of "indorse" (*Bank of Bengal* v. *Macleod*, cited NEGOTIATE).

"Pledge," in olden time, was used in the sense of a man or men being answerable for the good conduct of another (Cowel: *V.* FRANKPLEDGE). Thus, in ancient Charters we read of grants of "Amercements,

of Pledges, and Mainpernors" (*V.* MAINPRIZE). The distinction between "Pledges" and "Mainpernors," "has been variously stated and is somewhat obscure; but they did not either of them acknowledge a debt due to the Crown, though sometimes they may have been responsible for a fixed amount; their liability was not fixed from the beginning and was a different thing from the liability under RECOGNIZANCES" (per Ridley J., *Re Nottingham Corp*, cited AMERCIAMENT).

PLENARY. — Plenary proceedings and judgment; *V. Nouvion* v. *Freeman*, cited REMATE.

PLENE ADMINISTRAVIT. — This is a plea by an exor or admor that he has fully and duly administered the deceased's estate, and has therefore nothing in his hands with which to satisfy the plaintiff's demand: *Vh*, Wms. Exs. 1847 *et seq.*

PLIGHT. — "Plight is an old English word, and here (s. 357, Litt.) signifieth not only the estate but the habit and qualitie of the land, and extendeth to rent charges, and to a possibility of dower. *Vide* Sect. 289, where Plight is taken for an estate or interest of and in the land itself, and extendeth not to a rent charge out of the land" (Co. Litt. 221 b).

PLOUGH. — Beasts of Plough; *V.* BEASTS.
Plough-Bote; *V.* BOTE.

PLOUGHING. — In a Reference for Valuation of "Ploughing and Sowing," all expenses incidental to the preparation of land for sowing are included (*Branscombe* v. *Rowcliffe*, 18 L. J. C. P. 38; 6 C. B. 523): *Vthc*, for what was allowed for "Ploughing."

PLOW-LAND: PLOUGHLAND. — "'Plow-land' and a 'Hide of land' are *synonyma*, and are collective words. And, therefore, by the grant of *Carucatam* or *Hidam terræ*, or of a plow-land, or a hide of land, may pass 100 acres of land, meadow and pasture, and the houses thereupon; but it doth properly intend as much land as one plow can till in a year" (Touch. 93). *V.* HIDE: CARUCATA: JUGUM.

PLUG. — In s. 32, Metropolitan Fire Brigade Act, 1865, 28 & 29 V. c. 90 and s. 34, Metropolis Water Act, 1871, 34 & 35 V. c. 113, "Plug," or "FIREPLUG," includes, "Hydrant, and all other apparatus necessary or proper, in connection with the Co's pipes, for supply of water in case of fire" (s. 34 (1), 34 & 35 V. c. 113).

Vh, London Co. Co. v. *East London W. W. Co*, 1900, 1 Q. B. 330; 69 L. J. Q. B. 304; 82 L. T. 268; 48 W. R. 252.

PLUNDER. — "Whosoever shall *plunder* or steal any part of any ship or vessel which shall be in distress"; s. 64, Larceny Act, 1861, 24

& 25 V. c. 96 — "I do not know that this word 'plunder' has any special legal signification" (Steph. Cr. 255, *n* 5); *Vf*, Arch. Cr. 483, 484.

PLURAL. — *V.* SINGULAR.

PLY. — To "ply" a Passenger Steamer, within s. 318, Mer Shipping Act, 1854, repld s. 281 (3), Mer Shipping Act, 1894, means, to "ply for HIRE" (*R.* v. *Ipswich Jus.*, 5 Times Rep. 405): *Vh*, per Coleridge, C. J., *R.* v. *Southport*, 62 L. J. M. C. 48; 1893, 1 Q. B. 359.

A Steam Vessel "plies *between*" London Bridge and the Nore Light, s. 1, 19 & 20 V. c. 107, whilst she is travelling for hire between those boundaries, though she sometimes goes beyond them (*Walker* v. *Evans*, 2 E. & E. 356; 29 L. J. M. C. 22; 8 W. R. 61; 1 L. T. 59).

A HACKNEY CARRIAGE "plies *for hire*," within s. 7, 32 & 33 V. c. 115, if, without word or gesture, it solicits passengers in a Railway Station (*Clark* v. *Stanford*, 40 L. J. M. C. 151; L. R. 6 Q. B. 357; 19 W. R. 846: *Allen* v. *Tunbridge*, 40 L. J. M. C. 197; L. R. 6 C. P. 481; 19 W. R. 849); *secus*, under the previous (repealed) Act, 1 & 2 W. 4, c. 22, because in that Act the offence of unlicensed plying was restricted to a "*Public Street or Place*" which a Railway Station is not (*Case* v. *Storey*, L. R. 4 Ex. 319; 38 L. J. M. C. 113: *Skinner* v. *Usher*, cited PLACE, p. 1484). So, where a Livery-stable keeper rented an Office at Victoria Station and also ground within the station on which he kept superior carriages ready for use but which carriages could only be hired at the office; held, that was "plying for hire" within s. 7, 32 & 33 V. c. 115 (*Foinett* v. *Clark*, 41 J. P. 359). But where a Cab Proprietor was driving a licensed Hackney Carriage not large enough to carry the party of persons and he (gratuitously) drove them round to his stables to see his unlicensed Waggonette which they engaged for hire; held, that there was no plying for hire with the waggonette, within s. 45, Town Police Clauses Act, 1847 (*Cavill* v. *Amos*, 64 J. P. 309).

Following *Clark* v. *Stanford* (sup), it is an offence under s. 17 (2), 16 & 17 V. c. 33, for a Cabman to refuse to drive to a private place, *e.g.* a Ry Station, because, there, the words are "ANY Place," which means, any place where he can gain admittance (*Ex p. Kippins*, 1897, 1 Q. B. 1; 66 L. J. Q. B. 95; 75 L. T. 421; 45 W. R. 188; 60 J. P. 791).

"Ply for Hire" within a Municipal Bye Law; *V. Blackpool* v. *Bennett*, *Blackpool* v. *Kenyon*, 4 H. & N. 127; nom. *Bennett* v. *Blackpool*, 28 L. J. M. C. 203.

Vf, *Cocks* v. *Mayner*, cited HIRE.

POACHING. — *V.* GAME, *Animals*: NIGHT: SEARCH.

POCKET. — *V.* BAG.

POINT. — A sailor's "Point" is not a mathematical point at the end of a promontory; it is the whole of the promontory. "The Point begins where a vessel having to go round it, either up or down the river, would, if there were nothing in the way, be obliged to use her steerage for the purpose of continuing her course, and that it ends where the necessity, if there were nothing in the way, of using the steerage in order to go round, ceases." "*Rounding*" a Point "begins from the time when, if there were nothing in the way, a vessel would have to begin to use her steerage to go round, and that the rounding ends at the same place that I before stated, where, if there were nothing in the way, she would cease using her steerage for the purpose of going round, and would then be straight for her opposite course" (per Brett, M. R., *The Margaret*, 53 L. J. P. D. & A. 18; 9 P. D. 47; 50 L. T. 447; 32 W. R. 564; 5 Asp. 204).

"Points" on a Railway; *V.* CHARGE OR CONTROL.

POINT OF LAW. — *V.* LAW: QUESTION. *Cp*, FACT.

POINT OF SUBSTANCE. — As to what is "the Point of Substance" in a PLEADING within R. 19, Ord. 19, R. S. C.; *V. Thorp* v. *Holdsworth*, 3 Ch. D. 637; 45 L. J. Ch. 406: *Collette* v. *Goode*, 7 Ch. D. 842; 47 L. J. Ch. 370: *Byrd* v. *Nunn*, 7 Ch. D. 284; 47 L. J. Ch. 1; 26 W. R. 101: *Tildesley* v. *Harper*, 10 Ch. D. 393; 48 L. J. Ch. 495; 27 W. R. 249: *Green* v. *Sevin*, 49 L. J. Ch. 166; 13 Ch. D. 589. *Cp*, *Rutter* v. *Tregent*, 48 L. J. Ch. 791; 27 W. R. 902; 12 Ch. D. 758, and *Harris* v. *Gamble*, 7 Ch. D. 877; 47 L. J. Ch. 344, with *Smith* v. *Gamlen*, W. N. (81) 110.

V. SUBSTANCE: *Cp*, "Question," or "Point," of Law, QUESTION: LAW.

POISON. — "With regard to the meaning of the term 'Poison' (s. 58, 24 & 25 V. c. 100), there are certain things which have acquired the name of Poisons; and as to these, possibly, if a small quantity only were administered, the administration might come within the statute" (per Stephen, J., *R.* v. *Cramp*, 49 L. J. M. C. 45; 5 Q. B. D. 307; 28 W. R. 701; 42 L. T. 442; 44 J. P. 70, 411). But in the same case Coleridge, C. J., said, "A 'Poison' is defined to be that which, *when administered*, is injurious to health or life." And surely that must be the test. It is submitted that nothing is a Poison, unless regard be had to its administration, *e.g.* Strychnine is a deadly poison, or a valuable medicine, according to how and how much taken (*V. Pharmaceutical Socy* v. *Delve*, inf). *V.* ADMINISTER: DRUG: MEDICINE: NOXIOUS.

Quà the Pharmacy Act, 1868, 31 & 32 V. c. 121, there are certain things which, by s. 2 and Sch A, are to be deemed Poisons, but s. 2 also authorizes the Pharmaceutical Society (by Resolution, approved

by the Privy Council) to declare any article a Poison within the Act. The *London Gazette* of 21st December 1869, 14th December 1877, 28th July 1882, and 27th July 1900, contain the Resolutions that have been made. The joint effect of the Act and those Resolutions is, that the following is a List of Poisons within the Act:—

Not to be sold, unless buyer is known, or introduced by some one known, to the seller: Signed Entry to be made in Poison Book of, 1. Date of Sale, 2. Name and Address of buyer, 3. Name and Quantity of article, 4. Purpose for which it is wanted, and Must be labelled with, 1. Name of Article, 2. The word "Poison," 3. Name and Address of seller.	*Arsenic*, and its preparations; *Aconite*, and its preparations; *Alkaloids*,—all poisonous vegetable alkaloids and their salts; *Atropine*, preparations of; *Cantharides*; *Corrosive Sublimate*; *Cyanides of Potassium*, and all Metallic Cyanides, and their preparations; *Emetic Tartar*; *Ergot of Rye*, and its preparations; *Prussic Acid*, and its preparations; *Savin*, and its oil; *Strychnine*, and its preparations; *Vermin Killers*, if preparations of above poisons.	Must be labelled with,— 1. Name of Article, 2. The word "Poison," 3. Name and Address of seller.	*Almonds, Essential Oil of* (unless deprived of its Prussic Acid); *Belladonna*, and its preparations; *Cantharides Tincture*, and all vesicating liquid preparations of Cantharides; *Carbolic Acid*, liquid preparations of, and homologues; *Chloral Hydrate*, and its preparations; *Chloroform*; *Corrosive Sublimate*, preparations of; *Morphine*, preparations of; *Nux Vomica*, and its preparations; *Opium*, and its preparations, or preparations of Poppies; *Oxalic Acid*; *Precipitate, Red* (Red Oxide of Mercury); *Precipitate, White* (Ammoniated Mercury); *Vermin Killers*, if preparations of above poisons.

By the joint operation of the Poisons (Ir) Act, 1870, 33 & 34 V. c. 26, and the resolutions thereunder a similar list of Poisons is provided for Ireland,—the differences being that, in the Second Class of Poisons, the Irish authorities have added, Biniodide of Mercury; Preparations of Strychnine; Phosphorus, and all preparations of it in a free state; and Sulphuric Ether: whilst instead of the English qualified admission of Carbolic Acid in a liquid state, &c, the Irish admit, absolutely, Phenol commonly called Carbolic Acid.

A compound containing one of the above ingredients in such quantity that the compound is, in its entirety, a poisonous thing, though only to a child, is a "Poison" within the Acts (*Pharmaceutical Socy* v. *Piper*, 1893, 1 Q. B. 686; 62 L. J. Q. B. 305; 68 L. T. 490; 41 W. R. 447; 57 J. P. 502: *Ib.* v. *Armson*, 1894, 2 Q. B. 720; 63 L. J. Q. B. 532; 64 Ib. 32; 71 L. T. 315; 42 W. R. 662; 59 J. P. 52). Thus, Chlorodyne is a "Poison" within s. 15, Pharmacy Act, 1868, because it contains 2 grains of Morphine to the fluid ounce; and it is not a "*Patent Medicine*," within s. 16, for that latter phrase is only applicable to Patent Medicines strictly so called, *i.e.* those Medicines for which Letters Patent have been granted (*Pharmaceutical Socy* v. *Piper*, sup). So, Powell's Balsam of Aniseed is a "Poison," though it contains only $\frac{1}{10}$th of a grain of Morphine to the fluid ounce (*Pharmaceutical Socy* v. *Armson*, sup). But a preparation having but little more than a trace of Morphine is not a "Poison" within s. 15 (*Pharmaceutical Socy* v. *Delve*, 1894, 1 Q. B. 71; 63 L. J. Q. B. 360; 70 L. T. 139; 42 W. R. 192; 58 J. P. 152).

V. SELLER.

Vh, Taylor's Medical Jurisprudence: Mann's Forensic Medicine: 12 Encyc. 211–221.

To "ADMINISTER" "Poison or other Destructive Thing," s. 2, 1 V. c. 85, would not include administering an Innocent Thing and thinking it Poison; but it does include administering Poison though accompanied with something which prevents its acting, *e.g.* administering to a child Cocculus Indicus berries entire in the pod, the pod being indissolvable in the child's stomach (*R.* v. *Cluderoy*, 2 C. & K. 907; 19 L. J. M. C. 119; 1 Den. 514).

Death "by Poison," — *e.g.* in an Exception in a Life or Accident Policy, — is none the less so because the poison is taken accidentally (*Cole* v. *Accident Insrce*, 5 Times Rep. 370, 737; 61 L. T. 227).

Damage by Poisonous Trees; *V. Wilson* v. *Newberry*, *Crowhurst* v. *Amersham Bd*, and *Ponting* v. *Noakes*, cited NUISANCE, p. 1300.

POLE. —*V.* ROD.

POLICE. —*V.* CONSTABLE.

"Police Force"; Stat. Def., 46 & 47 V. c. 34, s. 8; 57 & 58 V. c. 57, s. 59. — *Scot.* 53 & 54 V. c. 67, s. 30; 57 & 58 V. c. 57, s. 60.

"Officer of Police"; Stat. Def., *Scot.* 50 & 51 V. c. 35, s. 1: "Chief Officer of Police"; *V.* CHIEF: SUPERINTENDENT.

Soldiers are not Constables or Police, even assuming that they happen to act as civilians (*R.* v. *Glamorganshire Co. Co.*, 1899, 2 Q. B. 536; 68 L. J. Q. B. 1047; 81 L. T. 372; 48 W. R. 112; 15 Times Rep. 536).

Payments "to or in respect of the Borough Police" "for the purpose of the Borough Constabulary Force," Sch 5, Part 2, clause 5, Mun Corp Act, 1882, do not include the costs of a Chief Constable of appearing as a litigant in a Licensing Appeal (*A-G.* v. *Tynemouth*, cited LEGAL PROCEEDINGS).

Rooms, part of Police Premises, occupied by the Chief Constable and his family, are occupied for "Police PURPOSES," and, as such, are exempt from Poor Rate (*Leicester Co. Co.* v. *Leicester Assessment Committee*, 78 L. T. 463; 46 W. R. 585: *Sv*, *Showers* v. *Chelmsford Assessment Committee*, cited PUBLIC PURPOSE, but *thlc* was distd in *Cross* v. *West Derby*, 81 L. T. 645). *Vf*, "Beneficial Occupation," sub BENEFICIAL.

A Police Officer or Constable when travelling, not *as* a Policeman but, only as an Inspector of Weights and Measures, is not an Officer or Man "of a Police Force" who is travelling on an "Occasion of the PUBLIC SERVICE," so as to be entitled to travel at a reduced fare under s. 6, Cheap Trains Act, 1883, 46 & 47 V. c. 34 (*Spencer* v. *Lanc. & Y. Ry*, 1898, 1 Q. B. 643; 67 L. J. Q. B. 465; 78 L. T. 323; 46 W. R. 443; 62 J. P. 296).

"The Police Acts, 1839 to 1893," "The Police (Scotland) Acts, 1857 to 1890," "The Town Police Clauses Acts, 1847 and 1899"; *V* Sch 2, Short Titles Act, 1896. *Vf*, GENERAL POLICE ACTS: "Local Police Act," 55 & 56 V. c. 55, s. 4.

"*Annual Pay*" of a Police Constable; *V.* PAY.

"Police *Area*": Stat. Def., 53 & 54 V. c. 45, s. 33; 57 & 58 V. c. 57, s. 59. — *Scot.* 53 & 54 V. c. 67, s. 30; 57 & 58 V. c. 59, s. 60.

"Police *Authority*"; Stat. Def., Licensing Act, 1872, s. 74; Army Act, 1881, s. 190; 46 & 47 V. c. 34, s. 8; 49 & 50 V. c. 38, s. 9; Police Act, 1890, 53 & 54 V. c. 45, s. 33. — *Scot.* 40 & 41 V. c. 53, s. 30; 53 & 54 V. c. 67, s. 30.

"Police *Burgh*"; *V.*: BURGH.

"Police *Commissioners*"; *V.* COMMISSIONERS.

"Police *Constable*," in Ireland; Stat. Def., 38 & 39 V. c. 63, s. 34: *Vf*, CONSTABLE.

Police *Cubicle*, is not a separate dwelling-house; *V.* DWELLING-HOUSE, p. 590.

"Police *District*"; Stat. Def., Dublin Police Act, 1842, 5 & 6 V. c. 24, s. 79; Explosives Act, 1875, 38 & 39 V. c. 17, ss. 107, 120; Licensing Act, 1872, s. 74; Pedlars Act, 1871, 34 & 35 V. c. 96, s. 3; Prevention of Crimes Act, 1871, 34 & 35 V. c. 112, s. 20; Prosecution of Offences Act, 1884, 47 & 48 V. c. 58, s. 4; P. H. Acts, Amendment Act, 1890, 53 & 54 V. c. 59, s. 51; Riot (Damages) Act, 1886, 49 & 50 V. c. 38, s. 9; 34 & 35 V. c. 87, s. 2.

"Police *Force*"; *V.* sup.

"Police *Fund*"; Stat. Def., Police Act, 1890, 53 & 54 V. c. 45, s. 33; Police (Scot) Act, 1890, 53 & 54 V. c. 67, s. 30.

Police *Magistrate*; *V.* MAGISTRATE.

"Police *Purposes*"; *V.* sup.

"Police *Rate*"; Stat. Def., Riot (Damages) Act, 1886, s. 9; Public Libraries Act (Scot), 1867, 30 & 31 V. c. 37, s. 2.

"Police *Receiver*"; Stat. Def., 49 & 50 V. c. 22, s. 7.

V. METROPOLITAN: PROHIBITED.

POLICY. — A Policy of INSURANCE is an INSTRUMENT of Recoupment, or Mitigation, of Loss, effected between the Insurer and the Insured, whereby the Insurer agrees to pay money, or make good destruction or damage, or do some other thing, on the happening of some event or events. "It is not, like most contracts, signed by both parties but only by the Insurer, who on that account, it is supposed, is denominated an 'Underwriter'" (Park, 1).

"Policy of Insurance," quà Stamp Act, 1891, "includes every writing whereby any Contract of Insurance is made or agreed to be made, or is evidenced; and the expression 'Insurance' includes ASSURANCE" (s. 91).

"Policy of Insrce against Accident"; *V.* ACCIDENT.

Honour Policy; *V.* HONOUR.

"Policies of Assurance upon *Human Life,*" s. 2, Life Assurance Companies Act, 1870, 33 & 34 V. c. 61; *V. Newbold Socy* v. *Barlow*, 1893, 2 Q. B. 128; 62 L. J. M. C. 124; 68 L. T. 798; 41 W. R. 543; 57 J. P. 565.

"Policy of *Life* Assurance," quà Policies of Assurance Act, 1867, 30 & 31 V. c. 144, means, "any INSTRUMENT by which the payment of moneys, by or out of the funds of an Assurance Co, on the happening of any contingency depending on the duration of human life, is assured or secured" (s. 7): "Policy of Life Insurance," quà Stamp Act, 1891, "means, a Policy of Insurance upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives, except a policy of insurance against ACCIDENT" (s. 98).

Port Policy; *V.* HARBOUR.

"Policy of SEA INSURANCE," quà Stamp Act, 1891, "*means*, any insurance (including re-insurance) made upon any ship or vessel, or upon the machinery tackle or furniture of any ship or vessel, or upon any goods merchandize or property of any description whatever on board of any ship or vessel, or upon the freight of or any other interest which may be lawfully insured in or relating to any ship or vessel; and *includes*, any insurance of goods merchandize or property for any transit which includes not only a sea risk but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance: — Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods merchandize or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods merchandize or property from any risk loss or damage, such agreement or engagement shall be deemed to be a Contract for Sea Insurance" (s. 92). Other Stat. Def., Policies of Marine Assurance Act, 1868, 31 & 32 V. c. 86, s. 3.

There are two kinds of Policies of Marine Insrce (1) *Valued*, *.e.* when the Policy, in terms, puts a value on the thing insured; (2) *Open*, *i.e.* when it does not mention the value, and therefore, in case of loss, the value has to be proved (Park, 1, citing 2 Burr. 1171). *Vh*, *Bruce* v. *Jones*, 1 H. & C. 769; 32 L. J. Ex. 132: *Wilson* v. *Nelson*, 5 B. & S. 354; 33 L. J. Q. B. 220.

V. SLIP: ORIGINAL POLICY: CONTINUING POLICY: PUBLIC POLICY.

"Policy wholly or partially kept up for donee"; *V.* WHOLLY.

POLICY HOLDER. — "Policy Holder," quà Life Assurance Companies Act, 1870, 33 & 34 V. c. 61, "means, the person who for the time being is the legal holder of the policy for securing the life assur-

ance, endowment, annuity, or other contract, with the Company" (s. 2). As used in s. 14, Ib., it includes covenantees under a deed by which an Insrce Co guarantees the payment of annuities (*Re Sovereign Life Assrce*, 58 L. J. Ch. 811); "but I feel grave doubt whether 'Policy Holder' includes those persons who have been policy holders but whose policies have matured, not by death but, by the happening of the stipulated event" (per Bowen, L. J., *Sovereign Life Assrce* v. *Dodd*, 1892, 2 Q. B. 582; 62 L. J. Q. B. 25).

POLITICAL. — To constitute an OFFENCE as one of a "Political *Character*," s. 3, Extradition Act, 1870, 33 & 34 V. c. 52, there must be, at least, two distinct Political Parties, each striving to impose its form of government on the country of those in conflict. "The offences of Anarchists, consist, in the main, of attacks on Private Citizens generally rather than on Governments, or members of any particular government, as such. In such cases they cannot be called 'political' offences" (per Cave, J., *Re Meunier*, 1894, 2 Q. B. 415; 63 L. J. M. C. 198; 71 L. T. 403; 42 W. R. 637). *Vf*, *Re Arton*, 1896, 1 Q. B. 108; 65 L. J. M. C. 23; 73 L. T. 687; 44 W. R. 238.

That being premised, a Crime of a "Political Character," can best be explained by examples. "For instance, if a Civil War were to take place, it would be High Treason by levying war against the Queen. Every case in which a man was shot in action would be Murder. Whenever a house was burnt for military purposes, Arson would be committed. To take cattle by requisition would be Robbery. According to the common uses of language, however, all such acts would be Political Offences, because they would be incidents in carrying on Civil War. I think, therefore, that the expression in the Extradition Act ought to be interpreted to mean, that FUGITIVE CRIMINALS are not to be surrendered for Extradition crimes if those crimes were incidental to, and formed a part of, the political disturbances" (2 Stephen's History of the Criminal Law of England, 70). "I adopt that language as the definition that I think is the most perfect to be found, or capable of being given, as to what is the meaning of the phrase [Offence of a "Political Character"] which is made use of in the Extradition Act" (per Hawkins, J., *Exp. Castioni*, 1891, 1 Q. B. 149, 60 L. J. M. C. 22).

V. EXTRADITION.

In construing an Exception in a Charter-Party of "Political *Disturbances* or *Impediments*," the rule in *Hudson* v. *Ede* (cited DETENTION BY ICE) is applicable (*Smith* v. *Rosario Nitrate Co*, 1893, 2 Q. B. 323; 1894, 1 Q. B. 174; 70 L. T. 68).

POLITICS. — According to its true original meaning, "Politics" "comprehends everything that concerns the government of the country, of which the administration of justice makes a considerable part" (per Hardwicke, C., *Chesterfield* v. *Janssen*, 2 Ves. sen. 156).

POLL. — A Deed Poll, is a Deed the paper or parchment on which it is written being polled or even at the top, and is unipartite, binding only the PARTY making it (Plowd. 134, 421); an INDENTURE, is a Deed which formerly was (but is not now, s. 5, 8 & 9 V. c. 106) required to be indented at the top, and is, generally, *inter partes*, and then its language is, speaking generally, that of all its Parties: *Vf*, DEED.

V. VOTE.

POLLAN. — *V.* FRESH-WATER FISH.

POLLING. — "Polling *Agent*"; Stat. Def., Corrupt and Illegal Practices Prevention Act, 1883, s. 64.

"Polling *Booth*" quà Rep People Acts, includes "a Polling *Station*" (s. 15, Ballot Act, 1872); Rules 15–25 of Sch 1, to Ballot Act, describe a Polling Station, and how it is to be furnished manned and used for the purposes of an Election. Quà Ballot Act, 1872, "'Polling *Place*,' means, in the case of a BOROUGH, such Borough, or any part thereof in which a separate Booth is required, or authorized by law, to be provided" (R. 57, Sch 1).

"Polling *District*"; Stat. Def., Registration of County Voters (Ir) Act, 1864, 27 & 28 V. c. 22, s. 20.

"Municipal Polling District"; Stat. Def., 48 & 49 V. c. 23, s. 23.

"Parliamentary Polling District"; *V.* PARLIAMENTARY.

POLLOCK'S ACT. — Limitations of Actions and Costs Act, 1842, 5 & 6 V. c. 97.

POLLUTING. — Quà Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75, "'Polluting,' shall not include innocuous discoloration" (s. 20).

Cp, FILTHY WATER: SOLID MATTER.

POLYGAMY. — *V.* MARRIAGE.

POND. — "A Pond is a standing DITCH cast by labour of man's hand in his private grounds for his private use to serve his house and household with necessary waters; but a POOL is a low plat of ground by nature, and is not cast by man's hand" (Callis, 82).

PONTAGE. — Is sometimes a Charge for repairing a Bridge, and sometimes a Toll for using a Bridge (Termes de la Ley).

POOL. — "*Stagnum*, in English a poole, doth consist of water and land; and therefore by the name of *stagnum*, or a poole, the water and land shall passe also" (Co. Litt. 5 a, b: *Cp*, WATERS). "A Pool is a mere standing water without any current at all, and hath seldom or never any issue to convey away the waters; but a DITCH hath no constant standing nor any apparent current" (Callis, 82). *Cp*, POND.

V. GURGES: LAND COVERED WITH WATER.

A Stock Exchange "Pool," is an arrangement between two or more

persons for selling or buying some particular class of stock, shares, or securities, and apportioning the result among themselves with the view (generally) to "Make a Price" in the thing dealt in. Such an arrangement is not illegal, or *ultra vires* of a Board of Directors (*Sanderson* v. *British Westralian Corp*, 43 S. J. 45).

Pooling Receipts by Railway Companies; *V. L. C. & D. Ry* v. *S. E. Ry*, cited CERTAIN TIME.

POOR. — Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, "'Poor,' shall be construed to include any PAUPER, or poor or indigent person applying for or receiving RELIEF from the Poor Rate in England or Wales, or chargeable thereto" (s. 109).

A trust for the benefit of "the Poor" of a locality does not, as a general rule, include those who are receiving Parochial Relief (*A-G.* v. *Exeter Corp*, 3 Russ. 395; 6 L. J. O. S. Ch. 50; *A-G.* v. *Clarke*, 1 Amb. 422: *A-G.* v. *Wilkinson*, 1 Bea. 370; *A-G.* v. *Gutch*, Reg. Lib. A., 1830, fo. 2720: 1 Jarm. 209: Lewin, 604, 605. *V.* jdgmt *St. Nicholas, Deptford* v. *Sketchley*, 17 L. J. M. C. 22, 23: *Sv*, RELIEF). A CHARITY for the benefit of "Poor Boys," was held *not confined* to those poor boys who required parish relief or to the boys of persons requiring such relief (*Canterbury Gdns.* v. *Canterbury Corp*, 31 L. J. Ch. 810); "indeed, poverty alone is an insufficient qualification" when the Charity is for EDUCATION (per Romilly, M. R., *Re Latymer*, 17 W. R. 525; L. R. 7 Eq. 353; 20 L. T. 425).

V. POOREST: RELATIONS: SICK.

A trust of impure personalty, "to give it to the Poor as the trustees may think fit," is against the statutes of Mortmain (*Re Clark, Husband* v. *Martin*, 54 L. J. Ch. 1080).

Sometimes "Poor" is used as a term of endearment (*Anon.*, 1 P. Wms. 327; *Vth*, 2 Jarm. 126, 127).

POOR CHILD. — *V.* CHILD.

POOR INHABITANTS. — *V.* INHABITANT.

POOR KINDRED. — *V.* POOREST.

POOR LAW. — Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, "'Poor Law,' or 'Laws for the Relief of the Poor,' shall be construed to include, every Act of Parliament for the time being in force for the RELIEF or Management of the Poor, or relating to the execution of the same or the administration of such relief" (s. 109). *Vh*, Arch. P. L.: 10 Encyc. 156–213.

The Poor Law *Board* was and is superseded by the LOCAL GOVERNMENT BOARD (s. 2, 34 & 35 V. c. 70).

"Poor Law *Parish*," quà Highway Act, 1862, 27 & 28 V. c. 101, means, "A Place that separately maintains its own poor" (s. 3).

"Poor Law *Union*"; V. s. 16 (2, 4), Interp Act, 1889.

POOR RATE. — Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, "'Poor Rate' shall be construed to include, any rate, rate in aid, mulct, cess, assessment, collection, levy, ley, subscription, or contribution, raised assessed imposed levied collected or disbursed for the RELIEF of the Poor in any Parish or Union" (s. 109).

Other Stat. Def. — 32 & 33 V. c. 41, s. 20. — *Ir.* 1 & 2 V. c. 56, s. 61 *et seq*: 13 & 14 V. c. 69, s. 117; 54 & 55 V. c. 1, s. 13; 58 & 59 V. c. 2, s. 14; 61 & 62 V. c. 50, s. 10: — "The Poor Relief (Ireland) Acts, 1838 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

POOR RELATIONS. — *V.* RELATIONS.

POOREST. — In order that a gift "for the relief and use of the poorest of my kindred" may be good as a charitable bequest, the word "poorest" must mean "poor" or "very poor," and not "the least wealthy of a number of wealthy persons" (*A-G.* v. *Northumberland*, 47 L. J. Ch. 569; 7 Ch. D. 745; 26 W. R. 586; 38 L. T. 245; disapproving dictum of Wickens, V. C., *Gillam* v. *Taylor*, 42 L. J. Ch. 674; L. R. 16 Eq. 581). *Vf*, Tudor, Char. Trusts, 5, 103.

V. POOR: RELATIONS.

POPULAR ACTION. — "Actions Popular are those given on the breach of some PENAL statute, which every man hath a right to sue for himself and the King. And because this action is not given to one especially, but generally to ANY that will prosecute, it is called Action Popular; and from the words used in the process (*qui tam pro domino rege sequitur quam pro se ipso*) it is called a Qui Tam action" (Jacob, *Action*). *Vf*, Termes de la Ley, *Action Popular*: 3 Bl. Com. 160.

V. PROMOTER.

POPULATION. — Stat. Def., London (Equalization of Rates) Act, 1894, 57 & 58 V. c. 53, s. 4 (1). — *Ir.* 54 & 55 V. c. 48, s. 42.

POPULOUS. — Quà the English Licensing Acts, "'Populous Place,' means, any area with a population of not less than 1000 which, by reason of the density of such population, the County LICENSING Committee may, by Order, determine to be a Populous Place" (s. 32, 37 & 38 V. c. 49).

Quà Working Classes Dwellings Act, 1890, 53 & 54 V. c. 16, "'Populous Place,' means, the Administrative County of LONDON, any Municipal BOROUGH, any URBAN Sanitary District, and any other PLACE having a dense population of an urban character" (s. 1).

Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, "'Populous Place,' shall mean, any Town, Village, Place, or Locality, containing a population of 700 inhabitants or upwards, not being administered under any General or Local POLICE Act; and, for the purpose of this Act, two or more contiguous Towns, Villages, Places, or Localities (not being BURGHS), may be held to be a Populous Place" (subs. 26, s. 4).

PORCA TERRÆ. — "By the name of *selio* or *porca terræ*, doth pass a Ridge of land, which is sometimes longer, and sometimes shorter" (Touch. 95). *V.* SELION.

PORCARIA. — "Fleta maketh mention of *porcaria*, a swinestye" (Co. Litt. 5 b).

PORK BUTCHER. — *V.* BUTCHER.

PORT. — "A Port is a place, for the lading and unlading of Ships or Vessels, erected by Charter of the King or a lawful Prescription" (per Ld Chelmsford, *Foreman* v. *Free Fishers of Whitstable*, 38 L. J. C.P. 350; L. R. 4 H. L. 266).

"A Port is a HAVEN and somewhat more, —

"1. It is a place for arriving and unlading of Ships or Vessels;

"2. It hath a superinduction of a civil signature upon it, somewhat of Franchise and Privilege;

"3. It hath a Ville or City or Borough, that is the *capus portus* for the receipt of mariners and merchants, and the securing and vending of their goods, and victualling their ships.

"So that a Port is *quid aggregatum*, consisting of somewhat that is *Natural*, — viz. an access of the sea whereby ships may conveniently come; safe situation against winds where they may safely lye; and a good shore where they may well unlade: Something that is *Artificial*, — as, Keys and Wharfs, and Cranes and Warehouses, and houses of common receipt: And something that is *Civil*, — viz. Privileges and Franchises *jus applicandi*, *jus mercati*, and divers other additaments given to it by Civil Authority" (Hale, De Portibus Maris, ch. 2, cited by Ld Chelmsford, *Foreman* v. *Free Fishers of Whitstable*, sup). *Vf*, Callis, 57. *Cp*, CREEK.

Note. "The FRANCHISE of a Port may be in one person and the ownership of the Soil, within the limits of the Port, in another" (per Ld Chelmsford, *Foreman's Case*, sup, citing De Portibus Maris).

Vf, 10 Encyc. 215–220: *Cp*, HARBOUR.

The word "Port," in a Charter-Party or Marine Policy, is to be understood in its popular, or business, or commercial, sense; it does not in such a document, necessarily, mean Port as defined for revenue or pilotage purposes (*Sailing-Ship "Garston" Co* v. *Hickie*, 15 Q. B. D. 580; in *whc* tests for determining the business meaning of "Port" were consid-

ered); *e.g.* "Port or Ports" may be construed "Place or Places," and so comprise an Open Roadstead (*Cockey* v. *Atkinson*, 2 B. & Ald. 460). *Vf*, *Price* v. *Livingstone*, 53 L. J. Q. B. 118; 9 Q. B. D. 679: per Martin, B., *Gen. Steam Nav. Co.* v. *British & Colonial Steam Nav. Co*, cited NAVIGATING WITHIN: *Caffin* v. *Aldridge*, 1895, 2 Q. B. 366, 648; 64 L. J. Q. B. 736; 65 Ib. 85; 73 L. T. 426; 44 W. R. 129: *Sea Insrce* v. *Gavin*, 4 Bligh, N. S. 578: *Hull Dock Co* v. *Browne*, 2 B. & Ad. 43.

Insurance on a Ship "at and from her Port of *Lading* in North America to Liverpool." She took in part of her cargo at K., in New Brunswick, and sailed thence to B., in the same province, seven miles distant on the same bay of the sea. She there completed her cargo, and then returned to K., to receive provisions, &c, after which she sailed for England, and was lost on the voyage. B. was not in the way from K. to Liverpool, B. and K. were situate on creeks opening in the bay, and were spoken of by some persons as ports, but neither of them had a custom-house. They had custom-house officers and were under the jurisdiction of the custom-house of St. John, New Brunswick; held, that after the ship had begun to load at K., that was her port of Lading; that the term "Port of Lading" in the policy did not allow of her afterwards going to B., and that her doing so was a deviation (*Brown* v. *Tayleur*, 4 A. & E. 241; 5 L. J. K. B. 57; 5 N. & M. 472). "There must be a nonsuit in this case, unless we are prepared to say, that 'Port' is equivalent to 'Ports' or 'Port or Ports.' But I think we are not at liberty here to construe the word with reference to custom-house regulations, but must consider it *as merely indicating a place*" (per Coleridge, J., *S. C.*, 4 A. & E. 250; 5 L. J. K. B. 60). *Vf*, *Harrower* v. *Hutchinson*, 39 L. J. Q. B. 229; 10 B. & S. 469; L. R. 5 Q. B. 584; 22 L. T. 684.

So, quà statutes, "Port" has been defined in its popular, rather than its legal, sense (*Barrett* v. *Stockton & Darlington Ry*, 2 M. & G. 134. *Hull Dock Co.* v. *Browne*, 2 B. & Ad. 43); but in a case which, like the last, related to Hull Dock, "Port," s. 14, 54 G. 3, c. 159, was held to mean, the Port as constituted for the time being by the Order of the Commrs of the Treasury (*Nicholson* v. *Williams*, 40 L. J. M. C. 159; L. R. 6 Q. B. 632).

"Port," quà Mer Shipping Act, 1894, "includes, Place" (s. 742).

Any Port; *V.* LIBERTY TO CALL.

Port of *Call*; *V.* CALL.

"'Port of *Discharge*,' includes the whole Port within which any portion of the Cargo is usually, according to the Custom of such Port, taken out of the vessel" (*Whitwell* v. *Harrison*, 18 L. J. Ex. 465; 2 Ex. 127, and cases there cited). *Vf*, *Attwood* v. *Case*, 45 L. J. M. C. 20; 1 Q. B. D. 134; 33 L. T. 507; 24 W. R. 94: 8 Encyc. 179.

In the Warranty of freedom from SEIZURE in Port of *Discharge*, "the word 'Port' is not to be taken in its narrow or strict legal sense, but

rather as meaning the place of discharge agreed upon by the assured and underwriters" (1 Maude & P. 507; and cases there cited).

"Port of *Discharge*," in Marine Policies, is in common use where it is intended to limit the risk to such Port; and where the Policy says to "*any* Port or Place," without more, it covers Ports of Loading as well as Ports of Discharge (*The Aikshaw*, 9 Times Rep. 605: *Crocker* v. *Sturge*, 1897, 1 Q. B. 330; 66 L. J. Q. B. 142; 2 Com. Ca. 43; 13 Times Rep. 96).

"Port of *Dublin* Corporation"; Stat. Def., 16 & 17 V. c. 131, s. 1; 17 & 18 V. c. 104, s. 2, c. 120, s. 2.

"Port of *Lading*" or "*Loading*"; "There is no technical meaning to be attached to the words 'Port of Lading'" (per Denman, C. J., *Brown* v. *Tayleur*, 4 A. & E. 247). *Vh*, LOAD.

"*Last* Port"; *V. Price* v. *Livingstone*, sup.

"Port of *London*"; *V.* LONDON, at end.

Port *Policy*; *V.* HARBOUR.

"Port of *Registry*," quà Mer Shipping Act, 1894; "the port at which a British Ship is registered for the time being, shall be deemed her Port of Registry, and the port to which she belongs" (s. 13).

"Port Sanitary Authority"; Stat. Def., 40 & 41 V. c. 60, s. 14.

"Port Sanitary District"; Stat. Def., 52 & 53 V. c. 72, s. 16.

"Now in the Port of A."; *V.* NOW.

V. BRITISH PORT: CINQUE PORTS: FINAL PORT: IN PORT: PORT OR PLACE: SAFE PORT.

PORT CHARGES.—"Port Charges," "in their ordinary sense, mean, such charges as a Ship would have to pay before she leaves Port," including Light Dues (per Mathew, J., *Newman* v. *Lamport*, 1896, 1 Q. B. 20; 65 L. J. Q. B. 102; 73 L. T. 475; 8 Asp. 76; 1 Com. Ca. 161).

"Port Charges, Pilotages, and other Expenses, at the Port," in a Charter-Party, do not include coals supplied at a port into which a steamer has been obliged to put in consequence of the breakdown of her machinery (*The Durham City*, 14 P. D. 85; 58 L. J. P. D. & A. 46).

PORT OR PLACE.—*V. Hull Dock Co* v. *Priestley*, 4 B. & Ad. 178; 1 N. & M. 85; *Cp, Tennant* v. *Swansea Harbour Trustees*, 3 Times Rep. 128. *V.* PORT.

Policy on a Ship "to any Port or Place in *any* order"; *V. Crocker* v. *Sturge*, cited PORT: *Spalding* v. *Crocker*, 2 Com. Ca. 189: *Crocker* v. *Gen. Insrce of Trieste*, 3 Ib. 22; 14 Times Rep. 113: *Cp*, LIBERTY TO CALL.

V. AUSTRALIA: PLACE.

Bishop PORTEOUS' ACT.—The Sunday Observance Act, 1780, 21 G. 3, c. 49. *Vh*, ENTERTAINMENT.

PORTER.—*V.* BEER: MERCHANT.

PORTION. — Probably, in its most frequent use, a "Portion" may be defined as, an undefined Share in a fund to which a member of a CLASS, *e.g.* Children or younger children, is or may become entitled under a Settlement or Will; and, generally, the right thereto arises by the exercise of a Power of Appointment: *Vh*, Lewin, ch. 17: Godefroi, ch. 28: *O'Hanlon* v. *Unthank*, Ir. Rep. 7 Eq. 68.

"Portion" is synonymous with SHARE; and a bequest of a legatee's "Portion" will not, without an auxiliary context, pass an accrued share (2 Jarm. 711, 712).

"The word 'Portion' is ambiguous. It may only mean, — and it frequently merely means, — a part of some larger amount; and it may also mean, the 'Portion' as used in the sense in which a person speaks of providing for his children" (per Pollock, C. B., *Butt* v. *Thomas*, 11 Ex. 243, 244; 25 L. T. O. S. 218).

"Portions *for Children*," s. 2, Accumulations Act, 1800, 39 & 40 G. 3, c. 98: — "Portions for Children are, I think, generally understood to be, sums of money secured to them out of property springing from or settled upon their parents; and although there may, no doubt, be cases in which provisions for children out of property in which the parents take no interest may well be called 'Portions,' I think that such provisions should only receive that designation where the nature or context of the instrument gives them that character. Where there is a gift to children both of capital and income, and there is nothing in the nature or context of the instrument to impress upon the gift the character of a Portion, I do not think it could be called a 'Portion' in the ordinary sense of the word, or ought to be so considered within the meaning of this Act" (per Turner, V. C., *Jones* v. *Maggs*, 22 L. J. Ch. 91; 9 Hare, 605: *Vf*, the cases there cited, and *Edwards* v. *Tuck*, 3 D. G. M. & G. 40; 23 L. J. Ch. 204: *Va*, Watson Eq. 8). *V.* ACCUMULATION.

"Advanced by Portion"; *V.* ADVANCEMENT.

"Any Portion"; *V. Liddy* v. *Kennedy*, cited ANY.

"The rule against *Double* Portions is generally stated to apply to a Parent, or person *in loco parentis*" (per Stirling, J., *Re Ashton*, cited LOCO PARENTIS). As to rebutting the presumption against Double Portions; *V. Re Lacon*, 1891, 2 Ch. 482; 60 L. J. Ch. 403; 64 L. T. 429; 39 W. R. 514. *Vh*, Lewin, 463: 10 Encyc. 221–225.

As to MAINTENANCE of Children in respect of Portions to which they are contingently entitled, *V. Re Greaves*, 1900, 2 Ch. 683; 69 L. J. Ch. 596.

PORTIONIBUS. — This word is properly employed to mean a portion of the Tithes of one parish claimed by the Rector of another parish (*Scarlet* v. *Lucton School*, 4 Cl. & F. 1; 10 Bligh, N. S. 592).

PORTRAIT. — A Portrait is the pictorial presentment, taken from life or from "reasonable materials from which a likeness may be framed,"

of a person (or it may be of more than one person), the chief object of the picture being the preservation of a life-like resemblance of the countenance; and it is not less a "Portrait" because accompanied by subordinate accessories more or less of an ideal character (*Leeds* v. *Amherst*, 14 L. J. Ch. 73; 13 Sim. 459, in *whc* the word, and even its derivation, are treated with a wealth of learning and illustration not a little unusual in a case on which the L. C. said, "nothing but Mr. Bethell's talent and ingenuity could have thrown any doubt"). In that case Lord Lyndhurst in the course of his judgment said, "I may be permitted to say this, that if a picture is painted *after a man's death*, and meant to represent him, if there is nothing affording the materials for the portrait, it is completely an ideal picture, and cannot properly be called a Portrait; but if there are reasonable materials from which a likeness may be framed, I do not consider it less a portrait, though painted after the death of the individual, than if painted during his lifetime" (14 L. J. Ch. 81).

Would a likeness of an animal, — *e.g.* a horse, — come within the meaning of "Portrait"? *V.* obs of Shadwell, V. C., in *Leeds* v. *Amherst*, 14 L. J. Ch. 75.

V. PHOTOGRAPH: DISTINCTIVE.

POSITION. — Of Celebrant and Minister at Holy Communion; *V.* *Elphinstone* v. *Purchas*, and *Ridsdale* v. *Clifton*, cited ORNAMENT.

POSITIVE. — "Clear and Positive Proof"; *V.* CLEAR.

POSSE. — For keeping the Peace and pursuing Felons (*V.* HUE AND CRY) the Sheriff "may command all the people of his County to attend him; which is called the *Posse Comitatus*, or Power of the County" (1 Bl. Com. 343), which "in the opinion of Lambert in his *Eirenarcha*, l. 3, c. 1, fol. 309, containeth the Ayd and Attendance of all Knights, Gentlemen, Yeomen, Laborers, Servants, Apprentices, and all others above the age of fifteen years, within the County: but Women, Ecclesiastical Persons, and such as be decrepite, or labor of an Infirmity, shall not be compelled to attend" (Cowel, *Power of the County*).

V. IN POSSE.

POSSESSED. — "'Possessed' is peculiarly applied to Personalty, and a gift coupled with that word would, *primâ facie*, imply PERSONAL ESTATE" (per Turner, V. C., *Stokes* v. *Salomons*, 9 Hare, 81; 20 L. J. Ch. 343: *Vf*, *Wilde* v. *Holtzmeyer*, 5 Ves. 816: *Coard* v. *Holderness*, 20 Bea. 147).

As to whether the use of the word "possess," in any of its inflections, will limit a general testamentary gift to personalty, *e.g.* in such a phrase as "all I am possessed of," *V.* ALL.

"Effects I die possessed of"; *V. Michell* v. *Michell*, cited EFFECTS.

"Everything else I die possessed of"; *V.* EVERY THING ELSE.

"Moneys I die possessed of"; *V. Re Greaves*, 23 Ch. D. 313; 52 L. J. Ch. 753: *Petty* v. *Willson*, 4 Ch. 574; 17 W. R. 778: *Byrom* v. *Brandreth*, cited MONEY: *Chapman* v. *Reynolds*, 28 Bea. 221; 29 L. J. Ch. 594; 8 W. R. 403. *V.* GENERAL POWER.

"Money of which I am possessed"; *V. Re Cadogan*, 25 Ch. D. 154; 32 W. R. 57; 53 L. J. Ch. 209, following *Prichard* v. *Prichard*, L. R. 11 Eq. 232; 40 L. J. Ch. 92, and dissenting from *Larner* v. *Larner*, 3 Drew. 704; 26 L. J. Ch. 668; 5 W. R. 513: MONEY.

"Now possessed or entitled"; *V.* NOW.

Property, as mentioned in a Settlement, which a wife during the coverture may become "possessed of"; *V. Wilton* v. *Colvin*, 25 L. J. Ch. 850; 3 Drew. 617: *Vth, Archer* v. *Kelly*, 6 Jur. N. S. 814.

Quà Trustee Act, 1850, "'Possessed' shall be applicable to any *vested* estate, less than a life estate, at Law or in Equity in Possession or in Expectancy, in any Lands" (s. 2); a def applicable to the Lunacy Acts (s. 28, 54 & 55 V. c. 65); but quà Trustee Act, 1893, the def also includes "receipt of income" (s. 50); *Va*, Stat. Def., POSSESSION.

V. ENTITLED.

POSSESSION.—"Possession is said two waies, either actuall possession, or possession in Law.

"Actuall Possession, is when a man entreth in deed into lands or tenements to him descended, or otherwise.

"Possession in Law, is when lands or tenements are descended to a man, and hee hath not as yet really, actually, and in deed, entred into them: And it is called Possession in Law because that in the eye and consideration of the law, he is deemed to be in possession, forasmuch as he is tenaunt to every mans action that will sue concerning the same lands or tenements" (Termes de la Ley, *Possession*).

Sometimes "in Possession," in relation to an estate,—*e.g.* in the phrase "ESTATE TAIL in possession" in a Will,—will be construed as "vested" (*Foley* v. *Burnell*, 1 Bro. C. C. 274; 4 Bro. P. C. 319: *Martelli* v. *Holloway*, 42 L. J. Ch. 26; L. R. 5 H. L. 532).

But, generally, where an estate or interest in realty is spoken of as being "in Possession," that does not, primarily, mean the actual occupation of the property; but means, the present right thereto or to the enjoyment thereof (*Ren* v. *Bulkeley*, 1 Doug. 292), as distinguished from REVERSION, REMAINDER, or EXPECTANCY, as illustrated by the old conveyancing phrase, "In possession, reversion, remainder, or expectancy." In this sense the word is employed at the commencement of s. 58, S. L. Act, 1882 (*Re Morgan*, 53 L. J. Ch. 85; 24 Ch. D. 114: *Sv, Re Edwards*, cited OCCUPATION, p. 1312), and in s. 2 (5), same Act (*Re Atkinson*, 31 Ch. D. 577). *Va*, COME TO.

So, a Power of Leasing conferred on each succeeding Tenant for Life "as and when he shall be entitled to the Possession or the Receipt of the Rents and Profits," is referable to the falling into-possession of the several life interests, and not to the unincumbered beneficial enjoyment thereof; and is exerciseable by the donee although he has aliened his life interest (*Lonsdale* v. *Crawfurd*, 1900, 2 Ch. 687; 69 L. J. Ch. 686; 83 L. T. 312). *V.* ENTITLED IN POSSESSION.

But in a SHIFTING CLAUSE in the event of "any person for the time being entitled to the Possession or to the Receipt of the Rents and Profits" succeeding to a Title, the idea that "Possession" was used in contradistinction to "Reversion" was rejected, and "Possession" was construed "Actual Possession" which the devisee was prevented from having by a Trustee's Management Clause (*Leslie* v. *Rothes*, 1894, 2 Ch. 499; 63 L. J. Ch. 617; 71 L. T. 134: *Vf*, *Fazakerley* v. *Ford*, 1 A. & E. 897; 4 Sim. 390; 2 L. J. K. B. 111).

"Actual Possession"; *V.* ACTUAL FREEHOLD: *Vf*, inf.

"The first meaning which is found for 'Possession' in Johnson's Dictionary is this, — 'The state of owning, or having in one's hands or power; property,' — and that, with in some cases slight modifications, has been repeated in every other Dictionary which I have been able to consult. I think that the fine distinction between such words as 'Possession,' 'Property,' and 'Ownership,' is not one which would be present to the mind of a layman, and I do not think that the words here, 'Money in my possession,' were used by the testatrix with reference to the distinction which lawyers draw between interests in Possession and in Reversion" (per Stirling, J., *Re Egan*, cited REMAIN).

Quà Land Registry Act, 1862, 25 & 26 V. c. 53, "Possession," includes "Receipt of the Rents and Profits" (s. 140); which expansion of meaning is made applicable to Conv & L. P. Act, 1881 (s. 2, iii), to S. L. Act, 1882 (subs. 10, s. 2), and to 25 & 26 V. c. 67, s. 48; 28 & 29 V. c. 101, s. 3; 54 & 55 V. c. 66, s. 95. *Vf*, Stat. Def., POSSESSED.

"Possession" on COMPLETION of a purchase of Realty, does not, of itself, mean Personal Occupation; if the property be tenanted, putting the purchaser into the Receipt of the Rents and Profits will be giving him "Possession" (*Lake* v. *Dean*, 28 Bea. 607; *Vth*, Sug. V. & P. 8: Dart, 145); *secus*, if the phrase be "ACTUAL Possession" (*Royal Bristol Bg Socy* v. *Bomash*, 56 L. J. Ch. 840; 35 Ch. D. 390; 57 L. T. 179). "Possession," in this connection, means, Possession with a GOOD TITLE shown (*Tilley* v. *Thomas*, 3 Ch. 61).

Mere ENTRY is not "Possession" of land quà Statutes of Limitation (s. 10, 3 & 4 W. 4, c. 27: *Vth*, *Baker* v. *Coombes*, 9 C. B. 718).

"Possession to the Entire Exclusion of the donor"; *V.* ENTIRE EXCLUSION. *Cp*, ADVERSE.

"Possession," s. 2251, Civil Code of Lower Canada; *V.* *Dunn* v. *Lareau*, 57 L. J. P. C. 108.

"*Apparent* Possession"; *V.* inf.

Power to purchase heredits "in Fee Simple in Possession"; *V.* FEE SIMPLE.

"*Estate or Interest* in Possession"; *V.* ESTATE AND INTEREST.

"Possession" of an "Estate or Interest" to give a Poor Law Settlement, s. 68, 4 & 5 W. 4, c. 76; *V. R.* v. *St. Giles*, cited COMING.

"*Interest* in Possession," s. 8 (1 *b*), Trustee Act, 1888; *V. Mara* v. *Browne*, cited BREACH OF TRUST.

"Interest which shall *fall into* Possession"; *V.* SETTLE.

As to what is a sufficient "*Lawful* Possession" of a Location in Lower Canada to enable its holder to obtain an Injunction against a Timber License under 41 V. c. 14, Quebec; *V. Gilmour* v. *Mauroit*, 59 L. J. P. C. 38; 14 App. Ca. 645.

"Mtgee in Possession"; *V.* MORTGAGEE.

"Possession" of "Money or Property" belonging to a Friendly Sccy by its Officer "by virtue of his Office," s. 15 (7), 38 & 39 V. c. 60, means, Money or Property which at his death or bankruptcy is, or *at any time previously has been*, in his possession by virtue of his Office (*Re Atkins*, 51 L. J. Ch. 406: *Re Miller*, 1893; 1 Q. B. 327; 62 L. J. Q. B. 324; 68 L. T. 367; 41 W. R. 243; 57 J. P. 469). So, a sum in a Trustee's "Possession, or under his CONTROL," in respect of which he is in DEFAULT, s. 4 (3), Debtors Act, 1869, means, money *at any time* in his Possession or under his CONTROL (*Middleton* v. *Chichester*, 40 L. J. Ch. 237; 6 Ch. 152: *Crowther* v. *Elgood*, 56 L. J. Ch. 416; 34 Ch. D. 691; 56 L. T. 415; 35 W. R. 369); but it must be, or have been, *actually* in his possession or control, as distinguished from his being merely liable for it (*Re Walker*, 60 L. J. Ch. 25; 63 L. T. 237; 38 W. R. 766), or ordered to pay it (*Ex p. Sharp*, 37 L. T. 168): *Note*, this latter section applies to a Married Woman (*Re Turnbull*, 1900, 1 Ch. 180; 69 L. J. Ch. 187). *V.* TREASURER, at end.

"PARTY in Possession," s. 79, Lands C. C. Act, 1845; *V. Ex p. Hollinsworth*, 19 W. R. 580: *Ex p. Winder*, 46 L. J. Ch. 572; 6 Ch. D. 696: *Re Evans*, 42 L. J. Ch. 357: *Ex p. Chamberlain*, 49 L. J. Ch. 354; 14 Ch. D. 323: *Gedye* v. *Commrs of Works*, 1891, 2 Ch. 630; 60 L. J. Ch. 587.

To pay a debt or transfer personal property to an Exor before Probate, *e.g.* for a Co to transfer shares of a deceased shareholder, is to "TAKE Possession" of the money or property by the payer or transferor within s. 37, Stamp Act, 1815, 55 G. 3, c. 184 (*A-G.* v. *New York Breweries Co*, 1898, 1 Q. B. 205; 67 L. J. Q. B. 86; affd in H. L. nom. *New York Breweries Co.* v. *A-G.*, 1899, A. C. 62; 68 L. J. Q. B. 135; 79 L. T. 568; 48 W. R. 32; 63 J. P. 179).

"*Take effect* in Possession," s. 1, Charitable Uses Act, 1735, 9 G. 2, c. 36, means, "giving the right to possession" (1 Jarm. 220, citing *Fisher* v. *Brierley*, 10 H. L. Ca. 159; 32 L. J. Ch. 281).

Distress "during the Possession of the TENANT" holding over; *V.* DURING.

V. ACTUAL: ACTUAL FREEHOLD: ENTITLED IN POSSESSION.

"In general, in technical language, one is said to be possessed of GOODS when he has the property, and an immediate right to have the goods dealt with as he will" (Blackb. 334). Yet obviously the word is one largely dependent on the context (*Vh*, Blackb. 334).

As to what acts will take Goods out of the "APPARENT POSSESSION" of a grantor, for the purpose of the Bills of Sale Act, 1878; *V. Gough* v. *Everard*, 32 L. J. Ex. 210; 2 H. & C. 1; 11 W. R. 702: *Ex p. Homann, Re Vining*, 39 L. J. Bank. 4; L. R. 10 Eq. 63: *Ex p. Lewis, Re Henderson*, 6 Ch. 626: *Davies* v. *Jones*, 7 L. T. 130: *Robinson* v. *Briggs*, 40 L. J. Ex. 17; L. R. 6 Ex. 1: *Ex p. Saffery, Re Brenner*, 16 Ch. D. 668: *Gibbons* v. *Hickson*, 55 L. J. Q. B. 119; 53 L. T. 910; 34 W. R. 140: *Ex p. Mutton, Re Cole*, 41 L. J. Bank. 57; L. R. 14 Eq. 178: *Ex p. Jay, Re Blenkhorn*, 43 L. J. Bank. 122; 9 Ch. 697: *Edwards* v. *Edwards*, 45 L. J. Ch. 391; 2 Ch. D. 291; 34 L. T. 472; 24 W. R. 713. *Ex p. Jay, Re Blenkhorn*, decides that the "Apparent Possession" will remain in the grantor unless much more be done to take it from him than would be necessary with reference to the doctrine of reputed ownership. If in fact the grantor keeps possession, he is none the less in apparent possession because his act is wrongful (*Ancona* v. *Rogers*, 46 L. J. Ex. 121; 1 Ex. D. 285), or because he occupies as the salaried servant of the grantee (*Pickard* v. *Marriage*, 45 L. J. Ex. 594; 1 Ex. D. 364); *secus*, if a Wife (with her own moneys) be the buyer and the goods remain in the conjugal domicile (*Ramsay* v. *Margrett*, 1894, 2 Q. B. 18; 63 L. J. Q. B. 513; 70 L. T. 788). *Vf, Cookson* v. *Swire*, 54 L. J. Q. B. 249; 9 App. Ca. 653. *Cp*, POSSESSION, ORDER, OR DISPOSITION.

"*Man* in Possession," entitled to charge for possession under a DISTRESS, connotes a real and Actual possession, as distinguished from what is called a Constructive or Walking possession (*Lumsden* v. *Burnett*, 1898, 2 Q. B. 177; 67 L. J. Q. B. 661; 78 L. T. 778; 46 W. R. 664). As to Abandonment of Possession, *V.* ABANDONMENT.

Possession under a Distress for Rent, does not require that some one should be actually on the premises (*Bannister* v. *Hyde*, 29 L. J. Q. B. 141; 2 E. & E. 627: *Jones* v. *Beirnstein*, 1900, 1 Q. B. 100; 69 L. J. Q. B. 1; 81 L. T. 553; 48 W. R. 232).

V. EXCLUSIVE POSSESSION: IMMEDIATE POSSESSION: OCCUPATION.

"Possession," quà the *Criminal Law* and Offences against Property, has been thus defined:—

"A moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.

"A moveable thing is in the possession of the husband of any woman, or the master of any servant, who has the custody of it for him, and from whom he can take it at pleasure. The word '*Servant*' here includes any person acting as a servant for any particular purpose or occasion.

"The word '*Custody*,' means such a relation towards the thing as would constitute Possession if the person having custody had it on his own account.

"If a servant receives anything for his master from a third person, not being a fellow-servant, he has the Possession as distinguished from the Custody of it, until he has put it into his master's possession, by putting it into a place or thing belonging to his master, or by some other act of the same sort, whether the servant himself has or has not the custody of that place or thing.

"If a servant receives anything belonging to his master from a fellow-servant who has received it from their common master, such thing continues to be in the Possession of the master, unless the servant who delivered it, delivered it with the intention to pass the property therein to the servant to whom it is delivered, having authority to do so from the master.

"If a servant receives anything belonging to his master from a fellow-servant who has received it on the master's account, and has done no act to put it into the master's possession, it is in the Possession of the servant who so receives it, and not in his Custody merely" (Steph. Cr. 210, 211).

A servant whose regular employment does not include taking care of, but who during his master's temporary absence is merely left in charge of, the Weights and Measures on his master's premises, is not, during such absence "in the Possession" of the Weights and Measures within s. 48, 41 & 42 V. c. 49 (*Smith* v. *Webb*, 12 Times Rep. 450).

"Custody or Possession," quà Coinage Offences Act, 1861; *V.* CUSTODY.

"Custody, Possession, or Keeping" of Naval Stores; *V. R.* v. *Sunley*, 7 W. R. 418: 27 & 28 V. c. 91, s. 12.

Possession of Unwholesome Meat, s. 117, P. H. Act, 1875; *V. Newton* v. *Monkcom*, 58 L. T. 231; 4 Times Rep. 205.

"Found in the Possession"; *V.* FOUND.

As to meaning of "fraudulently allure, &c, a woman, under the age of 21 years, *out of the Possession* and against the will of her father or mother," s. 53, 24 & 25 V. c. 100; *V. R.* v. *Burrell*, 33 L. J. M. C. 54; L. & C. 354. And as to a similar use of "Possession" in s. 55 of the same Act; *V. R.* v. *Manktelow*, 22 L. J. M. C. 115; Dears. 159: *R.* v. *Timmins*, 30 L. J. M. C. 45: *Vf*, TAKE.

V. Pollock and Wright on Possession: 10 Encyc. 228–237.

POSSESSION or POWER. — As to the meaning and requirements of this phrase in an Affidavit of Documents; *V.* Ann. Pr., notes to R. 13, Ord. 31, R. S. C.

POSSESSION, ORDER, or DISPOSITION. — The property divisible amongst a Bankrupt's Creditors comprises (int. al.), "All GOODS being, at the commencement of the bankry, in the Possession, Order, *or* Disposition of the Bankrupt, IN HIS TRADE OR BUSINESS, by the CONSENT and Permission of the TRUE OWNER, under such circumstances that he is the Reputed Owner thereof" (s. 44 iii, Bankry Act, 1883). The construction of "Possession, Order, or Disposition" "has yet to be determined" (per Ld Fitzgerald, *Colonial Bank* v. *Whinney*, 56 L. J. Ch. 52; 11 App. Ca. 445). "It is to be remarked, however, that the words are not now, — and have not been since 6 G. 4, c. 16, s. 72, — what they were when many of the earlier cases were decided. It is pointed out by Parke, B. (*Whitfield* v. *Brand*, 16 L. J. Ex. 103; 16 M. & W. 282), that they now stand as 'Possession, Order, *or* Disposition,' instead of 'Possession, Order, *and* Disposition.' I think, therefore, that it is enough if these goods were in the 'Possession' of the bankrupt in his Trade or Business, although they were not in his 'Disposition' therein, in the sense that they were such things as he sold in his trade. The words 'Order or Disposition' seem to me, necessarily, to enlarge the word 'Possession' so as to include something beyond visible occupation by a Reputed Owner. If it be said that this construction appears inconsistent with Ld Watson's words in *Colonial Bank* v. *Whinney*, — 'the principle which appears to me to be deducible from the authorities is this, That goods belonging to a third party are not within s. 44 (iii), unless they were left with the bankrupt in such circumstances that, as Reputed Owner, he could have sold them or otherwise obtained credit upon them in the course of his trade or business,' — then I would answer that I understand Ld Watson to have meant by 'obtaining credit upon goods,' not merely getting a loan by pledging them but, obtaining credit on the purchase of other goods because of the bankrupt appearing to own things valuable for business purposes though not for sale in his business. This construction recomends itself to me as being entirely consonant with the passage quoted in *Colonial Bank* v. *Whinney* (56 L. J. Ch. 53; 11 App. Ca. 447), by Ld Ashbourne, from *Ryall* v. *Rowles* (1 Ves. sen. 371), as applicable to the existing Bankry Law that the intent of it is 'to prevent traders from gaining a delusive credit by a false appearance of substance to mislead those who should deal with them.' Moreover, I think there is extreme force in the following passage from the jdgmt of Cotton, L. J., in *Colonial Bank* v. *Whinney*, — 'What meaning then are we to give to those words? Of course, where the goods are in the nature of Stock-in-Trade there is no difficulty; goods apparently forming part of the Stock-in-Trade of the firm must be in the Order or Disposition of the bankrupt in his trade or business. But, in my opinion, the words go further than that. I think the true construction is, that the goods must be in his Order or Disposition for the purposes of, or purposes *connected with*, his Trade or Business.' Further on in the same case,

Lindley, L. J., construes these words as meaning, 'not merely visibly employed in his Trade or Business but, acquired for the purposes of the business and used for those purposes'" (per Darling, J., *Sharman* v. *Mason*, 69 L. J. Q. B. 7, who points out that, though *Colonial Bank* v. *Whinney* was revd in H. L., the above reasoning of Cotton and Lindley, L. JJ., remained unaffected). Accordingly, it was held that Stands in a Dressmaker's business, which were not for sale and could not lawfully have been pledged, were in the "Possession, Order, or Disposition," of the Dressmaker, and came within the above Reputed Ownership Clause (*Sharman* v. *Mason*, 1899, 2 Q. B. 679; 69 L. J. Q. B. 3; 81 L. T. 485; 48 W. R. 142).

"Possession" by the TRUE OWNER is effectual to exclude the Reputed Ownership rule if it be real, even though it be friendly (*Re Francis*, 10 Ch. D. 408). So, of a notorious Trade Custom, *e.g.* that of an Hotel Keeper to hire his Furniture (*Re Parker*, cited FURNITURE: *Crawcour* v. *Salter*, 51 L. J. Ch. 495; 18 Ch. D. 30), or of Pianos on the HIRE-PURCHASE system (*Re Blanchard*, 47 L. J. Bank. 113; 8 Ch. D. 601), or of goods the subject of a SALE ON TRIAL (*Ex p. Wingfield*, 10 Ch. D. 591).

Note: That s. 44 (iii), Bankry Act, 1883, provides "that THINGS IN ACTION, other than Debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed 'Goods,' within the meaning of this section": *Vth*, *Re Seaman*, 1896, 1 Q. B. 412; 65 L. J. Q. B. 348; 74 L. T. 151; 44 W. R. 496: *Re Goetz*, cited CONSENT. *V.* CHOSE IN ACTION.

Vh, Baldwin, 304 *et seq*: Wms. Bank. 205 *et seq*: Robson, ch. 23.

Semble, "POWER, order, or disposition," is equivalent to "Possession, order, or disposition" (*Re Pole*, 4 W. R. 685; 27 L. T. O. S. 247).

POSSESSIONS. — The word "Possessions," in Case 5, Sch D, s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35, includes a Trade or Business, and is to be taken in the widest sense, as denoting all property that may be a source of income (*Colquhoun* v. *Brooks*, 59 L. J. Q. B. 53; 14 App. Ca. 493; 61 L. T. 518). *V.* PROFITS.

V. BRITISH POSSESSION: FOREIGN.

"Her Majesty's Possessions in Australasia"; Stat. Def., 48 & 49 V. c. 60, s. 1.

"His Majesty's Colonies and Possessions Beyond the Seas"; Stat. Def., 6 & 7 W. 4, c. 54, s. 25.

"Possessions of the Duchy of Cornwall"; Stat. Def., 7 & 8 V. c. 65, s. 44; 26 & 27 V. c. 49, s. 37.

POSSESSORY. — Possessory LIEN of a Shipbuilder for repairs to a ship; *V. The Scio*, L. R. 1 A. & E. 353.

A Possessory TITLE to land may perhaps be defined as, a Title unde-

fended by Muniments and the holder of which has only undisturbed and unqualified length of possession on which to rely: *Vh*, Real Property Limitation Acts, 1833 and 1874. Under the Land Transfer Act, 1897, a person may apply for registration "with a Possessory Title," if he makes a Declaration that he is "*in* possession [*or*, receipt of the rents and profits]" and that he is somehow entitled (Part 2, Land Transfer Rules, 1898, and Form 2 of Sch 1); but, *semble*, such a title never "ripens into absolute title" (s. 8, 38 & 39 V. c. 87; R. 18, L. T. Rules, 1898).

POSSIBILITY.—A Possibility is "an uncertain thing which may or may not happen" (Jacob). *Cp*, CONTINGENT.

"Estate, Interest, Right, or Possibility," s. 20, Real Property Limitation Act, 1833; *V.* RIGHT.

"Possibility of Issue extinct"; *V.* TAIL.

A "Possibility on a Possibility," in a limitation of property, is rejected in law (Co. Litt. 25 b, 184 a), referring to which doctrine and to Coke's discussion of it Lindley, L. J., said, "I hope he who reads it will be able to understand it better than I do. I do not understand it now, and I never did" (*Whitby* v. *Mitchell*, 59 L. J. Ch. 485; 44 Ch. D. 85). The phrase and the rule it expresses have but little force now (Wms. R. P. Part 2, ch. 2); but one example remains in the vigorous and "important rule that, if land is limited to one unborn person during his life, a Remainder cannot be limited so as to confer an estate by PURCHASE on that person's issue" (Butler's *n*, Fearne Cont. Rem. 565: *Vf*, Wms. R. P. sup). That old rule has not been abrogated by the much more modern rule against PERPETUITIES, though, in consequence of the latter, it is but seldom brought into practical operation; therefore, a limitation offending against the old rule is not saved because it happens not to offend the rule against Perpetuities (*Whitby* v. *Mitchell*, sup). *Vh*, *Re Frost*, 59 L. J. Ch. 118; 43 Ch. D. 246.

POSSIBLE.—Where a manufacturer undertakes to supply an article "*as soon as* possible," that means with all reasonable promptitude and in the shortest practicable time, regard being had to the manufacturer's ordinary means of business, and the orders he may reasonably be assumed to have already in hand (*Attwood* v. *Emery*, 26 L. J. C. P. 73; 1 C. B. N. S. 110, explained by *Hydraulic Engineering Co.* v. *McHaffie*, 4 Q. B. D. 670; 27 W. R. 221). *Vh*, Benj. 678: Add. C. 125: Blackb. 226. *Vf*, CAN: *Cp*, EFFICIENTLY.

A Duty, to do a thing "if possible" means, generally, if reasonably possible in a business sense (per Esher, M. R., *Assicurazione Generali* v. *Bessie Morris Co*, 1892, 2 Q. B. 652; 61 L. J. Q. B. 754; 67 L. T. 218; 41 W. R. 83, and in *Shepherd* v. *Kottgen*, 2 C. P. D. 585; 47 L. J. C. P. 72, 73). *Vf*, IMPRACTICABLE.

So, where a local Act modified the then law requiring furnaces to consume their own smoke by enacting that they should do so "*as far as* possible," this was held to mean "as far as possible consistently with carrying on the manufacture in question" (*Cooper* v. *Woolley*, L. R. 2 Ex. 88; 36 L. J. M. C. 27; 15 L. T. 539. *Note*: The general phrase hereon now is, "as far as *practicable*"; s. 91, proviso 2, P. H. Act, 1875).

Quarter Sessions "next practically possible"; *V.* NEXT.

A rule of a Managing Committee of a Publication to obtain Literary Compositions "as far as possible without expense," does not authorize one of the committee to contract for contributions to be paid for (*Heraud* v. *Leaf*, 5 C. B. 157; 17 L. J. C. P. 57).

V. IMMEDIATELY: IMPOSSIBLE: NECESSITY: PRACTICABLE: REASONABLE.

"To load with all possible DESPATCH"; *V. Hudson* v. *Clementson*, 25 L. J. C. P. 234; 18 C. B. 213. *Vf*, NEARLY AS POSSIBLE.

To discharge cargo "as fast as you can"; *V.* CUSTOMARY.

"*If* possible"; *V. Wilson* v. *Kynock*, W. N. (77) 164.

POST.— *V.* BY POST: ORDINARY COURSE.

Quà Telegraph Act, 1863, 26 & 27 V. c. 112, "'Post,' means, a post, pole, standard, stay, strut, or other aboveground contrivance, for carrying suspending or supporting a TELEGRAPH" (s. 3); *Vf*, s. 20, 47 & 48 V. c. 76.

"Post TOWN"; Stat. Def., 1 V. c. 36, s. 47; 3 & 4 V. c. 96, s. 71.

"Travelling Post," 25 G. 3, c. 51; *V. R.* v. *Tooley*, 3 T. R. 69: *R.* v. *Swift*, 8 East, 584, *n*: 44 G. 3, c. 98, Sch B; *V. Welsford* v. *Todd*, 8 East, 580.

POST CARD.— *V.* PACKET. "Reply Post Card"; *V.* REPLY.

POST LETTER.—Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "Post Letter," means, "Any letter or packet transmitted by the Post under the authority of the Postmaster General; and a letter shall be deemed a Post Letter from the time of its being delivered to a POST OFFICE to the time of its being delivered to the person to whom it is addressed" (s. 47); that def does not include a letter, not posted in the ordinary course but, put by a Post Official amongst letters so posted as a trap for a suspected person (*R.* v. *Rathbone*, 2 Moody, 242; C. & M. 220: *R.* v. *Shepherd*, 25 L. J. M. C. 52; Dears. 606); but, if duly posted, a letter is none the less a "Post Letter" because addressed to a fictitious person as a trap (*R.* v. *Young*, 2 C. & K. 466; 1 Den. 194, over-ruling *R.* v. *Gardner*, 1 C. & K. 628).

The above def of "Post Letter" quà Post Office (Offences) Act, 1837, and any Act incorporating it or referring thereto or to be construed there-

with, and also quà Post Office (Protection) Act, 1884, 47 & 48 V. c. 76, is widened by s. 19 (1) of the latter Act.

A Postal TELEGRAM, is a "Post Letter" within the Act of 1837 (s. 23, 32 & 33 V. c. 73).

V. LETTER: PACKET: Rosc. Cr. 755.

"Post Letter Bag," quà the Act of 1837, includes, "a mail bag or box, or packet or parcel, or other envelope or covering, in which Post Letters are conveyed, whether it does or does not contain post letters" (s. 47). *Cp*, PACKET: "Post Office Letter Box," sub POST OFFICE.

POST OBIT.—A Post Obit Bond or other obligation, is one that is payable on or after the death of a person other than the maker, *e.g.* one by an expectant heir payable on or after the death of the tenant for life of family estates; if unconscionable, it may be set aside (*Chesterfield* v. *Janssen*, 2 Ves. sen. 158 *et seq*).

POST OFFICE.—Quà Post Office (Offences) Act, 1837, and any Act incorporating it, or referring thereto, or to be construed therewith, "Post Office," means, "any house, building, room, carriage, or place, where Postal Packets, as defined by this Act (*V.* PACKET), or any of them are, by the permission or under the authority of the Postmaster General received delivered sorted or made up, or from which such packets or any of them are, by the authority of the Postmaster General, despatched; and shall include, any Post Office Letter Box" (s. 19 (1), 47 & 48 V. c. 76). A covenant to use demised premises as a "Post Office" only, is not broken by issuing therefrom Inland Revenue Licenses (*Wadham* v. *Postmaster General*, 24 L. T. 545).

"The Post Office Acts, 1837 to 1895," "The Post Office (Duties) Acts, 1840 to 1891," "The Post Office (Management) Acts, 1837 to 1884," "The Post Office (Money Orders) Acts, 1848 to 1883," "The Post Offices (Offences) Acts, 1837 and 1884," "The Post Office Savings Bank Acts, 1861 to 1893"; *V.* Sch 2, Short Titles Act, 1896.

"Post Office Laws"; Stat. Def., 1 V. c. 36, s. 47; 32 & 33 V. c. 73, s. 24.

"Post Office Letter Box"; Stat. Def., 47 & 48 V. c. 76, s. 19 (1).

"Post Office Packets," in the sense of Vessels; Stat. Def., 1 V. c. 36, s. 47.

Post Office "Purpose," land for; Stat. Def., 44 & 45 V. c. 20, s. 8.

"Post Office Regulations"; Stat. Def., 33 & 34 V. c. 79, s. 2; 43 & 44 V. c. 33, s. 5.

V. OFFICER: SAVINGS.

On the Post Office generally, *V.* 10 Encyc. 250–259.

POSTAGE.—Quà Post Office (Offences) Act, 1837, "Postage," means, "the duty chargeable for the transmission of POST LETTERS"

(s. 47); "Sea Postage," means, "the duty chargeable for the conveyance of letters by sea by vessels not packet boats" (Ib.).

V. BRITISH POSTAGE: COLONIAL: DOUBLE: FOREIGN: INLAND: PACKET: SINGLE POSTAGE: TREBLE.

POSTAL. — "Postal Officer"; *V.* OFFICER.
"Postal Packet"; *V.* PACKET.

POSTER. — *V.* BILL: BANNER.

POSTERITY. — *V.* DESCENDANTS.

POSTHUMOUS CHILD. — It is said, "If a father gives a legacy to provide for a CHILD *en ventre sa mère* by the term of a 'Posthumous Child' and he happens to survive its birth, it will still be considered a Posthumous Child within the meaning of the Will" (Wms. Exs. 951, citing *Jaggard* v. *Jaggard*, Pr. Ch. 177). But that proposition and case, and also *White* v. *Barber* (5 Burr. 2703), were cited in *Doe* d. *Blakiston* v. *Haslewood* (20 L. J. C. P. 89; 10 C. B. 544) in *whc* the facts were that a testator (contemplating his early death which did not happen) devised lands to his wife for life, with remainder in fee to his nephew, but if his wife should give birth to a posthumous child then such child to take to the exclusion of his nephew, and a child was born in the lifetime of the testator; held, that such child did not take, and that the devise to the nephew remained undisplaced; and, if necessary, the Court was prepared to over-rule *White* v. *Barber*. *Vh*, 10 Encyc. 243–248.

POSTMASTER GENERAL. — *V.* s. 12 (11), Interp Act, 1889.

POSTPONE. — An unrestricted power to Trustees to postpone a sale will not be limited by the court; and a power to postpone the sale of a Business involves the power of continuing the business in the meantime (*Re Chancellor*, 26 Ch. D. 46, 47: *Re Crowther*, 1895, 2 Ch. 56; 64 L. J. Ch. 537; 72 L. T. 762).

Such a power does not authorize postponement for a defined time, but has to be exercised from time to time according to the exigency of the circumstances for the time being, and must (unless otherwise directed) be exercised by the trustees unanimously (*Re Roth*, W. N. (96) 16; 74 L. T. 50); and should be exercised as a matter of prudent management (*Rowlls* v. *Bebb*, cited PRODUCE). *Vf*, PROFITS.

POULTER'S ACT. — The Apportionment Act, 1834, 4 & 5 W. 4, c. 22.

POUND. — "A Pound (*parcus*, which signifies any inclosure) is either Pound Overt, *i.e.* open overhead; or Pound Covert, *i.e.* close"

(3 Bl. Com. 12). *Vf*, OVERT: "Open Pound," sub OPEN, and on the authority of the passage from Co. Litt. there cited it may, probably, be said that, an Open Pound is one which is accessible to the owner of the impounded animals. *V.* IMPOUND: IMPOUND OR CONFINE.

The weight of the "Imperial Standard Pound" is regulated by s. 13, 41 & 42 V. c. 49. *V.* CWT.: DRAM: GRAIN: OUNCE: STONE: TON.

A "Pound," when a payment or money is referred to, means 20*s.*; and a covenant to pay so many "Pounds," without more, means pounds in money (per Twisden, J., *Hookes* v. *Swaine*, 1 Sid. 151). In *Re Buller* (74 L. T. 406) a gift of "£400 invested" in a stated Co, was held by Stirling, J., to mean, shares of that nominal amount in the Co.

POUNDAGE. — Sheriff's Poundage; *V.* EXECUTION, p. 662.

Poundage, was a SUBSIDY of 12*d.* in the £ on all merchandize exported or imported (Cowel).

POURPRESTURE. — *V.* PURPRESTURE.

POVERTY. — *V.* CHARITY: FORMÂ PAUPERIS: PAUPER: POOR.

POWER. — "'Power,' does not apply to the sort of interest which the Ownership gives" (per Ellenborough, C. J., *Roe* d. *Berkeley* v. *York*, 6 East, 107): *Vf*, per Fry, L. J., *Re Armstrong*, cited PROPERTY.

"A Power is an authority reserved by, or limited to, a person to dispose, either wholly or partially, of Real or Personal Property, either for his own benefit or for that of others. The word is used as a technical term, and is distinct from the dominion which a man has over his own estate by virtue of ownership" (Farwell, 1).

V. APPOINT: APPOINTED: APPOINTMENT.

As to what words will *create* a Power of Appointment; *V.* Sug. Pow. ch. 4, s. 1: Farwell, ch. 3.

As to what words will *exercise* a Power, the simple question is, Whether you can find in the document, which is put forward as exercising it, such an indication to exercise the Power as that it ought to be held that the Power has been exercised; "it is a question of intention, and a question of intention only" (per Pearson, J., *Von Brockdorff* v. *Malcolm*, 55 L. J. Ch. 121; 30 Ch. D. 172; cited with approval by North, J., *Re Cotton*, 58 L. J. Ch. 174; 40 Ch. D. 41, and by Stirling, J., *Re Milner*, cited ABSOLUTELY); and, "in applying a rule of this kind, little assistance is to be got from decisions on Wills differing in form and expression" (per Stirling, J., *Re Milner*, sup: *whcv*, for numerous cases hereon). *Vf*, Farwell, ch. 5: Theobald, ch. 20: 2 White & Tudor, 289–365: GENERAL POWER: MY: BENEFICIAL: WILL: WRITING: SPECIAL.

Fraud on a Power, is where a Power of Appointment, exercised according to the letter of the Power, is exercised pursuant to an antecedent bargain that the property shall be held for persons not objects of the Power (*Pryor* v. *Pryor*, 33 L. J. Ch. 441; 2 D. G. J. & S. 205). *Vh*, Farwell, 418 *et seq*: Watson Eq., *Powers*, ch. 9.

"Power to appoint," s. 27, Wills Act, 1837, means, "Power to appoint, *by the Will in question*" (*Phillips* v. *Cayley*, 43 Ch. D. 222; 59 L. J. Ch. 177). *V.* EXPRESSLY REFER.

"Shall hereby have Power"; *V.* MAY.

"According to their respective Powers"; *V.* FACILITIES.

"Disposing Power"; *V.* DISPOSING: BENEFICIAL.

"Powers in anywise enabling"; *V.* ENABLING: IN EXERCISE.

Leasing Power contrasted with a Restriction on granting leases; *V.* *Croft* v. *Lumley*, 6 H. L. Ca. 737; 27 L. J. Q. B. 343: YEAR.

Necessary Powers; *V.* NECESSARY.

"Power of Revocation"; *V.* REVOKE.

"Right, Power, or Privilege"; *V.* RIGHT.

Electrical "Power"; Stat. Def., 62 & 63 V. c. 19, Sch s. 1. *Cp*, ENERGY.

"Powers"; Stat. Def., Loc Gov Act, 1888, s. 100; London Gov Act, 1899, s. 34; Loc Gov (Scot) Act, 1889, s. 105; Loc Gov (Ir) Act, 1898, s. 109 (*Cp*, DUTIES: LIABILITY); 57 & 58 V. c. 57, s. 39 (8); 62 & 63 V. c. 50, s. 30.

V. POSSESSION OR POWER: POSSESSION, ORDER, OR DISPOSITION, at end: USURPED POWER.

POWER OF ATTORNEY. — A Power of Attorney, is an authority whereby one "is set in the turne, stead, or place of another" to act for him (*V.* ATTORNEY). It is generally made by Deed Poll (*V.* POLL), but *semble* (Wms. P. P. Part 2, ch. 3), may be by writing unsealed (*Howell* v. *M'Ivers*, 4 T. R. 690), or even by parol (*Heath* v. *Hall*, 4 Taunt. 326). *Vh*, ss. 46, 47, 48, Conv & L. P. Act, 1881; ss. 8, 9, Conv Act, 1882; s. 23, Trustee Act, 1893.

For wide Form of such a Power, espy of Power to Sell; *V.* *Hawksley* v. *Outram*, 1892, 3 Ch. 359; 62 L. J. Ch. 215; 67 L. T. 804.

As to effect of Recitals in; *V.* *Danby* v. *Coutts*, 54 L. J. Ch. 577; 29 Ch. D. 500; 52 L. T. 401; 33 W. R. 559.

POWER OF THE COUNTY. — *V.* POSSE.

POYNINGS' ACTS. — These are the Irish Acts, 10 H. 7, cc. 4, 22 (amended by Irish Act, 3 & 4 W. 3, c. 4); and were so called because Sir Edward Poynings was Lord Lieutenant at the time of the making thereof. Thereby all the then statutes in England were made to be of force in Ireland (Termes de la Ley: 1 Bl. Com. 101–104). *Vf*, YELVERTON'S ACTS: 7 Encyc. 63.

P. P. — As used in a sporting match; *V.* *Daintree* v. *Hutchinson*, 11 L. J. Ex. 186; 10 M. & W. 85.

V. PER PROCURATION.

P. P. I. Policy; *V.* HONOUR.

PRACTICABLE. — "All Practicable Speed"; *V. Nicholls* v. *Hall*, 42 L. J. M. C. 105; L. R. 8 C. P. 322.

"As far as Practicable," s. 91, proviso 2, P. H. Act, 1875; *V. Cooper* v. *Woolley*, L. R. 2 Ex. 88; 36 L. J. M. C. 27; 15 L. T. 539: POSSIBLE.

V. CORRESPOND: REASONABLY PRACTICABLE: WORKABLE: WORTH THE EXPENSE: IMPRACTICABLE: SAFE.

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

A man who has been a working miner, but who is, and for 8 years has been, employed above ground as a check-weigher, is not a "Practical *Working Miner*" within Rule 38, s. 49, Coal Mines Regulation Act, 1887, 50 & 51 V. c. 58 (*Indian* v. *Colquhoun*, Times, 18 Jan 1890).

PRACTICALLY. — *V.* PRACTICABLE.

Quarter Sessions "next practically possible"; *V.* NEXT.

PRACTICE. — "Practice," in its larger sense, is like "Procedure," and "denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right" (per Lush, L. J., *Poyser* v. *Minors*, 7 Q. B. D. 333; 50 L. J. Ex. 557).

The "Practice" of a Court, when that word is used in its ordinary and common sense, denotes the Rules that make or guide the *cursus curiæ*, and regulate procedure within the walls or limits of the Court itself, and does not involve or imply anything relating to the extent or nature of its jurisdiction; and, therefore, the Queen's Remembrancer Act, 1859, 22 & 23 V. c. 21, s. 26, enabling the now abolished Barons of the Exchequer to frame Rules for making "the process, practice, and mode of pleading" on the Revenue side of the Court uniform with that on the Plea side, did not give those learned judges the power, they assumed to exercise, of giving an appeal in Revenue cases (*A-G.* v. *Sillem*, 33 L. J. Ex. 209; 10 H. L. Ca. 704).

A Chamber Summons to Review a Taxation, is a matter of "Practice *and Procedure*" within s. 1 (4), Jud. Act, 1894, and R. 23, Ord. 54, R. S. C. (*Re Oddy*, 1895, 1 Q. B. 392; 64 L. J. Q. B. 123; 43 W. R. 363; 71 L. T. 861); so, is a summons for an Interim Injunction, even though the action itself be for an Injunction (*McHarg* v. *Universal Stock Exchange*, 1895, 2 Q. B. 81; 64 L. J. Q. B. 498); so, of an Application to set aside an *ex parte* Order to serve writ out of the jurisdiction (*Black* v. *Dawson*, 1895, 1 Q. B. 848; 64 L. J. Q. B. 464; 43 W. R. 435), or for leave to revoke appointment of an Arbitrator (*Re Portland and Tilley*, 1896, 2 Q. B. 98; 65 L. J. Q. B. 527; 74 L. T. 703), or for appointment of a Receiver (*Hood-Barrs* v. *Cathcart*, 11 Times Rep. 262), or a Garnishee Order (*Hockley* v. *Ansah*, 44 W. R. 666), or for jdgmt under Ord. 14, R. S. C. (*Cannon Brewery Co.* v. *Gilby*, 75 L. T. 407). So, *semble*,

of a summons to take out Execution (*Wilson* v. *Parker*, 39 S. J. 180); but a Prohibition to a County Court is not within the section (*Watson* v. *Petts*, 1899, 1 Q. B. 54; 67 L. J. Q. B. 970; 79 L. T. 330; 47 W. R. 68: *Morton* v. *Emanuel*, 43 S. J. 97). *Vh*, *Hood-Barrs* v. *Cathcart*, 1895, 1 Q. B. 597, *n*; 64 L. J. Q. B. 352; 43 W. R. 309.

R. 22, Ord. 22, R. S. C., which forbids communicating to a jury that money has been paid into Court, is one of Practice and Procedure (*Williams* v. *Goose*, 1897, 1 Q. B. 471; 66 L. J. Q. B. 345; 76 L. T. 143; 45 W. R. 308).

To constitute a "*Custom or Practice*" authorizing a Municipal Corporation to make a RENEWAL of a Lease, s. 95, 5 & 6 W. 4, c. 76, repld s. 110, Mun Corp Act, 1882, "there must be such a number of preceding leases of such a similar and uniform character as to amount, though not to a legal CUSTOM yet, to that which in ordinary and common parlance and by persons not acquainted with the technical import of legal expressions would be called a 'Custom,' to which the word 'Practice' is synonymous" (per Romilly, M. R., *A-G.* v. *Yarmouth*, 21 Bea. 635; 3 W. R. 309; 25 L. T. O. S. 5).

No "RIGHT or PRIVILEGE with respect to denominational schools which any class of persons have, by *Law or Practice*," in the Province of Manitoba (s. 22, Manitoba Act, 1870, confirmed by 34 & 35 V. c. 28), was prejudicially affected by the establishment of free and non-sectarian public education; for though "Practice," in such a connection, is not restricted to "Custom having the force of Law," yet it there relates to some legal Right or Privilege, or some benefit or advantage in the nature of a Right or Privilege, and, as there was no law or regulation or ordinance with respect to education in Manitoba at or before the Act, what was previously done by the denominations in the matter of providing education was only pursuant to a natural right needing no law to protect it, and could not be called a "Privilege" in any proper sense of the word (*Winnipeg* v. *Barrett*, 1892, A. C. 445; 61 L. J. P. C. 58; 67 L. T. 429).

"Practices"; *V.* PRETENCE.

"Put in Practice," a Patent; *V.* USE.

V. PRACTISE: ALREADY: CORRUPT PRACTICE.

PRACTISE. — To "act or practise" as an APOTHECARY without a certificate within the prohibition of s. 20, 55 G. 3, c. 194, has relation to an habitual or continuous course of conduct; therefore, where an uncertificated person gave advice and supplied medicine to three different persons at different times, he was guilty of one offence, not three, and was liable to only one penalty (*Apothecaries Co* v. *Jones*, 1893, 1 Q. B. 89; 41 W. R. 267; 67 L. T. 677).

A man practises as an Apothecary and, if registered, is entitled to recover his charges for medical aid and medicine (s. 21, 55 G. 3, c. 194; ss. 31 and 32, 21 & 22 V. c. 90) if his is the directing brain, though the

ministering hand be that of an unqualified person (*Howarth* v. *Brearley*, 19 Q. B. D. 303; 56 L. J. Q. B. 543). An assistant to another, though doing the work of an Apothecary, was not "in practice as an Apothecary" within s. 21, 55 G. 3, c. 194 (*Brown* v. *Robinson*, 1 C. & P. 264).

A SOLICITOR, holding a Country Certificate and whose office is in the country, does not "ACT or practise" in London (s. 59, Stamp Act, 1870, repld s. 43, Stamp Act, 1891) by attending one taxation at the Central Office (*Re Horton*, 8 Q. B. D. 434; 51 L. J. Q. B. 309).

Quà Justices Qualification Act, 1871, 34 & 35 V. c. 18, a Solicitor "shall be deemed to practise and carry on his profession or business in the County, City, or Town, in which he maintains an OFFICE, or place of business" (s. 2); *Vth, R.* v. *Douglas*, 1898, 1 Q. B. 560; 67 L. J. Q. B. 406; 78 L. T. 198; 46 W. R. 377; 62 J. P. 277. On the other hand, a Solr who regularly practises at a Petty Sessions or County Court, "exercises, practises, or carries on," his business there, although he receives his instructions elsewhere (*Llewellyn* v. *Simpson*, 91 Law Times, 9).

To "practise" as a SURGEON; *V. Rawlinson* v. *Clarke*, 14 L. J. Ex. 364; 14 M. & W. 187.

Assuming title of a "Veterinary Practitioner"; *V.* VETERINARY: QUALIFIED.

V. CARRY ON.

PRACTITIONER. — *V.* MEDICAL: QUALIFIED: VETERINARY.

PRÆDIAL TITHES. — *V.* TITHES.

PRÆMUNIRE. — This offence was "where any man sueth any other in the Spirituall Court for anything that is determinable in the Kings Court" (Termes de la Ley); and the statutes of Præmunire were to repress the civil power of the Pope. For those statutes, and hereon, *V.* Jacob: 4 Bl. Com. ch. 8: *Martin* v. *Mackonochie*, L. R. 2 A. & E. 150–155: *Middleton* v. *Crofts*, 2 Atk. 669: Phil. Ecc. Law, 1108.

PRATA. — *V.* MEADOWS.

"'Pratum Falcabile,' a Meadow or Ground fit for mowing" (Cowel).

PRAWNS. — *V.* SEA FISH.

PRAYER. — "What is Prayer? Barrow says it is, not only supplication but, adoration" (per Byles, J., *Baxter* v. *Langley*, 38 L.J. M. C. 5).

So, though "bequests for Prayers for the Soul of the testator are void as superstitious" (Tudor's Char. Trusts, 23, and cases there cited: *Vf, Egerton* v. *All Saints, Odd Rode*, 1894, P. 15), yet, *semble*, a bequest to say Prayers for the Living, or to offer Thanksgiving for the Dead in the sense at the end of the Prayer for the Church Militant in the BOOK OF

COMMON PRAYER, would be good (*Re Michel*, 28 Bea. 39; 29 L. J. Ch. 547; 2 L. T. 46; 8 W. R. 299; 6 Jur. N. S. 573). *Vf*, 10 Encyc. 289, 290.

"Open Prayer"; *V.* OPEN.

V. PRECATORY TRUST.

PREACHER. — *V.* GODLY PREACHER.

PREACHING. — *V.* MINISTRATION: PUBLIC PREACHING.

Preaching on the Seashore; *V. Llandudno* v. *Woods*, cited FORESHORE.

PREAMBLE. — The Preamble of a statute "is a key to open the minds of the makers of the Act, and the mischiefes which they intend to remedy by the same" (Termes de la Ley). *Vh*, *Sussex Peerage Case*, 11 Cl. & F. 143: per Ld Blackburn, *West Ham* v. *Iles*, 8 App. Ca. 388; 52 L. J. Q. B. 650.

PREBEND. — "Prebend" signifies the office which a Prebendary holds, and also his stipend, which stipend "is an endowment in land, or pension in money, given to a Cathedral or Conventual Church in *præbendam*" (Phil. Ecc. Law, 138).

A "Prebendary" is the holder of a Prebend, and is a Secular Priest or Regular Canon, and is either a Simple Prebendary or a Dignitary Prebendary, — Simple, when he has no jurisdiction; Dignitary, when he has a prescriptive jurisdiction (Ib.).

"Net Profits" of a Prebend; *V.* NET.

PRECARIÆ. — Precariæ, or Benework, or Boonwork, is "special work done by a tenant at the request of his lord, as distinguished from fixed services; Seebohm, 78; Spelm. Gloss. s. v. *Precariæ siccæ* are 'boon days without allowance of drink'; Domesday of St. Paul's (Cam. Soc.), notes, p. cxxiv. *Precariæ* is also used in the sense of Benefices (feuds); 2 Palgr. Eng. Commonwealth, p. ccv" (Elph. 616, 563). In the first of these senses, Cowel gives the def thus, "'Precariæ,' are Dayesworks, which the Tenants of some Mannors are bound, by reason of their Tenure, to do for the lord in Harvest."

PRECARIO. — *V.* VI, CLAM, PRECARIO.

PRECATORY TRUST. — "It has long been settled that words of Recommendation, Request, Entreaty, Wish, or Expectation, addressed to a devisee or legatee, will make him a trustee for the person or persons in whose favour such expressions are used" (1 Jarm. 385. *Va*, Lewin, 141); but "it is essential that there should be (1) a *certain subject*, and (2) a *certain object* of the trust to be so created" (per Wood, V. C., *Bernard* v. *Minshull*, Johns. 285, 286; 28 L. J. Ch. 649); *Vthc*, for an explanation as to these two essential certainties. *Va*, *Knight* v. *Knight*,

3 Bea. 148; 9 L. J. Ch. 354, for a full discussion of this doctrine before and by Langdale, M. R. *Vf, Cowman* v. *Harrison*, 22 L. J. Ch. 993.

"The words 'Precatory Trust' are an abominable phrase. They are used as a roundabout way of saying that the Court finds that there is a trust although the trust is not expressed, as such, but by words of prayer or suggestion, or the like" (per Chitty, J., *Re Sanson*, 12 Times Rep. 142). "The doctrine of thus construing expressions of Recommendation, Confidence, Hope, Wish, and Desire, into positive and peremptory commands, is not a little difficult to be maintained, upon sound principles of interpretation of the actual intention of the testator." "Accordingly we find, of late, a more strict and uniform requisition of definiteness, in regard to both the subject-matter and the objects of the intended trust than can be traced in some of the earlier, and a few of the more modern, adjudications" (1 Jarm. 391); and the strong disposition now is "to give to the words of Wills their natural and ordinary sense, unless it is clear that they are designed to be used in a peremptory sense" (Story, s. 1069). *Vf*, per Cotton, L. J., *Re Adams and Kensington*, 27 Ch. D. 410, cited by North, J., *Cochrane* v. *Dundonald*, 10 Times Rep. 262: per Rigby, L. J., *Re Williams*, 1897, 2 Ch. 27 *et seq*; 66 L. J. Ch. 491 *et seq*.

Each of the following phrases in Wills has been held to create a Precatory trust: —

"Advise him to settle" (*Parker* v. *Bolton*, 5 L. J. Ch. 98).

"Well Assured" (*Macey* v. *Shurmer*, 1 Atk. 389; 1 Amb. 520. *V. Ray* v. *Adams*, 3 My. & K. 237).

"Have full Assurance and confident Hope" (*Macnab* v. *Whitbread*, 17 Bea. 299).

"Authorize and Empower" (*Brown* v. *Higgs*, 4 Ves. 708; 5 Ib. 495; 8 Ib. 561; 18 Ib. 192: *Vf, Griffiths* v. *Evan*, 11 L. J. Ch. 219; 5 Bea. 241).

"Beg" (*Corbet* v. *Corbet*, Ir. Rep. 7 Eq. 456: *Sv, Green* v. *Marsden*, 1 Drew. 646; 1 W. R. 511).

"In the full Belief" (*Fordham* v. *Speight*, W. N. (75) 140).

"Most heartily Beseech" (*Meredith* v. *Heneage*, 1 Sim. 553).

"Confide" (*Griffiths* v. *Evan*, 11 L. J. Ch. 219; 5 Bea. 241: *Vf, Shepherd* v. *Nottige*, 2 J. & H. 766).

"Have the fullest Confidence" (*Shovelton* v. *Shovelton*, 32 Bea. 143: *Re Downing*, 60 L. T. 140: *Wright* v. *Atkyns*, 17 Ves. 255; 19 Ib. 299: *Webb* v. *Wools*, 21 L. J. Ch. 625; 2 Sim. N. S. 267: *Palmer* v. *Simmonds*, 2 Drew. 225: *Curnick* v. *Tucker*, L. R. 17 Eq. 320: *Le Marchant* v. *Le Marchant*, L. R. 18 Eq. 414). *Secus*, where the words expressing "confidence" are preceded by an absolute gift (*Meredith* v. *Heneage*, 1 Sim. 542: *Re Adams and Kensington*, 52 L. J. Ch. 758; 54 Ib. 87; 24 Ch. D. 199; 27 Ib. 394: *Va, Lambe* v. *Eames*, 40 L. J. Ch. 447; 6 Ch. 597: *Re Hutchinson and Tennant*, 8 Ch. D. 540: *Re Hamilton*, 1895, 2 Ch. 370; 64 L. J. Ch. 799; 72 L. T. 748; 43 W. R. 577: *Re*

Williams, 1897, 2 Ch. 12; 66 L. J. Ch. 485; 76 L. T. 600; 45 W. R. 519: *Mussoorie Bank* v. *Raynor*, inf).

"In **Consideration** the legatee has promised to give" (*Clifton* v. *Lombe*, 1 Amb. 519).

"Under the firm **Conviction**" (*Barnes* v. *Grant*, 26 L. J. Ch. 92; 2 Jur. N. S. 1127).

"**Of Course** the legatee will give" (*Robinson* v. *Smith*, 6 Mad. 194: *Sv*, *Lechmere* v. *Lavie*, 2 My. & K. 198).

"**Declare**"; *V.* "Will and Declare," inf.

"**Desire**" (*Harding* v. *Glyn*, 1 Atk. 469: *Mason* v. *Limbury*, cited *Vernon* v. *Vernon*, Amb. 4: *Trott* v. *Vernon*, 2 Vern. 708: *Pushman* v. *Filliter*, 3 Ves. 7: *Brest* v. *Offley*, 1 Ch. Rep. 246: *Bonser* v. *Kinnear*, 2 Giff. 195: *Cary* v. *Cary*, 2 Sch. & Lef. 189: *Cruwys* v. *Colman*, 9 Ves. 319: *V.*, on the contrary, *Shaw* v. *Lawless*, 5 Cl. & F. 129: *Re Diggles*, 32 S. J. 608: where "desire" follows an absolute gift there will be no trust, *Re Sanson*, sup).

"**Direct**"; *V.* "Order and Direct," inf.

"Do **not Doubt**" (*Parsons* v. *Baker*, 18 Ves. 476: *Taylor* v. *George*, 2 V. & B. 378: *Malone* v. *O'Connor*, L. & G. t. Plunk. 465: *Va*, *Sale* v. *Moore*, inf).

"**Empower**"; *V.* "Authorize and Empower," sup.

"**Entreat**" (*Prevost* v. *Clarke*, 2 Mad. 458: *Meredith* v. *Heneage*, 1 Sim. 553, 555: *Vf*, *Taylor* v. *George*, 2 V. & B. 378).

"**Hope**" (*Harland* v. *Trigg*, 1 Bro. C. C. 142: *Vf*, *Paul* v. *Compton*, 8 Ves. 380: *V.* "Assurance and Hope," sup). *Sv*, *Eaton* v. *Watts*, L. R. 4 Eq. 151.

"Well **Know**" (*Bardswell* v. *Bardswell*, 7 L. J. Ch. 268; 9 Sim. 323: *Nowlan* v. *Nelligan*, 1 Bro. C. C. 489: *Briggs* v. *Penny*, 21 L. J. Ch. 265; 3 Mac. & G. 546; 3 D. G. & S. 525: *Svthlc*, *Stead* v. *Mellor*, 46 L. J. Ch. 880; 5 Ch. D. 225; 36 L. T. 498). *Cp*, *Greene* v. *Greene*, inf.

"**Order and Direct**" (*Cary* v. *Cary*, 2 Sch. & Lef. 189).

"**Provide**"; *V.* "Take care of and provide," inf.

"**Recommend**" (*Tibbits* v. *Tibbits*, Jac. 317; 19 Ves. 656: *Horwood* v. *West*, 1 L. J. O. S. Ch. 201; 1 Sim. & St. 387: *Paul* v. *Compton*, 8 Ves. 380: *Malim* v. *Keighley*, 2 Ves. 333, 529: *Malim* v. *Barker*, 3 Ves. 150: *Meredith* v. *Heneage*, 1 Sim. 553: *Kingston* v. *Lorton*, 2 Hogan, 166: *Cholmondeley* v. *Cholmondeley*, 14 Sim. 590: *Hart* v. *Tribe*, 23 L. J. Ch. 462; 18 Bea. 215: *White* v. *Briggs*, 15 L. J. Ch. 182; 15 Sim. 33). "That 'recommend' may amount to a command and create a binding trust is certain. It is equally certain that the word is susceptible of a different interpretation. It must depend upon the language of the particular instrument in which this word is found, in which of the two senses it is to be taken" (per Knight Bruce, V. C., *Johnson* v. *Rowlands*, 17 L. J. Ch. 438; 2 D. G. & S. 356). *Vh*, *Re Hamilton*, 1895, 2 Ch. 370; 64 L. J. Ch. 799; 72 L. T. 748; 43 W. R. 577.

"**Request**" (*Pierson* v. *Garnet*, 2 Bro. C. C. 38: *Eade* v. *Eade*, 5 Mad. 118: *Moriarty* v. *Martin*, 3 Ir. Ch. Rep. 26: *Bernard* v. *Minshull*, 28 L. J. Ch. 649; Johns. 276: *Va*, *House* v. *House*, W. N. (74) 189): *Sv*, per contra, *Hill* v. *Hill*, 1897, 1 Q. B. 483; 66 L. J. Q. B. 329; 76 L. T. 103; 45 W. R. 371, in *whc*, Esher, M. R., said, "a Request, in its ordinary meaning, is nothing but a request; it does not impose an obligation, although there may be cases in which, under special circumstances, an obligation must be implied from a request": *Vf*, *Cochrane* v. *Dundonald*, 10 Times Rep. 262, where the words "requiring him to advise and assist his brothers, as I have done," were held, by North, J., as insufficient to create a trust.

"**Take Care of and Provide**" (*Broad* v. *Bevan*, 1 Russ. 511, *n*: *Svthc*, *Abraham* v. *Alman*, 1 Russ. 509, and *Re Moore*, inf).

"**Trusting**" (*Irvine* v. *Sullivan*, 38 L. J. Ch. 635; L. R. 8 Eq. 673): *Sv*, *Curtis* v. *Rippon*, 5 Mad. 434.

"**Trusting and Confiding**" (*Wade*, or *Wood* v. *Cox*, 5 L. J. Ch. 361; 6 Ib. 366; 1 Keen, 317; 2 My. & C. 684: *Pilkington* v. *Boughey*, 12 Sim. 114).

"**Well Know**"; *V.* "Know," sup.

"**Will**" (*Eales* v. *England*, Pr. Ch. 200: *Clowdsley* v. *Pelham*, 1 Vern. 411).

"**Will and Declare**" (*Gray* v. *Gray*, 11 Ir. Ch. Rep. 218).

"**Will and Desire**" (*Birch* v. *Wade*, 3 V. & B. 198: *Forbes* v. *Ball*, 3 Mer. 437: *Svthc*, per Romer, J., *Re Weekes*, 1897, 1 Ch. 296; 66 L. J. Ch. 181). *Vf*, *Re Hall*, 1899, 1 I. R. 308.

"**Wish and Desire**" (*Liddard* v. *Liddard*, 29 L. J. Ch. 619; 28 Bea. 266). *Sv*, *Stead* v. *Mellor*, inf: *Re Hamilton*, sup.

"**Wish and Request**" (*Foley* v. *Parry*, 5 Sim. 138; 2 My. & K. 138: *Re Hutchings*, W. N. (87) 217).

But either of the foregoing (or such like) phrases might easily be controlled the other way by a context; for, in the present day, there is, probably, no construction more dependent on, or more easily liable to be affected by, the general tenor of the instrument than one from which a precatory trust is to be gathered. "I fully agree with Lord Justice James in what he said in *Lambe* v. *Eames* (40 L. J. Ch. 447; 6 Ch. 597), that when you come to read the older authorities you can only arrive at the conclusion that they created trusts in numbers of cases where trusts were never intended" (per Pearson, J., *Re Adams and Kensington*, 52 L. J. Ch. 761; 24 Ch. D. 199: *Vf*, per Cotton, L. J., *S. C.*, 54 L. J. Ch. 95; 27 Ch. D. 410, and per Lindley, L. J., *Re Hamilton*, sup, "Recommend").

Words of entreaty when coupled with discretionary words (*Curtis* v. *Rippon*, sup: *White* v. *Briggs*, 15 L. J. Ch. 182; 15 Sim. 33: *Williams* v. *Williams*, 20 L. J. Ch. 280; 22 Ib. 639; 17 Bea. 156: *Hart* v. *Tribe*, 23 L. J. Ch. 462; 18 Bea. 215: *Eaton* v. *Watts*, L. R. 4 Eq. 151: *Re*

Bond, Cole v. *Hawes*, 4 Ch. D. 238; 46 L. J. Ch. 488: *Lambe* v. *Eames*, 40 L. J. Ch. 447; 6 Ch. 597), or with an absolute gift (*Green* v. *Marsden*, 1 Drew. 646; 1 W. R. 511: *Re Adams and Kensington*, sup: *Re Moore*, 55 L. J. Ch. 418), do *not* create a precatory trust. In the case lastly cited the words were, "they are hereby *enjoined* to take care of my nephew J. J. N. C. as may seem best in the future." So "feeling confident that she will act JUSTLY" does not create a Precatory Trust (*Mussoorie Bank* v. *Raynor*, 51 L. J. P. C. 72; 7 App. Ca. 321); nor do the words, "to do *Justice* to those Relations as she shall think worthy of remuneration" (*Re Bond*, sup: *Vf, Knight* v. *Knight*, sup: *Ellis* v. *Ellis*, 44 L. J. Ch. 225; 23 W. R. 382), nor "well knowing her *Sense of Justice* and love to her family" (*Greene* v. *Greene*, Ir. Rep. 3 Eq. 90), nor "not doubting but that she will *consider* my near Relations" (*Sale* v. *Moore*, 1 Sim. 534), nor a desire that the fund will be distributed "agreeably to my wishes" (*Stead* v. *Mellor*, 46 L. J. Ch. 880; 5 Ch. D. 225; 36 L. T. 498). *Vf*, DISPOSAL.

Note.—The doctrine of precatory trusts, though usually arising on Wills, is applicable to transactions *inter vivos* (*Liddard* v. *Liddard*, 29 L. J. Ch. 619; 28 Bea. 266: *Wheeler* v. *Smith*, 29 L. J. Ch. 194; 1 Giff. 300), but those cases were not cited when Chitty, L. J., said, "It is on Wills only, so far as I am aware, that these questions of Precatory Trusts have been raised" (*Hill* v. *Hill*, 66 L. J. Ch. 335).

Vh, Lewin, 142 *et seq*: 1 Jarm. 385 *et seq*.

PRECEDENT.—*V.* CONDITION.

PRECEDING.—*V.* PREMISES.

PRECEDING TWELVE MONTHS.—As to this phrase in s. 46, Valuation, Metropolis, Act, 1869; *V. R.* v. *East & W. India Docks Co*, 53 L. J. M. C. 97; 13 Q. B. D. 364; 51 L. T. 97; 48 J. P. 564.

The Rate, on a Brine Pumper, on brine pumped or raised by it "during the preceding 12 months," s. 38, 54 & 55 V. c. 40, means, during the 12 months next preceding the making of the Rate (*Salt Union* v. *Northwich Compensation Bd*, 42 S. J. 328).

PRECIOUS METALS.—*V.* METAL: GOLD: SILVER: MINE, last par.

PREDECESSOR.—"Predecessor," quà Sucn Dy Act, 1853; for Stat. Def. *V.* SUCCESSION: *Vh, A-G.* v. *Braybrooke*, 9 H. L. Ca. 150; 31 L. J. Ex. 177: *A-G.* v. *Floyer*, 9 H. L. Ca. 477; 31 L. J. Ex. 404: *A-G.* v. *Smythe*, 9 H. L. Ca. 497; 31 L. J. Ex. 404: *Charlton* v. *A-G.*, 4 App. Ca. 427; 49 L. J. Ex. 86: *A-G.* v. *Mitchell*, 50 L. J. Q. B. 406; 6 Q. B. D. 548: *A-G.* v. *Dowling*, 50 L. J. Ex. 192; 6 Ex. D. 177: *Re O'Neill*, 20 L. R. Ir. 73: *Re Barker*, 30 L. J. Ex. 404; 7 H. & N. 109:

Re Ramsay, 30 L. J. Ch. 849; 30 Bea. 75: *Re Lovelace*, 28 L. J. Ch. 489; 4 D. G. & J. 340: *A-G.* v. *Baker*, 4 H. & N. 19.

V. ANCESTOR: DISPOSITION.

PREDIAL TITHES. — *V.* TITHES.

PRE-EMPTION. — Right of, *V.* SUPERFLUOUS LAND: FIRST REFUSAL: OPTION.

PREFERENCE. — Preference *Dividend*; *V.* DIVIDEND: CUMULATIVE.

Preference *Shareholders*, s. 12, Ry Comp Act, 1867; *V. Re Brighton & Dyke Ry*, 59 L. J. Ch. 329; 44 Ch. D. 28. *Va*, NOMINAL: PREJUDICIALLY.

Payment of a Friendly Socy's claim on its OFFICER "*in Preference*" to his other debts, s. 15 (7), 38 & 39 V. c. 60; — "That is an English idiom. When a man says that he will do one thing in preference to another, according to the ordinary English idiom, the two things referred to are of the same kind" (per Esher, M. R., *Re Miller*, 1893, 1 Q. B. 327; 62 L. J. Q. B. 324); *whc* shows that this preference against a bankrupt Officer's estate extends to moneys he has received by virtue of his office.

Gift to one line "in Preference" to another; *V. Boys* v. *Bradley*, cited NEXT OF KIN.

V. FRAUDULENT PREFERENCE: UNDUE PREFERENCE.

PREFERENTIAL. — Preferential, as distinguished from Proprietary, right; *V. Ellis* v. *Bedford*, cited "Same Interest," sub SAME.

Preferential Payments in Bankry and Winding-up; *V.* 51 & 52 V. c. 62; 60 & 61 V. c. 19; *Ir.* 52 & 53 V. c. 60: DEBTS.

PREFERMENT. — Quâ Church Discipline Act, 1840, 3 & 4 V. c. 86, "Preferment," comprehends, "every deanery, archdeaconry, prebend, canonry, office of minor canon, priest vicar, or vicar choral in holy orders, and every precentorship, treasurership, sub-deanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church; and every mastership, wardenship, and fellowship, in any collegiate church; and all benefices with cure of souls, comprehending therein all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging to or reputed to belong or annexed or reputed to be annexed to any church or chapel; and every curacy, lectureship, readership, chaplaincy, office, or place, which requires the discharge of any spiritual duty; and whether the same be or be not within any exempt or peculiar jurisdiction" (s. 2): that def is adopted for Clerical Disabilities Act, 1870, 33 & 34 V. c. 91 (s. 2).

Other Stat. Def. — *Ir.* 14 & 15 V. c. 73, s. 1.

"Cathedral Preferment"; *V.* CATHEDRAL.

Power to apply Trust Moneys for the "Preferment" of beneficiaries; *V.* ADVANCEMENT: BENEFIT.

PREFERRED. — In the power given by s. 98, 5 & 6 W. 4, c. 50, to the Court before whom a Highway Indictment shall be "preferred" to award Costs, "preferred" means "tried" (*R.* v. *Pembridge*, 12 L. J. Q. B. 47; 3 Q. B. 901; 3 G. & D. 5: *Vf*, *R.* v. *Upper Papworth*, 2 East, 413). *V.* TRIAL.

V. PREFERENCE.

PREGNANT. — "Pregnant with a Child"; *V. Doe* d. *Blakiston* v. *Haslewood*, cited POSTHUMOUS CHILD. As to Period of Gestation, *V. Bosville* v. *A-G.*, cited PRESUMPTION.

"Pregnant" with the aptitude to learn; *V.* EDUCATIONAL ENDOWMENT.

V. NEGATIVE PREGNANT.

PREJUDICE. — *V.* ANNOYANCE: UNDUE PREFERENCE: WITHOUT PREJUDICE.

Creditors "prejudiced by a Voluntary Winding-up," s. 145, Comp Act, 1862; *V. Re Medical Battery Co*, 1894, 1 Ch. 444; 63 L. J. Ch. 189: *Re Bishop*, 1900, 2 Ch. 254; 69 L. J. Ch. 513; 82 L. T. 756.

PREJUDICE OF PURCHASER. — A PURCHASER who *knows* that the article which he buys is not of the nature, substance, and quality demanded by him, has not had the article sold to him to his "Prejudice" within s. 6, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63, even though no label is delivered to him pursuant to s. 8 (*Sandys* v. *Small*, 47 L. J. M. C. 115; 3 Q. B. D. 449; 26 W. R. 814; 42 J. P. 550). But "Prejudice" here does not mean pecuniary prejudice, or injury from taking unwholesome food; it means, the prejudice which the person buying sustains as a customer in getting, *without his knowledge*, an article different from that demanded; and it is immaterial that he buys only for analysis or with money other than his own (*Hoyle* v. *Hitchman*, 48 L. J. M. C. 97; 4 Q. B. D. 233; 27 W. R. 487; 43 J. P. 431; adopting the principle on which *Sandys* v. *Markham*, 41 J. P. 53, was remitted to be re-stated: *Vh*, s. 2, 42 & 43 V. c. 30). *Vf*, *Horder* v. *Grainger*, 44 J. P. 188: *Kirk* v. *Coates*, 55 L. J. M. C. 182; 16 Q. B. D. 49; 34 W. R. 296; 50 J. P. 148; 54 L. T. 178: *Collett* v. *Walker*, 59 J. P. 600; 64 L. J. M. C. 267.

Note. The due Notice of Analysis (*V. Barnes* v. *Chipp*, 3 Ex. D. 176) to be given under s. 14, 38 & 39 V. c. 63, is a Condition Precedent to a prosecution (*Parsons* v. *Birmingham Dairy Co*, 9 Q. B. D. 172: *Smart* v. *Watts*, 1895, 1 Q. B. 219; 71 L. T. 768); *secus*, of a prosecu-

tion under s. 6, Margarine Act, 1887, 50 & 51 V. c. 29 (*Buckler* v. *Wilson*, 1896, 1 Q. B. 83; 65 L. J. M. C. 18; 73 L. T. 580; 44 W. R. 220; 60 J. P. 118), but under that latter section an Analysis is admissible only against the person from whom the article is obtained (*Tyler* v. *Kingham*, 1900, 2 Q. B. 413; 69 L. J. Q. B. 630; 83 L. T. 169; 64 J. P. 598).

V. ARTICLE DEMANDED.

The principle of *Sandys* v. *Small* (sup), is applicable to the sale of Spirits diluted below the standard prescribed by s. 6 of the Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30 (*Gage* v. *Elsey*, 52 L. J. M. C. 44; 10 Q. B. D. 518).

It is not necessary to show the seller's guilty knowledge (*Betts* v. *Armstead*, 57 L. J. M. C. 100; 20 Q. B. D. 771; 58 L. T. 811; 36 W. R. 720; 52 J. P. 471). *Vh*, KNOWINGLY.

PREJUDICIALLY. — Damages when lands or buildings are "prejudicially affected" by the exercise of statutory powers, *e.g.* s. 50, 11 & 12 V. c. 112, connotes the same as INJURIOUSLY AFFECTED (*R.* v. *Metrop Bd of Works*, 3 B. & S. 710; 32 L. J. Q. B. 105; 11 W. R. 492).

V. INTERFERE.

"Prejudicially affect" rights of Guaranteed or PREFERENCE Shareholders, s. 15, Ry Comp Act, 1867; *V. Re Neath & Brecon Ry*, 1892, 1 Ch. 349; 66 L. T. 40; 40 W. R. 289, affg North, J., 61 L. J. Ch. 172.

PRELIMINARY. — "Preliminary Examination" of an Articled Clerk to a Solr; Stat. Def., 40 & 41 V. c. 25, s. 4; 61 & 62 V. c. 17, s. 4.

PREMIER. — Premier Earl; *V.* ELDEST.

The King's Premier Serjeant, had pre-audience in all the Courts over all other barristers, including the Attorney General (3 Bl. Com. 28, *n*).

V. SENIOR: *Cp*, PUISNE.

PREMISES. — The *Premises* of a DEED are all the foreparts of the deed before the HABENDUM (Touch. 75: 2 Bl. Com. 298). The word "Premises" in fact signifies what has gone before (*Beacon Assrce* v. *Gibb*, 1 Moore P. C. N. S. 73); and therefore may with propriety be used in relation to any preceding subject or subjects. Thus where a testator devised a certain messuage and the furniture in it, to A. for life and after his decease he gave "the said messuage and premises" to B., the latter devise was held to carry the furniture as well as the messuage (*Sanford* v. *Irby*, 4 L. J. O. S. Ch. 23: *Va*, *Doe* v. *Meakin*, 1 East, 456: *Fitzgerald* v. *Field*, 1 Russ. 427). *Cp*, "Parcels," sub PARCEL.

"In consideration of the Premises"; *V. Bell* v. *Welch*, 19 L. J. C. P. 184.

But frequently PROPERTY is spoken of as "Premises," without a

preceding description or mention of it. Thus, where a testator gave permission to A. to occupy a "mansion-house, garden, *and premises*," rent-free; it was held that the word "premises" meant, "premises in immediate connection with the mansion, and without the occupation of which the mansion could not be conveniently occupied and enjoyed" (per Turner, L. J., *Lethbridge* v. *Lethbridge*, 31 L. J. Ch. 741; 4 D. G. F. & J. 35). A park of 100 acres adjoining the Mansion-house was accordingly, in that case, held to be included in the word "Premises," (30 L. J. Ch. 388; 3 D. G. F. & J. 523); *secus*, as regards the Home Farm, though it was contiguous to the park on which the Mansion-house stood and was in hand at the death of the testator (31 L. J. Ch. 737). In such a connection "Premises" is as nearly as possible synonymous with APPURTENANCES (*Read* v. *Read*, W. N. (66) 386; 15 W. R. 165); and, in *e.g.* a Lease of a "House and Premises," "'premises' would naturally extend only to that which is closely and intimately connected with the house" (per Kelly, C. B., *Minton* v. *Geiger*, cited BELONGING), and, therefore, did not include an adjoining meadow. *Vf*, *Hibon* v. *Hibon*, cited MESSUAGE: *Doe* d. *Hemming* v. *Willetts*, 18 L. J. C. P. 240; 7 C. B. 709: 1 Jarm. 778: HOUSE.

"Premises" includes a PLEASURE Garden occupied with a dwelling-house, quà rating for water supply (*Bristol W. W. Co* v. *Uren*, 54 L. J. M. C. 97; 15 Q. B. D. 637).

"Premises," in popular language, frequently means Buildings (*Beacon Assrce* v. *Gibb*, 1 Moore P. C. N. S. 97); that, however, was a case of a fire insurance on a Ship, and "on the premises" in the policy was construed as "on the ship."

For a wide use of "Premises," *Vf*, *R.* v. *Leith*, 1 E. & B. 136.

"Premises," s. 22, P. H. Act, 1875, means, "premises in the state in which they are,—not at the time the grant was made, the Act passed, or the arrangements come to,—but, it means, the premises in all time according to the state in which they are at the time" (per North, J., *New Windsor* v. *Stovell*, 54 L. J. Ch. 117; citing *Newcomen* v. *Coulson*, 46 L. J. Ch. 459; 5 Ch. D. 133: *Finch* v. *G. W. Ry*, 5 Ex. D. 254).

Quà P. H. Act, 1875, generally, "Premises," includes, "messuages, buildings, lands, easements, and hereditaments, of any tenure" (s. 4: *Vf*, s. 11, 53 & 54 V. c. 59); in that sense it is used in s. 257, so that the CHARGE created by the latter section is on the respective interests of every owner for the time being, in proportion to the value of his interest (*Birmingham* v. *Baker*, 17 Ch. D. 782), and over-rides all trusts whether of a private, public, or statutory, origin (*Ib.*: *Scottish Widows Fund* v. *Craig*, 51 L. J. Ch. 363; 20 Ch. D. 208; *Bowditch* v. *Wakefield*, 40 L. J. M. C. 214; L. R. 6 Q. B. 567: *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); *secus*, if a Statutory Trust declares that the premises are to be used "for no other purpose whatsoever" (*Hornsey* v. *Smith*, 1897, 1 Ch.

843; 66 L. J. Ch. 476; 76 L. T. 431; 45 W. R. 581), and it does not over-ride Restrictive Covenants adversely affecting the Premises (*Tendring* v. *Dowton*, 1891, 3 Ch. 265; 61 L. J. Ch. 82; 65 L. T. 434; 40 W. R. 145). *Vf*, OWNER. *Note*: that in *Hornsey* v. *Smith* the trustees were held personally liable.

For the other defs relating to Public Health Acts, *V.* P. H. Ireland Act, 1878, s. 2; P. H. London Act, 1891, s. 141; P. H. Scotland Act, 1897, s. 3. "Premises" may, when coupled with words of identification, be equivalent to "house, or part of a house" quà s. 2 (1 *e*), P. H. London Act, 1891 (*R.* v. *Slade*, 65 L. J. M. C. 108; 74 L. T. 656; 60 J. P. 358).

"Premises" has also received statutory definition in and for the following Acts;—

Civil Bill Court Procedure Amendment Act, 1864, 27 & 28 V. c. 99; *V.* s. 3:

Gas Works Clauses Act, 1871, 34 & 35 V. c. 41; *V.* s. 4:

Licensing Act, 1872; *V.* ss. 77, 83:

Metropolis Gas Act, 1860, 23 & 24 V. c. 125; *V.* s. 4:

Metropolis Water Act, 1871, 34 & 35 V. c. 113; *V.* s. 3:

Private Street Works Act, 1892, 55 & 56 V. c. 57; *V.* s. 5:

Rep People (Scot) Act, 1868, 31 & 32 V. c. 48; *V.* s. 59:

Small Tenements Recovery Act, 1838, 1 & 2 V. c. 74; *V.* s. 7:

Spirits Act, 1880, 43 & 44 V. c. 24; *V.* s. 3:

Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103; *V.* s. 1:

Trespass (Scot) Act, 1865, 28 & 29 V. c. 56; *V.* s. 2.

"Premises occupied," "Premises occupied with Dwelling-house"; *V.* OCCUPIED.

V. LICENSED PREMISES: NEW PREMISES: ON THE PREMISES: SUITABILITY: UNLICENSED.

PREMIUM.—"Premium," ordinarily means, increased value; it inaccurately describes a Bonus on a Life Policy, but under a bequest of the "Premium of Insurance on my life" in the R. Office, a bonus that had been declared on the policy, but not the policy itself, was held to pass (*Barrow* v. *Methold*, 3 W. R. 629).

V. FINE.

"Premium" is now frequently used to denote the annual payment for keeping up an insurance; or the money paid on an Apprenticeship (*Walter* v. *Everard*, cited NECESSARIES).

PREPAID.—Prepaid Letter; *V.* BY POST.

PREPARE.—Under a Condition of Sale that the conveyance is "to be *prepared and completed* at the *vendor's* expense," the vendor is only liable to pay for the costs of the actual work done in such preparation and completion under Sch 2, Solrs Rem Ord, and is not liable for the

Scale Fee on the amount of purchase money under Sch 1 (*Re Thackeray*, 34 S. J. 64).

Scale Fee for "preparing and completing Conveyance"; *V. Grey* v. *Curtice*, cited CONVEYANCE, p. 404.

PREROGATIVE. — "*Littleton* speaketh of the king's prerogative but twice in all his bookes, viz., here (s. 125), and sect. 178, and in both places as part of the lawes of *England*. *Prærogativa* is derived of *præ*, *i.e. ante*, and *rogare*, that is, to aske or demand beforehand, whereof commeth *prærogativa*, and is denominated of the most excellent part; because though an act hath passed both the houses of the lords and commons in parliament, yet before it be a law, the royall assent must be asked or demanded and obtained, and this is the proper sense of the word. But legally it extends to all powers, preheminences, and priviledges, which the law giveth to the Crowne" (Co. Litt. 90 b). *V.* CROWN. *Vh*, 10 Encyc. 311–315.

Prerogative Mandamus; *V.* MANDAMUS.

Prerogative Writ; *V.* 10 Encyc. 316–318.

PRESBYTER. — *V.* BISHOP.

PRESBYTERIAN. — *V. A-G.* v. *Bunce*, 37 L. J. Ch. 697; L. R. 6 Eq. 563: *A-G.* v. *Anderson*, 57 L. J. Ch. 543; 58 L. T. 726; 36 W. R. 714.

PRESCRIBED. — "All laws should be made to commence *in futuro*, and be notified before their commencement; which is implied in the term 'prescribed'" (1 Bl. Com. 46).

In the Acts of Queen Victoria there are about 100 definitions of "prescribed," each having relation to the subject-matter of the Act in which it is contained and, generally, to be found in such Act's Interp Clause,— *e.g.* quà County Courts Act, 1888, "'prescribed' shall mean, prescribed by the County Court Rules for the time being" (s. 186); quà Explosives Act, 1875, 38 & 39 V. c. 17, "'prescribed,' means, prescribed by Order in Council" (s. 108); quà Loc Gov Act, 1894, "'prescribed,' means, prescribed by Order of the Local Government Board" (s. 75); quà Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, "'prescribed,' shall mean, 'prescribed by the Rules of Court'" (s. 3); quà Regimental Debts Act, 1893, 56 & 57 V. c. 5, "'prescribed,' means, prescribed by Royal Warrant" (s. 29).

"Prescribed *Day*"; Stat. Def., Medical Act, 1886, 49 & 50 V. c. 48, s. 17.

"Prescribed DISTANCE" from the CENTRE of a ROADWAY, quà London Bg Act, 1894, "means, 20 feet from the centre of the roadway where such roadway is used for the purpose of Carriage Traffic, and 10 feet from

the centre of the roadway where such roadway is used for the purposes of Foot Traffic only" (subs. 5, s. 5).

"Prescribed DISTRICT"; Stat. Def., *Ir.* 44 & 45 V. c. 4, s. 1.

"Prescribed *Limits*," s. 13, Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14, means, the boundaries of the borough to which the local Act relates, and not the limits of the market (*Casswell* v. *Cook*, 31 L. J. M. C. 185; 11 C. B. N. S. 637). *Vf*, *Llandaff Market Co* v. *Lyndon*, 8 C. B. N. S. 515: 6 Jur. N. S. 1344: *Spurling* v. *Bantoft*, 1891, 2 Q. B. 384; 60 L. J. Q. B. 745; 65 L. T. 584; 40 W. R. 157.

"Prescribed Limits," quà Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, means, "the distance measured from the harbour dock or pier, or other local limits (if any) beyond the harbour dock or pier, within which the powers of the harbour-master dock-master or pier-master, for the regulation of the harbour dock or pier, shall by the Special Act be authorized to be exercised" (s. 2). *V.* DISTANCE.

"In any *Manner* expressly prescribed by Act of Parliament"; *V.* MANNER.

V. PUBLIC DEPARTMENT.

PRESCRIPTION.—"Prescription, is when a man claimeth anything for that he, his ancestors or predecessors or they whose estate hee hath, have had or used it all the time whereof no mind is to the contrary" (Termes de la Ley). *V.* TIME OUT OF MIND: MEMORY.

"Prescription is a title taking his substance of use and time allowed by the law. In the common law a prescription, which is personal, is for the most part applyed to persons. . . . And a custome, which is local, is alledged in no person, but layd within some mannor or other place" (Co. Litt. 113 a, b; *whv* for illustration of this distinction: *Va*, 4 Rep. 32); or, in other words, a title by Prescription is when a man "and those under whom he claims have immemorially used to enjoy" the property or claim (2 Bl. Com. 263). *V.* CUSTOM.

Vh, Prescription Act, 1832, 2 & 3 W. 4, c. 71: ACCESS: ACTUALLY ENJOYED: RIGHT: ACQUIESCENCE: INTERRUPTION: Rosc. N. P. 802: 3 Cru. Dig. Title 31: Herbert on Prescription.

PRESENCE.—The subscription of the attesting witnesses of a Will has to be done in the "Presence" of the Testator (s. 9, Wills Act, 1837). This means that he must be corporeally in such a position as to be able to see the witnesses subscribe, and mentally capable of knowing what they are doing (1 Jarm. 86–88, *whv* for cases hereon: *Vf*, *Tod* v. *Winchelsea*, 2 C. & P. 488). By the same section a testator is to sign his Will in the "presence" of two or more witnesses; and that also means "that the witnesses should see *and be conscious* of the act done (per Dr. Lushington, *Hudson* v. *Parker*, 1 Rob. Ecc. 24), but that requirement is complied with if, in fact, it has been so done, even though the

witnesses may not be aware that the document is a Will or that what they saw the testator write was his signature (*Smith* v. *Smith*, 35 L. J. P. & M. 65; L. R. 1 P. & D. 143).

But to aver in an Indictment that the act charged was done in the "Presence" of others would, *semble*, not be equivalent to stating that it was done in their "sight" or "view," for they might be blind, or not looking (*R.* v. *Webb*, 2 C. & K. 937; 1 Den. 338), but, in the report of that case in the Law Journal, Parke, B., says, "I think that 'in the Presence of,' means, 'in the sight of'" (18 L. J. M. C. 40).

V. REAL PRESENCE.

PRESENT. — *V.* HANDSOME GRATUITY.

"Present at"; *V.* MEETING: ASSEMBLED.

"Present in Person or by Proxy"; *V.* PROXY.

"Present or future Husband"; *V.* HUSBAND.

Power to charge a Co's "present and future Property"; *V. Re Streatham Estates Co*, cited PROPERTY.

"Present and past *Member*" of a Co, s. 38, Comp Act, 1862; *V. National Bank of Wales*, cited SHARE.

"Present *Tenancy*"; Stat. Def., 44 & 45 V. c. 49, s. 57: "Present tenancy," s. 8, Ib.; *V. Massy* v. *Norse*, 20 L. R. Ir. 57: *Ronaldson* v. *La Touche*, 24 Ib. 344: *Magner* v. *Hawkes*, 28 Ib. 365. *V.* TENANCY.

V. AT THE PRESENT TIME: FUTURE: PRESENT TENSE.

PRESENT RIGHT TO RECEIVE. — This phrase in s. 40, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27, means, an *immediate* right without waiting for the happening of any future event (*Farran* v. *Beresford*, 10 Cl. & F. 319, 334). *Vf*, *Barcroft* v. *Murphy*, 1896, 1 I. R. 590.

As to the same phrase, in s. 13, 23 & 24 V. c. 38: *V. Re Johnson*, *Sly* v. *Blake*, 29 Ch. D. 964; 33 W. R. 502; 52 L. T. 682.

As used in s. 8, Real Property Limitation Act, 1874, 37 & 38 V. c. 57; *V. Hornsey* v. *Monarch Bg Socy*, 59 L. J. Q. B. 105; 24 Q. B. D. 1: *Re Owen*, 1894, 3 Ch. 220; 63 L. J. Ch. 749; 71 L. T. 181; 43 W. R. 55: *Barcroft* v. *Murphy*, sup.

PRESENT TENSE. — Words in the present tense will, frequently, also import the future when not accompanied by words of restraint, such as "then," "now," &c, *e.g.* in a Grant of Woods "*growing*," or in a Proviso making a Lease of a Commandry void if the Prior (the lessor) "or any of his Brethren there *being* Commanders will dwell thereupon" (4 Leon. 36, 37). *V.* BEING: HAVING.

PRESENT TIME. — *V.* AT THE PRESENT TIME.

PRESENTATION. — "The word 'Presentation' may have many meanings according to the context or as circumstances require, and it

may mean either 'showing' or 'delivering over'" (per Jervis, C. J., *Bartlett* v. *Holmes*, 22 L. J. C. P. 185; 13 C. B. 630). In that case the vendor's memorandum of contract was to deliver 1,000 tons of pig iron "on the presentation of this document," and it was held that there, "presentation" meant "delivering over."

In ecclesiastical law, "Presentation is derived *à præsentando* . . . and is the act of the patron offering his clerke to the bishop of that diocesse, to be instituted to such a church, in these or the like words directed to the bishop, *Præsento vobis* A. B. *clericum meum ad ecclesiam de* Dale, &c" (Co. Litt. 120 a). *V.* Phil. Ecc. Law, 277: ADVOWSON: COLLATION: PRESENTMENT.

PRESENTATIVE.—A Presentative Living, is one in which a Right of PRESENTATION, as distinct from a power of direct appointment, is vested in the Patron: *Vh, R.* v. *Foley*, cited DONATIVE: 2 Bl. Com. 22.

PRESENTLY ANSWER.—*V.* ANSWER.

PRESENTMENT.—"'Presentment' is of two significations: one is presentments to a Church, which when any man which hath right to give any Benefice Spirituall and nameth the person to the Bishop to whom hee will give it and maketh a writing to the Bishop for him, that is a PRESENTATION, or Presentment. . . . The other is a Presentment or Information by a Jury in a Court, before any Officer which hath authority to punish any offence done contrary to the law" (Termes de la Ley). But such Presentments are also made of matters not entailing punishment.

V. GRAND JURY: HOMAGE.

"Presentment *Sessions*," quà Loc Gov (Ir) Act, 1898, "includes, Road Sessions and Special Road Sessions" (s. 109).

PRESENTS.—*V.* THESE PRESENTS: TOUCH.

PRESERVATION.—To restrain a lessee of a mine from allowing damage by ceasing to pump, is "Preservation" within R. 3, Ord. 50, R. S. C. (*Strelley* v. *Pearson*, 15 Ch. D. 113; 49 L. J. Ch. 406; 28 W. R. 752; 43 L. T. 155: *Vf, Pollini* v. *Gray*, 12 Ch. D. 438).

V. PERISHABLE: REALIZATION.

Preservation of the Peace; *V.* GOOD BEHAVIOUR: PEACE: SURETY OF THE PEACE.

PRESERVED.—*V.* RECOVERED OR PRESERVED: BRED.

PRESIDING JUDGE.—*V.* JUDGE.

PRESS.—"The finishing process of a Press," in a Patent Specification; *V. Barber* v. *Grace*, 17 L. J. Ex. 122; 1 Ex. 339.

PRESSURE. — Merely paying money under protest to suit one's own convenience is not paying under "Pressure" (*Re Harrison*, 16 L. J. Ch. 170; 10 Bea. 57: *Re Boycott*, 29 Ch. D. 571; 52 L. T. 482; 34 W. R. 26). *Cp*, DURESS: UNDER PROTEST: UNDUE INFLUENCE.

PRESUME. — Where an Act imposes a Penalty if any one shall "presume" to do a stated thing, that "seems to me to imply, not a mere ignorant act but, an act in which a person KNOWINGLY takes upon him to do that which the law says shall not be done under the circumstances" (per Willes, J., *Royse* v. *Birley*, cited PUBLIC SERVICE).

PRESUMED. — "Admeasurements are presumed to be correct"; *V.* ADMEASUREMENT: *Cp*, ESTIMATED.

PRESUMPTION. — "'Presumption' is the evidence of things not seen; where, from an apparent effect, you may infer a probable cause" (per Counsel, arg., *Fanshaw* v. *Rotherham*, 1 Eden, 284). *Cp*, "Necessary Implication," sub NECESSARY: JUDICIAL PERSUASION.

Presumptions are of "three sorts, (1) Violent, (2) Probable, and (3) Light or Temerary. *Violenta præsumptio* is manie times *plena probatio*; as if one be runne thorow the bodie with a sword in a house, whereof he instantly dieth, and a man is seene to come out of that house with a bloody sword, and no other man was at that time in the house. *Præsumptio probabilis* moveth little; but *Præsumptio levis seu temeraria* moveth not at all" (Co. Litt. 6 b). *Vf*, 10 Encyc. 327–332.

"A Presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is no direct proof. It follows, therefore, that a presumption of any fact is an inference of that fact from others that are known (per Abbott, C. J., *R.* v. *Burdett*, 4 B. & Ald. 161). The word 'Presumption,' therefore, inherently imports an act of reasoning, — a conclusion of the judgment; and it is applied to denote such facts or moral phenomena as from experience we know to be invariably, or commonly, connected with some other related fact" (Wills on Circumstantial Evidence, 4 ed., 18, 19).

The presumption that a Woman is past *Child-Bearing* (quà payment out of Court of trust funds) will, generally, be made when she is 54 without having had a child (*Haynes* v. *Haynes*, 35 L. J. Ch. 303; 14 W. R. 361: *Re Widdow*, 40 L. J. Ch. 380; L. R. 11 Eq. 408; 19 W. R. 468: *Davidson* v. *Kimpton*, 18 Ch. D. 213; 29 W. R. 912); in the case of a spinster, 53 has been adopted as the age (*Price* v. *Boustead*, 8 L. T. 565): *Vf*, collection of cases in Note to *Haynes* v. *Haynes*, 35 L. J. Ch. 303. But where a married woman had lived 26 years with her husband without having had a child, the presumption was made when she was 49 years and 9 months old (*Re Millner*, 42 L. J. Ch. 44; L. R. 14 Eq. 245; 20 W. R. 823); yet it was refused at the age of 54 in the case of a woman

who had been married only 3 years (*Croxton* v. *May*, 9 Ch. D. 388; 27 W. R. 325). *Vh*, *Re Hocking*, cited CHILD, p. 307.

There is a presumption that a Child born in Wedlock is legitimate; but that presumption may be rebutted, though not upon a mere balance of probabilities (*Bosville* v. *A-G.*, 56 L. J. P. D. & A. 97; 12 P. D. 177).

DEATH is presumed if a person has not been HEARD OF for 7 years (per Ellenborough, C. J., *Doe* d. *George* v. *Jesson*, 6 East, 85, citing 19 Car. 2, c. 6 and 1 Jac. 1, c. 11), *i.e.* the fact that he is dead, "but not that he died at the beginning or the end of any particular period during those 7 years" (*Nepean* v. *Doe*, 7 L. J. Ex. 339; 2 M. & W. 910, affg and stating effect of *Doe* d. *Knight* v. *Nepean*, 2 L. J. K. B. 150; 5 B. & Ad. 86: *Re Rhodes*, 56 L. J. Ch. 825; 36 Ch. D. 586): *Vf*, Dart, 385: Godefroi, 474: Rosc. N. P. 41. As to the onus of proof, *V. Prudential Assrce* v. *Edmonds*, 2 App. Ca. 487, 511, 514. Where two die together, *e.g.* in a shipwreck, there is no presumption of survivorship on the ground of sex, age, or otherwise (*Wing* v. *Angrave*, 8 H. L. Ca. 183; 30 L. J. Ch. 65: *Re Greene*, 35 L. J. Ch. 252; L. R. 1 Eq. 289: *Re Alston*, 61 L. J. P. D. & A. 92; 1892, P. 142). The Probate Division will not presume death until the person has been advertised for (*Re Robertson*, 1896, P. 8; 65 L. J. P. D. & A. 16: *Re Matthews*, 67 L. J. P. D. & A. 11. *Vh*, *Re Hurlston*, 67 L. J. P. D. & A. 69: *Re Winstone*, Ib. 76). *Note*: the power to presume Death is sometimes made a discretionary power; *V. Escritt* v. *Todmorden Socy*, cited MAY, p. 1179.

V. BIGAMY.

"A strong or probable presumption" against a FUGITIVE CRIMINAL, s. 5, 44 & 45 V. c. 69; *V. R.* v. *Spilsbury*, 79 L. T. 211.

For other Presumptions, *V.* Rosc. N. P. 5, 33 *et seq.* *Cp*, "Way of Necessity," sub WAY.

PRESUMPTIVE. — Heir Presumptive; *V.* HEIR APPARENT.

A Presumptive Share is the antithesis of one that is VESTED; therefore, a Power of Advancement to A. out of "his Presumptive Share" can hardly be properly exercised when the share has become vested (*Molyneux* v. *Fletcher*, cited ADVANCEMENT). A clause for MAINTENANCE in favour of minors "presumptively ENTITLED," will need a strong context to control that phrase into any other than its ordinary meaning (*King-Harman* v. *Cayley*, 1899, 1 I. R. 39).

PRETENCE. — A charter (restoring one surrendered) granting all Franchises, Rights, &c, previously enjoyed "by Virtue or Pretence of any Charter," only (under the word "pretence") "excludes very scrupulous, nice, and subtle, enquiry upon doubtful points; and does not authorize matters done under a previous charter that were contrary to its clear and unambiguous ordinance" (*R.* v. *Salway*, 9 B. & C. 436).

"Pretence," and "Practices," are sometimes used as implying something of an improper description; *V. Barber* v. *Gamson*, 4 B. & Ald. 281.

V. CHARGE OF FRAUD: FALSE PRETENCE.

PRETENCED. — A "Pretenced" TITLE within 32 H. 8, c. 9, s. 2, is one purely fictitious (*Kennedy* v. *Lyell*, 15 Q. B. D. 491). Formerly a right of entry disannexed from actual possession, however good and true it might be, was a pretenced title within the statute (Co. Litt. 369 a: *Partridge* v. *Strange*, 1 Plowd. 88: *Doe* d. *Williams* v. *Evans*, 14 L. J. C. P. 237: 1 C. B. 717); but as a right of entry, formerly incapable of being conveyed, may now be conveyed (8 & 9 V. c. 106, s. 6), it is not, as such, a pretenced title within the statute of Henry 8 (*Jenkins* v. *Jones*, 51 L. J. Q. B. 438; 9 Q. B. D. 128; 46 L. T. 795; 30 W. R. 668). *Note*: the section is repealed by s. 11, Land Transfer Act, 1897.

"'Pretensed Right or Title' is where one is in possession of lands or tenements, and another who is out of possession, claimeth it, and sueth for it" (Termes de la Ley).

"Buying or selling a *pretended* title, is buying or selling lands, of which the title is known to be in dispute, below the value which they would have if the title was not in dispute, and to the intent that the buyer may carry on the suit in place of the seller" (Steph. Cr. 97).

PRETEND. — To "pretend," or "profess," to do a thing, *e.g.* to tell one's FORTUNES, usually connotes that what is done is with the intention to deceive (*R.* v. *Entwistle*, 1899, 1 Q. B. 846; 68 L. J. Q. B. 580; 80 L. T. 657; 63 J. P. 423).

"Pretend to be" a Solicitor; *V.* SOLICITOR.

V. PURPORTING.

PRETENDED. — *V.* PRETENCED.

PRETENDING TO CLAIM. — "A covenant that the lessee shall quietly enjoy against all claiming 'or pretending to claim' a right in the premises, extends to all interruptions, be the claim legal or not, provided it appear that the disturber do not claim under the lessee himself" (Woodf. 723, citing *Chaplin* v. *Southgate*, 10 Mod. 384; 1 Comyn, 230: *Va*, *Ibbett* v. *De la Salle*, 6 H. & N. 233; 30 L. J. Ex. 44). *V.* QUIET ENJOYMENT.

PRETEXT. — "Pretext of Monopoly," s. 4, 21 Jac. 1, c. 3; *V. Peck* v. *Hindes*, 67 L. J. Q. B. 272.

PREVENT. — To "prevent" does not mean *only* an obstruction by physical force, *e.g.* in the phrase that one party to a bargain "prevented or discharged" the other from fulfilling his part thereof: — "In answer to a question from the Court, we were told it would not be a 'preventing'

of the delivery of goods if the purchaser were to write in a letter to the person who ought to supply them, 'Should you come to my house to deliver them, I will blow your brains out.' But may I not reasonably say that I was 'prevented' from completing a contract by being desired not to complete it?"; and though "DISCHARGE" is sometimes used as equivalent to "RELEASE," yet, in such a phrase as the above, it "only means, like 'prevent,' that the act of the other side was the cause of the contract not being executed or performed" (per Campbell, C. J., *Cort* v. *Ambergate Ry*, 17 Q. B. 145, 146; 20 L. J. Q. B. 465: *Cp*, OBSTRUCT, towards end). So, if the fulfilment of a Contract, legal in its inception, becomes contrary to law, the contractor is "prevented" from fulfilling it (*United States* v. *Pelly*, 47 W. R. 332; 4 Com. Ca. 100).

"'Preventing the LOADING,' in a Charter-Party, means, preventing in the sense of stopping it, either before it has been commenced or whilst it is going on" (per Pollock, B., *Coverdale* v. *Grant*, 8 Q. B. D. 602, a def, *semble*, not affected by the reversal of the jdgmt, 53 L. J. Q. B. 462; 9 App. Ca. 470).

Preventing Workman "from returning to his work"; *V.* RETURN.

PREVENTION. — *V.* REGULATE.

PREVIOUS. — Previous Conviction; *V.* Stephen Cr., Articles 19, 20: Arch. Cr. 1239–1249: SECOND OFFENCE.

"Previous Litigation"; *V.* LITIGATION.

Where a Lessee has an OPTION to purchase at any time before a stated day, on giving so many days or months "Previous NOTICE" to the Lessor, the notice must be given the prescribed length of time before the stated day (*Riddell* v. *Durnford*, W. N. (93) 30; 37 S. J. 267).

PREVIOUSLY. — A Substitutional gift to issue of members of a CLASS "who may previously have died," means, generally, previously to the period of distribution (*Re Wintle*, 1896, 2 Ch. 719; 65 L. J. Ch. 865).

A Power to be exercised "UPON or previously to" Marriage, cannot mean "AFTER" and must be executed before the marriage (*Re Borrowes*, Ir. Rep. 2 Eq. 468: *Sv*, *Re Sampson and Wall*, cited OR, p. 1345, and UPON); if it were "AT" marriage, it could be executed as soon as the marriage takes place or at any time after (*Re Creagh*, 25 L. R. Ir. 128).

An employé's agreement in RESTRAINT OF TRADE not, at the determination of the service, to be engaged in trade or business with any goods which his employer "shall have dealt in *at any time previously*, to such determination," is limited to the period of his employment (*Moenich* v. *Fenestre*, 61 L. J. Ch. 737: 67 L. T. 602); "*dealt in*," means, dealt in like the employer had done, *e.g.* if the employer is a

Commission Agent, it does not mean bought or sold across the counter, but means dealt in as a Commission Agent (per Smith, L. J., *Ib.*). *Vf*, TRADE.

"The sum previously *offered*," s. 51, Lands C. C. Act, 1845, means, the sum mentioned in the Notice for a Jury given under s. 38 (*R.* v. *Smith*, 53 L. J. Q. B. 115; 12 Q. B. D. 481; 32 W. R. 275: *Metrop Ry* v. *Turnham*, 32 L. J. M. C. 249; 14 C. B. N. S. 212). *Vf*, OFFER.

PRICE. — *V.* BEST PRICE: FAIR PRICE: HAMMER PRICE: INVOICE PRICE: MARKET VALUE: REGULATION.

"Make a Price"; *V.* POOL: RIGGING: the phrase also means, quoting a price at which a Jobber on the Stock Exchange is prepared to deal.

"Sound Price"; *V.* SOUND, at end.

"Price to be fixed," by VALUATION, of Mains, Pipes, &c, of Water Works; *V. Stockton* v. *Kirkleatham*, 1893, A. C. 444; 63 L. J. Q. B. 56; 69 L. T. 661; 57 J. P. 772: *Cp*, TRAMWAY.

PRIEST. — A Priest in the Church of England, "by his ORDINATION, receives authority to preach the Word of God, and to consecrate and administer the Holy Communion in the Congregation where he shall be lawfully appointed thereunto" (Phil. Ecc. Law, 111). *Cp*, CLERGYMAN.

V. RESIDENT PRIEST.

PRIMÂ FACIE EVIDENCE. — Is, probably, synonymous with SUFFICIENT EVIDENCE (*Galvanized Iron Co* v. *Westoby*, cited SHAREHOLDER).

Cp, CONCLUSIVE EVIDENCE.

PRIMAGE. — "This is a small payment made by the owner or consignee of the goods to the Master for his care and trouble, which varies in amount according to the particular trade in which the Ship is engaged" (1 Maude & P. 121: *Va*, Cowel: 10 Encyc. 335). When used with "Primage," — *e.g.* "paying Freight with Primage and Average accustomed," — "AVERAGE" "denotes several petty charges which are to be borne partly by the Ship and partly by the Cargo, *e.g.* towage, beaconage, &c" (Abbott, 531). *V.* PRIVILEGE. As to what will exclude the right to Primage, *V. Caughey* v. *Gordon*, 3 C. P. D. 419.

PRIMARY. — "Of *Conveyances* by the Common Law, some may be called *Original*, or *Primary*, Conveyances, which are those by means whereof the benefit or estate is created or first arises: others are *Derivative*, or *Secondary*, whereby the benefit or estate originally created is enlarged, restrained, transferred, or extinguished. *Original* Conveyances are the following; — Feoffment; Gift; Grant; Lease; Exchange;

Partition: *Derivative* are;—Release; Confirmation; Surrender; Assignment; Defeasance" (2 Bl. Com. 309, 310). *V.* SUPPLEMENTAL.

Primary *Education*; *V.* ELEMENTARY: EDUCATION.

The "Primary" EVIDENCE of a document is itself; "Secondary" evidence of it is, *e.g.* a copy, or the recollection of it by a person who has read it. "The terms 'primary' and 'secondary' evidence are used by our law in the limited sense of the *original* and *derivative* evidence of written documents, the latter of which is receivable when, by credible testimony, the existence of the primary source has been established and its absence explained" (s. 89, Best on Evidence: *Vh*, Ib. Book 3). *Vf*, Rosc. N. P. 1: Taylor on Evidence, 9 ed., 184, 277. *Cp*, PRIMÂ FACIE EVIDENCE.

Primary *Security*; *V.* SECURITY FOR MONEY, at end.

PRIMATE.—Is an ARCHBISHOP.

PRIME BACON.—*V. Yates* v. *Pym*, 6 Taunt. 446; 2 Marsh. 141: 1 Sm. L. C. 597.

PRIMER SEISIN.—*V.* Termes de la Ley: Cowel: 2 Bl. Com. 66, 87.

PRIMOGENITURE.—Primogeniture is "the right of the ELDEST among the males to inherit" REAL ESTATE (Wms. R. P. Part 1, ch. 4: *V.* HEIR), or a DIGNITY.

PRIMUS.—*V.* ARCHBISHOP.

PRINCE.—Quà Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, "'Prince,' shall extend to and include, the Prince and Steward of Scotland, and his successors" (s. 3).

"Princes"; *V.* RESTRAINTS OF KINGS.

PRINCIPAL.—As to contextual effect of "principal" to cut down a testamentary gift to Personalty; *V. Saumarez* v. *Saumarez*, 4 My. & C. 331: *Stokes* v. *Salomons*, 9 Hare, 83; 20 L. J. Ch. 343: *Coard* v. *Holderness*, 20 Bea. 147.

V. AGENT.

PRINCIPAL ACCOUNTANT.—Quà Exchequer and Audit Department, "'Principal Accountants,' shall mean, those who receive ISSUES directly from the Accounts of Her Majesty's Exchequer at the Banks of England and Ireland respectively; 'Sub-Accountants,' shall mean, those who receive advances, by way of Imprest, from Principal Accountants, or who receive Fees or other Public Moneys through other channels" (s. 2, 29 & 30 V. c. 39).

V. ACCOUNTANT.

PRINCIPAL CAUSE. — "Principal Cause," "Cross Cause," s. 34, 24 & 25 V. c. 10; *V. The Rougemont*, 1893, P. 275; 62 L. J. P. D. & A. 121; 70 L. T. 420.

PRINCIPAL DEBTOR. — The principal debtor quà a guaranteed debt, is the person for whom a GUARANTEE is given.

PRINCIPAL ENGINEER. — As to who is the "Principal Engineer" of a Ry Co, within a clause referring disputes to arbitration; *V. Re Wansbeck Ry*, L. R. 1 C. P. 269.

PRINCIPAL IN FIRST DEGREE. — "Whoever actually commits, or takes part in the actual commission of, a crime, is a Principal in the First Degree, whether he is on the spot when the crime is committed or not; and if a crime is committed partly in one place and partly in another, every one who commits any part of it at any place is a principal in the first degree" (Steph. Cr. 29). "Whoever commits a crime by an innocent agent is a Principal in the First Degree" (Ib.).

"The general definition of a Principal in the First Degree is, one who is the actor or actual perpetrator of the fact" (Arch. Cr. 11).

Cp, ACCESSORY: AID OR ABET.

PRINCIPAL IN SECOND DEGREE. — "Whoever aids or abets the actual commission of a crime, either at the place where it is committed or elsewhere, is a Principal in the Second Degree in that crime.

"Mere presence on the occasion when a crime is committed does not make a person a Principal in the Second Degree, even if he neither makes any effort to prevent the offence or to cause the offender to be apprehended, but such presence may be evidence for the consideration of the jury of an active participation in the offence.

"When the existence of a particular intent forms part of the definition of an offence, a person charged with aiding or abetting the commission of the offence must be shown to have known of the existence of the intent on the part of the person so aided" (Steph. Cr. 30).

Vf, Arch. Cr. 11; Rosc. Cr. 157: AID OR ABET.

PRINCIPAL MANSION HOUSE. — *V.* MANSION: FAMILY MANSION.

PRINCIPAL MONEY. — A testator possessed of a small amount of cash, but of considerable other property both real and personal, gave as follows, — "I desire that the income arising from my Principal Money shall be paid to my wife, while unmarried, for the support of herself and the education of my children, and, at her death or on her marriage, to be divided between them"; held, that all the personalty, including lease-

holds, passed, but not the realty (*Prichard* v. *Prichard*, 40 L. J. Ch. 92; L. R. 11 Eq. 232; 24 L. T. 259).

V. MONEY: PRINCIPAL SUM.

PRINCIPAL OFFICE. — The "Principal OFFICE" of a Co, — s. 135, Comp C. C. Act, 1845; s. 138, Ry C. C. Act, 1845, — is the place at which the business of the Co is managed and controlled as a whole (*Garton* v. *G. W. Ry*, 27 L. J. Q. B. 375; E. B. & E. 837: *Palmer* v. *Caledonian Ry*, 1892, 1 Q. B. 823; 61 L. J. Q. B. 552; 66 L. T. 771; 40 W. R. 562). *Vf*, CARRY ON: RESIDE.

PRINCIPAL OFFICER. — The Manager of a Receiver in a Debenture-holder's action, who was also one of two joint Liquidators of the petitioning Co, was held by Williams, J., to be a "Principal Officer" of that Co quà the affidavit verifying a petition by that Co for the Compulsory Winding-up of another Co, within R. 36, Company Winding-up Rules, 1890 (*Re Review Publishing Co*, W. N. (93) 5). *Cp*, "Head Officer," sub OFFICER.

PRINCIPAL SECURITY. — "Principal or Primary Security"; *V.* SECURITY FOR MONEY, at end.

PRINCIPAL SUM. — Where a Covenant of Indemnity is given as a collateral security for principal and interest secured by a mortgage, and to the covenant there is a proviso that "no greater Principal Sum shall be ultimately recoverable under or by virtue hereof than the Principal Sum of," *e.g.* £3000, — the phrase "Principal Sum" in such a proviso does not mean "no greater sum in respect of the principal secured by the mortgage," but means the amount to be recovered under the Indemnity; so that if, after realizing the property mortgaged, there remain, *e.g.* £2047 7*s.* 6*d.* due for arrears of interest and £6175 for principal in respect of the mortgage debt, the amount recoverable under the Indemnity is not the £3000 plus the arears of interest, but the £3000 and no more (*Miller* v. *Miller*, cases lodged in H. L. Sess. 1886).

As to the phrase "Principal Sum" in a Power of Appointment; *V.* *Samuda* v. *Lousada*, 7 Bea. 243.

V. PRINCIPAL MONEY.

PRINCIPAL VALUE. — Quà Finance Act, 1894, "the 'Principal VALUE' of any property shall be estimated to be, the price which, in the OPINION of the Commissioners, such property would fetch if sold in the OPEN Market at the time of the death of the deceased: Provided that, in the case of any AGRICULTURAL property where no part of the Principal Value is due to the expectation of an increased income from such property, the Principal Value shall not exceed 25 times the ANNUAL VALUE as assessed under Sch A. of the Income Tax Acts, after

making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding 5 per cent of the Annual Value so assessed" (subs. 5, s. 7).

PRINCIPLE. — "Principle" in Science, "is equivocal; it may denote (1) Either the radical, elementary, truths of a science, or (2) Those consequential axioms which are founded on radical truths, but which are used as fundamental truths by those who do not find it expedient to have recourse to first principles" (per Rooke, J., *Boulton* v. *Bull*, 2 Bl. H. 478: *Vf*, per Lawrence, J., *Hornblower* v. *Boulton*, 8 T. R. 106).

PRINT. — *Semble*, that, for some purposes, Type-writing may be regarded as Printing; it could hardly be regarded as Printing quà multiplying documents in the High Court, for R. 3, Ord. 66, R. S. C. contains regulations thereon with which type-writing could hardly comply: but it is not the same as writing by hand; and where several copies are taken simultaneously by type-writing, the full solicitor's allowance of 4*d*. a folio for written copies will not be allowed (*Re Morse, Ex p. Latimer*, 7 Times Rep. 591; 60 L. J. Q. B. 626: *Va*, *Underwood* v. *Secretary of State*, 16 W. R. 752; 18 L. T. 351).

Quà International Copyright Act, 1844, 7 & 8 V. c. 12, "'printing,' and 're-printing,' shall include, engraving and any other method of multiplying copies" (s. 20).

Quà Metropolis Management Acts, "'print,' shall apply to and include, every mode of taking impressions, whether by letter-press, stereotype, lithography, or otherwise" (s. 112, 25 & 26 V. c. 102); more briefly, quà Loc Gov Act, 1888, "'print,' includes, any mechanical mode of reproduction" (s. 99), so, of Loc Gov (Scot) Act, 1889 (s. 103): *Vf*, s. 20, Interp Act, 1889.

V. WRITING: ENGRAVING.

PRINT WORKS. — *V. Hardcastle* v. *Jones*, and *Hoyle* v. *Oram*, cited EMPLOYED: NON-TEXTILE FACTORIES.

PRINTER. — *V.* GOVERNMENT PRINTER.

PRIOR ESTATE. — "Owner of the Prior Estate," s. 22, Fines and Recoveries Act, 1833; *V.* OWNER, p. 1392.

PRIOR INCUMBRANCER. — A judgment creditor is a "Prior Incumbrancer" within the proviso to s. 42, 3 & 4 W. 4, c. 27 (per Ld St. Leonards, *Henry* v. *Smith*, 2 Dr. & War. 381); but outstanding charges assigned to a trustee for a purchaser of the equity of redemption are not within the exception (*Chinnery* v. *Evans*, 11 H. L. Ca. 115); nor is a tenant for life such a "prior incumbrancer" as regards a creditor of a remainder-man (*Vincent* v. *Going*, 1 J. & La T. 697).

PRIOR INVENTOR. — *V.* First Inventor.

PRIOR PUBLICATION. — *V.* Publication.

PRIOR USER. — *V.* Anticipation: Public Use.

PRIORITY. — If a mesne incumbrancer of realty be given a "Priority of Charge" over a prior incumbrancer who has the Legal Estate, that will not divest the latter of his legal estate (*Doe* d. *Thompson* v. *Lediard*, 4 B. & Ad. 137).

PRISAGE. — "'Prisage' is that part or portion that belongs to the King of such merchandises as are taken at sea by way of lawfull prize. And this word you shall finde in the statute of 31 Eliz. c. 5" (Termes de la Ley: *Vf*, Prize).

"Prisage *of Wines*, mentioned in the statutes of 1 H. 8, c. 5, is a Custome by which the King out of every barke laden with wine under forty Tunne, claims to have two tun at his own price" (Termes de la Ley).

Vf, Cowel: Hale, Concerning Customs, ch. 2 *et seq*: Jacob: 10 Encyc. 402.

As to Customary, as distinguished from Prerogative, prisage; *V.* Hale, De Portibus Maris, ch. 6.

PRISON. — "Every place where any person is restrained of his liberty is a Prison: as, if one take Sanctuary and depart thence, he shall be said to 'break prison'" (*Hobert and Stroud's Case*, Cro. Car. 210); so, of a place where you are only at liberty on parole (*Ib.*); so, where "un fuit mis in les cippes come suspect de felony, et la vient un autre que luy lessa aler alarge, — ces est felony per common ley, *de frangentibus prisonis*" (Dyer, 99, pl. 60): *Vf*, Gaol: Imprisonment. Probably, a fuller def of "Prison" is, "a place of restraint for the safe custody of a person to answer any action, personal or criminal" (Cowel), or of a person convicted of an offence or who for any cause is legally ordered into confinement. *Vf*, 2 Hawk. P. C. ch. 18, s. 4: 10 Encyc. 402–404. So, quà West Indian Prisons Act, 1838, 1 & 2 V. c. 67, "Prison," comprises, "every gaol, house of correction, hospital, asylum, workhouse, and every other place however called, which shall be used, in any of the said Colonies or Plantations, for the confinement of persons charged with, or convicted of, any offence" (s. 10); *Vf*, 47 & 48 V. c. 31, s. 18, c. 64, s. 16: Break out: Escape: Rescue: Prisoner.

"Prison" quà Prison Acts for England; Stat. Def., 28 & 29 V. c. 126, s. 4; 40 & 41 V. c. 21, s. 60: *Vth*, *Prison Commrs* v. *Middlesex*, 51 L. J. Q. B. 433; 9 Q. B. D. 506; 46 L. T. 861; 30 W. R. 881.

"Prison" quà Prison Acts for Scotland; *V.* 40 & 41 V. c. 53, s. 71: — for Ireland, 40 & 41 V. c. 49, s. 3.

Other Stat. Def. — 62 & 63 V. c. 11, s. 2 (2).

"Local Prison," Stat. Def., 23 & 24 V. c. 105, s. 4; 61 & 62 V. c. 41, s. 14.

V. CERTIFIED: CONVICT: ORDINARY PRISON: PUBLIC PRISON.

"The Prison Acts, 1865 to 1893," "The Prisons (Scotland) Acts, 1860 to 1887," "The Prisons (Ireland) Acts, 1826 to 1884"; *V.* Sch 2, Short Titles Act, 1896.

"Prison *Authority*" first became a *nomen juris* on the passing of the Prison Act, 1865 (per Ld Watson, *Mullins* v. *Surrey Treasurer*, 51 L. J. Q. B. 150; 7 App. Ca. 1, *whcv* hereon): Stat. Def., 28 & 29 V. c. 126, s. 5; 29 & 30 V. c. 117, s. 3, c. 118, s. 4; 40 & 41 V. c. 21, ss. 18, 61. — *Scot.* 40 & 41 V. c. 53, s. 71; 41 & 42 V. c. 40, s. 2.

"Authorized Prison"; *V.* AUTHORIZE.

"Prison CHARITY"; Stat. Def., Prison Charities Act, 1882, 45 & 46 V. c. 65, s. 2.

"Separate Prison *Jurisdiction*"; *V.* JURISDICTION.

"Prison SERVICE"; Stat. Def., 40 & 41 V. c. 21, s. 36; 56 & 57 V. c. 26, s. 1. — *Scot.* 40 & 41 V. c. 53, s. 43. — *Ir.* 40 & 41 V. c. 49, s. 32; 46 & 47 V. c. 25, s. 1.

"In Prison or in Custody for DEBT"; *V. Re Stoffel*, 3 Ch. 240; 37 L. J. Bank. 4.

PRISONER. — *V.* IMPRISONMENT: PRISON.

"Prisoner," quà Prison Act, 1877, 40 & 41 V. c. 21, is "any person committed to prison on remand, or for trial, safe custody, punishment, or otherwise" (s. 57); such a person does not cease to be a "prisoner" by reason of being removed to a lunatic asylum during the term of punishment (*Mews* v. *The Queen*, 52 L. J. M. C. 57; 8 App. Ca. 339).

Other Stat. Def. — 47 & 48 V. c. 64, s. 16; 61 & 62 V. c. 41, s. 11 (3). — *Scot.* 40 & 41 V. c. 53, s. 70. — *Ir.* 20 & 21 V. c. 60, s. 4; 40 & 41 V. c. 49, s. 3.

V. CIVIL PRISONER: CRIMINAL PRISONER: MAINTENANCE.

A person in PENAL Servitude, is a "Prisoner in a Prison," s. 1, 9 & 10 V. c. 66 (*R.* v. *Potterhanworth*, 1 E. & E. 262; 28 L. J. M. C. 56; 7 W. R. 106; 32 L. T. O. S. 158, reviewing *R.* v. *Salford*, 12 Q. B. 106; 17 L. J. M. C. 170: *R.* v. *Pott Shrigley*, 12 Q. B. 143; 18 L. J. M. C. 33: *Hartfield* v. *Rotherfield*, 17 Q. B. 746).

A CHARITY for the "relief or redemption of Prisoners or Captives" (43 Eliz. c. 4), "does not include prisoners for crime, as poachers (*Thrupp* v. *Collett*, 26 Bea. 125). A bequest for such a purpose is against public policy and void" (1 Jarm. 208, *n*).

PRIVACY. — Invasion of, is DAMAGE, p. 456.

PRIVATE ACT. — *V.* PUBLIC ACT: LOCAL ACT OF PARLIAMENT: SEWER: 5 Cru. Dig. Title 33.

PRIVATE ASSESSMENT. — Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, " 'Private Assessment' shall mean, any assessment or charge on individuals for Private Improvement Expenses, or for House Drainage, or otherwise under this Act " (s. 1).

PRIVATE ASYLUM. — *V.* PUBLIC ASYLUM.

PRIVATE BILL. — Quà Parliamentary Costs Act, 1865, 28 & 29 V. c. 27, " Private Bill," extends to and includes, " any Bill for a Local and Personal Act " (s. 10).

PRIVATE BRIDGE. — " A distinction between a Public and a Private Bridge is taken in 2 Inst. 701, and made to consist principally in the former being built for the common good of all the subjects as opposed to a bridge made for private purposes; and the instance put of a Private Bridge is, a 'Bridge to a Mill, which A. was bound to maintain over which B. had passage' " (per Ellenborough, C. J., *R.* v. *Bucks*, 12 East, 202). *V.* PUBLIC BRIDGE.

PRIVATE CHAPEL. — *V.* PROPRIETARY.

A Bishop may license a Private Chapel belonging to any College, School, Hospital, Asylum, or Public or Charitable Institution, in his diocese (s. 1, 34 & 35 V. c. 66); ss. 2, 3, of that Act prescribe the status of the Minister of the Chapel and as to the Offertory and Alms, and saves the right of the Incumbent of the Parish " to the entire Cure of Souls " throughout his parish " elsewhere than within such Institution and the Chapel thereof."

V. PRIVATE HOUSE.

PRIVATE CHARITY. — *V.* CHARITABLE PURPOSE.

PRIVATE CLUB. — *V.* CLUB.

PRIVATE COURT. — Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, " Private Court," means, " a Court maintained, or liable to be maintained, by persons other than the Commissioners " under the Act (s. 4).

PRIVATE DEBTS. — *V. Re Fleck, Colton* v. *Roberts*, 57 L. J. Ch. 943; 37 Ch. D. 677; 58 L. T. 624; 36 W. R. 663.

PRIVATE DRAIN. — " Single Private Drain," s. 19, P. H. Act, 1890; *V.* DRAIN.

PRIVATE DWELLING-HOUSE. — A covenant requiring a building to be used as a " Private " dwelling-house, or RESIDENCE, only, is broken by its being used as a school, or dancing academy (*Wickenden* v. *Webster*, 25 L. J. Q. B. 264; 6 E. & B. 387), or as an adjunct to a school,

by taking in the governesses, and some pupils on ordinary paying terms (*Hobson* v. *Tulloch*, 1898, 1 Ch. 424; 67 L. J. Ch. 205; 78 L. T. 224; 46 W. R. 331), or as an institution for educating the daughters of missionaries, or as a club (*German* v. *Chapman*, 47 L. J. Ch. 250; 7 Ch. D. 271; 37 L. T. 685; 26 W. R. 149), or as an hotel or lodging-house (*Rolls* v. *Miller*, 53 L. J. Ch. 682; 27 Ch. D. 71), or by using it as an office for receiving orders, putting a trade-blind in one of the windows, *e.g.* "Coal Office" (*Wilkinson* v. *Rogers*, 2 D. G. J. & S. 62; 10 Jur. N. S. 5, 162; 12 W. R. 119, 284: *Va*, *Evans* v. *Davis*, 10 Ch. D. 747; 48 L. J. Ch. 223; 39 L. T. 391; 27 W. R. 285); but a public auction of the furniture of the house is not a breach of such a covenant (*Reeves* v. *Cattell*, 24 W. R. 485. *Vf*, AUCTION).

A covenant that every house to be erected shall be "adapted for and used as and for *a* private residence only" is broken by the erection of a Block of Residential Flats (*Rogers* v. *Hosegood*, cited HOUSE). *V.* A.

An art studio erected away from the house in such a way as not to be an adjunct thereto, is a breach of a covenant that only "private dwelling-houses" shall be erected (*Patman* v. *Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707); so is the erection of a wall (*Bowes* v. *Law*, L. R. 9 Eq. 636; 39 L. J. Ch. 483; 22 L. T. 267; 18 W. R. 640): *secus*, of a stable with a bedroom over it (*Russell* v. *Baber*, 18 W. R. 1021), or even a stable having no bedroom over it, if used solely as an adjunct to the private house, and so of such other mere adjuncts as a green-house, summer-house, or garden tool-house (*Blake* v. *Marriage*, 37 S. J. 633).

V. BUILDING: DWELLING-HOUSE: HOUSE: PRIVATE HOUSE: RESIDE.

PRIVATE ENDOWMENT.—"The Irish Church Act, 1869, 32 & 33 V. c. 42, s. 29, describes 'Private Endowments' as 'real or personal property becoming vested in the Commissioners by virtue of this Act, which may consist, or be the produce, of property or moneys given by private persons out of their own resources, or which may consist of, or be the produce of, moneys raised by private subscription.' That section shows that Holmes, J. (*R.* v. *Galway Infirmary*, 24 L. R. Ir. 233) rightly defined 'Private Endowment' as 'an Endowment contributed by individual members of the public, as distinguished from one originating in either Royal Bounty or in a grant from some Public Fund'; and is inconsistent with the dicta of O'Brien, J., that 'no one would call Subscriptions or Donations from the PUBLIC AT LARGE a Private Endowment,' and that 'Subscriptions are not Endowment'" (per FitzGibbon, L. J., *R.* v. *Runciman*, 28 L. R. Ir. 559).

V. ENDOWMENT.

PRIVATE ESTATES.—The "'Private Estates of Her Majesty, her heirs or successors,' shall mean (unless controlled or confined to a

more limited sense by express words or the context), any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be (whether situate or arising in England Scotland or Ireland, or in any other part of Her Majesty's dominions) which have at any time heretofore been *purchased or acquired* by Her Majesty, or shall at any time hereafter be purchased or acquired by Her Majesty, her heirs or successors, out of any moneys issued and applied for the use of her or their Privy Purse, or with any other moneys not appropriated to any public service; And any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be (whether situate or arising in England Scotland or Ireland, or in any other part of Her Majesty's dominions) which have *come to* Her Majesty, or shall or may come to Her Majesty, or her heirs or successors, by the gift or devise or disposition of, or by descent inheritance or succession or otherwise from, any of her or their ancestors, or any other person or persons, not being Kings or Queens of this Realm; And any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be (and whether situate or arising in England Scotland or Ireland, or in any other part of Her Majesty's dominions) which did or shall *belong* to Her Majesty, or her heirs or successors or to any person or persons in trust for her or them, *at the time of her or their respective accessions* to the crown of this Realm and which, before such accession, she or they respectively might have legally granted, sold, given, devised, disponed, or conveyed" (s. 1, 25 & 26 V. c. 37).

V. CROWN: MAJESTY: QUEEN.

PRIVATE FOUNDATION. — *V. R.* v. *Runciman*, 28 L. R. Ir. 527, 551, 558, 566: *Cp*, PRIVATE ENDOWMENT. *V.* FOUNDATION.

PRIVATE FRIEND. — If a Licensed Person supplies on his premises a dinner to the order of A. the guests at which stop till closing time, the licensed person cannot convert any of such guests into his own "Private Friends" so as to come within the exception of s. 30, Licensing Act, 1874, although it be clearly proved that he bonâ fide entertained them after closing hours at his own expense (*Corbet* v. *Haigh*, 5 C. P. D. 50; 42 L. T. 185; 28 W. R. 430).

PRIVATE HOTEL. — A Private Hotel, is "a dwelling-place for persons who wish to live there" (per Stirling, J., *Devonshire* v. *Simmons*, 39 S. J 60). *V.* HOTEL.

PRIVATE HOUSE. — An unconsecrated PROPRIETARY Chapel into which strangers are admitted, is not a "Private House" within the 71st of the Canons Ecc., 1604; and to read the Church Service in such a

building is a PUBLIC READING (*Barnes* v. *Shore*, 1 Rob. Ecc. 382). *Cp*, PRIVATE CHAPEL.

V. PRIVATE DWELLING-HOUSE.

PRIVATE IMPROVEMENT. — "Private Improvement Expenses," s. 150, P. H. Act, 1875; *V. Gould* v. *Bacup*, 50 L. J. M. C. 44; 44 L. T. 103; 29 W. R. 471; 45 J. P. 325.

PRIVATE PATIENT. — *V.* PATIENT.

PRIVATE PATRON. — Quà Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82, "'Private Patron,' shall mean and include, all patrons of churches and parishes (whether single or joint), — other than Her Majesty and her royal successors, and Burgh Corporations, Universities, or Trustees constituted Commissioners, Officers, or persons acting in a public capacity" (s. 9).

V. PATRON.

PRIVATE PROPERTY. — Though s. 1, Melbourne Corporation Act, 14 V. No. 20, gives the Melbourne Corporation a limited control over "Streets, Courts, and Alleys, on Private Property," and s. 2 renders adjoining or abutting owners or occupiers liable to contribute to the making and repair of such Streets, &c, yet such an owner or occupier has not, by the Act, any right of way over any such Street, &c, for the Act does not alter or affect its ownership or create any rights over it (*Moubray* v. *Drew*, 1893, A. C. 295; 62 L. J. P. C. 81; 68 L. T. 549).

V. PRIVATE ESTATES: PROPERTY.

PRIVATE PURPOSE. — *V.* PUBLIC PURPOSE.

PRIVATE RESIDENCE. — *V.* PRIVATE DWELLING-HOUSE.

PRIVATE ROAD. — *V.* ROAD.

The def of "STREET," in s. 4, P. H. Act, 1875, includes a Private Road (*Hill* v. *Wallasey*, 1894, 1 Ch. 133; 63 L. J. Ch. 1).

PRIVATE STREET. — Quà Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, "Private Street," means, "any Street maintained, or liable to be maintained, by persons other than the Commissioners" under the Act (s. 4).

V. STREET.

PRIVATE WAY. — *V.* WAY: EASEMENT.

PRIVATELY. — In order to constitute the offence of "privately *stealing*," 10 & 11 W. 3, c. 23, it was necessary that some degree of force was used to come at the goods (East, P. C. 641, 642). *V.* 4 Bl. Com. 242.

PRIVATION. — *V.* DEPRIVATION.

PRIVIES. — *V.* PRIVY.

PRIVILEGE. — " 'Priviledges,' are liberties and franchises granted to an office, place, towne, or mannor, by the Kings great charter, letters patents, or Act of Parliament: as, Toll, Sake, Socke, Infangtheefe, Outfangtheefe, Turne, or Delfe, and divers such like " (Termes de la Ley). *Vf*, Cowel: Jacob: FRANCHISE.

A " Privilege," *e.g.* s. 15 (7), 38 & 39 V. c. 60, is an advantage conferred " over and above the ordinary law " (per Esher, M. R., *Re Miller*, 1893, 1 Q. B. 327; 62 L. J. Q. B. 324): *Cp*, *Winnipeg* v. *Barrett*, cited PRACTICE.

" Privilege," R. 19 *a* (2), Ord. 31, R. S. C., is not used in a narrow sense but, extends to every case in which Inspection is sought to be resisted on any ground whatsoever (*Ehrmann* v. *Ehrmann*, *No. 2*, 1896, 2 Ch. 826; 65 L. J. Ch. 889; 75 L. T. 243).

" Privilege, Servitude, or Easement "; *V. Ramsay* v. *Blair*, 1 App. Ca. 701.

" Right, Power, or Privilege "; *V.* RIGHT: RIGHTS.

" Privileges and Conditions," in a power enabling a Co to create New Capital with such " privileges and conditions " as may be thought fit, are words of extensive meaning and authorize the issue of Preference Shares quà Capital and Dividend (*Harrison* v. *Mexican Ry*, L. R. 19 Eq. 358; 44 L. J. Ch. 403; 23 W. R. 403; 32 L. T. 82: *vthc*, *Re South Durham Co*, 31 Ch. D. 261; 55 L. J. Ch. 179; 34 W. R. 126; 53 L. T. 928).

In a Shipping Contract whereby the Captain was to receive a stipulated sum in lieu of " Privilege and PRIMAGE," Gibbs, C. J., regarding " privilege " " of so indeterminate a signification," received evidence of conversations between the parties to show in what sense they had used the word (*Birch* v. *Depeyster*, 1 Starkie, 210).

DOCUMENTS privileged from DISCOVERY; *V.* notes in Ann. Pr. to R. 1, Ord. 31, R. S. C.

GOODS privileged from DISTRESS; *V.* PUBLIC TRADE, and text-books there cited.

PRIVILEGED COMMUNICATION. — Quà Defamation, " the proper meaning of 'Privileged Communication' is only this, — That the occasion on which the communication was made rebuts the inference *primâ facie* arising from a statement prejudicial to the character of the plaintiff, and puts it upon him to prove that there was MALICE in fact, *i.e.* that the deft was actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made " (per Parke, B., *Wright* v. *Woodgate*, 2 Cr. M. & R. 577, cited *Jenoure* v. *Delmege*, 1891, A. C. 78; 60 L. J. P. C. 11; 63 L. T. 814; 39 W. R. 388; 55 J. P. 500).

The broad principle is, — "A communication made *bonâ fide* upon any subject-matter in which the party communicating has an *interest*, or in reference to which he has a *duty*, is privileged, if made to a person having a corresponding interest or duty, although it contain criminatory matter which, without this privilege, would be slanderous and actionable" (per Campbell, C. J., delivering the jdgmt, *Harrison* v. *Bush*, 25 L. J. Q. B. 29; 5 E. & B. 348): *Vf*, *Nevill* v. *Fine Arts Insrce*, 1897, A. C. 68; 66 L. J. Q. B. 195; 75 L. T. 606: *Stuart* v. *Bell*, 1891, 2 Q. B. 341; 60 L. J. Q. B. 577; 64 L. T. 633; 39 W. R. 612: *Hunt* v. *G. N. Ry*, 1891, 2 Q. B. 189; 60 L. J. Q. B. 498: *Pullman* v. *Hill*, 1891, 1 Q. B. 524; 60 L. J. Q. B. 299: *Clark* v. *Molyneux*, 47 L. J. Q. B. 230; 3 Q. B. D. 237.

Vh, Odgers, chs. 8, 9, 10: Add. T. 180: Rosc. N. P. 852: 10 Encyc. 439–449.

PRIVY. — As distinguished from a PARTY, a Privy "signifies him that is partaker, or hath an interest, in any Action or Thing" (Cowel); but a person who has a *Privity of Contract* is hardly distinguishable from one who is a Party to the CONTRACT, for it is a "personal privity" (*Walker's Case*, 3 Rep. 23). Other privities are, —

Privity *of Estate*, *i.e.* where two or more are legally bound together by the same Estate in lands or tenements, *e.g.* Lessor and Lessee, Joint Tenants; and the Privity lasts only so long as the Estate lasts. Thus, an Assignee of a leasehold term, is a Privy in Estate with the Lessor and liable on the lessee's covenants which RUN WITH THE LAND and arise for performance or observance whilst he is Assignee; but if he assigns to another, then he is not liable on those covenants so far as they remain to be performed or observed (*V.* Platt Cov. Part 4, ch. 1, s. 5). *Vh*, *Mercantile Investment Trust* v. *River Plate Trust*, cited MODIFICATION. *Note*: Between lessor and lessee there is Privity of Contract and of Estate (*Walker's Case*, sup); but between lessor and under-lessee there is no Privity at all, — not of Contract for there is none between them, nor of Estate for the under-lessee's term is one carved out, and different from, that granted by the lessor; therefore, Mortgages of Leaseholds are nearly always by Sub-Demise to prevent the mtgee from being liable on the lessee's covenants.

Privity *in Blood*, *e.g.* Heir, or between Co-Parceners (*Beverley's Case*, 4 Rep. 123: Co. Litt. 271 a): *Vf*, *Weeks* v. *Birch*, 69 L. T. 759; 10 Times Rep. 28.

Privity *in Representation*, *e.g.* Exors or Admors (*Beverley's Case*, 4 Rep. 123, 124).

Privity *in Tenure*, *e.g.* the Lord by Escheat (Ib. 124).

Privities in *Deed*, in *Law*, in *Right*; *V.* Termes de la Ley, *Privie*: Co. Litt. 271 a.

V. PARTY OR PRIVY.

"Privy to," is used in the sense of having knowledge of, a thing; *V.* PERMIT.

"Actual Fault or Privity"; *V.* ACTUAL FAULT.

V. SUFFICIENT PRIVY.

PRIVY COUNCIL. — *V.* s. 12 (5), Interp Act, 1889.

Other Stat Def. — 30 & 31 V. c. 125, s. 4; 31 & 32 V. c. 37, s. 5; 45 & 46 V. c. 9, s. 4.

PRIZE. — A Prize of War, as distinguished from BOOTY, is a belligerent capture of an Enemy's Ship or other property at SEA (*Beak* v. *Tyrrell*, Carth. 32). *Vh*, Hall on International Law, 4 ed., 473–480, 761–763: *Bolton* v. *Gladstone*, 5 East, 155: *Fisher* v. *Ogle*, 1 Camp. 418. *Vf*, PRISAGE.

Prize Courts; *V.* Part 1, 27 & 28 V. c. 25.

"Prize Money"; Stat. Def., 27 & 28 V. c. 36, s. 2.

Prize Competitions; *V.* LOTTERY.

PRIZE FIGHT. — *V.* ASSAULT: AID OR ABET.

PRO. — *V.* PER PROCURATION.

Pro Indiviso Proprietors; *V.* JOINT TENANTS.

PROBABLE. — *V.* PRESUMPTION: REASONABLE AND PROBABLE CAUSE: REASONABLE EXPECTATION.

"Probable Consequences," it is submitted, means very nearly the same as those results which are CAUSED BY something else; *V. Chibnall* v. *Paul*, cited NUISANCE.

"Probable Requirements"; Stat. Def., Prison Act, 1877, s. 18.

PROBATE. — Stat. Def., 47 & 48 V. c. 54, s. 3. *Semble*, in Scotland the equivalent for "Probate" is "Confirmation"; *V.* 46 & 47 V. c. 47, s. 2; 55 & 56 V. c. 6, s. 6. *Vf*, "Letters of Administration," sub LETTER.

Probate Duty; *V.* ESTATE AND EFFECTS: Stat. Def., Loc Gov Act, 1888, ss. 21, 121; Probate Duties (Scotland and Ireland) Act, 1888, 51 & 52 V. c. 60, s. 5; Loc Gov (Scot) Act, 1889, s. 21; 55 & 56 V. c. 6, s. 6.

PROBATIONARY DRAWINGS. — Where an architect undertakes to supply an intending employer with "Probationary Drawings" of the building or works to be executed, he undertakes, not merely to furnish drawings reasonably fit for approval but, that the employer shall be the sole judge of their fitness (*Moffatt* v. *Dickson*, 13 C. B. 543; 22 L. J. C. P. 265).

PROCEDURE. — "Practice and Procedure"; *V.* PRACTICE.

PROCEED IMMEDIATELY. — An obligation for a Ship "to proceed immediately" from Rotterdam to America, is not broken by stopping at an English port to coal (*Forest Oak S. S. Co* v. *Richard*, 5 Com. Ca. 100). *V.* ON OR BEFORE.

PROCEED TO SEA. — *V. Rodriques* v. *Melhuish*, 10 Ex. 110: *Wood* v. *Smith*, L. R. 5 P. C. 451; 43 L. J. Adm. 11: *The Cachapool*, 7 P. D. 217: *The Servia*, 1898, P. 36; 67 L. J. P. D. & A. 36; 78 L. T. 54; 46 W. R. 492; 8 Asp. 353.

PROCEED WITH ALL CONVENIENT SPEED. — *V.* CONVENIENT SPEED.

PROCEEDING. — "Any Proceeding," s. 89, Jud. Act, 1873, is equivalent to "any Action," and does not mean any step in an action (*Pryor* v. *City Offices Co*, 52 L. J. Q. B. 362; 10 Q. B. D. 504). But in R. 13, Ord. 64, R. S. C., "Proceeding" is obviously used as meaning a step in an action; *i.e.*, *semble*, a step "towards," and not "after," judgment (*Houlston* v. *Woodward*, Law Notes, 1885, p. 15).

"Any other Proceeding in the Action," R. 1, Ord. 26, R. S. C., means, any proceeding with a view to continuing the action, *i. e.* a step forward, not one backward (*Spincer* v. *Watts*, 58 L. J. Q. B. 383; 23 Q. B. D. 350; 37 W. R. 676; 61 L. T. 711). *V.* STEP.

"At any stage of the Proceedings"; *V.* STAGE.

"Proceeding," s. 53, Jud. Act (Ir), 1877; *V. Cassidy* v. *O'Loghlen*, 4 L. R. Ir. 731.

An Incumbrancer's Petition for sale by the Land Judges in Ireland, is a "Proceeding" to recover money within s. 8, Real Property Limitation Act, 1874 (*Re Stinson*, 29 L. R. Ir. 490).

An Action is a "Proceeding" within s. 13, 14 & 15 V. c. 99 (*Richardson* v. *Willis*, 42 L. J. Ex. 15; L. R. 8 Ex. 69); and the word "Proceeding" in s. 6, Ry and Canal Traffic Act, 1854, includes an action (*Manchester, S. & L. Ry* v. *Denaby Colliery*, 54 L. J. Q. B. 103; 14 Q. B. D. 209; affd in H. L., 55 L. J. Q. B. 181; 11 App. Ca. 97. *Vf*, *Rhymney Ry* v. *Rhymney Iron Co*, 59 L. J. Q. B. 414; 25 Q. B. D. 146).

A Counter-Claim is a "Proceeding" within the Condition of a Bond (*Norman* v. *Bolt*, Cab. & El. 77): *Vf*, *Chappell* v. *North*, cited STEP.

"Suit or Proceeding"; *V.* SUIT.

"Proceedings," s. 84, Co. Co. Act, 1888, apply to all Proceedings that may be brought in a Co. Co., including Administration Proceedings (*R.* v. *Bloomsbury Co. Co.*, 24 Q. B. D. 309; 62 L. T. 286; 38 W. R. 320).

Fees payable on the "Proceedings" in a Co. Co., s. 166, Co. Co. Act, 1888, include those on a Return to a Certiorari (*Batt* v. *Price*, 1 Q. B. D. 264; 45 L. J. Q. B. 170; 33 L. T. 808; 24 W. R. 318).

"Action or Proceeding," s. 2, M. W. P. Act, 1893, means, in the latter word, "a proceeding in the nature of an action" (per Davey, L. J.,

Hood-Barrs v. *Cathcart*, 1894, 3 Ch. 376; 63 L. J. Ch. 793; 71 L. T. 11). *Vh*, INSTITUTED.

The power given by s. 85, Comp Act, 1862, to restrain "any Action, Suit, or *other Proceeding*," against a Co in liquidation, extends to quasi-criminal Proceedings, *e.g.* for recovering penalties for neglecting to publish Statement, Form D., or Annual List of Members, or to make yearly statement of revenue (*Re Briton Medical Assrce*, 55 L. J. Ch. 416; 32 Ch. D. 503; 54 L. T. 152; 34 W. R. 390). Going to sale under a *fi. fa.* executed by seizure, is a "Proceeding" within the same section (*Re Perkins Beach Lead Mining Co*, 7 Ch. D. 371: *Re Artistic Colour Printing Co*, 49 L. J. Ch. 526; 14 Ch. D. 502), and so is a Distress for rent (*Re Exhall Mining Co*, 4 D. G. J. & S. 377: *Re Lancashire Cotton Co*, 56 L. J. Ch. 761; 35 Ch. D. 656: *Re Higginshaw Mills*, 1896, 2 Ch. 544; 65 L. J. Ch. 771: Buckl. 261).

A Co's Winding-up Petition, even before any Order thereon, is a "Proceeding" within s. 3, 53 & 54 V. c. 63 (*Re Laxon*, 1892, 3 Ch. 31; 62 L. J. Ch. 79; 67 L. T. 584; 40 W. R. 614).

The Taxation of Costs is a "Proceeding" within the phrase, "no actions, suits, executions, attachments, or other proceedings," shall be continued or commenced without leave (*R.* v. *L. C. & D. Ry*, L. R. 3 Q. B. 170; 37 L. J. Q. B. 75): *Vh*, *Mid. Ry* v. *Edmonton*, cited COMMENCEMENT.

A Debtor's Summons, under Bankry Act, 1869, was a "Proceeding" in Bankry (*Ex p. Johnson*, 53 L. J. Ch. 309); but Conveyancing business in a Bankry, is not a "Proceeding" in it, so as to limit the solicitor's costs by the three-fifths rule, if the assets do not exceed £300 (*Re Parfitt*, 58 L. J. Q. B. 428).

The Examination of a Witness under s. 27, Bankry Act, 1883, is a "Proceeding" within R. 12, Bankry Rules, 1886 (*Re Beall*, 1894, 2 Q. B. 135; 63 L. J. Q. B. 425; 70 L. T. 643: *Sv*, *Re Grey's Brewery*, and *Re Norwich Assrce*, inf). A Meeting of Creditors for confirming or rejecting a Scheme of Arrangement of a debtor's affairs, is not "a Proceeding in Court" within s. 105 (1), Bankry Act, 1883 (*Re Strand*, 53 L. J. Q. B. 563; 13 Q. B. D. 492).

An Examination of a witness, under s. 115, Comp Act, 1862, was not a "Proceeding" in a matter (*Re Grey's Brewery*, 53 L. J. Ch. 262; 25 Ch. D. 400: *Re Norwich Equitable Fire Assrce*, 54 L. J. Ch. 254; 27 Ch. D. 515: *Sv*, *Re Beall*, sup); *secus*, now by Rules 11, 32, Companies (Winding-up) Rules, April, 1892 (*Re Standard Gold Mining Co*, 1895, 2 Ch. 545; 64 L. J. Ch. 790; 73 L. T. 285; 44 W. R. 63).

"The Proceedings of a Co," in a clause giving a shareholder a right to INSPECT, means, "the proceedings of any meeting of the Shareholders, and not the proceedings of the Directors" in their Minute Book (*R.* v. *Mariquita Co*, 28 L. J. Q. B. 67; 1 E. & E. 289).

An Arbitration under Lands C. C. Act, 1845, is not a "Proceeding in

a Court of Justice" within s. 28, Solicitors Act, 1860 (*Macfarlane* v. *Lister*, 57 L. J. Ch. 92; 37 Ch. D. 88; 58 L. T. 201).

"SUIT or other Proceeding," s. 17, Charitable Trusts Act, 1853; *V. Holme* v. *Guy*, 5 Ch. D. 901; 46 L. J. Ch. 648. An Action by Charity Trustees to recover Rent-charge, is not a "Proceeding" within s. 41, Ib. (*Bassano* v. *Bradley*, 1896, 1 Q. B. 645; 65 L. J. Q. B. 479; 44 W. R. 576; 74 L. T. 553).

"Proceeding," s. 7, Friendly Soc. Act, 1858; *V. Roberts* v. *Page*, 45 L. J. Q. B. 601; 1 Q. B. D. 476.

An action under ss. 41, 224, Mun Corp Act, 1882, is not a "Proceeding" to which 56 & 57 V. c. 61 (*V.* s. 2) applies; s. 224 is unrepealed (*Humphriss* v. *Worwood*, 64 L. J. Q. B. 437).

"Other LEGAL PROCEEDING," s. 18 (10), Patents, &c, Act, 1883, refers to a proceeding for the revocation of a patent (*Cropper* v. *Smith*, 54 L. J. Ch. 287; 28 Ch. D. 148).

The appropriation of Penalties by s. 26, Sale of Food and Drugs Act, 1875, is a "Proceeding" within s. 12, Margarine Act, 1887, 50 & 51 V. c. 29 (*R.* v. *Titterton*, 1895, 2 Q. B. 61; 64 L. J. M. C. 202; 43 W. R. 603).

A Power of Attorney to commence, &c, "actions, suits, or other Proceedings," confers authority to sign a Bankruptcy Petition (*Ex p. Wallace*, 54 L. J. Q. B. 293; 14 Q. B. D. 22); and, in like manner, the power given to an Official Liquidator (s. 95, Comp Act, 1862), to bring or defend "any action, suit, or prosecution, or other legal Proceeding," includes the power to serve a Bankry Notice (*Re Winterbottom*, 56 L. J. Q. B. 238; 18 Q. B. D. 446; 56 L. T. 168). *Vf*, OTHER, p. 1363.

Proceeding "*against*" a Co; *V.* AGAINST.

A "*Criminal* Proceeding" is a far larger term than "Criminal Prosecution" (*Yates* v. *The Queen*, 54 L. J. Q. B. 258; 14 Q. B. D. 648).

"Proceeding *in the Cause*"; *V. Ball* v. *Stanley*, 9 L. J. Ex. 161; 6 M. & W. 398.

Proceedings by Poor Law Guardians against a husband, to compel him to maintain a child which, although born of his wife in wedlock, he refuses to maintain, on the ground that he is not its father, are not "Proceedings instituted *in consequence of Adultery*," within s. 3, Evidence Further Amendment Act, 1869, 32 & 33 V. c. 68 (*Nottingham* v. *Tomkinson*, 4 C. P. D. 343; 48 L. J. M. C. 171). *V.* INSTITUTED.

"*Like* Proceedings"; *V.* LIKE.

"*Necessary and Legal* Measures and Proceedings"; *V.* LEGAL MEASURES.

V. ACTION: CIVIL PROCEEDING: CRIMINAL CAUSE: JUDICIAL PROCEEDING: LEGAL PROCEEDING: MATTER: PROCESS.

Power to Local Authority "*to cause* any Proceedings to be taken" to abate or prohibit a NUISANCE, s. 107, P. H. Act, 1875, means, ordinary proceedings, and (there being no special damage) does not authorize a

Local Authority to sue in its own name in respect of a PUBLIC NUISANCE which must be by Information in the name of the Attorney General (*Wallasey* v. *Gracey*, 56 L. J. Ch. 739; 36 Ch. D. 593: *Stoke* v. *Price*, 1899, 2 Ch. 277; 68 L. J. Ch. 447; 80 L. T. 643; 47 W. R. 663; 63 J. P. 502).

"Where a Lessor *is* proceeding" to enforce Forfeiture, s. 14 (2), Conv & L. P. Act, 1881, means, where his proceedings are pending; not where they have been concluded by judgment (*Rogers* v. *Rice*, 1892, 2 Ch. 170; 61 L. J. Ch. 573; 66 L. T. 640; 40 W. R. 489: *Lock* v. *Pearce*, 1893, 2 Ch. 271; 62 L. J. Ch. 582; 68 L. T. 569; 41 W. R. 369). *V.* COMMENCEMENT: IS: PENDING.

PROCEEDS.— Money paid under protest is the "Proceeds" of goods and chattels taken under a *fi. fa.* within R. 1 *b*, Ord. 57, R. S. C. (*Smith* v. *Critchfield*, 54 L. J. Q. B. 366; 14 Q. B. D. 873).

"Proceeds of Sale"; *V.* SALE.

"Proceeds of such Sale," s. 1, 9 Anne (Ireland), c. 8; *V. Re M'Carthy*, 7 L. R. Ir. 473: *Davidson* v. *Allen*, 20 Ib. 16.

In *Entwistle* v. *Dent* (18 L. J. Ex. 138; 1 Ex. 812), a direction by a Merchant to his Commission Agent to remit the "Proceeds" of goods consigned to the latter, was held to mean that the Agent was to remit as soon as a part of the proceeds considerable enough to be remitted was received, and so on till all was remitted. *V.* REMIT.

"The Ship, or Proceeds thereof"; *V. James* v. *Lond. & S. W. Ry*, cited DAMAGE.

"Net Proceeds"; *V.* NET.

V. RENTS AND PROFITS.

PROCESS.—"'Proces' are the writs and precepts that go upon the originall . . . . But in actions personals, as in Debt, Trespasse, or Detinue, the processe is a distresse" (Termes de la Ley).

"Process" is the doing of something in a proceeding in a civil or criminal Court; and that which may be done without the aid of a Court is not a "Process." Therefore, a distraint, whether for rent or any other payment, and whether the right of distress be given by the Common Law or Statute (or, as it should seem, by any other authority), is not a "Process," nor is it "an Execution or other Legal Process" within s. 13, Bankry Act, 1869, or within the substituted section (s. 10) of the Bankry Act, 1883 (*Blackamore's Case*, 8 Rep. 157 a: *R.* v. *Crisp*, 1 B. & Ald. 287: 3 Bl. Com. 3, 6, 7: *Ex p. Birmingham & Staffordshire Gas Co, Re Fanshaw*, 40 L. J. Bank. 52; L. R. 11 Eq. 615: *Re Peake, Ex p. Harrison*, 53 L. J. Ch. 977; 13 Q. B. D. 753); so, *semble*, of the registration of a jdgmt under s. 13, 1 & 2 V. c. 110 (*Fluester* v. *M'Clelland*, 8 C. B. N. S. 357; 29 L. J. C. P. 237; 8 W. R. 497): but a Writ of Sequestration is such a Process (*Re Browne*, 40 L. J. Bank. 46; nom.

Ex p. Hughes, L. R. 12 Eq. 137); and a Notice of Appeal from a Bastardy Order is a "Process" within 29 Car. 2, c. 7 (*R.* v. *Middlesex Jus.*, 17 L. J. M. C. 111).

"All the steps taken in an execution—the seizure and the sale—are, in the natural meaning of the word, comprehended in the term 'Process'" (per Lynch, J., *Re Delahoyd*, 11 Ir. Ch. Rep. 407); therefore, s. 211, Bankry Act, 1849, did not prohibit a Jdgmt Creditor from registering his jdgmt under s. 13, 1 & 2 V. c. 110 (*Fluester* v. *M'Clelland*, sup), for such a registration is not "Process."

A Trader-Debtor's Summons was not a "Process" (*Re Dobson*, 8 Ir. Ch. Rep. 391), nor an Adjudication in Bankruptcy thereon (*Re Kerr*, 1 L. R. Ir. 67: *Re M'Veigh*, 5 Ib. 177); nor is a Petition in Bankruptcy (*Ex p. Walker, Re Haywood*, 6 D. G. M. & G. 752: *Ex p. Treherne, Re Saunders*, 2 D. G. F. & J. 661: *Ex p. Hills*, 3 D. G. & J. 476, *n*).

A mere notice, though headed with the name of a County Court, is not a "Process" within s. 57, 9 & 10 V. c. 95, repld s. 180, Co. Co. Act, 1888 (*R.* v. *Castle*, 27 L. J. M. C. 70; 30 L. T. 188); but such a notice, especially if it also has the Royal Arms and (without authority) professes to bear the signature of the Registrar, is a "False Colour or Pretence" of such "Process" (*R.* v. *Evans*, 26 L. J. M. C. 92; Dears. & B. 236: *R.* v. *Richmond*, 28 L. J. M. C. 188).

Quà the Summary Jurisdiction Acts, "'Process,' includes, any summons or warrant of citation to appear either to answer any Information or Complaint, or as a Witness; also any warrant of commitment, any warrant of imprisonment, any warrant of distress, any warrant of poinding and sale; also any Order or Minute of a Court of Summary Jurisdiction, or copy of such Order or Minute; also an Extract Decree; and any other document or process (other than a Warrant of Arrestment) required for any purpose connected with a Court of Summary Jurisdiction to be served or executed" (s. 8, 44 & 45 V. c. 24).

Other Stat. Def. — 27 & 28 V. c. 99, s. 3; 35 & 36 V. c. 58, s. 62.

V. COMPLAINT: INFORMATION: ORIGINATING SUMMONS: PETITION: PLAINT: PRACTICE: PROCEEDING: WRIT.

"Process of *Loading* or Unloading"; *V. Stuart* v. *Nixon*, cited AVERAGE WEEKLY EARNINGS.

"Process," quà Factory and Workshop Act, 1901, "includes the use of any locomotive" (s. 156). *V.* FACTORY.

"Process" contrasted with "Manufacture"; *V.* MANUFACTURE.

"Process of Manufacture"; *V.* STAGE.

V. MANUFACTURING PROCESS.

PROCLAIMED DISTRICT.—*V.* DISTRICT.

PROCLAMATION.—Stat. Def., Ballot Act, 1872, 35 & 36 V. c. 33, s. 15; Leeward Islands Act, 1871, 34 & 35 V. c. 107, s. 3.

PROCTOR. — "An Attorney at Law answers to the *Procurator*, or Proctor, of the civilians and canonists" (3 Bl. Com. 25). *V.* ATTORNEY: SOLICITOR: Jacob: 10 Encyc. 484: Phil. Ecc. Law, 937.

V. PROCURATOR FISCAL.

PROCURATION. — *V.* PER PROCURATION.

"Procuration," Art. 137 in the French Code of Commerce; *V. Bradlaugh* v. *De Rin*, L. R. 5 C. P. 473; 18 W. R. 931.

"Procuration Générale et Spéciale" to administer affairs and give promissory notes, authorizes the giving of all kinds of promissory notes; and, in Lower Canada, is not confined to such as, by Art. 181, Civil Code, are required for administration (*Banque de Hochelaga* v. *Jodoin*, 1895, A. C. 612; 64 L. J. P. C. 174).

"'Procurations' are certain sums of money which Parish Priests pay yearly to the Bishop, or Archdeacon, *ratione visitationis*" (Cowel).

PROCURATOR FISCAL. — Stat Def., 17 & 18 V. c. 80, s. 76; 28 & 29 V. c. 56, s. 2; 32 & 33 V. c. 87, s. 2; 50 & 51 V. c. 35, s. 1; 58 & 59 V. c. 36, s. 7.

PROCURE. — An obligation to "procure" something to be done by another person, connotes, at any rate, that the obligor is to take steps to procure its being done (per Fry, L. J., *Lowther* v. *Caledonian Ry*, 1892, 1 Ch. 73; 61 L. J. Ch. 108).

In such a phrase as "procuring, enticing, and persuading," *e.g.* a wife to absent herself from her husband, "'procuring' is certainly persuading with effect" (per Willes, C. J., *Winsmore* v. *Greenbank*, Willes, 582, 583); the learned judge also said, "Whether 'enticing' goes so far or not I will not, nor need, determine."

Gifts, &c, "to *endeavour* to procure the Return" of a Member of Parliament, s. 2 (3), 17 & 18 V. c. 102, are Bribery, though given only on a test ballot, and to secure a person being adopted as the candidate of a particular party (*Britt* v. *Robinson*, L. R. 5 C. P. 503; 23 L. T. 188; nom. *Brett* v. *Robinson*, 39 L. J. C. P. 265).

A person, even though he be the Election Agent, does not "*induce* or procure" a prohibited person to vote at an election, within s. 9, 46 & 47 V. c. 51, by merely having the opportunity to prevent the vote but doing nothing (*Stepney*, 4 O'M. & H. 178).

"Procure himself to be arrested, or his goods, &c, attached, sequestered, or taken in execution," 6 G. 4, c. 16, s. 3; 12 & 13 V. c. 106, s. 67: — This phrase imported an intent *on the part of the alleged bankrupt* to defeat or delay his creditors, and did not include a *fi. fa.* on a default judgment (*Gibson* v. *King*, C. & M. 458), or on a Warrant of Attorney (*Gore* v. *Lloyd*, 12 M. & W. 463; 13 L. J. Ex. 366). In the latter case Abinger, C. B., said, "It might just as well be argued, that any step which any defendant voluntarily takes in a cause, is a pro-

curing of the judgment and execution against him, as that the giving of this warrant of attorney, and the entering up judgment upon it, was a procuring by this person of his goods to be taken in execution."

By false pretences to "procure" a Woman or Girl to have unlawful carnal connexion, s. 3 (2), 48 & 49 V. c. 69, does not merely mean to act as a pimp or pandar to induce her to have connexion with another, but, means, "procure" in its ordinary sense of to obtain, cause, or bring about, a connexion, which may be with the offender himself (per Hall, Recorder of London, *Anon.*, 42 S. J. 444: *Cp, R.* v. *Jones,* cited ANOTHER).

Commission on Loan "procured"; *V. Fisher* v. *Drewett,* 48 L. J. Ex. 32: *Green* v. *Lucas,* 33 L. T. 584.

Authority to House or Estate Agent to "procure" or "find" a purchaser and "negotiate" a sale, does not, of itself, authorize him to enter into a contract binding his principal (*Chadburn* v. *Moore,* 61 L. J. Ch. 674; 67 L. T. 257; 41 W. R. 39: *Hamer* v. *Sharp,* 44 L. J. Ch. 53; L. R. 19 Eq. 108); *secus,* of an authority to "sell," even though the subject-matter be Realty (*Rosenbaum* v. *Belson,* 1900, 2 Ch. 267; 69 L. J. Ch. 569; 48 W. R. 522). An authority to "sell," "seems to me to mean 'I authorize you to *make* some one a purchaser'"; but an authority to "find a purchaser," means, "'I authorize you to find some one who is willing to *become* a purchaser'" (per Buckley, J., *Ib.*). *Cp,* INTRODUCE: TREAT AND VIEW.

V. CAUSE OR PROCURE: COUNSEL OR PROCURE: INDUCE: OBTAIN.

PROCUREMENT.—*V.* ACTS: COLLUSION.

PRODUCE.—"The 'Produce' of *Capital* employed in trade is, all that the Capital produces; *i.e.* whether in the shape of interest or profits allowed" (per Wood, V.C., *Johnston* v. *Moore,* 27 L. J. Ch. 455, 456); and accordingly, a direction to pay to A. for life "the Rents, Dividends, and Produce," of an estate consisting partly of Capital in a partnership, will give to A. the profits on that Capital, so long as the Capital is properly employed in the business of partnership (*S. C.*: *Vf, Straker* v. *Wilson,* 40 L. J. Ch. 630; 6 Ch. 503: *Re Hammersley,* 81 L. T. 150). So, where there is a bequest of Residuary Personalty with a direction to sell and invest and to pay the income of such investments to A. for life, with remainders over; and then there is a power to POSTPONE sale with a direction that, until sale, "the Yearly Produce" of the personalty "shall be deemed Annual Income"; A. is entitled to so much income, and no more, as the property in its actual state produces (*Rowlls* v. *Bebb,* 1900, 2 Ch. 107; 69 L. J. Ch. 562; 82 L. T. 633; 48 W. R. 562). In these and such like cases (*Vh,* Jarm. ch. 19; s. 3), the Rule in *Howe* v. *Dartmouth* (7 Ves. 137: White & Tudor, 68) is displaced,—a Rule which lays down, as a general proposition, Where personal property is be-

queathed for Life, with remainders over, it is to be converted, or is to be considered as converted, and the proceeds invested, the Tenant for Life being entitled to income on the capital as so ascertained or assumed whether it be against his interest or in his favour (*Rowlls* v. *Bebb*, sup), — an exception being a REAL SECURITY which will be retained in specie if, after enquiry, such retention is seen to be for the benefit of all parties. *V.* PROFITS: RENTS: INTEREST.

In a *Charter-Party* containing an agreement to ship at A. "a full cargo of Produce," "Produce" means, "anything produced by the country in the neighbourhood of the port of lading, and being an ordinary subject of importation" (per Maule, J., *Warren* v. *Peabody*, 19 L. J. C. P. 46; 8 C. B. 800). *Cp*, MERCHANDIZE.

"The expression 'Produce' of Mines or Minerals, does not, necessarily, mean Produce in its native state: Coke may be such Produce, although by combustion its chemical nature is changed" (MacS. 19, citing *Bowes* v. *Ravensworth*, 15 C. B. 518, 523; 24 L. J. C. P. 73; 3 W. R. 241; 24 L. T. O. S. 257).

V. PRODUCT: PRODUCTION.

"To produce" a thing to a person, *semble*, means, to show it to him personally, and does not involve the idea that the possession of it is to be parted with; for the holder of a Bill of Sale to ask the grantor to send him the last Receipt for Rent, is not to ask the grantor to "produce" it to him within s. 7 (5), Bills of S. Act, 1882 (*Ex p. Wickens*, cited MAINTENANCE, at end). *Vf*, REASONABLE EXCUSE.

Semble, a Vendor does not "produce" a GOOD TITLE until he has verified it (*Parr* v. *Lovegrove*, 6 W. R. 709).

Vendor shall not be required "to produce" Title; *V.* INVESTIGATING.

V. PRODUCTION.

PRODUCED. — "Produced" is a word "which has not got any exact legal meaning, but which requires to have an interpretation placed upon it in the statute in which it is used" (per Rigby, L. J., *Hanfstaengl* v. *American Tobacco Co*, 1895, 1 Q. B. 347; 64 L. J. Q. B. 282; 71 L. T. 864; 43 W. R. 261).

By s. 11, International Copyright Act, 1886, 49 & 50 V. c. 33, "'produced' means, as the case requires, published or made, or performed or represented." Reading that in connection with the Berne Convention of 5th Sep 1887 (which prescribes that the Country of Origin of a Literary or Artistic Work is that in which it is "first published"), a PAINTING is "produced" (or, synonymously, "first produced") within the Act in the country, not where it is "made" but, where it is "first published" (*Hanfstaengl* v. *American Tobacco Co*, sup, approving *Hanfstaengl Art Co* v. *Holloway*, 1893, 2 Q. B. 1; 62 L. J. Q. B. 347; 68 L. T. 676; 57 J. P. 407, and disapproving *Fishburn* v. *Hollingshead*, 1891, 2 Ch. 371; 60 L. J. Ch. 768; 64 L. T. 647). *V.* PUBLICATION.

"*Lawfully* produced," proviso to s. 6 of Act just cited, means, produced "without contravening any existing Copyright" (per Smith, J., *Moul* v. *Groenings*, 1891, 2 Q. B. 443; 60 L. J. Q. B. 718).

PRODUCT. — "Corn, Grass, *or other Product*," growing on land, 11 G. 2, c. 19; young trees are not distrainable under these words (*Clark* v. *Gaskarth*, 8 Taunt. 431). *V.* OTHER.

V. PRODUCE.

PRODUCTION. — "Plant, Root, Fruit, or *Vegetable* Production, growing in a garden, orchard, nursery-ground, hot-house, or conservatory," s. 42, 7 & 8 G. 4, c. 29, repld s. 36, Larceny Act, 1861, does not include young fruit trees (*R.* v. *Hodges*, Moo. & M. 341).

V. PRODUCE: PRODUCT.

Production of Documents; *V.* DISCOVERY: INSPECTION.

The "Production" of Literary or Artistic Work, quà International Copyright Act, 1886, is where it is "first published" (*Hanfstaengl* v. *American Tobacco Co*, cited PRODUCED).

PRODUCTIVE CAPITAL. — Fines on granting Leases "applied as Productive Capital," proviso to R. 2 (5), Sch A, 5 & 6 V. c. 35, imports (under the words "applied" and "capital") some element of permanence; therefore, a deposit at a bank is not within the proviso so as to exempt the money from Income Tax (*Mostyn* v. *Loudon*, 1895, 1 Q. B. 170; 64 L. J. Q. B. 106; 71 L. T. 760; 43 W. R. 330).

PROFANENESS. — "Profaneness" in Sunday Observance Act, 1780, 21 G. 3, c. 49, is used in the classical sense of "non-religious" (per Denman, as Counsel, in *Baxter* v. *Langley*, 38 L. J. M. C. 5).

Cp, BLASPHEMY.

Bye Law against Profane or OBSCENE language; *V.* *Strickland* v. *Hayes*, and *Thomas* v. *Sutters*, cited PEACE.

PROFESS. — *V.* PRETEND.

PROFESSED EXERCISE. — *V.* PURPORTING.

PROFESSED GAMBLER. — "The phrase 'Professed Gambler' would not, *per se*, be actionable" (per Watson, B., *Barnett* v. *Allen*, 27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217). *V.* BLACK: CHEAT: GAMBLER.

PROFESSED IN RELIGION. — *V.* ENTERED IN RELIGION.

PROFESSION. — *V.* APPRENTICE: CALLING: CARRY ON.

PROFESSIONAL CHARGES. — In a clause that a Solicitor Trustee may make "the Usual Professional Charges," — though accom-

panied by a special direction that he shall be entitled to the same remuneration for all business done, attendances, time, and trouble, as if (not being a Trustee) he were employed by the Trustees, — the Solicitor Trustee is only entitled to charge for business of a strictly professional character (*Re Chapple, Newton* v. *Chapman*, 27 Ch. D. 584: *Re Loftus-Otway*, 100 Law Times, 609, 610: *Re Bedingfield*, 57 L. T. 332: *Harbin* v. *Darby*, 28 Bea. 325; 29 L. J. Ch. 622; 8 W. R. 512: *Vf, Clarkson* v. *Robinson*, 1900, 2 Ch. 722; 69 L. J. Ch. 859; 83 L. T. 164; 48 W. R. 698). But where a testator directed that a Solicitor Trustee might make "the Usual Professional, or other proper and reasonable, charges for all business done and Time expended in relation to the trusts of the Will, whether such business should be usually within the business of a Solicitor or not"; held, that a Solicitor Trustee might charge for business not strictly of a professional character (*Re Ames, Ames* v. *Taylor*, 25 Ch. D. 72). *Vf, Re Fish*, 1893, 2 Ch. 413; 62 L. J. Ch. 977; 69 L. T. 233, *whc* sets out a full clause hereon, and on *whcv, Clarkson* v. *Robinson*, sup.

Cp, LEGACY, last par but one.

PROFESSIONAL RESPECT. — *V.* INFAMOUS CONDUCT.

PROFESSIONAL SERVICES. — The provision in s. 73 (2), Bankry Act, 1883, that where a Trustee in a bankry is a Solr he may contract that his remuneration "shall include all Professional Services," is governed by the preceding sub-section so that he cannot contract that his remuneration shall be his proper professional charges for work done; his remuneration as Trustee must be in the nature of a commission or percentage which he may contract shall be put at a fair amount to include "all professional services" (*Re Wayman*, 59 L. J. Q. B. 28; 24 Q. B. D. 68).

PROFESSOR. — "Professor" of the Universities of Oxford and Cambridge; Stat. Def., 17 & 18 V. c. 81, s. 48; 19 & 20 V. c. 88, s. 50; 25 & 26 V. c. 26, s. 11; 40 & 41 V. c. 48, s. 2.

PROFIT. — Policy on "Profit *on Cargo*," means, the improved value of an actually loaded cargo at its destined port (*Halhead* v. *Young*, 6 E. & B. 324, 325: *Royal Exchange Assrce* v. *M'Swiney*, 14 Q. B. 646). *Vf, Chope* v. *Reynolds*, 5 C. B. N. S. 642.

Policy on "Profit *on Charter*"; *V. Asfar* v. *Blundell*, 1896, 1 Q. B. 123; 65 L. J. Q. B. 138; 73 L. T. 648: 44 W. R. 130; 1 Com. Ca. 71, 185.

A Solicitor's profit is "what he receives on his Bill of Costs beyond his DISBURSEMENTS out of Pocket" (per Esher, M. R., *Re Gallard*, 65 L. J. Q. B. 199; 1896, 1 Q. B. 68); therefore, if, being a member of a Committee of Inspection in Bankry, he does work in the bankry without

the SANCTION of the Court, no allowance can be made him quà general office expenses (*S. C.*).

Profit Costs; *V.* Mortgagee's Legal Costs Act, 1895, 58 & 59 V. c. 25: *Vth, Day* v. *Kelland*, 1900, 2 Ch. 745; 70 L. J. Ch. 3. *Cp*, PROFESSIONAL CHARGES: THESE PRESENTS.

"Office of Profit," "Place of Profit"; *V.* OFFICE: PLACE.

Sewer made for Profit; *V.* OWN PROFIT.

Society "for any Purpose of Profit"; *V.* PURPOSE.

Trade, &c, "by which the occupier seeks a Livelihood or Profit," s. 13 (2), 41 & 42 V. c. 15; *V.* TRADE.

V. PROFITS: SECRET PROFIT.

PROFIT À PRENDRE.—"A Profit à Prendre, is a right vested in one man of entering upon the land of another and taking therefrom a profit of the soil" (Add. T. 284), *e.g.* a Right of COMMON.

The leading case on whether a grant is (1) a Personal License of Pleasure, or (2) a Profit à Prendre, is *Norfolk* v. *Wiseman*, Year Book, 12 Hen. 7, 25; 13 Hen. 7, 13, pl. 2: *Vh, Wickham* v. *Hawker*, 10 L. J. Ex. 153; 7 M. & W. 72: *Manning* v. *Wasdale*, 5 A. & E. 758; 6 L. J. K. B. 59: *Race* v. *Ward*, 4 E. & B. 702; 24 L. J. Q. B. 153; 3 W. R. 240; 24 L. T. O. S. 270: *Sutherland* v. *Heathcote*, cited LIBERTY OF WORKING.

V. FREE LIBERTY: HUNTING: SERVANTS: TENEMENT.

Vh, Add. T. 284 *et seq*: Gale, 1 *et seq*: Hall on Profit à Prendre and Rights of Common: 10 Encyc. 486–489.

PROFIT CHARGES.—*V.* PROFESSIONAL CHARGES: PROFIT: USUAL AGENCY TERMS.

PROFIT RENT.—*V. Langley* v. *Langley*, 6 L. R. Ir. 277.

PROFITABLE.—*V.* BENEFICIAL.

PROFITS.—"Are 'Profits' anything more than an excrescence upon the value of the Goods beyond the prime cost?" (per Ellenborough, C. J., *Eyre* v. *Glover*, 16 East, 220; 3 Camp. 276); expected profits may be insured by an Open POLICY (*S. C.*).

The Profits of a *Company*, — *e.g.* those out of which a Dividend may be declared, — are not such sum as may remain after the payment of every debt but, are the excess of Receipts (including extraordinary receipts, *Lubbock* v. *British Bank of S. America*, 1892, 2 Ch. 198; 61 L. J. Ch. 498) over Expenses properly chargeable to revenue account (*Mills* v. *Northern Ry of Buenos Ayres Co*, 5 Ch. 621, 631: *Vf, Birch* v. *Cropper*, 14 App. Ca. 525; 59 L. J. Ch. 122, on *whcv, Re Bridgewater Nav.*, 1891, 2 Ch. 317, 60 L. J. Ch. 415: *Lee* v. *Neuchatel Co*, 58 L. J. Ch. 408; 41 Ch. D. 1). Lost Capital need not, necessarily, be made good before estimating Profits out of which dividends may be

declared (*Lee* v. *Neuchatel Co*, sup: *Bolton* v. *Natal, &c, Co*, 1892, 2 Ch. 124; 61 L. J. Ch. 281: *Verner* v. *General & Commercial Trust*, 1894, 2 Ch. 239; 63 L. J. Ch. 456; 70 L. T. 516: *Wilmer* v. *McNamara*, 1895, 2 Ch. 245; 64 L. J. Ch. 516: *Re Kingston Cotton Mills Co, No. 2*, 65 L. J. Ch. 290, 673); but, though not absolutely necessary, care should be taken to properly write down Bad Debts (*Re National Bank of Wales*, 1899, 2 Ch. 629; 68 L. J. Ch. 634). *Vh*, and as to working out a Profit and Loss Account, Buckl. 563: *Va*, Hamilton, ch. 24.

"Profits available for Dividend"; *V.* AVAILABLE: REALIZED.

"Profits of EACH Year"; *V.* CUMULATIVE: *Dent* v. *London Trams*, 50 L. J. Ch. 196.

In a Winding-up, "Profits" means, the balance, if any, which remains after payment of liabilities and re-payment of the capital brought into the undertaking, with the accretions of such capital (*Birch* v. *Cropper*, sup: *Re Bridgewater Nav.*, sup); but, even in a Winding-up, Preference Shareholders are entitled (in priority to paid-up capital) to be paid their arrears of dividends out of a balance of the revenue account, though such profits were undivided at the date of the liquidation (*Bishop* v. *Smyrna & Cassaba Ry*, 1895, 2 Ch. 265; 72 L. T. 773; 64 L. J. Ch. 617: *Vf*, *Ib.* 1895, 2 Ch. 596; 64 L. J. Ch. 806; 73 L. T. 337).

V. DIVIDEND: IN HAND: NET.

Under the *Income Tax Act*, 1842, ss. 60–100, the "Profits" assessable "is the amount got from the property (or business) *minus* the cost of getting it" (per Jessel, M. R., *Mersey Docks* v. *Lucas*, 51 L. J. Q. B. 116; 32 W. R. 34: *Vf*, *Erichsen* v. *Last*, 51 L. J. Q. B. 86; 8 Q. B. D. 414: *Russell* v. *Town and County Bank*, 58 L. J. P. C. 8; 13 App. Ca. 418). The decision in *Mersey Docks* v. *Lucas* also laid down that excess of earnings over expenditure was "Profits," even though such excess had to be applied in reduction of a past debt. Nor (apart from special exemption) is it material, for the purpose of the Income Tax, that the "Profit" is earned by a Public Company, or by a Board (*e.g.* Burial Board) on behalf of parochial ratepayers (*Mersey Docks* v. *Lucas*, 51 L. J. Q. B. 114; 53 Ib. 4; 8 App. Ca. 891: *Paddington Burial Board* v. *Inl. Rev.*, 53 L. J. Q. B. 224; 13 Q. B. D. 9), or by a Hospital charging its richer, for the benefit of its poorer, patients (*St. Andrew's Hospital* v. *Shearsmith*, 19 Q. B. D. 624), or by Trustees who have to distribute the whole of the profits in charitable purposes (*Baptist Trustees* v. *Whitwell*, 7 Times Rep. 164). After a remarkable conflict of judicial opinion, and ultimately by the decision of the H. L. (Lords Blackburn and Fitzgerald; Lord Bramwell, diss.), it has been ruled that bonuses by an Insurance Company to participating policy-holders are "Profits" chargeable with Income Tax (*Last* v. *London Assrce*, 55 L. J. Q. B. 92; 10 App. Ca. 438; 32 W. R. 233: *Svthc*, *New York Insrce* v. *Styles*, 59 L. J. Q. B. 291; 14 App. Ca. 381; 61 L. T. 201: and on the comparison of those two cases, *V. Equitable Assrce* v. *Bishop*, 1899, 2 Q. B. 439; 68 L. J. Q. B. 772; 80 L. T. 728, affd 1900, 1 Q. B.

177; 69 L. J. Q. B. 252; 81 L. T. 693; 48 W. R. 341. *Va, Mersey Loan Co* v. *Wootton*, 4 Times Rep. 164; 2 Tax Cases, 316: *Gresham Assrce* v. *Styles*, 1892, A. C. 309; 62 L. J. Q. B. 41; 67 L. T. 479).

Note. As to what losses and expenses may be deducted in order to ascertain Taxable Profits; *V. Watney* v. *Musgrave*, 49 L. J. Ex. 493; 5 Ex. D. 41, with *whc* compare *Reid's Brewery Co* v. *Male*, 1891, 2 Q. B. 1; 60 L. J. Q. B. 340; 64 L. T. 294; 39 W. R. 459; 55 J. P. 216; *vthlc* for other decisions hereon. Profits are none the less assessable to Income Tax because the business is carried on for the Benefit of Creditors (*Armitage* v. *Moore*, 1900, 2 Q. B. 363; 69 L. J. Q. B. 614; 82 L. T. 618).

As to interest on a Company's Investments; *V. Clerical Med. & Gen. Insrce* v. *Carter*, cited YEARLY INTEREST.

Local Coal Duties are "PROPERTY or Profits" assessable to Income Tax (*A-G.* v. *Black*, L. R. 6 Ex. 308; 40 L. J. Ex. 194; 19 W. R. 1114).

In the case of Mines, the cost of sinking pits is not, generally speaking, deductible from the gross Profits (*Coltness Co* v. *Black*, 51 L. J. Q. B. 626; 6 App. Ca. 315); nor repayments out of royalties in respect of antecedent losses (*Broughton Co* v. *Kirkpatrick*, 54 L. J. Q. B. 268; 14 Q. B. D. 491).

Costs of collecting, are not deductible from Manorial Rates and Dues (*Norfolk* v. *Lamarque*, 24 Q. B. D. 485; 59 L. J. Q. B. 119).

A personal eleemosynary gift to a meritorious Curate, *e.g.* a donation, *honoris causa*, for having worked hard for 15 years, from the Curates' Augmentation Fund, is not "Profits or Gains" assessable to Income Tax (*Turner* v. *Cuxson*, 58 L. J. Q. B. 131; 22 Q. B. D. 150); *secus* of an allowance from that Fund in augmentation of the income of a benefice or a curacy, made to a clergyman in virtue of his office (*Herbert* v. *McQuade*, 1902, 2 K. B. 631; 71 L. J. K. B. 884).

V. ARISING: BUSINESS: CARRY ON, p. 264: ELSEWHERE: "Foreign Possessions," sub FOREIGN: GAINS: INCOME: POSSESSIONS.

"Profits" of a *Building Society*; *V. Fleming* v. *Self*, Kay, 518; 2 W. R. 390; 23 L. T. O. S. 63.

"Profits" of a *Partnership*, include the rise in value of partnership assets (*Robinson* v. *Ashton*, 44 L. J. Ch. 542; L. R. 20 Eq. 25).

As to when an anticipation of Profits in the *Prospectus* of a Co is fraudulent; *V. Bellairs* v. *Tucker*, cited FALSE REPRESENTATION.

"Rate of Interest varying with the Profits"; *V. Re Vince*, cited DUE ALLOWANCE.

"Share of Profits"; *V.* SHARE.

When trustees, under the powers of a Will, POSTPONE the sale of their testator's business, the net profits realized by their carrying on the business will belong to the person to whom "the Rents, Profits, and Income," of the testator's estate are, by the Will, to be paid during postponement of conversion (*Re Chancellor*, 53 L. J. Ch. 443; 26 Ch. D. 42: *Re*

Crowther, 1895, 2 Ch. 56; 64 L. J. Ch. 537; 72 L. T. 762; 43 W. R. 571). *Vf*, PRODUCE.

"If a man seised of lands in fee, by his deed granteth to another the 'profit' of those lands, to have and to hold to him and his heires, and maketh livery *secundum formam chartæ*, the whole land itselfe doth passe; for what is the land but the profits thereof; for thereby vesture, herbage, trees, mines, and all whatsoever parcell of that land doth passe" (Co. Litt. 4 b).

But a Bequest of the Profits of Leaseholds, was held to pass only the profits accruing from the death of the testator (*Tissen* v. *Tissen*, 1 P. Wms. 503).

"Profits arising in my Will," has been confined to income arising from Realty (*Elgood* v. *Cole*, 21 L. T. 80).

Semble, "Profits" means, *primâ facie*, "Annual Profits" (1 P. Wms. 418 *n*).

Cp, INCOME.

In *Gordon* v. *Rutherford* (T. & R. 373; 2 L. J. O. S. Ch. 50) a direction as to a son sharing in the Profits of testator's Business was held not to be operative until after the son was admitted to partnership in the business.

In an Order, against an innocent occupier, to account for "*Rents and Profits*," the latter word means, profits in the nature of rent and as arising from the land, and not such profits as may have been made by carrying on a business, — *e.g.* a colliery, — upon the land (*Re Morewood*, *Errington* v. *Morewood*, 29 S. J. 320; W. N. (85) 51).

"Net Profits"; *V.* NET.

V. ADVANTAGES: IN RECEIPT: OUT OF THE PROFITS: OWN PROFIT: PROFIT: RENT: RENTS AND PROFITS: SECRET PROFIT.

PROGENITOR. — The Progenitors of King Henry 7, held to be synonymous with his Predecessors, and therefore to include Edward 4 (*Meath* v. *Winchester*, 3 Bing. N. C. 205).

V. PREDECESSOR.

PROGENY. — *V.* INCREASE.

PROGRESS. — "Progress of Manufacture"; *V.* STAGE.

PROGRESS CERTIFICATE. — Certificates by an Architect during the progress of works, — called Progress Certificates, — mean, "that the sums advanced shall be accounted for by the contractor on the final settlement between him and the employer: they are to be treated as sums paid on account of whatever the contractor may eventually be entitled to recover, whether for original or additional works" (per Pollock, C. B., *Lamprell* v. *Billericay*, 18 L. J. Ex. 286; 3 Ex. 305). "The Certificates I look upon as simply a statement of a matter of fact, viz., what was the weight, and what was the contract price, of the materials actually delivered from time to time upon the ground; and the payments

made under those certificates were altogether provisional, and subject to adjustment, or re-adjustment, at the end of the contract" (per Cairns, C., *Tharsis Co* v. *M'Elroy*, 3 App. Ca. 1045; *Va*, per Ld Blackburn, Ib. 1054, and per Ld Hatherley, Ib. 1048). *Vf*, 1 Hudson, 288–293: CERTIFICATE.

PROHIBIT.—*V.* INHIBIT.

PROHIBITED.—A Penalty on smuggling "prohibited" *goods*, may extend to goods prohibited by a subsequent statute (*A-G.* v. *Saggers*, 1 Price, 182). *Cp*, "Convicted of Felony," sub CONVICTED: FELON.

A person "prohibited *from voting* by any Statute, or by the Common Law of Parliament," s. 7, Ballot Act, 1872, means, one who, from some inherent or (for the time) irremoveable quality in himself or herself, has not the status of a Parliamentary Voter, *e.g.* a Peer, a Woman, a FELON, or the holder of an Office or Employment which by statute or law incapacitates from voting (*Stowe* v. *Jolliffe*, L. R. 9 C. P. 734; 43 L. J. C. P. 265: *Doulon* v. *Halse*, 18 Q. B. D. 421; 56 L. J. Q. B. 41; 35 W. R. 502; 56 L. T. 340); but the prohibition does not include a mere temporary disqualification, *e.g.* receipt of Parochial Alms, Non-Residence, Non-Occupation, Insufficient Qualification (*Stowe* v. *Jolliffe*, sup: *Hayward* v. *Scott*, 5 C. P. D. 231; 49 L. J. C. P. 167; 28 W. R. 988; 41 L. T. 476). *Note*: the disqualification of Police was removed by 50 & 51 V. c. 9, s. 2, and 56 & 57 V. c. 6. *V.* BY LAW: INCAPACITATED.

PROHIBITED DEGREES.—The "prohibited degrees of Consanguinity or Affinity" within which marriages are now absolutely void by s. 2, 5 & 6 W. 4, c. 54, 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).

PROHIBITION.—*V.* REGULATE.

Quâ proceedings by Prohibition; *V.* Shortt on Informations, &c: 10 Encyc. 489–504. *Cp*, QUO WARRANTO.

PROJECTION.—A Local Act, one of the objects of which was to keep the pavements clear for passenger traffic, prohibited any Projection, in front of any Building, "over or upon" the pavement; held, that, "over" being used in association with "upon," the prohibition did not forbid a projection so high as not to impede the traffic, and, therefore, that an Oriel Window "over" a pavement, which only impeded the access of light and air to the street, was not prohibited (*Goldstraw* v. *Duckworth*, 49 L. J. M. C. 73; 5 Q. B. D. 275; 42 L. T. 440; 28 W. R. 504).

"Projection," s. 73 (8), London Bg Act, 1894; *V. Hull* v. *London Co. Co.*, 1901, 1 K. B. 580; 70 L. J. K. B. 364.

Overhanging Trees or Houses; *V.* NUISANCE: LOP.

V. OBSTRUCT.

PROLONGATION. — For Prolongation of a Patent, the phrase now is "Extension of Term of Patent"; *V.* EXTENSION.

PROLONGED EXAMINATION. — "Cause or Matter requiring any *Prolonged Examination* of documents or accounts, or any *Scientific* or *Local Investigation*," s. 57, Jud. Act, 1873; s. 14 (*b*), Arb Act, 1889; — An action to recover Damages for abstracting and heating water from a river is not within these words (*Ormerod* v. *Todmorden Mill Co*, 51 L. J. Q. B. 348; 8 Q. B. D. 667); nor, speaking generally, is an action for Constructive Total Loss of a Vessel (*Hamilton* v. *Merchant Mar. Insrce*, 58 L. J. Q. B. 544): but a complicated Builder's Bill, wherein many items are disputed, is within them (*Ward* v. *Pilley*, 49 L. J. Q. B. 705; 5 Q. B. D. 427). An action relating to the mode of moving a Ship in Dock, having no cargo or ballast, may involve a Scientific Investigation (*Swyny* v. *N. E. Ry*, 74 L. T. 88).

PROMISE. — "'Promise' is when, upon a valuable consideration, we bind ourselves by our words to do or perform such an act as is agreed upon and concluded, upon which an action may be grounded; whereas, if it be without consideration it is called *Nudum Pactum, ex quo non oritur actio*" (Cowel). *Cp*, NUDE CONTRACT.

V. CONTRACT: OFFER.

PROMISSORY NOTE. — "A Promissory Note is an unconditional Promise in Writing made by one person to another, signed by the maker, engaging to pay, ON DEMAND, or at a fixed or DETERMINABLE FUTURE TIME, a SUM CERTAIN in money to, or to the order of, a specified person, or to bearer" (s. 83, Bills of Ex. Act, 1882). That section further provides that,

"An instrument in the form of a Note payable to maker's order is not a Note within the meaning of this section unless and until it is indorsed by the maker.

"A Note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

"A Note which is, or on the face of it purports to be, both made and payable within the British Islands, is an INLAND Note. Any other Note is a Foreign Note."

The provisions of the Act relating to Bills of Exchange apply, generally, to Promissory Notes (s. 89).

As to "specified person" in above def; *V. Storm* v. *Stirling*, cited SECRETARY.

Cp, BILL OF EXCHANGE. *Vf*, NEGOTIABLE.

"The expression 'Promissory Note' includes, any document or writing (except a bank-note) containing a promise to pay any sum of money" (s. 33 (1), Stamp Act, 1891, replacing s. 49 (1), Stamp Act, 1870). A document is not within that definition unless it contains a promise to

pay a definite and ascertained sum of money, which promise is substantially the whole contents of the document (*Mortgage Insrce* v. *Inl. Rev.*, 57 L. J. Q. B. 630; 21 Q. B. D. 352; 36 W. R. 833. *Vf*, *British India Steam Nav Co* v. *Inl. Rev.*, 50 L. J. Q. B. 517; 7 Q. B. D. 165; 44 L. T. 378; 29 W. R. 610: *Brown* v. *Inl. Rev.*, cited MARKETABLE SECURITY). But a clause in a Promissory Note by two or more that time may be given to either without the other's consent, does not necessitate an Agreement Stamp nor prevent the document from being a good Pro. Note (*Yates* v. *Evans*, 61 L. J. Q. B. 446; 66 L. T. 532); but, *semble*, the exact opposite was held in *Kirkwood* v. *Smith* (1896, 1 Q. B. 582; 65 L. J. Q. B. 408).

Vf, as to what is a Promissory Note, *Leeds* v. *Lancashire*, 2 Camp. 205: *Bolton* v. *Dugdale*, 4 B. & A. 619; 2 L. J. K. B. 104; *Green* v. *Davies*, 4 B. & C. 235; 3 L. J. O. S. K. B. 185: *Smith* v. *Dean*, 81 L. T. 755; 69 L. J. Q. B. 331: Byles.

V. PART.

PROMONTORY. — *V.* POINT.

PROMOTER. — "First, Cockburn, C. J., in *Twycross* v. *Grant* (46 L. J. C. P. 636; 2 C. P. D. 469), defined a Promoter to be 'one who undertakes to form a COMPANY with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose.' Bowen, L. J., in *Whaley Bridge Printing Co* v. *Green* (49 L. J. Q. B. 326; 5 Q. B. D. 109), says, 'The term, Promoter, is a term not of law but of business, usefully summing up in a single word a number of business operations, familiar to the commercial world, by which a Company is generally brought into existence.' Then Lindley, L. J., in *Emma Silver Mining Co* v. *Lewis* (48 L. J. C. P. 504; 4 C. P. D. 396), says, 'With respect to the word Promoter, we are of opinion that it has no very definite meaning. As used in connection with Companies, the term, Promoter, involves the idea of exertion for the purpose of getting up and starting a Company, or what is called floating it, *and also the idea of some duty towards the Company imposed by or arising from the position which the so-called Promoter assumes towards it.*' All this is by no means satisfactory" (per Bacon, V. C., *Re Great Wheal Polgooth Co*, 53 L. J. Ch. 46; 49 L. T. 20; 32 W. R. 107; 47 J. P. 710). Referring to the passage in the judgment of Lindley, L. J., which is italicised in the above extract, the V. C. went on to observe, "That is the most satisfactory of all these varying definitions that I have been able to find."

Vf, Buckl. 622: *Lydney Iron Co* v. *Bird*, 55 L. J. Ch. 387; 33 Ch. D. 85; 55 L. T. 558; 34 W. R. 749: *Re Coal Economising Gas Co*, 44 L. J. Ch. 323; 1 Ch. D. 182: *Rooney* v. *Palmer*, 9 Ir. L. R. 327: *Re Olympia*, 67 L. J. Ch. 433; 1898, 2 Ch. 153; 78 L. T. 629; 5 Manson, 139.

"Promoter" has received statutory definition in and for the following Acts; —

Directors Liability Act, 1890, 53 & 54 V. c. 64; *V.* s. 3 (2):

General Pier and Harbour Act, 1861, 24 & 25 V. c. 45; *V.* s. 2:

Military Tramways Act, 1887, 50 & 51 V. c. 65; *V.* s. 12:

Parliamentary Costs Act, 1865, 28 & 29 V. c. 27; *V.* s. 9:

Railways Construction Facilities Act, 1864, 27 & 28 V. c. 121; *V.* s. 2.

"'The Promoters of the UNDERTAKING,' shall mean, the parties (whether Company, Undertakers, Commissioners, Trustees, Corporations, or Private Persons) by the Special Act empowered to execute the Works or Undertaking" (s. 2, Lands C. C. Act, 1845); and as the phrase is used in s. 133 of that Act, *V. Wheeler* v. *Metrop Bd of Works*, L. R. 4 Ex. 303; 38 L. J. Ex. 165: *Stratton* v. *Metrop Bd of Works*, L. R. 10 C. P. 76; 44 L. J. M. C. 33: *Bristol Poor* v. *Bristol*, 18 Q. B. D. 549; 56 L. J. Q. B. 320. *Cp*, UNDERTAKER.

"The Promoters of the Undertaking," quà Burgh Harbours (Scot) Act, 1853, 16 & 17 V. c. 93, means, "the Town Council of any Burgh" in which the Act is adopted (s. 6): — quà Post Office (Land) Act, 1881, 44 & 45 V. c. 20, the phrase means "the Post-Master General" (subs. 2 *a*, s. 3): — and quà Vestries Act, 1850, 13 & 14 V. c. 57, it means "the Churchwardens and Overseers, or Overseers, as aforesaid" (s. 4).

"Promoters" of a TRAMWAY, s. 42, Tramways Act, 1870, 33 & 34 V. c. 78; *V. Re Pontypridd Tramways Co*, 58 L. J. Ch. 536; 37 W. R. 570: ss. 43, 44, Ib., *V. Marshall* v. *South Staffordshire Tramways Co*, 1895, 2 Ch. 36; 64 L. J. Ch. 481; 72 L. T. 542; 43 W. R. 469.

"'Promooters,' or rather 'Promoters,' are those who, in Popular and Penal actions, do prosecute Offenders in their own name and the Kings, having part of the Fines or Penalties for their reward" (Cowel). *V.* POPULAR ACTION: PENAL.

PROMOTION. — In order to acquire property "by Promotion," *e.g.* a BENEFICE or OFFICE, ss. 18, 26, Rep People Act, 1832, s. 14, 13 & 14 V. c. 69, the property must accrue, as of right, by virtue of the promotion itself (*Foster* v. *Mulhall*, 10 Ir. Com. Law Rep. 532).

Promotion of Education; *V.* EDUCATION: of Science; *V.* SCIENCE.

V. GODLY LEARNING.

Promotion Money; *V.* FORMATION EXPENSES.

PROMPT DISPATCH. — "Prompt Dispatch in loading," in a Charter-party; *V. Elliott* v. *Lord*, 52 L. J. P. C. 23; 48 L. T. 542; 5 Asp. 63: *whc, semble*, shows that delay, even though caused by an insufficiency of cargo at the Port of Loading, is a breach of an obligation for "Prompt Dispatch."

"A contract to give 'Prompt Despatch' has been held in the United States to require the Charterer to have a berth ready at once (87 Fed. Rep. 935)": Carver, 695, 696, *n.*

PROOF. — "The word 'Proof' seems properly to mean any thing which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition; and as truths differ, the proofs adapted to them differ also. 'Proof' is also applied to the conviction generated in the mind by proof properly so called" (Best on Evidence, s. 10). *V.* defs referred to sub EVIDENCE.

The "Proofs" in a Brief to Counsel, are the written statements of the facts which the witnesses for his client are respectively expected to state on oath at the trial; "taking a Proof," is the act of writing down (generally, from the witness' lips) such a statement with the view to placing it among the "Proofs."

Burden of Proof: *V.* ONUS.

The 17 V. No. 22 (New South Wales), s. 1, provides, whenever a person executing a Power of Attorney, declares that such Power shall continue in force until notice of his death or of revocation shall have been received by the Attorney, then a Solemn Declaration by the Attorney that he has not received notice of revocation, by death or otherwise, shall, if made immediately before or after acting, "be *Conclusive* Proof of such non-revocation" in favour of a purchaser for value without notice; that means, that such Declaration is Conclusive Proof of non-revocation, in favour of such a purchaser, even though the Attorney had notice of revocation at the time of acting on the Power (*Mutual Provident Socy* v. *Macmillan*, 59 L. J. P. C. 22; 14 App. Ca. 596). *Cp*, ss. 8, 9, Conv Act, 1882.

"Clear and Positive Proof"; *V.* CLEAR.

"Proof made upon Oath"; *V.* OATH.

Satisfactory Proof; *V.* SATISFACTORY.

"Proof of Debts," in Bankry, *V.* ss. 37, 38, 39, and Sch 2, Bankry Act, 1883: Wms. Bank. 114–146: Baldwin, 501–578: DEBT, p. 471: in Winding-up a Co, s. 158, Comp Act, 1862, and Gen. Ord. 1862, under the Act, R. 20 *et seq*: Buckl. 378 *et seq*.

V. PROVE: CONCLUSIVE EVIDENCE: SUFFICIENT EVIDENCE.

Quà Spirits Act, 1880, 43 & 44 V. c. 24, "'Proof,' means, the strength of proof as ascertained by Sykes's hydrometer" (s. 3). *V.* SPIRITS.

PROPER. — "Shall think proper"; *V.* MAY: *Va*, jdgmt Cockburn, C. J., *S. E. Ry* v. *Ry Commrs*, 49 L. J. Q. B. 289; 5 Q. B. D. 217: *Sv*, *S. C.*, revd 6 Q. B. D. 586.

V. FIT: REASONABLE AND PROPER.

"Proper" is also used in the sense of "Own," *e.g.* a London Solr speaks of his "proper" business as distinguished from what he does as Agent for a Country Solr; so, in the phrase of parishioners going to and from "their proper PAROCHIAL CHURCH." *Va*, IN HIS PROPER PERSON.

PROPER ACCOUNTS. — *Semble*, that the "Proper Accounts" to be rendered by a Working Ry Co to an Owning Ry Co, within a

Working agreement of a Ry, are half-yearly accounts showing in detail, from each station of the railway, the gross receipts from all traffic conveyed over the railway, and the deductions made or claimed to be made therefrom (*Bedford & Northampton Ry* v. *Mid. Ry*, 4 Ry & Can Traffic Ca. 170).

PROPER and WORKMANLIKE. — A covenant, in a Mining Lease, to work in "a Proper and Workmanlike manner," though open to parol evidence to explain its local meaning, does not, *primâ facie*, mean in such a manner only as shall be most advantageous to the lessor; "but it means, in such a manner as shall not be simply an attempt to get out of the earth as much mineral as can be got for the particular purpose of the lessee, regardless of any ordinary or workmanlike proceeding" (per Hatherley, C., *Lewis* v. *Fothergill*, 5 Ch. 108).

PROPER CHURCH. — *V.* PAROCHIAL CHURCH.

PROPER CLAUSES and POWERS. — The phrase "Proper *Clauses*" in an *Agreement for a Lease* does not seem quite synonymous with "Usual Clauses." In *Eadie* v. *Addison* (52 L. J. Ch. 82, 83), Pearson, J., said, — "Then it is said that the word is 'proper,' not 'usual.' But that argument seems to me to have great weight on behalf of the plaintiff; because a clause against underletting *which might have been proper with regard to the publican to whom the house was to be let*, would be manifestly improper with regard to Mr. Eadie, who was known to be a brewer and to have no intention whatever of going into the trade of a publican." Accordingly, specific performance of an agreement to lease, with "proper clauses," a Public-house to a Brewer who it was known was not going to occupy it himself, was decreed without a clause against underletting. But could such a clause be insisted on even if the intended lessee were an occupying publican? Can "proper" in such a case really be distinguished from "usual"?

V. USUAL, and especially the cases of *Church* v. *Brown*, and *Hodgkinson* v. *Crowe* there cited.

A power to appoint New Trustees is "a Proper and Reasonable *Power*" (*Lindow* v. *Fleetwood*, 6 Sim. 152); but, *semble* and speaking generally, a power of Sale or Exchange is not (Lewin, 137, citing *Brewster* v. *Angell*, 1 Jac. & W. 625: *Horne* v. *Barton*, Jac. 437). *Vf*, as to "Proper Powers" in a Settlement, S. L. Act, 1882, ss. 3, 4, 6, *et seq*; Conv & L. P. Act, 1881, ss. 42, 66: and *Vth*, Lewin, 138.

V. NECESSARY.

PROPER CONTROL. — *V.* CONTROL.

PROPER COSTS. — *V.* COSTS.

PROPER CUSTODY. — Of Documents; *V.* Taylor on Evidence, s. 659–667: CUSTODY.

PROPER ENTAIL. — As to effect of direction for "a Proper Entail"; *V.* Lewin, 127.

PROPER FACILITIES. — *V.* FACILITIES.

PROPER INVESTMENT. — The trustee investment which is entitled to the benefit of s. 9 (1), Trustee Act, 1893, must be a "Proper Investment," *i.e.* one the quality of which, apart from the question of value, is such that the trustee would, at the time, be justified in investing in it (*Re Walker*, 59 L. J. Ch. 386).

PROPER LODGING. — "Proper Lodging or Accommodation," s. 124, P. H. Act, 1875, means, "proper" in the sense of protecting others from infection, as well as being proper for the patient himself (*Warwick* v. *Graham*, 1899, 2 Q. B. 191; 68 L. J. Q. B. 1001; 80 L. T. 773; 63 J. P. 599).

PROPER MIXTURE. — A proviso exonerating a Lessee of Iron Mines from working them if the iron-stone therein found will not "with a Proper Mixture," make good common pig-iron, does not mean that the "Proper Mixture" should necessarily be procurable on the premises (*Foley* v. *Addenbrooke*, 14 L. J. Ex. 169; 13 M. & W. 174).

PROPER NAME. — As a TRADE-MARK; *V. Re Colman*, cited NAME.

PROPER OFFICER. — *V.* OFFICER.

PROPER OUTGOINGS. — *V.* OUTGOING: WORKING EXPENSES.

PROPER PARTY. — "Necessary or Proper Party to an Action," R. 1 (*g*), Ord. 11, R. S. C.; *V.* NECESSARY.

PROPER PERSON. — *V.* IN HIS PROPER PERSON.

PROPER WORKS. — *V.* CONVENIENCE.

PROPERLY. — Action "properly BROUGHT," R. 1 (*g*), Ord. 11, R. S. C.; *V. Witted* v. *Galbraith*, 1893, 1 Q. B. 577; 62 L. J. Q. B. 248; 68 L. T. 421; 41 W. R. 395.

"Legal or Equitable Claim properly *brought forward*," s. 24 (7), 36 & 37 V. c. 66; *V. Warter* v. *Warter*, 59 L. J. P. D. & A. 45; 15 P. D. 35; 62 L. T. 328.

Outgoings "properly *chargeable*" against Arrears of Rents; *V.* OUTGOING.

A Trustee is entitled to COSTS AND CHARGES "properly *incurred*";

in that proposition "properly" means reasonably, as well as honestly (per Bowen, L. J., *Re Beddoe*, 1893, 1 Ch. 547; 62 L. J. Ch. 239), *whc* shows that, before embarking in a doubtful litigation, trustees should get the sanction of the Court. *Vf*, *Re Davis*, 57 L. T. 755; 57 L. J. Ch. 3: *Re Llewellin*, 37 Ch. D. 327: *Re Smith*, 64 L. T. 821: *Re Bennett*, 1896, 1 Ch. 778; 65 L. J. Ch. 422; 74 L. T. 157; 44 W. R. 419.

"Properly *stamped*"; *V. Allen* v. *Pullay*, 30 W. R. 904; 46 L. T. 435.

PROPERTY.—"Property" is the generic term for all that a person has dominion over. Its two leading divisions are (1) Real, and (2) Personal; *Vh*, 2 Bl. Com. passim: Mr. Joshua Williams' treatises on these two topics. *Vh*, per Chitty, J., *Re Earnshaw-Wall*, 1894, 3 Ch. 156; 63 L. J. Ch. 836: REAL ESTATE: PERSONAL ESTATE.

But care must be taken to distinguish between "Property" and "Power." "The Power of a person to appoint an estate to himself, is no more his 'Property' than the power to write a book or to sing a song" (per Fry, L. J., *Re Armstrong*, 55 L. J. Q. B. 579: *Vf*, *Pouey* v. *Hordern*, cited WILL: *Sv*, *Re Drummond and Davies*, inf): *V.* POWER. But if a person has power to make property his own, he may, by appropriate language, charge it (*Bank of S. Australia* v. *Abrahams*, 44 L. J. P. C. 76; L. R. 6 P. C. 265, cited hereon by Stirling, J., *Re Pyle Works*, inf).

"'Property,' is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have" (per Langdale, M. R., *Jones* v. *Skinner*, 5 L. J. Ch. 90). *Vf*, *Casey* v. *Lalor*, 5 Ir. Com. Law Rep. 507: *Morony* v. *Morony*, Ir. Rep. 8 C. L. 174: *Morrison* v. *Hoppe*, 4 D. G. & S. 234; 15 Jur. 737: Termes de la Ley: Cowel.

A gift by Will of all the testator's "Property," will pass everything belonging to him at his death (or over which he had a GENERAL POWER of Appointment, s. 27, Wills Act, 1837), whether real or personal property (per Knight-Bruce, L. J., *Tyrone* v. *Waterford*, 29 L. J. Ch. 486; 1 D. G. F. & J. 613); and in that case it was decided that a testamentary gift of "all my property in the County of N——," passed debts due to testator in respect of collieries in that county. Indeed, the context to deprive "property" of its comprehensiveness must be a clear one; no such context is provided by "Property *and Effects*" (*Doe* v. *Morgan*, 6 B. & C. 517; 5 L. J. O. S. K. B. 268; 9 D. & R. 633), or by "Property, *Goods and Chattels*" (*Doe* d. *Wall* v. *Langlands*, 14 East, 370), or by "all the Residue of my Money, Stock, Property, and Effects of what kind or nature soever" (*Doe* d. *Andrew* v. *Lainchbury*, 11 East, 290), or by "all my property, *leasehold and freehold*" (*Re Roberts*, *Kiff* v. *Roberts*, cited ALL, p. 68): *Sv*, ESTATE AND EFFECTS. Even such a collocation as a bequest of moneys at a bank and "all my Wines and property" does not narrow down the latter word to things *ejusdem generis* (*Arnold* v. *Arnold*,

4 L. J. Ch. 123; 2 My. & K. 365: *Va, Robinson* v. *Webb*, 17 Bea. 260: *Footner* v. *Cooper*, 2 Drew. 7; 23 L. J. Ch. 229; 2 W. R. 5: *Gover* v. *Davis*, 30 L. J. Ch. 505; 29 Bea. 222: *Mullaly* v. *Walsh*, 3 L. R. Ir. 244). But a bequest of "*Personal Estate and Property*" whatsoever and wheresoever, was held by Wood, V. C., not to pass realty (*Buchanan* v. *Harrison*, 31 L. J. Ch. 74; 1 J. & H. 662: *Va, Doe* d. *Bunny* v. *Rout*, 7 Taunt. 79; 2 Marsh. 397: *Roe* d. *Helling* v. *Yeud*, 2 B. & P. N. R. 214: *Belaney* v. *Belaney*, 36 L. J. Ch. 265; 35 Bea. 469; 2 Ch. 138): but in *Hall* v. *Hall* (1892, 1 Ch. 361; 61 L. J. Ch. 289; 66 L. T. 206; 40 W. R. 277) "Property," used in a general way, was relied on as part of the context to make "EFFECTS" comprise realty; and in *Reeves* v. *Baker* (cited FREEHOLD) "Property, whether freehold or personal," was held to include copyholds. *Vf*, 1 Jarm. 670, 728: Wms. Exs. 1041, 1047: ALL: IN: POSSESSED OF.

"My property at R.'s Bank"; *V.* MY.

"Property," in a Will, is equivalent to "ESTATE" for passing the fee of land before Wills Act, 1837 (2 Jarm. 283: *Hill* v. *Brown*, 1894, A. C. 125; 63 L. J. P. C. 46).

"Property" quà *Bankry Act*, 1883; *V.* ss. 44, 168. That will include (and will empower the Trustee to sell), a Bankrupt's claim to have an absolute conveyance set aside and declared to be only a security (*Seear* v. *Lawson*, 49 L. J. Bank. 69; 15 Ch. D. 426: *Vthc, Re Park Gate Waggon Co*, 17 Ch. D. 238). So, it includes a husband's interest in a wife's *chose in action* which he has not reduced into possession (*Re Biaggi*, 26 S. J. 417); also the right to sue on a covenant for Indemnity in an Assignment of Leaseholds (*Re Perkins*, cited LIABILITY); also the Pension of a retired Civil Servant (*Re Huggins*, 51 L. J. Ch. 935; 21 Ch. D. 85). Nor is the power to disclaim, given to Trustees by s. 55, Bankry Act, 1883, confined to property divisible amongst creditors (*Re Maughan*, 54 L. J. Q. B. 128; 14 Q. B. D. 956). But these Bankry defs do not comprise as "Property," that which the bankrupt holds in trust (*Heritable Reversionary Co* v. *Millar*, 1892, A. C. 598), or the future receipts in a person's business (*Ex p. Nichols*, 52 L. J. Ch. 635; 22 Ch. D. 782: *Wilmot* v. *Alton*, 1897, 1 Q. B. 17; 66 L. J. Q. B. 42; 45 W. R. 12, 113: *Sv, Re Toward*, 14 Q. B. D. 310; 54 L. J. Q. B. 126: *Re Davis, Ex p. Rawlings*, 22 Q. B. D. 193: *Cp*, INCOME), nor are Divorce damages "Property" within s. 47, Bankry Act, 1883, for by s. 33, Matrimonial Causes Act, 1857, they are under the control of the Court (*Re Stephenson*, 1897, 1 Q. B. 638; 66 L. J. Q. B. 423; 76 L. T. 328; 45 W. R. 416).

"His Property," s. 4 (1 *a*), Bankry Act, 1883, means, substantially the whole of the debtor's property (*Re Spackman*, 24 Q. B. D. 728; 59 L. J. Q. B. 306; 38 W. R. 497: *svthc, Re Hughes*, 1893, 1 Q. B. 595; 62 L. J. Q. B. 358; 68 L. T. 629; 41 W. R. 466). *V.* CONVEYANCE.

If a Building Contract provides that on default of the Contractor his

PLANT "*shall be deemed to be the property*" of the Contractee, that is effective "for the purposes of the Contract only"; it may protect as against the contractor's Exon Creditor but not as against his Trustee in Bankry (*Re Winter*, 47 L. J. Bank. 52; 8 Ch. D. 225; 38 L. T. 362: *Cp, Baker* v. *Gray*, cited USING).

Quà *Conveyancing Acts*, "'Property,' includes, Real and Personal property, and any Debt, and any Thing in Action, and any other Right or Interest in the nature of property, whether in possession or not" (s. 1 (4), Conv Act, 1882, amplifying def, s. 2 (i), Conv & L. P. Act, 1881). *Cp*, def in Trustee Act, inf.

Quà *Finance Act*, 1894, "'Property,' includes, Real Property and Personal Property, and the proceeds of sale thereof respectively, and any money or investment for the time being representing the proceeds of sale" (subs. 1 *f*, s. 22): as used in s. 15 (1), Finance Act, 1896, *V. A-G.* v. *Penrhyn*, 83 L. T. 103; 16 Times Rep. 464.

Quà *Friendly Societies Act*, 1896, "'Property,' shall extend to all property, whether Real or Personal, including books and papers" (s. 106); a similar def is provided for *Industrial and Provident Societies* (56 & 57 V. c. 39, s. 79).

Quà *Joint Stock Companies*, Uncalled Capital is not within a power enabling Directors to mortgage "Property" of a Co (*Bank of S. Australia* v. *Abrahams*, 44 L. J. P. C. 76; L. R. 6 P. C. 265; 23 W. R. 668: *Vf*, FUNDS); so, even though the power extends to "Property, *both present and future*" (*Re Streatham Estates Co*, 1897, 1 Ch. 15; 66 L. J. Ch. 57; 45 W. R. 105; 75 L. T. 574: *Re Russian Spratts'*, 1898, 2 Ch. 149; 67 L. J. Ch. 381; 78 L. T. 480; 46 W. R. 514), or to "PROPERTY AND EFFECTS" (*Re Sankey Brook Co*, L. R. 10 Eq. 381; 18 W. R. 914: *Jackson* v. *Rainford Co*, 1896, 2 Ch. 340; 65 L. J. Ch. 757; 44 W. R. 554): — *Secus*, if the power extends to a Co's "Property *and Rights*" (*Howard* v. *Patent Ivory Co*, 57 L. J. Ch. 878; 38 Ch. D. 156), or to "any SECURITY of the Co" (*Newton* v. *Anglo-Australian Co*, 1895, A. C. 244; 64 L. J. P. C. 57; 72 L. T. 305; 43 W. R. 401: *Jackson* v. *Rainford Co*, sup). *Vf*, Buckl. 185: *Re Pyle Works*, 59 L. J. Ch. 489; 44 Ch. D. 534; 62 L. T. 887; 38 W. R. 674: UNDERTAKING.

"Property," in a Co's Debenture, includes all the Co's property except future Calls (*Bower* v. *Foreign & Colonial Gas Co*, W. N. (77) 222: *Sv*, *Page* v. *International Agency*, 68 L. T. 435; 62 L. J. Ch. 610); and "PROPERTY AND EFFECTS," includes its GOODWILL (*Re Leas Hotel Co*, 1902, 1 Ch. 332; 71 L. J. Ch. 294).

"Money or Property of a Co"; *V.* MONEY.

Quà *Larceny Act*, 1861, "'Property,' shall include, every description of real and personal property, money, debts, and legacies; and all deeds and instruments relating to, or evidencing the title or right to, any property, or giving a right to recover or receive any money or goods; and shall also include, not only such property as shall have been origi-

nally in the possession or under the control of any party but also, any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise" (s. 1).

Quà *Loc Gov Act*, 1888; *V.* s. 100, a def adopted for London Gov Act, 1899 (s. 34): quà Loc Gov (Scot) Act, 1889, "'Property,' includes, all property heritable and moveable, and all interests therein" (s. 105).

Quà *Lunacy Act*, 1890, "'Property,' includes, Real and Personal Property, whether in possession, reversion, remainder, contingency, or expectancy; and any estate or interest, and any undivided share, therein" (s. 341).

Quà *M. W. P. Act*, 1882, "Property," "includes a Thing in Action" (s. 24); "Property" in this Act is very comprehensive, *e.g.* "Real Property" in s. 2 comprises the power to enlarge a BASE Fee (*Re Drummond and Davies*, 1891, 1 Ch. 524; 60 L. J. Ch. 258; 64 L. T. 246; 39 W. R. 445).

Quà *Matrimonial Causes Act*, 1857, s. 25, ALIMONY is not "Property" (*Re Robinson*, 53 L. J. Ch. 986; 27 Ch. D. 160); but a gross or annual sum ordered under s. 32 of that Act (as the Order cannot be subsequently withdrawn or modified) is "property" (*Harrison* v. *Harrison*, 58 L. J. P. D. & A. 28; 13 P. D. 180: *Re Tatham*, W. N. (92) 150: *Maclurcan* v. *Maclurcan*, 77 L. T. 474); and an allowance to a wife under a Deed of Separation is her "property" within s. 45, so that on her adultery the Court may deal with it (*Jump* v. *Jump*), 52 L. J. P. D. & A. 71; 8 P. D. 159). "Property" of a wife, s. 3, Matrimonial Causes Act, 1884, 47 & 48 V. c. 68, does not comprise property on which there is a RESTRAINT ON ALIENATION (*Michell* v. *Michell*, 1891, P. 208; 60 L. J. P. D. & A. 46; 64 L. T. 607; 39 W. R. 680, considering *Swift* v. *Swift*, 59 L. J. P. D. & A. 61).

"Property SETTLED," the settlement of which may be varied by the Court — under s. 5, Matrimonial Causes Act, 1859, as extended by s. 3, Matr. Causes Act, 1878 — no doubt includes "Property," in the ordinary sense of the word, which at the time of the marriage was transferred to and vested in trustees, but it may also include mere interests which are purported to be carved out of property; and under this statutory power the Court has the right to deal with a Covenant to pay an Annuity or a Jointure Rent-Charge (*Dormer* v. *Ward*, 69 L. J. P. D. & A. 144; 1901, P. 20; 83 L. T. 556; 49 W. R. 149). *Note*: As to the guiding principle justifying a variation of a settlement, *V. Hartopp* v. *Hartopp*, 1899, P. 65; 68 L. J. P. D. & A. 33; 80 L. T. 297.

"Property" which a wife may acquire after Judicial Separation; *V.* ACQUIRE.

Quà *Sale of Goods Act*, 1893, "'Property,' means, the general property in goods, and not merely a special property" (s. 62).

Quà *Solrs Rem Ord*, "Property," Sch 1, Part 1, means, property in

respect of which Title is deduced; it therefore comprises an ADVOWSON, but not CHATTELS (*Re Earnshaw-Wall*, sup: *Sv*, as to Chattels, 38 S. J. 544). An EASEMENT is not "Property" within the Order (*Re Stewart*, 41 Ch. D. 494: *Re Sanders*, 1896, 1 Ch. 480; 65 L. J. Ch. 426).

Quà *Stamp Acts*, and the duties thereunder, "a LICENSE may be, and often is, coupled with a Grant, and that grant may convey an interest in Property; but the License, pure and simple and by itself, never conveys an interest in Property" (per Fry, L. J., *Heap* v. *Hartley*, 42 Ch. D. 461; 58 L. J. Ch. 790; 61 L. T. 538; 38 W. R. 136: *Vf*, *Muskett* v. *Hill*, 5 Bing. N. C. 694: *Limmer Co.* v. *Inl. Rev.*, 41 L. J. Ex. 106; L. R. 7 Ex. 211; 26 L. T. 633: *Thames Conservators* v. *Inl. Rev.*, 56 L. J. Q. B. 181; 18 Q. B. D. 279; 56 L. T. 198; 35 W. R. 274: *Newby* v. *Harrison*, 1 J. & H. 393); but a License to use a PATENT, does convey an interest in Property (*Smelting Co* v. *Inl. Rev.*, cited LOCALLY SITUATE: *National Socy, &c* v. *Gibbs*, inf). A GOODWILL is Property (*Potter* v. *Inl. Rev.*, 23 L. J. Ex. 345; 10 Ex. 147: *Inl. Rev.* v. *Angus*, 23 Q. B. D. 590); and though, for some purposes, it is said that "Goodwill" is inapplicable to a business depending upon personal trust and confidence, *e.g.* a Solicitor's (*Austen* v. *Boys*, 27 L. J. Ch. 243, 714; 2 D. G. & J. 626; 24 Bea. 598: per Jessel, M. R., *Arundell* v. *Bell*, 52 L. J. Ch. 537; 31 W. R. 477), yet, it is submitted, that if a person buys such a Goodwill, the Conveyance thereof is one of "property" and will be liable to the ad val. Stamp Duty (*Potter* v. *Inl. Rev.*, sup: *Vf*, PROPERTY OTHER THAN LAND); so, of a Trade-Mark (*Brooke* v. *Inl. Rev.*, 1896, 2 Q. B. 356; 65 L. J. Q. B. 657; 44 W. R. 670).

Quà *Succession Duty Act*, 1853, "the term 'Property' alone shall include Real property and Personal property" (s. 1): *vth*, and espy in reference to s. 2, *Re Cigala*, 47 L. J. Ch. 166; 7 Ch. D. 351; 38 L. T. 439; 26 W. R. 257: *A-G.* v. *Jewish Colonisation Assn*, cited DOMICIL: *Colquhoun* v. *Brooks*, 59 L. J. Q. B. 53; 14 App. Ca. 493; 61 L. T. 518; 38 W. R. 289.

Quà Trustee Act, 1893, "'Property,' includes Real and Personal property, and any estate and interest in any property real or personal, and any Debt, and any Thing in Action, and any other Right or Interest, whether in possession or not" (s. 50). *Cp*, def quà Conveyancing Acts, sup.

"Property" has also received a Stat. Def. in and for the following Acts; —

Bankruptcy (Scot) Act, 1856, 19 & 20 V. c. 79; *V.* s. 4:

Conjugal Rights (Scot) Amendment Act, 1861, 24 & 25 V. c. 86; *V.* s. 19:

Criminal Procedure Act, 1851, 14 & 15 V. c. 100; *V.* s. 30:

Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57; *V.* s. 19:

Ecclesiastical Commission Act, 1868, 31 & 32 V. c. 114; *V.* s. 2:

General Prisons (Ir) Act, 1877, 40 & 41 V. c. 49; *V.* s. 3:

Irish Church Act, 1869, 32 & 33 V. c. 42; *V.* s. 72.

A PATENT "is for all purposes to be regarded as Property" (per Cozens-Hardy, J., *National Socy, &c* v. *Gibbs*, cited JOINT TENANCY: *Vf, Smelting Co* v. *Inl. Rev.*, sup. sub "Stamp Acts").

"Property" sometimes means, held for or appropriated to; *V.* LITERARY.

The *description* of "Property" in *Conditions of Sale*, refers to the physical thing sold, and not to the estate therein (*Re Beyfus and Masters*, cited LEASE).

"Property and Benefit" in a Copyright; *V.* BENEFIT.

"House and Property"; *V. Conway* v. *Vernon*, cited HOUSE.

"Money or other Property"; *V.* MONEY.

"Property or Profits"; *V.* PROFITS.

"Vessel or Property"; *V.* VESSEL.

"Workhouse or other Property" of a Poor Law Union, s. 32, 4 & 5 W. 4, c. 76, includes, as "Property," Annuities payable to a Union by the County Council (*R.* v. *Willesden*, cited FIX).

After-acquired property; *V.* ACQUIRE: ENTITLED, pp. 629–631: FUTURE: RIGHT IN EQUITY.

"Property in the Goods," mentioned in a Bill of Lading; *V.* PASS.

"Property at Interest"; *V.* MONEY OUT AT INTEREST.

"Property held in Trust"; *V.* IN TRUST.

"Property locally situate out of the United Kingdom"; *V.* LOCALLY SITUATE.

Property not reduced into Money; *V.* REDUCED INTO MONEY.

"Property passing"; *V.* PASSING.

"Property purchased"; *V.* PURCHASED.

Property recovered; *V.* RECOVERED OR PRESERVED.

"Property vested" under P. H. Act, 1875; *V.* VESTED.

V. ACTUALLY PRODUCING INCOME: BENEFIT: CIVIL RIGHTS: EFFECTS: EXPECTANCY: FREEHOLD: HOUSEHOLD: MOVEABLE: OWN PROPERTY: PRIVATE PROPERTY: PROPERTY AND EFFECTS: PROPERTY OTHER THAN LAND: SEPARATE PROPERTY: SPECIAL: THE.

PROPERTY AND EFFECTS.—The "Property and Effects" of a business have been held not to include its GOODWILL (*Chapman* v. *Hayman*, 1 Times Rep. 397: *Sv, Potter* v. *Inl. Rev.*, p. 1586, and *Re Leas Hotel Co*, p. 1584: ASSETS). *V.* EFFECTS: PROPERTY OTHER THAN LAND: STOCK IN TRADE.

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

PROPERTY OTHER THAN LAND.—"Houses, Buildings, and Property *other than land*, quà the *three times greater* rating prescribed by s. 33, Lighting and Watching Act, 1833, 3 & 4 W. 4, c. 90, include, a Coal Mine (*Thursby* v. *Briercliffe*, 1895, A. C. 32; 64 L. J. M. C. 66;

71 L. T. 849; 59 J. P. 180); so, of SALEABLE UNDERWOOD (per Cave, J., *Crayford* v. *Rutter*, inf). But a Railway, a Canal with its towing paths, or a Dry Dock, is "Land" (*R.* v. *Neath Canal Nav.*, 40 L. J. M. C. 193; nom. *R.* v. *Neath*, L. R. 6 Q. B. 707: *vthc*, and *Peto* v. *West Ham*, 28 L. J. M. C. 240; 2 E. & E. 144, discussed in *R.* v. *Mid. Ry*, 44 L. J. M. C. 137; L. R. 10 Q. B. 389); so, of a Water Co's Pipes (*R.* v. *Southwark, &c, Water Co*, 6 E. & B. 1008), or a Brickfield (*Crayford* v. *Rutter*, 1897, 1 Q. B. 650; 66 L. J. Q. B. 506).

In the last case, and dealing with those cases where the rateable tenement is partly Land and partly Buildings, Cave, J., said, — "If it is really Buildings, it is to be rated at the higher rate; if Land, at the lower rate. In the case of a Building alone, or Land without a building upon it, no difficulty can arise. But where a particular subject is both land and buildings, then the question is, Whether it is to be considered as a Building or as Land? Strictly speaking, it is not solely land, nor solely buildings; and it seems to me that the only way to decide whether it should be rated at the higher or the lower rate is to consider whether the buildings are accessory to the land, or the land to the buildings. If, *e.g.*, there is a large Warehouse with a small court-yard for the convenience of carts and waggons delivering goods at the warehouse, it is obvious that the court-yard must be accessory to the building and that the whole is rateable as a building. On the other hand, if there is a piece of land occupied as a Farm and there happens to be upon it a shed for horses to take refuge in at night, it is obvious that the subject of rateability is Land, and not Buildings." The learned judge went on to indicate that where part of a tenement is a building, *e.g.* a house, which can be conveniently separated from land with which it is held, it should be so separated for the purpose of the rating; but that, probably, the engines, mills, and such like buildings, on a Brickfield could not be so separated.

V. LAND: *Cp*, LAND COVERED WITH WATER.

GOODWILL, ordinarily, is "Property except" — *i.e.* other than — "Lands," a Contract for the sale of which is liable to ad val. Stamp Duty as on a CONVEYANCE (s. 59 (1), Stamp Act, 1891); and even the Goodwill of a Public-House is not, necessarily, a mere enhancement of the value of the tenement, and may, on the facts, be "Property except lands," &c, within the section (*West London Syndicate* v. *Inl. Rev.*, 1898, 2 Q. B. 507; 67 L. J. Q. B. 956; 79 L. T. 289; 47 W. R. 125); but if the Goodwill be inherent in, or annexed to (and not treated as separate from), the land, then it is (like an EASEMENT) part of the land, and ad val. duty on a Contract for its sale is not payable under the section (*Muller* v. *Inl. Rev.*, 1900, 1 Q. B. 310; 69 L. J. Q. B. 291; 81 L. T. 667). *Vf*, LOCALLY SITUATE: PROPERTY: PROPERTY AND EFFECTS.

PROPERTY TAX. — *V* CLEAR.

PROPHECY. — "'Prophecies,' are, by our statutes, reputed for wizardly foretelling of things to come in dark and ambiguous speeches, whereby great commotions have been often caused in this Kingdom, and great attempts made by those to whom those speeches promised good successe" (Cowel: *Vf*, Jacob). *Cp*, CONJURATION.

PROPORTION. — "In joint and equal proportions"; *V.* JOINT AND EQUAL.

PROPRIETARY. — "A Proprietary CHAPEL is perfectly anomalous; it is a thing unknown to the constitution of our Church and in our Ecclesiastical Establishment. It can possess no parochial rights; and the exercise of any such rights would be a mere usurpation in the view of the law" (per Nicholl, D. A., *Moysey* v. *Hillcoat*, 2 Hagg. Ecc. 46). *Vf*, EASE: FREE CHAPEL: PRIVATE CHAPEL: PRIVATE HOUSE.

Proprietary Club; *V.* CLUB.

Proprietary, as distinguished from a Preferential, Right; *V. Ellis* v. *Bedford*, cited "Same Interest," sub SAME.

The holder of "Proprietary STOCK is a MEMBER of the Co, and has the right of participating in the dividends or net profits of the Co"; whilst the holder of DEBENTURE STOCK is a CREDITOR of the Co (per Chitty, J., *Re Bodman*, cited SHARE).

PROPRIETOR. — *V.* OWNER: HERITOR.

In a Contract for the Sale of property for "the Proprietor" (*Sale* v. *Lambert*, 43 L. J. Ch. 470; L. R. 18 Eq. 1; 22 W. R. 478: *Rossiter* v. *Miller*, 48 L. J. Ch. 10; 3 App. Ca. 1124; 39 L. T. 173; 26 W. R. 865), or for the "OWNER," "MORTGAGEE," or the like (*Jarrett* v. *Hunter*, 56 L. J. Ch. 141; 34 Ch. D. 182; 55 L. T. 727; 35 W. R. 132: *Vf*, *Butcher* v. *Nash*, 61 L. T. 72), or for "the Executor or Personal Representative of A." (*Towle* v. *Topham*, 37 L. T. 308), or for "a Trustee selling under a trust for sale" (*Catling* v. *King*, 46 L. J. Ch. 384; 5 Ch. D. 660; 36 L. T. 526; 25 W. R. 550: *Va*, *Bourdillon* v. *Collins*, 19 W. R. 556; 24 L. T. 344), or "by direction of the Executors" of a person named (*Hood* v. *Barrington*, L. R. 6 Eq. 218), the description of the vendor is sufficient to satisfy the Statute of Frauds though he be not named; "but if he is described as 'VENDOR,' or as 'CLIENT,' or 'FRIEND' of a named agent, that is not sufficient" (per Kay, J., *Jarrett* v. *Hunter*, sup: *Vf*, *Butcher* v. *Nash*, sup: *Potter* v. *Duffield*, 43 L. J. Ch. 472; L. R. 18 Eq. 4; 22 W. R. 585: per Mellish, L. J., *Catling* v. *King*, sup). But the description is sufficient if it be for "Vendors" who are described as "a Company in possession of, and carrying on mining operations on, the property" (*Commins* v. *Scott*, 44 L. J. Ch. 563; L. R. 20 Eq. 11; 32 L. T. 420; 23 W. R. 498). In a Contract for a Mortgage, a description of the proposed mtgee as the "Lender" is insufficient (*Pattle*

v. *Anstruther*, 69 L. T. 175; 41 W. R. 625). *Vf*, as to what is a sufficient designation of a Vendor, *Filby* v. *Hounsell*, 1896, 2 Ch. 737; 65 L. J. Ch. 852; 75 L. T. 270:—of a Lessee or Purchaser, *V.* YOU: *Shardlow* v. *Cotterill*, cited PURCHASED.

"Proprietor," s. 24, Copyright Act, 1842, "includes, not merely an original proprietor but, all persons who become proprietors by assignment in some valid method other than that provided by s. 13, and seek to sue for an Infringement" (per Kennedy, J., *Liverpool Brokers' Assn* v. *Commercial Press*, 1897, 2 Q. B. 1; 66 L. J. Q. B. 405; 76 L. T. 292, rejecting dictum of Cockburn, C. J., *Wood* v. *Boosey*, 36 L. J. Q. B. 110; L. R. 2 Q. B. 352). As to who is to be registered as such Proprietor under, s. 13, *V. London Printing Alliance* v. *Cox*, 1891, 3 Ch. 291; 60 L. J. Ch. 707: *Petty* v. *Taylor*, 1897, 1 Ch. 465; 66 L. J. Ch. 209. *Cp*, AUTHOR.

"Proprietor," s. 1, Engraving Copyright Act, 1734, 8 G. 2, c. 13; *V. Graves* v. *Ashford*, cited COPY. *V.* NAME.

"Proprietor" of a DESIGN, s. 61, Patents, Designs, and Trade-Marks Act, 1883; *V. Re Guiterman*, 55 L. J. Ch. 309: "Registered Proprietor," ss. 58, 59, Ib.; *V. Woolley* v. *Broad*, 1892, 1 Q. B. 806; 61 L. J. Q. B. 259; 66 L. T. 680: "Proprietor" of a PATENT, s. 87, Ib.; *V. Van Gelder* v. *Sowerby Bridge Socy*, 59 L. J. Ch. 583; 44 Ch. D. 374; 62 L. T. 105. *Cp*, AUTHOR. The "'Proprietor' and 'Inventor'" (of a Design or Patent) "do not mean the same thing" (per Cresswell, J., *Millingen* v. *Picken*, 1 C. B. 813).

A Registered Proprietor of *Land*, under the Transfer of Land (Victoria) Act, 1866, must be a real person; the myth of a forger is not within the phrase, though on the Register (*Gibbs* v. *Messer*, 1891, A. C. 248; 60 L. J. P. C. 20).

"Proprietor," as used in a River Navigation Act; *V. Tibbits* v. *Yorke*, 3 L. J. K. B. 38; 5 B. & Ad. 605.

"Proprietor" has received various statutory definitions in and for the following Acts;—

County Voters Registration (Scot) Act, 1861, 24 & 25 V. c. 83; *V.* s. 2:

Drainage Acts; *V.* 5 & 6 V. c. 89, s. 159; 8 & 9 V. c. 69, s. 21; 10 & 11 V. c. 38, s. 20, c. 113, s. 17; 29 & 30 V. c. 49, s. 24: *Vh, Re White*, 25 L. R. Ir. 418:

Dublin Carriage Act, 1853, 16 & 17 V. c. 112; *V.* s. 80:

Fisheries Acts; *V.* 5 & 6 V. c. 106, s. 113; 9 & 10 V. c. 3, s. 87; 13 & 14 V. c. 88, s. 1; 25 & 26 V. c. 97, s. 2:

Lands Valuation (Scot) Act, 1854, 17 & 18 V. c. 91; *V.* s. 42:

London Hackney Carriages Act, 1843, 6 & 7 V. c. 86; *V.* s. 2, on *whv*, *King* v. *London Improved Cab Co*, 58 L. J. Q. B. 456; 23 Q. B. D. 281, and *Keen* v. *Henry*, 63 L. J. Q. B. 63; 1894, 1 Q. B. 292:

Merchandize Marks Act, 1887, 50 & 51 V. c. 28; *V.* s. 3:

Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60; *V.* s. 1:

Rep People (Scot) Act, 1868, 31 & 32 V. c. 48; *V.* s. 59:

Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51; *V.* s. 3:

Small Dwellings Acquisition Act, 1899, 62 & 63 V. c. 44; *V.* s. 10 (3).

PROSECUTE. — "A man prosecutes a Charge (quà Malicious Prosecution) who lays an Information before a magistrate accusing of the Offence (*Davis* v. *Noak*, 1 Starkie, 377), or in making an Oral Accusation before a magistrate (*Dawson* v. *Van Sandeau*, 11 W. R. 516); or in taking any active part in a Prosecution at any stage (*Fitzjohn* v. *Mackinder*, 9 C. B. N. S. 505), including preferring a Bill before a Grand Jury (*Payn* v. *Porter*, Cro. Jac. 490: *Smith* v. *Cranshaw*, Jo. W. 93), whether it is ignored, or is found and is followed by acquittal on any ground, or the indictment is bad (*Taylor's Case*, Palm. 44: *Chambers* v. *Robinson*, 2 Stra. 691), and whether the Court to which the accusation was made was or was not competent to adjudicate on it (*Atwood* v. *Monger*, Style, 378), and whether or not the prosecutor was under recognizance to prefer the Bill (*Fitzjohn* v. *Mackinder*, sup)": 8 Encyc. 87.

To "prosecute" a Suit or Matter, — that is, begin to prosecute (*Morris* v. *Matthews*, 11 L. J. Q. B. 57; 2 Q. B. 293). So to "make and prosecute" an application for a new trial, s. 27, 4 & 5 W. 4, c. 62, was satisfied by obtaining a Rule *nisi*, whatever afterwards became of the Rule (*Haworth* v. *Ormerod*, 13 L. J. Q. B. 265; 6 Q. B. 300).

To prosecute an Action for Infringement of a Patent "with DUE DILIGENCE," proviso to s. 32, 46 & 47 V. c. 57, does not necessarily require that the action should be carried on to trial (*Colley* v. *Hart*, 59 L. J. Ch. 308; 44 Ch. D. 179; 62 L. T. 424; 38 W. R. 501).

To "prosecute *with Effect*," — that is, to prosecute to a not unsuccessful termination. "It has never been decided, as I believe, that the Condition 'to prosecute the suit' means to prosecute it successfully: 'to prosecute *with effect*' has been held to have that meaning" (per Jackson, J., *Bently* v. *Hastings*, 8 Ir. L. R. 177). *V.* EFFECT.

To "prosecute *with Effect*," an application for extension of time for a Patent, 5 & 6 W. 4, c. 83, s. 4; *V. Russell* v. *Ledsam*, 12 L. J. Ex. 439; 14 Ib. 353; 16 Ib. 145; 14 M. & W. 574; 16 Ib. 633; 1 H. L. Ca. 687.

To "prosecute *without Delay*," is to use due diligence in the business (*Harrison* v. *Wardle*, 5 B. & Ad. 146). *Cp*, WILFUL DELAY.

V. SUE: THREAT.

PROSECUTING. — In the Colony of Victoria a Crown Prosecutor is a Barrister whose functions and status are quite distinct from those of a "Prosecuting Barrister," — the duties of the first are higher than those

of the second, the first being paid by salary, the second by fees, the one point of similarity being that both act as advocates for the Crown in prosecutions, the first in cases presented by him, the second on getting a brief; a Prosecuting Barrister is not, under the Public Service (Victoria) Act, 1890, entitled to superannuation, *secus* of a Crown Prosecutor, unless excluded by s. 3 which provides that nothing in the Act shall apply to a "Prosecuting Barrister"; held, that that phrase does not embrace a Crown Prosecutor although, if read without that meaning, the phrase is meaningless (*Smyth* v. *The Queen*, 1898, A. C. 782; 67 L. J. P. C. 129; 79 L. T. 199).

PROSECUTION. — "Laying a Prosecution, does not, in ordinary parlance, mean bringing an Action" (per Patteson, J., *Rawlins* v. *Jenkins*, 12 L. J. Q. B. 151; 4 Q. B. 419), and it was there held that an agreement amongst claimants to a Fishery to bear expenses "of defending any Prosecution laid" against them for asserting their claim, referred only to criminal proceedings.

A criminal Information for libel, whether *ex officio* or not, is not a "Criminal Prosecution" within s. 3, Newspaper Libel and Registration Act, 1881, 44 & 45 V. c. 60 (*Yates* v. *The Queen*, 54 L. J. Q. B. 258; 14 Q. B. D. 648).

"*Such* Prosecution," s. 95, Highway Act, 1835, 5 & 6 W. 4, c. 50, means, a Prosecution which Justices have power to order, and which is the one which they have actually ordered; and the power given by the section to award costs, cannot be exercised where the Indictment ordered was for non-repair of a general highway, and was amended at the trial so as to charge in respect only of a limited highway (*R.* v. *Lee*, 45 L. J. M. C. 54; 1 Q. B. D. 198).

Costs other than for the "Prosecution, MAINTENANCE, and Punishment," of Offenders, s. 117, 5 & 6 W. 4, c. 76; *V. R.* v. *Birmingham*, 10 Q. B. 116; 17 L. J. M. C. 56: *Cp*, *R.* v. *Gravesend*, cited SUPPORT.

The "Prosecution" of an Action ends with the FINAL JUDGMENT therein (*Hume* v. *Druyff*, L. R. 8 Ex. 214; 42 L. J. Ex. 145).

V. MALICIOUS PROSECUTION: NON PROS: PUBLIC PROSECUTION: COMMENT.

PROSECUTOR. — *V.* PUBLIC PROSECUTOR.

PROSPECTUS. — Prospectus of a Co; *V.* ss. 9–11, Comp Act, 1900, 63 & 64 V. c. 48, and *Vh*, Palmer Co. Prec. ch. 3: Hamilton, ch. 10: PROMOTER: UNTRUE.

PROTECTION. — Proceedings for "Protection," or "Recovery," of SETTLED Land, s. 36, S. L. Act, 1882; *V. Re De la Warr*, 16 Ch. D. 587; 50 L. J. Ch. 383; 51 Ib. 407; 29 W. R. 350; 44 L. T. 56: *Re*

Twyford Abbey, 30 W. R. 268; 45 L. T. 745: *Re Ormrod*, 1892, 2 Ch. 318; 61 L. J. Ch. 651; 66 L. T. 845; 40 W. R. 490.

"Protection and Security" of a Wife's Separate Property; *V.* SEPARATE PROPERTY.

A Protection *Order*, is an Order granted by Justices to a Married Woman who has been DESERTED by her husband "without REASONABLE CAUSE," and who "is maintaining herself by her own industry or property"; its effect is that her earnings and property become her own "as if she were a FEME sole," and her status is the same as if she had obtained a JUDICIAL SEPARATION (s. 21, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85; *Vf*, s. 9, 21 & 22 V. c. 108; 27 & 28 V. c. 44). Besides and distinct from this, an Order may be granted by Justices to a married woman whose husband has offended in either of the ways mentioned in s. 4, 58 & 59 V. c. 39; and by s. 5 thereof such Order may provide (1) that its effect shall be the same as a "Judicial Separation on the ground of CRUELTY," (2) for the custody of the Children while under 16, (3) for a weekly payment by the husband, not exceeding £2, and (4) for the costs. *Vh*, "Aggravated Assault," sub AGGRAVATED: DESERTED: NEGLECT: PERSISTENT: WILFUL NEGLECT: Stone, tit. *Wife*.

PROTECTOR OF THE SETTLEMENT.—"The Protector of the Settlement" without the consent of whom (where there is one) the Remainder and Reversion after an Entail cannot be barred (ss. 34, 35, Fines and Recoveries Act, 1833), was established by that Act, and is, ordinarily, the First Tenant for Life (s. 22); but *Vf*, ss. 23–33. His power is absolute; "by s. 36, a Protector is made irresponsible, and is at liberty to act from mere caprice, ill-will, or any bad motive. By s. 37, he is enabled to take a bribe for giving consent" (per Shadwell, V. C., *Bankes* v. *Le Despencer*, 11 Sim. 527; 12 L. J. Ch. 297).

Vh, Wms. R. P., Part 1, ch. 2: Goodeve, 73: 10 Encyc. 518–522: BASE.

PROTEST.—"When a Foreign Bill is refused Acceptance or Payment, it was, and still is, necessary by the Custom of Merchants, in order to charge the Drawer, that the Dishonour should be attested by a Protest" (Byles, ch. 19), and it is usually done by a NOTARY PUBLIC: *Vh*, ss. 51, 65, 68, Bills of Ex. Act, 1882: *Re English Bank of the River Plate*, 1893, 2 Ch. 438; 62 L. J. Ch. 578; 69 L. T. 14; 41 W. R. 521; 9 Times Rep. 367. *V.* SUPRA PROTEST.

V. UNDER PROTEST.

PROTESTANT.—"Protestants," s. 2, Places of Religious Worship Act, 1812, 52 G. 3, c. 155, extends to a congregation of foreign Lutherans (*R.* v. *Hube*, Peake, 132). *V.* CONVENTICLE.

The phrase "Protestant Dissenters" now includes Unitarians (1 Jarm. 206, *n*).

A bequest to "Protestant Dissenters" may be explained by parol (*Drummond* v. *A-G., Ireland*, 2 H. L. Ca. 837). *Cp*, GODLY PREACHER.

"Protestant Episcopal Church in Scotland," quà Episcopal Church (Scot) Act, 1864, 27 & 28 V. c. 94 (*V.* s. 2), means, "the Episcopal Communion in Scotland as mentioned in" 32 G. 3, c. 63.

"Protestant Episcopalian," quà Matrimonial Causes and Marriage Law (Ir) Amendment Act, 1870, 33 & 34 V. c. 110, means, a member, of the Church of Ireland, "the Church of England, the Episcopal Church of Scotland, and any other Protestant Episcopal Church" (s. 4).

Protestant Religion; *V.* EDUCATION: RELIGION.

PROVABLE. — "Debt provable in Bankruptcy"; *V.* DEBT, p. 471. *Va*, LIABILITY.

PROVE. — "To prove" a thing is to test it, or (when spoken of a legal conclusion) to establish it by litigation; therefore, to say of a man's patent that it "has been *proved* to be an infringement" of another patent, is actionable, if there has been no litigation under which such infringement has been established (*Crampton* v. *Swete*, 32 S. J. 274; 58 L. T. 516).

But where a Charter-Party stipulated that the Owner should receive "the highest freight which he could prove" to have been paid for a similar voyage; held, that this did not contemplate strictly legal proof, but, meant such proof as ought reasonably to satisfy (*Gether* v. *Capper*, 24 L. J. C. P. 69; 25 Ib. 260; 15 C. B. 39, 696). In *thc* Maule, J., asked "Is not a thing proved to one who knows the fact?" *Vf.* PROOF.

"*Admitted or Proved*," s. 30 (2), Bills of Ex. Act, 1882, "means no more than that some evidence of circumstances in the nature of the fraud must be given sufficient to be left to the Jury" (per Denman, J., *Tatam* v. *Hasler*, 23 Q. B. D. 345; 38 W. R. 110; 58 L. J. Q. B. 432).

"Manifested and Proved"; *V.* MANIFESTED.

"Proved to be Rich," in a Prospectus of a Mine Co; *V. Aaron's Reefs* v. *Twiss*, 1896, A. C. 282; 65 L. J. P. C. 59.

V. ATTEST: EVIDENCE: OATH.

PROVIDE. — A bequest to be applied in "*Providing* a proper school" is good, as not necessarily involving the acquisition of land (*Johnston* v. *Swann*, 3 Mad. 457: 1 Jarm. 228, 229). *Cp*, FOUND: ENDOW: ERECT.

"Provide, Furnish, or Supply," goods for parochial relief, s. 6, Poor Relief Act, 1815, 55 G. 3, c. 137, s. 77, 4 & 5 W. 4, c. 76; *V. Davies* v. *Harvey*, 43 L. J. M. C. 121; L. R. 9 Q. B. 433.

A power to "Purchase or Provide" fire engines, &c, s. 32, Town Police Clauses Act, 1847, authorizes, when necessary, a Hiring (*Janes* v. *Staines*, 83 L. T. 426; 17 Times Rep. 2).

V. PRECATORY TRUST: PROVIDED: SUPPLY.

PROVIDE SUITABLY. — "It has been held, in Marriage Articles, that a trust to 'provide suitably' for the settlor's younger children is not too vague to be executed, but the Court will direct an enquiry what the provision should be" (Lewin, 127, citing *Brenan* v. *Brenan*, Ir. Rep. 2 Eq. 266).

PROVIDED. — *V.* WHEN: CONDITION.

"Except otherwise provided"; *V.* EXCEPT: *Vf*, EXPRESSLY PROVIDED.

No New BURIAL Ground "shall be provided *and used*" without the approval of the Home Secretary, s. 6, 16 & 17 V. c. 134, does not merely mean that no land shall be acquired (whether by gift or purchase) for a Burial Ground without such approval, — it means more than that, for "provided and used" in that connection, means, the acquisition and equipment of land as, and so that it may at once be properly used as, a New Burial Ground (*Ward* v. *Portsmouth*, 1898, 2 Ch. 191; 67 L. J. Ch. 489; 78 L. T. 771; 46 W. R. 610; 62 J. P. 820).

PROVIDED ALWAYS. — "If a man by Indenture letteth lands for yeares, Provided alwaies, and it is covenanted and agreed between the said parties, that the lessee should not alien, and it was adjudged that this was a CONDITION by force of the *proviso*, and a covenant by force of the other words" (Co. Litt. 203 b: *Vf*, Touch. 122: Elph. 411: *Doe* d. *Henniker* v. *Watt*, cited IF). The rule was thus stated by Periam, J., *Simpson* v. *Titterell* (Cro. Eliz. 242), — "'Proviso,' alwaies implieth a Condition if there be not words subsequent which may, peradventure, change it into a Covenant, as where there is another penalty annexed to it for performance as *Dockwray's Case* (27 H. 8, 14), but it is a rule in provisoes, where the proviso is that the lessee shall perform or not perform a thing and no penalty to it, this is a Condition, otherwise it is void; but if a penalty is annexed, *aliter est.*" But in *Brookes* v. *Drysdale* (3 C. P. D. 52; 26 W. R. 331), it was held that, in a Lease, the words "Provided always, and these presents are upon this express condition," of themselves, amounted to a Covenant. *V.* PROVISO: IF.

But, generally, the words "Provided always" refer to, and qualify, what has preceded (*Martelli* v. *Holloway*, L. R. 5 H. L. 532; 42 L. J. Ch. 26). *Vf*, *Dicker* v. *Angerstein*, cited PURPORTING.

PROVIDED THE FUNDS PERMIT. — These words in the withdrawal clause of a Building Society, do not deprive a member who has given Notice of Withdrawal of his right of priority over other members, in case of a liquidation after the Notice has expired (*Walton* v. *Edge*, 54 L. J. Ch. 362; 10 App. Ca. 33, distinguishing *The Mutual Socy*, 24 Ch. D. 425, *n*, and explaining *Blackburn Bg Socy* v. *Cunliffe*, 52 L. J. Ch. 92; 22 Ch. D. 61). *V.* AVAILABLE.

PROVIDENT. — "Provident Benefits," quà Trade Union (Provident Funds) Act, 1893, 56 & 57 V. c. 2, "means and includes, any payment made to a Member during sickness, or incapacity from personal injury, or while out of work; or, to an Aged Member, by way of superannuation; or to a Member who has met with an Accident or has lost his Tools by fire or theft; or a payment in discharge or aid of Funeral expenses on the death of a member or the wife of a member; or as provision for the Children of the Deceased Member where the payment in respect whereof exemption is claimed is a payment expressly authorized by the registered rules of the Trade Union claiming the exemption" (s. 3).

V. INDUSTRIAL AND PROVIDENT SOCIETY. *Cp*, FRIENDLY SOCIETY.

PROVIDING COVERS. — *V.* COVERS.

PROVINCE. — *V.* CANADA: PROVINCIAL.

Quà Indian Councils Act, 1892, 55 & 56 V. c. 14, "'Province,' means, any presidency, division, province, or territory, over which the powers of any local legislature for the time being extend" (s. 6).

PROVINCIAL. — "Provincial COURT," quà Clergy Discipline Act, 1892, 55 & 56 V. c. 32, "means, as respects the Province of Canterbury, the Arches Court of Canterbury; and, as respects the Province of York, the Chancery Court of York" (s. 12).

"Provincial Law Societies or Associations"; Stat. Def., 44 & 45 V. c. 44, s. 1.

PROVISION. — Annuity to "make provision" for a wife; *V.* JOINTURE. *Vf*, REASONABLE.

"Like Provisions"; *V.* LIKE.

V. PROVISIONS.

PROVISIONAL COMMITTEE. — A Provisional Committee is an association formed for carrying into effect the preliminary arrangements necessary to promote a scheme; it is not a partnership, for it constitutes no agreement to share in profit or loss (*Reynell* v. *Lewis*, 15 M. & W. 526; 16 L. J. Ex. 25).

V. COMMITTEE.

PROVISIONAL LICENSE. — A Provisional License under s. 22, Licensing Act, 1874, "covers the whole period of the building of the premises to be constructed, however long" (per Coleridge, C. J., *R.* v. *London Jus.*, cited LICENSE).

PROVISIONAL LIQUIDATOR. — *V.* s. 4, Comp Winding-up Act, 1890.

PROVISIONAL ORDER. — Quà Parliamentary Costs Act, 1871, 34 & 35 V. c. 3, "Provisional Order" includes, "provisional certificates,

schemes, and orders in the nature of Provisional Orders, made under the authority of any statute and requiring to be confirmed sanctioned or carried into effect by Act of Parliament" (s. 4).

"Provisional and Final Order," quà Highway Acts; *V.* 27 & 28 V. c. 101, s. 18.

PROVISIONAL SPECIFICATION. — *V.* SPECIFICATION.

PROVISIONS. — "Provisions," in a Market Act, includes Potatoes (*Collier* v. *Worth*, 40 J. P. 342).

"Goods, Materials, or Provisions"; *V.* USE.

"Provisions," as used in the sense of Regulations or Rules; *V. Walsh* v. *Secretary for India*, 10 H. L. Ca. 385; 32 L. J. Ch. 594.

V. PROVISION.

PROVISO. — "This word (*proviso*) hath divers operations. Sometime it worketh a Qualification or Limitation; sometime a Condition; and sometime a Covenant" (Co. Litt. 146 b; *Vf*, Ib. 203 b). "'Proviso' is a condition inserted into any deed, upon the performance whereof the validity of the deed consisteth. Sometimes it is onely a covenant, whereof see Coke, l. 2, p. 71, 72, in the Lord *Cromwels Case*" (Termes de la Ley). A proviso wholly repugnant to a covenant creating a personal liability is void; *secus* of a proviso only limiting such liability (*Williams* v. *Hathaway*, 6 Ch. D. 544).

A statutory proviso "is something engrafted on a preceding enactment" (*R.* v. *Taunton, St. James*, 9 B. & C. 836).

It is said that "the terms 'Proviso' and 'Condition' are synonymous, and signify some quality annexed to a real estate, by virtue of which it may be defeated, enlarged, or created, upon an uncertain event" (Woodf. 192). That proposition is probably true when Real Estate is the subject-matter; but "Proviso" and "Condition" can hardly be regarded as convertible terms for all purposes.

V. CONDITION: PROVIDED ALWAYS.

PROVOCATION. — As to what is Provocation that will reduce MURDER to MANSLAUGHTER; *V.* Steph. Cr. 161, 162: Arch. Cr. 759–762: Rosc. Cr. 620.

"Provocation" for riot, s. 2 (1), Riot (Damages) Act, 1886, 49 & 50 V. c. 38, may prevent compensation altogether, or reduce its quantum (*Gunter* v. *Metrop. Police*, 5 Times Rep. 58).

PROXIMATE. — Proximate Cause of Loss or Damage; *V. Marsden* v. *City and County Assrce*, 35 L. J. C. P. 60; L. R. 1 C. P. 232: *Collins* v. *Middle Level Commrs*, 38 L. J. C. P. 236; L. R. 4 C. P. 279: *Harrison* v. *G. N. Ry*, 33 L. J. Ex. 266; 3 H. & C. 231: *Everett* v. *London Assrce*, 34 L. J. C. P. 299; 19 C. B. N. S. 126. *Vf*, FIRE.

Negligence which is the Proximate Cause of a Mistake so as to work ESTOPPEL, means, that which is the real cause (*Seton* v. *Lafone*, 56 L. J. Q. B. 415; 19 Q. B. D. 68). *Cp*, Contributory Negligence, sub NEGLIGENCE.

PROXY. — A Proxy is a "lawfully constituted Agent" (per Smith, L. J., *Re English Scottish & Australian Bank*, 1893, 3 Ch. 385; 62 L. J. Ch. 825; 69 L. T. 268; 42 W. R. 4), an "Agent properly appointed" (per Lindley, L. J., *Ib.*); and, *semble* (from the jdgmts of the Court of Appeal in that case), he need not, in the absence of a contrary regulation, be appointed in writing. However, in the Court below, Williams, J., said, "Under the Companies Act, generally, there can be to my mind no doubt but that the authority of the Proxy must be in writing"; and referring to the phrase "Creditors present, either in person or by proxy," s. 2, 33 & 34 V. c. 104, he added, that "means a Proxy authorized by an instrument in writing"; but referring to the same phrase Smith, L. J., said, it "means, either in person or by his lawfully constituted agent, and not by the instrument of proxy, or the proxy paper."

If there be an Instrument of Proxy, it is not absolutely necessary to produce it at the meeting for which it is to be used, unless there be some requirement to that effect (*S. C.*).

Note: *Vthc* for a Special Order under s. 2, 33 & 34 V. c. 104, and also as to the Stamp on Proxies, on which latter, *V. Ernest* v. *Loma Co*, 1897, 1 Ch. 1; 66 L. J. Ch. 17; 75 L. T. 317; 45 W. R. 86: in *thlc* it was also held that the Date of the Meeting may be filled in after the proxy paper is signed. *Vf*, VOTE.

PUBLIC. — "The Public," — *e.g.* quà an UNDUE PREFERENCE which is to be guarded against "in the interests of the Public," s. 27 (2), Ry and Canal Traffic Act, 1888, — means, "nothing wider than the British Public, at any rate," but it does not mean anything so narrow as the general interests of the particular localities which may be affected by the matters in question; it means, those interests which concern the *Public at Large*. "Whilst it may, undoubtedly, be a most difficult enquiry whether this or that be for the Public Good, I would point out that the question is not altogether foreign to many which have from time to time been freely entertained by the Courts. Many a contract has been held invalid as contrary to PUBLIC POLICY; and although, warned perhaps by the economic errors of their predecessors, judges have grown more cautious in laying down what is and what is not contrary to Public Policy, yet the jurisdiction remains and is constantly exercised" (per Wills, J., *Liverpool Corn Trade Assn* v. *Lond. & N. W. Ry*, 1891, 1 Q. B. 120; 60 L. J. Q. B. 76; 7 Ry & Can Traffic Ca. 125). It is suggested that the older cases on the construction of Contracts in RESTRAINT OF TRADE may usefully be studied as examples of those remarks,

and that the persons entitled to complain of a COMMON NUISANCE furnish an illustration of what is generally connoted by "the Public."

Public at Large; *Vf, Inl. Rev.* v. *Scott*, cited MANNER.

V. PUBLIC BENEFIT: PUBLIC DOCUMENT: PUBLIC INTEREST: PUBLIC SERVICE.

PUBLIC ACCOUNTANT. — "Public Accountant," held to include a Deputy Assistant Commissary General (*R.* v. *Fernandes*, 12 Price, 862).

PUBLIC ACT OF PARLIAMENT. — "Public Act of Parliament," "Public and General" Act, means, an Act which affects the Public at Large, as distinguished from one which only or chiefly affects private, personal, or local, interests; *Vh, Richards* v. *Easto*, 15 L. J. Ex. 163; 15 M. & W. 251: *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: LOCAL ACT OF PARLIAMENT.

The TOLERATION ACT was held a Private Act (*R.* v. *Larwood*, 1 Salk. 168), but was declared a Public Act by s. 4, 19 G. 3, c. 44.

Cp, "Special Act," sub SPECIAL.

PUBLIC ANALYST. — Quà Sale of Food and Drugs Acts, "Public Analyst," means, an Analyst appointed by a Local Authority authorized to make such an appointment (s. 25, 62 & 63 V. c. 51).

PUBLIC ANNUAL OFFICE. — *V.* PUBLIC OFFICE.

PUBLIC ASYLUM. — "Public Asylum," and also "Private Asylum"; Stat. Def., Lunacy (Scot) Act, 1857, 20 & 21 V. c. 71, s. 3.

V. ASYLUM.

PUBLIC AUCTION. — *V.* AUCTION.

PUBLIC AUTHORITY. — *V.* AUTHORITY: PUBLIC BODY.

Costs as between Solr and Client under Public Authorities Protection Act, 1893; *V.* PURSUANCE: PUBLIC DUTY. *Semble*, that "PERSON" exercising a "Public Authority," s. 1 of that Act, includes one having a public authorization (*Chamberlain Co.* v. *Bradford*, 83 L. T. 518).

PUBLIC BALL. — A "Public Dinner or Ball," s. 20 (3), 26 & 27 V. c. 33, is one in aid of, or connected with, some Public Purpose, *e.g.* a CHARITY, and to which members of the Public are admitted, such admission being, generally, on payment or with the expectation of a subscription; though, probably, payment or such an expectation is not a necessary ingredient to a Public Dinner or Ball, nor is a Dinner or Ball less Public on account of power being reserved to exclude improper persons: if, however, the Dinner or Ball be solely for the entertainment or amusement

of its promoters and their friends, and one to which the Public are in no way invited, it is private: whether or not a particular Dinner or Ball is Public or Private, is a question of fact (*Maloney* v. *Lingard*, 42 S. J. 193).

Semble, this construction applies to "Public Dancing, Singing, Music, or other Public Entertainment of the like kind," s. 51 (1), P. H. Act, 1890.

V. PUBLIC DANCING: PUBLIC SINGING.

PUBLIC BATH. — *V.* BATH.

PUBLIC BENEFIT. — As to what is for the "Public Benefit"; *V. A-G.* v. *Terry*, 9 Ch. 423; disapproving *R.* v. *Russell*, 6 B. & C. 566.

Payments by a Municipal Corporation to a University College in the Borough, are not "for the Public Benefit of the inhabitants and IMPROVEMENT of the borough" within s. 143, Mun Corp Act, 1882 (*A-G.* v. *Cardiff*, 1894, 2 Ch. 337; 63 L. J. Ch. 557; 70 L. T. 591; 10 Times Rep. 420).

V. PUBLIC: PUBLIC CONCERN.

A Bequest for the Public Benefit is a good CHARITY (Tudor Char. Trusts, 11 *et seq*).

PUBLIC BODY. — *V.* PUBLIC AUTHORITY: PUBLIC DUTY: PURSUANCE.

Stat. Def. — Public Bodies Corrupt Practices Act, 1889, 52 & 53 V. c. 69, s. 7; Public Works Loans Act, 1882, 45 & 46 V. c. 62, s. 7. — *Ir.* 32 & 33 V. c. 79, s. 9.

PUBLIC BOOK. — A Public Book, receivable in evidence as such, is one the entries in which are made by an Officer in the discharge of a Public Duty, *e.g.* the Register of the Navy Office, Log-book of a Man of War, or a Master's Book; but does not include the Register of Attendances kept by a Medical Officer of a Poor Law Union (*Merrick* v. *Wakley*, 8 A. & E. 170; 7 L. J. Q. B. 190). *Vf*, PUBLIC OFFICER: Rosc. N. P. 123: s. 14, Evidence Act, 1851, 14 & 15 V. c. 99, within which section is included the Act Book of the Ecclesiastical Court (*Dorrett* v. *Meux*, 15 C. B. 142; 23 L. J. C. P. 221). *Cp*, PUBLIC DOCUMENT.

PUBLIC BRIDGE. — *Vh*, Glen on Highways, 2 ed., 21, 110 *et seq*, and the cases there collected.

A bridge of public utility, even though built by an individual, if dedicated to and accepted by the community, is a Public Bridge (*R.* v. *Yorkshire*, 2 East, 342: *R.* v. *Bucks*, 12 East, 192). A bridge in a HIGHWAY is a Public Bridge (s. 1, 22 H. 8, c. 5); and "Public Bridges" "may safely be defined to be, such Bridges as all His Majesty's subjects have used freely and without interruption, as of Right, for a period of time competent to protect them from being considered as wrong-doers in

respect of such use" (per Ellenborough, C. J., *R.* v. *Bucks*, 12 East, 204); and such user may be intermittent, *e.g.* only on occasion of floods (*R.* v. *Northampton*, 2 M. & S. 262: *R.* v. *Devon*, Ry. & Moo. 144). *Vf*, *R.* v. *Southampton*, 17 Q. B. D. 424; 19 Q. B. D. 590.

V. BRIDGE: COUNTY BRIDGE: PRIVATE BRIDGE.

PUBLIC BUILDING. — A Union Workhouse is a "Public Building" for the purposes of rating under a local Improvement Act (*Bedford Union* v. *Bedford Improvement Commrs*, 21 L. J. M. C. 229; 7 Ex. 777); and so is an Infirmary (*Bedford Infirmary* v. *Bedford Improvement Commrs*, 21 L. J. M. C. 229). In *Arnell* v. *Lond. & N. W. Ry* (12 C. B. 695) a Bridge over a Ry was, on the context in a Local Paving Act, held not to be a "Public Building"; but Maule and Talfourd, JJ., held that the fence-walls of the bridge were such a building; and from the jdgmt of Maule, J., it may, probably, be said that any building (including a fence-wall or DEAD WALL) built pursuant to an Act of Parliament and for the convenience and safety of the Public, is a "Public Building"; *Sv*, per Jervis, C. J., *Arnell* v. *Regent's Canal Co*, 14 C. B. 576.

An ambulance was not a "Public Building" within the Metropolitan Building Acts, 1855 and 1878, so as to require deposit of plans, &c (*Josolyne* v. *Meeson*, 53 L. T. 319; 49 J. P. 805; 1 Times Rep. 565).

Quà London Bg Act, 1894, "Public Building," "means, a Building used, or constructed or adapted to be used, as a CHURCH, CHAPEL, or other PLACE of PUBLIC WORSHIP, or as a SCHOOL, College, or Place of Instruction (not being merely a Dwelling-house so used), or as a HOSPITAL, Workhouse, Public THEATRE, Public Hall, Public Concert Room, Public Ball Room, Public Lecture Room, Public Library, or Public Exhibition Room, or as a PUBLIC PLACE of ASSEMBLY, or used, or constructed or adapted to be used, for any other PUBLIC PURPOSE; also a building used, or constructed or adapted to be used, as an HOTEL, LODGING-HOUSE, Home, Refuge, or Shelter, where such building extends to more than 250,000 cubic feet or has sleeping accommodation for more than 100 persons" (subs. 27, s. 5): *Vth*, *Moses* v. *Marsland*, 1901, 1 Q. B. 668; 70 L. J. Q. B. 261.

V. INHABITED.

PUBLIC BURIAL PLACE. — *V.* BURIAL.

PUBLIC BUSINESS. — *V.* PUBLIC TRADE OR BUSINESS.

PUBLIC CARRIAGE ROAD. — "Turnpike Road or Public Carriage Road"; *V.* TURNPIKE ROAD: PUBLIC ROAD.

PUBLIC CHARGES. — "Public Charges or Taxes"; Stat. Def., Arrears of Rent (Ir) Act, 1882, 45 & 46 V. c. 47, s. 17.

PUBLIC CHARITABLE INSTITUTION. — "Public Charitable Institution," "Public Charitable Purpose"; *V.* PUBLIC CHARITY: PUBLIC PURPOSE: CHARITABLE PURPOSE.

PUBLIC CHARITY. — An institution for the charitable benefit of a large and important body of poor persons, is a "Public Charity," as well for the purposes of construing that phrase in a Will as for obtaining a statutory exemption from rating (*A-G.* v. *Pearce*, 2 Atk. 87: *St. Thomas's Hosp.* v. *Lambeth*, 45 L. J. M. C. 23; L. R. 7 H. L. 477; *Hall* v. *Derby*, 55 L. J. M. C. 21; 16 Q. B. D. 163; 54 L. T. 175; 50 J. P. 278; 2 Times Rep. 81). *Vf, R.* v. *Stapleton*, 33 L. J. M. C. 17; 4 B. & S. 629.

As a general rule, a FRIENDLY SOCIETY, even if it has honorary members, is not a Public Charity (*Re Clark*, 45 L. J. Ch. 194; 1 Ch. D. 497: *Re Dutton*, 48 L. J. Ex. 350; 4 Ex. D. 54: *Cunnack* v. *Edwards*, 1896, 2 Ch. 679; 65 L. J. Ch. 801; 75 L. T. 122; 45 W. R. 99: *Sv, Spiller* v. *Maude*, 32 Ch. D. 158 *n*, on *whlcv, Re Lacy*, cited A: *Pease* v. *Pattinson*, 55 L. J. Ch. 617; 32 Ch. D. 154; 54 L. T. 209; 34 W. R. 361); *secus*, if it receives voluntary donations and be founded for members in DISTRESSED CIRCUMSTANCES, or otherwise in poverty (*Re Buck*, 1896, 2 Ch. 727; 65 L. J. Ch. 881; 75 L. T. 312; 45 W. R. 106; 60 J. P. 775).

The Dilworth Ulster Institute is not only a "Public School" but is also a "Public Charitable Institution . . . carried on for" a "Public Charitable Purpose, and not for any gain or profit," within s. 3 (4), Land and Income Assessment (New Zealand) Act, Amendment Act, 1892 (*Dilworth* v. *Commr of Stamps*, cited PUBLIC SCHOOL).

"Public Charitable Purposes"; Stat. Def., 35 & 36 V. c. 24, s. 14.

V. CHARITABLE PURPOSE: CHARITY: PUBLIC HOSPITAL: PUBLIC PURPOSE.

PUBLIC CIVIL OFFICE. — *V.* PUBLIC OFFICE.

PUBLIC COMPANY. — "What a 'Public Company' is has not been defined, but one test is, whether the members have a right to transfer their shares" (Buckl. 3, citing *Re Griffith, Carr* v. *Griffith*, 12 Ch. D. 655; 41 L. T. 540; 28 W. R. 28). "The words 'Public Company' import, no doubt, some relation to the PUBLIC; but the decisions leave it doubtful what that relation should be. It may mean, a Company the shares in which are open to all the public" (per Byles, J., *Nicholls* v. *Rosewarne*, 6 C. B. N. S. 493; 28 L. J. C. P. 275).

It is suggested that, a Public Company is one the constitution or affairs of which is or are made public. Therefore, a Co which has a PUBLIC OFFICER through whom it may sue or be sued, or which has to make returns to a Public Office from which the names and places of abode of its members or the state of its affairs may be ascertained, is a

"Public Company" within s. 14, 1 & 2 V. c. 110 (*Macintyre* v. *Connell*, 1 Sim. N. S. 225; 20 L. J. Ch. 284: *Graham* v. *Connell*, 19 L. J. Ex. 361). So, a Co incorporated under Comp Act, 1862 (whose Mem of Assn and Articles are, necessarily, public documents) is a "Public Company" within a testamentary power authorizing investments in the securities of "any Railway or other Public Company" (*Re Sharp*, *Rickett* v. *Sharp*, 60 L. J. Ch. 38; 45 Ch. D. 286; 62 L. T. 777); and such a Co is a "Public Company" within s. 5, Apportionment Act, 1870 (*Re Lysaght*, cited ACCRUE); but a PUBLIC BODY for the execution of public functions, is not a "Public Company" within an investment clause (*Wood* v. *Middleton*, 79 L. T. 155).

V. TRADING AND OTHER PUBLIC COMPANIES.

PUBLIC CONCERN. — "Matter not of Public Concern, and the publication of which is not for the PUBLIC BENEFIT," proviso to s. 4, Law of Libel Amendment Act, 1888, 51 & 52 V. c. 64; *Vh*, Odgers, 730: PUBLIC MEETING. *Cp*, PUBLIC INTEREST.

PUBLIC and CONSPICUOUS. — "Public and Conspicuous *Place*"; *V.* PUBLIC PLACE.

"Public and Conspicuous *Situation*"; *V.* PUBLIC SITUATION.

PUBLIC CONVENIENCE. — *V.* CONVENIENCE: FACILITIES: PUBLIC PLACE: PUBLIC SERVICE.

PUBLIC CONVEYANCE. — "Railway for Public Conveyance"; *V.* RAILWAY.

V. CAB: HACKNEY CARRIAGE: OMNIBUS: STAGE CARRIAGE.

PUBLIC DANCING. — *V.* PUBLIC BALL.

A "house, room, garden, or other PLACE, *kept* for Public Dancing, Music, or other Public ENTERTAINMENT of the like kind," s. 2, Disorderly Houses Act, 1751, 25 G. 2, c. 36 (made perpetual by 28 G. 2, c. 19), must be so used (to the knowledge of the deft) on more than one occasion (*Marks* v. *Benjamin*, cited KEEP); but exclusive use, or one for payment, is not essential (*Ib.*: *Gregory* v. *Tuffs*, 6 C. & P. 271; 1 Moo. & R. 313), yet the dancing or music must be a substantial, and not merely a subsidiary, part of the Entertainment (*Guaglieni* v. *Matthews*, 13 W. R. 679; 34 L. J. M. C. 116: *R.* v. *Tucker*, 46 L. J. M. C. 197; 2 Q. B. D. 417).

Rinking is not Dancing (*R.* v. *Tucker*, sup), nor are performances on the Tight-rope, or other rhythmic movements in a Circus (*Guaglieni* v. *Matthews*, sup), though it is not necessary to "Public Dancing" that the dancing should be by the Public (*Marks* v. *Benjamin*, sup).

PUBLIC DEPARTMENT. — Stat. Def., Crown Suits (Scot) Act, 1857, 20 & 21 V. c. 44, s. 4; Lunacy Act, 1890, s. 341; Superannuation

Act, 1887, 50 & 51 V. c. 67, s. 12, which section also provides that " 'Prescribed Public Department,' means, as respects any matter, the Department prescribed for the purpose of that matter by the Treasury."

PUBLIC DINNER. — *V.* PUBLIC BALL.

PUBLIC DOCUMENT. — The principle upon which a Public Document is admissible as Evidence is, that there " should be a Public Inquiry, a Public Document, and made by a Public Officer. I do not think that 'PUBLIC,' there, is to be taken in the sense of meaning the whole world. I think an entry in the books of a Manor is 'public,' in the sense that it concerns all the people interested in the Manor. And an entry, probably, in a Corporation book concerning a corporate matter or something in which all the corporation is concerned, would be 'public' within that sense. But it must be a Public Document, and it must be made by a Public Officer. I understand a 'Public Document,' there, to mean, a document that is made for the purpose of the Public making use of it, and being able to refer to it. It is meant to be where there is a judicial, or quasi judicial, duty to enquire as might be said to be the case with the Bishop acting under the writs issued by the Crown: that may be said to be quasi judicial. He is acting for the public when that is done; but I think the very object of it must be that it should be made for the purpose of being kept public, so that the persons concerned in it may have access to it afterwards " (per Ld Blackburn, *Sturla* v. *Freccia*, 50 L. J. Ch. 96; 5 App. Ca. 643, 644). *Vh*, *Evans* v. *Merthyr Tydfil*, 1899, 1 Ch. 241; 68 L. J. Ch. 175; 79 L. T. 578: *Moriarty* v. *Moriarty*, 18 W. R. 145.

A Register of Parliamentary Voters and Poll Books are documents of a " Public *Nature*," within s. 14, Evidence Act, 1851, 14 & 15 V. c. 99 (*Reed* v. *Lamb*, 29 L. J. Ex. 452; 6 H. & N. 75); so, are Bye Laws of a Ry Co made under Ry C. C. Act, 1845 (*Motteram* v. *Eastern Counties Ry*, 29 L. J. M. C. 57; 7 C. B. N. S. 58); so, *semble*, verified copies of Parish Registers under s. 7, 52 G. 3, c. 146 (*Walker* v. *Beauchamp*, 6 C. & P. 552).

As to what is a Public Document the republication of which is not a Libel, except there be Malice; *V. Fleming* v. *Newton*, 1 H. L. Ca. 363: *Cosgrave* v. *Trade Auxiliary Co*, Ir. Rep. 8 C. L. 349: *Williams* v. *Smith*, 22 Q. B. D. 134; 58 L. J. Q. B. 21: *Searles* v. *Scarlett*, 1892, 2 Q. B. 56; 61 L. J. Q. 573; 66 L. T. 837; 40 W. R. 696; 56 J. P. 789: *Annaly* v. *Trade Auxiliary Co*, 26 L. R. Ir. 11.

V. PUBLIC BOOK: DOCUMENT.

PUBLIC DRAIN. — The Eau Brink Cut near King's Lynn, is not a " Public or Parish Drain," s. 35, 4 G. 4, c. lv (*Coulton* v. *Ambler*, 13 M. & W. 403; 14 L. J. Ex. 10).

V. DRAIN.

PUBLIC DUTY. — A PUBLIC AUTHORITY, — *e.g.* a Municipal Corporation, or a Local Board, — even when carrying on a Business or a Trade such as supplying water or gas, is exercising a "Public Duty" within the Public Authorities Protection Act, 1893, 56 & 57 V. c. 61 (*The Ydun*, 1899, P. 239, 240; 68 L. J. P. D. & A. 101); *secus*, of a Body which has private gain for one of its substantial objects, though executing statutory powers, *e.g.* a Ry Co or a Harbour Board (*A-G.* v. *Margate Pier Co*, 1900, 1 Ch. 749; 69 L. J. Ch. 331; 82 L. T. 448; 48 W. R. 518; *vthc* per Williams, L. J., *Ambler* v. *Bradford*, 1902, 2 Ch. 585; 71 L. J. Ch. 744). So, a Public Authority is exercising such a Public Duty when authorizing the driving over a road as an assertion of its being a HIGHWAY (*Greenwell* v. *Howell*, 1900, 1 Q. B. 535; 69 L. J. Q. B. 461; 82 L. T. 183; 48 W. R. 307). *V.* PURSUANCE.

V. PUBLIC OFFICER.

PUBLIC EDUCATION. — Quà Leases for Schools (Ir) Act, 1881, 44 & 45 V. c. 65, "Public Education," includes, "EDUCATION provided in return for periodical payments, as well as purely gratuitous or free education" (s. 1).

PUBLIC ELEMENTARY SCHOOL. — In the application of Coal Mines Regn Act, 1887, to Scotland, "'Public Elementary School,' means, State-aided School" (s. 76); in a like application of Elementary School Teachers (Superannuation) Act, 1898, 61 & 62 V. c. 57, the phrase "means a Public or other School in receipt of annual parliamentary grant" (s. 12).

V. ELEMENTARY: PUBLIC SCHOOL.

PUBLIC EMPLOYMENT. — *V.* PUBLIC TRADE OR BUSINESS.

PUBLIC ENDOWMENT. — *V.* ENDOWMENT: PRIVATE ENDOWMENT.

PUBLIC ENEMIES. — *V.* ADHERING TO THE QUEEN'S ENEMIES: ENEMY: QUEEN'S ENEMIES.

PUBLIC ENTERTAINMENT. — *V.* ENTERTAINMENT: PUBLIC BALL: PUBLIC DANCING: PUBLIC SINGING.

PUBLIC EXAMINER. — Quà Oxford University Act, 1854, 17 & 18 V. c. 81, "Public Examiner," includes, "Moderators and Masters of the Schools" (s. 48).

PUBLIC FUNDS. — *V.* FUNDS: GOVERNMENT SECURITIES: PUBLIC MONEY: PUBLIC PAROCHIAL FUNDS: PUBLIC SECURITIES.

PUBLIC GALLERY. — Quà National Gallery (Loan) Act, 1883, 46 & 47 V. c. 4, "'Public Gallery authorized by this Act,' means, any Gal-

lery situate in the United Kingdom belonging to, or under the control of, Government or of any Municipal Authority, or of any Society or Body approved by any two or more of the said Trustees of the National Gallery together with the Director" (s. 5).

PUBLIC GARDEN. — *V.* PUBLIC PARK.

PUBLIC GOOD. — *V.* PUBLIC: PUBLIC BENEFIT: GOOD, at end.

PUBLIC HARBOUR. — "Public Harbours," British North America Act, 1867, 30 & 31 V. c. 3, Sch 3; *V. A-G. Canada* v. *A-G. Ontario*, cited EXCLUSIVE, over-ruling *Holman* v. *Green*, 6 Canada S. C. R. 707.

V. HARBOUR.

PUBLIC HEALTH. — "The Public Health *Acts*"; *V.* Sch 2, Short Titles Act, 1896; these relate to England and Wales, other than London.

P. H. London Act, 1891, 54 & 55 V. c. 76.

P. H. Ireland Acts, 1878 to 1896, are, 41 & 42 V. c. 52; 42 & 43 V. c. 57; 47 & 48 V. c. 77; 52 & 53 V. c. 64; 53 & 54 V. c. 59; and 59 & 60 V. c. 54 (*V.* ss. 34 and 35, 59 & 60 V. c. 54).

P. H. Scotland Act, 1897, 60 & 61 V. c. 38.

"Public Health *Rate*"; Stat. Def., P. H. Scotland Act, 1897, s. 193.

PUBLIC HIGHWAY. — Where the access to a road at either end has become impossible by reason of ways leading up to it having been lawfully stopped, such road ceases to be a "Public Highway" (*Bailey* v. *Jamieson*, 1 C. P. D. 329); such a case forms an exception to what Byles, J., said (*Dawes* v. *Hawkins*, 29 L. J. C. P. 347; 8 C. B. N. S. 858), it is "an established maxim, Once a highway always a highway."

Vf, HIGHWAY.

"Turnpike Road or Public Highway"; *V.* TURNPIKE ROAD.

V. PUBLIC ROAD: THOROUGHFARE: PLACE.

PUBLIC HOSPITAL. — "Public HOSPITAL, Infirmary, or other Medical Institution," proviso to s. 22, Coroners Act, 1887, 50 & 51 V. c. 71, includes a Children's and General Hospital, supported by voluntary contributions, and founded for the free admission and relief of patients within a defined area upon production of a Governor's letter, and of patients outside that area upon payment of a small weekly sum (*Horner* v. *Lewis*, 78 L. T. 792; 67 L. J. Q. B. 524; 62 J. P. 345).

Cp, PUBLIC CHARITY.

PUBLIC HOUSE. — Quà Licensing (Scot) Act, 1853, 16 & 17 V. c. 67, and, probably, of general acceptation, "Public house," includes, "a Common Inn, Alehouse, VICTUALLING HOUSE, or other premises in which any exciseable liquors are sold by retail, to be drunk or consumed in the premises in which the same are sold" (s. 17).

Obtaining and using an "off" License for the sale of Beer, is not a breach of a covenant not to use the premises "as a Public-house for the sale of beer" (*Pease* v. *Coates*, 36 L. J. Ch. 57; L. R. 2 Eq. 688: *Vf*, *Fielden*, or *Feilden* v. *Slater*, 38 L. J. Ch. 379; L. R. 7 Eq. 523; 20 L. T. 112; 17 W. R. 485: *Devonshire* v. *Simmons*, 11 Times Rep. 52; 39 S. J. 60). So, a Private CLUB, in which liquors are only sold to members, is not a "Public-house," nor is it used "for the SALE of liquors" within a restrictive covenant (*Ranken* v. *Hunt*, 96 Law Times, 413). *Cp*, Conducting a Public-house, sub PEACEABLE.

A clause, in a lease against the use of the premises "as a Public-house," will prohibit the lessee from using them as a Beer-house (1 W. 4, c. 64, s. 31), and from selling "Wine to be consumed on the premises" under the Wine and Refreshment Houses Acts (*V.* 23 V. c. 27, s. 44). *V.* ON THE PREMISES.

Vf, as to covenant against a Public-house, RETAIL.

As to the duty of a Vendor, quà the License, on the sale of a Public-house; *V. Claydon* v. *Green*, 37 L. J. C. P. 226; L. R. 3 C. P. 511: *Day* v. *Luhke*, 37 L. J. Ch. 330; L. R. 5 Eq. 336: *Cowles* v. *Gale*, 40 L. J. Ch. 492; 7 Ch. 12: *Tadcaster Brewery Co* v. *Wilson*, cited AFFECTED.

V. ALEHOUSE: BEER-HOUSE: FREE PUBLIC HOUSE: HOTEL: SHOP.

"Public-house," used sometimes to be employed in the sense of a Toll-house (*R.* v. *St. Andrew the Less*, 10 B. & C. 742).

PUBLIC INSTITUTION.—*V.* PUBLIC CHARITY: PUBLIC SCHOOL: INSTITUTION.

"Public Institution," quà Births and Deaths Registration Act, 1874, 37 & 38 V. c. 88, "means, a prison, lock-up, workhouse, lunatic asylum, hospital, and any prescribed public or charitable institution" (s. 48); a like def for a like purpose is provided for Ireland, but between "workhouse" and "lunatic asylum" is inserted "barracks," and "religious" is added to "public or charitable institution" (s. 38, 43 & 44 V. c. 13).

PUBLIC INTEREST.—A matter of Public or General Interest, "does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected" (per Campbell, C. J., *R.* v. *Bedfordshire*, 4 E. & B. 541, 542; 24 L. J. Q. B. 84; 24 L. T. O. S. 268). *Vf*, *Seymour* v. *Butterworth*, 3 F. & F. 372: *Cox* v. *Feeney*, 4 Ib. 13: *Strauss* v. *France*, Ib. 1113: *Hunter* v. *Sharp*, Ib. 983; 15 L. T. 421: *R.* v. *Labouchere*, 14 Cox C. C. 419: *South Hetton Co* v. *North Eastern News Assn*, 1894, 1 Q. B. 133; 63 L. J. Q. B. 293; 69 L. T. 844; 42 W. R. 322; 58 J. P. 196.

V. FAIR COMMENT: GENERAL INTEREST: INTERESTED IN: PUBLIC: PUBLIC BENEFIT: PUBLIC CONCERN.

PUBLIC LANDS. — Gold and Silver Mines are not included in the "Public Lands" which, by the 11th Article of the Union of British Columbia to Canada, were to be "conveyed" by British Columbia to the Dominion of Canada (*A-G. British Columbia* v. *A-G. Canada*, cited MINE, at end).

PUBLIC LIBRARY. — "The Public Libraries Acts, 1892 and 1893," "The Public Libraries (Ireland) Acts, 1855 to 1894," "The Public Libraries (Scotland) Acts, 1887 and 1894"; *V.* Sch 2, Short Titles Act, 1896.

V. LIBRARY: PUBLIC MUSEUM.

PUBLIC MARKET. — A "Public Market," s. 5, 50 G. 3, c. 41, means, a "legally established" MARKET by grant from the Crown, not a merely *de facto* Market (*Benjamin* v. *Andrews*, 5 C. B. N. S. 299; 6 W. R. 692).

PUBLIC MEETING. — Quà Law of Libel Amendment Act, 1888, 51 & 52 V. c. 64, "Public Meeting," means, "any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of PUBLIC CONCERN, whether the admission thereto be general or restricted" (s. 4). A Sermon delivered in the usual course in a place of religious worship, is not at a "Public Meeting" within that def, and "a fair and accurate report" thereof is not entitled to the protection of s. 4 (per Wills, J., *Chaloner* v. *Lansdown*, 10 Times Rep. 290).

PUBLIC MONEY. — Quà Universities (Scot) Act, 1889, 52 & 53 V. c. 55, and, probably, of general acceptation, "'Public Moneys,' means, 'moneys provided by Parliament,' or 'moneys issuing out of the Consolidated Fund'" (s. 3). *Vf*, PARLIAMENT: PUBLIC FUNDS: PUBLIC OFFICE: PUBLIC TAXES.

"The Public Money Drainage Acts, 1846 to 1856"; *V.* Sch 2, Short Titles Act, 1896.

PUBLIC MUSEUM. — Stat. Def., Mortmain and Charitable Uses Act, 1888, 51 & 52 V. c. 42, s. 6 (4 iv).

V. LIBRARY: PUBLIC LIBRARY.

PUBLIC MUSIC. — The music at a Skating Rink is "Public Music," within 25 G. 2, c. 36 (*R.* v. *Tucker*, cited PUBLIC DANCING).

V. PUBLIC BALL.

PUBLIC NATURE. — *V.* PUBLIC BOOK: PUBLIC DOCUMENT: PUBLIC PURPOSE: NATURE: RECORD.

PUBLIC NOTARY. — *V.* NOTARY PUBLIC.

PUBLIC NOTICE. — A "Public Notice or Advertisement," Sch to Medicines Stamp Act, 1812, 52 G. 3, c. 150, is not confined to an announcement in a newspaper; the phrase includes, a statement in a Trade Price List (*Smith* v. *Mason*, 1894, 2 Q. B. 363; 63 L. J. M. C. 201; 70 L. T. 909; 58 J. P. 432).

V. PROCLAMATION.

PUBLIC NUISANCE. — This is another name for a COMMON NUISANCE. *Vf*, NUISANCE.

PUBLIC OCCUPATION. — *V.* PUBLIC TRADE OR BUSINESS.

PUBLIC OFFICE. — *V.* OFFICE: PUBLIC OFFICER.

An employ in an Incorporated Co, such as the Bank of Scotland, is a "Public Office, or Employment of Profit" within Sch E, Income Tax Acts, 1842, and 1853 (*Tennant* v. *Smith*, 1892, A. C. 150; 61 L. J. P. C. 11; 66 L. T. 327; 56 J. P. 596); so, of a National Schoolmaster, "because the salary is paid by persons whose position as Managers of the school is recognized by Act of Parliament, and is paid out of sums of money principally contributed from the taxes of the country in order that the persons to whom it is paid may discharge a duty which is recognized as part of the PUBLIC SERVICE" (per Pollock, B., *Bowers* v. *Harding*, 1891, 1 Q. B. 560; 60 L. J. Q. B. 474): *V.* PUBLIC MONEY. A Bursar of an Oxford College, who is not on the foundation and receives a salary, holds such a "Public Office" (*Langston* v. *Glasson*, 1891, 1 Q. B. 567; 60 L. J. Q. B. 356; 65 L. T. 159). *Note*: A person assessable on a "Public Office, or Employment" must be assessed under Sch E, and cannot be assessed under Case 2, Sch D, as on an "Employment or VOCATION" (per Ld Watson, *Tennant* v. *Smith*, sup).

"Public Office"; Stat. Def., Corrupt and Illegal Practices Prevention Act, 1883, s. 64; Public Bodies Corrupt Practices Act, 1889, 52 & 53 V. c. 69, s. 7; Superannuation Act, 1892, 55 & 56 V. c. 40, s. 4.

"Public *Annual* Office," s. 6, 3 & 4 W. & M. c. 11, includes, the office of Assessor and Collector of Land or Assessed Taxes, or of a Churchwarden (*R.* v. *Anderson*, cited SERVED); so, *semble*, of a Clerk to Land Tax Commrs (*R.* v. *St. Martin in the Fields Commrs*, 1 T. R. 146).

"Public *Civil* Office," quà Pensions Commutation Act, 1871, 34 & 35 V. c. 36, "means, any Office (other than that of an Officer in Her Majesty's Naval or Land Forces) the holder of which is paid his remuneration out of moneys provided by Parliament for supply services" (s. 2). *V.* PUBLIC MONEY.

Semble, the Mastership of a City Company, is a Public Office *of Trust* (*R.* v. *Neal*, Cunningham, 267).

V. PUBLIC TRADE OR BUSINESS: WHOLLY.

PUBLIC OFFICER. — *V.* OFFICER: PUBLIC OFFICE.

"Every one who is appointed to discharge a PUBLIC DUTY, and receives a compensation in whatever shape, whether from the Crown or otherwise, is constituted a Public Officer," *e.g.* a Bishop, Clergyman, or Lord of a Manor, or a Corporation with a grant of lands which grant imposes a public duty, and, as such, is liable to an action for injury to an individual arising from abuse of the Office, either by act of omission or commission (*Henly* v. *Lyme*, 5 Bing. 107, 108).

In *Re Mirams* (1891, 1 Q. B. 594; 60 L. J. Q. B. 397, cited also INCOME), Cave, J., held that a Charge on the Stipend of a Workhouse Chaplain was not against PUBLIC POLICY as being on the emoluments of a Public Officer: he said "to make the Office a Public Office the pay must come out of national, and not out of local, funds, — the Office must be Public in the strict sense of that term. It is not enough that the due discharge of the duties should be for the Public Benefit in a secondary and remote sense"; he also said, "It has never been held that a Clergyman having the Cure of Souls was a Public Officer": *Sv*, *Henly* v. *Lyme*, sup.

"Public Officer" of a Bank; *V.* Country Bankers Act, 1826, 7 G. 4, c. 46, ss. 4, 5, 8, 9.

PUBLIC PARK. — Quà Mortmain and Charitable Uses Act, 1888, "'Public Park,' includes, any park, garden, or other land, dedicated or to be dedicated to the recreation of the PUBLIC" (subs. 4 i, s. 6).

V. PARK.

PUBLIC PAROCHIAL FUNDS. — By 56, G. 3, c. 139, s. 11, a parish Indenture of Apprenticeship at the expense of "Public Parochial Funds" is invalid unless approved by two justices ("under their hands and seals"; *V.* VOID): — such funds mean, those of some one particular parish having an interest in the transaction (*R.* v. *St. Peter's*, 1 B. & Ad. 916); and though property given "for the benefit of a parish in general terms might probably be considered as a parochial fund," yet it would not be so if "confined to a particular specified purpose, and not intended to go generally in aid of the parish funds" (*R.* v. *Halesworth*, 1 L. J. M. C. 71; 3 B. & Ad. 717: *Vf*, *R.* v. *Quainton*, 3 L. J. M. C. 93; 1 A. & E. 133; 3 N. & M. 289).

PUBLIC PASSAGE. — The bridges over the Regent's Canal, London, might very well answer the description of a "Public Passage or Place," but they are not "BUILT UPON, or in building" within s. 3, 55 G. 3, c. XXV (*Arnell* v. *Regent's Canal Co*, cited PASSAGE). *V.* PUBLIC BUILDING: PUBLIC ROAD.

PUBLIC PLACE. — A Place is public, within the Criminal law against Indecency, "if it is so situated that what passes there can be

seen by any considerable number of persons if they happen to look" (Steph. Cr. 115). *V.* PLACE: OPEN.

The declaration in a Private Act that a Place of usual resort is a "Public Place," does not imply a dedication to the public of anything except the surface; and the Local Authority is not entitled to erect public conveniences under the surface of such "Public Place" (*Tunbridge Wells* v. *Baird*, 1896, A. C. 434; 65 L. J. Q. B. 451; 74 L. T. 385; 60 J. P. 788). *Vf*, VEST.

"Public Place"; Stat. Def., Public Statues (Metropolis) Act, 1854, 17 & 18 V. c. 33, s. 1; 30 & 31 V. c. 134, s. 3; Licensing Act, 1902, s. 8.

"Public and *Conspicuous* Place," s. 4, 45 & 46 V. c. 20, for Publication of Rates; *V. R.* v. *Wolferstan*, 1893, 2 Q. B. 451; 62 L. J. M. C. 148; 69 L. T. 429; 42 W. R. 176; 58 J. P. 133.

V. STREET, towards end: PLY.

PUBLIC POLICY.—"Is a very unruly horse, and when once you get astride of it you never know where it will carry you" (per Burrough, J., *Richardson* v. *Mellish*, 2 Bing. 252): this saying was adopted and approved by Esher, M. R., *Cleaver* v. *Mutual Reserve Assn*, 1892, 1 Q. B. 147; 61 L. J. Q. B. 128; 66 L. T. 220. "Judges are more to be trusted as interpreters of the Law than as expounders of what is called 'Public Policy'" (per Cave, J., *Re Mirams*, cited PUBLIC OFFICER). *Vh*, *Egerton* v. *Brownlow*, 4 H. L. Ca. 1; 23 L. J. Ch. 348: per Kekewich, J., *Davies* v. *Davies*, 36 Ch. D. 364: Matthews' Restraint of Trade, Introd. ch. *Cp*, INTENTION: CHARGE OF FRAUD. *Sv*, PUBLIC.

PUBLIC PREACHING.—*V.* PUBLIC READING: Phil. Ecc. Law, Part 3, ch. 11, s. 9.

PUBLIC PRISON.—Stat. Def., 44 & 45 V. c. 58, ss. 64, 65.
V. PRISON.

PUBLIC PROSECUTION.—A PROSECUTION instituted by the Director of Public Prosecutions under Prosecution of Offences Act, 1879, 42 & 43 V. c. 22, is a Public Prosecution (*Marks* v. *Beyfus*, 59 L. J. Q. B. 479; 25 Q. B. D. 494; 38 W. R. 705).

PUBLIC PROSECUTOR.—In England, the Public Prosecutor, or (to use his exact legal title) "Director of Public Prosecutions" is the Solicitor to the Treasury (s. 2, 47 & 48 V. c. 58).

Quà Bail (Scot) Act, 1888, 51 & 52 V. c. 36, "Public Prosecutor," means, "any prosecutor acting for the PUBLIC INTEREST in the High Court of Justiciary, or the Sheriff Court" (s. 9).

PUBLIC PURPOSE.—A bequest for charitable "or other purposes" is uncertain and bad (*Ellis* v. *Selby*, 4 L. J. Ch. 69; 5 Ib. 214; 7 Sim. 352; 1 My. & C. 286); but if given for charities and "other

publix purposes" it is good, the word "public" indicating that the other purposes are to be legally, if not popularly called, charitable (*Dolan* v. *Macdermot*, L. R. 5 Eq. 60; 3 Ch. 676. *Vh*, 1 Jarm. 215, 216).

V. PUBLIC CHARITY.

A Workhouse is a "House," and the supply of water to it by a Water Co is for "Domestic," and not "for Public, purposes" (*Liskeard Union* v. *Liskeard W. W. Co*, 7 Q. B. D. 505).

Quà Electric Lighting Act, 1882, 45 & 46 V. c. 56, "Public Purposes," *means*, "lighting any Street or any Place belonging to or subject to the control of the Local Authority, or any Church or Registered Place of Public Worship, or any Hall or Building belonging to or subject to the control of any Public Authority, or any Public Theatre; but shall not include any other purpose to which electricity may be applied": "*Private* Purposes," *includes*, "any purposes whatever to which electricity may, for the time being, be applicable not being Public Purposes; except the transmission of any Telegram" (subss. 3, 4, s. 3). *V.* s. 36, Ib., for def of "Public Purposes" quà Scotland.

Quà rateability or non-rateability of property to Poor Rate, a Public Purpose is, *semble*, synonymous with a Crown Purpose; *V.* per Bowen, L. J., *Showers* v. *Chelmsford Assessment Committee*, 1891, 1 Q. B. 339; 60 L. J. M. C. 55; 64 L. T. 755; 39 W. R. 231: per Whiteside, C. J., *Rep. Church Body* v. *Commr of Valuation*, Ir. Rep. 6 C. L. 566: *Limerick* v. *Commr of Valuation*, Ib. 420: BENEFICIAL, p. 181: *Cp*, *Belfast Harbour Commrs* v. *Commr of Valuation*, 1897, 2 I. R. 516: *Commr of Valuation* v. *Sligo Harbour*, 1899, 2 I. R. 214.

The property used for the purposes of the Irish Church Representative Body, is not "altogether of a Public *Nature*, or used exclusively for CHARITABLE PURPOSES," within the exemption from rating given by ss. 15, 16, Valuation (Ir.) Act, 1852, 15 & 16 V. c. 63 (*Rep. Church Body* v. *Commr of Valuation*, Ir. Rep. 6 C. L. 561).

A Savings Bank, is not a "Public or Charitable Purpose" within s. 1, 20 & 21 V. c. 54, repld, s. 80, Larceny Act, 1861 (*R.* v. *Fletcher*, L. & C. 180; 31 L. J. M. C. 206; 6 L. T. 545).

V. PUBLIC CHARITY.

PUBLIC RACE.—*V.* RACE.

PUBLIC READING.—"In *Barnes* v. *Shore* (1 Rob. Ecc. 397), I said what I now repeat, that 'where two or three are gathered together,' who do not strictly form a part of a FAMILY, there is a 'Congregation,' and the reading to them the Service of the Church is a reading 'in Public'" (per Sir H. J. Fust, *Freeland* v. *Neale*, 1 Rob. Ecc. 651). *Cp*, "Open Prayer," sub OPEN. *Vf*, PRIVATE HOUSE.

PUBLIC RECEPTION.—"Public Reception of Pregnant Women"; *V. R.* v. *Manchester*, cited HOSPITAL, towards end.

PUBLIC RECORDS. — *V.* RECORD.

PUBLIC REFRESHMENT. — Building kept for "Public Refreshment, Resort, and Entertainment," s. 6, 23 V. c. 27; *V.* ENTERTAINMENT: KEEP: REFRESHMENT HOUSE.

PUBLIC RELIGIOUS WORSHIP. — "Place appropriated to Public Religious Worship"; *V. Hornsey* v. *Brewis*, cited INCUMBENT.

"Place of Religious Worship"; *V.* PLACE, towards end.

PUBLIC RESORT. — *V.* PLACE: RESORT.

PUBLIC RIGHT. — Quà Artillery and Rifle Ranges Act, 1885, 48 & 49 V. c. 36 (*V.* subs. 3, s. 3), and quà Military Lands Act, 1900, 63 & 64 V. c. 56 (*V.* subs. 4, s. 2), "Public Right," "means any right of navigation, anchoring, grounding, fishing, bathing, walking, or recreation."

PUBLIC ROAD. — "A Road becomes Public by reason of a dedication of the right of passage to the PUBLIC by the owner of the soil, and of an acceptance of the right by the Public or the Parish" (per Littledale, J., *R.* v. *Mellor*, 1 B. & Ad. 37). *Vf*, *R.* v. *St. Benedict*, 4 B. & Ald. 447: *R.* v. *Leake*, 5 B. & Ad. 469: *Selby* v. *Crystal Palace Gas Co*, 30 Bea. 606; 10 W. R. 432, 636: *Grand Junction Canal Co* v. *Petty*, 21 Q. B. D. 273; 57 L. J. Q. B. 572.

"Public Road," quà Telegraph Acts; Stat. Def., 26 & 27 V. c. 112, s. 3; 41 & 42 V. c. 76, s. 2.

V. HIGHWAY: PUBLIC HIGHWAY: PUBLIC PASSAGE: PUBLIC WAY: ROAD: TURNPIKE ROAD.

PUBLIC SALE. — *V.* OPEN.

PUBLIC SCHOOL. — The City of London School, though partly supported by the fees payable by the scholars, is a "Public School" within Sch A, No. VI (Allowances), to s. 60, Income Tax Act, 1842, 5 & 6 V. c. 35 (*Blake* v. *London Corp*, 56 L. J. Q. B. 148, 424; 19 Q. B. D. 79; 35 W. R. 791); but some charitable element is implied in the phrase (*Needham* v. *Bowers*, 21 Q. B. D. 442). A Theological College for educating ministers for the Free Church of Scotland, is not a "Public School" within the Allowances (*Bain* v. *Free Church of Scotland*, W. N. (97) 140).

In the firstly cited case Denman, J., said that, "a definition of 'Public School' is nowhere to be found either at Common Law, or in any law book, or Act of Parliament. It is, therefore, a very mixed question of law and fact, though in its nature it is very much a question of fact." But the statement was not strictly accurate, for quà Education (Scot) Act, 1872, 35 & 36 V. c. 62, "Public School" had been defined as meaning

"any Parish or Burgh School, or any school under the management of a School Board established under this Act" (s. 1).

"Public Institutions, such as Libraries, Museums, Institutions for the promotion of Science and Art, Colleges, and Schools," s. 2, Charitable Gifts Duties Exemption (New Zealand) Act, 1883; — The Dilworth Ulster Institute, of Auckland, New Zealand, is a "Public School" within that exemption, although the recipients of the benefits are to be trained in the doctrines of a particular Church and chosen from specified Localities, for it has the distinguishing elements of a Public School in that it is an Educational Endowment in perpetuity, the trustees of which have no personal interest in it, and the beneficial interest in which belongs inalienably to the Public, or to members of the Public (*Dilworth* v. *Commr of Stamps*, 1899, A. C. 99; 68 L. J. P. C. 1; 79 L. T. 473).

"Public School *Accommodation*"; Stat. Def., 54 & 55 V. c. 56, s. 5.

"The Public Schools *Acts*, 1868 to 1873"; *V.* Sch 2, Short Titles Act, 1896.

V. CHARITY SCHOOL: HOSPITAL: PUBLIC ELEMENTARY SCHOOL.

PUBLIC SECURITIES. — "Public Securities" in the Stock Jobbing Act, 7 G. 2, c. 8, did not include FOREIGN Securities (*Wells* v. *Porter*, 2 Bing. N. C. 722; 5 L. J. C. P. 250). In *the* Bosanquet, J., said, "When we find the expression 'PUBLIC STOCKS' we must intend the Public Stocks of this country": *Vf*, *Hewitt* v. *Price*, 4 M. & G. 355.

Semble, "Public Securities," in an Investment Clause, is a wider term than "GOVERNMENT SECURITIES" (per Shadwell, V. C., *Sampayo* v. *Gould*, 12 Sim. 435).

PUBLIC SERVICE. — The "Public Service," — an existing contract for or on account of which disqualifies the Contractor from being elected to the House of Commons (22 G. 3, c. 45, s. 1), — means, the Government of the United Kingdom. Probably, a contract made with an agent of the Government, though the payment thereunder would not be out of the PUBLIC FUNDS of Great Britain, *e.g.* one with the Secretary of State for India, would be within the phrase (*Royse* v. *Birley*, 38 L. J. C. P. 203; L. R. 4 C. P. 296, espy jdgmt of Brett, J.); but the contract must be immediately with the Government or its agent; therefore, if an Army Officer, having an allowance for the clothing of his men, personally enters into a contract for the supply of such clothing, that is not a contract "for or on account of the Public Service" within the section (*Thompson* v. *Pearce*, 1 Brod. & B. 25); a contract for the supply of goods to the State Lunatic Asylum at Broadmoor is within the section (*Royse* v. *Birley*, sup). *Vf*, UNDERTAKE: KNOWINGLY.

But a requisition which the Board of Trade may be authorized to make on a Railway Co as being "requisite for the Public Service," is not nar-

rowed to the service of the Government; the phrase includes "any service which would supply wants felt by the PUBLIC, or which the Public might reasonably be desirous of having on its own behalf" (*Re Launceston Ry Acts*, 3 Ry & Can Traffic Ca. 139).

Quà Treasury Chest Fund Act, 1877, 40 & 41 V. c. 45, "'Public Service,' includes Colonial Service" (s. 6).

V. PARLIAMENT: POLICE: PUBLIC OFFICE.

PUBLIC SINGING. — By simply providing a piano forte and letting his customers amuse themselves with playing and singing, a PUBLICAN does not "keep or use" his premises for "Public Singing or Music" within s. 51, P. H. Act, 1890 (*Brearley* v. *Morley*, 1899, 2 Q. B. 121; 68 L. J. Q. B. 722; 80 L. T. 801; 47 W. R. 574; 63 J. P. 582). *Vf*, KEEP, p. 1039.

V. PUBLIC BALL: PUBLIC DANCING.

PUBLIC SITUATION. — "Public and Conspicuous Situation," s. 23, Parliamentary Voters Registration Act, 1843, 6 V. c. 18; *V. Hildred* v. *Ingram*, 64 L. J. M. C. 57.

Cp, PUBLIC PLACE.

PUBLIC STATUE. — Stat. Def., Public Statues (Metropolis) Act, 1854, 17 & 18 V. c. 33, s. 1; the Sch to the Act contains a list of the then Public Statues in the Metropolis.

PUBLIC STATUTE. — *V.* PUBLIC ACT OF PARLIAMENT.

PUBLIC STOCKS. — Quà Dividends and Stock Act, 1869, 32 & 33 V. c. 104, "Public Stocks," means and includes "any Stock forming part of the National Debt, and transferable in the books of the Bank" (s. 6).

V. PUBLIC SECURITIES: GOVERNMENT STOCK.

PUBLIC STORES. — *V.* STORES.

PUBLIC STREET. — *V.* STREET: PLY.

PUBLIC TAX. — "Public Taxes, or Levies of the Town or Parish," s. 6, 3 & 4 W. & M. c. 11; *V, R.* v. *St. Thomas*, L. R. 5 Q. B. 371; 39 L. J. M. C. 83; 18 W. R. 997; 22 L. T. 379: *Vf*, TAXES.

Poor Rate is a "Public Tax," quà an eleemosynary exemption (*R.* v. *Scot*, 3 T. R. 602).

V. RATE.

PUBLIC THOROUGHFARE. — *V.* HIGHWAY: NEAREST: PUBLIC HIGHWAY: PUBLIC ROAD: TRAVELLER.

PUBLIC TRADE or BUSINESS. — A Girls' School is a breach of a covenant not to suffer "any Public Trade or Business" to be carried on (*Wickenden* v. *Webster*, 25 L. J. Q. B. 264; 6 E. & B. 387; 27 L. T. O. S. 122: BUSINESS). *Cp*, PUBLIC OFFICE.

Things delivered to a person exercising a "Public Trade," — to be carried, wrought, worked-up, or managed, in the way of his trade or employ, — are exempt from DISTRESS (*Simpson* v. *Hartopp*, Willes, 512: 1 Sm. L. C. 463: *V.* DELIVERY). On that, Patteson, J., said, "I do not know what is meant by the phrase 'Public Trade'" (*Gibson* v. *Ireson*, 3 Q. B. 44); but each of the following is a "Public Trade" within this rule, — Auctioneer (*Adams* v. *Grane*, 1 Cr. & M. 380; 2 L. J. Ex. 105: *Williams* v. *Holmes*, 8 Ex. 861; 22 L. J. Ex. 283); Butcher (*Brown* v. *Shevill*, 2 A. & E. 138; 4 L. J. K. B. 50); Carrier (*Gisbourn* v. *Hurst*, 1 Salk. 249); Clothier, Farrier, Innkeeper, Miller, Tailor, Weaver (Co. Litt. 47 a: *Rede* v. *Burley*, Cro. Eliz. 596); Factor or Commission Agent (*Gilman* v. *Elton*, 3 Brod. & B. 75: *Findon* v. *M'Laren*, 6 Q. B. 891; 14 L. J. Q. B. 183); Pawnbroker (*Swire* v. *Leach*, 34 L. J. C. P. 150; 18 C. B. N. S. 479); Warehouseman (*Miles* v. *Furber*, 42 L. J. Q. B. 41; L. R. 8 Q. B. 77; 27 L. T. 756; 21 W. R. 262); Wharfinger (*Thompson* v. *Mashiter*, 1 Bing. 283: *Matthias* v. *Mesnard*, 2 C. & P. 353). *Vh*, Rosc. N. P. 724–726: Woodf. 704–711: Redman, 351–354: Fawcett, 333–339.

The only public businesses which (under pain of indictment or action) must be carried on by those who profess them (if they are at the time able to do so) are, *semble*, those of an Innkeeper, and, possibly, a Carrier (per Parke, B., *Muspratt* v. *Gregory*, 1 M. & W. 653).

PUBLIC TRAFFIC. — A Railway "authorized to be open for Public Traffic," means, "'open' for Public Traffic generally, and not merely open for Mineral Traffic" (per Lindley, M. R., *Great Central Ry* v. *Metrop Ry*, 15 Times Rep. 86). *V.* OPEN: RAILWAY: TRAFFIC.

PUBLIC UNDERTAKING. — *V. Gardner* v. *L. C. & D. Ry*, 36 L. J. Ch. 323; 2 Ch. 201: *Blaker* v. *Herts & Essex W. W. Co*, 58 L. J. Ch. 497: UNDERTAKING.

PUBLIC USE. — A "Public Use" of an INVENTION does not mean a general use, but a use in public as distinguished from one that is secret (*Carpenter* v. *Smith*, 11 L. J. Ex. 213; 9 M. & W. 300; 1 Webster, 530: *V. Patterson* v. *Gas Light & Coke Co*, 47 L. J. Ch. 402; 3 App. Ca. 239: *Stead* v. *Williams*, 2 Webster, 136: *Brereton* v. *Richardson*, 1 Pat. Ca. 173).

The "Public Use" of a TRADE-MARK, s. 17, Patents, &c, Act, 1888, is, not use since registration but, use and the reputation gained by it at the time of the Application for Registration; continued registration is

not equivalent to continued user (*Re Batt*, 1898, 2 Ch. 432; 67 L. J. Ch. 576; 79 L. T. 206; in H. L. nom. *Batt* v. *Dunnett*, 1899, A. C. 428; 68 L. J. Ch. 557; 81 L. T. 94).

V. USE.

A Churchyard is a "PLACE dedicated to Public Use" (*R.* v. *Jones*, cited METAL).

PUBLIC WALKS.—"Public Walks and Pleasure Grounds"; *V.* PLEASURE.

PUBLIC WASH-HOUSE.—*V.* BATH.

PUBLIC WAY.—"By Public Way, I mean, not merely a Mail-Coach Road but, every WAY which is common to the Queen's subjects" (per Pennefather, B., *Devoy's Case*, Ir. Circuit Rep. 74, 75). *Vf*, HIGHWAY: PUBLIC ROAD: *Campbell* v. *Lang*, 1 Macq. 451.

PUBLIC WELL.—A Well, though situate in private ground, which is used gratuitously, and as of RIGHT, by the inhabitants in the vicinity for the purpose of drawing water, is a "Public Well" within s. 89 (4), P. H. Scotland Act, 1867, repld s. 126 (3), P. H. Scotland Act, 1897 (*Smith* v. *Archibald*, 5 App. Ca. 489); a definition which applies to the similar enactment in s. 74, P. H. Ireland Act, 1878 (*Dungarvan Guardians* v. *Mansfield*, 1897, 1 I. R. 420). *V.* SPRING.

PUBLIC WHARF.—A Public WHARF or QUAY is one which is common to all the King's subjects; a claim of a "Public Wharf," without more, involves that it is claimed by immemorial usage (*Bolt* v. *Stennott*, 8 T. R. 606).

PUBLIC WORK.—Stat. Def., Grand Jury (Ir) Act, 1872, 35 & 36 V. c. 42, s. 1; Loc Gov (Ir) Act, 1898, s. 109.

"The Public Works (Ireland) Acts, 1831 to 1886"; *V.* Sch 2, Short Titles Act, 1896.

"Commrs of Public Works"; *V.* COMMISSIONERS, p. 343.

V. WORK.

PUBLIC WORSHIP.—*V.* PUBLIC RELIGIOUS WORSHIP: WORSHIP.

V. Public Worship Regulation Act, 1874, 37 & 38 V. c. 85, on *whv* BOOK OF COMMON PRAYER: CIRCUMSTANCES: MAY: OPINION.

PUBLICAN.—The prohibition, in a Lease, of the business "of a Victualler or Publican," will include a Beer-shop (1 W. 4, c. 64, s. 31).

"Victualler"; *V.* Article, 52 J. P. 398, 423. Primarily, "Victualler" simply means, "he who sells Victuals" (Cowel, *Vitteler*); the restriction of the word to one who keeps a PUBLIC HOUSE is modern (*Tyson* v. *Smith*, 9 A. & E. 410).

PUBLICATION: PUBLISH.—"Publication" is accomplished in a variety of ways according to the subject-matter.

A BOOK or other literary matter is published by being surrendered by its author for public use. Thus the sale of a MS. copy of a book is a publication of it (*White* v. *Geroch*, 1 Chitty, 26; 2 B. & Ald. 298). But a circulation amongst friends gratuitously, or to pupils, *e.g.* by lectures, is not (*Queensbury* v. *Shebbeare*, 2 Eden, 329: *Prince Albert* v. *Strange*, 18 L. J. Ch. 120; 2 D. G. & S. 652; 1 Mac. & G. 25; 1 H. & Tw. 1: *Caird* v. *Sime*, 57 L. J. P. C. 2; 12 App. Ca. 326: *Palmer* v. *Dewitt*, 23 L. T. 823: *Bartlett* v. *Crittenden*, 4 McLean, 300, cited Copinger on Copyright, 3 ed., 117); so, of a circulation amongst subscribers for their private use (*Exchange Telegraph Co* v. *Central News*, 1897, 2 Ch. 48; 66 L. J. Ch. 672). Nor is the use of letters as evidence in court, a publication (7 Jarman Conv. by Sweet, 628, *n*). *V.* FIRST PUBLICATION: PRODUCED.

A NEWSPAPER, or PERIODICAL, is published whenever and wherever it is offered to the Public by the proprietor (*McFarlane* v. *Hulton*, 1899, 1 Ch. 884; 68 L. J. Ch. 408; 80 L. T. 486; 47 W. R. 507).

Acting a *Play* is not a "publication" of it, according to the primary meaning of that word (*Palmer* v. *Dewitt*, sup: Copinger on Copyright, 3 ed., 329 *et seq*); but for the purposes of the Copyright Acts the first public representation of a drama or musical composition is equivalent to the first publication of a book (5 & 6 V. c. 45, s. 20): *Vf*, per James, L. J., *Boucicault* v. *Chatterton*, cited FIRST PUBLICATION.

A *Sculpture*, or Bust, is published (54 G. 3, c. 56, s. 1) by being publicly exhibited (*Turner* v. *Robinson*, 10 Ir. Ch. Rep. 516). *V.* PRODUCED.

"Publication" of a DESIGN; *V. Blank* v. *Footman*, 57 L. J. Ch. 909; 39 Ch. D. 678; 59 L. T. 507; 36 W. R. 921.

The "Prior Publication" of an INVENTION which will invalidate a *Patent*, means the prior existence in this country of some document to which the public have access, containing such a description of the invention as will enable a practical man to carry it out from the description given (Terrell on Patents, 3 ed., 58); such access being of such a kind as to raise a reasonable probability that the knowledge on which the invention is based might have been obtained from the document (per Pearson, J., *Otto* v. *Steel*, 55 L. J. Ch. 198; 31 Ch. D. 241; 54 L. T. 157; 34 W. R. 289; disapproving of the *dicta* in *Lang* v. *Gisborne*, 31 L. J. Ch. 769; 31 Bea. 133, and *Plimpton* v. *Malcolmson*, 45 L. J. Ch. 505; 3 Ch. D. 531). *V.* ANTICIPATION: FIRST INVENTOR.

An AWARD is published, and "ready to be delivered," as soon as it is completed and executed by the arbitrator (*Brooke* v. *Mitchell*, 6 M. & W. 473: Russell on Arb., 8 ed., 175); but, *semble*, even where the words used are "ready to be delivered" the Award may be by parol (*V.* DELIVER).

Publication of a BYE LAW; *V. Motteram* v. *Eastern Counties Ry*,

29 L. J. M. C. 57; 7 C. B. N. S. 58: *Fielding* v. *Rhyl*, 3 C. P. D. 272: Arnold on Municipal Corporations, 4 ed., 39.

A LIBEL is published, quà a Civil Action, when (its contents being known, or negligently unknown, *Emmens* v. *Pottle*, 55 L. J. Q. B. 51; 16 Q. B. D. 354; 53 L. T. 808; 34 W. R. 116; *vthe*, *Vizetelly* v. *Mudie's Library*, 1900, 2 Q. B. 170; 69 L. J. Q. B. 645) it is communicated to any one (even the libelled's wife, *Wenman* v. *Ash*, 13 C. B. 836), other than the person libelled; but the qualification contained in the last five words does not apply in Criminal proceedings for libel (Steph. Cr. 199: Odgers, 454). *Cp*, quà Civil libel, *Pullman* v. *Hill* (1891, 1 Q. B. 524; 60 L. J. Q. B. 299) with *Boxius* v. *Goblet* (1894, 1 Q. B. 842; 63 L. J. Q. B. 401). *Vf*, Odgers, ch. 6: 10 Encyc. 535–540.

A forthcoming LOTTERY is published by publishing a Newspaper containing an advertisement of it (*King* v. *Smith*, 4 T. R. 414).

Publication of a RATE; *V. R.* v. *Whipp*, 4 Q. B. 141; 12 L. J. M. C. 64; *R.* v. *Wolferstan*, 1893, 2 Q. B. 451; 62 L. J. M. C. 148; 69 L. T. 429; 42 W. R. 176; 58 J. P. 133: Arch. P. L. Part 5.

Publication of a WILL. — *V.* DELIVERY: *Vincent* v. *Sodor and Man, Bp.*, 8 C. B. 905; 19 L. J. Ex. 366: *Johns* v. *Dickinson*, 8 C. B. 934: Re-Publication, or Re-Execution, *V. Re Truro*, 35 L. J. P. & M. 89; L. R. 1 P. & D. 201: *Re Rendle*, 68 L. J. P. D. & A. 125: *French* v. *Hoey*, 1899, 2 I. R. 472.

V. DEFINITIVE.

PUBLISHER. — "Publisher," ss. 13, 16, 24, Copyright Act, 1842, 5 & 6 V. c. 45, means the first Publisher (*Weldon* v. *Dicks*, 10 Ch. D. 247; 48 L. J. Ch. 201: *Coote* v. *Judd*, 23 Ch. D. 727; 53 L. J. Ch. 36).

PUER. — A limitation to "seniori puero" of the body of A. has been construed as of either sex, and that an eldest daughter took before a younger son (*Humfreston's Case*, Dyer, 337). *Vf*, Hargrave's *n* 3 to Co. Litt. 176 b. *Cp*, ELDEST: HEIRS OF THE BODY.

PUFFER. — A "Puffer" at a sale by auction of lands (and, *semble*, generally) means, "a person appointed to bid on the part of the Owner" (s. 3, 30 & 31 V. c. 48): *Vth*, *Shimmin* v. *Bellew*, Ir. Rep. 1 Eq. 289. *Vf*, RESERVED BIDDING.

Quà this word in a Pleading; *V. Jones* v. *Quinn*, 2 L. R. Ir. 516.

PUISNE. — A Puisne JUDGE in England, was one of the Justices of the old Courts of King's Bench, or Common Pleas, or one of the Barons of the old Court of Exchequer, other than the Chief (3 Bl. Com. 41, 45).

Quà Jud. Act (Ir) 1887, "'Puisne Judges of the High Court,' shall mean, Judges of the High Court who are not *ex officio* Judges of the Court of Appeal" (s. 5).

A Puisne MORTGAGEE or Incumbrancer, is a mtgee other than and subordinate to the First Mtgee, from whom accordingly he may purchase the mortgaged property when the First Mtgee is selling under a power of sale (*Shaw* v. *Bunny*, 34 L. J. Ch. 257; 33 Bea. 494; 2 D. G. J. & S. 468). As to the Redemption of first mtge by Puisne Mtgee, *V.* Fisher, ss. 982, 1712, 1954; 1934, 1935.

Cp, MESNE: PREMIER.

PULL DOWN.—*V.* DEMOLISH: TAKE DOWN: UNNECESSARY INCONVENIENCE.

PUNCTUAL.—Where a thing has to be done "punctually" on a day named, that means, on the very day; any day after the day named is too late (*Leeds Theatre Co* v. *Broadbent*, 1898, 1 Ch. 343; 67 L. J. Ch. 135; 77 L. T. 665; 46 W. R. 230: *Hicks* v. *Gardner*, 1 Jur. 541). Therefore, a mortgage stipulation that it is not to be called in, or that its interest is to be reduced, if the interest is "punctually" paid, will only be operative if such interest is paid on or before the day or days named (*Ib.*). *Vf*, *Simpson* v. *Manley*, cited CREDIT.

But for the purpose of a clause in a Charter-Party authorizing the ship-owner to withdraw the vessel if there be failure in "the punctual and regular payment" of the monthly hire, Bigham, J., held, that a tender, made immediately after a notice withdrawing the vessel because there had been one default, was not too late, such tender being only two days after the due day (*Nova Scotia Steel Co* v. *Sutherland Co*, 5 Com. Ca. 106).

Cp, "Duly paid," sub DULY.

PUPIL.—*V.* INFANT.

PUR AUTRE VIE.—"By common speech, he which holdeth for terme of his owne life, is called tenant for terme of his life,"—*i.e.* TENANT FOR LIFE,—"and he which holdeth for terme of another's life, is called tenant for terme of another man's life,"—*i.e.* Tenant Pur Autre Vie (Litt. s. 56: *Vth*, Co. Litt. 41 b). *Vf*, Wms. R. P. 19: Challis, 325: Goodeve, 36: "Special Occupant," sub SPECIAL.

Though an estate Pur Autre Vie is one of freehold (Litt. s. 57), yet it is not an "Estate of INHERITANCE" within s. 2, Dower Act, 1833, 3 & 4 W. 4, c. 105; nor, where it is severed from the inheritance, *e.g.* by a possible entail, is it "Equal to an Estate of Inheritance in Possession" within the same section (*Re Michell*, 1892, 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375).

PURCHASE.—Speaking technically, a person acquires by "Words of Purchase" and is a "Purchaser" when he obtains title in any other mode than by descent or devolution of law (Litt. s. 12: Co. Litt. 18 b: Fearne Cont. Rem. 79: Termes de la Ley: Jacob: *Weeks* v. *Birch*, 69

L. T. 759); a devisee under a Will is accordingly a purchaser in law (Wms. R. P., ch. 4: *Vf*, Watson Eq. 201, 202). *Cp*, LIMITATION. *V.* BY PURCHASE: PURCHASER.

But in the Statute of Elizabeth (27 Eliz. c. 4, s. 2) relating to Fraudulent Conveyances as against those "as have *purchased*, or shall afterwards purchase" lands, tenements, and hereditaments, "the word 'Purchase,' of course, refers to cases of selling and purchasing in the ordinary and vulgar acceptation of the word, and not in the technical sense of any person who obtains lands otherwise than by descent" (May on Fraudulent Conveyances, 2 ed., 217). A "purchaser" under this statute, must be "a purchaser for money or other valuable consideration" (*Upton* v. *Bassett*, cited in *Twyne's Case*, 3 Rep. 83 a: *V.* VALUABLE. *Sv*, 56 & 57 V. c. 21, cited GOOD). This definition includes,—

Mortgagees, legal or equitable (*Dolphin* v. *Aylward*, L. R. 4 H. L. 486; 23 L. T. 636: *Lister* v. *Turner*, 5 Hare, 281), even if the mortgage be for a past consideration (*Barton* v. *Vanheythuysen*, 11 Hare, 126: per Cranworth, C., *Beavan* v. *Oxford*, 6 D. G. M. & G. 520);

Lessees at rack-rent (*Goodright* v. *Moses*, 2 Bl. W. 1019);

Assignees of Leases (*Price* v. *Jenkins*, 5 Ch. D. 619; 46 L. J. Ch. 805; 37 L. T. 51: *Ex p. Doble*, 26 W. R. 407; 38 L. T. 183: *Harris* v. *Tubb*, 42 Ch. D. 79: *Sv*, *Price* v. *Jenkins*, dissented from in *Lee* v. *Matthews*, 6 L. R. Ir. 530. *Price* v. *Jenkins* does not apply to 13 Eliz. c. 5, *Re Ridler*, 22 Ch. D. 74; 52 L. J. Ch. 343; 31 W. R. 93; 48 L. T. 396: *Green* v. *Paterson*, 32 Ch. D. 104); and, *semble*, Sub-Lessees who covenant for performance of the lessee's obligations, *secus*, where there is no such covenant (*Shurmur* v. *Sedgwick*, 53 L. J. Ch. 87; 24 Ch. D. 597);

Children of a Widow, quà Marriage Settlement (*Newstead* v. *Searles*, 1 Atk. 265; 9 App. Ca. 320 *n*: *Vthc*, *A-G.* v. *Jacobs-Smith*, cited VOLUNTEER); but not those of a Widower (*Re Cameron and Wells*, 57 L. J. Ch. 69; 37 Ch. D. 32);

Persons becoming partners with the owner under mutual obligations to work the land (*Shaw* v. *Standish*, 2 Vern. 326);

Trustees of a Creditors' Deed, when thereby taking a real interest (*Butterfield* v. *Heath*, 15 Bea. 408; 22 L. J. Ch. 270), not otherwise (*Cadell* v. *Bewley*, 15 W. R. 703). *Note.* *Butterfield* v. *Heath* was disapproved in *Re Foster and Lister* (inf);

Releasors of adverse claims (*Hill* v. *Exeter, Bp.*, 2 Taunt. 69);

"Marriage is a good consideration to make the Feme a Purchaser" (*Douglasse* v. *Waad*, 1 Ch. Ca. 99). As to a post-nuptial Settlement; *V. Re Foster and Lister*, 6 Ch. D. 87; 46 L. J. Ch. 480.

But the definition does *not* include, —

Judgment Creditors (*Beavan* v. *Oxford*, cited DISPOSING POWER: *Dolphin* v. *Aylward*, L. R. 4 H. L. 486; 23 L. T. 636);

Purchaser from Heir or Devisee of grantor (*Lewis* v. *Rees*, 3 K. & J. 132).

V. this subject elaborately discussed, May on Fraudulent Conv., Part 3, ch. 2: *Va*, Seton, 2354.

In s. 91, Bankry Act, 1869, repld s. 47, Bankry Act, 1883, "Purchaser" means "Buyer" (*Re Pumfrey, Ex p. Hillman*, 10 Ch. D. 622; 48 L. J. Bank. 77; 27 W. R. 567; 40 L. T. 177), or rather, one who (in good faith on his part, *Macintosh* v. *Pogose*, 1895, 1 Ch. 505; 64 L. J. Ch. 274; 72 L. T. 251) gives a *quid pro quo* (*Hance* v. *Harding*, 57 L. J. Q. B. 403; 20 Q. B. D. 732; 59 L. T. 659; 36 W. R. 629, explaining *Re Pumfrey*). *Va*, BOUGHT.

Quà Conv & L. P. Act, 1881, and Conv Act, 1882, "'Purchaser,' unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser lessee or mortgagee, or other person who, for valuable consideration, takes or deals for any property" (s. 2 (viii), Act, 1881; s. 1 (4 ii), Act, 1882); which includes an Equitable Mtgee (*Lloyd's Bank* v. *Bullock*, 1896, 2 Ch. 192; 65 L. J. Ch. 680; 74 L. T. 687; 44 W. R. 633). *Vf*, *Jones* v. *Barnett*, 1899, 1 Ch. 611; 68 L. J. Ch. 244; 80 L. T. 408; 47 W. R. 493. *V.* VALUABLE.

Property "PASSING" on death which is exempt from ESTATE DUTY if passing upon "a *bonâ fide* Purchase from the person under whose Disposition the property passes," s. 3, Finance Act, 1894, does not, in that exemption, include a policy on a Husband's life or the moneys payable under it at his death and which, by a *Post-Nuptial* Settlement, he has settled for the benefit of his Wife for life and afterwards upon other trusts, and which policy he had by the settlement covenanted to keep up and did keep up agreeably to such covenant (*A-G.* v. *Dobree*, 1900, 1 Q. B. 442; 69 L. J. Q. B. 223; 81 L. T. 607; 48 W. R. 413). *Vf*, MONEY'S WORTH: *A-G.* v. *Hawkins*, 45 S. J. 80; 70 L. J. Q. B. 195.

Semble, where a person takes, in the same property, an equitable estate by election, and a legal estate by descent, he is not a "PURCHASER" within Inheritance Act, 1833, 3 & 4 W. 4, c. 106, ss. 2, 3 (*Wood* v. *Douglas*, 54 L. J. Ch. 421; 28 Ch. D. 327). *Vf*, *Blake* v. *Hynes*, 11 L. R. Ir. 284.

"Purchase" is used in its ordinary sense in the Mortmain Acts (*Philpott* v. *St. George's Hospital*, cited ERECT).

"Purchase," *bonâ fide* and without FRAUD or unfair dealing, of a *Reversionary Interest* which is not to be set aside "merely on the ground of undervalue" (s. 1, Sales of Reversions Act, 1867, 31 V. c. 4), includes, "every kind of Contract, Conveyance, or Assignment, under or by which any beneficial interest in any kind of property may be acquired" (s. 2): *Vh*, *Brenchley* v. *Higgins*, 82 L. T. 143; W. N. (1900) 242. *V.* REVERSION.

As to what is a "purchase" by a Co of its own SHARES; *V. Phosphate of Lime Co* v. *Green*, L. R. 7 C. P. 43; 25 L. T. 636, on *whcv* per Ld Herschell, *Trevor* v. *Whitworth*, 12 App. Ca. 420, 421, by *whlc* it is settled that a power to make such a purchase is ultra vires and void. *Vh*, Buckl. 584.

A special statutory power enabling a Corporation "*to purchase, take, hold, receive, or enjoy,*" land in Mortmain, does not enable it to acquire land by devise (*British Museum* v. *White*, 2 Sim. & Stu. 594; 3 Moore & P. 689: *Nethersole* v. *Indigent Blind School*, L. R. 11 Eq. 1; 40 L. J. Ch. 26; 23 L. T. 723; 19 W. R. 174: *Chester* v. *Chester*, L. R. 12 Eq. 444; 19 W. R. 946); *secus*, if the power enables it to acquire land "by Will" (*Perring* v. *Trail*, L. R. 18 Eq. 88; 43 L. J. Ch. 775; 30 L. T. 248; 22 W. R. 512: *Sv, Luckraft* v. *Pridham*, 6 Ch. D. 205; 46 L. J. Ch. 744; 37 L. T. 204; 26 W. R. 33). *Vh*, 1 Jarm. 242.

So the power to a Trade Union "to purchase or take upon lease" land not exceeding 1 acre (s. 7, 34 & 35 V. c. 31), means, acquire by giving a consideration; it does not authorize an acquisition by devise (*Re Amos, Carrier* v. *Price*, 1891, 3 Ch. 159; 60 L. J. Ch. 570; 65 L. T. 69; 39 W. R. 550).

"Purchase or provide"; *V.* PROVIDE.

V. BONÂ FIDE: BUY: BY PURCHASE: OPTION: PURCHASE FOR VALUE: PURCHASED: PURCHASER: SALE.

"Purchase" held to mean "Agreement to Purchase" (*Long* v. *Millar*, cited BALANCE).

Purchase in the Army abolished by Royal Warrant, 20th July, 1871: *V.* REGULATION: SALEABLE COMMISSION.

PURCHASE ANNUITY.—Quà Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48, "'Purchase Annuity,' means, an annuity for the repayment of an advance for the purchase of a HOLDING, made by the issue of stock under this Act" (s. 42).

V. ANNUITY.

PURCHASE FOR VALUE.—This phrase does not include a conveyance in consideration of marriage, in the implied covenants for title in a conveyance deed under s. 7, Conv & L. P. Act, 1881; *V.* subs. A, s. 7, at end; subs. B, at end.

Quà Land Charges Registration and Searches Act, 1888, 51 & 52 V. c. 51, "'Purchaser for Value,' includes, a mortgagee or lessee, or other person who, for valuable consideration, takes any interest in land, or in a charge on land; and 'Purchase' has a meaning corresponding with 'Purchaser'" (s. 4).

"Purchaser for Value without Notice," means, a purchaser of property from its legal owner to whom he has *bonâ fide* paid the consideration and from whom he has taken a legal conveyance, without having any

notice of any trust affecting the property (Godefroi, ch. 37: Lewin, ch. 31). *Cp*, HOLDER IN DUE COURSE.

A BONÂ FIDE Purchaser for Value without Notice of Fraud, is within the protection of s. 5, 13 Eliz. c. 5, though the conveyance under which he gets title is itself fraudulent (*Halifax Banking Co* v. *Gledhill*, 1891, 1 Ch. 31; 60 L. J. Ch. 181). *Vf*, on Purchaser for Value without Notice, Kerr on Fraud and Mistake, 3 ed., 337: 10 Encyc. 588–593.

V. VALUABLE.

PURCHASED. — "Purchased," in a devise of lands, *primâ facie*, means, lands acquired in any other way than by descent; therefore, a devise of lands testator has "purchased" will include those he has acquired by exchange (*Doe* d. *Meyrick* v. *Meyrick*, 2 L. J. Ex. 259; 1 Cr. & M. 820; 3 Tyr. 916).

An appointment by a married woman of "all funds and property which have been or shall be *purchased* out of the savings of property to which I have been or shall be entitled to my separate use," does not include separate estate savings, standing to her account at her bankers (*Askew* v. *Rooth*, L. R. 17 Eq. 426; 43 L. J. Ch. 368).

Though "*the* Property," in a V. & P. contract, would, probably, be an insufficient description, yet "Property *purchased*," *e.g.* a receipt for a deposit "on Property purchased," is sufficient, — "Property," in that connection, meaning Real Property (*Shardlow* v. *Cotterill*, 20 Ch. D. 90; 51 L. J. Ch. 353; followed in *Plant* v. *Bourne*, cited THE). *Cp*, BALANCE.

Commission on all Goods "purchased"; *V.* BOUGHT.

"Purchased Manure"; *V.* MANURE.

"Purchased with money provided by Parliament"; *V.* PARLIAMENT.

V. PURCHASE.

PURCHASER. — *V.* PURCHASE: PURCHASE FOR VALUE: BONÂ FIDE: VALUABLE.

Quâ Inheritance Act, 1833, 3 & 4 W. 4, c. 106, "'the Purchaser' shall mean, the person who last acquired the land otherwise than by DESCENT, or than by any escheat, partition, or inclosure, by the effect of which the land shall have become part of, or descendible in the same manner as, other land acquired by descent" (s. 1); *Vth*, *Cooper* v. *France*, 19 L. J. Ch. 313: *Re Matson*, 1897, 2 Ch. 509; 66 L. J. Ch. 695.

"Any Purchaser," s. 11, Sale of Farming Stock Act, 1816, 56 G. 3, c. 50, means, any purchaser from the tenant; and does not include a purchaser from the landlord under a distress for rent (*Hawkins* v. *Walrond*, 45 L. J. C. P. 772; 1 C. P. D. 280; 35 L. T. 210; 24 W. R. 824). *Vf*, BEST PRICE.

"Purchaser"; Stat. Def., Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, s. 3; Heritable Securities (Scot) Act, 1894, 57 & 58 V. c. 44, s. 18.

Goods sold to the PREJUDICE OF THE PURCHASER, are those sold to the real buyer, though, quà the actual transaction, he acts by deputy (*Horder* v. *Scott*, 5 Q. B. D. 552; 49 L. J. M. C. 78; 42 L. T. 660; 28 W. R. 918; 44 J. P. 520: *Somerset* v. *Miller*, cited FORTHWITH, p. 755: *Garforth* v. *Esam*, 56 J. P. 521; 8 Times Rep. 243).

"Purchaser, Payee, or Incumbrancer"; *V.* PAYEE.

PURE. — *Butter* is "pure" though it has the addition of a little salt, or (per Ridley, J.) boracic acid added for the same reason as salt; and in a warranty between two tradesmen that the butter sold by the one to the other is "pure," the question is, Was it "pure" in the sense in which that word is used in the trade (*Roose* v. *Perry*, 44 S. J. 503).

"Pure *New Milk*"; *V. Robertson* v. *Harris*, cited WRITTEN WARRANTY.

"Pure *Personalty*," "Impure Personalty," quà a Charitable Bequest; *V. Beaumont* v. *Oliveira*, cited CHARITY, p. 296: *Re Holmes*, 63 L. T. 477: Tudor Char. Trusts, 62–65, 401 *et seq.*

"Pure and Wholesome *Water*," s. 35, W. W. C. Act, 1847, 10 & 11 V. c. 17; *V. Milnes* v. *Huddersfield*, 56 L. J. Q. B. 1; 11 App. Ca. 511; 55 L. T. 617; 34 W. R. 761; 50 J. P. 676.

V. ADULTERATED.

PURLIEU. — "'Purlue' is all that ground which is neare any Forrest, which being made forrest by Henry the Second, Richard the First, or king John, were by perambulations granted by Henry the Third, severed again from the same" (Termes de la Ley, citing Manwood, Part 2, ch. 20). *Vf*, Cowel.

"Purlieu containeth such grounds which H. 2, R. 1, or king John, added to their ancient forests over other mens grounds, and which were disafforested by force of the Statute of Carta de Foresta, cap. 1, and cap. 3, and the perambulations and grants thereupon" (4 Inst. 303). "As to rights of Common in respect of purliew, *V. R.* v. *Rodley*, Hard. 437: *Jenning* v. *Rocke*, Palm. 93" (Elph. 616, 617).

"Purlie Man, is he that hath lands within the purlieu, and being able to dispend forty shillings by the yeare of freehold, is upon these two points licensed to hunt in his owne purlieu" (Termes de la Ley, citing Manwood, Part 1, p. 151, & 177; 1 Jac. c. 27). *Vf*, Cowel.

PURLOIN. — "The words 'purloin, embezzle,' s. 97, 4 & 5 W. 4, c. 76, seem to point to absolute criminality" (per Coleridge, J., *Carpenter* v. *Mason*, cited WILFUL WASTE). *V.* EMBEZZLE.

PURPORTING. — When validity is given to anything "purporting" to be done in pursuance of a Power, a thing done under it may have validity though done at a time when the power would not be really exerciseable (*Dicker* v. *Angerstein*, 3 Ch. D. 600; 45 L. J. Ch. 754). In that case it was held that the proviso, following conditional Powers of

Sale in a mortgage, that a "Sale purporting to be made in pursuance" of the powers shall be valid as regards purchasers, enables the mortgagee to confer a good title on a *bonâ fide* purchaser even though the security be satisfied. *Cp*, PROVIDED ALWAYS.

Note. In the corresponding proviso in the statutory power of sale, the phrase for "purporting" is "professed exercise" (s. 21 (2), Conv & L. P. Act, 1881).

Writing "purporting" to be a Will; *V.* NATURE, p. 1244: *Re Broad*, 1901, 2 Ch. 86; 70 L. J. Ch. 601.

"Purporting," quà a Criminal Offence, — *e.g.* engraving a Note "purporting" to be a Bank Note, s. 16, Forgery Act, 1861, 24 & 25 V. c. 98, — *semble*, means, "pretending." "An instrument purports to be that which, on the face of the instrument, it more or less accurately resembles. The definition of 'purporting' is the same whether applicable to the whole or to a part of an instrument. There must be a resemblance more or less accurate" (per Coleridge, J., *R.* v. *Keith*, 24 L. J. M. C. 110; 3 W. R. 412; 25 L. T. O. S. 118), *whc* shows that proof that a forged engraving "purports" to be what it is not is furnished by comparing it with a genuine one. *Vf*, *Hare* v. *Copland*, 13 Ir. Com. Law Rep. 426: PRETEND.

V. PURSUANCE.

PURPOSE. — "Any Purpose"; *V.* AVAILABLE.

"For Any Other Purpose"; *V. Re Norris*, W. N. (83), 35, 65: OTHER.

LIBERTY TO CALL to deliver, "or for Any Other Purpose whatsoever" would, probably, not justify a call to take in Cargo (per Herschell, C., *Glynn* v. *Margetson*, 1893, A. C. 351; 62 L. J. Q. B. 466).

Heredit "used EXCLUSIVELY" for a CHARITABLE PURPOSE; *V. Dublin Cemeteries* v. *Valuation Commr*, 1897, 2 I. R. 157: *Waterford* v. *Barton*, 1896, 2 I. R. 538.

"Purpose merely Charitable," s. 38, 5 & 6 V. c. 82; *V. A-G.* v. *Bagot*, 13 Ir. Com. Law Rep. 48.

"For the Purpose of"; *V.* CONSTITUTED: VIEW.

The "Purpose" of a Company is contrasted with its "Objects" in s. 1 (5), Comp Mem of Assn Act, 1890 (per Chitty, J., *Re Governments Stock Investment Co*, cited MAIN PURPOSE).

Society "for any Purpose of PROFIT," s. 2, 7 & 8 V. c. 110; *V. R.* v. *Whitmarsh*, 15 Q. B. 600; 19 L. J. Q. B. 469: *Bear* v. *Bromley*, 18 Q. B. 271; 21 L. J. Q. B. 354: *Moore* v. *Rawlins*, 6 C. B. N. S. 289; 28 L. J. C. P. 247: *Re Jones*, 1898, 2 Ch. 91; 67 L. J. Ch. 504; 78 L. T. 639; 46 W. R. 577, considering *Re Bristol Athenæum*, cited JOINT STOCK COMPANY.

Special Purpose; *V.* SPECIAL.

V. LAWFUL PURPOSE: PAROCHIAL PURPOSE: POST OFFICE: PUBLIC PURPOSE: PURPOSES.

PURPOSES. — "For ALL Purposes, Constables of the Aided Force," s. 25 (1), 53 & 54 V. c. 45; *V. R.* v. *West Riding Co. Co.*, 1895, 1 Q. B. 805; 64 L. J. M. C. 145; 72 L. T. 520; 43 W. R. 386; 59 J. P. 340.

"For the Purposes of the *Act*"; *V. Grand Junction Canal Co* v. *Petty*, 57 L. J. Q. B. 572; 21 Q. B. D. 273; 36 W. R. 795; 52 J. P. 692, and cases therein cited: *Re Loc Gov Act*, 1888, cited ADMINISTRATIVE.

"The Purposes of *Agriculture*, and other *Rural Industries*"; Stat. Def., Agriculture and Technical Instruction (Ir) Act, 1899, 62 & 63 V. c. 50, s. 30.

Using premises "for the Purposes" of *Betting*; *V.* USING.

Buildings belonging to and "used for the Purposes" of a *Canal, Dock*, or *Railway*, s. 6, Metrop Bg Act, 1855, repld s. 201, London Bg Act, 1894; *V. North Kent Ry* v. *Badger*, 27 L. J. M. C. 106; 8 E. & B. 728; *Coole* v. *Lovegrove*, 1893, 2 Q. B. 44; 62 L. J. M. C. 153; 69 L. T. 19; 57 J. P. 647.

County Purposes; *V.* GENERAL COUNTY PURPOSES: SPECIAL.

CROWN Purposes; *V.* "Beneficial Occupation," sub BENEFICIAL.

"Purposes of *Gain*"; *V.* GAIN.

"*Mining* Purposes"; *V.* MINING.

"*Necessary* for the Purposes"; *V.* NECESSARY.

"The Purposes of *Sea Fisheries*"; Stat. Def., Agriculture and Technical Instruction (Ir) Act, 1899, 62 & 63 V. c. 50, s. 30.

"Money WHOLLY and exclusively laid out or expended for the Purposes of TRADE," quà *Income Tax* Deduction, Rule 1, applying to Cases 1 and 2, Sch D, s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Dillon* v. *Haverfordwest*, 1891, 1 Q. B. 575; 60 L. J. Q. B. 477; 64 L. T. 202; 47 W. R. 478; 55 J. P. 392: *Watson* v. *Royal Insrce*, 1896, 1 Q. B. 41; 65 L. J. Q. B. 132; 66 Ib. 1; 73 L. T. 524; 44 W. R. 89; 59 J. P. 822: *Rhymney Co* v. *Fowler*, 1896, 2 Q. B. 79; 65 L. J. Q. B. 524; 44 W. R. 651: *Vf*, SOLELY: PART. "*Premises occupied* for the Purpose of" Trade, &c, Rule 3 to Case 1, Ib., means, premises so occupied *by the person assessed* (*Brickwood* v. *Reynolds*, 1898, 1 Q. B. 95; 67 L. J. Q. B. 26; 77 L. T. 456; 46 W. R. 130). "Purposes of Trade," quà *Inhabited House Duty*, s. 11, 32 & 33 V. c. 14; *V. Bank of India* v. *Wilson*, 3 Ex. D. 113; 47 L. J. Ex. 153.

Building, "used in Part for Purposes of Trade or Manufacture"; *V.* PART, p. 1411.

Railway "used for the Purposes of PUBLIC TRAFFIC"; *V.* RAILWAY.

Premises "used for the Purposes of the *Traffic* of a Railway"; *V. Elliott* v. *London Co. Co.*, cited TRAFFIC.

Lands "not required for the Purposes" of the UNDERTAKING, s. 127, Lands C. C. Act, 1845; *V. Betts* v. *G. E. Ry*, cited SUPERFLUOUS LAND.

Lands "taken or used for the Purposes of the *Works*," s. 133, Lands C. C. Act, 1845; *V. Putney* v. *Lond. & S. W. Ry*, cited WORKS.

V. ALL INTENTS AND PURPOSES: DOMESTIC: GENERAL PURPOSES: MILITARY PURPOSES: POLICE: PUBLIC PURPOSE: PURPOSE: RELIGIOUS: SANITARY: SEWAGE: SHIPPING PURPOSES: VOID.

PURPRESTURE. — "By 'Purpresture' is meant, in its present acceptation, an encroachment upon the Crown, either upon part of the demesne lands, or upon the high roads, rivers, forts, or streets; and the difference between purprestures and nuisances consists in this, — that where the jus *privatum* of the Crown is invaded, it is a Purpresture; but where the jus *publicum* is violated, it is a Nuisance" (Dan. Ch. Pr. 1338, citing 2 Inst. 38, 272; Harg. Law Tracts, 84, 87: *Vf*, Co. Litt. 277 b: Termes de la Ley: Cowel: Manwood: Elph. 617).

V. NUISANCE: INTRUSION.

PURPRISUM. — "A close or enclosure; also the whole compass of a Mannor" (Cowel).

PURSER. — "Purser" of the STANNARIES; Stat. Def., 32 & 33 V. c. 19, s. 2; 50 & 51 V. c. 43, s. 2.

PURSUANCE. — Notice of Action is in many instances required to be given prior to commencing proceedings for things done "In Pursuance," or "Under or By Virtue," or "In Execution" of a statute. In strictness, anything not authorized by a statute cannot be "in pursuance" or "under or by virtue" of it, whilst if authorized it would need no other protection. But if effect were given to such a construction it would altogether do away with the protection intended to be given; accordingly it is held that if any public or private body or person, charged with the execution of an Act of Parliament, or of any Public Duty or Authority (*V.* s. 1, 56 & 57 V. c. 61), honestly intends to put the law in motion and really and not unreasonably believes in the existence of facts, which, if existent, would justify his acting and acts accordingly, his conduct will be "in pursuance" or "under or by virtue" of the statute under which he believes he is acting, although he errs in such belief. The question whether there was in fact reasonable ground for such belief is a subordinate question and one very material to be pressed on the minds of the jury; but the presence or absence of such reasonable ground can only be relied on for the purpose of determining whether the belief was *bonâ fide* or not (*Hermann* v. *Seneschal*, 32 L. J. C. P. 43; 13 C. B. N. S. 392, and cases there cited: *Roberts* v. *Orchard*, 2 H. & C. 769; 33 L. J. Ex. 65: *Judge* v. *Selmes*, L. R. 6 Q. B. 724; 40 L. J. Q. B. 287: *Chamberlain* v. *King*, L. R. 6 C. P. 474, nom. *King* v. *Chamberlain*, 40 L. J. C. P. 273: *Agnew* v. *Jobson*, 47 L. J. M. C. 67: *Waterhouse* v.

Keen, 4 B. & C. 200; 6 D. & R. 257: *Mid. Ry* v. *Withington*, 52 L. J. Q. B. 689; 11 Q. B. D. 788: *Cree* v. *St. Pancras*, 1899, 1 Q. B. 693; 68 L. J. Q. B. 389; 80 L. T. 388: *Hughes* v. *Buckland*, 15 M. & W. 346; 15 L. J. Ex. 233: *Lea* v. *Facey*, 56 L. J. Q. B. 536; 19 Q. B. D. 352; 35 W. R. 721; 51 J. P. 756: *Rochfort* v. *Rynd*, 9 L. R. Ir. 204: *O'Dea* v. *Hickman*, 18 L. R. Ir. 233: *Sv, Thomas* v. *Stephenson*, 2 E. & B. 108; 22 L. J. Q. B. 258). *Vf*, Wilberforce, 87–98: Maxwell, 278: Rosc. N. P. 1104, 1121, 1128, 1130–1134.

An *omission* to do, in pursuance of a statute, is on the same line, as regards notice of action, as an actual thing done (*Wilson* v. *Halifax*, L. R. 3 Ex. 114; 37 L. J. Ex. 44: *Joliffe* v. *Wallasey*, L. R. 9 C. P. 62; 43 L. J. C. P. 41).

As to when (apart from the question of Notice of Action) a thing is done "in pursuance" of an Act; *V. Armstrong* v. *Bowdidge*, 16 C. B. 358.

By *Public Authorities Protection Act*, 1893, 56 & 57 V. c. 61, a successful deft gets Costs as between Solr and Client of a "Judgment" in proceedings brought "against any person for any act Done in Pursuance or Execution" of a Statutory or other Public Duty or Authority, or quà any alleged neglect or default therein (s. 1), a provision which applies to every Action, even though it be brought only for an Injunction to restrain a Public Authority from doing something (*Fielden* v. *Morley*, 1899, 1 Ch. 1; 67 L. J. Ch. 611; 79 L. T. 231; 1900, A. C. 133; 69 L. J. Ch. 314; 82 L. T. 29: *Harrop* v. *Ossett*, 1898, 1 Ch. 525; 67 L. J. Ch. 347; 46 W. R. 391; 78 L. T. 387; 62 J. P. 297: *Toms* v. *Clacton*, 78 L. T. 712; 46 W. R. 629; 62 J. P. 505); such Costs follow the jdgmt without any special direction (*North Metrop Tramways Co* v. *London Co. Co.*, 1898, 2 Ch. 145; 67 L. J. Ch. 449; 78 L. T. 711; 46 W. R. 554; 62 J. P. 488); but for Good Cause the judge may deprive even such a deft of Costs (*Westminster* v. *Bedford*, 44 S. J. 120: *Bostock* v. *Ramsey*, 1900, 2 Q. B. 616; 69 L. J. Q. B. 945; 83 L. T. 358; 64 J. P. 660). *Note*: the section does not apply to Interlocutory Applications, or to Appeals (*Fielden* v. *Morley*, sup). *V.* Public Authority.

Expenses "incurred in executing" the *Public Health Acts*; *V. Leith* v. *Leith Harbour Commrs*, 1899, A. C. 508; 68 L. J. P. C. 109; 81 L. T. 98: *Vf*, Rights.

"Persons acting in the execution of this Act," s. 19, *Special Constables Act*, 1831, 1 & 2 W. 4, c. 41; *V. Bryson* v. *Russell*, 54 L. J. Q. B. 144; 14 Q. B. D. 720.

V. Carrying into Execution: Execution of Statutory Powers: In Exercise: Purporting.

PURSUANT. — Agreement "pursuant to the Highways Acts," Sch Stamp Act, 1891; *V. Cumberland Co. Co.* v. *Inl. Rev.*, 78 L. T. 679; 62 J. P. 407.

PURSUER. — *V.* PLAINTIFF.
Stat. Def. — 13 & 14 V. c. 36, s. 53; 31 & 32 V. c. 100, s. 2.

PURSUIT. — *V.* FRESH PURSUIT.
"Pursuit of Game"; *V.* SEARCH.

PURVEYOR. — Purveyor of Milk; *V.* DAIRYMAN.

PURVIEW. — "'Purveiw,' is a French word signifying a Gift or Grant, and *Pourveu que* a Condition; Sir Edward Coke often uses it for that part of an Act of Parliament which begins with 'Be it enacted'" (Cowel).

PUT. — To create a thing, or to "put" a thing into a certain state or condition, is a very different thing from to "KEEP" it up, or to "keep" it in that state or condition; an agreement to "do" or to "put," can only be broken once, but an agreement to "keep" is a continuing one: *e.g.* an agreement to "forthwith REPAIR," or "forthwith put in repair," is broken once for all (*Coward* v. *Gregory*, 36 L. J. C. P. 1; L. R. 2 C.P. 153: *V.* FORTHWITH), so, of an agreement to build a house within a stated period (*Jacob* v. *Down*, cited KEEP, p. 1038); but an agreement to "keep" such house in repair is continuing, and involves, *e.g.*, the practical revival of a waived agreement to build, because you cannot "keep" in repair that which is non-existent (*Ib.*).

PUT ASHORE. — *V.* LANDED: ON SHORE.

PUT AWAY. — "It shall not be lawful for any Master to *put away* or transfer his Apprentice to any other, or in any way discharge or dismiss him from his service" without consent of magistrates, s. 9, 56 G. 3, c. 139: — a master not having sufficient employment for a Parish Apprentice agreed with another tradesman that the Apprentice should work for him, he paying to the first master 5*s.* a week; held, a "putting away" within the section cited, although the apprentice, on one occasion, on demand, returned to his first master and worked for him for 10 days (*R.* v. *Wainfleet*, 9 L. J. M. C. 31; 11 A. & E. 656). *Vf*, *R.* v. *Shipton*, 6 L. J. O. S. M. C. 92; 8 B. & C. 88: PLACE OUT.
V. ASSIGN.

PUT IN FORCE. — An Execution is "put in force," s. 163, Comp Act, 1862, by the Sheriff's actual entry into possession under it (*Re London & Devon Biscuit Co*, L. R. 12 Eq. 190; 40 L. J. Ch. 574); "but where an execution is perfected by seizure before the commencement of the Winding-up, a sale after the commencement is not such a 'putting in force'" (Buckl. 261, citing *Re Great Ship Co*, *Parry's Case*, 4 D. G. J. & S. 63; 33 L. J. Ch. 245; 12 W. R. 139): *Vf*, *Re Opera*, W. N. (90) 104; 1891, 3 Ch. 260; 60 L. J. Ch. 839; 39 W. R. 705. *Vh*, PROCEEDING: DEBTOR.

Giving a Notice to TREAT is not "to put in force" compulsory powers within s. 16, Lands C. C. Act, 1845 (*Guest* v. *Poole, &c, Ry,* cited COMPULSORY POWERS).

V. N. E. Ry v. *Tynemouth*, 9 B. & S. 630.

PUT IN PRACTICE. — Quà Patent; *V.* USE.

PUT INTO. — *V.* WRITING.

PUT OFF. — To "put off" a bargain for the sale of goods, may mean, to postpone its completion, or to procure a resale of the goods to a third person; the first is the more ordinary meaning, but which is the meaning in a particular case is for the jury (*Thornton* v. *Charles,* 11 L. J. Ex. 302; 9 M. & W. 802).

V. UTTER.

PUT ON BOARD. — *V.* TAKE ON BOARD: ON BOARD.

PUTCHER. — A "Putcher," in the def of FIXED ENGINE quà Salmon Fishery Acts, "is a conical or funnel-shaped basket made of 20 straight rods fastened together at intervals by 4 or 5 hoops of decreasing size, each rod about half an inch or an inch thick and about 5 feet long and running lengthways from end to end of the basket. The length or depth of the basket is about 5 feet, the diameter about 20 inches at the mouth (where one end of each rod is fastened to the longest hoop at intervals of 3 inches) and 2 or 3 inches at the other end. The frame-work is loose or open, and the mouth and end are open so as to offer as little resistance to the tide as possible" (*Holford* v. *George*, L. R. 3 Q. B. 643; 37 L. J. Q. B. 187).

PUTRID. — "Putrid Solid Matter," s. 2, Rivers Pollution Prevention Act, 1876; *V.* SOLID MATTER.

PYKE. — *V.* GORE.

PYROTECHNIC LIGHT. — *V. The Orion*, 1891, P. 307; 60 L. J. P. D. & A. 90.

QUACK—QUALIFIED

QUACK.—A "Quack" is one who pretends to a skill or knowledge which he does not possess; therefore, to call a Practising Medical Man a "Quack," or a "Quack-salver," or an "Empiric," or a "Mountebank," is Slander *per se* (Odgers, 84, citing *Allen* v. *Eaton*, Rol. Ab. 54: *Goddart* v. *Haselfoot*, Ib.); so, to say of an Optician that he is "a Quack in Spectacle Secrets" (*Keyzor* v. *Newcomb*, 1 F. & F. 559).

As to what will be FAIR COMMENT justifying such expressions, *V. Hunter* v. *Sharp*, cited PUBLIC INTEREST.

QUADRANTATA TERRÆ.—¼ of an acre (Cowel: Elph. 598).

QUADRUGATA TERRÆ.—"A Team of Land which may be till'd with four Horses" (Cowel).

QUALIFICATION.—Where a stated Qualification, *e.g.* of a Director of a Co, is made a Condition Precedent, an appointment is void if the qualification is not possessed (*Jenner's Case*, 47 L. J. Ch. 201; 7 Ch. D. 132).

Director shall "acquire his Qualification"; *V. Re Bolton*, 1894, 3 Ch. 356; 64 L. J. Ch. 27; 71 L. T. 284: *Re Anglo-Austrian Printing Co, Ex p. Isaacs*, 1892, 2 Ch. 158; 61 L. J. Ch. 481; 66 L. T. 593; 40 W. R. 518: *Re Bread Supply Assn*, 62 L. J. Ch. 376; 68 L. T. 434: *Re Hercynia Copper Co*, 1894, 2 Ch. 403; 63 L. J. Ch. 567; 70 L. T. 709; 42 W. R. 593: *Sv*, *Re Moore*, 1899, 1 Ch. 627; 68 L. J. Ch. 302; 80 L. T. 104; 47 W. R. 401. *Vh*, s. 3, Comp Act, 1900.

"Cease to hold" Qualification; *V.* CEASE.

"Future Qualification"; *V.* FUTURE.

"Household Qualification"; *V.* HOUSEHOLD.

"Lodger Qualification"; *V.* LODGER.

"Nature of Qualification"; *V.* NATURE.

"The SAME Qualification," s. 4, Parliamentary Voters Registration Act, 1843, 6 V. c. 18, means, the same Property (*Burton* v. *Gery*, 17 L. J. C. P. 66; 5 C. B. 7; 10 L. T. O. S. 135).

V. PROHIBITED.

QUALIFIED.—An Apprentice bound to a Freeman of the Watermen's Co, or to a registered Barge-owner, is a "qualified" APPRENTICE within s. 54, 22 & 23 V. c. CXXXIII (*Gosling* v. *Newton*, 1895, 1 Q. B. 793; 64 L. J. M. C. 160; 72 L. T. 500; 43 W. R. 559; 59 J. P. 406).

"Duly qualified CLERGYMAN," s. 48, 1 & 2 V. c. 56; *V. R.* v. *Poor Law Commrs*, 3 Ir. Com. Law Rep. 147. *Vf*, OFFICIATE.

A qualified FEE, is a Fee less absolute in duration than a FEE SIMPLE, and is spoken of by Ld Coke as synonymous with a BASE Fee, its most familiar example being a FEE TAIL (Co. Litt. 1 b).

Qualified *Indorsement*; *V.* SANS RECOURS.

"Qualified PILOT"; *V. The Carl XV*, 1892, P. 324; 61 L. J. P. D. & A. 111: *Stafford* v. *Dyer*, 1895, 1 Q. B. 566; 64 L. J. M. C. 194; 72 L. T. 114: Mer Shipping Act, 1894, s. 586.

"Qualified *Practitioner*," quà Legal Practitioners Act, 1877, 40 & 41 V. c. 62, "means and includes, any serjeant-at-law, barrister-at-law, certificated solicitor, proctor, notary public, certificated conveyancer, special pleader, or draughtsman in equity" (s. 3). *Cp*, MEDICAL.

Qualified *Property* in animals *feræ naturæ*, in the elements of nature, and in goods; *V.* 2 Bl. Com. 391 et seq. *V.* SPECIAL.

"Qualified Veterinary Surgeon"; *V.* VETERINARY.

A statement that a person is "*specially* qualified" as a Veterinary Practitioner, s. 17 (1), 44 & 45 V. c. 62, does not, necessarily, require a representation that he is possessed of some kind of diploma; a representation of having had special training to use veterinary skill is within the section; therefore, it is an offence within the section for a Shoeing Smith to advertise his place as a "Veterinary Forge" (*Royal College Vet. Surgeons* v. *Robinson*, 1892, 1 Q. B. 557; 61 L. J. M. C. 146; 66 L. T. 263; 40 W. R. 412; 56 J. P. 313); *secus*, of "Veterinary Chemist" if used in the sense of preparing veterinary medicines for sale (*Royal College Vet. Surgeons* v. *Groves*, cited VETERINARY).

V. DISQUALIFIED: DULY: OFFICER: QUALIFICATION. *Cp*, ELIGIBLE.

QUALIFIED TO ELECT.—"Qualified to elect," s. 11 (3), Mun Corp Act, 1882, 45 & 46 V. c. 50, is not equivalent to "entitled to vote," in s. 51 of the same Act; and though, under the latter section, a person on the Register, however he got there, is "entitled to vote," he is not qualified to be elected as a Councillor, as being "qualified to elect to the office" (s. 11, subs. 3) unless, in fact, he really does possess the qualifications to elect that are prescribed by s. 9 (*Flintham* v. *Roxburgh*, 55 L. J. Q. B. 472; 17 Q. B. D. 44); nor is a woman, "though entitled to vote," capable of being elected a County Councillor (*Beresford-Hope* v. *Sandhurst*, cited FEMALE).

QUALIFY.—An EXPERT Witness "qualifies" when he reads up, or otherwise masters, the details of the particular case on which he is to give evidence. As to the Allowance for this work, *V.* R. 9, Ord. 65, R. S. C., and thereon Ann. Pr.

QUALITY.—Quà Sale of Goods Act, 1893, "'Quality of Goods,' includes their state, or condition" (subs. 1, s. 62).

"Character or Quality" of Goods, quà a Trade-Mark; *V.* CHARACTER: FANCY WORD.

Lands of a "Like Quality"; *V.* LIKE.

"Quality Marks" in a Bill of Lading; *V. Grant* v. *Norway*, 20 L. J. C. P. 93; 10 C. B. 665: *Cox* v. *Bruce*, 56 L. J. Q. B. 121; 18 Q. B. D. 147.

As to what is a fraudulent misrepresentation of the Quality of an article; *V. R.* v. *Ardley*, L. R. 1 C. C. R. 301; 40 L. J. M. C. 85, and cases there cited.

Similar Quality; *V.* SIMILAR.

V. DYE: NATURE: QUANTITY AND QUALITY UNKNOWN: SORT.

QUAMDIU. — "*Quamdiu* also is a word of limitation, for if a man grant a rent out of the mannor of D., *quamdiu* the grantor shall bee dwelling upon the mannor, this is good, or *quamdiu se bene gesserit*. And so by these words, *donec, quousque, usque ad, tamdiu, ubicunque*" (Co. Litt. 235 a).

"The word 'Quamdiu' implies a duration, without interruption or intermission. If Blackacre is granted to A. *quamdiu* B. suffers J. N. to enjoy Whiteacre, if B. enter into Whiteacre the grant of Blackacre ceaseth. Now, though B. suffer J. N. to re-enter and re-enjoy Whiteacre, yet the estate by the *quamdiu* is determined. And so, if lands be granted to A. and his heirs *quamdiu* B. hath heirs of his body, if B. die without heir of his body, the estate ceaseth; and though the wife of B. be enseint and after have a son, yet it shall not revive. That is the express case put by Yelverton in *Poole and Needham's Case*, in 6 Jac. B. R. 149; for it was a collateral determination which, being once interrupted, shall not be set on foot again. The true reason is, the *quamdiu* is a word of limitation of a continued uninterrupted estate. And indeed to have an estate cease and rise again, the proper words should be *toties quoties*, and not *quamdiu* which, as I said, implies a continued estate" (per Bridgman, C. J., *Holland* v. *Fisher*, Orl. Bridg. 202, 203). *V.* TOTIES QUOTIES.

QUANTITY AND QUALITY UNKNOWN. — *V. Tully* v. *Terry*, 42 L. J. C. P. 240; L. R. 8 C. P. 679: *The Ida*, 2 Asp. 551; 32 L. T. 541: CONTENTS UNKNOWN: CLEAN BILL OF LADING.

QUANTITY SURVEYOR. — A Quantity Surveyor, is a person "whose business consists in taking out in detail the Measurements and Quantities, from plans prepared by an architect, for the purpose of enabling Builders to calculate the amount for which they could execute the plans" (per Morris, J., *Taylor* v. *Hall*, 4 Ir. Rep. C. L. 476). There is no privity between him and the Builder whose tender is accepted; accordingly, he cannot recover his fees from such builder (*Taylor* v.

Hall), unless the builder's liability is shown by the arrangement between the parties or (probably) by a custom in the trade (*North* v. *Bassett*, 1892, 1 Q. B. 333; 61 L. J. Q. B. 177); nor, on the other hand, can he be sued by such builder for negligence in preparing the Bill of Quantities (*Priestley* v. *Stone*, 4 Times Rep. 730). Nor is there, necessarily and without express evidence of such a relationship, any privity between the Quantity Surveyor and the Building Owner, for the employer of the Quantity Surveyor is generally the Architect; therefore, the Builder has, generally, no claim against the Building Owner for the negligent preparation of the Bill of Quantities (*Scrivener* v. *Pask*, L. R. 1 C. P. 715), nor can the Quantity Surveyor, merely as such, recover his fees against the Building Owner (*Antisell* v. *Doyle*, 1899, 2 I. R. 275: *Sv*, *Moon* v. *Witney*, 5 Scott, 1; 3 Bing. N. C. 814).

QUANTUM MERUIT. — *Quantum Meruit*, is the reasonable amount to be paid for services rendered or work done, when the price therefor is not fixed by contract (3 Bl. Com. 161). *Vh*, *Cutter* v. *Powell*, 6 T. R. 320; 2 Sm. L. C. 1: *Sumpter* v. *Hedges*, 1898, 1 Q. B. 673; 67 L. J. Q. B. 545.

QUARANTINE. — *V.* QUARENTINE.

QUARENTENA TERRÆ. — "A Furlong; Co. Litt. 5 b; Spelm. It is also used in the secondary meaning of a furlong or shot (a division in the common field); Seebohm, Eng. Vil. Comm. 4; and for that reason, we suppose, 'some hold that by that name land may be demanded'; Co. Litt. 5 b" (Elph. 617). *V.* QUARENTINE: STADIUM.

QUARENTINE. — "'Quarentine' is where a man dyeth seised of a manour place, and other Lands, whereof the wife ought to be endowed, then the woman may abide in the manour place, and there live of the store and profits thereof the space of forty dayes, within which time her Dower shall be assigned, as it appeareth in Magna Charta, cap. 6" (Termes de la Ley). *Vf*, Cowel.

"'Quarentine' is also the space of forty days wherein any person coming from foreign parts infected with the plague, is not permitted to land or come on shore" (Cowel). *Vh*, 10 Encyc. 601–603.

"'Quarentine' also signifies a Furlong" (Cowel). *Va*, QUARENTENA TERRÆ.

QUARRELS. — "As to this word (*Querelas*), it is to be known that Quarrels extend not only to actions as well real as personal, as it is held in 9 E. 44 a; but also to causes of actions and suits, as it is held in 39 H. 6, 9 b. So that, by release of all 'Quarrels,' not only actions depending in suit, but causes of action and suit also are released. . . . And this word Querela is derived *a querendo, unde etiam querens*, who is the

plaintiff; and Quarrels, Controversies, and Debates, are *synonima*, and of one and the same signification" (*Altham's Case*, 8 Rep. 153 a, 153 b). *Vf*, Co. Litt. 292 a: Termes de la Ley, *Quarels*.

QUARRY. — "The word 'Quarry' is in the *Encyclopædia Metropolitana* stated to be derived from the French word 'quarrière,' and the derivation is followed by this description: 'In the Latin of the lower ages, *quadratarius* was a stone-cutter, *qui marmora quadrat*, and hence "quarrière," the place where he quadrates or cuts the stone in squares, the place where the stone is cut in squares, generally a stone-pit,' — clearly, therefore, referring to a place upon or above, and not under, the ground" (per Turner, L. J., *Bell* v. *Wilson*, 35 L. J. Ch. 341; 1 Ch. 303; 14 W. R. 493; 14 L. T. 115); and, therefore, distinct from a "Mine" (*Darvill* v. *Roper*, 24 L. J. Ch. 779; 3 Drew. 294; 3 W. R. 467; 25 L. T. O. S. 302). "The authorities, both at Law and in Equity, concur in this, that if the operations carried on are in fact mining operations and not surface operations, — whatever may be the material gained, whether it be Slate, as here, Limestone, as in *R.* v. *Sedgley* (*V.* MINE), or Clay, as in *R.* v. *Brettell* (*Va*, MINE), — the criterion is, not the material obtained but, the mode in which it is obtained" (per Malins, V. C., *Cleveland* v. *Meyrick*, 37 L. J. Ch. 128). *Vf*, as to the difference between a Quarry and a Mine, MacS. 3–5.

Quà Factory and Workshop Acts, a "Quarry" is, "any place, not being a Mine, in which persons work in getting Slate, Stone, Coprolites, or other Minerals" (41 V. c. 16, Sch 4, Part 2, repld Sch 6, Part 2 (26), Factory and Workshop Act, 1901). *V.* FACTORY.

So, quà the Quarries Act, 1894, 57 & 58 V. c. 42, a "Quarry" means, "every place (not being a Mine) in which persons work in getting Slate, Stone, Coprolites, or other Minerals, *and any part of which is more than 20 feet deep*" (s. 1). Furnace Slag is not a "MINERAL," nor is a heap of it a "Quarry" within this def (*Scott* v. *Mid. Ry*, 61 J. P. 358; 13 Times Rep. 398).

The Workmen's Comp Act, 1897 (subs. 2, s. 7), adopts the def of "Quarry" contained in the Quarries Act, 1894.

Quà Quarry (Fencing) Act, 1887, 50 & 51 V. c. 19, "'Quarry,' includes, every pit or opening *made* for the purpose of getting Stone, Slates, Lime, Chalk, Clay, Gravel, or Sand; but not any natural opening" (s. 4).

V. DELF: MINE: "Open Mine," sub OPEN.

QUART. — Is ¼th of a GALLON (s. 15, 41 & 42 V. c. 49).

QUARTER. — A Quarter Measure is 8 BUSHELS (s. 15, 41 & 42 V. c. 49), *i.e.* 64 GALLONS.

QUARTER OF A YEAR. — "A 'Quarter of a Year' containeth, by legall computation, 91 dayes" (Co. Litt. 135 b). *Cp*, HALF A YEAR.

QUARTER SESSIONS. — "COURT of Quarter Sessions"; Stat. Def., Interp Act, 1889, s. 13 (14).

"Quarter Sessions"; Stat. Def., 28 & 29 V. c. 121, s. 3; 31 & 32 V. c. 130, s. 3; Loc Gov Act, 1888, s. 100. — quà Scotland, 46 & 47 V. c. 51, s. 68. — quà Ireland, 53 & 54 V. c. 70, s. 98 (3).

"Quarter Sessions BOROUGH"; *V.* Loc Gov Act, 1888, ss. 35, 100, on *whv, Re Dover and Kent Co. Co.*, 1891, 1 Q. B. 389; 60 L. J. Q. B. 314; 64 L. T. 421; 55 J. P. 248.

Vh, Archbold's Practice of Quarter Sessions: Simey, Ib.: 10 Encyc. 605–610.

V. GENERAL OR QUARTER SESSIONS: NEXT: SEPARATE QUARTER SESSIONS: SESSIONS. *Cp*, PETTY SESSIONS.

QUARTERLY. — Where an annual rent, salary, or (*semble*) any other annual payment, has to be made "quarterly," without more, that means, by four equal portions on the usual Quarter Days (*Vanaston* v. *Mackarly*, 2 Lev. 99). *Vf*, HALF YEARLY: *Cp*, YEARLY.

The power given, by s. 1, 5 V. c. 27, to Incumbents, with consent of Bishop and Patron, to lease glebe lands, is on the condition "that there be reserved on every such Lease, payable to the Incumbent for the time being of such benefice, *quarterly* in every year" during the term, the best and most improved yearly rent that can reasonably be gotten; that condition is imperative; and, therefore, where an Incumbent entered into an agreement to grant a lease at a rent "payable half-yearly," the agreement could not be enforced, nor could the Court modify it so as to make it conform to the provisions of the statute (*Jenkins* v. *Green*, 28 L. J. Ch. 820; 27 Bea. 440).

A provision for a "Quarterly Account" is insufficient to make a Guarantee a continuing one; *V. Melville* v. *Hayden*, 3 B. & Ald. 593.

QUASH. — "To overthrow or annul" (Cowel), *e.g.* to quash an Indictment for defect on its face, or a Rate for illegality.

QUAY. — "Is a convenient place fitted on the Shore for the loading and unloading of Vessels; we commonly call it a WHARFE" (Cowel, *Kay*); but "'Quay' is a wider term than 'Wharf'; it is almost tantamount to 'STREET'" (per Crampton, J., *Belfast* v. *Tomb*, Smythe, 437).

V. DOCK: FACTORY: EX QUAY OR WAREHOUSE.

QUEEN. — This book professes to give the meaning of the English of Affairs as expounded by the English Judges and Parliament up to the end of the Nineteenth Century. That date very nearly coincides with the deeply lamented death of Her Most Gracious Majesty Queen Victoria, whose long and illustrious reign had accustomed the public records and publicists to speak of "The Queen" as transcending her

ancestors and as though she were not only a Model Ruler and the Type of Womanhood but also a Public Department. "King's Enemies" became "Queen's Enemies," "King's Peace," "Queen's Peace," and so with many like phrases. The idea of this book was formed in the twenty-second year of the reign, and written (for the most part) during the days, of our Good Queen, and it was indeed hoped that this edition might be published in her time. So it came about that "The Queen" is constantly used in these pages in the sense of Queen Victoria as typifying *the* Monarch of the British Empire; in that sense it is retained, and where so used the Monarch for the time being is of course intended: *V.* CROWN: HIGH TREASON: MAJESTY: PRIVATE ESTATES: QUEEN'S ENEMIES: AS THE QUEEN DIRECTS.

QUEEN ANNE'S BOUNTY. — *V.* s. 12 (16), Interp Act, 1889. "The Queen Anne's Bounty Acts, 1706 to 1870"; *V.* Sch 2, Short Titles Act, 1896.

V. FIRST FRUITS.

QUEEN'S ENEMIES. — "The words 'the Queen's Enemies' relate, not to Robbers — for the consequences of whose attacks carriers are liable, unless their liability has been varied by statute or express contract — but in the case of an English ship, and, in other cases, to the Enemies of the Sovereign of the Shipowner" (1 Maude & P. 351, citing *Russell* v. *Niemann*, 17 C. B. N. S. 163; 34 L. J. C. P. 10: *The Heinrich*, L. R. 3 A. & E. 435: *The Teutonia*, L. R. 4 P. C. 171; 41 L. J. Adm. 57. *Va, The San Roman*, L. R. 3 A. & E. 583; 41 L. J. Adm. 72). Pirates, probably, are not included herein (1 Maude & P. 351, *n* (*h*), 487: *Sv*, Carver, 12). *V.* ENEMY: RESTRAINTS OF KINGS.

QUEEN'S REGULATIONS. — *V.* REGULATION.

QUEEN'S WAREHOUSE. — *V.* WAREHOUSE.

QUESTION. — "Question in the Action"; *V. Norris* v. *Beazley*, 2 C. P. D. 80; 46 L. J. C. P. 169: *Horwell* v. *Gen. Omnibus Co*, 46 L. J. Ex. 700; 3 Ex. D. 365: *Byrne* v. *Brown*, 22 Q. B. D. 657.

By a "Question arising in any Cause or Matter," which may be referred under s. 56, Jud. Act, 1873, is meant a question that must necessarily arise for decision therein (*Weed* v. *Ward*, 58 L. J. Ch. 454; 40 Ch. D. 555); but that provision is replaced by ss. 13, 14, Arb Act, 1889, which are couched in wider language: *V. Hurlbatt* v. *Barnett*, cited ACCOUNT.

"Question arising in the Administration of" an Estate or Trust, R. 3 *g*, Ord. 55, R. S. C.; *V. Re Medland, Eland* v. *Medland*, 58 L. J. Ch. 572.

"Question arising out of, or connected with, the Contract," s. 9, V. & P. Act, 1874, includes, "whatever could be done in Chambers upon a reference as to title under a decree where the contract was established" (*Re Burroughes and Lynn*, 46 L. J. Ch. 528; 5 Ch. D. 601; 25 W. R. 520; 36 L. T. 778: for the cases carrying out this principle, *V.* Greenwood's Real Property Statutes, 2 ed., 206–208: *Vf, Re Jackson and Woodburn*, 36 W. R. 396; 37 Ch. D. 44; 57 L. J. Ch. 243; 57 L. T. 753). *Cp*, COMPENSATION.

"The Question," in the latter part of s. 41, Regn of Railways Act, 1868, 31 & 32 V. c. 119, means only, *the* Question of Compensation (*Re East London Ry*, 24 Q. B. D. 507; 63 L. T. 147; 38 W. R. 312).

"Difference . . . or any other Question," s. 19, Regn of Railways Act, 1873, 36 & 37 V. c. 48, is confined to questions of account, compensation, and remuneration; and does not extend to the violation of an enactment (*Postmaster General* v. *Highland Ry*, 2 Ry & Can Traffic Ca. 34).

"Question *of Law*," s. 14, Jud. Act, 1881, includes the question as to whether a Judge, not on the Election Petitions Rota, has power to amend a Petition (*Shaw* v. *Reckitt*, 1893, 2 Q. B. 59; 62 L. J. Q. B. 375; 69 L. T. 327; 41 W. R. 497; 57 J. P. 805). "*Point of Law*," s. 58, Court of Probate Act, 1857, 20 & 21 V. c. 77; *V. Copeland* v. *Simister*, 1893, P. 16; 62 L. J. P. D. & A. 38; 68 L. T. 257; 41 W. R. 269: *Cp*, POINT OF SUBSTANCE.

Action in which *Title* "shall be in Question," s. 58, 9 & 10 V. c. 95, repld s. 56 Co. Co. Act, 1888, means, where the Title shall really and *bonâ fide* be in question, as distinguished from the possibility of its coming in question under a general plea (*Latham* v. *Spedding*, 20 L. J. Q. B. 302; 17 Q. B. 440). *Vf*, TITLE: *Lilley* v. *Harvey*, 17 L. J. Q. B. 357: *Mountney* v. *Collier*, 22 L. J. Q. B. 124; 1 E. & B. 630: *Emery* v. *Barnett*, 27 L. J. C. P. 216; 4 C. B. N. S. 423. *Cp*, VALUE: ANNUAL VALUE, p. 88.

V. BROUGHT INTO QUESTION: DISPUTE: FACT: MATTER.

QUI TAM. — *V.* POPULAR ACTION.

QUIA EMPTORES. — The statute of *Quia Emptores*, — so called from its commencing words, — is 18 Edw. 1, c. 1; thereby was sanctioned the full and free alienation of FEE SIMPLE lands, but SUBINFEUDATION was forbidden and stopped. *Vh*, Wms. R. P. Part 1, chs. 3, 5, Part 2, ch. 5, Part 3, ch. 1: Goodeve, 20, 82 *n*, 87.

Cp, Statute de Donis, sub WESTMINSTER.

QUIA TIMET. — A Quia Timet Action is an action brought to prevent a wrong that is apprehended: *Vh*, *A-G.* v. *Manchester*, 1893, 2 Ch. 87; 62 L. J. Ch. 459.

QUICK. — A woman is "quick with child" when she has conceived (per Gurney, B., *R.* v. *Wycherley*, 8 C. & P. 264); the learned judge added, " 'With quick child,' is when the child has quickened."

QUID PRO QUO. — Is the CONSIDERATION of a Contract, — the giving of one thing of value for another thing of value (Cowel).

QUIET ENJOYMENT. — The question as to whether or not a Covenant for Quiet Enjoyment has been broken is "in every case a question of fact whether the quiet enjoyment of the land has or has not been interrupted; and where the ordinary and lawful enjoyment of the land is substantially interfered with by the acts of the lessor (or, other covenantor ?), or those CLAIMING UNDER him, the covenant appears to us to be broken, although neither the TITLE to the land nor the POSSESSION of the land may be otherwise affected" (per Willes, J., *Dennett* v. *Atherton*, 41 L. J. Q. B. 165; L. R. 7 Q. B. 316). "I take that as an advance upon the older authorities. I accept it and act upon it" (per Lindley, L. J., *Robinson* v. *Kilvert*, 58 L. J. Ch. 396; 41 Ch. D. 88). But a mere "temporary inconvenience which does not interfere with the estate or title or possession," is not a breach (per Lindley, L. J., *Manchester S. & L. Ry* v. *Anderson*, 1898, 2 Ch. 394; 67 L. J. Ch. 568; 78 L. T. 821). Observe, that *Dennett* v. *Atherton* was considered in *Sanderson* v. *Berwick-upon-Tweed*, 53 L. J. Q. B. 561; 13 Q. B. D. 547; 33 W. R. 67, and that those two cases and *Manchester, S. & L. Ry* v. *Anderson*, were considered in *Tebb* v. *Cave*, 1900, 1 Ch. 642; 69 L. J. Ch. 282; 82 L. T. 115; 48 W. R. 318.

This covenant does not embrace tortious acts (*Hayes* v. *Bickerstaffe*, Vaugh. 118: *Nash* v. *Palmer*, 5 M. & S. 379), unless expressly extended, *e.g.* to persons "PRETENDING TO CLAIM" (*Chaplin* v. *Southgate*, 10 Mod. 384), or unless such acts are those of the covenantor his heirs or exors or admors (Elph. 485), or of a specified person (Ib. 486). Nor does it guarantee unrestricted user (*Spencer* v. *Marriott*, 1 B. & C. 457; 2 D. & R. 665: *Dennett* v. *Atherton*, sup), or freedom from unforeseen consequences (*Harrison* v. *Muncaster*, 1891, 2 Q. B. 680; 61 L. J. Q. B. 102; 40 W. R. 102; 65 L. T. 481).

It has been said that the covenant for Quiet Enjoyment can only extend to protect the purchaser from incumbrances and defects in the title of which he has no Notice (per Malins, V. C., *Hunt* v. *White*, 37 L. J. Ch. 326; 19 L. T. 141; 16 W. R. 478); but that case (which was never law in the United States) is over-ruled, and the covenant extends, — if its terms are wide enough, — to defects of title appearing on the conveyance itself (*Page* v. *Mid. Ry*, 1894, 1 Ch. 11; 63 L. J. Ch. 126).

Vh, Elph. 481–493: Woodf. 718–728: Touch. 166, 170–172: 36 S. J. 180, 42 Ib. 143: *Anderson* v. *Oppenheimer*, 49 L. J. Q. B. 708; 5 Q. B. D. 608: DEFAULT: DEMISE: INTERRUPTION: NEGLECT OR DEFAULT: PEACEABLY AND QUIETLY: THROUGH.

QUIET IN HARNESS. — "Quiet in Harness," in a Warranty, refers rather to the behaviour than to the health of the horse (per Pollock, B., *Bush* v. *Freeman*, 3 Times Rep. 449).

"Proof that a horse is a good drawer only, will not satisfy a warranty that he is 'a Good Drawer and pulls quietly in harness'; and the K. B. held that it was quite clear these were convertible terms, because no horse can be said to be a 'Good Drawer' if he will not pull quietly in harness, and therefore proof that he is merely a Good Puller will not satisfy the warranty, the word 'good' must mean, good in all particulars (*Coltherd* v. *Puncheon*, 2 D. & R. 10). And where a horse was warranted 'Sound and Quiet *in all respects*,' Abinger, C. B., held it to include the being Quiet in Harness (*Smith* v. *Parsons*, 8 C. & P. 199). But where the warranty was as follows, — 'Received from A. £60 for a Black Horse, rising 5 years, Quiet to Ride and Drive, and warranted Sound up to this date or subject to the examination of a veterinary surgeon,' — it was held that there was no warranty that the horse was Quiet to Ride and Drive (*Anthony* v. *Halstead*, 37 L. T. 433)": Oliphant on Horses, 4 ed., 121, 122.

QUIETUS. — "'Quietus,' acquitted, — Is a word used by the Clerk of the Pipe and Auditors in the Exchequer in their Acquittances or Discharges given to Accomptants" (Cowel), *e.g.* a Sheriff, at the end of his year, carries in his Bill of Cravings (*i.e.* claim for expenses) and also accounts for what he may have received for the Crown, and gets his Quietus.

For the protection of purchasers of land against Crown Debts, a Quietus may be registered under s. 9, Judgments Act, 1839, 2 & 3 V. c. 11.

QUIT. — *V.* NOTICE TO QUIT: NOTICE, towards end.

QUITCLAIM. — This is a corruption of "quiet claim" (Litt. s. 445: *V.* REMISE). "'Quite clayme, *quieta clamantia*,' Is a Release or Acquitting of a man for any action that he hath, or might, or may have against him. Also a quitting of ones Claime or Title" (Cowel).

QUIT RENT. — "Rents of Assize are the certain established rent of the freeholders and ancient copyholders of a Manor, and which cannot be departed from: — those of Freeholders are frequently called Chief Rents, and both sorts are indifferently denominated Quit Rents, because thereby the tenant goes quit and free of all other services" (Woodf. 405, citing 2 Bl. Com. 42; Gilb. Rents, 38; Co. Litt. 143 b, Hargrave's *n* 5): *Vf*, Litt. s. 117: Cowel, *Quit Rent*: Copinger and Munro on Rents, 17, 18: *North* v. *Strafford*, 3 P. Wms. 151 *n*: *Howitt* v. *Harrington*, 1893, 2 Ch. 497; 62 L. J. Ch. 571; 68 L. T. 703; 41 W. R. 664: *Re Maxwell*, cited IN CHARGE: CHIEF: RENT: FEE FARM.

QUO WARRANTO. — "Is a Writ that lies against him that usurps any FRANCHISE or Liberty" (Cowel), or Office. *Vh*, Short & Mellor's Crown Office Practice: 10 Encyc. 629–642. *Cp*, PROHIBITION.

QUORUM. — Where a Quorum of Directors or Shareholders is prescribed, that means, imperatively, that no business shall be transacted unless the prescribed number, at least, be present (*Re Alma Spinning Co*, 50 L. J. Ch. 171; nom. *Bottomley's Case*, 16 Ch. D. 681; following *Kirk* v. *Bell*, 16 Q. B. 290, and criticising *Thames Haven, &c, Co* v. *Rose*, 12 L. J. C. P. 90; 4 M. & G. 552): *Vf, Hemans* v. *Hotchkiss Co*, 1899, 1 Ch. 115; 68 L. J. Ch. 99.

Where a Quorum is to be fixed but none has actually been fixed; *V. Re Bank of Syria*, 1900, 2 Ch. 272; 69 L. J. Ch. 412; 83 L. T. 165; 1901, 1 Ch. 115; 70 L. J. Ch. 82.

In order that there may be a duly constituted Quorum of the DIRECTORS of a Co "it is necessary that they should act conjointly, and as a Board of Directors. I do not say that they are bound to meet at any particular place or any particular time; but they are bound to be together, as a Board, at the time the thing is ordered to be done" (per Bramwell, B., *D'Arcy* v. *Tamar, &c, Ry*, 36 L. J. Ex. 37; L. R. 2 Ex. 158; 4 H. & C. 463: *vthc*, *Re Great Northern Salt Works*, 59 L. J. Ch. 288; 44 Ch. D. 472).

In a Commission, to be "of the Quorum," means, that the persons so indicated are *sine quâ non* to the proceedings (Cowel). *Note.* The Quorum clause no longer appears in the Commission of the Peace.

QUOTE. — Quote a Rate; *V.* TO BOOK, p. 206.

QUOUSQUE. — *V.* QUAMDIU.

A Seizure *Quousque*, is when a copyholder dies and no person comes in to claim Admittance to his tenement as his heir or devisee, then the Lord of the Manor may seize the tenement *until* some rightful person does so claim (*Doe* d. *Bover* v. *Trueman*, 9 L. J. O. S. K. B. 119; 1 B. & Ad. 736); but such seizure cannot be made until after three Proclamations in the Manor Court have been made, or a special notice given requiring the proper claimant to come in and be admitted and he has refused to do so (*Beighton* v. *Beighton*, 64 L. J. Ch. 796; 43 W. R. 685). This right of seizure may be barred by the Lord's long acquiescence in a neglect to come in and claim (*Ecc. Commrs* v. *Parr*, 1894, 2 Q. B. 420; 63 L. J. Q. B. 784; 42 W. R. 561). *Vh*, Wms. R. P., Part 3, ch. 2: Goodeve, 329: 1 Watkins on Copyholds, 3 ed., 234, 2 Ib. 97: Scriven on Copyholds, 7 ed., 471: *Walters* v. *Webb*, 39 L. J. Ch. 677.

V. UNTIL.

RABBITS.—*V.* DOMESTIC ANIMAL: GAME, p. 795: GROUND GAME.

RACE.—*V.* FOOT-RACE: HORSE RACE.

Racecourse; *V.* PLACE, p. 1486.

"Race HORSE"; Stat. Def., 19 & 20 V. c. 82, s. 12, the Act repealed by 37 & 38 V. c. 16.

Is a Regatta a "*Public* Race" within an Excise Exemption, *e.g.* s. 11, 6 G. 4, c. 81? *V. Ash* v. *Lynn*, 35 L. J. M. C. 159; L. R. 1 Q. B. 270.

RACK-RENT.—"'Rack rent,' is only a RENT of the full Value of the tenement, or near it" (2 Bl. Com. 43).

"Rack-rent, is rent of, or approaching to, the full Annual Value of the property out of which it issues" (Elph. 618); "a 'Rack-rent,' in legal language, means, a rent that represents the full Annual Value of the holding" (per Holmes, L. J., *Exp. Connolly to Sheridan*, 1900, 1 I. R. 6: *V.* LONG). But on these two latter definitions it may be observed that "Annual Value," primarily, means, *net* annual value (*V.* ANNUAL VALUE); whereas "Rack-rent," or "Annual Rack-rent," means gross rental as distinguished from net annual value (*Stevens* v. *Barnet Water Co*, 57 L. J. M. C. 82; 36 W. R. 924). *Semble*, that Blackstone's remains the correct definition.

Vh, *Re Elwes*, 28 L. J. Ex. 47; 3 H. & N. 719.

Quà Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, "'Rack-rent,' shall be construed to mean, any rent which shall not be less than ⅔ds of the Full Improved Net Annual Value of any property" (s. 109): *Va*, 24 & 25 V. c. 133, s. 38 (3); P. H. Ireland Act, 1878, s. 2.

Quà Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, "'Rack-rent' shall mean, rent which is not less than ⅔ds of the Full Net Annual Value of the property out of which the rent arises; and the 'Full Net Annual Value,' shall (save as regards any valuation for Poor Rates, or valuation for Assessments under this Act) be taken to be, the rent at which the property ought reasonably to be expected to let from year to year, free from all quit rent, head rent, ground rent, and usual tenant's rates and taxes, and deducting therefrom the probable annual cost of the repairs, insurance, and other expenses (if any), necessary to maintain the same in a state to command such rent" (s. 1). *Vf*, ANNUAL VALUE: FULL ANNUAL VALUE: NET.

Quà P. H. Act, 1875 (*V.* s. 4), "Rack-rent" is defined as in 17 & 18 V. c. 103; "Full Net Annual Value" being defined as "Net Annual Value" in s. 1, 6 & 7 W. 4, c. 96 (*V.* ANNUAL VALUE).

Quà P. H. London Act, 1891 (*V.* s. 141), "Net" is dropped out of the def of "Rack-rent" and "Full Annual Value" is defined in language nearly resembling, but not identical with, that used for "Net Annual Value" in s. 1, 6 & 7 W. 4, c. 96.

RADMANS: RADCHEMISTRES. — *V.* COLEBERTI.

RAGGED SCHOOL. — Quà 32 & 33 V. c. 40, "'Ragged School,' shall mean, any SCHOOL used for gratuitous education of children and young persons of the poorest classes, and for the holding of Classes and Meetings in furtherance of the same object, and without any pecuniary benefit being derived therefrom except to the teacher or teachers employed" (s. 2): *Vth, Bell* v. *Crane*, cited MAY, p. 1179. *Cp*, SUNDAY SCHOOL.

RAIL. — "'Line of Rail,' has, I think, been held to include land covered by an embankment" (per Erle, J., *South Wales Ry* v. *Swansea*, 24 L. J. M. C. 34; 4 E. & B. 189).

RAILROAD. — *V. Fletcher* v. *London United Tramways Co*, cited RAILWAY, p. 1646.

RAILWAY. — The word "Railway" has no especial technical meaning, but is to be understood in its commonly received sense. Thus, in reference to the Ry and Canal Traffic Act, 1854, Brett, L. J., made the following observations, — "For instance, if additional points or sidings were requisite for safety at an existing junction, no ordinary person would say that the addition of a set of points or the laying of a siding rail would make a new railway; they would term it an adaptation or improvement of the existing railway: though an Order to make a single-line railway from A. to B. into a double-line railway would be considered by all ordinary persons of intelligence to be an Order to construct a substantially new line of railway or new railway" (*S. E. Ry* v. *Ry Commrs*, 50 L. J. Q. B. 211: 6 Q. B. D. 586). *V.* FACILITIES.

"Railway" is not synonymous with "Rails," and is not usually confined to a particular line of rails. "Railway," means far more than that. It includes the land taken and used for Ry purposes; goods brought along a Ry for shipment are carried or conveyed upon or along the Ry as soon as they cross the fence bounding the land acquired and used for railway purposes and continue to be so carried or conveyed until they leave such land (*Northumberland* v. *N. E. Ry*, 95 Law Times, 181, 182).

But there is a distinction between "Railway" and "RAILWAY STATION" (*V. Lond. & N. W. Ry* v. *Wigan*, 2 Ry & Can Traffic Ca. 240).

A Station is no part of a Ry, nor are offices, warehouses, or other property, which are ancillary to its working; but sidings, turn-tables, and so much of the platform as is to be considered as the side of the railway, do form part of it (*South Wales Ry* v. *Swansea*, 24 L. J. M. C. 30; 4 E. & B. 189: *Sv*, *Lond. & N. W. Ry* v. *Llandudno*, inf).

Quà Ry Regulation Act, 1840, 3 & 4 V. c. 97, "Railway," extends, "to all Railways constructed under the powers of any Act of Parliament, and intended for the conveyance of Passengers, in or upon carriages drawn or impelled by the power of steam or by any other mechanical power" (s. 21). A Ry is not less a Ry within s. 13 of that Act because it has not yet been opened for passenger traffic (*R.* v. *Bradford*, 29 L. J. M. C. 171; Bell C. C. 268). *Note*: A power to make "any Railway," in an Act prior to the invention of steam locomotives, would comprise a railway to be worked by such engines (*Bishop* v. *North*, 12 L. J. Ex. 362; 11 M. & W. 426).

Quà Regulation of Railways Act, 1873, 36 & 37 V. c. 48, "'Railway' includes, every Station, Siding, Wharf, or Dock, of or belonging to such railway, and used for the purposes of PUBLIC TRAFFIC" (s. 3). *Vf*, inf.

Other Stat. Def., quà Ry Regn Acts;—5 & 6 V. c. 55, s. 21; 7 & 8 V. c. 85, s. 25; 31 & 32 V. c. 119, s. 2; 34 & 35 V. c. 78, s. 2.

Quà Ry and Canal Traffic Acts, "Railway," includes, "every Station of or belonging to such Railway used for the purposes of PUBLIC TRAFFIC"; and quà Part 2, Act of 1888, it includes a Canal (17 & 18 V. c. 31, s. 1; 51 & 52 V. c. 25, s. 36).

"The Railway Regulation Acts, 1840 to 1893," "The Railway and Canal Traffic Acts, 1854 to 1894"; *V.* Sch 2, Short Titles Act, 1896.

For other defs of "Railway" in Ry Acts, *V.* Ry C. C. Act, 1845, s. 3; Ry C. C. (Scotland) Act, 1845, s. 3; 13 & 14 V. c. 83, s. 38; 27 & 28 V. c. 120, s. 2, c. 121, s. 2; 29 & 30 V. c. 108, s. 2; Indian Guaranteed Railways Act, 1879, 42 & 43 V. c. 41, s. 1; 57 & 58 V. c. 12, s. 2; 59 & 60 V. c. 34, s. 12.

A Private Ry, is not a "Railway" so as to impose on its owner the rules of the Ry Acts as to Gates and Level Crossings (*Matson* v. *Baird*, 3 App. Ca. 1082). *Vf*, quà Level Crossings, TURNPIKE ROAD.

A short line of railway, part of a Dock undertaking and connecting the dock with other and independent railways, is a "Railway" within s. 3, Ry Comp Act, 1867, 30 & 31 V. c. 127 (*G. N. Ry* v. *Tahourdin*, 53 L. J. Q. B. 69; 13 Q. B. D. 320); and, under that Act, a "Railway" is still a railway though closed for traffic and its re-opening doubtful (*Midland Waggon Co* v. *Potteries, &c, Ry*, 50 L. J. Q. B. 6; 6 Q. B. D. 36); but if altogether abandoned as a railway, it would, probably, lose that character (per Stephen, J., *Ib.*).

"Railway," as used in s. 1 (5), Employer's Liability Act, 1880, 43 & 44 V. c. 42, is not restricted to a Ry worked under statutory powers; it is there used in a popular sense, and signifies any way upon which trains

pass by means of rails, including a temporary tramway used by a contractor for the passage of engines and trucks during the execution of his contract (*Doughty* v. *Firbank*, 52 L. J. Q. B. 480; 10 Q. B. D. 358). *V.* TRAIN.

Quà Workmen's Comp Act, 1897, " 'Railway,' *means*, the railway of any Ry Co to which the Regulation of Railways Act, 1873, applies; and *includes*, a LIGHT RAILWAY, made under the Light Railways Act, 1896; and 'Railway' and 'Railway Company' have the same meaning as in the said Acts of 1873 and 1896 " (subs. 2, s. 7). Neither a Ry Bookstall, Hotel, or Refreshment Room, is part of a " Railway " within either of these defs (*Milner* v. *G. N. Ry*, 1900, 1 Q. B. 795; 69 L. J. Q. B. 427; 82 L. T. 187; 48 W. R. 387; 64 J. P. 291): *Vf*, *Fullick* v. *Evans*, 84 L. T. 413: *Fletcher* v. *London United Tramways Co*, 1902, 2 K. B. 269; 71 L. J. K. B. 653. *V.* ANCILLARY.

Quà Railway Employment (Prevention of Accidents) Act, 1900, 63 & 64 V. c. 27, " 'Railway,' *means*, any railway used for the purposes of PUBLIC TRAFFIC, whether passenger goods or other traffic; and *includes*, any works of the Ry Co connected with the railway " (s. 16).

Quà National Defence Act, 1888, 51 & 52 V. c. 31, " 'Railway,' includes any TRAMWAY, whether worked by animal or mechanical power, or partly in one way and partly in the other " (subs. 8, s. 4).

Other Stat. Def. — Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, Sch s. 1; Post Office (Duties) Act, 1847, 10 & 11 V. c. 85, s. 20; Telegraph Act, 1863, 26 & 27 V. c. 112, s. 3.

V. PASSENGER RAILWAY: STREET RAILWAY: THE.

LAND used ONLY " as a Railway constructed under the powers of any Act of Parliament for PUBLIC CONVEYANCE," s. 55, Loc Gov Act, 1858, 21 & 22 V. c. 98, — language which (per Wills, J., *Lond. & N. W. Ry* v. *Llandudno*, inf) was first used by s. 88, P. H. Act, 1848, and is now replaced by s. 211 (1 *b*), P. H. Act, 1875, — does not exclusively mean a Ry for Passengers; any Ry to which the PUBLIC has a right of access for the conveyance of themselves or their goods is a Ry " for Public Conveyance " (*R.* v. *Newport Dock Co*, 31 L. J. M. C. 266). But a Railway originally constructed by Private Arrangement is not a Ry " for Public Conveyance," although subsequently worked under an Act of Parliament (*N. E. Ry* v. *Leadgate*, 39 L. J. M. C. 65; L. R. 5 Q. B. 157); nor is a Street Tramway comprised in " Land used *only* " as a Ry (*Swansea Improvements Co* v. *Swansea*, 1892, 1 Q. B. 357; 61 L. J. M. C. 124; 66 L. T. 119; 56 J. P. 248).

Where, however, you have to deal with what is in fact a Ry within a Rating Act, then arises the further question, — What is included in " Land used only as a Ry " ? It includes all those things without which the Ry could not be used as a way; but does not include adjuncts which are only necessary for the convenience of business or similar purposes, — *e.g.* it includes the platforms, and so much of the station roof as covers a

portion of the line of rail, sidings, or platforms; it does not include the station generally, nor the cab drive, nor a cattle landing nor pens beyond the limits of the station, nor a crane in the goods yard (*S. Wales Ry* v. *Swansea*, sup: *Adamson* v. *Edinburgh, &c, Ry*, 2 Macq. 331; 1 Paterson, 544: *Lond. & N. W. Ry* v. *Llandudno*, 1897, 1 Q. B. 287; 66 L. J. Q. B. 232; 75 L. T. 659; 45 W. R. 350; 61 J. P. 55). In *thlc*, Wills, J., said, " 'Land used only as a Ry' is a very different expression from 'Line of Railway.'" *Vf*, *Williams* v. *Lond. & N. W. Ry*, 1899, 2 Q. B. 197; 68 L. J. Q. B. 883; on app. 1900, 1 Q. B. 760; 69 L. J. Q. B. 531; 82 L. T. 287; 64 J. P. 372.

Cp, MARKET GARDEN: LAND COVERED WITH WATER: PROPERTY OTHER THAN LAND.

Building " used for the purposes " of a Ry; *V.* PURPOSES.

" Necessary Land for making a Ry "; *V.* NECESSARY.

" In or about " a Ry; *V.* IN OR ABOUT: *Milner* v. *G. N. Ry*, sup.

Vh, Hodges on Railways: Browne & Theobald, Ib.: Darlington on Ry Rates and Charges: 11 Encyc. 1–39.

RAILWAY BILL. — Stat. Def., 27 & 28 V. c. 120, s. 2, c. 121, s. 2.

RAILWAY COMPANY. — Quà Regulation of Railways Act, 1873, " 'Railway Company,' includes, any person being the owner or lessee of, or working, any Railway in the United Kingdom, constructed or carried on under the powers of any Act of Parliament " (s. 3); *Vth*, *Greenock & Wemyss Bay Ry* v. *Caledonian Ry*, 3 Ry & Can Traffic Ca. 160.

Other Stat. Def., quà Ry Regn Acts; — 3 & 4 V. c. 97, s. 21; 5 & 6 V. c. 55, s. 21; 31 & 32 V. c. 119, s. 2; 34 & 35 V. c. 78, s. 2.

Quà Ry and Canal Traffic Acts, " Railway Company," " Canal Company," or " Railway and Canal Company," includes, " any person being the owner or lessee of, or any contractor working, any Railway or Canal or Navigation, constructed or carried on under the powers of any Act of Parliament "; and quà Part 2, Act of 1888, " Railway Company " includes, " a Canal Company, and Railway and Canal Company " (17 & 18 V. c. 31, s. 1; 51 & 52 V. c. 25, s. 36). *Vf*, s. 37 (2), of the latter Act.

A Ry Co which has no rolling stock, and whose line is wholly worked by another Co under a proportional mileage agreement, but maintaining and managing its own line, and collecting and forwarding its own traffic, and wholly employing and paying the staff engaged on its own line, is a " Railway Company " within Ry and Canal Traffic Act, 1854, and Regn of Railways Act, 1873 (*Central Wales Ry* v. *G. W. Ry*, 52 L. J. Q. B. 211; 10 Q. B. D. 231); so, a Canal Co, with statutory powers to construct railways on their quays and land and to charge reasonable tolls for their use, is a " Ry Co " within Ry and Canal Traffic Act, 1888, although not under the obligation as Carriers to admit the public (*Manchester Ship Canal Co* v. *Mid. Ry*, 10 Ry & Can Traffic Ca. 54).

Quà Ry Comp Act, 1867, "Railway Company," means, "a Company constituted by Act of Parliament, or by Certificate under Act of Parliament, for the purpose of constructing, maintaining, or working, a Railway (either alone or in conjunction with any other purpose)" (s. 3): *Vth, Re East & West India Dock Co,* cited CONSTITUTED.

For other defs of "Railway Company" in Ry Acts; *V.* Ry (Conveyance of Mails) Act, 1838, 1 & 2 V. c. 98, s. 19; 22 & 23 V. c. 59, s. 1; 27 & 28 V. c. 121, s. 51 (3); 29 & 30 V. c. 108, s. 2; 31 & 32 V. c. 18, s. 2; 42 & 43 V. c. 41, s. 1. — *Ir.* 54 & 55 V. c. 2, s. 18.

Quà Workmen's Comp Act, 1897; *V.* RAILWAY.

Other Stat Def. — Cheap Trains Act, 1883, 46 & 47 V. c. 34, s. 8; Diseases of Animals Act, 1894, 57 & 58 V. c. 57, s. 59; Explosives Act, 1875, 38 & 39 V. c. 17, s. 108; National Defence Act, 1888, 51 & 52 V. c. 31, s. 4; Post Office Acts, 10 & 11 V. c. 85, s. 20, 45 & 46 V. c. 74, s. 17. — *Ir.* 33 & 34 V. c. 36, s. 12.

"Railway Companies INCORPORATED by Act of Parliament," s. 199, Comp Act, 1862 (and which are excepted from being wound-up thereunder), include only a Co whose principal object is the construction (or working?) of a Railway (*Exmouth Docks Co,* 43 L. J. Ch. 110; L. R. 17 Eq. 181); a Tramway Co, is not within the exception (*Re Brentford & Isleworth Tramways Co,* 53 L. J. Ch. 624; 26 Ch. D. 527).

"Indian Ry Co"; *V.* INDIAN.

"Ry or other Public Co"; *V.* PUBLIC COMPANY.

V. DEBENTURE, at end: COMPANY.

RAILWAY RATE. — A "Rate," quà Part 2, Ry & Canal Traffic Act, 1888, includes, "tolls and dues of every description chargeable for the use of any Canal or by any Canal Co" (s. 36).

Railway Rates, "per Mile"; *V.* MILE.

RAILWAY STATION. — "This term is not in ordinary sense used as a description merely of the actual existing structures at a station; but as the description of a space actually set apart for, and generally used as, a resting-place for traffic, or a place for dealing with it in a particular way, although every part of the space is not covered with structures or used for passing along or for deposit" (per Brett, L. J., *S. E. Ry* v. *Ry Commrs,* 50 L. J. Q. B. 211).

V. RAILWAY: STATION.

RAILWAY TIME. — *V.* OF THE CLOCK.

RAILWAY TRACK. — In Canada, "Railway Track" is often used as including a line of street railway; and as used in item 173, s. 2, of the Canadian Act, 50 & 51 V. c. 39, it comprises all steel rails of the specified weight, whether used for ordinary railways or for tramways, the term "Railways Tracks," by the usage of Canadian draftsmen, being

equally applicable to both (*Toronto Ry* v. *Regina*, 1896, A. C. 551; 65 L. J. P. C. 110; 75 L. T. 234).

RAISE. — "Raise," s. 83 (6), Metrop Bg Act, 1855, repld, s. 88 (6), London Bg Act, 1894, is not confined to raising above-ground, but includes raising a wall by adding to its foundation by under-pinning (*Standard Bank of British S. Africa* v. *Stokes*, 47 L. J. Ch. 554; 9 Ch. D. 68).

"A covenant to Raise a *Mineral*, means, *primâ facie*, to get or win; not to bring to the surface" (MacS. 219, citing *Senhouse* v. *Harris*, 5 L. T. 635: *Kinsman* v. *Jackson*, 42 Ib. 80; 28 W. R. 337, 601). *V.* WIN.

"Not to raise the Rent"; *V.* MOLEST: TERMINATE.

A power in a Co's Articles enabling the directors by debentures to "secure the repayment of or *raise* any money authorized to be borrowed," authorizes them to issue debentures at a discount (*Re Anglo-Danubian Steam Nav. Co*, L. R. 20 Eq. 341; 44 L. J. Ch. 502), — "Raise" in such a connection being used "to prevent it being contended that the directors could only secure the repayment of the money borrowed" (per Jessel, M. R., *Ib.*). *V.* REPAYMENT.

As to power to a Receiver, in a Debenture-holder's action, to "raise" money so as to give priority over the Debentures; *V. Lathom* v. *Greenwich Ferry Co*, 72 L. T. 790; 2 Manson, 408; W. N. (95) 77.

"Borrow and raise"; *V.* BORROW.

"Raise and pay"; *V.* SEVERANCE: TO BE PAID.

Raise Obstructions and Wrecks; *V.* REMOVAL: REMOVE.

RANKNESS. — *V.* MODUS.

RANSOM. — "'*Ransome.*' *Redemptio* is here (Litt. s. 194) taken for a grand summe of money for redeeming of a great delinquent from some heynous crime, who is to be captivate in prison untill he payeth it" (Co. Litt. 127 a). Horne, in his Mirror of Justices, lib. 3, "makes this difference between Amerciament and Ransome, that Ransome is the redemption of a corporal punishment due by law" (Cowel).

"'Ransome' signifies properly the summe that is payd for the redeeming of one that is taken captive in warre; but it is used also for a summe of money paid for the pardoning of some great offence, and so it is used in the statute of 1 H. 4, c. 7, and in other statutes. Fine and Ransome going together; as in 23 Hen. 8, cap. 3, and elsewhere" (Termes de la Ley, *Ransome*). *Vf*, *Havelock* v. *Rockwood*, 8 T. R. 268: 11 Encyc. 44.

V. AMERCIAMENT: FINE AND RANSOM.

RAPE. — "'*Rape.*' *Raptus* is, when a man hath carnall knowledge of a woman by force and against her will" (Co. Litt. 123 b); or, as

expressed more fully, "Rape, is the carnal knowledge of any woman, above the age of 10 years, against her will; or of a woman child, under that age, with or against her will" (Hale P. C. 628).

"Rape is the act of having carnal knowledge of a woman without her conscious (*V. R.* v. *Camplin*, 1 Den. 89; 1 C. & K. 746: *R.* v. *Fletcher*, 28 L. J. M. C. 85) permission, such permission not being extorted by force, or fear of immediate bodily harm; but if such permission is given, the fact that it was obtained by fraud, or that the woman did not understand the nature of the act, is immaterial (*V. R.* v. *O'Shay*, 19 Cox C. C.76). Provided that (1) a Husband (it is said) cannot commit rape upon his wife by carnally knowing her himself, but he may do so if he aids another person to have carnal knowledge of her; (2) a Boy, under 14 years of age, is conclusively presumed to be incapable of committing rape" (Steph. Cr. 185, 186). *Vf*, Arch. Cr. 862–865: Rosc. Cr. 771: 11 Encyc. 45–48.

"The essential words in an Indictment for Rape are *rapuit & carnaliter cognovit*; but *carnaliter cognovit*, nor any other circumlocution without the word *rapuit*, are not sufficient in a legal sense to express Rape: 1 H. 6, 1 *a*; 9 E. 4, 26 *a*" (Hale P. C. 628: *Vf*, 4 Bl. Com. 307). Possibly, the omission of "*carnaliter cognovit*" is cured by the verdict; but such omission is imprudent (3 Russ. Cr. 230, citing *R.* v. *Warren*, M. T. 1832).

V. Carnal Knowledge: Consent.

Note: As to admissibility of the whole of a prosecutrix's speedy complaints, *V. R.* v. *Lillyman*, 1896, 2 Q. B. 167; 65 L. J. M. C. 195; 74 L. T. 730; 44 W. R. 654; 60 J. P. 536.

"'Rape of the Forest,' is Trespass committed in the Forest by violence" (Cowel).

A "Rape" "is part of a County, being in a manner the same with a Hundred, and sometimes contains in it more Hundreds than one" (Cowel). *V.* Wapentake. *Cp*, Lathe.

RAPINE. — "To take a thing in private against the owners will, is, properly, Theft; but to take it openly, or by violence, is Rapine" (Cowel): *Vf*, 4 Bl. Com. 243. *Cp*, Robbery.

RASCAL. — *V.* Cheat.

RASH AND HAZARDOUS. — Stock Exchange speculations (*Ex p. Salaman*, 54 L. J. Q. B. 238; 14 Q. B. D. 936: *Cp*, Gaming), or Betting or Gambling (*Ex p. Thornber*, *Re Barlow*, W. N. (86) 207; 3 Times Rep. 218), or investing in an undeveloped and unproductive Mining Co (*Re Young*, W. N. (85), 12), or giving credit for goods to an unreasonable amount (*Re Rogers*, 13 Q. B. D. 438), or even transactions within the limits of legitimate commerce, when the article dealt in is liable to great fluctuations in price and the dealings are large and the trader's

means are small (*Re Heyne*, 2 Ch. 650; 15 W. R. 1158), is a "Rash and Hazardous Speculation" within s. 28 (3 *d*), Bankry Act, 1883. So, of almost any speculation by a Practising Solicitor outside his ordinary business (*Re Keays*, 36 S. J. 111; 9 Morr. 18). *Vf*, hereon *Ex p. Evans, Re Barnard & Rosenthal*, 31 L. J. Bank. 63; 6 L. T. 519: *Ex p. Downman*, 32 L. J. Bank. 49; 11 W. R. 577.

RATE: RATES. — Apart from any special def a "Rate" is an impost, usually for current and recurrent expenditure, spread over a district; and is distinct from an amount payable for work done upon or in respect of particular premises (*V.* per Brett, L. J., *Budd* v. *Marshall*, 50 L. J. Q. B. 24; 5 C. P. D. 481).

A lessor's covenant to pay "all Rates and Taxes chargeable in respect of the demised premises," held to include the Water Rate (*Direct Spanish Telegraph Co* v. *Shepherd*, 53 L. J. Q. B. 420; 13 Q. B. D. 202; 32 W. R. 717). As, however, the word "Rates" is here associated with "Taxes," it may, perhaps, be doubted whether the meaning of it should not have been confined to parochial or other such like public rates: *V.* TAXES: DEDUCTIONS. And in a subsequent case where a lessor covenanted to pay "all Rates, Taxes, and Impositions, whatsoever whether parliamentary, parochial, or *imposed* by the Corporation of London, or otherwise," it was held by the Court of Appeal (reversing the Divisional Court, acting upon the authority of *Direct Spanish Telegraph Co* v. *Shepherd*), that that case did not apply, and that the Water Rate was not included (*Badcock* v. *Hunt*, cited IMPOSED). In *thlc*, the Court of Appeal distinguished the words of the covenant from those used in the other case, but the drift of the judgments would seem to justify the statement that *Direct Spanish Tel. Co* v. *Shepherd* was not favourably regarded.

V. ASSESSMENTS: BURDEN: CHARGES: DUTIES: IMPOSITION: OUTGOING: TAXES: BOROUGH, p. 209.

Quà Jurisdiction in Rating Act, 1877, 40 & 41 V. c. 11, "'Rate,' means, any Rate, Tax, Duty, or Assessment, whether public, general, or local; and also any fund formed from the proceeds of any such rate, tax, duty, or assessment, or applicable to the same or like purposes to which any such rate, tax, duty, or assessment, might be applied" (s. 3).

"Rate" has received statutory definition in and for the following Acts; —

Agricultural Rates Act, 1896, 59 & 60 V. c. 16; *V.* s. 9:

Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27; *V.* s. 3:

Isle of Man Harbours Act, 1883, 46 & 47 V. c. 9; *V.* s. 5:

Local Authorities Loans (Scot) Act, 1891, 54 & 55 V. c. 34; *V.* s. 4:

Loc Gov (Scot) Act, 1889, 52 & 53 V. c. 50; *V.* s. 105:

Local Loans Act, 1875, 38 & 39 V. c. 83; *V.* s. 34:

Militia Act, 1882, 45 & 46 V. c. 49; *V.* s. 53 (9):
Prison (Officers Superannuation) Act, 1878, 41 & 42 V. c. 63; *V.* s. 5:
Public Works Loans Act, 1875, 38 & 39 V. c. 89; *V.* s. 51:
Tithe Act, 1891, 54 & 55 V. c. 8; *V.* s. 6 (4).

"Gas Rate"; *V.* GAS.

"General Purposes Rate"; *V.* GENERAL PURPOSES.

"Highway Rate"; *V.* HIGHWAY.

"Last Rate"; *V.* LAST.

V. AVERAGE UNION RATE: COUNTY, p. 422: LOCAL RATE: OVERRATE: PAROCHIAL RATE: POLICE: POOR RATE: PUBLIC HEALTH: PUBLIC TAX: TOWN RATE: WATER RATE.

Vh, Penfold on Rating: Castle, Ib.: Mayer, Ib.: 11 Encyc. 54–70.

Loans on Bonds "secured on Rates or Taxes" levied under an Act "by Municipal Corporations," s. 3 (12), 47 & 48 V. c. 63; *V. Hutton* v. *Annan,* cited REAL SECURITY.

In *Carr* v. *Fowle* (1893, 1 Q. B. 251; 62 L. J. Q. B. 177; 68 L. T. 123; 41 W. R. 365; 57 J. P. 136) Collins, J., said that "OTHER," in the exemption of Tithe Rent-charge, s. 4 (5), 49 & 50 V. c. 54, from "Parochial, County, or other Rate Charge or Assessment," "was wide enough to include Land Tax."

A Qualification, *e.g.* for Harbour Commr, depending on being rated to the Poor "by one or more Rate or Rates to the amount of £10 PER ANNUM," means, being assessed on £10; it does not mean paying rates to that amount (*Easton* v. *Alce,* 31 L. J. Ex. 115; 7 H. & N. 452).

"Rate of INTEREST varying with the Profits," s. 1, Bovill's Act, 28 & 29 V. c. 86, repld s. 2 (3 *d*) and s. 3, Partnership Act, 1890; *V. Re Vince,* cited DUE ALLOWANCE.

"Current Rate"; *V.* CURRENT.

Agreement to pay RENT "at the *rate* of" so much PER ANNUM, does not imply a contract for a year (*Atherstone* v. *Bostock,* 10 L. J. C. P. 113; 2 M. & G. 511); *secus,* if the agreement is to take the premises "at the *rent*" of so much per annum (per Tindal, C. J., *Ib.*).

Vf, as to "at the rate of," *Salton* v. *New Beeston Co,* cited YEAR.

V. MAXIMUM: RAILWAY RATE: REASONABLE RATE: TOLL.

RATEABLE. — *Primâ facie,* "'Rateable Property' means, property in its nature capable of being rated" (per Lush, J., *R.* v. *Malden,* L. R. 4 Q. B. 326; 38 L. J. M. C. 125; 10 B. & S. 323); therefore, unoccupied houses would have to be included in the Parish Lists forming the basis or standard for a County Rate, s. 2, 15 & 16 V. c. 81 (*R.* v. *Hammersmith,* 7 W. R. 524; 33 L. T. O. S. 183), and so, of the Valuation List, under s. 14, 25 & 26 V. c. 103, as regards new houses completely finished and ready for occupation, but not actually occupied at the time the List is returned (*R.* v. *Malden,* sup).

"Rated" not construed as "Rateable"; *V. R.* v. *Rose,* cited USUALLY.

RATEABLE OCCUPATION. — *V.* BENEFICIAL, pp. 180, 181: EXCLUSIVE OCCUPATION.

RATEABLE VALUE. — Probably, the general meaning of "Rateable Value" is the same as that provided for Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67; *V.* ANNUAL VALUE, p. 87.

"Rateable Value" has received statutory definition in and for the following Acts; —

Agricultural Rates Act, 1896, 59 & 60 V. c. 16; *V.* s. 9, on *whv, Lancashire Asylums Bd* v. *Manchester,* 1900, 1 Q. B. 458; 69 L. J. Q. B. 234; 82 L. T. 1; 48 W. R. 356; 64 J. P. 101, in *whc* "Rateable Value" was contrasted with "Assessable Value":

Agriculture and Technical Instruction (Ir) Act, 1899, 62 & 63 V. c. 50; *V.* s. 30:

Brine Pumping (Compensation for Subsidence) Act, 1891, 54 & 55 V. c. 40; *V.* s. 52:

Local Government Acts, 56 & 57 V. c. 73; *V.* s. 75: 61 & 62 V. c. 37; *V.* s. 109:

London Government Act, 1899; *V.* s. 34:

Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48; *V.* s. 42:

Seed Potatoes Supply (Ir) Acts, 54 & 55 V. c. 1; *V.* s. 13: 58 & 59 V. c. 2; *V.* s. 14: 61 & 62 V. c. 50; *V.* s. 10.

V. GROSS: PLANTATION.

RATED or ASSESSED. — Under s. 6, Metrop Man. Act, 1855, a Vestry consisted of persons "rated or assessed." "An Assessment seems to me to speak of two operations. The Overseers first assess the rate for the whole parish — that is, they consider and determine the amount which is to be raised for the whole parish. That having been done the rate is assessed, but has not been made. The next operation is to calculate the amount for which each person is to be liable. But the mere calculation and fixing of the amount which each person is to pay does not impose any liability, for the rate has not been made; but when the amount has been assessed, the person is rated by putting the amount of the assessment into the rate-book. A person cannot really be assessed, so as in any way to be liable, until he has been rated; nor can he be rated until he has been assessed. The two words 'rated' and 'assessed,' therefore, describe the operation which makes a person liable to the rate. That seems to me to show that although the words in s. 6, are 'rated *or* assessed,' yet the proper way to read them is 'rated *and* assessed,' as having reference to one operation" (per Esher, M. R., *Mogg* v. *Clark,* 55 L. J. Q. B. 71; 16 Q. B. D. 79). It was held in that case that an owner (not himself the occupier) who has made an agreement to pay poor rates under s. 3, Poor Rate Assessment and Collection Act, 1869, is not a person "rated or assessed" within the section just referred to: *vthc,*

R. v. *Soutter*, 1891, 1 Q. B. 57; 60 L. J. Q. B. 71: *Gordon* v. *Williamson*, 1892, 2 Q. B. 459; 61 L. J. Q. B. 820; 67 L. T. 214; 40 W. R. 692; 57 J. P. 166: *Va*, *Goodhew* v. *Williams*, 47 L. J. C. P. 313; 3 C. P. D. 382. *Note*: s. 6, sup was repealed by Loc Gov Act, 1894.

Vf, as to qualification depending on rating, *Easton* v. *Alce*, cited RATE, p. 1652.

"Taxed, charged, rated, assessed, or imposed"; *V.* CHARGED: ASSESSED: IMPOSED.

"Usually rated"; *V.* USUALLY.

RATE-PAYER. — "By persons *paying* to the Church and Poor must be understood persons *liable to pay*, though they may not have actually paid (*A-G.* v. *Foster*, 10 Ves. 339, 346); but it seems to be a necessary qualification that they should have been rated (*Edenborough* v. *Canterbury*, 2 Russ. 110), unless, perhaps, the name has been omitted by mistake, or there is the taint of fraud (Ib. 110, 111)." Lewin, 90.

"Ratepayer," quà Public Libraries Acts, meant "every INHABITANT who would have to pay the Free Library Assessment in the event of the Act being adopted" (s. 3, 40 & 41 V. c. 54); that definition included Compound Householders, whose rates were paid for them under the Poor Rate Assessment and Collection Act, 1869 (*A-G.* v. *Croydon*, 58 L. J. Ch. 527). *Note*, 40 & 41 V. c. 54, was repealed by 53 & 54 V. c. 68, s. 1 of which prescribes who shall be voters quà these Acts.

Quà Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, "'Rate-payer,' means, every person who is liable to any rate or tax in respect of property entered in any Valuation List" (s. 4).

In other Acts the def is, every person "for the time being assessed to, and paying rates for, the relief of the poor of the parish" (10 & 11 V. c. 61, s. 2; 15 & 16 V. c. 85, s. 52); but the def for Elementary Education Act, 1870, is, "every person who, under the provisions of the Poor Rate Assessment and Collection Act, 1869, is deemed to be duly rated" (s. 3).

Quà Scotland; *V.* 20 & 21 V. c. 70, s. 10; 39 & 40 V. c. 49, s. 3; 41 & 42 V. c. 51, s. 3; 52 & 53 V. c. 50, s. 105: — quà Ireland; *V.* 1 & 2 V. c. 56, s. 80.

RATIFY. — Ratification of a Contract "must be by an existing person on whose behalf a contract might have been made at the time" (per Charles, J., *Nichols* v. *Regent's Canal Co*, 63 L. J. Q. B. 645, citing Willes and Byles, JJ., *Kelner* v. *Baxter*, 36 L. J. C. P. 94; L. R. 2 C. P. 174). *Vf*, *Falcke* v. *Scottish Insrce*, 56 L. J. Ch. 707; 34 Ch. D. 234.

"Ratification requires, — (1) That the agent's act must be one in the doing of which he purports to act for his principal; (2) The act must be of a kind which the agent was, at the time, empowered to do for his principal; (3) At the time of the ratification the principal must have

had the legal capacity of doing the act himself" (per Wright, J., *Firth* v. *Staines*, cited APPROVAL); the second of these requirements was regarded as *not* essential by the majority of the Court of Appeal (*Durant* v. *Roberts*, 1900, 1 Q. B. 629; 69 L. J. Q. B. 382; 82 L. T. 217; 48 W. R. 476), but that case was reversed in H. L. (nom. *Keighley* v. *Durant*, 1901, A. C. 240; 70 L. J. K. B. 662). *Cp*, *Lyell* v. *Kennedy*, cited CESTUI.

Cp, SANCTION.

A "Ratification" after full age of a contract made during Infancy, s. 5, 9 G. 4, c. 14, meant such a ratification as would make a person liable as principal for an act done by another in his name (*Harris* v. *Wall*, 1 Ex. 122: *Mawson* v. *Blane*, 10 Ib. 210; 23 L. J. Ex. 342: *Maccord* v. *Osborne*, 45 L. J. C. P. 727; 1 C. P. D. 568). *Vf*, CORRECT. *Note*: No action can now be brought on such a ratification (s. 2, Infants Relief Act, 1874).

When a Will describes a Deed and proceeds to "ratify and confirm" it, the Deed is incorporated into the Will (*Sheldon* v. *Sheldon*, 1 Rob. Ecc. 89: *Stump* v. *Gaby*, 2 D. G. M. & G. 623; 22 L. J. Ch. 352: *Re Harris*, L. R. 2 P. & D. 83; 39 L. J. P. & M. 48). *Vf*, as to incorporation of documents in a Will, Wms. Exs. 86–90: Agnew on the Statute of Frauds, 343–350: *Re Garnett*, 1894, P. 90; 63 L. J. P. D. & A. 82; 70 L. T. 37: *Re Murray*, 1896, P. 65; 65 L. J. P. D. & A. 49; following *Re Howden*, 43 L. J. P. & M. 26. *Cp*, REVIVE: CONFIRM.

RATING. — "Rating *Appeal*," quà Ry and Canal Traffic Act, 1888, "means, an appeal against any Valuation List, or against any Poor Rate, or any other Local Rate" (s. 55).

"Rating *Authority*," quà Public Works Loans Acts; *V.* 45 & 46 V. c. 62, s. 7 (4); 50 & 51 V. c. 37, s. 4.

RATIONE. — A liability to repair a HIGHWAY, or PUBLIC BRIDGE, *ratione tenuræ*, is where the liability to do the repair has from time immemorial attached to the occupancy of particular lands (13 Rep. 33: *Cuckfield* v. *Goring*, 1898, 1 Q. B. 865; 67 L. J. Q. B. 539: Glen on Highways, 2 ed., 131). *Vh*, and as to the evidence to prove such a liability, *Rundle* v. *Hearle*, 1898, 2 Q. B. 83; 67 L. J. Q. B. 741.

A liability to repair a Highway, *ratione clausuræ*, is where the owner of unenclosed lands lying next adjoining the highway, encloses such lands on both sides of the highway (*V.* Glen on Highways, 141).

RATS. — *V.* PERIL OF THE SEA, p. 1454.

RAVISH. — "Ravish," is a Term of Art (*V.* RAPE).

READER. — "The Reader, is he who reads in the Church of God, being also ordained to this that he may preach the Word of God to the people" (Phil. Ecc. Law, 90).

READIEST.—*V.* First and Readiest.

READING.—*V.* Public Reading.
Reading Room; *V.* Library.

READY.—"I will be ready to"; held a covenant (*Walker* v. *Walker*, 1 Rol. Ab. 519, pl. 8).
V. Ready and Willing.

READY AND WILLING.—"'Ready and Willing' imply not only the disposition, but the capacity, to do the act" (per Abinger, C. B., *De Medina* v. *Norman*, 11 L. J. Ex. 322; 9 M. & W. 827). "I cannot conceive any circumstance more indicative of want of readiness than incapacity" (per Bosanquet, J., *Lawrence* v. *Knowles*, 5 Bing. N. C. 399; 8 L. J. C. P. 210). "In common sense, the averment of Readiness and Willingness (by, *e.g.* plaintiffs) must be that the non-completion of the contract was not the fault of the plts, and that they were disposed and able to complete it if it had not been renounced by the defts" (per Campbell, C. J., *Cort* v. *Ambergate Ry*, 17 Q. B. 144). *Vf*, *Griffith* v. *Selby*, 23 L. J. Ex. 226; 9 Ex. 393.
V. Ready.

READY FOR SEA.—*V.* *Pittegrew* v. *Pringle*, 3 B. & Ad. 520: *Graham* v. *Barras*, cited Sail: *Bouillon* v. *Lupton*, cited Seaworthy.

READY MONEY.—A bequest of "Ready Money" includes cash at the Bankers, whether balance on current account, or on a deposit, or withdrawable after notice (*Parker* v. *Marchant*, 12 L. J. Ch. 385; 1 Phill. 356: *Langdale* v. *Whitfield*, 27 L. J. Ch. 797: *Taylor* v. *Taylor*, 1 Jur. 401: 1 Jarm. 769, *n*: *Tallent* v. *Scott*, W. N. (68) 236: *Stein* v. *Ritherdon*, Ib. 65), or cash at a Savings Bank of which notice of withdrawal has been given (*Re Powell*, Johns. 49): *secus*, of unreceived Dividends on Stock (*May* v. *Grave*, 18 L. J. Ch. 401; 3 D. G. & S. 462). But in *Cooke* v. *Wagster* (23 L. J. Ch. 496; 2 Sm. & G. 296), Stuart, V. C., said that *May* v. *Grave* was not reconcileable with *Parker* v. *Marchant*, nor with *Fryer* v. *Ranken* (9 L. J. Ch. 337; 11 Sim. 55; *Va*, Wms. Exs. 1052). In *Cooke* v. *Wagster* it was held that a Debt passed under a bequest of "Ready Money"; but that was under the peculiar wording of the Will; generally, neither an ordinary Debt nor money due on a Note of Hand will be included in "Ready Money" (*Re Powell*, sup). In Ireland, it has been held that money in the hands of a Sales-master, is not "Ready Money" (*Smith* v. *Butler*, 9 Ir. Eq. Rep. 398); and that "Ready Money in Bank" includes money on deposit withdrawable on demand, but not if previous notice is necessary (*Mayne* v. *Mayne*, 1897, 1 I. R. 324).

A bequest of "whatever remains of the Ready Money already men-

tioned," held, not to pass a sum of £4,000 Government Stock which was previously mentioned in the Will (*Bevan* v. *Bevan*, 5 L. R. Ir. 57).

Vf, *Browne* v. *Groombridge*, 4 Mad. 501: *Vaisey* v. *Reynolds*, 6 L. J. O. S. Ch. 172; 5 Russ. 12: *Smith* v. *Butler*, 3 J. & La T. 565: and as to admitting extrinsic evidence to widen the meaning of "Ready Money," *V. Knight* v. *Knight*, 30 L. J. Ch. 644; 2 Giff. 616.

V. MONEY.

READY QUAY BERTH. — Where by a Charter-Party, a ship, on arriving in port, is to go "to such *ready quay berth* as ordered by charterers," that means, that the charterers undertake, for the benefit of the shipowner, that a quay shall be "ready" as soon as the ship is ready to proceed to it (*Harris* v. *Jacobs*, 54 L. J. Q. B. 492; 15 Q. B. D. 247).

READY TO BE DELIVERED. — *V.* PUBLICATION, *of Award*, p. 1618.

READY TO DISCHARGE. — *V.* "Arrived Ship," sub ARRIVE.

READY TO LOAD. — A ship to be "Ready to Load," or "Ready to receive Cargo," must be completely ready, and discharged in all her holds, so as to give the charterer complete control of every portion of the ship available for cargo (*Groves* v. *Volkart*, 1 Times Rep. 92, 454. *Va*, *Vaughan* v. *Campbell*, 2 Times Rep. 33: *Hick* v. *Tweedy*, 63 L. T. 765; 7 Times Rep. 144); and that Condition is not controlled by an Exception of "Dangers of the Seas" (*Smith* v. *Dart*, cited DANGERS: *Va*, THROUGHOUT), nor is its performance excused by bad weather (*Shubrick* v. *Salmond*, 3 Burr. 1637: *Smith* v. *Dart*, sup: *Glaholm* v. *Hays*, 10 L. J. C. P. 98; 2 M. & G. 257: *Oliver* v. *Fielden*, 18 L. J. Ex. 353; 4 Ex. 135: Abbott, 329), or other *vis major*, *e.g.* Quarantine (per Ld Shand, *White* v. *Winchester S. S. Co*, 13 Sess. Ca. 4th Ser. 536), or medical prohibition (*The Austin Friars*, 71 L. T. 27; 10 Times Rep. 633). *Cp*, *Granger* v. *Dent*, 1 Moo. & M. 475.

"For the calculation of LAY DAYS, it seems that there is no difference between 'Ready to load' and 'Ready *in berth* to load,' and it has been so held in an unreported case" (Scrutton, 99).

REAL ACTION. — "'Action Real,' is that action whereby a man claims title to lands tenements or heredits, in fee or for life: and these actions are possessory, or auncestrel; possessory, of a man's own possession and seizin; or auncestrel, of the possession or seizin of his ancestor" (Jacob, *Action*: *Vf*, Termes de la Ley, *Actions Real*). *Cp*, PERSONAL ACTION.

Note. Real and Mixed Actions (except Dower, *Quare Impedit*, and Ejectment) were abolished as from Dec 31, 1834 (s. 36, Real Property

Limitation Act, 1833); Dower and *Quare Impedit* were abolished as from Oct 9, 1860 (s. 26, Com. L. Pro. Act, 1860). Since the Jud. Acts there is no special form of action of EJECTMENT.

REAL EFFECTS.—"Do the words 'Real Effects' in law, mean Real Chattels only? No authority has been produced to show that they do. The natural and true meaning of 'Real Effects,' in common language and speech is, Real Property" (per Mansfield, C. J., *Hogan* v. *Jackson*, 1 Cowp. 307). "*Hogan* v. *Jackson* decided that 'Real Effects' mean Real Property" (per Parker, V. C., *Torrington* v. *Bowman*, 22 L. J. Ch. 236). *Vf*, 1 Jarm. 723, 724; 2 Ib. 283.

V. EFFECTS.

REAL ESTATE.—"Real Estate" is a Term of Art to be construed, as a general rule, technically (per Chitty, J., *Butler* v. *Butler*, 54 L. J. Ch. 197; 28 Ch. D. 66). It comprises all a person's freehold and copyhold lands tenements and heredits, including therein titles of honour and dignity, and also INCORPOREAL HEREDITAMENTS: but not including leaseholds for years (Wms. R. P. Introd.: *Va*, ESTATE).

Quà Wills Act, 1837, "Real Estate" extends to, "Manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant-right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal; and to any undivided share thereof, and to any estate right or interest (other than a chattel interest) therein" (s. 1). The phrase "other than a chattel interest" chiefly points to leaseholds for years: *V.* CHATTELS.

V. PERSONAL ESTATE.

Leaseholds for *Lives*, pass under a gift of "Real Estate" (*Weigall* v. *Brome*, 6 Sim. 99).

Though a devise of "Real Estate" does not, *primâ facie*, include Leaseholds for *Years*, for they are only chattels (Co. Litt. 46 a: *Vf*, *Holmes* v. *Milward*, 47 L. J. Ch. 522: *Butler* v. *Butler*, sup), yet leaseholds for years may, by a context or the circumstances, be included in such a devise (*Swift* v. *Swift*, 29 L. J. Ch. 121; 1 D. G. F. & J. 160: *Gully* v. *Davis*, 39 L. J. Ch. 684; L. R. 10 Eq. 562). And so, where a testator being possessed of freeholds and long leaseholds at A., and of long leaseholds only at B., devised his "Real Estate" at A. and B., it was held that all the leaseholds passed (*Moase* v. *White*, 3 Ch. D. 763; 24 W. R. 1038: *Svthc*, *Butler* v. *Butler*, sup). So, in *Re Davison* (32 S. J. 273; 58 L. T. 304), North, J., followed *Moase* v. *White*, and further held that "Real Estate" was equivalent to "Land" as that latter word is used in s. 26, Wills Act, 1837; *Moase* v. *White* was also followed by Kekewich, J., *Re Uttermare*, W. N. (93) 158. *Vf*, Hawk. 33: 41 S. J. 24.

A general devise of "Real Estate," or of "Lands," and such like

expressions, includes real estate contracted to be purchased by the testator, but not actually conveyed to him (*Atcherley* v. *Vernon*, 10 Mod. 518); but unless the testator expresses a CONTRARY INTENTION, any unpaid purchase money is payable by the devisee (LOCKE KING'S ACTS, espy s. 2, 30 & 31 V. c. 69). Such a devise will not include purchase money of property sold by the testator, but which he has not conveyed (*Knollys* v. *Shepherd*, 1 Jac. & W, 499); *secus*, where the sale is demanded after his death under an option given in his lifetime (*Drant* v. *Vause*, 11 L. J. Ch. 170; 1 Y. & C. Ch. 580).

A like devise formerly comprised Trust and Mortgage estates (*Braybroke* v. *Inskip*, 8 Ves. 435: *Bainbridge* v. *Ashburton*, 6 L. J. Ex. Eq. 73; 2 Y. & C. Ex. 347: *Sv*, "all my Real Estate," sub MY). But all trust and mortgage estates, devolving by death since Dec 31, 1881, go to the deceased's personal representatives "notwithstanding any testamentary disposition" (s. 30, Conv & L. P. Act, 1881), except Copyholds (s. 45, 50 & 51 V. c. 73: *Vth*, *Re Mills*, cited MY, p. 1238).

Devise of "All other my Real Estate *in* the County of L"; held, on the context, to pass two Advowsons in Gross (*Re Hodgson*, but *Cp*, *Crompton* v. *Jarratt*, both cases cited IN). *Va*, TITHES, at end.

Quà Land Transfer Act, 1897, Part 1, "Real Estate" "shall not be deemed to include land of Copyhold Tenure or Customary Freehold in any case in which an Admission, or any act by the Lord of the Manor, is necessary to perfect the title of a purchaser from the customary tenant" (subs. 4, s. 1).

Other Stat. Def. — 4 & 5 V. c. 39, s. 29.

V. FEE: LAND: LANDED PROPERTY: REAL OR PERSONAL PROPERTY: REAL PROPERTY.

An action by an heir-at-law against an administratrix for an account of Rents received by her, is not "a Cause or Matter relating to Real Estate" within R. 1, Ord. 51, R. S. C. (*Re Staines*, 55 L. J. Ch. 913).

"INTEREST in the Nature of Real Estate," 24 & 25 V. c. 40; a Gale of Mines in the Forest of Dean is within this phrase (*Morgan* v. *Crawshay*, 40 L. J. M. C. 202; L. R. 5 H. L. 304).

"Real and Personal Estate" in the Administration and Probate Act (of Victoria), 1890, s. 97 (2), comprises only property within the Colony; and "DEBTS," in the same section, refers only to such as are properly chargeable upon such colonial property (*Henty* v. *Regina*, 1896, A. C. 567; 65 L. J. P. C. 94; 75 L. T. 106; following *Blackwood* v. *Regina*, cited PERSONAL ESTATE).

REAL AND PERSONAL EFFECTS. — This phrase is "synonymous to SUBSTANCE" (per Mansfield, C. J., *Hogan* v. *Jackson*, 1 Cowp. 307).

In an Assignment for the Benefit of Creditors by Partners, of "ALL"

their "Real and Personal Estate and Effects," only the joint property of the assignors passes (*Re Lowden*, 10 L. T. 261).

V. REAL EFFECTS.

REAL OR PERSONAL PROPERTY. — In the language of conveyancers, all kinds of PROPERTY, and all kinds of proprietary rights, are comprehended in one or other of the two great classes into which such property and rights are divided; — (1) Real, or (2) Personal, Property (*V.* 2 Bl. Com.: Intro. Ch. Wms. R. P.). But in the Malicious Damage Act, 1861, 24 & 25 V. c. 97, s. 52, the phrase "any real or personal property whatsoever" relates only "to corporeal, tangible, visible property, and not to property which is incorporeal, invisible, and not tangible" (per Lopes, J., *Laws* v. *Eltringham*, 51 L. J. M. C. 15), and therefore a right to herbage, *e.g.* of freemen in a Town Moor, is not within the section (51 L. J. M. C. 13; 8 Q. B. D. 283): *Vf*, as to this section, WILFUL AND MALICIOUS.

It may probably be stated that "Real Property" and REAL ESTATE are synonymous, and that "Personal Property" is synonymous with PERSONAL ESTATE.

REAL PRESENCE. — The Church of England does not forbid the assertion of a "real, actual, objective," Presence in Holy Communion, for that does not affirm a Presence other than spiritual (*Sheppard* v. *Bennett*, 41 L. J. Ecc. 1; L. R. 4 P. C. 371): *Vthc* for much learning on the doctrine of the "Real Presence," especially as dealt with by the Book of Common Prayer.

V. SACRIFICE.

REAL PROPERTY. — *V.* REAL OR PERSONAL PROPERTY.

"Real Property," in Scotland, quà Finance Act, 1894, "includes HERITABLE property" (subs. 9, s. 23).

"Real Property," s. 2, M. W. P. Act, 1882, comprises the power to enlarge a BASE Fee (*Re Drummond and Davies*, cited PROPERTY).

"Real Property," quà Sucn Dy Act, 1853; *V.* PERSONAL PROPERTY.

REAL RENT HERITOR. — *V.* VALUED.

REAL REPRESENTATIVE. — Quà REAL ESTATE (except Copyholds) the PERSONAL REPRESENTATIVE of a person dying on or since Jan 1, 1898, is his or her Real Representative (Land Transfer Act, 1897, Part 1). *V.* LEGAL REPRESENTATIVES: REPRESENTATIVE.

REAL RESIDENT HOLDER. — Who is a "Real Resident Holder and Occupier" to whom a Beerhouse License may be granted, s. 1, Beerhouse Act, 1840, is a question of fact, and not of law, — he must be the RESIDENT, the Holder, and the OCCUPIER, in substance and fact (*Nix* v. *Nottingham Jus.*, 1899, 2 Q. B. 294; 68 L. J. Q. B. 854; 81 L. T. 41;

47 W. R. 628; 63 J. P. 628); and, *semble*, he cannot be resident unless he habitually sleeps in the premises (*R.* v. *Allmey*, 35 J. P. 534: *R.* v. *Manchester Jus.*, 1899, 1 Q. B. 571; 68 L. J. Q. B. 358; 47 W. R. 410; 63 J. P. 360).

REAL SECURITY. — The obvious meaning of this phrase is, a mortgage of the legal and equitable estate and interest in REAL ESTATE, including, it is submitted, FEE FARM lands. A power to invest on "Real Security" will not authorize trustees to invest on an Equitable, or Second, Mortgage (*Swaffield* v. *Nelson*, W. N. (76) 255: *Sheffield Bg Socy* v. *Aizlewood*, 44 Ch. D. 459: *Sv, Want* v. *Campain*, 9 Times Rep. 254), nor on a Contributory Mtge especially when the power requires the trustees to invest "in their names" (*Webb* v. *Jonas*, 57 L. J. Ch. 671; 39 Ch. D. 660; 58 L. T. 882).

Turnpike-Road Bonds secured by a mortgage or charge on tolls and toll-houses, are within a power enabling trustees to invest in Real Securities (*Robinson* v. *Robinson*, 21 L. J. Ch. 111; 1 D. G. M. & G. 247); but where a testator bequeathed all his securities for money "except *Mortgages* on real and leasehold security," it was held that mortgages of *Turnpike Tolls*, whether including toll-houses or not, were not within the exception, such mortgages not being within the ordinary meaning of the word "Mortgage" (*Cavendish* v. *Cavendish*, 55 L. J. Ch. 144; 30 Ch. D. 227; 53 L. T. 652).

Sewers Bonds charged on Sewers Rates, are not Real Securities (*Robinson* v. *Robinson*, 18 L. J. Ch. 73; 11 Bea. 371), nor are *Railway Debentures* (*Mant* v. *Leith*, 21 L. J. Ch. 719; 15 Bea. 524: *Vf, Harris* v. *Harris*, 29 Bea. 107, cited FUNDS, at end). *Harbour Bonds* secured by the revenues of the trust and with power to appoint a Receiver or Judicial Factor in case of default, but with no assignment of the Undertaking itself, are not "Real or Heritable Security" within s. 1 (*b*), Trustee Act, 1893, or the corresponding words in the Act for Scotland, s. 3 (10), 47 & 48 V. c. 63 (*Hutton* v. *Annan*, 1898, A. C. 289; 67 L. J. P. C. 49).

Though a freehold *Brick-field* is a Real Security in itself, yet so much of its improved value as is derived from the buildings and machinery on it, which are only applicable to the trade of brick-making, should not be estimated for the purpose of the investment of trust funds (*Learoyd* v. *Whiteley*, 57 L. J. Ch. 390; 12 App. Ca. 727; 58 L. T. 93; 36 W. R. 721).

Before the Trustee Act, 1888, *Leaseholds for Years*, however long the term, were held not a "Real Security" (*Re Chennell*, 47 L. J. Ch. 583; 8 Ch. D. 492, 508: *Re Boyd*, 49 L. J. Ch. 808; 14 Ch. D. 626); nor even a long term for raising portions (*Leigh* v. *Leigh*, 56 L. J. Ch. 125; 35 W. R. 121; 55 L. T. 634; 3 Times Rep. 123: *Vh*, Lewin, 369, where it is suggested that a long term *at a pepper-corn rent* might be enlarged

into the fee simple, Conv & L. P. Act, 1881, s. 65; Conv Act, 1882, s. 11, and so be available as a Real Security). But by s. 9, Trustee Act, 1888, a trustee having power to invest trust money in "Real Securities," unless expressly forbidden by the trust instrument, may invest, and shall be deemed to have always had power to invest, on Mortgage of Leaseholds held for an unexpired term of not less than 200 years, — and not subject to a greater rent than 1*s.* a year, or to any right of redemption, or to any condition for re-entry except for non-payment of rent. That section is replaced by s. 5 (1), Trustee Act, 1893, which extends the def so as also to include any charge, or mtge of any charge, made under Improvement of Land Act, 1864, 27 & 28 V. c. 114.

Vh, Lewin, 360–375.

"Real Securities," in Ireland, include Leaseholds for lives renewable for ever (*Macleod* v. *Annesley*, 16 Bea. 600; 22 L. J. Ch. 633). *Vf,* FEE FARM.

Stat. Def. — Charitable Funds Investment Act, 1870, 33 & 34 V. c. 34, s. 3.

V. SECURITY.

REALIZATION. — As to "Realization" of a bankrupt's property, within s. 24 (3), Bankry Act, 1883; *V.* jdgmt of Ld Fitzgerald, *Board of Trade* v. *Block*, 58 L. J. Q. B. 116; 13 App. Ca. 570; 59 L. T. 734.

"Costs of Realization," means, the costs of actual sale, including an abortive sale when it is a step to realization (*Batten* v. *Wedgwood Co*, 28 Ch. D. 317; 54 L. J. Ch. 686; 52 L. T. 212: *Lathom* v. *Greenwich Ferry Co*, 72 L. T. 790); but, probably, the phrase does not include costs of PRESERVATION (*Vthlc*: *Sv*, *Perry* v. *Oriental Hotels Co*, L. R. 12 Eq. 126; 40 L. J. Ch. 420; 24 L. T. 495).

REALIZE. — If goods "realize" so much, then commission on excess: — As to what expenses may be deducted from gross proceeds in order to ascertain amount "realized"; *V. Ardree Oyster Co* v. *Ullmann*, Times, March 25, 1890.

Direction to sell goods to "realize" so much net cash; *V.* NET, p. 1266.

REALIZED. — By itself, and independently of s. 15, Bankry Act, 1890, the "*Amount* realized" on which a Trustee in Bankry is entitled to a percentage under s. 72 (1), Bankry Act, 1883, means, the amount realized by the trustee; it does not include a fund provided by the bankrupt's father wherewith to pay a composition (*Re Christie*, 1900, 1 Q. B. 5; 69 L. J. Q. B. 31; 81 L. T. 528; 48 W. R. 94).

Where Articles of Association of a Company provide that "no dividend shall be payable except out of realized *Profits*," the word "Realized" "must have its ordinary meaning, which, if not equivalent to 'Reduced

to actual cash in hand,' must at least be 'Rendered tangible for the purpose of division.' . . . The meaning of the word is the direct converse of 'Estimated'" (per Kay, J., *Re Oxford Bg Socy*, 56 L. J. Ch. 102; 35 Ch. D. 502; 55 L. T. 598; 35 W. R. 116). *Cp*, "Profits available for dividend," sub AVAILABLE.

"Realized *Member*" of a Building Society; *V. Re Norwich & Norfolk Bg Socy*, 45 L. J. Ch. 785.

REALM. — "The Custom of the Realm," means, the Common Law of England; *V.* CUSTOM.

"'*Out of the realme*,' (*id est*) *extra regnum*; as much to say, as out of the power of the king of England as of his crowne of England: for if a man be upon the Sea of England, he is within the kingdom or realme of England, and within the ligeance of the king of England, as of his crowne of England. And yet *altum mare* is out of the jurisdiction of the common law, and within the jurisdiction of the lord admirall" (Co. Litt. 260 a, b). A little further on Coke seems to cite Littleton as using "Beyond the Sea" and "Out of the realm" as convertible terms; but in *King* v. *Walker* (1 Bl. W. 286) Wedderburn, arg., said "these expressions have usually (though inaccurately) been used as synonymous terms."

Probably, since and somewhat by force of 1 Jac. 1, c. 1, "the Realm," or "this Realm," in and since 1604, means, generally, "the Realms and Kingdoms of England, Scotland, and Ireland" (*Vh*, *King* v. *Walker*, sup). France is also mentioned in the statute, but that, of course, had ceased to be practical. *V.* TERRITORIAL WATERS.

The "Realm," in the old Bankry Acts for England, meant, England and Wales, for those parts of the kingdom only were subject to the English bankry law (*Williams* v. *Nunn*, 1 Taunt. 270).

The words "Within this Realm," in the Statute of Monopolies (21 Jac. 1, c. 3), applies to all the UNITED KINGDOM (*Robinson's Patent*, 5 Moore P. C. 65: *Morgan* v. *Seaward*, 2 M. & W. 544: *Brown* v. *Annandale*, 8 Cl. & F. 437); but not to the Colonies (*Rolls* v. *Isaacs*, 51 L. J. Ch. 170; 19 Ch. D. 268).

V. BEYOND SEAS: ENGLAND: SEA: THREE ESTATES.

REALTY. — This word briefly expresses what is meant by REAL ESTATE, or REAL PROPERTY.

REASON. — When a "Reason" has to be given for an act or for refraining from an act, and a discretion be given, such discretion is not less absolute (*R.* v. *London, Bp.*, and *Allcroft* v. *London, Bp.*, cited OPINION).

The mere fact that a PLAINTIFF Limited Co is in Liquidation, furnishes "reason *to believe*" that if unsuccessful it will be unable to pay the deft's costs, and therefore it ought to be ordered to give security for costs under s. 69, Comp Act, 1862 (*Northampton Coal Co* v. *Midland*

Waggon Co, 7 Ch. D. 500: *Pure Spirit Co* v. *Fowler*, 59 L. J. Q. B. 537; 25 Q. B. D. 235).

He acts "against Law and Reason"; *V.* UNWORTHY.

V. BY REASON: GOOD REASON: SPECIAL.

REASONABLE. — It would be unreasonable to expect an exact definition of the word "Reasonable." Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic, sounds now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury (or the decision of a judge sitting as a jury) usually determines what is "reasonable" in each particular case; but frequently reasonableness "belongeth to the knowledge of the law, and therefore to be decided by the justices" (Co. Litt. 56 b).

Where a *Contract* has to be performed (*Attwood* v. *Emery*, 26 L. J. C. P. 73; 1 C. B. N. S. 110: *Briddon* v. *G. N. Ry*, 28 L. J. Ex. 51: *Hales* v. *Lond. & N. W. Ry*, 32 L. J. Q. B. 292; 4 B. & S. 66; 11 W. R. 856: *Taylor* v. *G. N. Ry*, L. R. 1 C. P. 385), or a duty discharged (*Goodwyn* v. *Cheveley*, 28 L. J. Ex. 298; 4 H. & N. 631), within a Reasonable *Time* (or within no specified time, which connotes a reasonable time; *Nosotti* v. *Averbach*, 79 L. T. 414), such time will have to be determined according to the circumstances of the case, and with particular reference to the means and ability of the person by whom the contract is to be performed, or the duty discharged (*Postlethwaite* v. *Freeland*, 49 L. J. Q. B. 630; 5 App. Ca. 599: *Hick* v. *Raymond*, 1893, A. C. 22; 62 L. J. Q. B. 98, *Vthlc* per Ld Herschell, *Carlton S. S. Co* v. *Castle Co*, 1898, A. C. 490–492: CUSTOMARY: *Toms* v. *Wilson*, 32 L. J. Q. B. 33; Ib. 382; 4 B. & S. 455; 11 W. R. 117: *Brighty* v. *Norton*, 32 L. J. Q. B. 38; 3 B. & S. 305; 11 W. R. 167). An obligation to perform a Contract within "a reasonable time" does not require so speedy a fulfilment as one to be done "directly" or "as soon as possible" (Add. C. 125). *Vf*, REASONABLE HOUR: USUAL AND CUSTOMARY MANNER.

Quà Sale of Goods Act, 1893, "'Reasonable Time,' is a question of fact" (s. 56).

Six years is a reasonable time within which to present a Cheque for payment, unless loss has been occasioned by unnecessary delay (*Robinson* v. *Hawksford*, 15 L. J. Q. B. 377; 9 Q. B. 52: *Laws* v. *Rand*, 27 L. J. C. P. 76; 30 L. T. O. S. 286: *Re Bethell*, 34 Ch. D. 566: *Sv*, *Hare* v. *Henty*, 30 L. J. C. P. 302).

Reasonable Time after attaining 21 within which an Infant's Settlement can be repudiated; *V. Carter* v. *Silber*, 1892, 2 Ch. 278; 61 L. J. Ch. 401; affd in H. L. nom. *Edwards* v. *Carter*, 1893, A. C. 360; 63 L. J. Ch. 100; 69 L. T. 153.

A Power to grant *Mining Leases* for such *Terms* as to the donee "shall

seem reasonable and proper," authorizes a Lease for 99 years (*Taylor* v. *Mostyn*, 52 L. J. Ch. 848; 23 Ch. D. 583; 31 W. R. 3, 686; 48 L. T. 715).

"Reasonable Time" for serving a *Magistrate's Summons* prior to hearing; *V. R.* v. *Smith*, L. R. 10 Q. B. 604.

As to reasonable Time for service of *Notice to Produce*; *V.* Rosc. N. P. 12.

As to what is a reasonable *Notice to Quit* in tenancies for less than a year; *V. Huffell* v. *Armistead*, 7 C. & P. 56: *Towne* v. *Campbell*, 16 L. J. C. P. 128; 3 C. B. 921: *Jones* v. *Mills*, 31 L. J. C. P. 66: And as to what is a reasonable *Notice to determine Service* in cases other than domestic; *V. Fairman* v. *Oakford*, 29 L. J. Ex. 459; 5 H. & N. 635: *Parker* v. *Ibbetson*, 27 L. J. C. P. 236; 4 C. B. N. S. 346: *Buckingham* v. *Surrey & Hants Canal Co*, 46 L. T. 885.

Four clear days are, generally speaking, a reasonable time for Unloading Ry Waggons at a Ry Station (*Mid. Ry* v. *Sills*, 9 Ry & Can Traffic Ca. 161: *Manchester, &c, Traders' Assn* v. *Lanc. & Y. Ry*, 10 Ib. 127: *Mid. Ry* v. *Black*, 10 Ib. 146).

Fares and Times between 6 P. M. and 8 A. M. for WORKMEN'S TRAINS "as appear to the Board of Trade reasonable," s. 3 (1 *b*), Cheap Trains Act, 1883, 46 & 47 V. c. 34; *V. Re London Reform Union and G. E. Ry*, 10 Ry & Can Traffic Ca. 280: *Re Metropolitan Ry*, 8 Ib. 32.

"Reasonable *Apprehension*"; *V.* IMPOSSIBLE.

"Fair and Reasonable *Compensation*," s. 5, Agricultural Holdings (England) Act, 1883; *V.* Woodf. 822.

The obligation of a LESSEE under s. 14, Conv & L. P. Act, 1881, to make "Reasonable *Compensation*" for breach of covenant, does not make him liable to pay anything that he would not have been liable to pay anterior to the statute, *e.g.*, if the breach be non-repair, he is not liable to pay the lessor's Survey Fee (per Charles, J., *Skinners Co* v. *Knight*, 1891, 2 Q. B. 542; 60 L. J. Q. B. 629: *Cp*, FULL COMPENSATION). But the expenses of Solicitor, and Surveyor or Valuer, are now provided for by s. 2 (1), Conv & L. P. Act, 1892; *Svth*, RELIEF. *Cp*, COMPULSORY POWERS.

Reasonable *Provision* for a Wife "having regard to the means both of the husband and wife," s. 5 (*c*), 58 & 59 V. c. 39, is ½d of the Joint Income where there are no children (*Cobb* v. *Cobb*, 1900, P. 294; 69 L. J. P. D. & A. 125; 83 L. T. 716).

Reasonable Regulations by a Telegraph Co; *V. M'Andrew* v. *Electric Telegraph Co*, 25 L. J. C. P. 26; 17 C. B. 3.

"Reasonable Security"; *V.* SECURITY.

By s. 7, *Railway and Canal Traffic Act*, 1854, 17 & 18 V. c. 31, Railway and Canal Companies are empowered to make such *Conditions* with their customers respecting the receiving, forwarding, or delivering, goods, "as shall be adjudged, by the Court or Judge before whom any

question relating thereto shall be tried, to be *just and reasonable.*" The question of reasonableness under that section is one of law and not of fact (*Simons* v. *G. W. Ry*, 26 L. J. C. P. 25, 33; 18 C. B. 805, 829); and the onus of showing reasonableness is on the Company (*Peek* v. *N. Staffordshire Ry*, 32 L. J. Q. B. 241; 10 H. L. Ca. 473). The solution of this question "will materially depend upon the nature of the articles to be conveyed, the degree of risk attendant upon their conveyance, the rate of charge made, and whether the Company was bound, by the common law or by statute, to carry the articles on being paid the customary hire, or whether it was in its powers to reject them altogether and refuse to carry them upon any terms. Whenever, in order to bring a Railway or Canal Company within the protection of a condition or special contract, it is necessary to construe it as excluding responsibility for losses occasioned by the Company's negligence and misconduct, the condition or special contract is unreasonable and unjust, and therefore void, unless an option is given to the customer to have the goods carried on the ordinary terms, at the ordinary rate. Where the terms of the condition are unconditional and would, if valid, protect the Company even in the case of the wilful misconduct of the defendant's own servants, the condition is unreasonable" (Add. C. 960). Applying these principles the following have been held to be

Reasonable Conditions.

Non-liability of Company, for loss of market or other such like delay or detention (*White* v. *G. W. Ry*, 26 L. J. C. P. 158; 2 C. B. N. S. 7: *Beal* v. *S. Devon Ry*, 29 L. J. Ex. 441; 5 H. & N. 875: *Lord* v. *Mid. Ry*, 36 L. J. C. P. 170; L. R. 2 C. P. 339: *Sheridan* v. *Mid. G. W. Ry*, 24 L. R. Ir. 146); or for goods incorrectly described (*Lewis* v. *G. W. Ry*, 29 L. J. Ex. 425; 5 H. & N. 867); or for damage in transit to perishable goods, or from restiveness of animals (*Austin* v. *Manchester, S. & L. Ry*, 21 L. J. C. P. 179; 10 C. B. 475: *Beal* v. *S. Devon Ry*, sup: *Sheridan* v. *Mid. G. W. Ry*, sup), or from over-crowding (*Sheridan* v. *Mid. G. W. Ry*, sup); or when a special rate of freight lower than ordinary is taken (*Simons* v. *G. W. Ry*, 26 L. J. C. P. 25; 18 C. B. 805, espy if a *bonâ fide* alternative be given to send the goods at the ordinary rate without condition, *Robinson* v. *G. W. Ry*, 35 L. J. C. P. 123: *Brown* v. *Manchester, S. & L. Ry*, 51 L. J. Q. B. 599; 52 Ib. 132; 53 Ib. 124; 9 Q. B. D. 230; 10 Ib. 250; 8 App. Ca. 703, or when the exemption does not include wilful misconduct, *Lewis* v. *G. W. Ry*, 47 L. J. Q. B. 131; 3 Q. B. D. 195); or precluding Company's liability unless claim sent in within 7 days after goods delivered (*Lewis* v. *G. W. Ry*, 29 L. J. Ex. 425; 5 H. & N. 867).

But the following (except when warranted by a specially low rate of freight, coupled with the option of sending at ordinary rate without condition) are

Unreasonable Conditions.

Non-liability of Company for loss however occasioned (*Peek* v. *N. Staffordshire Ry*, 32 L. J. Q. B. 241; 10 H. L. Ca. 473: *Cohen* v. *S. E. Ry*, 2 Ex. D. 253; 46 L. J. Ex. 417, on *whcv*, per Ld Blackburn, *Doolan* v. *Mid. Ry*, 2 App. Ca. 804–807; and as to horses, &c, *V. M'Manus* v. *Lanc. & Y. Ry*, 28 L. J. Ex. 353; 4 H. & N. 327: *M'Cance* v. *Lond. & N. W. Ry*, 31 L. J. Ex. 65; 34 Ib. 39; 7 H. & N. 477; 3 H. & C. 343: *Ashendon* v. *L. B. & S. Ry*, 5 Ex. D. 190: *Gregory* v. *W. Midland Ry*, 33 L. J. Ex. 155; 2 H. & C. 944: *Rooth* v. *N. E. Ry*, 36 L. J. Ex. 83; L. R. 2 Ex. 173); or for loss, detention, or damage, through Insufficient Packing (*Simons* v. *G. W. Ry*, sup: *Garton* v. *Bristol & Exeter Ry*, 30 L. J. Q. B. 273; 1 B. & S. 112); or for loss of passenger's luggage "unless fully and properly addressed with the name and destination of the owner" (*Cutler* v. *N. London Ry*, 56 L. J. Q. B. 648; 19 Q. B. D. 64; 56 L. T. 639; 35 W. R. 575; 51 J. P. 774).

As to what is a *bonâ fide* and just *Alternative Rate*; *V. Dickson* v. *G. N. Ry*, 56 L. J. Q. B. 111; 18 Q. B. D. 176; 55 L. T. 868; 35 W. R. 202; 51 J. P. 388: and as to what words will give an option, *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.

As to presumption of reasonableness; *V. Rickett* v. *Mid. Ry*, 9 Ry & Can Traffic Ca. 107; 1896, 1 Q. B. 260; 65 L. J. Q. B. 274.

Vf, as to Carriers Act, and Ry and Canal Traffic Act, Add. C. 957: Rosc. N. P. 629–637: Browne & Theobald on Railways, 3 ed., 414–416.

V. Calculated to Benefit: Fair and Reasonable: Reasonably: Unreasonable.

REASONABLE ACTS.—*V.* Acts.

REASONABLE AND PROBABLE CAUSE.—"Reasonable and Probable Cause," s. 8, 7 & 8 G. 4, c. 29, repld s. 44, Larceny Act, 1861, relating to Threatening Letters, applies to the money demanded, and not to the accusation threatened (*R.* v. *Hamilton*, 1 C. & K. 212).

"Reasonable and Probable Cause" for detaining a Ship, s. 10, Mer Shipping Act, 1876, 39 & 40 V. c. 80, repld s. 460, Mer Shipping Act, 1894, is a question for the jury with the assistance of expert evidence; and the proper question to be left to the jury is, whether the facts in connection with the ship, which would have been apparent to a person of ordinary skill who had had, and had used, all means of examining and enquiring about her, would, in the opinion of the jury, have

given such person Reasonable and Probable Cause to suspect the safety of the ship on her outward and homeward voyage, and so to detain her for survey (*Thompson* v. *Farrer*, 51 L. J. Q. B. 534; 9 Q. B. D. 372). *Vf*, *Dixon* v. *Bd of Trade*, 3 Times Rep. 478. REASONABLY SUSPECTS.

The question, quà False Imprisonment against a Police Officer, whether he had Reasonable and Probable Cause for making the arrest, or, quà Malicious Prosecution, whether the prosecutor had Reasonable and Probable Cause for preferring the charge, is for the Judge (*Hailes* v. *Marks*, 30 L. J. Ex. 392; 7 H. & N. 56: *Lister* v. *Perryman*, 39 L. J. Ex. 177; L. R. 4 H. L. 521: *Panton* v. *Williams*, 10 L. J. Ex. 545; 2 Q. B. 194); where the facts are in dispute, it is for the Jury to find the facts, but whether those facts amount to Reasonable and Probable Cause is an inference to be drawn by the Judge (*Ib.*). *Vh*, Rosc. N. P. 869–873: Add. T. 222: 8 Encyc. 87–89: *Kelly* v. *Mid. G. W. Ry*, Ir. Rep. 7 C. L. 8.

"Lawful or Reasonable Cause"; *V.* LAWFUL CAUSE.

"Reasonable or Sufficient Cause"; *V.* CAUSE: SUFFICIENT CAUSE.

V. REASONABLE CAUSE.

REASONABLE AND PROPER.—Particulars in an action for Infringement of a Patent will not be shown to be "Reasonable and Proper," so as to justify Certificate of Costs for them under s. 29 (6), Patents, Designs, and Trade-Marks, Act, 1883, by merely showing that they were not unreasonable; the Court will satisfy itself as to whether they were "reasonable and proper" rather by the result, than by considering the position in which the litigant's advisers were placed when settling the Particulars (*Germ Milling Co* v. *Robinson*, 55 L. T. 282; 3 Pat. Ca. 254; 2 Times Rep. 785). *Vf*, *Mandleberg* v. *Morley*, 64 L. J. Ch. 245; 72 L. T. 106: *Middleton* v. *Bradley*, 1895, 2 Ch. 716; 64 L. J. Ch. 888; 73 L. T. 81; 43 W. R. 684.

V. THINK FIT.

REASONABLE CARE. — *V.* ORDINARY CARE: REASONABLE DILIGENCE.

REASONABLE CAUSE.—The power of striking out a Pleading "on the ground that it discloses no Reasonable Cause of Action, or Answer," R. 4, Ord. 25, R. S. C., "is only intended to be had recourse to in plain and obvious cases" (*Hubbuck* v. *Wilkinson*, 1899, 1 Q. B. 86; 68 L. J. Q. B. 34). *Vh*, Ann. Pr.

Reasonable Cause for Desertion; *V.* DESERTION: REASONABLE EXCUSE: CAUSE.

By the Scots Act, 1573, c. 55, "Quhatsumeuer persoun or persounis Joynit in lauchfull Matrimonie, husband or wife, diuertis fra vtheris

companie, without ane ressonabill caus alledgeit or deducit befoir ane Judge and remainis in their malicious obstinacie be the space of four yeiris, and in the meantime refusis all preuie admonitiounis," may have Divorce decreed against him or her: — a Spouse's conduct causing the other mental distress sufficient to interfere with health, and menaces causing well-founded apprehension of physical restraint (especially if culminating in an act of personal violence), is "Reasonable Cause" for leaving that spouse within this provision (*Mackenzie* v. *Mackenzie*, 1895, A. C. 384).

V. REASONABLE AND PROBABLE CAUSE.

REASONABLE CLAUSES. — *V.* PROPER CLAUSES.

REASONABLE COMPENSATION. — *V.* REASONABLE.

REASONABLE CONDITION. — *V.* REASONABLE.

REASONABLE COSTS. — A statutory power to Quarter Sessions to order "Reasonable Costs," means, that the Court itself must ascertain, before making the Order, that the costs ordered are reasonable; and though it may be assisted therein by sending the costs for taxation before making the Order, yet it cannot delegate its function by leaving a blank in the Order for the Taxing Master to fill up (*R.* v. *Wargrave*, 2 Nolan, 4 ed., 574: *R.* v. *Sweet*, 9 East, 25: *R.* v. *Skinn*, 1 Bott, 476). There is no difference in this respect between "Reasonable Costs" and "Costs incurred" (*Selwood* v. *Mount*, cited INCURRED).

Where an intended mortgagor agreed to pay the "Reasonable Costs" of the mortgagee's solicitor if the matter went off (which happened), held, that this did not include the expense of withdrawing the money from a banker and remitting it for payment (*Re Blakesley*, 32 Bea. 379).

REASONABLE DILIGENCE. — As to when "Reasonable Diligence" could not have discovered CONCEALED FRAUD, within s. 26, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V. Ecclesiastical Commrs* v. *N. E. Ry*, 4 Ch. D. 845; 36 L. T. 174: *Ashton* v. *Stock*, 6 Ch. D. 719; 25 W. R. 862: *Williams* v. *Raggett*, 46 L. J. Ch. 849: on the contrary, *V. Chetham* v. *Hoare*, L. R. 9 Eq. 571; 39 L. J. Ch. 376; 22 L. T. 57: *Lawrance* v. *Norreys*, 15 App. Ca. 210; 59 L. J. Ch. 681; 38 W. R. 753: *Willis* v. *Howe*, 50 L. J. Ch. 4; 1893, 2 Ch. 545; 62 L. J. Ch. 690. Quà Partnerships; *V. Rawlins* v. *Wickham*, 28 L. J. Ch. 188; 3 D. G. & J. 304: *Betjemann* v. *Betjemann*, 1895, 2 Ch. 474; 64 L. J. Ch. 641; 73 L. T. 2.

V. DUE DILIGENCE: ORDINARY CARE: "Contributory Negligence," sub NEGLIGENCE.

REASONABLE EFFORTS. — "Reasonable Efforts," to effect Personal Service of a Writ, "do not simply mean 'reasonable' in the mind of the man who makes them according to his belief of the facts; but they mean 'reasonable' according to the actual facts" (per Pollock, C. B., *Flower* v. *Allan*, 33 L. J. Ex. 83; 2 H. & C. 688).

"Reasonable Efforts to obtain payment of the Debt," s. 7, Bankry Act, 1869; *V. Re Tupper*, 9 Ch. 312; 22 W. R. 381; 30 L. T. 102.

REASONABLE EXCUSE. — The excuses for not causing a child to attend school which may be prescribed by bye-laws under s. 74, 33 & 34 V. c. 75, do not exhaust the instances of "Reasonable Excuse" (*Belper Case*, 51 L. J. M. C. 91; 9 Q. B. D. 259). That case also decides that a parent reasonably and fairly doing his best to send his truant child to school, has a "Reasonable Excuse" against a summons for a penalty for not causing the child to attend. Detaining a child at home to earn money necessary to the support of the family, is also a like "Reasonable Excuse" (*London School Bd* v. *Duggan*, 53 L. J. M. C. 104; 13 Q. B. D. 176; 32 W. R. 768). But where a child plays truant against the parent's wish, that is not a "Reasonable Excuse" against an application for an Order for sending the child to school under s. 11, Elementary Education Act, 1876, 39 & 40 V. c. 79; a "Reasonable Excuse" under that section must be one of the two thereby prescribed (*Hewett* v. *Thompson*, 58 L. J. M. C. 60; 60 L. T. 268). *Vf*, s. 11, Education (Scot) Act, 1883, 46 & 47 V. c. 56.

"Reasonable Excuse" for Non-Vaccination, s. 29, 30 & 31 V. c. 84, includes, a reasonable belief that it would be injurious to the particular child (*Rutter* v. *Norton*, 57 J. P. 8; 37 S. J. 12; nom. *Rutter* v. *Newton*, 9 Times Rep. 35), and, Hawkins, J., added that, even if the defendant's "arguments and evidence also tended to show that all vaccination is wrong, he still is entitled to be heard so far as his own child is concerned." *Note*: A magisterial certificate of a parent's, or other custodian's, "Conscientious Objection" excuses from penalty for non-vaccination (s. 2, 61 & 62 V. c. 49).

As to what is a "Reasonable Excuse" (within s. 31, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85), justifying a wife in living separate from her husband; *V. Du Terreaux* v. *Du Terreaux*, 28 L. J. P. & M. 95; and *vice versâ*, *Haswell* v. *Haswell*, 29 L. J. P. & M. 21. If a Wife, without a justifying cause, refuses sexual intercourse to her husband, that is a "Reasonable Excuse" for his Desertion of her (*Synge* v. *Synge*, cited DESERTION).

V. CAUSE.

If rent be only recently due and has not been demanded by the landlord, that is a "Reasonable Excuse," in the mouth of a grantor of a *Bill of Sale*, for the non-production of the receipt for that rent within s. 7 (4), Bills of Sale Act, 1882 (*Ex p. Cotton*, 11 Q. B. D. 301: *Ex p. Wickens*,

cited MAINTENANCE, at end: *Va*, PRODUCE). *Note*: as to what is a covenant in contravention of this sub-section, *V. Barr* v. *Kingsford*, 56 L. T. 861, on *whcv*, *Cartwright* v. *Regan*, 1895, 1 Q. B. 900; 64 L. J. Q. B. 507; 43 W. R. 650.

Cp, LAWFUL EXCUSE: REASONABLY.

REASONABLE EXPECTATION. — A person who begins business without capital and with a mortgage on all his assets, and who afterwards becomes bankrupt, has contracted his debts without "reasonable or probable ground of expectation *of being able to pay*" within s. 28 (3), Bankry Act, 1883 (*Ex p. White*, 54 L. J. Q. B. 384; 14 Q. B. D. 600; 33 W. R. 670: *Vf*, *Ex p. Downman*, 32 L. J. Bank. 49; 11 W. R. 577: *Ex p. Mortimore*, 30 L. J. Bank. 17; 3 D. G. F. & J. 599).

REASONABLE EXPENSES. — "Fees and Reasonable Expenses"; *V.* ELECTRIC.

REASONABLE FACILITIES. — *V.* FACILITIES.

REASONABLE FARES. — *V.* REASONABLE.

REASONABLE FINE. — As to what are "Reasonable Fines" within s. 1, Bg Socy Act, 1836, *V. Parker* v. *Butcher*, L. R. 3 Eq. 762; 36 L. J. Ch. 552: *Re Tierney*, Ir. Rep. 9 Eq. 1.

Reasonable Copyhold Fines; *V.* Elton on Copyholds, 2 ed., 175: Scriven, 182: 1 Watkins, 3 ed., 475.

V. FINE.

REASONABLE HOUR. — In a contract to sell and deliver 10 tons of oil "within the last 14 days of March"; the plaintiff tendered it at half-past eight on the evening of the last day of March. It was found that the tender had been made in time to give the defendant full opportunity to weigh, examine, and receive, the oil, but the defendant who was present declined to receive it on the ground that the tender was made at an unreasonable time; but it was held (Denman, C. J., diss.) that the tender had been made in time (Blackb. 225, citing *Startup* v. *Macdonald*, 6 M. & G. 593; 12 L. J. Ex. 477). In that case Parke, B., said, "Where a thing is to be done *anywhere*, a tender a convenient time before midnight is sufficient; where the thing is to done at a *particular place*, and where the law implies a duty on the party to whom the thing is to be done to attend, that attendance is to be by daylight, and a convenient time before sunset."

V. REASONABLE.

REASONABLE INDEMNITY. — *V.* INDEMNITY.

REASONABLE LET. — "Reasonable Let or Impediment"; *V.* LET, at end.

REASONABLE MEANS. — Taking "Reasonable Means" for enforcing Mine Regulations, s. 50, 50 & 51 V. c. 58; *V. Stokes* v. *Checkland,* cited AGENT.

REASONABLE NOTICE. — *V.* REASONABLE.

REASONABLE PORTION. — A Power to charge estates "with Reasonable Portions, or Fortunes, for Younger Children, and for their maintenance and education," is sufficiently certain to be capable of execution; and the word "Reasonable" there, is applicable not only to the amount of the Portion, but also to the time and occasion on which the child would want it (*Edgeworth* v. *Edgeworth,* Beatty, 328).

REASONABLE PROVISION. — *V.* REASONABLE.

REASONABLE RATE. — A Reasonable RATE or Charge by a Railway Co, s. 1 (1), Ry and Canal Traffic Act, 1894, is to be judged on its merits, and "is not to be tried by its effect upon the trade of the persons who have to pay it" (per Collins, J., *Rickett* v. *Mid. Ry,* 9 Ry & Can Traffic Ca. 144; 65 L. J. Q. B. 277; 1896, 1 Q. B. 260).

REASONABLE ROUTE. — S. 11 (5), Regn of Railways Act, 1873; *V. East and West Junction Ry* v. *G. W. Ry,* 1 Ry & Can Traffic Ca. 331.

REASONABLE SALVAGE. — *V.* SALVAGE.

REASONABLE SKILL. — *V.* SKILL.

REASONABLE SUM. — Reasonable sum for Ry Services; *V.* per Ld Shand, *Mid. Ry* v. *Loseby,* cited DIFFERENCE: *Mid. Ry* v. *Sills,* 9 Ry & Can Traffic Ca. 161: *Mid. Ry* v. *Black,* 10 Ib. 142: — for TERMINAL Charges, s. 15, Regn of Railways Act, 1873, *V. Berry* v. *L. C. & D. Ry,* 4 Ry & Can Traffic Ca. 310: *Hall* v. *L. B. & S. Ry,* cited INCIDENTAL. *Cp,* EXTRAORDINARY SERVICES.

REASONABLE TIME. — *V.* REASONABLE: REASONABLE HOUR.

REASONABLE USE. — As to the reasonable use of premises by deft quà an allegation of nuisance; *V. Sanders-Clark* v. *Grosvenor Mansions Co,* cited NUISANCE, p. 1299.

REASONABLE WEAR. — *V.* WEAR AND TEAR.

REASONABLY. — A Trustee who allows his Co-Trustee to advance trust funds upon an improvident or improper security, or "who swallows

wholesale what is said by his Co-Trustee," does not act "reasonably" or "honestly," within s. 3, Judicial Trustees Act, 1896, even though the Co-Trustee be the Solicitor to the trust nominated by the author of the trust and be a reliable person (*Re Turner*, 1897, 1 Ch. 536; 66 L. J. Ch. 282; 76 L. T. 116; 45 W. R. 495: *Re Second East Dulwich Bg Socy*, 68 L. J. Ch. 196; 79 L. T. 726; 47 W. R. 408). In making or allowing investments a trustee must act as a fairly prudent man would deal with his own money (*Re Stuart*, 1897, 2 Ch. 583; 66 L. J. Ch. 780; 46 W. R. 41).

So, a Trustee does not act "reasonably" if he allows his Co-Trustee to receive, and (without enquiry or good reason) to retain, trust funds (*Wynne* v. *Tempest*, cited INDEMNITY).

So, an Exor does not act "reasonably" if he does not advertise for Claims as soon as possible; and he will not get relief for parting with the Assets to beneficiaries after being served with a writ for a claim which, in the event, is substantiated, even though he honestly believed, and had some grounds for believing, that the claim was unfounded (*Re Kay*, cited TRUST). An Exor who, on reasonable grounds, refrains from bringing an action to recover a Debt due to his testator's estate, may not quite bring himself within the decision in *Clack* v. *Holland* (24 L. J. Ch. 13; 19 Bea. 262), but the spirit of Ld Romilly's remarks in that case ought to be applied, and if there was reasonable ground for believing that an action would have been "ineffectual," then, in not suing, the Exor would have acted "reasonably, and ought fairly to be excused" under s. 3 of the Act cited (*Re Roberts*, 76 L. T. 479); so, if, on the Will, there was a reasonable doubt as to whether the testator intended the debt to be called in at once (*Re Grindey*, 1898, 2 Ch. 593; 67 L. J. Ch. 624; 47 W. R. 53; 79 L. T. 105); so, of payment to legatees in ignorance of a claim against the estate (*Re Kay*, 41 S. J. 722), *secus* of such payments after commencement of an action to enforce the claim, although its extent was then unascertained (*Re Kay*, sup).

The words of the section are "has acted *honestly* and reasonably, and ought fairly to be excused"; but as in the large majority of cases of breach of trust so, generally, under this section "the word 'honestly' may be left out of consideration" (per Kekewich, J., *Perrins* v. *Bellamy*, 1898, 2 Ch. 521; 67 L. J. Ch. 649; 46 W. R. 682; 79 L. T. 109; affd 1899, 1 Ch. 797; 68 L. J. Ch. 397; 80 L. T. 478; 47 W. R. 417), in *whc* trustees, who were sued by a tenant for life for selling leaseholds without being thereunto authorized by a power, were relieved because they had acted "reasonably," — they had sold thinking they had a power, had sold on the advice of a competent surveyor, and the sale was the best thing that could have been done for the benefit of all parties, and especially having regard to those in remainder who were the children of the tenant for life. On the other hand, an unreasonable, but honest, postponement of realizing non-trustee investments, is not excusable, not

even though, in some instances, profit has resulted from the postponement (*Ravenshaw* v. *Barker*, 77 L. T. 712; 46 W. R. 296).

Vf, *Re De Clifford*, 69 L. J. Ch. 828; 1900, 2 Ch. 707; 83 L. T. 160. *Note*: that the claim for relief may be set up at the trial, though not made by the pleadings (*Singlehurst* v. *Tapscott S. S. Co*, 43 S. J. 717).

Cp, REASONABLE EXCUSE. *V.* BREACH OF TRUST.

Surveyor "reasonably believed" to be "able and practical"; *V.* SURVEYOR.

V. OUGHT: PROPERLY: REASONABLE.

REASONABLY NECESSARY. — A Trustee loses the protection of s. 17, Trustee Act, 1893, if he permits a Banker or Solicitor who receives trust money to retain it "longer than is reasonably necessary . . . to pay or transfer the same to the trustee" (subs. 3, s. 17); that proviso is as applicable to Scotland as to England, and must be exigently observed in spite of specious excuses by the banker or solicitor (*Wyman* v. *Paterson*, 1900, A. C. 271; 69 L. J. P. C. 32; 82 L. T. 473).

REASONABLY PRACTICABLE. — A direction that a set of affirmative and negative rules shall be observed "so far as is reasonably PRACTICABLE," will not, unless under very exceptional circumstances indeed, apply to the negative rules. "It is always possible *not* to do that which you are forbidden to do" (per Day, J., *Wales* v. *Thomas*, 55 L. J. M. C. 61; 16 Q. B. D. 340; 55 L. T. 400; 50 J. P. 516; 2 Times Rep. 53); and it was accordingly held in that case that the rule in s. 51, Coal Mines Regulation Act, 1872, 35 & 36 V. c. 76, prohibiting firing a shot into a mine until the men are out of it, is unqualified by the words at the commencement of the section that the rules thereby laid down "shall be observed so far as is reasonably practicable."

REASONABLY REQUIRE. — An agreeement to give a Bill of Sale in such form as A. shall "reasonably require," means, IN ACCORDANCE WITH THE FORM prescribed by s. 9, Bills of S. Act, 1882 (*Furnivall* v. *Hudson*, 1893, 1 Ch. 335; 62 L. J. Ch. 178; 68 L. T. 378; 41 W. R. 358).

REASONABLY SUSPECTS. — Pawnbrokers Act, 1872, 35 & 36 V. c. 93, s. 34; *V. Howard* v. *Clarke*, 20 Q. B. D. 558.

REBEL. — "Thou art a Rebel"; held, not Slander (*Fountain* v. *Rogers*, Cro. Eliz. 878).

REBELLION. — A "Rebellion." *e.g.* in an Exception to a Fire Policy, involves the idea of an attempt to set up an USURPED POWER (per Mansfield, C. J., *Langdale* v. *Mason*, cited CIVIL COMMOTION).

"The difference between a Rebellious Mob and a Common Mob is that, the first is HIGH TREASON, the latter a RIOT or a FELONY" (per Wilmot, C. J., *Drinkwater* v. *London Assrce*, cited USURPED POWER).

Cowel says that a "'Rebellious Assembly,' is a gathering together of 12 persons, or more," for an unlawful purpose. *Cp*, UNLAWFUL ASSEMBLY.

V. LEVY WAR: RESTRAINTS OF KINGS.

REBUILDING. — "Rebuilding the Principal Mansion House on settled land," s. 13 (iv), S. L. Act, 1890, does not include repairs and improvements (*Re De Teissier*, 1893, 1 Ch. 153; 62 L. J. Ch. 552; 68 L. T. 275; 41 W. R. 186: *Re De Tabley*, 75 L. T. 328). But where the greater part of the mansion house is pulled down and re-constructed, though the re-construction be in a modernized and enlarged manner and the walls of another part are utilized therein, that is a "rebuilding" within the section (*Re Walker*, 1894, 1 Ch. 189; 63 L. J. Ch. 314; 70 L. T. 259). In that case North, J., dealing with this word, said, "I think it is a question of fact in each particular case. Supposing most of the house front were pulled down and a small part left and the rest of the house were re-built, it could not be said that there was not a 're-building.' Again, if the house were burnt and the walls were left standing and made use of in erecting the new house, there would none the less be a 're-building.' Nor would the introduction of alterations and enlargements make any difference in that respect. And I do not think it would make any difference if the site were slightly shifted. If the house were built at a distance that would be another matter. I do not think, however, it follows that every re-building would be a re-building authorized by the section. For example, supposing a tenant for life of a large estate or his predecessor had been content to live in some mere farmhouse or a small villa residence, if he were to erect a large mansion with all the requirements suited to his position as the owner of such an estate, I do not think that that ought to be considered a 're-building' within the enactment. I think there must be really a substantial re-building, and not merely alterations and enlargements." *Re Wright* (83 L. T. 159) is an example of what comes within these concluding words. *V.* ADDITION: IMPROVEMENT: per Lopes, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 23; 69 L. T. 393.

Note: As to whether settled money can be spent in pulling down and re-building houses; *V. Re Montagu*, 1897, 2 Ch. 8; 66 L. J. Ch. 345, 541; 45 W. R. 594; 76 L. T. 485, and cases there cited.

A Covenant to "re-build" a building on the same site as the existing one, does not, by the word "re-build," involve the obligation to re-build the new in the same manner, style, and shape, and with the same elevation, as the old building (*Low* v. *Innes*, 4 D. G. J. & S. 289; 11 L. T. 217; 10 Jur. N. S. 1037); but, *semble*, it imposes an obligation to com-

pletely take down all the old buildings and build new ones (*London* v. *Nash*, cited BUILDING LEASE).

A Power to grant a Lease "for the purpose of new building or effectually re-building and repairing" existing buildings, is not well executed if the lessee only covenants to "effectually repair" the buildings and to keep them repaired and upheld as need should require (*Doe* d. *Dymoke* v. *Withers*, 2 B. & Ad. 896: *svthc* questioned by Jessel, M. R., *Truscott* v. *Diamond Rock-Boring Co*, cited IMPROVE).

REBUTTER.—"'*Rebouter*' is a French word, and is in Latine *repellere*, to repell or barre" (Co. Litt. 365 a).

A Rebutter, in Pleading, was the deft's answer to the Plt's Sur-Rejoinder; a Sur-Rebutter was the plt's answer to the Rebutter (3 Bl. Com. 310).

RECAPTION.—"Is a second Distress of one formerly distreyned for the selfe same cause" (Termes de la Ley). *Vf*, Jacob: 11 Encyc. 81.

RECEIPT.—"No particular form of words is necessary to constitute a Receipt. The word 'settled,' or 'paid,' or any other word purporting to give a discharge, together with the signature of the creditor, or his mere signature on a document specifying the amount due without any other words indicating payment, is sufficient (*R.* v. *Martin*, 7 C. & P. 549: *Spawforth* v. *Alexander*, 2 Esp. 621: *R.* v. *Boardman*, 2 Moo. & R. 147: *R.* v. *Overton*, 23 L. J. M. C. 29)": 11 Encyc. 82. *Cp*, RELEASE.

A Turnpike Ticket is a "Receipt" (*R.* v. *Fitch*, L. & C. 159), and a Bank Pass Book is an "*Accountable* Receipt" (*R.* v. *Smith*, 31 L. J. M. C. 154; L. & C. 168; *R.* v. *Moody*, 31 L. J. M. C. 156; L. & C. 173), within s. 23, Forgery Act, 1861, 24 & 25 V. c. 98; but a "Clearance" certificate from one branch of a Friendly Society to another, is not (*R.* v. *French*, 39 L. J. M. C. 58; L. R. 1 C. C. R. 217), nor is a Railway Scrip Certificate (*Clark* v. *Newsam*, 16 L. J. Ex. 296; 1 Ex. 131: *R.* v. *West*, 1 Den. 258).

"Receipt" of a Garnished Debt (to complete its attachment, s. 45 (2), Bankry Act, 1883), means, its actual receipt by the jdgmt creditor; a constructive receipt, *e.g.* its payment into Court to abide a Third-Party claim afterwards withdrawn, will not suffice (*Butler* v. *Wearing*, 17 Q. B. D. 182: *Vf*, *Re Trehearne*, 63 L. T. 323, affd 39 W. R. 116; 60 L. J. Q. B. 50; 63 L. T. 798).

Neither a simple Receipt, nor an Inventory of goods and Receipt for their purchase money, is a "Receipt" which, under s. 4, *Bills of Sale Act*, 1878, requires registration, *unless such Receipt, or Inventory and Receipt, make the title of the purchaser* to the goods (*Marsden* v. *Meadows*, 7 Q. B. D. 80; 50 L. J. Q. B. 536. *Va*, *Thompson* v. *Barrett*, 1 L. T. 268: *Allsop* v. *Day*, 31 L. J. Ex. 105; 7 H. & N. 457: *Byerley* v. *Prevost*, L. R. 6 C. P. 144: *V.* those three cases commented on and

distinguished in *Ex p. Odell, Re Walden*, 10 Ch. D. 76; 48 L. J. Bank. 1, and *Re Baum, Ex p. Cooper*, 10 Ch. D. 313; 48 L. J. Bank. 40; but the authority of *Marsden* v. *Meadows* was established by H. L. in *Manchester, S. & L. Ry* v. *North Central Waggon Co*, 13 App. Ca. 554. *Vf, Ex p. Blandford, Re Hood*, 37 S. J. 512, 602: ASSURANCE).

Quà *Stamp Act*, 1891, "'Receipt' includes, any Note, Memorandum, or Writing, whereby any money amounting to £2 or upwards, or any bill of exchange or promissory note for money amounting to £2 or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand or any part of a debt or demand of the amount of £2 or upwards is acknowledged to have been settled satisfied or discharged, or which signifies or imports any such acknowledgement; and whether the same is or is not signed with the name of any person" (s. 101). "Those are words of the most wide and comprehensive kind" (per Russell, C. J., *A-G.* v. *Carlton Bank*, 68 L. J. Q. B. 791), and include receipts given by the Cashier of a Bank to its Solicitor, for moneys recovered or collected by the latter for the Bank, even though such Solr is, by the terms of his appointment, an OFFICER of the Bank who is entitled to his whole time and pays him an annual salary (*S. C.*, 1899, 2 Q. B. 158; 68 L. J. Q. B. 788; 81 L. T. 115; 47 W. R. 650; 63 J. P. 629). *Note*: In the Sch to the Act several Exemptions from the Stamp Duty are provided, the first and chief of which is a "Receipt given for money deposited in any Bank or with any Banker to be accounted for and expressed to be received of the person to whom the same is to be accounted for": as to Exemption 11, *V. London & Westminster Bank* v. *Inl. Rev.*, 1900, 1 Q. B. 166; 69 L. J. Q. B. 102; 81 L. T. 630; 48 W. R. 195.

"Receipt," ss. 54, 55, 56, Conv & L. P. Act, 1881; *V. Renner* v. *Tolley*, 68 L. T. 815; W. N. (93) 90.

"Receipt and Acceptance" of Goods; *V.* ACCEPTANCE: *Vf, Marshall* v. *Green*, 45 L. J. C. P. 153; 1 C. P. D. 35.

V. AUTHORITY OR REQUEST: IN RECEIPT: RECEIPTS: STATUTORY: VACATE.

RECEIPTS. — This is not a word applicable to corpus (*Troutbeck* v. *Boughey*, 35 L. J. Ch. 840; L. R. 2 Eq. 53). In that case Kindersley, V. C., said, "How could a receipt be given for a fee simple?" *Vf, Johnson* v. *Johnson*, 56 L. J. Ch. 326; 35 Ch. D. 345; 56 L. T. 163; 35 W. R. 329.

Receipts of Theatre; *V. Cadogan* v. *Lyric Theatre*, cited RENT, towards end.

V. IN RECEIPT: INCOME.

RECEIVABLE. — "I myself should have held that the words 'receivable' and 'PAYABLE' were the same thing, and that both were

equivalent to 'VESTED'; but I am happy to find that the judgment of the M. R. in *Hayward* v. *James* (29 L. J. Ch. 822; 28 Bea. 523), expresses exactly the same conclusion" (per Malins, V. C., *West* v. *Miller*, 37 L. J. Ch. 426; L. R. 6 Eq. 59). *Vf*, Watson Eq. 1228.

"Receivable" may be construed "received" (Wms. Exs. 938, citing *Re Dodgson*, 1 Drew. 440). In that case there was a gift over if any member of a CLASS died "before receiving" his share; held, that that phrase meant, "before being ENTITLED to receive."

V. RECEIVED: PAYABLE.

RECEIVE.—*V.* RECEIPT: RECEIVABLE: RECEIVING: PAYABLE.

A Building Socy cannot, in strictness, "receive" LOANS on deposit "in excess" of its statutory limits (s. 15, Bg Socy Act, 1874; s. 14, Bg Socy Act, 1894); but as that phrase is used in s. 43 of the 1874 Act, the personal liability on the Directors thereby enacted arises when some person duly accredited, *e.g.* frequently the Secretary, receives money on behalf of a Socy which, but for the prescribed limits, would be properly received by such Socy (*Cross* v. *Fisher*, 1892, 1 Q. B. 467; 61 L. J. Q. B. 609; 66 L. T. 448; 40 W. R. 265; 56 J. P. 372).

"Receives payment for a CUSTOMER of a Cheque crossed," s. 82, Bills of Ex. Act, 1882; *V.* PAYMENT.

"Ready to receive Cargo"; *V.* READY TO LOAD.

"Purchase, take, hold, receive, or enjoy" land in Mortmain; *V.* PURCHASE.

"Send out, deliver, remove, or receive," Spirits; *V.* SEND, at end.

RECEIVED.—In an executory gift over, "Received" should generally be read "RECEIVABLE," and accordingly as equivalent to PAYABLE (*West* v. *Miller*, 37 L. J. Ch. 423; L. R. 6 Eq. 59: 2 Jarm. 812 *et seq*). "I take it to be now settled that where there is a gift of property to vest in a person at 21 or marriage, with a gift over in the event of such person dying before the same becomes 'payable,' or the legatee is 'entitled in possession,' these and all similar expressions mean no more than dying before the property becomes 'vested.' Here the word is 'Received,' that is 'Receivable.' But if one person has to pay, there must be another to receive, and 'receivable' must mean the same as 'payable,' so far as it refers to any period of time. . . . In all cases where there is a gift for life, followed by a gift in remainder, which is to vest at the attainment of a particular age, or upon any other event personal to the legatee in remainder, and then a gift over in the event of the latter dying before the legacy is 'payable,' 'receivable,' 'vested in possession,' *or any other form is used which means 'paid' or 'received,'* there all such expressions are to be taken as equivalent to 'VESTED'" (per Malins, V. C., *West* v. *Miller*, sup). *Cp*, *Minors* v. *Battison*, 1 App. Ca. 428; 46 L. J. Ch. 2.

"When received"; *V.* WHEN.

Where a Charter-Party provides that the Bills of Lading shall be "CONCLUSIVE EVIDENCE of the amount of *Cargo* received," "received" means, "shipped on board" (*Lishman* v. *Christie*, 56 L. J. Q. B. 538; 19 Q. B. D. 333; 57 L. T. 552; 35 W. R. 744, which, *semble*, overrules *Pyman* v. *Burt*, Cab. & El. 207).

Guarantee for *Goods* "received" will, generally, import future goods and a future consideration; if necessary, evidence explanatory is admissible (*Colbourn* v. *Dawson*, 10 C. B. 765; 20 L. J. C. P. 154). *Vf*, HAVING.

Commission "on any *Money* received"; *V. Fisher* v. *Drewett*, 48 L. J. Q. B. 32: *Green* v. *Lucas*, 33 L. T. 584.

Sums "received" in the United Kingdom in respect of Securities elsewhere and chargeable with Income Tax under s. 100, Sch D, Case 4, Income Tax Act, 1842, do not include sums only constructively received in Great Britain, in yearly accounts of profits and loss (*Gresham Life Assrce* v. *Bishop*, 1902, A. C. 287; 71 L. J. K. B. 618, weakening effect of, if not over-ruling, *Universal Life Assrce* v. *Bishop*, 81 L. T. 422; 64 J. P. 5; 68 L. J. Q. B. 962; following *Scottish Mortgage Co of New Mexico* v. *McKelvie*, 24 Sc. L. R. 87, and *Norwich Union Fire Insrce* v. *Magee*, 44 W. R. 384). *Cp*, Income Tax cases, CARRY ON, pp. 264, 265.

"Received in"; *V.* CAUSED BY.

V. ACTUALLY RECEIVED: MONEY RECEIVED: SERVED.

RECEIVER. — Generally speaking, a Receiver "is an indifferent person between the parties appointed by the Court to receive the rents and profits of real estate, or to act in and collect personal estate or other things in question, pending the suit, where it does not seem reasonable to the Court that either party should do so; or where a party is incompetent to do so, as in the case of an Infant" (Dan. Ch. Pr. 1409).

"A Receiver means, a person who receives rents or other income, paying ascertained outgoings; but he does not manage the property in the sense of buying and selling or anything of that kind. . . . The Receiver merely takes the income and pays necessary outgoings; the MANAGER carries on the trade or business" (per Jessel, M. R., *Re Manchester & Milford Ry*, 49 L. J. Ch. 369; 14 Ch. D. 652, 653).

Vh, R. 16, Ord. 50, R. S. C., on *whv* Ann. Pr.: Kerr on Receivers: Dan. Ch. Pr. ch. 27: Seton, ch. 32: 11 Encyc. 83–102.

"Receiver by way of Equitable Execution," R. 15 *a*, Ord. 50, R. S. C.; *Vh*, Ann. Pr.

Mortgagee's Receiver; *V.* s. 24, Conv & L. P. Act, 1881: Fisher, s. 815.

Stat. Def. — 22 & 23 V. c. 52, s. 1; 57 & 58 V. c. 30, s. 23.

V. OFFICIAL.

A Receiver of Stolen Goods, is one who receives them "knowing them to be stolen" (4 Bl. Com. 132). *Vf*, RECEIVING.

RECEIVER-GENERAL. — Stat. Def., 35 & 36 V. c. 23, s. 3; 53 & 54 V. c. 21, s. 39.

RECEIVER JUDGE. — *V.* JUDGE.

RECEIVING. — As regards the criminal receiving of stolen goods, "a person is said to receive goods improperly obtained as soon as he obtains control over them from the person from whom he receives them.

"Where goods are received by a wife or servant, in the husband's or master's absence, with a guilty knowledge on the part of such wife or servant, the husband or master does not become a Receiver only by acquiring a guilty knowledge of the receipt of the goods by such wife or servant, and passively acquiescing therein; but he does become a Receiver with a guilty knowledge if, having such knowledge, he does any act approving of the receipt of the goods.

"Property ceases to be stolen or otherwise improperly obtained, within the meaning of this Article, as soon as it comes into the possession of the general or special owner, and if such general or special owner delivers it to some one who delivers it to a person who receives it knowing of the previous theft or other obtaining, such receiving is not an offence within this article" (Steph. Cr. 282).

Vf, Arch. Cr. 514–523: Rosc. Cr. 778–789: 11 Encyc. 102–104.

Joint Tenant or Tenant in Common "receiving more than comes to his Just Share," so as to be liable to an Account under s. 27, 4 Anne, c. 16, connotes an actual receiving, in money or kind, from a third party; a beneficial occupation by such a Tenant is not such a "receiving" (*Henderson* v. *Eason*, 21 L. J. Q. B. 82; 17 Q. B. 701).

RECEIVING ORDER. — This phrase, in s. 40 (*b*), Bankry Act, 1883, means, an Order, whether interim or not, "which takes the receipts out of the hands of the debtor, and leaves him no longer the power of satisfying claims for wages and salaries" (per Cave, J., *Re Smith*, 55 L. J. Q. B. 291; 17 Q. B. D. 4; 54 L. T. 307; 34 W. R. 535).

RECEPTION. — "Reception Order"; *V.* ORDER, p. 1351.

RECITAL. — As to effect of Recitals on Operative Words, &c; *V.* Introductory Chapter: they may work ESTOPPEL *V.* WHEREAS.

Vh, Elph. ch. 10.

RECITAL OF FACT. — *V.* FACT.

RECLUSE. — "'*Recluse,*' *Reclusus*, *Heremita*, *seu Anchorita*, so called by the order of his religion; he is so mured or shut up, *quòd solus semper sit, et in clausurâ suâ sedet*; and can never come out of his place" (Co. Litt. 258 b; *V.* s. 434, Litt., for use of "Recluse"; *Vf*, Termes de la Ley).

RECOGNIZANCE. — "A Recognizance, is the Acknowledgment of a Debt due to the King, defeasible upon the happening of a certain event, viz. the appearance of the party in Court pursuant to the terms of the condition. In this respect, a Recognizance resembles a Bond in its nature" (per Wightman, arg. *R.* v. *Dover*, 1 Cr. M. & R. 733); that is an accurate statement of "the precise nature of Recognizances" (per Ridley, J., *Re Nottingham Corp*, cited AMERCIAMENT). *Vh*, 4 Cru. Dig. 95: Jacob: 11 Encyc. 105–107.

The Scotch equivalent is "Bond of Caution"; *V.* 31 & 32 V. c. 125, s. 58; 46 & 47 V. c. 3, s. 9: ENTER.

V. BAIL: BIND OVER: SURETY: SURETY OF THE PEACE.

RECOGNIZE. — "Act . . . which recognizes a pre-existing Contract of Sale," s. 4 (3), Sale of Goods Act, 1893; *V. Abbott* v. *Wolsey*, 1895, 2 Q. B. 97; 64 L. J. Q. B. 587; 72 L. T. 581; 43 W. R. 513: ACCEPTANCE.

RECOGNIZED. — A Vessel registered as a British Ship at the time of action brought, but not so registered when the collision occurred, is not a "Recognized BRITISH SHIP," quà the action, within s. 19, Mer Shipping Act, 1854, repld s. 2 (2), Mer Shipping Act, 1894 (*The Andalusian*, 3 P. D. 182).

"Recognized *Efficient School*"; Stat. Def., 41 & 42 V. c. 16, s. 95; 1 Edw. 7, c. 22, s. 160 (2). *Cp*, CERTIFIED.

RECOMMEND. — *V.* PRECATORY TRUST.

"Held out or recommended"; *V.* HOLD OUT.

RECONCILIATION. — A Reconciliation of a Church, is an exception to the rule that a Church once consecrated cannot be re-consecrated, for there is a Re-Consecration after a Church has been polluted by the shedding of blood, *e.g.* on Oct 13, 1890, at St. Paul's Cathedral after a suicide there (Phil. Ecc. Law, 1399: *Vf*, Ib. 1400, as to Re-Consecration).

RECONSTRUCTION. — "Reconstruction" of a Co, "is really a sale out-and-out, — a Voluntary Winding-up followed by an actual, complete, legal, sale of all the rights of the Co. It is a sale to a stranger, — a Co called into existence for the express purpose. The sale is as complete a legal sale as if the assets of the Co were sold to any person or corporation utterly unconnected with the Co" (per Kekewich, J., *Simpson* v. *Palace Theatre*, 69 L. T. 70). Accordingly, applying the principle of *Griffith* v. *Paget* (5 Ch. D. 894; 6 Ib. 515; 46 L. J. Ch. 493; 25 W. R. 523; 37 L. T. 141), a Reconstruction (in the absence of special authority) must provide for a *pro ratâ* distribution amongst all classes of shareholders in the old Co. But though the def in *Simpson's Case*

is strictly so, yet, for many purposes, Reconstruction "involves something which is not out-and-out sale" (per Chitty, J., *Hooper* v. *Western Counties & S. Wales Telephone*, 41 W. R. 86; 68 L. T. 78). "Reconstruction differs from AMALGAMATION in that, as a rule, there is only one transferring Co, and the Co to which the property in question is transferred is practically the *same* Co with some alterations in its constitution" (Lindley Comp. 900), — a dictum approved and relied on in *Hooper's Case* (sup) to show that the Winding-up there was for an Amalgamation, and not for a "Reconstruction or Reorganization" within a Condition indorsed on a Co's Debentures. In the same case Chitty, J., said that "Reconstruction" is not a Term of Art. *Vf*, LIQUIDATION.

Vh. 1 Palm. Co. Prec. 1125: Hamilton, 589: Buckl. 426.

RECONVEYANCE. — A Reconveyance, is the document which a mtgor takes from his mtgee when he pays off a mtge. *V.* RENUNCIATION.

A Statutory Receipt is sometimes made to have a similar operation as a Reconveyance; *V.* STATUTORY: VACATE.

RECORD. — The Record of an Action is a memorial of the pleadings and acts in an action brought in a COURT OF RECORD (Co. Litt. 260 a, 117 b: *Vf*, Cowel: Jacob), and was formerly written on parchment (Ib. 260 a); but see now R. 30, Ord. 36, R. S. C.

The Issue accompanying a Judge's Order remitting an action to the County Court under 19 & 20 V. c. 108, s. 26, was a sufficient "Record" within s. 5, County Courts Act, 1867 (*Taylor* v. *Cass*, L. R. 4 C. P. 614).

No appeal in a CRIMINAL CAUSE save for Error "APPARENT upon the Record," s. 47, Jud. Act, 1873; *V. Payne* v. *Wright*, 1892, 1 Q. B. 104; 61 L. J. M. C. 114; 66 L. T. 148; 56 J. P. 564.

V. COURT OF RECORD: DEBT UPON RECORD.

MATTER of Record; *V. Sadlers' Case*, 4 Rep. 54 b.

Assurances by Matter of Record, are, (1) Act of Parliament, or (2) Grant from the Crown; to these formerly were added, (3) FINE, and (4) COMMON RECOVERY; *V. Sadlers' Case*, sup: 2 Bl. Com, ch. 21.

The *Public Record Office*, was established by Public Record Office Act, 1838, 1 & 2 V. c. 94, by s. 20 of which "'Records,' shall be taken to mean, all rolls, records, writs, books, proceedings, decrees, bills, warrants, accounts, papers, and documents whatsoever, of a PUBLIC NATURE belonging to Her Majesty, or now deposited in any of the offices or places of custody" mentioned in s. 1 of the Act. *Vf*, Public Record Act, 1877, 40 & 41 V. c. 55.

The Public Record Office of Ireland, was established by Public Records (Ir) Act, 1867, 30 & 31 V. c. 70, s. 3 of which defines the "Records" included in the Act, a def extended by s. 4, 38 & 39 V. c. 59, but which extension is itself restricted by s. 4, 39 & 40 V. c. 58.

The *Record of Title Office* of Ireland, was established by 28 & 29 V. c. 88; *Vf*, 54 & 55 V. c. 66.

RECORDED. — "Recorded Estate"; Stat. Def., 28 & 29 V. c. 88, s. 2.

"Recorded Land"; Stat. Def., 28 & 29 V. c. 101, s. 3.

"Recorded Service"; Stat. Def., 61 & 62 V. c. 57, s. 1 (5).

RECORDER. — The Recorder of a Borough "sits as sole judge" of its Quarter Sessions (s. 165 (2), Mun Corp Act, 1882); his qualification, status, salary, and powers, are prescribed or provided for by ss. 163, 165-168, of that Act; *Vf*, 51 & 52 V. c. 23.

Stat. Def. — 8 & 9 V. c. 10, s. 11. — *Ir.* 13 & 14 V. c. 18, s. 51. — *Scot.* 50 & 51 V. c. 58, s. 76.

RECOVER. — The word "Recover" has a technical meaning in law whereby it signifies, to recover by action and by the judgment of the Court (*Vh, Wigens* v. *Cook*, 28 L. J. C. P. 312; 6 C. B. N. S. 784: *Cream* v. *Ray*, 30 L. J. Ex. 110: *Cooper* v. *Pegg*, 24 L. J. C. P. 167: *Smith* v. *Edge*, 33 L. J. Ex. 9; 2 H. & C. 659; 12 W. R. 133: *Fergusson* v. *Davison*, 8 Q. B. D. 470; 51 L. J. Q. B. 266); but it is said that there are cases which may be found in which the word has been held to be used in the larger and more popular sense of recover by any legal means, which would include, *e.g.* a distress (per Willes, J., *Haines* v. *Welch*, 38 L. J. C. P. 118; L. R. 4 C. P. 91; 17 W. R. 163). In that case it was held that the word in s. 1, 14 & 15 V. c. 25, includes the right to distrain.

But the amount of a verdict is not "recovered" till judgment can be signed upon it (per Brett, J., *Ings* v. *Lond. & S. W. Ry*, 38 L. J. C. P. 8; L. R. 4 C. P. 17; 17 W. R. 120). A Plaintiff does not "recover" a sum paid in under a successful Plea of Tender (*James* v. *Vane*, 29 L. J. Q. B. 169, over-ruling *Cooch* v. *Maltby*, 23 L. J. Q. B. 305); and, where there is a successful Set-Off, he only "recovers" the balance due to him after its allowance (*Ashcroft* v. *Foulkes*, 25 L. J. C. P. 202; 18 C. B. 261: *Beard* v. *Perry*, 31 L. J. Q. B. 180; 2 B. & S. 493, approved *Stooke* v. *Taylor*, 49 L. J. Q. B. 861; 5 Q. B. D. 569; 43 L. T. 200). But he does "recover" a sum paid into Court and which he accepts in satisfaction (*Parr* v. *Lillicrap*, 1 H. & C. 615; 11 W. R. 94; 32 L. J. Ex. 150: *Boulding* v. *Tyler*, 32 L. J. Q. B. 85; 3 B. & S. 472).

So, money found due by an Award in an Action is "recovered" (*Cowell* v. *Amman Co*, 34 L. J. Q. B. 161; 6 B. & S. 333).

But when a statute prescribes that a Penalty is to be "recovered" SUMMARILY before Justices within (say) 6 months after the offence, the time for the Complaint or Information is not thereby "specially limited" (*i.e.* there is no definite limitation) so as to exclude s. 11, 10 & 11 V. c. 43; and, if the Complaint or Information is made or laid within the proper

time, the matter may be heard and the penalty "recovered" *after* that time (*Morris* v. *Duncan*, 1899, 1 Q. B. 4; 68 L. J. Q. B. 49; 47 W. R. 96; 79 L. T. 379; 62 J. P. 823: *Sv, R.* v. *Mainwaring*, E. B. & E. 474; 27 L. J. M. C. 278). *Vf*, ARISE.

"*Sum* recovered"; *V. Johnson* v. *Harris*, 24 L. J. C. P. 40; 15 C. B. 357: *Dixon* v. *Walker*, 10 L. J. Ex. 43; 7 M. & W. 214: *James* v. *Vane*, 2 E. & E. 883: *Scott's Standard Co* v. *Northern Wheeleries Co*, 1899, 2 I. R. 34: *Myers* v. *Phelan*, 26 L. R. Ir. 218, 223. Quà the *County Court Scales of Costs*, this phrase means, the amount the plt gets by the action, including any amount that may have been paid him by the deft after action brought (*Keeble* v. *Bennett*, 1894, 2 Q. B. 329; 63 L. J. Q. B. 694; 42 W. R. 539: *White* v. *Headlands Co*, 1899, 1 Q. B. 507; 68 L. J. Q. B. 354; 80 L. T. 442; 47 W. R. 273, over-ruling *Bailey* v. *Watson*, 1898, 2 Q. B. 270; 67 L. J. Q. B. 802). The "*Subject-matter*," quà those Scales, is, in an Interpleader action, the value of the whole goods claimed, and (if any) the damages (*Studham* v. *Stanbridge*, 1895, 1 Q. B. 870; 64 L. J. Q. B. 473; 43 W. R. 543).

The proceeds of a sale in a mortgagee's hands, are not "recovered by any Distress, Action, or SUIT," within s. 42, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; therefore, arrears of interest for as far back as 20 years may be retained out of such proceeds (*Edmunds* v. *Waugh*, 35 L. J. Ch. 234; L. R. 1 Eq. 418; 14 W. R. 257; *Re Marshfield*, 34 Ch. D. 721; 56 L. J. Ch. 599; 56 L. T. 694; 35 W. R. 491: *V.* BY); so, the Mtgor must pay all arrears of interest when he is claiming to redeem (*Dingle* v. *Coppen*, 1899, 1 Ch. 726; 68 L. J. Ch. 337). So, though a loan, the interest on which is to vary with trade profits, cannot be "recovered," if the borrower become bankrupt, until the general creditors are satisfied (s. 5, 28 & 29 V. c. 86, repld, s. 3, Partnership Act, 1890), yet this word does not extend to deprive the lender of such rights as he may have as mortgagee (*Ex p. Sheil, Re Lonergan*, 4 Ch. D. 789; 46 L. J. Bank. 62; rejecting *Ex p. MacArthur*, 40 L. J. Bank. 86). In *Ex p. Sheil* (sup), James, L. J., said, "I think the word 'Recover' means recover, and does not mean 'RETAIN.'"

On that principle *Philpott* v. *Jones* (4 L. J. K. B. 65; 2 A. & E. 41; 4 N. & M. 14) decided that a debt for Spirituous Liquors was not "recovered," within the Sale of Spirits Act, 1750, 24 G. 2, c. 40, s. 12, by crediting an unappropriated payment therefor.

"Recover," s. 2, Real Property Limitation Act, 1833; *V. Grant* v. *Ellis*, 11 L. J. Ex. 228; 9 M. & W. 113: *Irish Land Commission* v. *Grant*, 10 App. Ca. 26.

"Recovered," may sometimes be read as "sued for" (*V.* per Parke, B., *Collins* v. *Hopwood*, 15 M. & W. 464; 16 L. J. Ex. 126). *Vf, Morris* v. *Duncan*, sup.

A power to a body to "recover," implies the power to sue by its

collective designation though not incorporated (*Mills* v. *Scott*, L. R. 8 Q. B. 496; 42 L. J. Q. B. 234).

"Recovered *as Damages*," in a Local Improvement Act incorporating Ry C. C. Act, 1845, and Towns Imp. Act, 1847, means, so recovered before Justices (*Blackburn* v. *Parkinson*, 28 L. J. M. C. 7; 1 E. & E. 71).

No "right to recover" a Solr's County Court Costs without taxation; *V.* ALLOW.

V. RECOVERED OR PRESERVED: TO BE RECOVERED.

RECOVERABLE. — In an undertaking by a Solicitor to his client that "should the damages or costs not be recoverable in this action, I shall charge you costs out of purse only," the result of the action, and not the solvency of the defendant therein, is referred to (*Re Stretton*, 15 L. J. Ex. 16; 14 M. & W. 806).

"Recoverable as a Penalty": *V. R.* v. *Lewis*, cited PENALTY.

V. CLAIMED: MAINTAIN.

RECOVERED. — *V.* RECOVER.

"Sum recovered"; *V.* RECOVER.

"When recovered"; *V.* WHEN.

RECOVERED OR PRESERVED. — The Charge for costs to which the COURT OR JUDGE is empowered, by s. 28, Solicitor's Act, 1860, 23 & 24 V. c. 127, to declare a solicitor entitled upon the property "Recovered or Preserved" by him, must be upon property recovered or preserved in some action, matter, or proceeding, in a Court of Justice (*Re Humphreys*, 1898, 1 Q. B. 520; 67 L. J. Q. B. 412; 78 L. T. 182; 46 W. R. 322). It may embrace the whole property saved by his exertions, and is not confined merely to his client's interest therein (*Bulley* v. *Bulley*, 47 L. J. Ch. 841; 8 Ch. D. 479: *Greer* v. *Young*, 52 L. J. Ch. 915; 24 Ch. D. 545; 31 W. R. 930: *Charlton* v. *Charlton*, 52 L. J. Ch. 971; 32 W. R. 91; over-ruling *Berrie* v. *Howitt*, 39 L. J. Ch. 119; L. R. 9 Eq. 1. *Vf*, *Scholey* v. *Peck*, 1893, 1 Ch. 709; 62 L. J. Ch. 658; 68 L. T. 118; 41 W. R. 508).

As to *when* and *by whom* property is "recovered" or "preserved"; *V. North* v. *Stewart*, 15 App. Ca. 452: *Baile* v. *Baile*, L. R. 13 Eq. 497; 41 L. J. Ch. 300; 20 W. R. 534; 26 L. T. 283, and cases there cited: *Re Wadsworth*, inf: *Re Knight*, 1892, 2 Ch. 368; 61 L. J. Ch. 399; 40 W. R. 460: *Briscoe* v. *Briscoe*, inf. Realty devised by a Will is "preserved" by proceedings by which the Will is validated for probate (*Ex p. Tweed*, 1899, 2 Q. B. 167; 68 L. J. Q. B. 794; 81 L. T. 1; 48 W. R. 5).

As to *what* is "Property" so "recovered or preserved"; *V. Birchall* v. *Pugin*, 44 L. J. C. P. 278; L. R. 10 C. P. 397: *Emden* v. *D'Oyley Carte*, 51 L. J. Ch. 371; 19 Ch. D. 311; 30 W. R. 17: *Re Wadsworth*,

54 L. J. Ch. 638; 29 Ch. D. 517: *Pinkerton* v. *Easton*, 42 L. J. Ch. 878; L. R. 16 Eq. 490: *Wilson* v. *Hood*, 3 H. & C. 148; 33 L. J. Ex. 204. The Costs recovered in an action, as well as the thing sued for, are such "Property" (*Dallow* v. *Garrold*, 54 L. J. Q. B. 76; 14 Q. B. D. 543; 33 W. R. 219), and so are Costs ordered to be repaid to the Client upon a successful Appeal (*Guy* v. *Churchill*, 35 Ch. D. 489; 56 L. J. Ch. 670; 57 L. T. 510; 35 W. R. 706; 3 Times Rep. 600); and so is an annual sum which has been secured to a wife under s. 32, 20 & 21 V. c. 85 (*Harrison* v. *Harrison*, 13 P. D. 180); and so is property which, by a compromise, has been partially defended from a claim (*Ratcliff* v. *Swift*, 32 S. J. 787), or money received in compromise of an action (*Ross* v. *Buxton*, 58 L. J. Ch. 442: *The Paris*, 1896, P. 77; 65 L. J. P. D. & A. 42), or money paid into Court, under Ord. 14, R. S. C., in an action afterwards compromised behind the back of plt's solr (*Moxon* v. *Sheppard*, 59 L. J. Q. B. 286; 24 Q. B. D. 627). An Easement, *e.g.* a claim of right to light, is *not* such "Property" (*Foxon* v. *Gascoigne*, 43 L. J. Ch. 729; 9 Ch. 654); nor is money paid into Court but not taken out and which, in the result, has to be paid back (*Westacott* v. *Bevan*, 60 L. J. Q. B. 536; 1891, 1 Q. B. 774).

Vf, Ann. Pr. notes to R. 3, Ord. 7, R. S. C.: 11 Encyc. 628–630: *Catlow* v. *Catlow*, 2 C. P. D. 362: *Ex p. Brown, Re Suffield and Watts*, 20 Q. B. D. 693; 58 L. T. 911; 36 W. R. 584, *vthlc*, *Re Deakin*, cited COURT OR JUDGE: *Keeson* v. *Luxmore*, 61 L. T. 199: *Pelsall Co* v. *Lond. & N. W. Ry*, 8 Ry & Can Traffic Ca. 146. *Vf*, NOTICE, p. 1290.

Note: The Solr's personal representatives may present the petition (*Baile* v. *Baile*, sup), or his assignee (*Briscoe* v. *Briscoe*, 1892, 3 Ch. 543; 61 L. J. Ch. 665; 40 W. R. 621; 67 L. T. 116).

If the Solr takes an express security on the property he is not entitled to a Charging Order (*Groom* v. *Cheesewright*, 1895, 1 Ch. 730; 64 L. J. Ch. 406; 72 L. T. 555; 43 W. R. 475); so he may lose his right by delay (*Roche* v. *Roche*, 29 L. R. Ir. 339): but the Court may, by a Charging Order on a fund in Court recovered by his exertions, aid the Solr's common law lien (*Re Born*, 1900, 2 Ch. 433; 69 L. J. Ch. 669).

V. CHARGING ORDER: PROPERTY.

RECOVERY.—*V.* COMMON RECOVERY.

A REWARD "on Recovery" of property (lost or stolen) and conviction of offender, without more, is payable only to the person "who is the original and meritorious cause of the recovery" and conviction (per Tindal, C. J., *Thatcher* v. *England*, 3 C. B. 262; 15 L. J. C. P. 243).

RECOVERY OF LAND.—An action for the "Recovery of Land," as mentioned in R. S. C., is equivalent to the old action of EJECTMENT to obtain possession; and does not include an action for Declaration of

Title (*Gledhill* v. *Hunter*, 49 L. J. Ch. 333; 14 Ch. D. 492; 28 W. R. 530; disapproving *Whetstone* v. *Dewis*, 45 L. J. Ch. 49; 1 Ch. D. 99).

A Foreclosure or Redemption action is (except as hereafter stated) an action for recovery of land (*Heath* v. *Pugh*, 50 L. J. Q. B. 473; 51 Ib. 367; 6 Q. B. D. 345; 7 App. Ca. 235: *Harlock* v. *Ashberry*, 51 L. J. Ch. 394; 19 Ch. D. 539; 30 W. R. 112; 45 L. T. 602); but not for the recovery of *possession* of land within R. 5, Ord. 42, R. S. C. (*Wood* v. *Wheater*, 52 L. J. Ch. 144; 22 Ch. D. 281; 31 W. R. 117). And now, for the purposes of R. 2, Ord. 18, R. S. C., neither Foreclosure nor Redemption is to be "deemed an action for the recovery of land" (*V.* provisoes added to the Rule by R. S. C., Dec 1885; *Vth*, Ann. Pr.).

Proceedings for "Protection" or "Recovery" of Settled Land; *V.* PROTECTION.

Vh, 11 Encyc. 121–148.

RECREATION. — Rational Recreation; *V.* ENTERTAINMENT.

Re-Creation; *V.* EXTENSION.

RECRUITER. — Quà Army Act, 1881, a "Recruiter" is a person "authorized to enlist recruits in the Regular Forces" (subs. 1, s. 80). *V.* MILITARY FORCES.

RECTIFY. — "Altering the Register of a Company so as to make it conformable with a lawful transfer, is not to 'rectify' the Register under s. 35, Comp Act, 1862. That section only comes into operation when the Co improperly puts on the Register a name which ought not to be on it, or improperly refuses to put on the Register a name which ought to be on it" (per Lindley, L. J., *Re National Bank of Wales*, cited SHARE).

Rectification of Contracts; *V.* Fry, s. 787 *et seq*: Chitty on Contracts, 13 ed., ch. 27.

Rectification of Instruments generally; *V.* Kerr on Fraud and Mistake, Part 2.

V. MISTAKE, p. 1211.

RECTOR. — "'Rector' signifies a Governor; and *Rector Ecclesiæ parochialis* is he that hath the Charge or Cure of a Parish Church" (Cowel); but the appellation of "'PARSON' (however it may be depreciated by familiar, clownish, and indiscriminate use) is the most legal, most beneficial, and most honourable, title that a parish priest can enjoy; because such a one (Sir Edward Coke observes), and he only, is said *vicem seu personam ecclesiæ gerere*" (1 Bl. Com. 384). *Vf*, 11 Encyc. 151–153.

As to the Rector's rights in the Church and Churchyard; *V.* jdgmt of Blackburn, J., *Greenslade* v. *Darby*, cited PERPETUAL CURATE: 1 Bl. Com. 384.

V. CLERGYMAN: MINISTER: VICAR.

RECTORY. — "By the grant of a Rectory, or Parsonage, will pass the house, the glebe, the tithes, and offerings, belonging to it. And by the grant of a Vicarage will pass as much as doth belong unto it, as the vicarage house, &c" (Touch. 93). "'Rectory,' *per se*, will carry the tithes and glebe," whether used in an Order in Council or in a Conveyance; but it may be restricted by the context so as not to include either (*Wilson* v. *Loveland*, 7 Ir. L. R. 239, 237, 241, 242).

"The word 'Rectory' comprehends the parish church, with all its rights, glebes, tithes, and other profits whatsoever" (5 Cru. Dig., Title 35, ch. 6, s. 14). *Va*, Spelman: Cowel: Jacob, *Parsonage*: Elph. 617: 11 Encyc. 152.

V. ADVOWSON.

RECUSANT. — A Recusant, is one who obstinately refuses to frequent Divine Service in the Church of England (65th Canons Ecc. 1604). *Vf*, 35 Eliz. c. 1.

Popish Recusants convict; *V.* 4 Bl. Com. 54 *et seq*, 124.

V. Brown v. *Montreal Curé*, L. R. 6 P. C. 157; 44 L. J. P. C. 1.

REDDENDUM. — The Reddendum is the clause in a Lease whereby the rent is reserved, and commonly begins with the words "YIELDING AND PAYING." *Vh*, 2 Bl. Com. 299: Redman, 110 *et seq*.

REDEEM. — Money expended by a Tenant for Life "in redeeming" Rent-charges created to defray expenses of Improvements under S. L. Act, 1882, "or otherwise providing for the payment thereof," shall be treated as being for an IMPROVEMENT under S. L. Act, 1882, for which CAPITAL MONEY may be employed (s. 1, S. L. Act, 1887); that means, that there must be a "redeeming" from the principal money secured; and although, in so redeeming, you also pay interest and costs or may have to pay a bonus in order to redeem, all of which would be "money expended in redeeming" (*Re Egmont*, 59 L. J. Ch. 768; 45 Ch. D. 395; 63 L. T. 608; 38 W. R. 762: *Re Verney*, 1898, 1 Ch. 508; 67 L. J. Ch. 243; 78 L. T. 191; 46 W. R. 348), yet money spent by the Tenant for Life for the mere separate purpose of reducing interest, is not within the phrase (*Re Verney*, sup).

REDEEMABLE. — "Redeemable," as applied to Debentures, imports, *primâ facie*, an OPTION to the Co, not an Obligation to redeem (*Re Chicago & N. W. Granaries Co*, 1898, 1 Ch. 263; 67 L. J. Ch. 109; 77 L. T. 677).

REDEEMING STOCK. — Quà 32 & 33 V. c. 102, this phrase, "and terms referring thereto, means, paying the portion of instalments of any Annuity which represents Capital" (subs. 3, s. 46).

REDEMPTION. — "Stat. Marlbridge, c. 3. '*Non Ideo puniatur dominus per redemptionem.*' 'Redemption' is FINE: and *finis dicitur*

quia finem litibus imponit; the party redeems his offence for a sum of money, which makes an end of his transgression and of his imprisonment for it" (Dwar. 690, citing *Griesley's Case*, 8 Rep. 41 a).

Equity of Redemption; *V.* EQUITY.

RED-HANDED. — *V.* BLOODY HAND.

RE-DISSEISIN. — *V.* DISSEISIN.

RE-DIVISION. — "Re-Division of Fields"; *V.* INCLOSE.

REDUCE. — The power of a Co "to reduce" its Capital, s. 9, Comp Act, 1867, need not (as at one time held) be a rateable reduction over all classes of Capital but, authorizes every mode of reduction (*British & American Corp* v. *Couper*, 1894, A. C. 399; 63 L. J. Ch. 425; 70 L. T. 882; 42 W. R. 652).

Surrendering Assets, is not "reducing" Capital within that section (*Thomson* v. *Trustees Incorporation*, 1895, 2 Ch. 454; 65 L. J. Ch. 66; 73 L. T. 149; 44 W. R. 237).

REDUCED BY PAYMENT. — This phrase, in s. 7, County Court Act, 1867, meant "Reduced by payment before action brought" (*Osborne* v. *Homburg*, 1 Ex. D. 48; 45 L. J. Ex. 65: *Foster* v. *Usherwood*, 3 Ex. D. 1; 47 L. J. Ex. 30). That section is replaced by s. 65, Co. Co. Act, 1888; but the meaning is the same notwithstanding the introduction into the latter section of the phrase "at any time"; that phrase refers, probably, to the time for making the application to remit (*Hodgson* v. *Bell*, 24 Q. B. D. 525; 59 L. J. Q. B. 231; 62 L. T. 481; 38 W. R. 325).

V. OTHERWISE, p. 1371: PAYMENT. *Cp*, ADMITTED SET-OFF: ORIGINALLY.

REDUCED INTO MONEY. — The phrase in Legacy Duty Act, 1796, 36 G. 3, c. 52, s. 22, whereby duty is to be payable on the valuation of personalty "which shall not be reduced into money," means, which shall not be so reduced *during the administration* of the estate (*A-G.* v. *Dardier*, 52 L. J. Q. B. 329; 11 Q. B. D. 16).

REDUCTION INTO POSSESSION. — "Reduction into possession, by a Husband as regards Choses in Action, means, actual payment to the husband in his character of husband, not as trustee or what is equivalent to it. If the property has been paid to his agent, or so dealt with that the property is no longer a chose in action of the wife, but under the exclusive control of the husband; or has been, in the exercise of his exclusive control, placed by him in the hands of, or transferred to, other persons upon some trust inconsistent with the existence of the

wife's possible title by survivorship; that will be considered to be a Reduction into Possession" (2 Spence Eq. Jur. 478, cited by Fry, J., *Nicholson* v. *Drury Building Co*, 47 L. J. Ch. 194; 7 Ch. D. 48).

RE-ENGAGEMENT. — In an agreement to pay Commission on all "Re-Engagements" of a theatrical, or other like, artist, *e.g.* a Music Hall Singer, "Re-Engagement" has no definite legal meaning; it can only be explained by illustrations, and its meaning must be determined on the facts of each case as a question of fact (*Arnold* v. *Stratton*, 14 Times Rep. 537: *Robey* v. *Arnold*, Ib. 220).

V. RENEWAL.

RE-ENTRY. — Right of; *V.* FIRST ACCRUED.

V. ENTRY: FORFEITURE.

REEVE. — *V.* BAILIFF.

RE-EXCHANGE. — "Re-exchange" is the measure of damage sustained by the holder of a dishonoured Bill of Exchange drawn in one country on a person in another country, and is payable in addition to the amount of the Bill (*Willans* v. *Ayers*, 47 L. J. P. C. 1; 3 App. Ca. 133). *Vh*, Chalmers, 193: 11 Encyc. 157, 158.

RE-EXECUTION. — Of a Will; *V.* PUBLICATION.

REFEREE. — *V.* IN CASE OF NEED: OFFICIAL.

REFERENCE. — A power to an arbitrator to give the "Costs of the Reference," includes the Costs of the Award (*Re Walker and Brown*, 51 L. J. Q. B. 424; 9 Q. B. D. 434; 30 W. R. 703). And when the arbitration is by an agreement without action, "Costs of the Reference" include the agreement and those preliminaries which were necessary to bring the parties *ad idem*; but in a reference at Nisi Prius the "Costs of the Reference" begin with the reference itself, the prior costs being costs in the Cause (*Re Autothreptic Co and Hook*, 57 L. J. Q. B. 488; 21 Q. B. D. 182; 59 L. T. 632; 37 W. R. 15). *V.* ENTER.

When a Reference gives the arbitrator power to award the Costs of the reference, it is, *semble*, in his discretion whether they shall be on the High Court scale or the County Court scale; and when he says nothing as to that, the proper inference is that he means the High Court scale; and that is so though he finds for the plt for a sum not exceeding £50 in a Reference in an Action which provides that the Costs of the *Action* shall "abide the event," and which latter costs have accordingly to be on the Co. Co. scale (*Street* v. *Street*, 1900, 2 Q. B. 57; 69 L. J. Q. B. 574; 82 L. T. 648; 48 W. R. 450; over-ruling *Moore* v. *Watson*, 36 L. J. C. P. 122; L. R. 2 C. P. 314).

Reference "by Consent"; *V.* CONSENT: CAUSE.

V. ARBITRATION: DISPUTE.

REFORM ACT.—Representation of the People Act, 1832, 2 & 3 W. 4, c. 45.

REFORMATORY.—*V.* INEBRIATE: RETREAT.

REFRESHER.—Refreshers to Counsel; *V.* CLEAR, p. 323.

REFRESHMENT.—*V.* ENTERTAINMENT: PUBLIC REFRESHMENT. Refreshment-bar; *V.* INN.

REFRESHMENT HOUSE.—Quà Refreshment Houses Act, 1860, 23 & 24 V. c. 27, "all houses, rooms, shops, or buildings, kept open for Public Refreshment, RESORT and ENTERTAINMENT, at any time between the hours of 9 P. M. and 5 A. M. (not being licensed for the sale of beer, cider, wine, or spirits, respectively) shall be deemed Refreshment Houses" (s. 6); that def is applied to Public House Closing Act, 1864, 27 & 28 V. c. 64 (s. 4).

V. SHOP.

REFUGE.—*V.* ASYLUM: HARBOUR: RETREAT.

REFUSAL.—Justices do not "refuse" to do an act relating to the duties of their office (s. 5, 11 & 12 V. c. 44) merely because they will not do it; for when, fairly exercising a judicial discretion, they decline to do a thing, they do not "refuse" to do it (*R.* v. *Paynter*, 26 L. J. M. C. 102; 7 E. & B. 328: *R.* v. *Dayman*, 26 L. J. M. C. 128; 7 E. & B. 672), nor do they "refuse" when they do not hold their hands but, doing what they believe their duty, take what may be a wrong course (*Re Clee*, 21 L. J. M. C. 112). But when they decline jurisdiction, though through mistake (*R.* v. *Brown*, 26 L. J. M. C. 183; 7 E. & B. 757: *R.* v. *Phillimore*, 51 L. T. 205, over-ruling *R.* v. *Percy*, 43 L. J. M. C. 45; L. R. 9 Q. B. 64: *Va*, *R.* v. *Biron*, 54 L. J. M. C. 77; 14 Q. B. D. 474), or refrain from doing a ministerial act (per Crompton, J., *R.* v. *Dayman*, 26 L. J. M. C. 130, commenting on *R.* v. *Pilkington*, 2 E. & B. 546; nom. *Ex p. Grimes*, 22 L. J. M. C. 153: *Re Hartley*, 31 L. J. M. C. 232), they do "refuse" within the section.

An angry Wife of an Innkeeper who keeps a Constable outside the door whilst she lets him have a piece of her mind, but (that being done) admits him, does not, *semble*, "refuse" to admit the Constable within s. 16, Licensing Act, 1874; and at any rate, the Innkeeper being absent, she is not "acting by his *Direction*" within the section (*Caswell* v. *Worcestershire Jus.*, Times, 19th Dec 1889; 53 J. P. 820). Before there can be refusal within this section there must be reasonable ground shown for the request to enter (*Duncan* v. *Dowding*, 1897, 1 Q. B. 575; 66 L. J. Q. B. 362), *e.g.* a reasonable suspicion that something wrong is going on (*R.* v. *Dobbins*, 48 J. P. 182).

"Refusal of an APPLICATION," R. 15, Ord. 58, R. S. C., means, a

simple refusal (*International Financial Socy* v. *Moscow Gas Co*, 47 L. J. Ch. 258; 7 Ch. D. 241), and does not include a case where the application partly succeeds and partly fails (*Shelfer* v. *City of London Electric Co*, 1895, 1 Ch. 287; 64 L. J. Ch. 216; 72 L. T. 34; 43 W. R. 238). *Vf*, Ann. Pr.

Shall "refuse to approve"; *V.* APPROVE.

"Refusal or Failure to give a *Consent*"; Stat. Def., Telegraph Act, 1892, 55 & 56 V. c. 59, s. 9.

As to what is a Refusal by a Company to *produce books* and papers to a shareholder which by statute he has a right to inspect, so as to ground an application for a Mandamus against the Co; *V. R.* v. *Wilts & Berks Nav.*, 3 A. & E. 477: *R.* v. *London & St. Katharine Docks Co*, 44 L. J. Q. B. 4: *Sv*, *Holland* v. *Dickson*, 37 Ch. D. 672; 57 L. J. Ch. 502.

"Refuse to reside"; *V.* RESIDE.

A refusal by an Assistant to *sell* food or a drug EXPOSED for sale, s. 17, Sale of Food and Drugs Act, 1875, is a refusal by his Employer, even though the latter be absent and the assistant be acting in disobedience to express orders (*Farley* v. *Higginbotham*, 42 S. J. 309; 104 Law Times, 410). *V.* a contrary principle applied under other sections of the same Act in cases cited KNOWINGLY, p. 1047.

V. WILFUL REFUSAL: NEGLECT: OMISSION: OMIT: FIRST REFUSAL.

REFUSE. — "Refuse of any Trade, Manufacture, or Business," s. 128, Metrop Man. Act, 1855, means, the leavings (comparatively worthless) of materials used for the peculiar purpose of any trade, manufacture, or business (*St. Martin's* v. *Gordon*, 60 L. J. M. C. 37; 1891, 1 Q. B. 61; 39 W. R. 295; 64 L. T. 243; 55 J. P. 437); therefore, it was there held that clinkers and other refuse produced by the light and heat generating furnaces of an Hotel, are not within the phrase, but are much more of the nature of Domestic Refuse. But ashes from coals burnt in the furnace of a steam-engine which is used only as a force or power for sawing and lifting wood, and other such matters, in a Piano Manufactory, is "Refuse" of the "Manufacture or Business" of piano making within this section (*Gay* v. *Cadby*, 46 L. J. M. C. 260; 2 C. P. D. 391: *whlc* Lindley, L. J., in *St. Martin's* v. *Gordon*, said was right, yet Esher, M. R., and Lopes, L. J., said they could not agree with it).

Notwithstanding s. 129, Metrop Man. Act, 1855, a magistrate's decision as to what is "Refuse" is appealable, as the question is one of law (*R.* v. *Bridge*, 59 L. J. M. C. 49; 24 Q. B. D. 609; 62 L. T. 297; 38 W. R. 464; 54 J. P. 629).

Clinkers produced by the business furnaces of a Laundry, are not "*House* Refuse" within s. 42, P. H. Act, 1875 (*London & Provincial Steam Laundry* v. *Willesden*, 1892, 2 Q. B. 271; 67 L. T. 499; 40 W. R. 557; 56 J. P. 696).

Quà P. H. London Act, 1891, "'*House* Refuse,' means, ashes, cinders,

breeze, rubbish, night-soil, and filth, but does not include Trade Refuse; '*Trade* Refuse,' means, the refuse of any trade, manufacture, or business, or of any building materials; '*Street* Refuse,' means, dust, dirt, rubbish, mud, road-scrapings, ice, snow, and filth" (s. 141). *V. Saunders* v. *Holborn*, 1895, 1 Q. B. 64; 64 L. J. Q. B. 101.

V. IRON: RUBBISH: REFUSAL.

REFUSING TRUSTEE.—*V.* DECLINING TRUSTEE.

REGARD.—"Regard being had to the Adequacy of the Security," s. 1, Redemption of Rent (Ir) Act, 1891, 54 & 55 V. c. 57, refers to security for the Rent, and not to security for an advance by the Land Commission (*Warren* v. *Richardson*, 30 L. R. Ir. 639). *Vh, O'Donnell* v. *Chearnley*, 32 L. R. Ir. 185.

Having regard to the Circumstances; *V.* CIRCUMSTANCES.

"Regard shall be had" to Earnings before the Accident; *V. Illingworth* v. *Walmsley*, cited AVERAGE WEEKLY EARNINGS.

Tenant for Life to "have regard" to the other Interests; *V.* INTEREST.

"Regard being had to the Scale of Allowances hereinafter contained," s. 1, 29 & 30 V. c. 31: *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), is over-ruled; and this phrase limited the discretion of the Vestry to the amount of allowance prescribed by the Scale, but it had full discretion to act within the Scale (*R.* v. *St. Pancras*, 24 Q. B. D. 371; 38 W. R. 311).

V. DUE REGARD.

REGARDANT.—Villein Regardant; *V.* GROSS.

REGATTA.—*V.* RACE.

REGIMENTAL.—Quà Army Act, 1881, "'Regimental,' means, connected with a Corps, or with any Battalion or other subdivision of a Corps" (subs. 17, s. 190).

Regimental *Debts*; *V.* Regimental Debts Act, 1893, 56 & 57 V. c. 5.

REGISTER.—Register of British Ships; *V.* Mer Shipping Act, 1894, ss. 5–13.

Register of *Electors*, or Voters; Stat. Def., Ballot Act, 1872, Sch 1, Rules 64, 65, 66; 35 & 36 V. c. 60, ss. 2, 28 (7); 46 & 47 V. c. 51, s. 64; 50 & 51 V. c. 9, s. 2 (4 *c*).

Register of *Land*; Stat. Def., 54 & 55 V. c. 66, s. 95: *Vf*, LAND REGISTRY.

"Register of *Licenses*"; Stat. Def., 35 & 36 V. c. 94, s. 77; 37 & 38 V. c. 69, s. 37.

"Register of *Sasines*"; Stat. Def., 31 & 32 V. c. 64, s. 2.

A Register of *Shareholders* in a Co, ss. 25, 35 Comp Act, 1862, may consist of a book or document (or more than one, *Weikersheim's Case*,

8 Ch. 831; 42 L. J. Ch. 435) "intended to be a Register, although the requirements of the Act of Parliament as to the keeping of the Register have not been exactly complied with; but I am not aware of any authority for saying that rough memoranda or sheets of paper, not intended as a Register at all, but intended as materials from which a Register may be prepared can be a Register" (per Lindley, L. J., *Re Agence Havas Co*, 63 L. J. Ch. 539, in *whc* Allotment Sheets were rejected as a Register). The "Register" includes the entries of names of persons who have been, but have ceased to be, Members (*Boord* v. *African Co*, cited INSPECT).

"Register *Tonnage*," s. 9 (4), 30 & 31 V. c. 124, and "Registered Tonnage," s. 9 (3), Ib., refer to the total gross tonnage as registered (*The Petrel*, 1893, P. 320; 62 L. J. P. D. & A. 92: *Vf*, *The Pilgrim*, 1895, P. 117; 64 L. J. P. D. & A. 78). Gross Tonnage; *V.* GROSS. *Vf*, BURDEN.

V. REGISTRY.

REGISTERED. — "Registered *Building*," quà Marriage Act, 1898, 61 & 62 V. c. 58, means, "any building registered for solemnizing marriages therein under the Marriage Act, 1836" (s. 1).

Registered Company; *V.* UNREGISTERED COMPANY.

"Registered Land," "Unregistered Land"; Stat. Def., 54 & 55 V. c. 66, s. 95.

"Registered Medical Practitioner"; *V.* MEDICAL.

"Registered NEWSPAPER," quà Post Office Act, 1891, 54 & 55 V. c. 46, "means, a Newspaper registered by the Postmaster-General for transmission by Inland Post" (s. 12).

Registered Office; *V.* OFFICE.

Registered Person; *V.* MEDICINE.

Registered Proprietor; *V.* PROPRIETOR.

Registered Society; *V.* FRIENDLY SOCIETY; Friendly Soc. Act, 1896, s. 106; Industrial and Provident Societies Act, 1893, ss. 3, 79.

Registered Tonnage; *V.* REGISTER: BURDEN.

Registered Trade-Mark: — If a person sells an article as a TRADE-MARK article and adds the word "Registered," or like phrase, that is a representation that the Trade-Mark has been registered within s. 105 (1), Patents, Designs, and Trade-Marks, Act, 1883 (subs. 2, ib.); but merely to employ the phrase "Trade-Mark" does not, necessarily, imply that registration has been obtained (*Sen Sen Co* v. *Brittens*, 1899, 1 Ch. 692; 68 L. J. Ch. 250; 80 L. T. 278; 47 W. R. 358, commenting on and explaining *Lewis* v. *Goodbody*, 67 L. T. 194).

REGISTRAR. — "Registrar" has received statutory definition varying according to the subject-matter of the Act in which the word is used, and which will generally be found in the Interp Clause of the Act. The following is a somewhat full list; —

23 & 24 V. c. 127, s. 1; 38 & 39 V. c. 87, s. 4; 39 & 40 V. c. 45, s. 3; 40 & 41 V. c. 56, s. 7; 44 & 45 V. c. 60, s. 1, c. 62, s. 2; 45 & 46 V. c. 31, s. 2; 47 & 48 V. c. 54, s. 3; 50 & 51 V. c. 43, s. 2; 51 & 52 V. c. 43, s. 186, c. 65, s. 4; 56 & 57 V. c. 39, s. 79; 57 & 58 V. c. 60, s. 4; 59 & 60 V. c. 25, s. 106. — *Scot.* 17 & 18 V. c. 80, s. 76; 36 & 37 V. c. 63, s. 1; 41 & 42 V. c. 43, s. 1. — *Ir.* 20 & 21 V. c. 60, s. 4, c. 79, s. 2; 21 & 22 V. c. 100, s. 3; 28 & 29 V. c. 50, s. 4; 29 & 30 V. c. 84, s. 1; 34 & 35 V. c. 22, s. 2; 53 & 54 V. c. 48, s. 3.

"Registrar-General," of Births, Deaths, and Marriages, in England; *V.* 6 & 7 W. 4, c. 86, s. 2: in Scotland; *V.* 17 & 18 V. c. 80, ss. 2, 76; 26 & 27 V. c. 108, s. 30; 41 & 42 V. c. 43, s. 1. "Registrar-General," of Births and Deaths in Ireland; *V.* 26 & 27 V. c. 11, ss. 3, 4.

"Registrar-General," quà Foreign Marriage Act, 1892, 55 & 56 V. c. 23, "means, the Registrar-General of Births, Deaths, and Marriages, in England" (s. 24).

V. BIRTH.

"County Court Registrar"; *V.* COUNTY COURT, at end.

V. LOCAL REGISTRAR.

REGISTRATION. — In the ordinary case of a purchase by a Jobber on the Stock Exchange of Shares requiring registration, "the contract of the Jobber is that, at the Settling Day, he will either take the shares himself and register the transfer, or that he will give the name of one or more transferees, to whom no reasonable objection can be made, who will accept and pay for the shares" (per Hatherley, C., *Cruse* v. *Paine*, 38 L. J. Ch. 225; 4 Ch. 441); but where the contract adds "*with Registration guaranteed,*" then it means, in addition, that the Jobber will either register himself or find a purchaser who will do so; therefore, the giving in by the Jobber to the Vendor's Broker of the name of an acceptable transferee, does not discharge the Jobber until the transferee has actually registered the shares in his (the transferee's) name, failing which the Jobber is bound to register in his own name and must indemnify the vendor for default (*S. C.*).

V. OFFICER.

REGISTRY. — *V.* REGISTER: OFFICE.

"Registry of Deeds," "Registry of Judgments"; *V.* Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, s. 95.

"Port of Registry"; *V.* PORT.

REGRATOR. — "'Forestaller' is hee that buyeth corne, cattell, or other merchandize whatsoever is saleable, by the way as it commeth to Markets, Faires, or such like places to bee sold, to the intent that he may sell the same againe at a more high and deer price, in prejudice and hurt of the common-wealth and people" (Termes de la Ley, *Forestaller*). *Cp*, INGROSSER.

" 'Regrator' is he that hath corn, victuals, or other things sufficient for his owne necessary need, occupation, or spending, and doth nevertheless ingrosse and buy up into his hands more corne, victuals, or other such things, to the intent to sell the same againe at a higher and deerer price, in faires, markets, or other such like places, whereof see the stat. 5 E. 6, c. 14, for he shall be punished as a forestaller" (Termes de la Ley, *Regrator*). *Vh*, Cowel: Jacob, *Forestalling*.

By 7 & 8 V. c. 24, the offences of Forestalling, Regrating, and Engrossing, are abolished; but s. 4 preserves "the offence of knowingly and fraudulently spreading, or conspiring to spread, any False Rumour with intent to enhance or decry the price of any goods or merchandize," and also "the offence of preventing, or endeavouring to prevent, by force or threats any goods wares or merchandize being brought to any fair or market": *vth*, per Fry, L. J., *Mogul Co* v. *McGregor*, 58 L. J. Q. B. 488; 23 Q. B. D. 621.

REGRESS. — *V.* INGRESS.

REGULAR CLERGYMAN. — A "Regular CLERGYMAN of the Church of England" does not merely mean one who is duly ordained; he must also be duly inducted, or licensed by the Bishop to perform Divine service or preach, and (if not in his own parish) he must have the consent of the rector or vicar (*Foundling Hospital* v. *Garrett*, 47 L. T. 230; 26 S. J. 631). In that case Brett, L. J., said that "Regular" Clergyman meant not only a Clergyman of the Church of England, "but also a Clergyman who can, without ecclesiastical irregularity, perform duty"; and Cotton, L. J., said, "'Regular Clergyman' at least requires that he shall be regular in performing Divine service, not only with reference to the doctrine he preaches, but as regards performing, in the proper way, the services" in the place of his ministrations.

V. MINISTER: *Cp*, REGULAR MINISTER.

REGULAR FORCES. — *V.* MILITARY FORCES.

REGULAR JOCKEY. — *V.* JOCKEY.

REGULAR LINE OF BUILDINGS. — *V.* GENERAL LINE OF BUILDINGS.

REGULAR MINISTER. — "Regular Minister of any Dissenting Congregation," s. 28, 5 & 6 W. 4, c. 76, repld s. 12 (1 *b*), Mun Corp Act, 1882; "Regular Minister," "means, a Minister who is regularly invited by the congregation to accept the office of their Minister, and who accepts that office, — something quite different from a man who merely temporarily holds the office" (per Mellor, J., *R.* v. *Oldham*, 38 L. J. Q. B. 125; 10 B. & S. 193; L. R. 4 Q. B. 290). In that case it appeared that Mr. Oldham carried on business at Wallingford, and was a deacon in the

Baptist chapel there, and had for some years been in the habit of preaching at Pangbourne and its neighbourhood; in Sept 1867, the congregation at Pangbourne (hearing he was retiring from business, which he did on 1st Sept 1868) invited him to become their Minister; he declined but subsequently agreed to preach to them every Sunday from 25th March 1868, to the end of that year, and he did so; on 29th Dec 1868, the Pangbourne congregation invited Mr. Oldham to continue the services for 1869, to which he agreed, but on the 7th Jan 1869, the congregation found, by looking at their chapel deed, that they were a Pædo-Baptist congregation and that their Minister must also be of that denomination, which Mr. Oldham was not, and therefore resolved that "we cannot invite Mr. Oldham to become our Regular Permanent Minister"; held, that at the municipal election for Wallingford on the 2nd Nov 1868, Mr. Oldham was not a "Regular Minister," and was not disqualified under the section cited from being elected a Town Councillor.

Cp, REGULAR CLERGYMAN.

REGULAR NOTICE TO QUIT.—*V.* NOTICE TO QUIT.

REGULAR PAYMENT.—*V.* PUNCTUAL.

REGULAR TURNS OF LOADING.—*V.* TURN.

REGULARITY.—The refusal by Governors of a CHARITY to accept a nominee on to their body, is not a matter "affecting the Regularity or Validity" of their proceedings (*R.* v. *Charity Commrs,* 1897, 1 Q. B. 407; 66 L. J. Q. B. 321; 76 L. T. 199; 45 W. R. 336).

REGULARLY.—*V.* FAIRLY: *Cp,* REASONABLY.

Payments guaranteed to be "regularly made"; *V. Simpson* v. *Manley,* cited CREDIT. *Cp,* PUNCTUAL.

REGULATE.—To "regulate" a Supply of Water, does not mean to shut it off altogether. Therefore, where an Act required the consumers of water to provide "proper Ball or Stop-cocks, or other Necessary Apparatus, for regulating" the supply, that did not include an out-of-door screw-down valve, whereby the water could be shut off from coming into a consumer's house (*Ward* v. *Folkestone W. W. Co,* 59 L. J. M. C. 65; 24 Q. B. D. 334).

A power to make a Bye Law to "regulate *and govern*" a trade, does not authorize the prohibition of such trade; "there is a marked distinction between the Prohibition or Prevention of a trade and the Regulation or governance of it; and, indeed, a power to 'regulate and govern' seems to imply the continued existence of that which is to be regulated or governed" (*Toronto* v. *Virgo,* 1896, A. C. 88; 65 L. J. P. C. 4: *Ontario* v. *Canada,* 65 L. J. P. C. 34; 1896, A. C. 348). *V.* PEACE.

Whenever an Act authorizes the making of rules for "regulating" matters under it, that does not validate a rule which creates a new jurisdiction (*King* v. *Henderson*, 1898, A. C. 720; 67 L. J. P. C. 134; 79 L. T. 37; 47 W. R. 157).

REGULATION. — "Regulation Price of a Commission" in the Army, and "Over-Regulation Price," prior to the Royal Warrant of 20th July 1871, abolishing Purchase in the Army; *V.* 34 & 35 V. c. 86, s. 3.

"Queen's Regulations"; Stat. Def., 44 & 45 V. c. 57, s. 43 (3).

"Treasury Regulations"; Stat. Def., Friendly Soc. Act, 1896, s. 106.

REIMBURSE. — *V.* TAKE AND APPROPRIATE.

"Reimbursement"; *V.* COLLATERAL.

Reimbursement for Improvements; *V.* IMPROVEMENT, pp. 922, 923.

REINSTATE. — When a Fire Policy gives the insurers an option to "reinstate or replace" the insured property instead of making payment for damage, "the word 'reinstate' applies to property which is damaged, and the word 'replace' to that which is destroyed" (per Cotton, L. J., *Anderson* v. *Commercial Union Assrce*, 55 L. J. Q. B. 149); and "when one is dealing with property in the nature of chattels, the term 'reinstate' means to replace the chattels not *in situ* but *in statu*; and all that the insurers are bound to do is to make the chattels as good as they were before the fire" (per Bowen, L. J., *Ib.*). Accordingly, it was held in that case that the insurer's option, as regards machinery, would not be affected by the mere fact that the building in which it was had been destroyed, or that the term of the assured had been determined.

REJECTED. — A Claim to be on a Burgess Roll is "rejected," s. 24, 1 V. c. 78, repld s. 47 (2), Mun Corp Act, 1882, if not allowed on it, although the cause of such non-allowance is the Overseer's neglect to send a Burgess List for revision (*R.* v. *Lichfield*, 1 Q. B. 453; 10 L. J. Q. B. 171).

REJOINDER. — A Rejoinder, in Pleading, was the deft's answer to the plt's replication; a Sur-Rejoinder was the plt's answer to the Rejoinder (3 Bl. Com. 310).

REJOINING GRATIS. — *V. Winterbottom* v. *Lees*, 17 L. J. Ex. 217; 2 Ex. 325: *Cooke* v. *Blake*, 16 L. J. Ex. 151.

RELATING. — Statute "relating to" *Bankrupts*; *V. Dunn* v. *The Queen*, 18 L. J. M. C. 41; 12 Q. B. 1031.

Expenses "in relation to" a *Highway*; *V. R.* v. *Heath*, 6 B. & S. 578; 13 W. R. 805; 12 L. T. 492.

In *Compagnie Financière* v. *Peruvian Guano Co* (52 L. J. Q. B. 185; 11 Q. B. D. 55), Brett, L. J., defining words similar to those used in R. 12, Ord. 31, R. S. C., "relating to any *Matter in Question*," said;—"It seems to me that any document must be properly held to relate to matters in question in the action which not only would be evidence, but which it is not unreasonable to suppose does contain information which may, either directly or indirectly, enable a party either to advance his own case or to damage the case of his adversary. I used the expression, 'directly or indirectly,' because it seems to me that a document may be properly said to be material if it is one which would naturally lead a party to a chain of enquiry which would lead him to one of those results."

"Acts and things in relation to his *Property*"; *V.* GENERALLY.

"Cause or Matter relating to Real Estate"; *V.* REAL ESTATE.

"Agreement relating to the *Sale of Goods, Wares or Merchandize*," Exemption 2, Stamp Act, 1891, tit. *Agreement*, includes an Indemnity to a Broker against loss on re-sale of the goods purchased (*Curry* v. *Edensor*, 3 T. R. 524), or a Mem of Advance on goods handed over for immediate sale (*Southgate* v. *Bohn*, 16 L. J. Ex. 50; 16 M. & W. 34), or a Guarantee for price of goods to be supplied to a third person (*Warrington* v. *Furbor*, 8 East, 242: *Sadler* v. *Johnson*, 16 L. J. Ex. 178; 16 M. & W. 775: *Chatfield* v. *Cox*, 21 L. J. Q. B. 279; 18 Q. B. 321: *Sv, Glover* v. *Halkett*, inf), or an Indemnity against the claim of a third person to goods sold (*Heron* v. *Granger*, 5 Esp. 269), or a Warranty of quality on sale of goods (*Skrine* v. *Elmore*, 2 Camp. 407: *Hughes* v. *Breeds*, 2 C. & P. 159), or an Agreement for sharing profit or loss on goods bought on a joint account (*Venning* v. *Leckie*, 13 East, 7), or for cancellation of a former sale and supply of goods on different terms (*Whitworth* v. *Crockett*, 2 Starkie, 431), or for supply of future goods (*Pinner* v. *Arnald*, 5 L. J. Ex. 1; 2 Cr. M. & R. 613: *Gurr* v. *Scudds*, 11 Ex. 190). But the Exemption does not extend to a document in which the sale of goods is a secondary matter (*Smith* v. *Cator*, 2 B. & Ald. 778); and does not cover an ordinary Guarantee for Debt, for that involves no sale of goods (*Glover* v. *Halkett*, 26 L. J. Ex. 416; 2 H. & N. 487), nor does it exonerate a document which on other grounds requires a stamp (*Horsfall* v. *Key*, 17 L. J. Ex. 266; 2 Ex. 778).

A Condition of Sale empowering a Vendor to rescind the contract if any Objection should be made "as to the Title, Particulars, Conditions, or any other Matter or Thing relating or incidental to the *Sale*" which the Vendor is unable or UNWILLING to comply with, enables the Vendor to rescind on account of a requisition quà a matter of Conveyance as well one quà Title (*Re Deighton and Harris*, 1898, 1 Ch. 458; 67 L. J. Ch. 240; 78 L. T. 430; 46 W. R. 341; distinguishing *Bowman* v. *Hyland*, cited WHATSOEVER).

Agreement "in relation to the *Use or Hire of any Ship*"; *V.* SHIP.

RELATION. — " 'Relation' is a terme in law, where in consideration of law two times or other things are considered so as if they were all one, and by this the thing subsequent is said to take his effect by relation at the time preceding " (Termes de la Ley). *Vf*, Cowel.

" Relation back," is where a thing or act constructively relates back to an antecedent thing or act, *e.g.* a Trustee in Bankry is appointed in proceedings commencing with a Petition, but his Title to property in the bankry is deemed " to have relation back to, and to commence at the time of, the ACT OF BANKRUPTCY being committed on which a Receiving Order is made against him, or (if the bankrupt is proved to have committed more acts of bankruptcy than one) to have relation back to and to commence at the time of, the first of the acts of bankruptcy proved to have been committed by the bankrupt within 3 months next preceding the date of the presentation of the bankruptcy petition " (s. 43, Bankry Act, 1883; on *whv* Wms. Bank. 171).

" In relation to "; *V.* RELATING.

RELATIONS. — The accurate meaning of " Relations," or " Relatives," is " Legitimate Relatives " (*Seale-Hayne* v. *Jodrell*, 1891, A. C. 304; 61 L. J. Ch. 70; 65 L. T. 57). But this word, like all other words involving *primâ facie* the idea of legitimacy, *e.g.* CHILD, ISSUE, WIFE, HUSBAND, BROTHER, NEPHEW, may include Illegitimate relations if such be designated (*Seale-Hayne* v. *Jodrell*, sup). So, a gift " to my Wife's Relations as she may direct " (the wife being illegitimate, childless, and 47 years old) was held to mean, such persons as would have been the wife's relations if she had been legitimate (*Re Deakin*, 1894, 3 Ch. 565; 63 L. J. Ch. 779; 71 L. T. 838; 43 W. R. 70), not, however, including an illegitimate child of one of such relations (*Ib.*).

A testamentary gift to a person's " Relations " (or " Relation," *Pyot* v. *Pyot*, 1 Ves. sen. 337), or " Relatives " (*Fielden* v. *Ashworth*, L. R. 20 Eq. 410: *Eagles* v. *Le Breton*, L. R. 15 Eq. 148; 42 L. J. Ch. 362), means, his NEXT OF KIN according to the Statutes of Distribution (*Cruwys* v. *Colman*, 9 Ves. 324: *Lees* v. *Massey*, 8 W. R. 109: 2 Jarm. 120, a rule " not departed from on slight grounds," Ib. 121); but it seems — (herein distinguished from " Heirs," or " Legal Representatives," where either expression is construed statutory next of kin) — PER CAPITA (Ib. 122: Lewin, 1028), and especially so where there are words directing equal distribution (2 Jarm. 123). But where the words were " to my Relatives, SHARE AND SHARE ALIKE, as the law directs," it was held that the statutory next of kin *per stirpes* were indicated (*Fielden* v. *Ashworth*, sup). A husband or wife is not included, except that a wife might be included by a context (2 Jarm. 125). *Vf*, Watson Eq. 1407: *Hibbert* v. *Hibbert*, L. R. 15 Eq. 372; 42 L. J. Ch. 383.

Under a devise of freeholds to the " Relations *on my Side*," all those

take who would be entitled to personal estate under the Statute of Distribution, as well in the Maternal, as in the Paternal, line (*Doe* d. *Thwaites* v. *Over*, 1 Taunt. 263).

Where there is an express reference to the Statute of Distribution, "Relations" take as tenants in common; otherwise, as joint tenants (*Eagles* v. *Le Breton*, sup).

Where a gift to Relations is preceded by a life estate, the class is to be determined at the death of the testator (*Eagles* v. *Le Breton*, sup: *Va*, *Doe* d. *Thwaites* v. *Over*, sup: *Lees* v. *Massey*, sup). *Cp*, NEXT OF KIN.

"The objects of a gift to 'Relations' are not varied by its being associated with the word '*near*.' But where the gift is to the '*Nearest* Relations,' the next of kin will take, to the exclusion of those who, under the statute, would have been entitled by representation. Thus surviving brothers and sisters would exclude the children of deceased brothers and sisters, or a living child or grandchild, the issue of a deceased child or grandchild" (2 Jarm. 124: *Va*, Watson Eq. 1408).

Other qualifying adjectives, — *e.g.* "POOR," "Poorest," "DESERVING," "NECESSITOUS," — are, it is said, generally inoperative because too uncertain (2 Jarm. 126: *Vf*, Sug. Pow. 654, 655); but the contrary doctrine is strenuously argued for in a note to Lewin, 1021, 1022: *Va*, POOREST.

"Poor" has been held to have been used as a term of endearment and compassion, and to include a Countess who had not sufficient estate to support her dignity (*Anon.*, 1 P. Wms. 327: *Svth*, Sug. Pow. 654, 655).

Gifts to "Poor Relations," especially when the intention is to create a perpetual fund, are sometimes regarded as founding a CHARITY (*V.* 2 Jarm. 127; 1 Ib. 213, 214: *Vf*, Wms. Exs. 980: Lewin, 1027).

"Blood Relations"; *V.* BLOOD.

Where there is a Power of Appointment amongst Relations, then consider, — (1) Is the Power one giving the donee power to *select* some and exclude others? or (2) Is it one of *distribution* only? If the former, the donee may select any one or more of the relations whatever the kinship (*Harding* v. *Glyn*, 1 Atk. 468: *Grant* v. *Lynam*, 4 Russ. 292; 6 L. J. O. S. Ch. 129: *Wilson* v. *Duguid*, 53 L. J. Ch. 55; 24 Ch. D. 251); but if the latter (and, probably, it is more frequently the latter), then the class amongst which he may appoint is confined to the *statutory* Next of Kin of the person whose Relations are spoken of (*Pope* v. *Whitcombe*, 3 Mer. 689: *Lawlor* v. *Henderson*, Ir. Rep. 10 Eq. 150: *Re Deakin*, 1894, 3 Ch. 565; 63 L. J. Ch. 779; 71 L. T. 838; 43 W. R. 70), and on this point the rule has not been altered by the Powers Law Amendment Act, 1874, 37 & 38 V. c. 37 (*Re Deakin*, sup). In default of appointment the property, in the first case, will, *semble*, go to the NEXT OF KIN of the person whose relations are spoken of (*Harding* v. *Glyn*, and *Grant* v. *Lynam*, sup); in the second case, it will go to the *statutory* Next of Kin (*Re Deakin*, and *Wilson* v. *Duguid*, sup): and

in either case, the class is to be ascertained at the death of the donee of the Power (*Re Saville*, 14 W. R. 603). *Vh*, Sug. Pow. ch. 15: Farwell, 504 *et seq*: Lewin, 1027 *et seq*.

Vh, Chitty Eq. Ind. 7741–7744.

V. DEPENDANT: FRIENDS AND RELATIONS: NEAR RELATIONS: PRECATORY TRUST.

As to what is Evidence establishing a Relationship to a deceased, *V. Smith* v. *Tebbitt*, L. R. 1 P. & D. 354; 36 L. J. P. & M. 35; 15 L. T. 594; 15 W. R. 562: *Doe* d. *Jenkins* v. *Davies*, 10 Q. B. 314; 16 L. J. Q. B. 218: *Re Crawford and Lindsay Peerages*, 2 H. L. Ca 534: *Re Sussex Peerage*, 11 Cl. & F. 85.

"Financial Relations"; *V.* FINANCIAL.

RELATIVE.—*V.* RELATIONS.

Quà Lunacy Act, 1890, "'Relative,' means, a lineal ancestor or lineal descendant, or a lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother" (s. 341); quà Registration of Births and Deaths "'Relative,' includes, a relative by marriage" (s. 48, 37 & 38 V. c. 88; s. 38, 43 & 44 V. c. 13).

RELATOR.—The Relator in an ACTION or an INFORMATION, is a person who is aggrieved in a matter of PUBLIC INTEREST, and who (1) satisfies the Attorney General that the subject-matter of the action is such as to justify the use of that officer's name, or who (2) satisfies the Court that the name of the Queen's Coroner and Attorney should be used in the Information: *Vh*, R. 5, Central Office Practice Rules: Ann. Pr. notes to R. 1, Ord. 1, R. S. C.: R. 20, Ord. 16, R. S. C.: 3 Bl. Com. 264, 427; 4 Ib. 308: Short & Mellor's Crown Office Practice, ch. 8, espy p. 292.

RELEASE.—"'Release' is the giving or discharging of the right or action which any hath or claimeth against another, or his land" (Termes de la Ley: Cowel: Jacob: 11 Encyc. 210–219). "The distinction between a RECEIPT and a Release is,—the Release extinguishes the claim, and, when given, in itself annihilates the debt; but a Receipt is only evidence of payment, and if the proof be that no payment was made, it cannot operate as evidence of payment against such proof" (per Martin, B., *Bowes* v. *Foster*, 27 L. J. Ex. 266; 2 H. & N. 788).

V. SURRENDER.

"Release" may work a DISCLAIMER, though it would not be operative to convey any estate or interest, *e.g.* if two of three joint devisees of Copyholds "release" by deed to the third before taking, and in order not to take, Admittance (*Wellesley* v. *Withers*, 24 L. J. Q. B. 134; 4 E. & B. 750).

A "Release" under s. 3, 8 & 9 V. c. 106, must be by Deed (*Gilman* v. *Crowly*, 7 Ir. Com. Law Rep. 557).

As to when a document is a mere Covenant not to sue and is not a

Release; *V. Price* v. *Barker*, 24 L. J. Q. B. 133; 4 E. & B. 777: *Bateson* v. *Gosling*, 41 L. J. C. P. 53; L. R. 7 C. P. 9: *Hutton* v. *Eyre*, 6 Taunt. 289; 1 Marsh. 603: *Duck* v. *Mayeu*, 1892, 2 Q. B. 511; 62 L. J. Q. B. 69; 67 L. T. 547; 41 W. R. 56.

A DEED whereby for an agreed sum an Owner of land (the surface of which has been acquired by a Ry Co) agrees with the Co not to work the Minerals underneath, and undertakes to do all things necessary for vesting the same in the Co whenever required, and accepts the sum in satisfaction of all claims, is not a "Release, or RENUNCIATION, upon a SALE," and is not liable as such to the ad val. duty under the Stamp Act, 1891 (*G. N. Ry* v. *Inl. Rev.*, 1899, 2 Q. B. 652; 1901, 1 K. B. 416; 68 L. J. Q. B. 978; 70 L. J. K. B. 336). But a Deed on a Dissolution of Partnership whereby one partner, in consideration of a payment by the other to him, declares that the same "is in Full SATISFACTION" of all his claims and demands in respect of the partnership business and property, is either such a "Release or Renunciation," or it is a "CONVEYANCE on Sale" (*Garnett* v. *Inl. Rev.*, 81 L. T. 633). *Vf*, as to what is a Release quà Stamp Duty, *Humphreys* v. *Inl. Rev.*, 81 L. T. 199.

V. DEMAND: PREVENT: REMISE.

RELEGATION. — Is a BANISHMENT for less than life, and does not work civil death (Co. Litt. 133 a). *Cp*, ABJURATION.

RELIEF. — "Relief," as used in the POOR LAW or in Orders thereunder, includes, among other things, the ministrations by ministers of religion (*R.* v. *Haslehurst*, 53 L. J. M. C. 127; 13 Q. B. D. 253: *R.* v. *Braintree Union*, 10 L. J. M. C. 76; 1 Q. B. 130).

"A Trust 'for the Relief of the Poor' has been construed to authorize an application of the funds to the building of a School-house, and the Education of the Poor of the parish" (Lewin, 612, citing *Wilkinson* v. *Malin*, 2 Tyr. 544, 570).

V. PAROCHIAL RELIEF.

As to a feudal "Relief"; *V.* Co. Litt. 76 a: Termes de la Ley: Cowel: Jacob: 2 Bl. Com. 64: 11 Encyc. 223.

"'Relief' and 'relieve,' are appropriate terms to describe the remedial action of the *Court* in cases where a PENALTY or FORFEITURE has been incurred, and which the Court thinks it equitable that the complainant should not lie under or suffer" (per Davey, L. J., *Nind* v. *Nineteenth Century Bg Socy*, 1894, 2 Q. B. 226; 63 L. J. Q. B. 640; 70 L. T. 831; 42 W. R. 481; 58 J. P. 732); therefore, it was held in that case that a LESSEE is not "relieved," under s. 14, Conv & L. P. Act, 1881, or s. 2 (1), Conv & L. P. Act, 1892, if he himself avoids a Forfeiture by remedying his breaches of covenant and making the necessary compensation. *Vf*, LEASE: UNREASONABLY.

Relief quà BREACH OF TRUST; *V.* REASONABLY.

"Relief *claimed*"; *V. Litton* v. *Litton*, 3 Ch. D. 793; 24 W. R. 962; nom. *Linton* v. *Linton*, 46 L. J. Ch. 64: *Pascoe* v. *Richards*, 50 L. J. Ch. 337.

"Relief" quà Petitions of Right Act, 1860; *V.* s. 16.

RELIGION.—"What is Religion? Is it not what a man honestly believes in and approves of and thinks it his duty to inculcate on others, whether with regard to this world or the next? A belief in any system of retribution by an over-ruling power? It must, I think, include the principle of gratitude to an active power who can confer blessings" (per Wilies, J., *Baxter* v. *Langley*, 38 L. J. M. C. 5).

Direction for Education to be in the Protestant Religion; *V.* EDUCATION.

V. CHRISTIAN RELIGION: ENTERED IN RELIGION: SPIRITUAL: UNDUE INFLUENCE.

RELIGIOUS.—A testamentary gift for "Religious Purposes," or for "Religious Societies," without naming them, is *primâ facie* for a CHARITABLE PURPOSE, and creates a good CHARITY (*Baker* v. *Sutton*, 1 Keen, 224; 5 L. J. Ch. 264: *Townsend* v. *Carus*, 13 L. J. Ch. 169; 3 Hare, 257: *Re White*, 1893, 2 Ch. 41; 62 L. J. Ch. 342; 68 L. T. 187; 41 W. R. 683: *Vf*, CONSERVATIVE). So, of the phrase "any other Religious Institution or Purposes" (*Wilkinson* v. *Lindgren*, 5 Ch. 570; 39 L. J. Ch. 722; 18 W. R. 961). *Secus*, where the Society indicated is only for Prayer and Devotion by its own Members (*Cocks* v. *Manners*, 40 L. J. Ch. 640; L. R. 12 Eq. 574).

A bequest for "Religious *and* BENEVOLENT Societies or Objects" is good, as that means, Societies or Objects which are primarily Religious but are also Benevolent (*Re Lloyd*, 10 Times Rep. 66); had the conjunction been "or" instead of "and," the bequest would have been void (*V.* OR); but Stirling, J., did not read "or" for "and," and if driven to that then he held (by an interpretation supplied by a Codicil) that "benevolent" meant "charitable."

V. SERVICE OF GOD.

A clause in an Endowed School Scheme requiring that the Rector for the time being of the parish shall *ex officio* be a Governor, is not a provision "respecting the Religious *Opinions* of the Governing Body" within the concluding words of s. 19, Endowed Schools Act, 1869 (*Re Hodgson's School*, 3 App. Ca. 857; 47 L. J. P. C. 101; 38 L. T. 790).

"Place of Religious Worship"; *V.* PLACE, p. 1490: USUAL PLACE OF RELIGIOUS WORSHIP.

V. EDUCATION: PUBLIC RELIGIOUS WORSHIP: WORSHIP.

RELINQUISH.—"Relinquish" is not a Word of Art, and may be satisfied by an ABANDONMENT, or Non-Claim (*Home* v. *Booth*, 3 M. & G. 742; 11 L. J. C. P. 78).

Property which a Successor "shall be bound to relinquish, or be DEPRIVED of," s. 38, SUCN DY Act, 1853; *V. Le Marchant* v. *Inl. Rev.*, 45 L. J. Ex. 247; 1 Ex. D. 185.

REM. — An ACTION *in rem*, is one in which the subject-matter is itself sought to be affected, and in which "the claimant is enabled to ARREST the ship or other property, and to have it detained in the custody of officers of the law, until his claim has been adjudicated upon, or until security by bail has been given for the amount, or for the value of the property proceeded against, where that is less than the amount of the claim" (Carver, s. 684). The action is peculiar to the Courts of Admiralty, and affects generally a Ship, or Cargo, or Freight. *Vh*, R. 7, Ord. 2, R. 10–14, Ord. 9, R. S. C.: Carver, ch. 19: Wms. & Bruce, Part 2, ch. 1.

"There is also an INFORMATION *in rem*, when any goods are supposed to become the property of the Crown, and no man appears to claim them, or to dispute the title of the king. As antiently in the case of treasure-trove, wrecks, waifs, and estrays, seised by the king's officer for his own use"; and enquiry thereupon made by Information for the owner, and him failing the property to be declared to belong to the crown (3 Bl. Com. 262).

REMAIN. — *V.* LEFT.

"Being out of England, remains out of England," s. 4 (*d*), Bankry Act, 1883, does not include a person whose home is out of England (*Ex p. Crispin*, 42 L. J. Bank. 65; 8 Ch. 374; 21 W. R. 492; 28 L. T. 483: *Ex p. Brandon, Re Trench*, 25 Ch. D. 500; 53 L. J. Ch. 576).

Bequest of Money which might "remain" (*Rogers* v. *Thomas*, 2 Keen, 8: *Barrett* v. *White*, 1 Jur. N. S. 652; 24 L. J. Ch. 724), or "whatever remains of my money" (*Dowson* v. *Gaskoin*, cited MONEY), held to pass the Residuary Personal Estate: *Vf, Re Maclean*, 11 Times Rep. 82. So, a bequest of "any Money that may remain," passed a reversionary interest in a sum charged on realty (*Stocks* v. *Barré*, Johns. 54; 5 Jur. N. S. 537); and "any Money not mentioned in the aforesaid bequests that may be in my POSSESSION at my death," passed a reversionary interest in personalty (*Re Egan*, 1899, 1 Ch. 688; 68 L. J. Ch. 307).

Bequest to wife, absolute in the first instance, but followed by limitations which would cut down her estate to a life interest, is not saved from that cutting down by the limitations being prefaced by "*whatever remains* of my said estate and effects" (*Constable* v. *Bull*, 18 L. J. Ch. 302). But a clear absolute gift is, on the other hand, not cut down by a gift over of, *e.g.* "any BALANCE remaining" (*Lloyd* v. *Tweedy*, 1898 1 I. R. 5: *Vf, Monck* v. *Croker*, 1900, 1 I. R. 56).

V. REMAINDER: REST.

"Remain unmarried"; *V. Re Burlinson*, cited UNMARRIED.

Agreement by A. to let B. "remain" in the premises as Tenant during A.'s term; *V. Re King*, and *Wood* v. *Davis*, cited MOLEST. *Vf*, IN HIS HANDS: TERMINATE.

REMAINDER. — As used in a residuary clause in a Will this is a technical word, as is also the word "Residue." "Here the words are, 'All the Remainder and Residue of all his estate and effects, both real and personal,' — which includes all the testator's property. All the terms he makes use of, except the word 'effects,' are technical terms; for 'Remainder' is applicable to Real Estate, and 'Residue' to Personal Estate" (per Mansfield, C. J., *Hogan* v. *Jackson*, 1 Cowp. 308). *V.* REMAIN: RESIDUE: REST.

But "Remainder of my Personal Estate," may mean only a very small surplus, not including a large lapsed legacy (*A-G.* v. *Johnstone*, 2 Amb. 577: *Page* v. *Leapingwell*, 18 Ves. 466). *Cp*, OVERPLUS: SURPLUS.

Where a testator directed his debts to be paid out of a specified fund, and "*the* Remainder to be equally divided to my surviving children"; held, a gift of the residue of the specified fund, and not of the general residue (*Jull* v. *Jacobs*, 3 Ch. D. 703). *V.* RESIDUE.

"Remainder," as a technical term applicable to Realty, "is the residue of an estate at the same time appointed over, and must be grounded upon some PARTICULAR ESTATE given before, granted for years, or life, and so forth; and ought to begin in possession when the Particular Estate endeth" (Noy's Maxims, ch. 12: *Goodtitle* v. *Billington*, Doug. 753). As distinguished from an Executory Devise, a Remainder "may be described to be an estate which is so limited as to be immediately expectant on the natural determination of a Particular Estate of freehold limited by the same instrument" (1 Jarm. 864). *Vf*, *Blackman* v. *Fysh*, 60 L. J. Ch. 666; 64 L. T. 590; 39 W. R. 520. *Cp*, "Contingent Remainder," sub CONTINGENT, "Vested Remainder," sub VESTED: REVERSION. *Vh*, Wms. R. P., Part 2, ch. 1, 2: Goodeve, 234: 2 Cru. Dig. Title 16.

Cross Remainders (*V.* CROSS) have been implied from the word "Remainder" (2 Jarm. 552).

Even before s. 28, Wills Act, 1837, a devise of "Reversion," or "Remainder," carried the fee (2 Jarm. 284; *sv*, 285).

"Like Remainder"; *V.* LIKE.

"Right in Remainder"; *V.* RIGHT.

V. FOR WANT OF: FROM AND AFTER.

REMAINING. — "Remaining" is an equivocal expression, which may more easily be construed as "other" than the word "surviving" (*Hughes* v. *Whitby*, Ir. Rep. 7 Eq. 99). *V.* SURVIVOR.

"Remaining Legatee"; held, to mean Surviving Legatee (*Sheridan* v. *O'Reilly*, 1900, 1 I. R. 386).

V. DISPOSE OF.

REMATE. — Remate Judgment; *V. Nouvion* v. *Freeman*, 15 App. Ca. 1; 59 L. J. Ch. 337; 62 L. T. 189; 38 W. R. 581.

REMEDY. — "Require the same to be remedied," s. 46, Coal Mines Regulation Act, 1872, 35 & 36 V. c. 76; *V. R.* v. *Baker*, W. N. (78) 165.

REMEMBRANCER. — *V.* CHIEF: 12 & 13 V. c. 105, s. 38.

REMISE. — The usual form of words in a RELEASE, — "remise, release, and quit claim," — are as old as Littleton; but the old, and true, form of "quit" was "quiet" (Litt. s. 445: *Vf*, QUITCLAIM).

"'*Remisisse, relaxâsse, et quietum clamâsse.*' Here Littleton sheweth, that there be three proper words of release, and bee much of one effect: besides, there is *renunciare, acquietare,* and there bee many other words of release; as if the lessor grants to the lessee for life, that he shall be discharged of the rent, this is a good release. *V.* Sect. 532" (Co. Litt. 264 b; *Vf*, Ib. 291 a).

V. DEMAND.

REMIT. — To "remit," *e.g.* money realized by the sale of goods, means, to send off the money in the ordinary manner; a person whose duty is to "remit" money or documents, discharges that duty as soon as he has, in the ordinary course and manner of business, sent it or them off; he is not responsible for accidents in the transit (*Comber* v. *Leyland*, 1898, A. C. 524; 67 L. J. Q. B. 884; 79 L. T. 180, *V.* espy jdgmt of Ld Herschell). *Cp*, TRANSMIT: AT ONCE: PROCEEDS.

Bill of Exchange "for the sole purpose of remitting" public revenue money, Stamp Act, 1891, Sch 1, *Bill of Exchange*, Exemption, 10; *V. London Clearing Committee* v. *Inl. Rev.*, 1896, 1 Q. B. 542; 65 L. J. Q. B. 253, 372; 74 L. T. 209; 44 W. R. 516; 60 J. P. 404.

REMITTER. — "Remitter is an antient terme in the law, and is where a man hath two titles to lands or tenements, viz., one a more antient title, and another a more latter title; and if he come to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthie title. And then when a man is adjudged in by force of his elder title, this is sayd a Remitter in him" (Litt. s. 659: *Vth*, Co. Litt. 347 b, and Butler's note, 299). *Vf*, Termes de la Ley: Cowel: Jacob: 3 Bl. Com. 19, 190: *Doe* d. *Daniell* v. *Woodroffe*, 10 M. & W. 608; 12 L. J. Ex. 147.

REMOTE. — A Remote Cause is the antithesis of PROXIMATE Cause.

Remote Damages are those "remotely resulting from the act complained of" (Sedgwick on Damages, ch. 3, *whv* hereon). *Va*, Beven, Bk. 1, ch. 3.

Void for Remoteness; *V.* PERPETUITY.

REMOVAL. — "The technical meaning of 'Removal' in 7 & 8 V. c. 101, is not the meaning which the word 'Removal' has in 16 & 17 V. c. 97" (per Cotton, L. J., *R.* v. *Pemberton*, 49 L. J. M. C. 31; 5 Q. B. D. 95).

In a proviso to a Marine Insrce, expenses "for Removal of Obstructions under statutory powers," include expenses of removal paid as damages, as well as expenses for which the assured becomes directly responsible (*The North Britain*, 1894, P. 77; 63 L. J. P. D. & A. 33, *whc* approved in H. L., *The Engineer*, 1898, A. C. 382; 67 L. J. P. D. & A. 61). As to expenses of Harbour Authority in raising Wrecks, &c; *V. The Emerald*, 1896, P. 192; 65 L. J. P. D. & A. 69; 74 L. T. 645. *Vf*, REMOVE.

"Breakage during Removal"; *V.* BREAKAGE.

A Surrender of an Old License to induce Justices to grant a License for New Premises, is not a "Removal" of the old license under s. 50, Licensing Act, 1872 (*Laceby* v. *Lacon*, 1899, A. C. 222; 68 L. J. Q. B. 480; 80 L. T. 473; 47 W. R. 497; 63 J. P. 371).

REMOVE. — To "remove" a thing, is not to blow it to atoms; therefore, where a Wreck in a Harbour, or its approaches, has to be dispersed by explosives, the expense of such a REMOVAL as that cannot be recovered under s. 56, Harbours, Docks, and Piers Clauses Act, 1847 (per Ld Macnaghten, *Arrow Co* v. *Tyne Commrs*, 1894, A. C. 508; 63 L. J. P. D. & A. 146: *Vf*, *Barraclough* v. *Brown*, 1897, A. C. 615; 66 L. J. Q. B. 672: *Sv*, *Smith* v. *Wilson*, 1896, A. C. 579; 65 L. J. P. C. 66).

To "remove" Shell Fish "from a Fishery," within 57 & 58 V. c. 26, or a Bye-Law thereunder, means, a sufficient taking up or severance of the fish for the purpose of taking it away (*Thomson* v. *Burns*, 66 L. J. Q. B. 176; 76 L. T. 58).

"Send out, deliver, remove, or receive," Spirits; *V.* SEND, at end.

REMUNERATION. — "Remuneration" is a wider term than "SALARY." "'Remuneration,' means, a *quid pro quo*. Whatever consideration a person gets for giving his services, seems to me a 'Remuneration' for them. Consequently, if a person was in receipt of a payment or of a percentage, or any kind of payment which would not be an actual money payment, the amount he would receive annually in respect of this would be 'Remuneration'" (per Blackburn, J., *R.* v. *Postmaster General*, 1 Q. B. D. 663, 664). *Cp*, EMOLUMENT.

A School Board may provide "Salary or Remuneration" for its teachers, s. 35, Elementary Education Act, 1870; that may very well include the Board requiring their teachers to provide for themselves by contributing to a Superannuation Fund (*Phillips* v. *London School Bd*, 1898, 2 Q. B. 447; 67 L. J. Q. B. 874; 79 L. T. 50; 46 W. R. 658, espy jdgmt of Williams, L. J.).

RENDER. — To "render," means, "to yield, give again, or return" (Jacob). *Vf*, Cowel.

"Rendering" rent free of impositions, amounts to a covenant (*Giles* v. *Hooper*, Carth. 135); *Sv*, 2 Platt, 87.

V. RESERVATION.

RENEW. — To "renew" a Bill or Note, does not, necessarily, import that a new or additional Bill or Note is to be given; such an instrument is "renewed" by the time for its payment being extended (*Russell* v. *Phillips*, 19 L. J. Q. B. 297; 14 Q. B. 892); but, generally, a Bill or Note "is renewed by another being taken in its place, the parties and the amount being the same, though perhaps in some cases the interest due on the first is added" (per Lindley, L. J., *Barber* v. *Mackrell*, 68 L. T. 29; 41 W. R. 341); the context, however, may show that the parties used "renew" in a merely colloquial sense (*S. C.*).

V. RENEWAL.

RENEWABLE LEASE. — *V. Hughes* v. *Twisden*, 55 L. J. Ch. 481; 54 L. T. 570; 34 W. R. 498. *Vf*, RENEWAL.

RENEWAL. — "'The Renewal of a License,' means, a License granted at a General Annual Licensing Meeting by way of renewal" (s. 74, Licensing Act, 1872). *Vh*, Paterson's Licensing Acts: 7 Encyc. 400, 401.

By Sch 2, Licensing Act, 1872, the Appeal to Quarter Sessions created by ss. 27, 28, 29, Alehouse Act, 1828, 9 G. 4, c. 61, is repealed, except in so far as those sections "relate to the Renewal of Licenses, or to the Transfer of Licenses under ss. 4 and 14 of the same Act": — the tenant of a licensed house gave it up on the 29th Sept, and in the meantime, having received notice of opposition, purposely neglected to apply for a Renewal of his license at the Brewster Sessions held on the 26th Sept; the in-coming tenant applied for a license at the next Special Sessions held on the 10th Oct; this was refused and he appealed to Quarter Sessions: held, that such application was not for a new license, but was for a Renewal or Transfer of the old license, and therefore that the right of appeal was not taken away (*Thornton* v. *Clegg*, 24 Q. B. D. 132; 59 L. J. M. C. 6; 38 W. R. 160). But, quà Appeal, an application in respect of a house pulled down, is only a Renewal or Transfer within s. 14, Alehouse Act, 1828, when made by the "person duly licensed" therefor, *i.e.* the person who was the licensed holder of the Inn at the time when the premises were pulled down (*R.* v. *Yorkshire Jus.*, 1898, 1 Q. B. 503; 67 L. J. Q. B. 279; 78 L. T. 47; 62 J. P. 197). *V.* NEW LICENSE: NEW PREMISES: IN FORCE: TRANSFER.

A Renewal of a Beerhouse License may be applied for by a New Tenant under ss. 8, 19, Wine and Beerhouse Act, 1869, 32 & 33 V. c. 27 (*Symons* v. *Wedmore*, 1894, 1 Q. B. 401; 63 L. J. M. C. 44; 69 L. T.

801; 42 W. R. 301; 58 J. P. 197, in *whc* the previous cases are considered). If such a License was in force on 1st May 1869, and has not been allowed to drop, it must be renewed although no beer has been sold on the premises for a great number of years, the only grounds of refusal being those prescribed in s. 8 (*Mackrell* v. *Brentford Jus.*, 1900, 2 Q. B. 387; 69 L. J. Q. B. 748; 83 L. T. 31; 48 W. R. 648; 64 J. P. 663). *Vf*, LICENSED PERSON: *Cp*, *R.* v. *Cotham*, 1898, 1 Q. B. 802; 67 L. J. Q. B. 632; 78 L. T. 468; 46 W. R. 512; 62 J. P. 435.

The "Renewal" of a LEASE warranted by a PRACTICE, s. 110, Mun Corp Act, 1882, replacing s. 95, 5 & 6 W. 4, c. 76, does not mean that periodically a new lease on new terms has been granted nor that each renewal was on precisely the same terms as its predecessor, but "there must be such a species of uniformity as to show that, in point of fact, it is the same lease which was renewed" (per Romilly, M. R., *A-G.* v. *Yarmouth*, 21 Bea. 633; 3 W. R. 309; 25 L. T. O. S. 5).

An Agreement to grant a "renewed" Lease or Term, simpliciter, means, the renewing, as from the expiry of the original term, of such term for a like period and (with one exception) on the like terms (per Lyndhurst, C. B., *Price* v. *Asheton*, 4 L. J. Ex. Eq. 3; 1 Y. & C. Ex. 92, adopted by Bruce, J., *Lewis* v. *Stephenson*, 67 L. J. Q. B. 296; 78 L. T. 165). The exception as to terms is, that such renewed instrument will not, without clearly expressed words, include the agreement for renewal, the insertion of which would connote a perpetual renewal (per Bruce, J., *Lewis* v. *Stephenson*, citing *Iggulden* v. *May*, 7 East, 237; 9 Ves. 325: *Hyde* v. *Skinner*, 2 P. Wms. 196: *Baynham* v. *Guy's Hospital*, 3 Ves. 294: — for an example of such clear words, *V. Hare* v. *Burges*, 27 L. J. Ch. 86; 4 K. & J. 45: to the contrary, *Swinburne* v. *Milburn*, 54 L. J. Q. B. 6; 9 App. Ca. 844; 33 W. R. 325. *Vf*, AS OFTEN AS: FOR EVER: FROM TIME TO TIME). Therefore, an agreement for a term of 3 years, "with the OPTION of Renewal," gives the tenant the right to call for a further agreement for 3 years and on the like terms (except the clause for renewal) as those contained in the first agreement; but he must exercise that Option within a reasonable time before the expiration of the original term (*Lewis* v. *Stephenson*, sup). *Vf*, Redman, 23–25: SAME.

V. PERPETUAL INTEREST: RENEW: REPAIR. *Cp*, RE-ENGAGEMENT.

RENOUNCE. — *V.* RENUNCIATION.

RENT. — "'Rents' be in divers manners, that is Rent Service, Rent Charge, and Rent Secke" (Termes de la Ley). *Vf*, 3 Cru. Dig. Title 28.

Probably, it may be said that the primary meaning of "Rent" is the sum certain, in gross, which a tenant pays his landlord for the right of occupying the demised premises (*Vh*, Co. Litt. 96 a, 141 b, 142 a: Jacob: Elph. 617–619: Woodf. 403: 11 Encyc. 230–236). Thus an agreement

to occupy part of premises on the terms of keeping the whole clean and paying the rates and taxes, is not an agreement to pay "Rent" *e.g.* within the Small Tenements Recovery Act, 1838, 1 & 2 V. c. 74 (*Re Richmond Jus.*, 10 Times Rep. 68: *Cp, Doe* d. *Edney* v. *Benham*, inf). *V.* CERTAIN RENT.

A covenant to hold clear of all "Rents," includes a QUIT RENT (*Hammond* v. *Hill*, 1 Comyn, 180: *Vf, Re Maxwell*, cited IN CHARGE).

"The word *Rent*, in Powers of Leasing, is with great propriety construed to mean not money merely, but any return or equivalent adapted to the nature of the subject demised; therefore, upon a Lease of Mines, a due proportion of the produce may be reserved as a render in lieu of money, although the power requires a 'Rent' generally to be reserved" (Sug. Pow. 791, citing *Campbell* v. *Leach*, 2 Amb. 740: *Bassett's Case*, cited 2 Amb. 748).

"The words 'Rent' and 'Annual Value' are often used indiscriminately" (per Cleasby, B., *Sheffield W. W. Co* v. *Bennett*, 41 L. J. Ex. 240). In that case a Water-works Co were empowered to charge each house supplied, according to its "Rent" per annum; which was held to mean the money payment made by the tenant, less tenant's rates payable by the landlord (41 L. J. Ex. 233; 42 Ib. 121; L. R. 7 Ex. 409; 8 Ib. 196: *V.* ANNUAL RENT: ANNUAL VALUE: FULL ANNUAL VALUE).

Quà Real Property Limitation Acts, 1833 and 1874, "Rent," extends to "all heriots, and to all services and suits, for which a distress may be made, and to all annuities and periodical sums of money charged upon, or payable out of, any land (except moduses or compositions belonging to a Spiritual or Eleemosynary corporation sole)" (s. 1, R. P. L. Act, 1833); that includes Tithe Rent-Charge (*Irish Land Commission* v. *Grant*, 10 App. Ca. 14; 52 L. T. 228), also an ordinary RENT CHARGE (*Jones* v. *Withers*, 74 L. T. 572). A tenant who occupies his holding on the terms of sweeping the Parish Church, is one who pays "Rent" within that def and s. 8 of same Act (*Doe* d. *Edney* v. *Benham*, 14 L. J. Q. B. 342; 7 Q. B. 976: *Cp, Re Richmond Jus.*, sup).

"Rent," s. 2, R. P. L. Act, 1833, s. 1, R. P. L. Act, 1874, "must be confined to rents existing as an inheritance distinct from the land, and for which before the statute the party entitled might have had an assize; such as ancient Rents Service, FEE FARM Rents, or the like" (per Cur., *Grant* v. *Ellis*, 11 L. J. Ex. 232; 9 M. & W. 113: *Va, Ely* v. *Bliss*, 2 D. G. M. & G. 459), including a freehold or copyhold QUIT RENT (*Owen* v. *De Beauvoir*, 19 L. J. Ex. 177; 16 M. & W. 547; 5 Ex. 166: *Howitt* v. *Harrington*, 1893, 2 Ch. 497; 62 L. J. Ch. 571). *V.* TITHES.

In the same sense "Rent" is used in ss. 3, 4, 5, 7, and 15, R. P. L. Act, 1833, just cited; and whilst in the early part of s. 8 it is used in that sense, yet at the close of that section it means, Rent reserved under a Lease; and of the *seven* times the word is used in s. 9, in the first, fourth, and sixth times it means Rent Charge, whilst in the second,

third, fifth, and seventh times it means Rent Reserved (per Denman, C. J. delivering jdgmt of the Q. B., *Doe* d. *Angell* v. *Angell*, 15 L. J. Q. B. 193; 9 Q. B. 328: *Va*, *Baines* v. *Lumley*, 16 W. R. 674).

Vf, as to "Rent" in Real Property Limitation Act, 1833, Dart, 433, 434, and cases there cited.

Quà Conv & L. P. Act, 1881, "'Rent,' includes, yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise" (s. 2, ix); that shows that "Rent" is not used in the Act in its strict sense, and that it includes recurring payments not issuing out of the thing demised and for which, accordingly, there can be no Distress (per Williams, L. J., *Browne* v. *Peto*, cited OCCUPATION LEASE).

Quà S. L. Act, 1882, a like def is provided (subs. 10, ii, s. 2).

"Rent" has also received statutory definition in and for the following Acts; —

Apportionment Act, 1870, 33 & 34 V. c. 35; *V.* s. 5:

Chief Rents Redemption (Ir) Act, 1864, 27 & 28 V. c. 38; *V.* s. 1:

Copyhold Act, 1894, 57 & 58 V. c. 46; *V.* s. 94:

Land Law (Ir) Act, 1887, 50 & 51 V. c. 33; *V.* s. 8 (11):

Landlord and Tenant Law Amendment Act, Ireland, 1860, 23 & 24 V. c. 154; *V.* s. 1:

Poor Relief (Ir) Act, 1838, 1 & 2 V. c. 56; *V.* s. 124:

Purchase of Land (Ir) Act, 1885, 48 & 49 V. c. 73; *V.* s. 10:

Railway Rolling Stock Protection Act, 1872, 35 & 36 V. c. 50; *V.* s. 2.

"Rent," quà *ad val.* Duty on a LEASE under Stamp Act, 1891; *V. British Electric Traction Co* v. *Inl. Rev.*, 64 J. P. 805; 84 L. T. 84.

Where periodical payments in respect of a MINE are spoken of, "the phrases 'Rent' and 'ROYALTY' are figurative; you pay 'Rent' in one sense, it is true; but 'Rent' generally has been understood to be a return from the soil, and not to be a consumption or taking away of the soil; whereas, of course, where the soil consists of coal, or other minerals, you are actually taking it away" (per Halsbury, C., *Greville-Nugent* v. *Mackenzie*, 69 L. J. P. C. 3; 1900, A. C. 83).

Royalties are "Rent" within s. 1, Parochial Assessment Act, 1836, 6 & 7 W. 4, c. 96 (*R.* v. *Westbrook*, 16 L. J. M. C. 87; 10 Q. B. 178; 9 L. T. O. S. 21: *Sv*, *Taylor* v. *Evans*, 1 H. & N. 101; 25 L. J. Ex. 269).

A periodical payment for a PRIVILEGE or EASEMENT, *e.g.* a Factory Standing, is not "Rent" (*Hancock* v. *Austin*, 14 C. B. N. S. 634; 11 W. R. 833; 8 L. T. 429). So, payments for admission to, *e.g.* a Theatre, are not "Rents," or "PROFITS" of the place which can be reached by an EQUITABLE Execution, though the Receiver may prevent performances thereat (*Cadogan* v. *Lyric Theatre*, 1894, 3 Ch. 338; 63 L. J. Ch. 775; 71 L. T. 8).

As "Rent in *Arrear*"; *V.* DISTRESS.

"Rent of *Assize*"; *V.* QUIT RENT.

"At the Rent of" so much per ann.; *V.* RATE.

Rent *Balance*; *V. Edwards* v. *Bagster*, 2 M. & W. 221.

Chief Rent; *V.* CHIEF.

"Clear Yearly Rent"; *V.* CLEAR.

Rent due; *V.* DUE. Bequest of "all Rent and Arrears of Rent *due* on the said property"; held, to include an apportioned part of the Gale accruing at the testator's death (*Sealy* v. *Stawell*, Ir. Rep. 2 Eq. 326).

"GAS Rent"; *V. Re Peake, Ex p. Harrison*, 53 L. J. Ch. 977; 13 Q. B. D. 753: *Ex p. Birmingham & Staffordshire Gas Co*, 40 L. J. Bank. 52; L. R. 11 Eq. 615: *Ex p. Hill, Re Roberts*, 46 L. J. Bank. 116; 6 Ch. D. 63.

"*Improved* Rent"; *V.* IMPROVE.

"Rent having no Money Value"; *V.* MONEY VALUE.

"Rent of a TENANCY"; Stat. Def., 44 & 45 V. c. 49, s. 57.

Note: as to deductions from Rent, *V.* PAYABLE.

V. ACTUALLY PAID: ANCIENT RENT: BEST RENT: CLEAR: CUSTOMARY RENT: DEAD RENT: FAIR RENT: GROSS: GROUND RENT: INCREASED RENT: JUDICIAL RENT: MOST RENT: NET: PEPPERCORN: PROFIT RENT: QUIT RENT: RACK RENT: RENTAL: RENTS: VALUED.

RENT CHARGE. — A Rent Charge, is a Rent issuing out of land, not by virtue of any tenure or ownership but, by force of some RESERVATION by which also a power of DISTRESS is reserved if the Rent get into arrear; if no such power be reserved it was formerly a Rent Seck (Litt. ss. 217, 221: Co. Litt. 143 b, 147 a: Termes de la Ley, *Rents*: *Monypenny* v. *Monypenny*, 9 H. L. Ca. 137, 138: 11 Encyc. 230–236). But s. 5, 4 G. 2, c. 28, gave distress for arrears of Rent Seck, and such a Rent, accordingly, is now a Rent Charge (*Dodds* v. *Thompson*, L. R. 1 C. P. 133; 35 L. J. C. P. 97; 14 W. R. 476: Copinger & Munro on Rents, 10–17. *Vf, Re Gerard and Beecham*, 1894, 3 Ch. 295; 71 L. T. 272; 63 L. J. Ch. 695; 42 W. R. 678, quà "Rent Charge" in Particulars of Sale. *Cp*, CHIEF RENT). A small rent arising out of a long term of years, cannot be called a "Rent Charge" (*Nicholls* v. *Bulwer*, L. R. 6 C. P. 281; 40 L. J. C. P. 82; 19 W. R. 282; 23 L. T. 542). *V.* TENEMENT.

Quà Rep People Act, 1884, "'Rent Charge,' includes, a fee farm rent, a feu duty in Scotland, a rent seck, a chief rent, a rent of assize, and any rent or annuity granted out of land" (s. 11).

Other Stat. Def. — 19 & 20 V. c. 56, s. 47.

Note: Rent Charge in arrear for which no distress is available may be raised by an Order for sale or mortgage (*Hambro* v. *Hambro*, 1894, 2 Ch. 564; 63 L. J. Ch. 627; 70 L. T. 684; 43 W. R. 92: *Sv, Blackburne* v. *Hope-Edwardes*, W. N. (1900) 175): — as to recovering arrears of Rent Charge in an Action of Debt, *V. Re Herbage Rents Charity*, 1896, 2 Ch.

811; 65 L. J. Ch. 871; 45 W. R. 74, and cases there cited: *Pertwee* v. *Townsend*, 1896, 2 Q. B. 129; 65 L. J. Q. B. 659: 41 S. J. 107, 140:— as to Apportionment of Rent Charge on eviction from part of the property by title paramount, *V. Hartley* v. *Maddocks*, 1899, 2 Ch. 199; 68 L. J. Ch. 496:— *semble*, WASTE cannot be restrained by an owner of Rent Charge (*Sandeman* v. *Rushton*, 61 L. J. Ch. 136; 66 L. T. 180).

"Rent Charge" to redeem which CAPITAL MONEY may be expended, s. 1, 50 & 51 V. c. 30, includes a bonus reasonably demanded for loss of interest in consequence of the redemption (*Re Egmont*, 59 L. J. Ch. 768; 45 Ch. D. 395; 63 L. T. 608; 38 W. R. 762; disapproving *Re Sudeley*, 37 Ch. D. 123; 57 L. J. Ch. 182).

V. GROUND RENT: RENT: TITHE RENTCHARGE.

RENT FREE. — A testamentary direction "to allow A. during his life to reside Rent Free" in a specified dwelling-house, is not the same thing as a gift of the house to A for life with a Condition that he shall LIVE AND RESIDE, or RESIDE, there; such a direction does not make A. a TENANT FOR LIFE, he is only entitled to reside in the house if he likes and is not entitled to let it (*Re Varley*, 68 L. T. 665; 62 L. J. Ch. 652).

RENT PAYABLE. — "Rent payable," s. 11, 30 & 31 V. c. 142, means, the Rent payable between the litigant parties (*Brown* v. *Cocking*, 37 L. J. Q. B. 250; L. R. 3 Q. B. 672. *V.* as to "Value" in this section, *Elston* v. *Rose*, L. R. 4 Q. B. 4; 38 L. J. Q. B. 6: ANNUAL VALUE). *Vf*, PAYABLE, towards end.

RENT SECK. — *V.* RENT: RENT CHARGE.

RENT SERVICE. — *V.* RENT.

RENTAL. — "Annual Rental of the Settled Land," s. 13 (iv), S. L. Act, 1890, includes interest of CAPITAL MONEY (*Re De Teissier*, 1893, 1 Ch. 153, 62 L. J. Ch. 552; 68 L. T. 275; 41 W. R. 186). *Vh*, *R.* v. *Walker*, cited REBUILDING.

V. ANNUAL RENT.

"Rental at which lands, &c, valued or rated," s. 133, Lands C. C. Act, 1845; *V.* WORKS.

V. GROSS: NET: RENT.

RENTED. — House or land "*bonâ fide* rented," s. 2, 6 G. 4, c. 57; *V. R.* v. *Pontefract*, 12 L. J. M. C. 81; 2 Q. B. 548: per Patteson, J., *R.* v. *St. Giles*, cited COMING.

RENTS. — "The primary meaning of 'Rents' is, rents accruing from year to year" (per Stirling, J., *Re Green*, 40 Ch. D. 615).

"The use of the word 'Rents' may in some cases show that the tes-

tator intended Leaseholds to be enjoyed in specie," and so displace the rule in *Howe* v. *Dartmouth*, 7 Ves. 137 (Watson Eq. 121, citing *Cafe* v. *Bent*, 5 Hare, 36: *Cp*, *Pickup* v. *Atkinson*, 4 Hare, 624; 15 L. J. Ch. 213: *Skirving* v. *Williams*, 24 Bea. 275: *Blann* v. *Bell*, 2 D. G. M. & G. 775; 21 L. J. Ch. 811; 5 D. G. & S. 658: *Vachell* v. *Roberts*, 32 Bea. 140). But where the devise includes "both freeholds and leaseholds, the use of the word 'Rents' is not a sufficient indication that the leaseholds should be enjoyed *in specie*, inasmuch as the word may be perfectly well satisfied by being attributed to the freeholds" (per Stirling, J., *Re Game*, 1897, 1 Ch. 881; 66 L. J. Ch. 505; 76 L. T. 450; 45 W. R. 472; following *Harris* v. *Poyner*, 21 L. J. Ch. 915; 1 Drew. 174, and *Craig* v. *Wheeler*, 29 L. J. Ch. 374; and rejecting *Crowe* v. *Crisford*, 17 Bea. 507, *Wearing* v. *Wearing*, 23 Ib. 99, and *Vachell* v. *Roberts*, sup). In *Pickup* v. *Atkinson* (sup), Wigram, V. C., held that "Rents" was not so sufficient, even where there are no freeholds to which the word could apply. *Cp*, RENTS AND PROFITS.

The reservation to the Lord of the Manor of "Rents," &c, in an Inclosure Act; held, insufficient to give him the mines under the allotments (*Townley* v. *Gibson*, 2 T. R. 701).

"Rents," s. 2, Apportionment Act, 1870; *V. Ellis* v. *Rowbotham*, cited PERIODICAL.

"Rents and Charges" in a mortgage of a Wharf; *V. Anderson* v. *Butler's Co*, W. N. (79) 163.

V. ANNUAL PROCEEDS: RENT.

RENTS AND PROFITS. — When, under a Contract for the Sale of Realty, the purchaser is to be entitled to all the rents and profits from the day appointed for COMPLETION, which time is delayed considerably, during which delay the vendor simply remains in possession without arrangement as to rent, the purchaser is nevertheless entitled to a fair occupation rent under the words "all Rents and profits" (*Metropolitan Ry* v. *Defries*, 2 Q. B. D. 189, 387). "Rents and Profits," in such a Contract, "mean, ordinary rents and profits, and not merely nominal rents and profits reserved upon leases for lives" (per Turner, L. J., *Hughes* v. *Jones*, 31 L. J. Ch. 88; 3 D. G. F. & J. 307), and, accordingly, it was there held that a vendor of a fee simple did not fulfil his agreement to let his purchaser "in to the receipt of the Rents and Profits" by handing over the rents proceeding from leases for lives which were less than the ordinary rents: *Vf*, Dart, 144. So, "Rents and Profits" of lands which comprise a QUARRY, include Royalties in respect of stone got from the quarry (*Leppington* v. *Freeman*, 65 L. T. 145; W. N. (91) 198).

"A Devise of the 'Rents and Profits,' or of the 'Income,' of lands passes the land itself both at law and in equity (*Cp*, ISSUES); a rule. it is said, founded on the feudal law, according to which the whole benefi-

cial interest in the land consisted in the right to take the rents and profits. And since 1 V. c. 26, such a devise carries the fee simple; but before that Act it carried no more than an estate for life unless words of inheritance were added" (1 Jarm. 797: *Sheridan* v. *O'Reilly*, 1900, 1 I. R. 386: *Cp*, WHOLE). An Advowson will pass under "Rents and Profits" (1 Jarm. 798). *Va*, Co. Litt. 4 b, cited PROFITS.

But in *Johnson* v. *Johnson* (56 L. J. Ch. 326; 35 Ch. D. 345; 56 L. T. 163; 35 W. R. 329), Stirling, J., refused to apply the doctrine just stated to the interpretation of s. 8, M. W. P. Act, 1870, 33 & 34 V. c. 93, and he held that the property of which, under that section, the "Rents and Profits" were to be for the separate use of married women, meant only such property as could be personally enjoyed by a married woman; and that accordingly no separate use was thereby declared of a fee-simple, and that an unacknowledged conveyance of a fee-simple by a married woman was not saved by the section from being invalid.

A Bequest of the "Interest, Dividends, and Profits," of personalty will sometimes be construed as an absolute gift of the corpus (*Jenings* v. *Baily* 22 L. J. Ch. 977; 17 Bea. 118: *Re L'Herminier*, 1894, 1 Ch. 675; 63 L. J. Ch. 496; 70 L. T. 727: *Vf*, INTEREST). So, of a gift of "the RESIDUE of Interest and Rents" (*Re Morgan*, 1893, 3 Ch. 222; 62 L. J. Ch. 789). So, a direction in a Will to pay a gross sum or debts out of "Rents and Profits" is often construed as a charge on the corpus (*Re Moore*, 19 L. R. Ir. 365: *Metcalfe* v. *Hutchinson*, 1 Ch. D. 591; 45 L. J. Ch. 210). In *thlc*, after reviewing the previous, cases, Jessel, M R., said —"The result is, that you must find, on the face of the Will, a clear restriction of the general meaning of words directing you to raise a gross sum payable, immediately or at a day fixed, out of 'Rents and Profits , and the words are not otherwise to be read as annual rents and profits" (1 Ch. D. 598): for examples of such a restrictive context, *V. Heneage* v. *Andover*, 3 Y. & J. 360: *Philipps* v. *Philipps*, 8 Bea. 193: *Foster* v. *Smith*, 1 Phill. 629: *Re Green*, 40 Ch. D. 610; 58 L. J. Ch. 157 37 W. R. 300; 60 L. T. 314.

In *Re Martin* (W. N. (92) 120), North, J., held that a freehold house in which the testator carried on his business, passed under a devise and bequest of "the whole of the Rents and Profits *derived from the business.*"

But observe that in a direction as to the payment or application of property, "the words 'Rents,' 'Issues,' 'Profits,' 'Interest,' 'Dividends,' and 'Proceeds,' are all applicable to a life interest, but not to the fee simple" (per Kindersley, V. C., *Troutbeck* v. *Boughey*, 35 L. J. Ch. 842; L. R. 2 Eq. 534: *Va*, *Crowe* v. *Crisford*, cited RENTS). Indeed "the most usual and proper meaning of 'Rents and Profits' is, *annual* rents and profits" (per Kindersley, V. C., *Lovat* v. *Leeds*, 2 Dr. & Sm. 77), and the rulings to the contrary before stated are exceptions, either founded on the feudal law, or reached by a course of "liberal" construc-

tion of which an account is given in *Allan* v. *Backhouse* (2 V. & B. 65); and of which liberal construction an example is, "that where a Term is created for the purpose of raising money out of the 'Rents and Profits,' if the trusts of the Will require that a gross sum should be raised, the expression 'Rents and Profits' will not confine the power to the mere annual rents, but the trustees are to raise it out of the estate itself by sale or mortgage" (per Eldon, C., *Bootle* v. *Blundell*, 1 Mer. 232, 233). *Vf*, 2 Jarm. 610–612.

Cp, RENTS.

As to powers and duties of Trustees to raise Fines on Renewals of Leases out of "Rents, Issues, and Profits," *V.* Lewin, 426 *et seq*: as to raising Portions, *V.* Ib. 480, 481: *Smyth* v. *Foley*, 7 L. J. Ex. Eq. 34; 3 Y. & C. Ex. 142.

"Rents, Issues, and Profits," of Real Estate, are, of themselves, sufficient to include the proceeds of sale of a Next Presentation (per Turner, L. J., *Cust* v. *Middleton*, 34 L. J. Ch. 185).

A Rector who is enjoying, or has enjoyed, the right to Fees for Burials in a Churchyard (although the freehold of the churchyard is not in him and the churchyard has long been disused for burials), is the person entitled to the "Rents and Profits" of the Churchyard, under s. 70, Lands C. C. Act, 1845 (*Ex p. Rector of Liverpool*, 40 L. J. Ch. 65; L. R. 11 Eq. 15: *Ex p. Rector of St. Martin's, Birmingham*, 40 L. J. Ch. 69; L. R. 11 Eq. 23). *Vf*, 1898, P. 158.

"Net Rents and Profits"; *V.* NET.

RENTS AND TOLLS.—Quà application of Weights and Measures Act, 1878, 41 & 42 V. c. 49, to Scotland, "'Rents and Tolls,' includes all stipends, feu duties, customs, casualties, and other demands whatsoever, payable in grain, malt, or meal, or any commodity or thing" (s. 71).

V. TOLL.

RENUNCIATION.—The Renunciation of a Bill of Exchange or Pro. Note which discharges it, must be in writing, unless it be delivered up to the Acceptor or Maker (s. 62 (1), Bills of Ex. Act, 1882); there, "Acceptor," or "Maker," includes his legal personal representatives, but not his legatee or devisee (*Edwards* v. *Walters*, 1896, 2 Ch. 157; 65 L. J. Ch. 557; 44 W. R. 547; 74 L. T. 396); the Renunciation must absolutely and unconditionally renounce the rights on the Bill or Note (*Re George*, cited ON DEMAND, p. 1333).

Renunciation of a Contract; *V.* REVOKE.

Renunciation by an Exor; *V.* Wms. Exs. Part 1, Bk. 3, ch. 6: RETRACT.

There is no Conveyancing Instrument known to English law as a "Renunciation," in the sense in which that word is used in the Sch to

the Stamp Act, 1891; quà that Act, there is a "Renunciation" upon a Letter of Allotment dealt with by the Sch, and there is a Renunciation of Probate by a nominated Exor which is not within the Sch. "In the law of Scotland, however, the term is well known and applied in, at least, three classes of cases, — (1) Renunciation by an Heir, which is similar to, but not the same as, a Renunciation by an Exor in England; (2) Renunciation by a Lessee of his lease, which is equivalent to the English SURRENDER; (3) Renunciation by a Mortgagee or Incumbrancer of certain heritable rights which he has acquired by way of mortgage, or hypothecation, or pledge, and in that sense Bell's Law Dictionary and Paterson's Compendium treat it as a translation of the English terms 'Reconveyance,' or 'Release.' In this last sense it appears to be used in the Sch (to the Stamp Act) not only under this title of 'Release' but also under the titles 'Mortgage' and 'Reconveyance.' As used in that Sch, 'Renunciation' may, I think, be regarded as the Scotch equivalent for the English 'Reconveyance,' or 'Release'" (per Phillimore, J., *G. N. Ry* v. *Inl. Rev.*, 68 L. J. Q. B. 983; 1899, 2 Q. B. 661). *V.* RECONVEYANCE: RELEASE.

Cp, RESIGNATION: ABJURATION.

REORGANIZATION. — The Reorganization of a Co, means the same as, and not more than, its RECONSTRUCTION (per Chitty, J., *Hooper* v. *Western Counties Telephone Co*, 41 W. R. 84; 68 L. T. 78).

REPAID. — "Expense shall be repaid," may create an Obligation; *V.* jdgmts of Herschell, C., and Ld Macnaghten, *Arrow Co* v. *Tyne Commrs*, 1894, A. C. 508; 63 L. J. P. D. & A. 146; 71 L. T. 346. *Vf*, OWNER.

The Burial Board or Churchwardens have to maintain and repair a closed Churchyard or Burial-Ground, "and the Costs and EXPENSES shall be repaid" out of the Poor Rate "upon the CERTIFICATE of the Burial Board or Churchwardens," s. 18, 18 & 19 V. c. 128; — "It is contended that 'repaid' implies a Condition Precedent, and that before any one can be '*re*paid' he must have paid something himself. No doubt, this is so. But, in practice, the reasonable construction of 'repaid' may, in such a case as this and under such a statute, well include payment of a sum for which a churchwarden has, by the authority of a vestry, himself become liable. I am of opinion that this is the reasonable construction, and that we are justified in holding, under the circumstances, that 'repaid' may include money for which a churchwarden has rendered himself liable, although he has not advanced the amount out of his own pocket" (per Pollock, B., *R.* v. *St. Mary, Islington*, 59 L. J. Q. B. 462; 25 Q. B. D. 523; 63 L. T. 226; 39 W. R. 10; 54 J. P. 807); "Costs and Expenses," in that connection, "are not only costs and expenses 'expended' but 'to be expended'" (per Smith, J., *Ib.*).

REPAIR. — To "repair" means, to make good defects, including renewal where that is necessary (*Inglis* v. *Buttery*, 3 App. Ca. 552), *i.e.* "patching, where patching is reasonably practicable; and, where it is not, you must put in a new piece" (per Ld Blackburn, *Ib.* 579). In *the* the contract was to "carefully overhaul and repair" the plating of an iron ship; held, that that included withdrawing injured plates and substituting new ones where the plating could not properly be patched (*V.* espy jdgmt of Ld Hatherley). But "repair" does not connote a total reconstruction (*R.* v. *Epsom*, cited GOOD REPAIR).

The general principle for determining a tenant's liability to "repair," simpliciter, is that, "diminution in value, resulting from the natural operation of time and the elements, falls on the landlord; but the tenant must take care that the premises do not suffer more damage than the operation of these causes would effect; and he is bound, by reasonable applications of labour, to keep the house as nearly as possible in the same condition as when it was demised" (per Tindal, C. J., *Gutteridge* v. *Munyard*, 1 Moo. & R. 336; 7 C. & P. 129). But it has been held that a few cracks in the plastering not affecting the stability of the structure, or holes in the walls caused by driving in nails, are not breaches of a covenant to repair (per Cave, J., *Perry* v. *Chotzner*, 9 Times Rep. 488).

By an agreement to "repair" and keep in repair, there is no obligation to substitute new buildings for old (*Gutteridge* v. *Munyard*, sup: *Belcher* v. *McIntosh*, 8 C. & P. 720; 2 Moo. & R. 186: *Lister* v. *Lane*, 1893, 2 Q. B. 212; 62 L. J. Q. B. 583; 69 L. T. 176; 41 W. R. 626). But an agreement to "KEEP in repair" a house out of repair, means that the contracting party is first of all to put it in good repair having regard to its age and its class, — *i.e.* a house in Spitalfields would not be repaired in the same style as one in Grosvenor Square, and, *semble*, you are to take into consideration the condition of the premises at the time of the contract (*Stanley* v. *Towgood*, 6 L. J. C. P. 129; 3 Bing. N. C. 4: *Payne* v. *Haine*, 16 L. J. Ex. 130; 16 M. & W. 541: *Easton* v. *Pratt*, 33 L. J. Ex. 233; 2 H. & C. 683: *Saner* v. *Bilton*, 47 L. J. Ch. 267; 7 Ch. D. 815; 38 L. T. 281; 26 W. R. 394: *Lister* v. *Lane*, sup: *V.* KEEP). *Vf*, Rosc. N. P. 727 *et seq*: Woodf. 627, 628: *Proudfoot* v. *Hart* and *Dashwood* v. *Magniac*, cited GOOD REPAIR.

To put premises in "*Habitable* Repair," means to improve the state of repair, and render the premises reasonably fit for an ordinary occupier of such premises (*Belcher* v. *McIntosh*, sup).

V. PUT.

"The painting of a house is usually provided for by the express terms of a lease, but it would seem that some degree of *painting* is implied in the mere term 'Repair.' It has been ruled for instance, that under a covenant to 'substantially repair, uphold, and maintain,' a house, the covenantor is bound to keep up the inside painting (*Monk* v. *Noyes*,

1 C. & P. 265); but it has been also ruled, on a covenant, — as often as necessary well and sufficiently to repair, uphold, sustain, paint, glaze, cleanse, and scour, and keep and leave, the premises in such repair, reasonable wear and tear excepted, — that the tenant, if he has repaired within a reasonable time before leaving, is only bound, in addition to the repair of actual dilapidations, to clean the old paint, &c, and not to repaint (*Scales* v. *Lawrence*, 2 F. & F. 289). Questions of this kind will often be more questions of fact than of law; but if the painting be left to be included in the general term 'Repair,' the only legal obligation would seem to be to paint just as much as is necessary to keep the premises from actual deterioration" (Woodf. 630). To this effect is *Crawford* v. *Newton* and *Proudfoot* v. *Hart*, cited TENANTABLE REPAIR.

Painting the outside of a house is "Repair" within s. 7 (1), Workmen's Comp Act, 1897 (*Dredge* v. *Conway*, 70 L. J. K. B. 494; 1901, 2 K. B. 42; 84 L. T. 345; 49 W. R. 518, hereon over-ruling *Wood* v. *Walsh*, 1899, 1 Q. B. 1009; 68 L. J. Q. B. 492; 80 L. T. 345; 47 W. R. 504; 63 J. P. 212). But ordinary whitewashing, painting, and glazing, are not "Reparations" within a clause in a Settlement enlarging the powers of s. 25, S. L. Act, 1882, as to "rebuilding, reparation, or permanent IMPROVEMENT"; in such a connection, "Reparation," means, repairs of a substantial nature (*Re Egmont*, 44 S. J. 428).

Vf, Redman, 210–216: and as to "*Substantial* Repair," *Brown* v. *Trumper*, 26 Bea. 11.

Under a covenant to repair, the covenantor must *rebuild in case of fire*, unless there be the qualification "Damage by fire excepted" (*Bullock* v. *Dommitt*, 6 T. R. 650: *Pym* v. *Blackburn*, 3 Ves. 34. *Clark* v. *Glasgow Assrce*, 1 Macq. H. L. 668: *Jacob* v. *Down*, cited KEEP). *Vf*, Woodf. 631.

The *Measure of Damages*, after the term has expired, for breach of a Tenant's covenant to repair is, not the diminution of proprietary value thereby caused but, the amount necessary to put the premises in repair (per Esher, M. R., *Joyner* v. *Weeks*, 60 L. J. Q. B. 510; 1891, 2 Q. B. 31; 65 L. T. 16; 39 W. R. 583; 55 J. P. 725: *Henderson* v. *Thorn*, 1893, 2 Q. B. 164; 62 L. J. Q. B. 586; 69 L. T. 430; 41 W. R. 509), whether the premises be re-let or not (*Joyner* v. *Weeks*, sup); but during the currency of the tenancy, the measure is, "the depreciation in the saleable value of the reversion" (per Wills, J., *Henderson* v. *Thorn*, sup). *Vf*, where the Tenant knows he is taking an Under-lease, *Conquest* v. *Ebbetts*, 1896, A. C. 490; 65 L. J. Ch. 808; 45 W. R. 50: *Ebbetts* v. *Conquest*, 44 S. J. 378.

A covenant by a Lessor to repair, "carries with it a license to the lessor to enter upon the premises of the lessee, and to occupy them for a reasonable time to do that which he has contracted to do" (per Fry, J., *Saner* v. *Bilton*, sup).

A covenant by a Lessee to "repair and *keep up*," does not disentitle

him to pull down and re-erect (*Re M'Intosh and Pontypridd Imp. Co*, cited APPROVED PLAN).

Vf, as to Covenant to Repair, Fawcett, 313.

As to RELIEF against FORFEITURE for breach of the covenant; *V.* s. 14, Conv & L. P. Act, 1881; Conv & L. P. Act, 1892, on *whv* LEASE, p. 1070: NOTICE, pp. 1292, 1293.

Compulsory Drainage, which under P. H. Act, 1875, is chargeable to Trustees as Owners, is not "repair" to be borne by a TENANT FOR LIFE under a clause directing him to keep the premises in repair (*Re Barney*, 1894, 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. 180).

Repair a Road, a Railway, or a Highway; *V.* MAINTAIN: MAINTENANCE.

"Repair, form, and pave," a Street; *V.* FORM.

V. DILAPIDATION: GOOD CONDITION: GOOD REPAIR: LIABLE: PERFECT REPAIR: REPAIRS: TENANTABLE REPAIR: REBUILDING.

REPAIRABLE. — Highway "repairable by the Inhabitants at large"; *V. Rishton* v. *Haslingden*, cited STREET.

REPAIRING LEASE. — "The term 'Repairing Lease' has no very precise signification" (per Erle, C. J., *Easton* v. *Pratt*, 33 L. J. Ex. 234; 2 H. & C. 687). In that case the Exchequer Chamber (in the absence of a controlling context) held that a Lease, — containing a covenant by the Lessee "to repair, maintain, amend, and keep," the premises repaired (under which phrase "keep repaired" the lessee is bound to PUT the premises in repair, *Payne* v. *Haine*, cited KEEP), coupled with covenants by the Lessee to deliver up in good repair and to allow the lessor to enter and view and for the tenant to repair on notice, — was a good exercise of a Power to grant a "Repairing Lease." It would seem to follow that an Agreement to grant a "Repairing Lease" does not entitle the lessor to covenants for painting, papering, &c, at stated periods, on *whv* jdgmt of Jessel, M. R., *Truscott* v. *Diamond Rock-Boring Co*, cited IMPROVE, where referring to *Easton* v. *Pratt* (sup) that learned judge said it was "a decision that the insertion of a Covenant by a tenant to repair and keep in repair the premises, makes the lease a Repairing Lease": *V.* REPAIR: TENANTABLE REPAIR: BUILDING LEASE.

"'Improve' and 'Repair' are not equivalent words" (per Brett, L. J., *Truscott* v. *Diamond Rock-Boring Co*, cited IMPROVE).

REPAIRS. — "Repairs," s. 70, Church Building Act, 1818, 58 G. 3, c. 45, includes, not only repairs to the fabric of a church but also, the expenses necessary for the proper and decent performance of divine service, and the other offices to be performed therein and necessarily incident thereto (*R.* v. *Consistory Court*, 31 L. J. Q. B. 106; 2 B. & S. 339; 12 C. B. N. S. 220).

"Necessary Repairs"; *V.* NECESSARY, pp. 1254; 1255.

"Repairs and Necessaries" to a Ship; *V.* Abbott, Part 2, ch. 3: NECESSARIES.

REPARATION. —*V.* REPAIR: "Necessary Occasions," sub NECESSARY, p. 1253.

REPASS. —*V.* PASS AND REPASS.

REPAYMENT. — "'May secure the Repayment of' (borrowed money) — a form of expression occurring in Railway Acts, which has been held to preclude the issue of securities at a discount" (per Jessel, M. R., *Anglo-Danubian Steam Nav. Co*, 44 L. J. Ch. 503). *V.* RAISE.

"Bond given for the Repayment of Money," Stamp Act, 1815, 55 G. 3, c. 184; Stamp Act, 1891, — "Repayment cannot apply to Commission or Interest" (per Platt, B., *Frith* v. *Rotherham*, 15 L. J. Ex. 136; 15 M. & W. 43).

REPEAL. — "'Repealed' is not to be taken in an absolute, if it appear upon the whole Act to be used in a limited, sense" (per Ellenborough, C. J., *R.* v. *Rogers*, 10 East, 573). But the general rule is, "that when an Act of Parliament is 'repealed' it must be considered (except as to transactions past and closed) as if it had never existed" (per Tenterden, C. J., *Surtees* v. *Ellison*, 9 B. & C. 752). *Vf*, *R.* v. *Mawgan*, 8 A. & E. 499, 500: Dwar. 530–535: Maxwell, ch. 13, s. 3: s. 38, Interp Act, 1889.

REPEAT. —*V.* MULTIPLY.

Repeated Legacy; *V.* CUMULATIVE.

REPLACE. —*V.* REINSTATE.

REPLEVIN. — "'*Replevin*' is derived of *replegiare*, to redeliver to the owner upon pledges or suretie" (Co. Litt. 161 a; *Vf*, Ib. 145 b: Termes de la Ley: *Mounsey* v. *Dawson*, 6 A. & E. 756, 759–761).

Vh. Woodf. ch. 12, s. 1: Redman, ch. 7, s. 4: Fawcett, 283: 11 Encyc. 239–245.

REPLICATION. — A Replication, in Pleading, was the plt's answer to the deft's original plea (3 Bl. Com. 309, 310). Its place is taken by the modern REPLY.

REPLY. —*V.* WAITING YOUR REPLY.

"Reply," R. 14, Ord. 21, R. S. C., does not include a Counter-Claim (*Street* v. *Gover*, 2 Q. B. D. 498; 46 L. J. Q. B. 582; 36 L. T. 766; 25 W. R. 750: *Alcoy* v. *Greenhill*, 1896, 1 Ch. 19; 65 L. J. Ch. 99; 73 L. T. 452; 44 W. R. 117). *V.* PLEADING.

"A 'Reply *Post Card*,' means, a Post Card of such a character that

the person receiving the same through the post may, without further payment, again transmit the same or a part thereof through the post" (s. 2, 45 & 46 V. c. 2); when so re-transmitted, it is to deemed a "Postal PACKET" (Ib.).

REPORT. — "The above cargo is accepted on the Report and Samples of Scott & Co," is a warranty that the bulk is equal to the Report and Samples; and is not merely a representation that the Report is the genuine report of Scott & Co, and that the Samples were taken by them (*Russell* v. *Nicolopulo*, 8 C. B. N. S. 362).

V. SAMPLE: FAIR REPORT: SURVEYOR.

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

As to the Privilege of a fair and correct Report of Judical Proceedings, *V. Kimber* v. *Press Assn*, 1893, 1 Q. B. 65; 62 L. J. Q. B. 152: of a Constable to Justices, *Andrewes* v. *Nott Bower*, 1895, 1 Q. B. 888; 64 L. J. Q. B. 536: *Va*, PUBLIC MEETING: SHAMEFUL.

REPRESENT. — You may "represent" a state of things without making a direct communication thereon to the person affected thereby. Therefore, where a vendor of coals affixed a metal label to a sack of coal indicating that, when full, the sack contained ½ cwt; held, that he thereby "represented" that it did contain that weight, within s. 29, Weights and Measures Act, 1889, 52 & 53 V. c. 21 (*Franklin* v. *Godfrey*, 63 L. J. M. C. 239; 43 W. R. 46. *Cp*, WRITTEN WARRANTY). But the representation must be by the "seller"; for an unauthorized verbal representation by a servant no one is responsible; not the master because it was unauthorized, and not the servant because he is not the seller (*Roberts* v. *Woodward*, 59 L. J. M. C. 129; 25 Q. B. D. 412; 63 L. T. 200; 38 W. R. 770: *Sv*, SELLER); *secus*, when the representation is made by an agent in the course of his employ, for then it is the same as if made by the seller himself (*Baker* v. *Herd*, 58 J. P. 413; 10 Times Rep. 181).

V. HESITATE: MISREPRESENT: PATENT.

The Manager of a Theatre acting under the instructions of the proprietor, does not "represent, or cause to represent," the plays that are performed therein, within s. 2, Dramatic Copyright Act, 1833, 3 & 4 W. 4, c. 15 (*French* v. *Gregory*, 9 Times Rep. 548); but a person who, for a benevolent purpose, gets up a dramatic performance, is within the section (*Duck* v. *Mayeu*, 8 Times Rep. 339, 737, cited also RELEASE).

REPRESENTATION. — *V.* FALSE REPRESENTATION: REPRESENT: WARRANTY.

"Upon any Representation or Assurance"; *V.* UPON.

"Representation," quà Mer Shipping Act, 1894, "means, probate, administration, confirmation, or other instrument, constituting a person the executor, administrator, or other REPRESENTATIVE, of a deceased

person" (s. 742). *Va*, Finance Act, 1894, s. 22 (1 *c*); 28 & 29 V. c. 111, s. 2; Regimental Debts Act, 1893, 56 & 57 V. c. 5, s. 29.

"The Representation of the People Acts"; *V.* Rep People Act, 1884, s. 8: *Va*, Table of Abbreviations, ante.

REPRESENTATIVE.—A Solicitor is the representative of his client; but Counsel is not, for Counsel "has the whole conduct of the case, and can act even against the instructions of the client" (per Brett, M. R., *R.* v. *Greenwich Co. Co. Registrar*, 54 L. J. Q. B. 392; 15 Q. B. D. 54; 33 W. R. 671). In that case it was accordingly held that a Solicitor is a "Representative" within s. 17 (4), Bankry Act, 1883, and must be "authorized in writing" to entitle him to question a debtor at a public examination.

The signification of "Representative," when used in reference to the ownership of land, is a question of fact; it may mean HEIR, or DEVISEE, or EXECUTOR, or LEGATEE, deriving under an absolute owner, or (*e.g.* in Receipts for Rents) the Successor to a person having only a limited estate (*M'Auliffe* v. *Fitzsimons*, 26 L. R. Ir. 29, applying *Lyell* v. *Kennedy*, cited WRONGFULLY CLAIMING).

"Representative," is sometimes defined as one who has taken REPRESENTATION to a deceased person; *V.* 28 & 29 V. c. 111, s. 2; 33 & 34 V. c. 71, s. 3; 56 & 57 V. c. 5, s. 29.

V. REPRESENTATIVES: REAL REPRESENTATIVE.

"Representative LEGISLATURE," quâ Colonial Courts of Admiralty Act, 1890, 53 & 54 V. c. 27, "means, in relation to a BRITISH POSSESSION, a legislature comprising a Legislative Body of which at least one half are elected by inhabitants of the British Possession" (s. 15): *Va*, Colonial Laws Validity Act, 1865, 28 & 29 V. c. 63, s. 1.

REPRESENTATIVES.—"The ordinary legal sense of the term 'Representatives,' without the addition of 'legal,' or 'personal,' is exors or admors" (Wms. Exs. 993: *Re Crawford*, 2 Drew. 230; 23 L. J. Ch. 625: *Re Henderson*, 28 Bea. 656: *Leak* v. *MacDowall*, 3 N. R. 185: *Lindsay* v. *Ellicott*, 46 L. J. Ch. 878: *Re Ware*, 59 L. J. Ch. 717; 45 Ch. D. 269; 38 W. R. 767; 63 L. T. 52); but in *Re Horner, Eagleton* v. *Horner* (57 L. J. Ch. 211; 37 Ch. D. 695; 36 W. R. 348; 58 L. T. 103), Stirling, J., contextually construed "Representatives" as "Next of Kin" or as "Descendants." So, in a bequest to A. for life, and, at his death, the principal to be paid "to such children or *Representatives of Children* as he may leave," "Representatives" mean "Descendants" (*Herbert* v. *Forbes*, 1 L. J. Ch. 118). *Va*, *Booth* v. *Vicars*, 13 L. J. Ch. 147; 1 Coll. 6.

In *Lindsay* v. *Ellicott* (sup) Jessel, M. R., said that the rule and observations in *Re Crawford* do not apply where "Representatives" are to take derivatively, and he added,—"Where you have a class who take

under the Statute of Distribution as a primary class, and, by reason of some members being dead, another generation take under the Statute, the second class do take by representation. They represent a dead member of the class. Thus, where an intestate dies leaving brothers and sisters, and leaves children of a dead brother and sister, the children take as representing the dead brother and sister. Therefore, it is the very meaning of the word to describe the persons who take thus as statutory next of kin": accordingly, in a limitation to persons who would be entitled under the Statute "exclusive of A. and his Representatives," it was held that "Representatives" meant statutory next of kin.

In a proviso to a Bond enabling the Obligor or his "representatives" to DETERMINE the obligation, "representatives" includes the exs or ads of the obligor (*Re Silvester*, 1895, 1 Ch. 573; 64 L. J. Ch. 390; 72 L. T. 283; 43 W. R. 443).

NOTICE TO QUIT to a lessor, or lessee, "his representatives or ASSIGNS"; *V. Easton* v. *Penny*, 67 L. T. 290; 41 W. R. 72.

V. LEGAL REPRESENTATIVES: NATURAL REPRESENTATIVES: PERSONAL REPRESENTATIVES: REAL REPRESENTATIVE: REPRESENTATIVE.

REPRESENTING or PERFORMING. — The words, "representing or performing" a dramatic piece or musical composition within the Copyright Act, 1842, 5 & 6 V. c. 45, s. 20, mean "that there must be publicity in the audience" (per Brett, M. R., *Wall* v. *Taylor*, 52 L. J. Q. B. 562: the judgment at this passage seems to have been incorrectly reported at 11 Q. B. D. 107: *V. Duck* v. *Bates*, 53 L. J. Q. B. 99). *Va*, *Duck* v. *Bates*, on appeal, 53 L. J. Q. B. 338; 13 Q. B. D. 843; 50 L. T. 778; 32 W. R. 813; 48 J. P. 501, as to what would be publicity: *Vf*, "Place of Dramatic Entertainment," sub PLACE, p. 1485.

V. PERFORM: REPRESENT.

REPRIEVE. — "'Reprieve,' may be derived from the French *Repris*, that is, taken back: so that to 'reprieve,' is properly to take back, or suspend, a Prisoner from the Execution and Proceeding of the Law for that time" (Cowel). *Vh*, 4 Bl. Com. ch. 31.

Cp, RESPITE: NOLLE PROSEQUI.

REPRINTING. — *V.* PRINT.

REPRISAL. — Letters of Marque or Reprisal; *V.* LETTER.

REPRISES. — "'Reprises' are deductions, payments, and duties, that goe yearely and are payed out of a mannour: As rent charge, rent secke, pensions, corodies, annuities, fees of stewards or baylifes, and such like" (Termes de la Ley). *Vh*, *R.* v. *Shaw*, cited OUTGOING.

REPRODUCTION. — A COPY or "Reproduction," of a Painting Drawing or Photograph, s. 1, 25 & 26 V. c. 68, must be on some material

or thing which may be forfeited under s. 6; a Tableau Vivant representing a picture, is not a Copy or Reproduction of it (*Hanfstaengl* v. *Empire Palace*, 1894, 2 Ch. 1; 63 L. J. Ch. 417; 1894, 3 Ch. 109; 63 L. J. Ch. 681; in H. L. nom. *Hanfstaengl* v. *Baines*, 1895, A. C. 20; 64 L. J. Ch. 81). *V.* MULTIPLY.

REPUBLICATION. — A Codicil, or a subsequent Will, may republish a prior Will (*Allen* v. *Maddock*, 11 Moore P. C. 427), but to do so it must contain either an express republication, or some mention of the former Will from which may be gathered an intention to republish it (*Re Smith*, cited FEME). If there be such a republication, a LEGACY, void under s. 15, Wills Act, 1837, may be set up by a Codicil to which the legatee is not an attesting witness (*Anderson* v. *Anderson*, 41 L. J. Ch. 247; L. R. 13 Eq. 381: *Re Trotter*, 1899, 1 Ch. 764; 68 L. J. Ch. 363; 80 L. T. 647).

Vf, *Re Blackburn*, 59 L. J. Ch. 208; 43 Ch. D. 75: PUBLICATION, at end.

REPUGNANT. — That is repugnant which "is contrary to anything said before" (Jacob), *e.g.* a direction that a donee in fee (who is not a married woman) shall not sell the land given, is repugnant because the right to alienate is inherent in the gift. *Vf*, CONDITION: PROVISO.

REPUTED. — As to excluding this word from GENERAL WORDS of a Conveyance; *V. Re Peck and London School Bd*, cited WAYS.

REPUTED MANOR. — *V.* MANOR.

REPUTED MARRIAGE. — *V.* MARRIAGE.

REPUTED OWNER. — *V.* POSSESSION, ORDER, OR DISPOSITION.

REPUTED THIEF. — "Reputed Thief," s. 16, 3 G. 4, c. 55, repld s. 31, 3 & 4 W. 4, c. 19 (the latter repealed by 2 & 3 V. c. 71, s. 54), applied only to persons of general bad character, and not to a person suspected of a particular theft (*Cowles* v. *Dunbar*, Moo. & M. 37; 2 C. & P. 565).

REPUTED WIFE. — *V.* WIFE.

REQUEST. — *V.* AUTHORITY OR REQUEST: CONSENT: EARNEST: PRECATORY TRUST: REASONABLY REQUIRE.

"At the Request" of Urban Authority, s. 38, 10 & 11 V. c. 17; *V. Grand Junction W. W. Co* v. *Brentford*, 1894, 2 Q. B. 735; 63 L. J. Q. B. 717; 71 L. T. 240; 59 J. P. 51.

"On Request"; *V.* ON DEMAND.

"I request you to give A. credit for goods, and guarantee his pay-

ment for same," is an absolute Guarantee, and is not, by the use of the words "I request," determined by the death of the guarantor (*Bradbury* v. *Morgan*, 31 L. J. Ex. 462; 1 H. & C. 249).

"Instigation or Request"; *V.* INSTIGATION.

"Letter of Request"; *V.* LETTER.

REQUIRE. — In a contractual obligation whereby one party is to do or permit such things as the other may "require," the word means "reasonably require" (*Braunstein* v. *Accidental Insrce*, 31 L. J. Q. B. 17; 1 B. & S. 782).

"If Trustees be authorized and required, at the instance of the tenant for life, to invest the trust funds in the *purchase of Leaseholds*, they have no option if the tenant for life insist upon his right" (Lewin, 370, citing *Cadogan* v. *Essex*, 2 Drew. 227; 23 L. J. Ch. 487: *Beauclerk* v. *Ashburnham*, 8 Bea. 322): but if they are "required" to lend money to a husband on his personal security at the request of the wife, and the husband become insolvent, they are justified in refusing to lend, because the circumstances and position of the husband have so totally changed (*Boss* v. *Godsall*, 1 Y. & C. Ch. 617: *Va, Luther* v. *Bianconi*, 10 Ir. Ch. Rep. 194: *Costello* v. *O'Rorke*, Ir. Rep. 3 Eq. 172: *Vf*, Lewin, 335, 336, 370, 729, 730).

V. CONSENT.

Accounts, &c, which might be directed if a Charge had been made by a Partner, "or which the circumstances *may require*," s. 23 (2), Partnership Act, 1890; this latter alternative is only to be exercised in special cases; the rule to be acted on in ordinary cases is given in the preceding paragraph of the clause; and seeing that if a charge had been made the Assignee would not be entitled to Partnership Accounts (subs. 1, s. 31), so, under s. 23 (2), the Court will only direct such accounts in special cases (*Brown* v. *Hutchinson*, 1895, 2 Q. B. 126; 64 L. J. Q. B. 619; 73 L. T. 8; 43 W. R. 545).

V. REASONABLY REQUIRE: REQUEST.

REQUIRED. — The phrase "*is hereby* required" is directory only as regards a father's consent to the marriage of a minor under s. 16, Marriage Act, 1823, 4 G. 4, c. 76 (*R.* v. *Birmingham*, 8 B. & C. 29; 6 L. J. O. S. M. C. 67; 2 M. & R. 230). In giving judgment in that case Tenterden, C. J., said, — "The language of this section is merely to *require* consent; it does not proceed to make the marriage void if solemnized without consent" (cited by Tindal, C. J., *Cole* v. *Greene*, 13 L. J. C. P. 32): *V.* SHALL. But the provision in s. 29, Alehouse Act, 1828, that the Court hearing the appeal therein mentioned "is hereby required" to adjudge Costs, gives no discretion, and, if the events therein mentioned happen, the Court is called upon to give the litigant Licensing Justices indemnity costs (*R.* v. *Worcestershire Jus.*, 1900, 2 Q. B.

576; 69 L. J. Q. B. 826; 83 L. T. 272; 49 W. R. 89; 64 J. P. 707). *Vf, R.* v. *London Jus.*, cited PARTY: s. 20, Licensing Act, 1902.

A DIFFERENCE between Railway Companies is not, by Act of Parliament, "required *or authorized*" to be referred to arbitration within s. 8, Regn of Railways Act, 1873, 36 & 37 V. c. 48, when a Private Railway Act merely "confirms and makes binding" (*Cp*, OBLIGATORY) a provisional agreement, one of the clauses of which provides that all differences between the railway companies parties thereto shall be settled by arbitration (per Smith, J., *G. W. Ry* v. *Halesowen Ry*, 52 L. J. Q. B. 473; 4 Ry & Can Traffic Ca. 244, 245, adopted *R.* v. *Mid. Ry*, 56 L. J. Q. B. 585; 19 Q. B. D. 540; 57 L. T. 619; 51 J. P. 550; 5 Ry & Can Traffic Ca. 267): *Vf*, quà this section, *Portpatrick Ry* v. *Caledonian Ry*, 3 Ry & Can Traffic Ca. 189: *Waterford & Limerick Ry* v. *G. W. Ry*, Ib. 546: *G. W. Ry* v. *Central Wales Ry*, 5 Ib. 1.

When a Railway Company, or other body, is empowered by an Act of Parliament to take such lands "*as may be* required" for their undertaking; that means, such lands as the Company, or other body, may fairly think convenient for its purpose. "I cannot think that 'required' (in this connection) means, 'absolutely necessary.' 'Required' means, where the Company *bonâ fide* think and are of opinion that the lands are desirable. I think those cases of *Stockton, &c, Ry* v. *Brown* (9 H. L. Ca. 246) and *Kemp* v. *S. E. Ry* (41 L. J. Ch. 404; 7 Ch. 364) . . . really mean this, that the opinion of the railway authorities is to be the governing matter as to whether the things are for the advantage of the railway, if that opinion is an opinion *bonâ fide* expressed and *bonâ fide* laid before the Court" (per Brett, L. J., *Errington* v. *Metrop District Ry*, 51 L. J. Ch. 313; 19 Ch. D. 559: *City & S. London Ry* v. *London Co. Co.*, cited NECESSARY, towards end: *Vf*, per Ld Robertson, *Macfie* v. *Callander Ry*, 67 L. J. P. C. 61: *G. W. Ry* v. *May*, cited SUPERFLUOUS LAND).

A contractual Monopoly by which A. agrees to "obtain and purchase" from B. all, *e.g.* water, "required" by A. in a specified undertaking, precludes A. from getting a supply in any other way than from B. even though such supply be gratuitous (*Kimberley W. W. Co* v. *De Beers Co*, 1897, A. C. 515; 66 L. J. P. C. 108; 77 L. T. 117).

"*Authorized* and required"; *V. R.* v. *Bristol Dock Co*, 6 B. & C. 181.

Rates "required" *by law* to be based on the Poor Rate; *V. N. E. Ry* v. *Scarborough*, 38 L. J. M. C. 65; L. R. 4 Q. B. 163.

Where Churchwardens are "*directed* and required" to raise a Rate, *e.g.* for Church Purposes, a duty is imposed on them to make the Rate; the assent of the vestry is not necessary, even though the Rate has to be made in vestry (*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).

"*If* required"; *V. Wilson* v. *Kynock*, W. N. (77) 164: *Smith* v. *Pyman*, 7 Times Rep. 417. *V.* ADVANCE.

"Immediate Possession if required"; *V.* IMMEDIATE POSSESSION.

Sprags or props "*where* they are required," R. 22, s. 49, Coal Mines Regn Act, 1887, means, "where they are necessary; and not where the workmen think they are necessary" (per Wills, J., *Gibbon* v. *Phillips*, 64 L. J. M. C. 42).

V. AS REQUIRED.

"Required *to Calculate*," s. 31, Sucn Dy Act, 1853; *V. Re Cornwallis*, 25 L. J. Ex. 149; 11 Ex. 580.

"No longer required"; *V.* USELESS.

Title shall not be "required"; *V.* INVESTIGATING, *Note.*

REQUISITION. — Quà Conditions of Sale, a "Requisition" (or "ENQUIRY," which is synonymous) on Title, is a request based on a defect in title (or its evidence) arising on the Abstract; an "Objection" may arise aliunde (per Blackburn, J., *Waddell* v. *Woolfe*, 43 L. J. Q. B. 138; L. R. 9 Q. B. 515). *V.* INVESTIGATING, *Note.*

REREDOS. — *V. Re St. John, Pendlebury*, 1895, P. 178: *Re St. Mark's*, 1898, P. 114: *Re Barsham*, 1896, P. 256.

RESCIND. — *V.* REVOKE.

RESCUE. — "'Rescous,' *Rescussus*, is an ancient French word comming from *rescourrer* (*id est*) *recuperare*, that is, to take from, to rescue or recover. *Rescous* is a taking away and setting at liberty against law a distresse taken, or a person arrested by the proces or course of law. And all is one, as to the point of the disseisin, to rescue the distresse after it is taken, and before hand to resist and withstand the taking of it; but yet it is no Rescous, until it be distreyned" (Co. Litt. 160 b: *Vh*, Termes de la Ley, *Rescous*: Woodf. 524: Redman, 384).

"Rescue, is the act of forcibly freeing a person from custody against the will of those who have him in custody. If the person rescued is in the custody of a *private* person, the offender must have notice of the fact that the person rescued is in such custody" (Steph. Cr. 99, 100: *Vf*, 4 Bl. Com. 131). *Vh*, 1 Russ. Cr. 904: Rosc. Cr. 790: Arch. Cr. 987. *Cp*, ESCAPE. *V.* PRISON.

RESEMBLING. — "The word 'resembling' means made, or apparently intended, to resemble" (Steph. Cr. 292: *Vh*, *R.* v. *Robinson*, 34 L. J. M. C. 176; L. & C. 604).

RESERVATION. — "'Reservation' is taken divers wayes, and hath divers natures, as sometimes by way of Exception, to keepe that which a man had before in him . . . . Sometimes a reservation doth get and bring forth another thing which was not before . . . . And note, that in ancient time, their reservations were as well (or for the more part) in victuals, whether flesh, fish, corne, bread, drinke, or what else, as in

money, untill at the last, and that chiefly in the raigne of King Henry I., by agreement, the reservation of victuals was changed into ready money, as it hath hitherto since continued" (Termes de la Ley).

"Note a diversitie betweene an EXCEPTION (which is ever of part of the thing granted and of a thing *in esse*) for which, *exceptis, salvo, præter*, and the like, be apt words; and a Reservation which is alwaies of a thing not *in esse*, but newly created or reserved out of the land or tenement demised" (Co. Litt. 47 a; *V.* 1b. 143 a: *State* v. *Wilson*, 42 Maine, 21: *Va*, Touch. 80, where it is said that a Reservation "doth, most commonly and properly, succeed the *Tenendum*, and is made by one or more of these words, *reddend'*, *reservand'*, *solvend'*, *faciend'*, *inveniend'*, or such like").

"In considering what is required by a power of leasing, we should bear in mind that rent, heriots, suit of mill, and suit of court, are, according to the legal sense and meaning of the word, *Reservations*. A privilege to the lessor to hawk, hunt, fish, or fowl, is not either a Reservation or an Exception in point of law" (Sug. Pow. 817).

Therefore a Leasing Power "so as the accustomed yearly *Rents and Reservations* be thereby reserved," would, *semble*, not authorize an Exception of the Mines, Minerals, Quarries, or such like (*Doe* d. *Douglas* v. *Lock*, 2 A. & E. 705; 4 L. J. K. B. 113; 4 N. & M. 807: *Vh*, Sug. Pow. 817, 818).

For an example of words of reservation operating as a grant; *V. Wickham* v. *Hawker*, 10 L. J. Ex. 153; 7 M. & W. 72: on the contrary, *Sutherland* v. *Heathcote*, cited LIBERTY OF WORKING: *Va*, *Pannell* v. *Mill*, cited ROYALTIES.

V. RESERVING: CONDITION.

RESERVE. — A direction to "reserve" the pure personalty for a Charitable Bequest, implies marshalling the assets (*Miles* v. *Harrison*, 9 Ch. 316; 43 L. J. Ch. 585: *Re Arnold*, 57 L. J. Ch. 682; 37 Ch. D. 637; 58 L. T. 469; 36 W. R. 424: 1 Jarm. 237, 238). *Cp*, EXCLUSIVELY.

V. RESERVED BIDDING: RESERVING.

RESERVE FORCES. — Quà Army Act, 1881, 44 & 45 V. c. 58, "'Reserve Forces,' means, the Army Reserve Force and the Militia Reserve Force" (subs. 9, s. 190): *V.* ARMY: MILITIA.

Vf, AUXILIARY: MILITARY FORCES: VOLUNTEER.

RESERVE FUND. — *V. Dent* v. *London Tramways Co*, 50 L. J. Ch. 190; 16 Ch. D. 344.

RESERVED BIDDING. — Where Conditions of Sale provide that the auction is made "subject to a Reserved Bidding," that does not give the right *to bid up* to the reserve price; *secus*, if the words were "a right to bid is reserved" (*Gilliat* v. *Gilliat*, 39 L. J. Ch. 142; L. R. 9 Eq. 60, explaining s. 5, Sale of Land by Auction Act, 1867, 30 & 31 V. c. 48).

Quà Sale of Goods Act, 1893, "where a right to bid is expressly reserved, but not otherwise, the SELLER or any one person on his behalf may bid at the AUCTION" (s. 58).

V. HIGHEST: PUFFER: WITHOUT RESERVE.

RESERVING: RESERVED. — "'*Reserving.*' *Reserve* commeth of the Latine word *reservo*, that is, to provide for store; as when a man departeth with his land, he reserveth or provideth for himselfe a rent for his owne livelihood. And sometime it hath the force of *Saving* or *Excepting*. So as sometime it serveth to reserve a new thing, viz., a rent, and sometime to except part of the thing in *esse* that is granted" (Co. Litt. 142 b, 143 a. *Sv*, this passage criticised in the jdgmt in *Doe* d. *Douglas* v. *Lock*, 4 L. J. K. B. 120; 2 A. & E. 705: *Va*, RESERVATION. But a little further on in the jdgmt in *Doe* d. *Douglas* v. *Lock*, occurs this passage, — "It may be said, however, that if the person who creates the Power uses the word 'Reserving' in such a way as to make an Exception a Reservation, it must be so taken; but, we think, not necessarily").

"Reserved," s. 8, Game Act, 1831, 1 & 2 W. 4, c. 32, "is not used in a technical sense; it points to an arrangement between landlord and tenant; and the game might be reserved by Lease, by Deed, or by Parol contract" (per Lush, J., *Coleman* v. *Bathurst*, L. R. 6 Q. B. 369; 40 L. J. M. C. 134; 24 L. T. 426; 19 W. R. 848: Lush, J., was in a minority only as to whether the agreement there amounted to a Reservation).

Rent "reserved"; *V. Dibble* v. *Bowater*, cited DUE.

V. WITHOUT RESERVE.

RESERVOIR. — *V.* LAND COVERED WITH WATER: TRIBUTARY.

RESIDE: RESIDENCE: RESIDENT. — "Residence," "signifies a mans abode or continuance in a place" (Cowel, *Resiance*).

"What is the meaning of the word 'resides'? I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats drinks and sleeps, or where his family or his servants eat drink and sleep" (per Bayley, J., *R.* v. *North Curry*, 4 B. & C. 959). "A man's Residence is where he habitually sleeps" (per Blackburn, J., *Oldham*, 1 O'M. & H. 158, citing *R.* v. *Norwood*, L. R. 2 Q. B. 457; 36 L. J. M. C. 91: *Sv*, *Walcot* v. *Botfield*, inf).

"'Residence' has a variety of meanings according to the statute (or document) in which it is used" (per Erle, C. J., *Naef* v. *Mutter*, 31 L. J. C. P. 359). It is an "ambiguous word" and may receive a different meaning according to the position in which it is found (per Cotton, L. J., *Re Bowie, Ex p. Breull*, 50 L. J. Ch. 386; 16 Ch. D. 484).

A CONDITION to a gift of a house that the donee take actual possession of it "as and for his Residence and Place of Abode," and continue, during his life, to reside therein, does not imply that the donee must continue personally to live in the house; he will satisfy the condition by keeping up the house as a place of residence in which he, and (or ?) some of the members of his family occasionally dwell (*Warner* v. *Moir*, 53 L. J. Ch. 474; 25 Ch. D. 605: *Vf*, 2 Jarm. 57, 58. It has however been said, "it would seem difficult to reconcile *Warner* v. *Moir* with *Walcot* v. *Botfield*, Kay, 534; 2 Eq. Rep. 758," Watson Eq. 1246. *Vf*, *May* v. *May*, 44 L. T. 412). *Cp*, LIVE AND RESIDE: OCCUPATION, pp. 1311, 1312: PERSONAL OCCUPATION. Such a condition is void if it involves (1) the doing a wrong, (2) the omission of a duty, or (3) an encouragement to either (per Parker, C. J., *Mitchel* v. *Reynolds*, 1 P. Wms. 189: *Wilkinson* v. *Wilkinson*, 40 L. J. Ch. 242; L. R. 12 Eq. 604).

Note: *Semble*, such a Condition is inapplicable to an Infant (*Partridge* v. *Partridge*, cited OMIT), and void quà a TENANT FOR LIFE, because it offends against s. 51, S. L. Act, 1882, as inducing him to abstain from exercising his powers under that act (*Re Paget*, 55 L. J. Ch. 42; 30 Ch. D. 161; 33 W. R. 898: *Vf*, INDUCE). Where, therefore, a testator directed that his widow should be permitted to occupy his dwelling-house, and that if she ceased to reside there the annuity he gave her should be reduced, it was held (1) that she was Tenant for Life of the dwelling-house, and (2) that the reduction of the annuity was void as offending the section cited (*Re Eastman*, cited OCCUPATION). *Sv*, RENT FREE.

A power to "reside in" or "occupy" a building subject to a Condition, — *e.g.* to repair, — would seem to imply that the privilege once accepted is always accepted quà the Condition: thus, where there was a power to A. to occupy a Mill so long as he thought proper, "he nevertheless keeping the premises in good and tenantable repair," and A. accepted, but the premises were afterwards totally destroyed by accidental fire; held, that A. was liable to re-instate the premises, and to pay rent therefor in the meanwhile, and could not escape that liability by declining any longer to occupy (*Gregg* v. *Coates*, 23 Bea. 33; 4 W. R. 735; 2 Jur. N. S. 964).

An Annuity to A., to cease when A. and B. cease to reside together, does not determine by the death of B. (*Sutcliffe* v. *Richardson*, 41 L. J. Ch. 552; L. R. 13 Eq. 606). *V.* USUAL PLACE OF ABODE.

A person "resides," quà *Assessed Taxes*, not only where he sleeps but also at his place of business (*A-G.* v. *McLean*, 1 H. & C. 750; 32 L. J. Ex. 101; 11 W. R. 292; 8 L. T. 113). *V.* BE.

Residence, quà Income Tax Acts; *V. A-G.* v. *Coote*, 4 Price, 183: *Va*, TEMPORARY: *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: *Grainger* v. *Gough*, 1896, A. C. 325; 65 L. J. Q. B. 410; 74 L. T. 435; 44 W. R. 561; 60 J. P. 692: CARRY ON, pp. 264, 265: RESIDING.

In *Re Bowie, Ex p. Breull* (50 L. J. Ch. 385; 16 Ch. D. 484), James, L. J., held that a man "resides" within s. 59, *Bankruptcy Act*, 1869, "where he is to be found daily," *e.g.* a clerk would "reside" at his employer's place of business. But under the Bankry Act, 1883, — *e.g.* in s. 95, — it would seem that "Residence" means, where the person sleeps, or, at any rate, does not include the place where he carries on business; for R. 126, and the Forms in the Appendix to the Rules (*V.* Notes to Forms Nos. 3, 4, and 5) employ the word "resides" in a sense opposed to that of "place of business." *Vf*, "Place of Abode," sub PLACE, p. 1489.

Quà a *Bastardy* Application a woman may "reside" (s. 3, 35 & 36 V. c. 65) in the Petty Sessional Division to which she, for convenience and without improper motive, goes temporarily to reside for the purpose of making the application (*R.* v. *Hughes*, 26 L. J. M. C. 133; Dears. & B. 188); but going over night into a Division is not to "reside" there (*Vevers* v. *Mains*, 4 Times Rep. 724); and if, having made an unsuccessful Application, the woman goes to another Division to make a second Application because she hopes that there she will have a better chance of succeeding, she does not "reside" in the latter Division (*R.* v. *Myott*, 32 L. J. M. C. 138; 27 J. P. 119). If she has no settled residence, she "resides" where she happens to be (*Lawrence* v. *Ingmire*, 33 J. P. 339; 20 L. T. 391). *V.* CEASE.

The "Residence" of a Grantor or an Attesting Witness, required to be verified on the registration of a *Bill of Sale*, may be where he usually sleeps; but for this purpose it is sufficient, and perhaps better, to state the place "where he is chiefly to be found" (per Pollock, C. B., *Attenborough* v. *Thompson*, inf), *e.g.* his place of business, or his master's place of business, where he performs his ordinary duties (*Hewer* v. *Cox*, 30 L. J. Q. B. 73: *Blackwell* v. *England*, 27 L. J. Q. B. 124; 8 E. & B. 541; 6 W. R. 59: *Attenborough* v. *Thompson*, 27 L. J. Ex. 23; 2 H. & N. 559; 6 W. R. 135), or, if not misleading, a man's Club address (*Dolcini* v. *Dolcini*, 1895, 1 Q. B. 898; 64 L. J. Q. B. 427; 43 W. R. 542). If he have more than one, it will be sufficient if one of his Residences be given and verified (*Greenham* v. *Child*, 59 L. J. Q. B. 27; 24 Q. B. D. 29; 38 W. R. 94; 61 L. T. 563; herein agreeing with Bacon, V. C., in *Re Moulson, Ex p. Knightly*, 51 L. J. Ch. 823, and dis-agreeing with him in *Wallis* v. *Smith*, W. N. (82) 77. The point was ruled as stated by Coleridge, C. J. and Charles, J., *Hosking* v. *Wood*, 25th Jan 1893). A wide description of the *locality* of the residence may suffice if it gives such information as would enable a stranger to find the residence without unreasonable trouble (*Briggs* v. *Boss*, 37 L. J. Q. B. 101; L. R. 3 Q. B. 268: *Jones* v. *Harris*, 41 L. J. Q. B. 6; L. R. 7 Q. B. 157), so, even of an inaccurate description, if not such as to mislead persons of ordinary knowledge and intelligence (*Blount* v. *Harris*, 48 L. J. Q. B. 159; 4 Q. B. D. 603). The verified residence should be that at the time of

making the Affidavit (*Button* v. *O'Neill*, 48 L. J. C. P. 368; 4 C. P. D. 354); but, *semble*, the residence at the time of giving the Bill of S. may suffice (*Re Hewer*, 51 L. J. Ch. 904; 21 Ch. D. 871). An inaccurate description in the Bill of S. may be cured by the affidavit (*Jones* v. *Harris*, sup: *Blaiberg* v. *Parke*, 52 L. J. Q. B. 110; 10 Q. B. D. 90). *V.* OCCUPATION: ADDRESS: DESCRIPTION.

"Residence," s. 8, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, means, home or domicil (*Lambe* v. *Smythe*, 15 L. J. Ex. 287; 15 M. & W. 434).

A person's place of business was his "Residence" under s. 6, *Com. L. Pro. Act*, 1852 (*Ablett* v. *Basham*, 25 L. J. Q. B. 239; 5 E. & B. 1019; following *Yardley* v. *Jones*, 4 Dowl. 45); and was at least, *primâ facie* evidence of his residence within s. 2 of that Act (*Naef* v. *Mutter*, 31 L. J. C. P. 357). But in the Indorsement of a Writ under the R. S. C., where the plaintiff "resides" should be given as at his usual place of residence as distinguished from his place of business (*Re a Solicitor*, 5 Times Rep. 339); and so of a person's "Residence" under s. 9, Com. L. Pro. (Ir) Act, 1853 (*Tom* v. *Nagle*, 13 Ir. Com. Law Rep. App. xxxviii).

A *Company* is only "DOMICILED or ordinarily resident," within R. 1 (*c*, *e*), Ord. 11, R. S. C., where its PRINCIPAL OFFICE is (*Jones* v. *Scottish Acc. Insrce*, 55 L. J. Q. B. 415; 17 Q. B. D. 421: *Vh*, *Newby* v. *Van Oppen Co*, 41 L. J. Q. B. 148; L. R. 7 Q. B. 293; 26 L. T. 164: *Carron Co* v. *Maclaren*, 5 H. L. Ca. 416: *Watkins* v. *Scottish Imperial Insrce*, 58 L. J. Q. B. 495: *Haggin* v. *Comptoir d'Escompte*, 58 L. J. Q. B. 508; 23 Q. B. D. 519; 37 W. R. 733). *Vf*, RESIDING.

Though a Foreign Incorporated Co resides in England if it has a place of business there (*Haggin* v. *Comptoir d'Escompte*, sup; *svthc*, *Badcock* v. *Cumberland Gap Park Co*, 1893, 1 Ch. 362; 62 L. J. Ch. 247), yet that rule is not applicable to an individual or private firm (*Russell* v. *Cambefort*, 58 L. J. Q. B. 498).

A Ry Co "resided" within s. 97, Com. L. Pro. Amendment Act (Ir), 1856, 19 & 20 V. c. 102, where it had a Station (*M'Mahon* v. *Irish N. W. Ry*, Ir. Rep. 5 C. L. 200).

V. CARRY ON: DWELL.

Temporary Residence without DOMICIL may be sufficient to found jurisdiction quà a Judicial Separation (*Armytage* v. *Armytage*, 1898, P. 178; 67 L. J. P. D. & A. 90; 78 L. T. 689).

Quà *Elementary Education* (Blind and Deaf Children) Act, 1893, 56 & 57 V. c. 42, "a Child resident in a school, or boarded out in pursuance of this Act, shall be deemed to be resident in the district from which the child is sent" (subs. 2, s. 15).

Quà s. 189, *Merchant Shipping Act*, 1854, repld s. 165, Mer Shipping Act, 1894, the residence of the Owner or Master of a Ship does not include a place of occasional business (*The Blakeney*, Swabey, 428).

Quà *Oxford University Act*, 1854, 17 & 18 V. c. 81, s. 48, a Fellow

of a College, having a living where he usually resided 9 miles from Oxford, but having also exclusive occupation of rooms at his College, in which rooms he frequently slept, was held not a "Resident" so as to be eligible as a member of the Congregation of the University (*R.* v. *Oxford*, L. R. 7 Q. B. 471).

Residence quà a *Pauper Settlement* or a status of Irremoveability (s. 34, 39 & 40 V. c. 61) must be his home and fixed place of abode (*Holborn* v. *Chertsey*, 54 L. J. M. C. 53; 14 Q. B. D. 289: *Vf, Merthyr Tydvil* v. *Stepney*, 54 L. J. M. C. 12: *R.* v. *Abingdon*, 39 L. J. M. C. 153; L. R. 5 Q. B. 406: *R.* v. *Glossop*, 35 L. J. M. C. 148; L. R. 1 Q. B. 227: *R.* v. *St. Leonard's, Shoreditch*, 35 L. J. M. C. 48; L. R. 1 Q. B. 21: *Wolstanton* v. *Northwich*, 46 L. T. 528: *R.* v. *East Stonehouse*, 23 L. J. M. C. 137; 4 E. & B. 901). As to what is a Break of such a residence, *V. R.* v. *Stapleton*, 1 E. & B. 766: *Manchester* v. *Ormskirk*, 16 Q. B. D. 723: *R.* v. *St. Leonard's, Shoreditch*, sup: *Cambridge* v. *Edmonton*, 1900, 2 Q. B. 111; 69 L. J. Q. B. 584; 82 L. T. 495; 48 W. R. 559; 64 J. P. 533: As to a Child under 16, *V. West Ham* v. *St. Matthew*, 1894, A. C. 230; 63 L. J. M. C. 97; 70 L. T. 818; 42 W. R. 573; 58 J. P. 493.

"Justice having jurisdiction in the place where the Pauper resides," s. 14 (2), Lunacy Act, 1890; *V. R.* v. *Bell*, 1900, 2 Q. B. 391; 69 L. J. Q. B. 622; 82 L. T. 711; 64 J. P. 789.

Quà *Representation of the People Acts* (*V.* Act, 1832, ss. 27, 32; Act, 1867, ss. 46, 4 (3): s. 27, Act, 1832, was repealed by Rep. People Act, 1884, but condition of residence has still an application, *V.* Registration Order, 1895, Sch 2, Part 1, ss. 8, 9, 11, 12, 14), Residence includes a dwelling-place always kept up by the vote-claimant though only occasionally resided in by himself personally (*Northallerton*, 1 O'M. & H. 170, 171, cited by Chitty, J., *Re Ingilby*, 6 Times Rep. 446: *Sv, Oldham*, 1 O'M. & H. 158: *Bewdley*, Ib. 175: *Whithorn* v. *Thomas*, 7 M. & G. 1; 14 L. J. C. P. 38), and especially so if it be the usual residence of his wife, for ubi uxor ibi domus (*Northallerton*, sup: *Great Marlow*, B. & Aust. 83: *Sv, R.* v. *Norwood*, L. R. 2 Q. B. 457; 36 L. J. M. C. 91). But such a constructive dwelling-place must be one which the vote-claimant is always *able* to enjoy personally and to which, whilst away, he has the *animus revertendi*. Therefore, a person in prison (*Powell* v. *Guest*, 34 L. J. C. P. 69; 18 C. B. N. S. 72: *Donnelly* v. *Graham*, 24 L. R. Ir. 127: *Sv, Charlton* v. *Morris*, 1895, 2 I. R. 541: *Holland* v. *Hagan*, Ib. 551), or prevented by duty from residing at his dwelling-place, *e.g.* a soldier away on duty (*Ford* v. *Hart*, L. R. 9 C. P. 273; 43 L. J. C. P. 24; 2 Hop. & Colt. 167), or a clerk or servant whose general duties compel him to live away (*Ford* v. *Drew*, 5 C. P. D. 59; 49 L. J. C. P. 172: *Beal* v. *Exeter*, 20 Q. B. D. 300; 57 L. J. Q. B. 128; 58 L. T. 407; 36 W. R. 507; 52 J. P. 501: *secus*, if sent away for only one night, *Beal* v. *Ford*, 3 C. P. D. 73; 47 L. J. C. P. 56; 2 Hop. &

Colt. 374), cannot be said to "reside" at such dwelling-place. So, of one who has, for however short a period, deprived himself of the dominion over his dwelling-place, *e.g.* a non-resident clergyman whose rectory-house has been assigned to the officiating curate (*Durant* v. *Carter*, L. R. 9 C. P. 261; 43 L. J. C. P. 17; 2 Hop. & Colt, 142), or a clergyman who has exchanged duty and residence (*Ford* v. *Pye*, L. R. 9 C. P. 269; 43 L. J. C. P. 21; 2 Hop. & Colt. 157). But a residence, if actual, is not less a residence because tortious (*Beal* v. *Ford*, sup). *Cp*, "Inhabitant Occupier," sub INHABITANT. *Note*: Non-residence whilst being away on duty, for "not exceeding 4 months at any one time," has a statutory exemption (54 & 55 V. c. 11, making general the Police exemption of 50 & 51 V. c. 9); *Va*, as to losing dominion by letting a dwelling-place as a furnished house for a like period, 41 & 42 V. c. 3. *Vh*, 1 Rogers, 148 *et seq*.

As to what amounted to a Residence for 12 months sufficient to qualify a London Vestryman; *V. Stanford* v. *Williams*, 80 L. T. 490; 15 Times Rep. 316.

Quà *Small Dwellings Acquisition Act*, 1899, 62 & 63 V. c. 44, a person is not "resident in a house unless he is both the Occupier of, and Resident in, that house" (s. 10).

V. DOMICIL: INHABITANT: OCCUPATION: OCCUPIER: ORDINARY RESIDENCE: PRIVATE DWELLING-HOUSE: REAL RESIDENT HOLDER.

"Resident *Abroad*," quà obtaining from a plaintiff Security for Costs; *V.* Ann. Pr., notes to R. 6, Ord. 65, R. S. C.: Dan. Ch. Pr. 84.

"Bonâ fide Residence"; *V.* BONÂ FIDE.

Residence and Non-Residence of the Clergy; *V.* Phil. Ecc. Law, 884–898: Residence Houses of the Clergy; *V.* Ib. Part 5, ch. 2.

"Now resides," "Now residing"; *V.* Now, p. 1297.

"Place of Residence"; *V.* PLACE, p. 1490.

"Return to reside in England"; *V.* RETURN.

Royal Residence; *V.* ROYAL PALACE.

The erection of huts for evicted tenants is inconsistent with a demise of land for the purpose of providing a "*Suitable* Residence and Holding" for a Clergyman (*Kehoe* v. *Lansdowne*, 1893, A. C. 451; 62 L. J. P. C. 97).

"Agents or Servants *usually* residing with" the Real Worker of Goods, so as to escape the PEDLAR'S license, s. 23, 50 G. 3, c. 41, included only such agents and servants as resided in the same house as their employer as members of his family (*R.* v. *Mainwaring*, 10 B. & C. 66).

RESIDENT MAGISTRATE. — In Ireland, a "Resident Magistrate," means, a MAGISTRATE appointed in pursuance of the Constabulary (Ir) Act, 1836, 6 & 7 W. 4, c. 13 (s. 11 (6), 50 & 51 V. c. 20).

RESIDENT PRIEST. — A legacy to the "Resident Priest" of a locality, comprises one whose usual residence is elsewhere but who is the

duly appointed Resident Priest of the locality and who occasionally sleeps in the priest's house there, which house he keeps up, and who performs many religious services in the locality (*Re Ingilby*, 6 Times Rep. 446; 89 Law Times, 253, 254).

V. PRIEST.

RESIDENTIAL FLAT.—*V.* FLAT.

RESIDING.—A Turkish Corporation, by Turkish law established as a state Bank for the Ottoman Empire with its seat at Constantinople and power to establish branches, established a branch in London under the control of directors resident in England; held, that the Corporation was not a "person residing in the United Kingdom," quà Income Tax, within s. 2, Sch D, 16 & 17 V. c. 34 (*A-G.* v. *Alexander*, 44 L. J. Ex. 3; L. R. 10 Ex. 20). But a Joint Stock Co having a registered office in London, from which also its affairs in the United Kingdom were managed by a board of English directors, and to which were sent transcripts of the Co's books and also the money for the dividends to English shareholders, was held to be "residing" in the United Kingdom within the section cited, although all the working operations of the Co were in Italy, where also all its profits were earned under the direction of a Board resident there, and where also its books and general moneys were kept (*Cesena Sulphur Co* v. *Nicholson*, 45 L. J. Ex. 281; 1 Ex. D. 428: at same reference *Va*, *Calcutta Jute Co* v. *Nicholson*, which was a similar case in India).

V. LIVING: RESIDE.

RESIDUARY BEQUEST or DEVISE.—*V.* REST.

RESIDUARY EXECUTOR.—*V.* PERSONAL ESTATE.

RESIDUARY LEGATEE.—A person appointed "Residuary Legatee" takes all the RESIDUE of the personal estate (*Langley* v. *Thomas*, 6 D. G. M. & G. 645; 5 W. R. 219).

Like LEGACY, "Residuary Legatee" has, *primâ facie*, reference only to personalty (*Windus* v. *Windus*, 26 L. J. Ch. 185; 6 D. G. M. & G. 549: *Re Spooner*, 21 L. J. Ch. 151; 2 Sim. N. S. 129: *Re Morris*, 71 L. T. 179: *Hamilton* v. *Foot*, Ir. Rep. 6 Eq. 572: *Gethin* v. *Allen*, 23 L. R. Ir. 236); contextually, however, it may extend to realty (*Hughes* v. *Pritchard*, 46 L. J. Ch. 840; 6 Ch. D. 24), but in that case there was a prior gift of the realty, and where there is no such a gift, *Hughes* v. *Pritchard* is not in point (*Re Methuen and Blore*, 50 L. J. Ch. 464; 16 Ch. D. 696). But the contextual widening of this phrase is supplied in such a case as where a testator directed his exors to sell specified landed property, and then gave legacies and made specific devises of other landed property, and concluded, "I constitute A. my Residuary Legatee," and there it was held that the land not specifically devised (after satisfying

the general purposes of the Will) went to A., and not to the heir-at-law (*Singleton* v. *Tomlinson*, 3 App. Ca. 404; 38 L. T. 653; 26 W. R. 722: *Re Sankey*, W. N. (89) 79: *Sv*, *Re Morris*, sup). *Vh*, 1 Jarm. 743: *Re Williams*, *Williams* v. *Acton*, 35 S. J. 24.

RESIDUARY PERSONAL ESTATE. — *V. Court* v. *Buckland*, 45 L. J. Ch. 214; 1 Ch. D. 605: 1 Jarm. 761 *et seq.*

RESIDUE. — *V.* REMAINDER: REST: SURPLUS: WHAT IS LEFT.

"A 'Residue' of personal estate, means, the personal estate which remains after payment of the testator's debts, funeral and testamentary expenses, and the costs of the administration of the estate, including the costs of an administration suit" (Dan. Ch. Pr. 842, citing *Trethewy* v. *Helyar*, 4 Ch. D. 53; 46 L. J. Ch. 125: *Fenton* v. *Wills*, 7 Ch. D. 33: *Blann* v. *Bell*, 7 Ch. D. 382; 47 L. J. Ch. 120: *Re Jones*, 10 Ch. D. 40), and after payment of the legacies. *Vf*, *Re Brook*, 13 W. R. 573; 12 L. T. 172: *Trott* v. *Buchannan*, 33 W. R. 339.

"Keep the Residue"; *V.* KEEP, at end.

An Appointment, of part of a fund subject to a Power, to A., B., and C., each taking a separate sum, followed by an Appointment to D. of the "Residue," will not, under "Residue," pass either of such sums which may lapse by the death of A., B., or C., in the appointor's lifetime (*Lakin* v. *Lakin*, 13 W. R. 704; 12 L. T. 517).

A gift of "Residue" following on a gift of the remainder of the testator's estate, does not nullify that latter gift (*Kilvington* v. *Parker*, 21 W. R. 121: *Bristow* v. *Masefield*, 31 W. R. 88).

The "Residue" of a fund, means, what remains after the withdrawal of a part; not a definite share of it (*Vivian* v. *Mortlock*, 21 Bea. 252).

Bequest of "Residue and Remainder" of two mortgage debts; *V. Re Grainger*, 1900, 2 Ch. 756; 69 L. J. Ch. 789; revd in H. L. nom. *Higgins* v. *Dawson*, 1902, A. C. 1; 71 L. J. Ch. 132.

"Residue" in the sense of an arithmetical remainder; *V. Stokes* v. *Prance*, 67 L. J. Ch. 74; 1898, 1 Ch. 222.

"Residue of *Interest and Rents*"; *V.* RENTS AND PROFITS.

As to value of "Residue" for exercising a Power of Appointment; *V. Re Milner*, 1899, 1 Ch. 563; 68 L. J. Ch. 255; 80 L. T. 151; 47 W. R. 369.

Revocation of gift of "the Residue"; *V. Clarke* v. *Butler*, 1 Mer. 304.

"Residue of *my Money*," held to include stocks, shares, and securities for money (*Re Smith*, *Henderson-Roe* v. *Hitchins*, cited MONEY). The "Residue of Money," held a gift of the general residue (*Re White*, 51 L. J. P. D. & A. 40; 7 P. D. 65).

V. Specific Bequest, sub SPECIFICALLY.

"Residue of the said *Sums*" in a Settlement; *V. De Lisle* v. *Hodges*, 43 L. J. Ch. 385; L. R. 17 Eq. 440: *Cp*, OVERPLUS.

"Residue of a *Term*," sale of; *V.* LEASE.

A devise of "Residue" of lands, though personalty was included in it, passed the fee even before s. 28, Wills Act, 1837 (*Murray* v. *Wise*, Pr. Ch. 264; 2 Vern. 564: *Tanner* v. *Wise*, 3 P. Wms. 295: *Tilley* v. *Simpson*, 2 T. R. 659: *Hopewell* v. *Ackland*, 1 Com. 164).

V. CHATTELS; OUT OF THE RESIDUE.

RESIGNATION.—"'Resignation,' *Resignatio*, is used particularly for the giving up of a BENEFICE into the hands of the Ordinary, otherwise, by the Canonists, termed *Renunciatio*. And though it signifie all one in nature with the word SURRENDER, yet it is by custome restrained to the yielding up a Spiritual Living, and 'Surrender' to the giving up of Temporal Lands into the hands of the Lord" (Cowel).

Vh, Phil. Ecc. Law, Part 2, ch. 13: Cripps' Church and Clergy, 642–659.

A Resignation of an OFFICE, "implies that the party resigning has been elected into the Office which he resigns; a man cannot 'resign' that which he is not entitled to" (per Cockburn, C. J., *R.* v. *Blizard*, 36 L. J. Q. B. 21; L. R. 2 Q. B. 57).

Cp, RENUNCIATION.

RESOLUTION.—Quà Bankry Act, 1883, "'Resolution,' means, Ordinary Resolution," and "'*Ordinary* Resolution,' means, a Resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution": "'*Special* Resolution,' means, a Resolution decided by a majority in number and ¾ths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution" (s. 168).

"Resolution," s. 72 (2), Bankry Act, 1883, means, the Resolution fixing the Trustee's Remuneration, whether that be by the creditors or the committee of inspection (*Re Gallard*, 1892, 1 Q. B. 532; 61 L. J. Q. B. 425; 66 L. T. 452; 40 W. R. 385).

The Companies Act, 1862, "provides for three sorts of Resolutions;—(1) an *Ordinary* Resolution, which is that of a simple majority of members at a duly convened and constituted meeting; (2) a *Special* Resolution; (3) an *Extraordinary* Resolution. A *Special* Resolution, is a Resolution passed by ¾ths of the members present at a general meeting of which notice, specifying the intention to propose such resolution, has been duly given; and confirmed by a subsequent resolution, passed by a majority at a subsequent general meeting, of which notice has been duly given, held at an INTERVAL of not less than 14 days nor more than one month from the date of the first meeting (s. 51). A fresh notice should be given for the second meeting (*Alexander* v. *Simpson*, 43 Ch. D. 139; 59 L. J. Ch. 137). An *Extraordinary* Resolution is a Resolution passed by ¾ths of the members present at a general meeting of which notice

specifying the intention to propose such resolution has been duly given; but needs no confirmation (s. 129). In other words, an Extraordinary Resolution is the first step of a Special Resolution" (Smith's Company Law, 6 ed., 74, 75). A member may be present "in person or by proxy, in cases where, by the regulations of the Co, proxies are allowed" (s. 51). *Vh*, *Re Bridport Old Brewery Co*, 2 Ch. 191: *Re Silkstone Fall Colliery Co*, 1 Ch. D. 38: *Vf*, SPECIFY.

"Special Resolution," quà Canal Boats Act, 1877, 40 & 41 V. c. 60, means, "a resolution passed in manner provided by" s. 51, Comp Act, 1862 (s. 12).

Resolution of a Municipal Corporation to grant a Lease; *V. Drogheda* v. *Holmes*, 5 H. L. Ca. 460.

RESORT. — "To resort" to a place, *e.g.* s. 1, 16 & 17 V. c. 119, means, physically to go to a place other than your own in the sense of FREQUENTING it; sending letters and telegrams to a place, is not "resorting" thereto (*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; 11 Times Rep. 54: *Cp*, BROTHEL). So, one Member of a Club betting with other Members on the Club premises, does not "use" the Club for "betting with persons resorting thereto," within ss. 1, 3, Ib. (*Downes* v. *Johnson*, 1895, 2 Q. B. 203; 64 L. J. M. C. 238; 72 L. T. 728; 43 W. R. 556; 59 J. P. 487). *V. Murphy* v. *Arrow*, cited FOUND, p. 758.

"Open, keep, or use"; *V.* USE.

"Place of Resort"; *V.* PLACE, pp. 1484, 1485.

RESPECT. — *V.* IN RESPECT OF.

RESPECTABLE. — *V.* RESPONSIBLE.

RESPECTIVE: RESPECTIVELY. — "Respective," "respectively," are words of severance. Occurring in a testamentary gift to more persons than one, their effect is "to sort out" the devisees or legatees so that they take as TENANTS IN COMMON (*Re Moore*, 31 L. J. Ch. 368; 10 W. R. 315; 6 L. T. 43; wherein Wood, V. C., explained his own decision in *Re Hodgson*, 1 K. & J. 178: *Va*, *Sutcliffe* v. *Howard*, 38 L. J. Ch. 472; 17 W. R. 819: *Ive* v. *King*, 16 Bea. 46; 21 L. J. Ch. 560: *Davis* v. *Bennett*, 31 L. J. Ch. 337: *Vf*, 2 Jarm. 257, 259: Wms. Exs. 1327). But a devise to S. M. for life, remainder to the children of her body and the heirs of their "respective" bodies, creates a JOINT TENANCY in the children and several inheritances in tail (*Ex p. Tanner*, 20 Bea. 374; 24 L. J. Ch. 657); in which case it was also held that a tenancy in common in the children would have been created, if the devise had been to the children and the heirs of their bodies "respectively," because in that case the word "respectively" would have had reference to the whole estate. *Vf*, *Pery* v. *White*, 2 Cowp. 781: *Doe* d. *Patrick* v. *Royle*, 18 L. J. Q. B. 145; 13 Q. B. 100:

Doe d. *Littlewood* v. *Green*, 8 L. J. Ex. 65; 4 M. & W. 229: *Re Atkinson*, 1892, 3 Ch. 52; 61 L. J. Ch. 504: *Vanderplank* v. *King*, 3 Hare, 1; 12 L. J. Ch. 497; 7 Jur. 548: *Gordon* v. *Atkinson*, cited EACH: *Torrett* v. *Frampton*, Style, 434: Wms. Exs. 1329.

Cross-Remainders may be implied notwithstanding the use of these words (2 Jarm. 545, 551).

Sometimes "respective," and "respectively," are read into testamentary dispositions; *V.* AT, p. 137.

In a Power of Sale to Trustees "and their *respective heirs and assigns*," "respective" was rejected as surplusage, so that surviving Trustees could make a title (*Jones* v. *Price*, 10 L. J. Ch. 195; 11 Sim. 557).

"In Court or in Chambers *respectively*," s. 39, Jud. Act, 1873, means "*either* in Court or in Chambers" (*Salm-Kyrburg* v. *Pomansky*, 53 L. J. Q. B. 428; 13 Q. B. D. 218: *Amstell* v. *Lesser*, 55 L. J. Q. B. 114; 16 Q. B. D. 189).

"Respective Owners or Occupiers," s. 150, P. H. Act, 1875, means, "all and every of them" (per Kekewich, J., *Handsworth* v. *Derrington*, 66 L. J. Ch. 694).

S. 10, Jud. Act, 1875, incorporating into the administration of Insolvent Estates and the winding-up of Companies the rules of Bankruptcy as to the "respective Rights of Secured and Unsecured Creditors," affects the rights of all classes of creditors *inter se* (*Re Whitaker*, 1900, 2 Ch. 676; 1901, 1 Ch. 9; 69 L. J. Ch. 774; 70 Ib. 6, over-ruling *Re Maggi*, *Winehouse* v. *Winehouse*, 51 L. J. Ch. 560; 20 Ch. D. 545).

RESPITE. — Respite is a delay, forbearance, or continuance, of time (Glanvil, l. 12, c. 9), *e.g.*, as used in a Copyhold Admittance, "but his Fealty was respited," or to "respite" the doing of HOMAGE (Cowel, *Respite of Homage*), or to "respite" an Appeal at Quarter Sessions, or "the Jury is respited, through defect of the Jurors" (3 Bl. Com. 354), or to "respite" execution of the judgment on a convict.

V. ADJOURN. *Cp*, REPRIEVE.

RESPONDENT. — The Respondent in a Matrimonial Cause is the defendant thereto. The Co-Respondent, is the ALLEGED adulterer who, in a suit by a husband, must be joined as a deft unless the Court "on SPECIAL Grounds" excuses (s. 28, Matrimonial Causes Act, 1857).

The deft to a Quarter Sessions Appeal, is called the Respondent; so, generally, of the deft to a Petition. So, of Appeals generally, the party (whether plt or deft) against whom the appeal is brought, is called the Respondent.

Quà Summary Prosecutions Appeals (Scot) Act, 1875, 38 & 39 V. c. 62, "'the Respondent,' means and includes, any PARTY to a cause other than the party appealing under this Act against the determination thereof by an Inferior Judge" (s. 2).

RESPONDENTIA. — *V.* BOTTOMRY BOND.

RESPONSIBLE. — *V.* INDEMNIFY.

A Condition which exonerates a Carrier from being "responsible" for an article, extends to its damage as well as to its loss (*Pratt* v. *S. E. Ry*, 1897, 1 Q. B. 718; 66 L. J. Q. B. 418; 76 L. T. 465; 45 W. R. 503: *Van Toll* v. *S. E. Ry*, 31 L. J. C. P. 241; 12 C. B. N. S. 75).

"Responsible OFFICER," quà the Customs, means and includes, "the Master, Mates, and Engineers, of any Ship; and, in the case of a ship carrying a Passenger Certificate, the Purser or Chief Steward; and, where the ship is manned by Asiatic seamen, the Serang or other leading Asiatic officer" (s. 3, 53 & 54 V. c. 56).

When a clause in a Lease (against Assignment without consent) provides that Consent shall not be refused to a "PERSON of responsibility or respectability," *semble*, a Municipal Corporation is not a "person" within the provision (*Harrison* v. *Barrow in Furness*, 63 L. T. 834; 39 W. R. 250).

V. UNREASONABLY.

A Bankrupt cannot "justly be held responsible" for his estate not paying 10*s.* in the £ (s. 8 (3), Bankry Act, 1890; s. 56 (1), 35 & 36 V. c. 58), if, being a Respondent in an Election Petition, he tried to stay the proceedings by offering to give up the seat, but which offer the judges declined and so the hearing lasted several days, the result being that the respondent was un-seated, and ordered to pay costs which proved heavy and his failure to pay which caused the bankry (*Re Davitt*, 1894, 1 I. R. 517).

REST. — Phrases in a will dealing with the residue of a person's property, — *e.g.* "Rest," "RESIDUE," and "REMAINDER," or either or any of such words, — are not merely most comprehensive in themselves, but will frequently enlarge the scope of other words in association with them.

A Residuary Bequest, always (*Cambridge* v. *Rous*, 8 Ves. 25: *Leake* v. *Robinson*, 2 Mer. 392: *Reynolds* v. *Kortright*, 18 Bea. 427), and a Residuary Devise, since Jan 1st 1838 (Wills Act, 1837, s. 25), carries not only everything not in terms disposed of, but "sweeps in everything (*Sv, Springett* v. *Jenings*, 40 L. J. Ch. 348; 6 Ch. 333; distd *Re Mason*, 1901, 1 Ch. 619; 70 L. J. Ch. 343) which turns out to be undisposed of" (per Wood, V. C., *Bernard* v. *Minshull*, 28 L. J. Ch. 657: *Vf, Re Bagot*, 1893, 3 Ch. 348; 62 L. J. Ch. 1006; 69 L. T. 399: *Cogswell* v. *Armstrong*, 2 K. & J. 227: 1 Jarm. 761 *et seq*: Theobald, ch. 19: Wms. Exs. 1319: As to Devises, Jarm. ch. 20: Lewin, 169, 170); except a Share of the Residue itself which, on failing, will go as undisposed of, unless it be the manifest intention of the testator that such lapsed share should belong to the donees of the residue (1 Jarm. 764: *Re Rhoades*, 54 L. J. Ch. 573; 29 Ch. D. 142; 33 W. R. 608: *Holgate* v. *Jennings*,

73 S. J. 303; following *Crawshaw* v. *Crawshaw*, 49 L. J. Ch. 662; 14 Ch. D. 817; 29 W. R. 68. *Vf*, *Re Ballance*, 58 L. J. Ch. 534; 42 Ch. D. 62; 37 W. R. 600, in *whlc* the conflicting cases from *Humble* v. *Shore*, 7 Hare, 247, downwards are succinctly stated by Kay, J.; and, probably, *Humble* v. *Shore*, and the cases following it, may now be regarded as definitely over-ruled by *Re Palmer*, 1893, 3 Ch. 369; 62 L. J. Ch. 988; 69 L. T. 477; 42 W. R. 151). *V.* FALL.

"All the Rest" (*Attree* v. *Attree*, 40 L. J. Ch. 192; L. R. 11 Eq. 280; 24 L. T. 121; 19 W. R. 464: *Dobson* v. *Bowness*, L. R. 5 Eq. 404), or "the Rest and Residue" (*Smyth* v. *Smyth*, 8 Ch. D. 561; 26 W. R. 736; 38 L. T. 633), may very well include and pass realty, even though found in association with words relating to personalty. In the latter case a gift of "my sheep and all the rest, residue, moneys, chattels, and all other my *effects*," was held (by Malins, V. C.) to pass realty. But in *Doe* d. *Hurrell* v. *Hurrell* (cited ESTATE AND EFFECTS) a gift of "all the Rest and Residue of my Estate" was, on the context, confined to personalty. *Vh*, *Marhant* v. *Twisden*, Gilb. Eq. Rep. 30: *Murray* v. *Wise*, cited RESIDUE, at end: *Meeds* v. *Wood*, 19 Bea. 215: 1 Jarm. 728.

Where Pecuniary Legacies are followed by a gift (by whatever words) of the Residue of the Real and Personal Estate, such residue is a mixed fund on which the legacies are charged proportionally and rateably (*Greville* v. *Brown*, 7 H. L. Ca. 697: *Gainsford* v. *Dunn*, 43 L. J. Ch. 403; L. R. 17 Eq. 405: *Re Bawden*, 1894, 1 Ch. 693; 63 L. J. Ch. 412; 70 L. T. 526; 42 W. R. 235). As to working out proportion of liability for Debts between such a residuary donee and specific legatees, *V. Raikes* v. *Boulton*, 29 Bea. 41: *Re Saunders-Davies*, 56 L. J. Ch. 492; 34 Ch. D. 482: *Re Bawden*, sup.

"All the Rest of my Money, however invested"; *V. Re Pringle*, 50 L. J. Ch. 689; 17 Ch. D. 819.

"Rest of my Residuary Estate"; *V. Re Judkin*, cited SEVERANCE.

As to the efficacy of "All the Rest" to pass the LEGAL ESTATE, *V. Re Brown and Sibly*, 24 W. R. 782.

V. RESIDUE: REMAIN: ALL.

A Rest, in taking an ACCOUNT, is a pause at which the net balance between receipts and expenses is ascertained, so that interest may be abated or charged according to the finding; *e.g.*, as between Mortgagee in Possession and his Mtgor, to reduce the principal on which interest is thenceforth to be debited, or (if it be shown that the principal has been more than paid) to charge the Mtgee with interest on the excess: *V.* "*Taking Accounts with Rests*," Fisher, s. 1793 *et seq.*

Rests as between a Purchaser who has been let into possession and his unpaid Vendor; *V. Donovan* v. *Fricker*, Jacob, 165: *Neesom* v. *Clarkson*, 4 Hare, 104: *Patch* v. *Wild*, 7 Jur. N. S. 1181.

As between Tenant for Life and Remainder-man, *V. Re Chesterfield*, 52 L. J. Ch. 958; 24 Ch. D. 643.

RESTITUTION. — " 'Restitution, *Restitutio*,' is the yielding up again, or restoring, of any thing unlawfully taken from another. But it is most frequently used in the Common Law for the setting him in possession of Lands or Tenements that hath been unlawfully disseised of them " (Cowel).

Restitutio in integrum; *V. Western Bank of Scotland* v. *Addie*, L. R. 1 H. L. Sc. 145: *Adam* v. *Newbigging*, 57 L. J. Ch. 1066; 13 App. Ca. 308.

Restitution of Conjugal Rights; *V.* Browne & Powles on Divorce, 6 ed., ch. 4: 11 Encyc. 261–263. Disobedience to an Order for such Restitution, is equivalent to matrimonial DESERTION for 2 years (s. 5, 47 & 48 V. c. 68).

Writ of Restitution; *V. R.* v. *London*, L. R. 4 Q. B. 371; nom. *Walker* v. *London*, 38 L. J. M. C. 107.

RESTORE. — " When the statute, 7 & 8 G. 4, c. 29, s. 57, says that the stolen property 'shall be restored,' it may mean, the chattel stolen shall be restored; but at all events it means, the restoration of the right " (per Patteson, J., *Scattergood* v. *Sylvester*, 15 Q. B. 511), and the right to the property re-vests on conviction of the thief, so that the owner can recover it even against one who purchased it in MARKET OVERT (*S. C.* 19 L. J. Q. B. 447: *Nickling* v. *Heaps*, 21 L. T. 754; *whc* followed the principle of *Horwood* v. *Smith*, 2 T. R. 750 on 21 H. 8, c. 11: *Vf*, *Chichester* v. *Hill*, 52 L. J. Q. B. 160). The same ruling applies to the similar phrase in s. 100, Larceny Act, 1861 (*Bentley* v. *Vilmont*, 57 L. J. Q. B. 18; 12 App. Ca. 471; 57 L. T. 854; 36 W. R. 481; 52 J. P. 68). In all the cases the principle was upheld that no Order for Restitution was or is necessary to perfect the statutory restoration of the right to the chattel. *Vh*, *Moss* v. *Hancock*, cited MONEY, p. 1217.

An obligation to " restore " a ROAD interfered with under compulsory powers, *semble*, is to make it as nearly as possible identical with the road before the interference (*R.* v. *Birmingham & Gloucester Ry*, 2 Q. B. 47; 10 L. J. Q. B. 322).

V. MAKE GOOD: RESTITUTION.

RESTRAINING NOTICE. — *V.* Stop Order, sub STOP.

RESTRAINT. — " 'Restraint,' in a Marine Insurance, is the preventing the goods from being got away without laying hands upon them " (per Brett, J., *Rodocanachi* v. *Elliott*, L. R. 8 C. P. 659: 9 Ib. 518; 42 L. J. C. P. 247; 43 Ib. 255). *Vh*, criticism by Cave, J., *Johnston* v. *Hogg*, 52 L. J. Q. B. 343.

V. RESTRAINTS OF KINGS.

RESTRAINT OF TRADE. — Though Contracts in Restraint of Trade were at first a horror to the Bench, so much so that when one was produced to Hull, J., he declared it contrary to the Common Law and

swore that had the plaintiff been present he would have sent him to prison until he had paid a fine to the King (2 Hen. 5, fol. 5, pl. 26), yet now the rule is, to construe the contracts and see if they are reasonable under all the circumstances of each particular case: if so, the Restraint may extend over the whole life of the Contractor (per Chitty, J., *Mills* v. *Dunham*, 1891, 1 Ch. 576; 60 L. J. Ch. 362), and it may extend over the whole world, if (in the altered circumstances of modern times and the nature of the business) such a restriction is reasonably required for the protection of the Contractee and is not injurious to the PUBLIC (*Nordenfelt* v. *Maxim Nordenfelt Co.*, 1894, A. C. 535; 63 L. J. Ch. 908; 71 L. T. 489; *whcv*, 1893, 1 Ch. 630; 62 L. J. Ch. 273, for a luminous review of the previous authorities by Bowen, L. J., whose remarks were afterwards, in H. L., criticised by Ld Macnaghten). The doctrine of reasonableness as expounded in Nordenfelt's case applies not only to contracts on the Sale of a Business, but also to a contract for service (*Underwood* v. *Barker*, 1899, 1 Ch. 300; 68 L. J. Ch. 201; 80 L. T. 306; 47 W. R. 347: *Vf*, *Haynes* v. *Doman*, 68 L. J. Ch. 419; 1899, 2 Ch. 13).

Vh, Matthews on Restraint of Trade: Add. C. 87: Leake, 633: 11 Encyc. 265–269.

For an example of an unreasonable agreement, *V. Morse* v. *Fowler*, 44 S. J. 89; of a restraint being construed as personal to the contractee, *V. Davies* v. *Davies*, cited So FAR AS, *whcva*, for a discussion of the judicial change of view quà these agreements.

V. CARRY ON: GOODWILL: NEIGHBOURHOOD: USUAL.

RESTRAINT ON ALIENATION. — As to what words will operate as a Restraint on Alienation of property by a married woman, *V.* Elph. 301–303: 2 Jarm. 26 *n*: Watson Eq. 396: what will offend such a Restraint, *V.* ALIENATION and its cross-references: as to its removal, *V.* BENEFIT: as to the property being made liable for Costs, *V. Cox* v. *Bennett*, 1891, 1 Ch. 617; 60 L. J. Ch. 651; 64 L. T. 380: *Hood Barrs* v. *Heriot*, 1896, A. C. 174; 66 L. J. Q. B. 356: s. 2, M. W. P. Act, 1893, on *whv* INSTITUTED.

Note: A Restraint on Alienation (or, in other words, against ANTICIPATION) by a married woman "can never exist except as an accessory to a trust for a SEPARATE USE" (per Fry, L. J., *Stogdon* v. *Lee*, 1891, 1 Q. B. 661; 60 L. J. Q. B. 669; 64 L. T. 494; 39 W. R. 467), which case decided that such a trust cannot be inferred from a restraint alone. In a Settlement made *after* the M. W. P. Act, 1882, a Restraint is good without words creating Separate Use, because the statute itself supplies that (*Re Lumley*, 1896, 2 Ch. 690; 65 L. J. Ch. 837; 75 L. T. 236; 45 W. R. 147). *Va*, ESTOPPEL.

For the origin of the rule allowing this restraint, *V.* per Jessel, M. R., *Re Ridley*, 48 L. J. Ch. 563; 11 Ch. D. 645.

Vh, Matthews' Law relating to Married Women: Godefroi, ch. 30: Theobald, 560–563.

As to forfeiture on alienation by a beneficiary; *V.* FORFEITURE.

RESTRAINTS OF KINGS. — "The words 'Arrests, Restraints, and Detainments, of all Kings, Princes, and PEOPLE' (in a Marine Insurance), are properly applicable only to the ruling power of a country, and not to pirates or any other lawless power (*Nesbitt* v. *Lushington*, 4 T. R. 783). They apply, however, not only to hostile acts, but also to those which are committed by the government of which the assured is a subject; as, for instance, to the seizure of the vessel by the owner's government for the purpose of using her as a fire-ship (*Green* v. *Young*, 2 Raym. Ld, 840), or to the wrongful seizure of an English ship and cargo by a British ship of war (*Lozano* v. *Janson*, 2 E. & E. 160; 28 L. J. Q. B. 337: *Va*, *Stringer* v. *English and Scottish Mar. Insrce*, L. R. 5 Q. B. 599; 38 L. J. Q. B. 321; 39 Ib. 214; 10 B. & S. 770), [or to an Embargo, for a temporary purpose, by a friendly government: *Aubert* v. *Gray*, 32 L. J. Q. B. 50; 3 B. & S. 163, 169].

"The detention of a neutral vessel within a blockaded port is, it seems, a 'Restraint of Princes' within the meaning of this clause (*Geipel* v. *Smith*, L. R. 7 Q. B. 404; 41 L. J. Q. B. 153: *Rodocanachi* v. *Elliott*, L. R. 8 C. P. 649; 9 Ib. 518; 43 L. J. C. P. 255)": 1 Maude & P. 488. *Vf*, *Crew* v. *G. Western S. S. Co*, 4 Times Rep. 148.

In variance of previous decisions (*V.* 1 Maude & P. 352), it seems now the rule, that a reasonable apprehension of Capture will justify delay under the usual Exception in Charter-parties of "Restraint of Princes and Rulers" (*The San Roman*, L. R. 5 P. C. 301; 42 L. J. Adm. 46: *The Heinrich*, L. R. 3 A. & E. 435: *Va*, *Geipel* v. *Smith* and *Rodocanachi* v. *Elliott*, sup: *Nobel Co* v. *Jenkins*, 1896, 2 Q. B. 326; 65 L. J. Q. B. 638; 75 L. T. 163; 12 Times Rep. 522; 1 Com. Ca. 436); "but, generally speaking, in order to justify a shipowner in putting an end to the Contract Voyage, there must be proof of more than a reasonable apprehension of Restraint" (per Kennedy, J., *Brunner* v. *Webster*, 5 Com. Ca. 174; 16 Times Rep. 217).

This Exception has "reference to the *forcible* interference of a State, or of the Government of a country, taking possession of the goods *manu forti*; and does not extend" to a detention under legal proceedings (per Martin, B., *Finlay* v. *Liverpool & G. Western S. S. Co*, 23 L. T. 251).

Vh, Abbott, 466, 503: Arn. ss. 832, 833: Carver, ss. 82, 233, 271.

V. ENEMY: QUEEN'S ENEMIES: POLITICAL.

RESTRICTION. — "Restrictions as to Expenditure"; *V. R.* v. *Plymouth*, cited SUBJECT TO.

RESTRICTIVE COVENANT. — *V.* RUN WITH THE LAND, *Note*.

RESTRICTIVE INDORSEMENT.—*V.* s. 35, Bills of Ex. Act, 1882: *Vf, Sigourney* v. *Lloyd,* cited USE.

Cp, SPECIAL.

RESTS.—Taking accounts with Rests; *V.* REST, at end.

RESULT.—In granting a New Trial where the Order is "the Costs of the Former Trial to abide the Result of the New Trial," that means, that the costs of the former trial will have the same fate as those of the new trial; therefore, if the plt gets a verdict or jdgmt without costs in the new trial he will get no costs of the former trial (*Brotherton* v. *Metrop District Ry,* 1894, 1 Q. B. 666; 70 L. T. 218). *Cp,* EVENT.

Fees for "Results" in Schools; Stat. Def., 38 & 39 V. c. 96, s. 2.

RESULTING.—"Necessarily resulting"; *V.* NECESSARILY.

RESULTING TRUST.—A Resulting Trust is where property is ineffectually, or incompletely, conveyed, or where on a conveyance the beneficial interest in property is not completely disposed of; and accordingly the property, or the undisposed of beneficial interest in it, reverts to the person making the conveyance. It arises by implication when, *e.g.,* the document purporting to convey the property is legally void, or conveys the property as Trust property but declares no trust, or declares trusts which fail or do not exhaust the property; but in this lastly mentioned case, it has been said that "the ordinary and familiar" mode of creating a Resulting Trust "is by saying so on the face of the instrument" (per Halsbury, C., *Smith* v. *Cooke,* 1891, A. C. 299; 60 L. J. Ch. 610; 65 L. T. 1; 40 W. R. 67); though that can hardly be so (*Re Abbott,* 1900, 2 Ch. 326; 69 L. J. Ch. 539), for that would be an ULTIMATE TRUST, and the dictum quoted was, probably "a mere verbal slip" (8 L. Q. Rev. 108).

Vh, Re West, 1900, 1 Ch. 84; 69 L. J. Ch. 71: Lewin, ch. 9: Godefroi, ch. 11: 2 White & Tudor, 830–834: SUBJECT TO.

RESULTING USE.—"Whenever the Use limited by a deed expires, or cannot vest, it returns back to him who raised it, and is styled a Resulting Use" (Jacob). *Vh,* 2 Bl. Com. 335: Wms. R. P. Part 1, ch. 8: Goodeve, 272.

RESUMED AREA.—As to this phrase in New South Wales Crown Land Acts, *V.* cases cited LEASEHOLD AREA.

RESUMPTION.—"'Resumption' is a word used in the statute of 31 H. 6, c. 7, and is there taken for the taking againe into the Kings hands such lands or tenements as upon false suggestion or other error he had made livery of to an heire, or granted by patent unto any man" (Termes de la Ley).

RETAIL. — *V.* TRAFFICKING: WHOLESALE.

Quà Licensing Acts (*V.* ss. 3, 74, 35 & 36 V. c. 94), the sale of Beer, Cider, or Perry, in any less quantity than 4½ gals. is selling By Retail (4 & 5 W. 4, c. 85, s. 19; 35 & 36 V. c. 94, ss. 74, 77); but as regards Spirits, there seems no definition in these Acts, so that each case must be decided on its own circumstances (Paterson's Licensing Acts, 13 ed., 12, 144).

Under the Spirits Act, 1880, 43 & 44 V. c. 24, s. 104, "the sale of Spirits in any quantity less than 2 gals., or less than 1 doz. reputed quart bottles, shall be deemed sale By Retail." That def is applied to Foreign Wine, quà Refreshment Houses Act, 1860 (s. 4), and to Sweets, Made Wines, Mead, and Metheglin, quà Excise Act, 1860, 23 & 24 V. c. 113 (s. 7). *Vf*, Beerhouses (Ir) Act, 1864, 27 & 28 V. c. 35, s. 15.

By the Sch to 6 G. 4, c. 81, a Retailer of Beer (other than an Innkeeper) is defined as "Every person, not being a Brewer of Beer, who shall sell Strong Beer only in casks, containing not less than 4½ gallons Imperial Standard Gallon Measure, or in not less than 2 dozen reputed Quart Bottles at one time, to be drank or consumed elsewhere than on his her or their premises." This provision relating to Quart Bottles no longer obtains: if the quantity sold at one time be 4½ gals. or more, it is not sold "by Retail," though it be delivered in pint or half-pint bottles (*Fairclough* v. *Roberts*, 24 Q. B. D. 350; 59 L. J. M. C. 54; 38 W. R. 330; 62 L. T. 700; 54 J. P. 421; 6 Times Rep. 180: WHOLESALE). *Semble*, this principle would also apply to the similar provision in the Spirits Act, 1880, cited above. *Vf*, RETAILER.

Person "licensed to sell Beer by retail" who, under s. 18, Game Act, 1831, 1 & 2 W. 4, c. 32, is disqualified from having a license to sell Game, means, a person who *for the time being* is licensed to sell Beer by Retail; the disqualification is not confined to Beerhouse keepers (a trade introduced the previous year, 1830, by 1 W. 4, c. 64), but it also includes persons holding a Grocer's License for selling Beer under s. 1, 26 & 27 V. c. 33 (*Shoolbred* v. *St. Pancras Jus.*, 24 Q. B. D. 346; 59 L. J. M. C. 63; 38 W. R. 399; 54 J. P. 231).

A Covenant, made in 1854, not to carry on the trade of "an hotel or tavern-keeper, publican, or beer-shop keeper, or *Seller by Retail* of wine, beer, spirits, or spirituous liquors," was held not broken by selling wines and spirits, *in bottles*, by virtue of a license under 24 & 25 V. c. 21, s. 2, because, at the time the covenant was entered into, that would not have been a selling by retail, for at that time the only sellers of Beer, Spirits, or Wine, *by retail*, were hotel or tavern keepers (per James, V. C., *Jones* v. *Bone*, L. R. 9 Eq. 674; 39 L. J. Ch. 405; 23 L. T. 304; 18 W. R. 489: *Cp*, *Fielden*, or *Feilden* v. *Slater*, cited SPIRITUOUS LIQUOR). *Jones* v. *Bone* is, accordingly, not of general application; and a covenant that "no public-house, beer-house, or house for the sale of beer wine or spirituous liquors, shall be erected, nor shall the trade of an innkeeper,

victualler, or *Retailer of Wines Spirits or Beer*, be carried on," is broken by opening a Bar at a Theatre, at which frequenters to the theatre may obtain wines, spirits, or beer (*Buckle* v. *Fredericks*, 44 Ch. D. 244; 38 W. R. 742: *Cp*, COFFEE HOUSE). *Vf*, RETAILER.

Simons v. *Farren* (4 L. J. C. P. 41; 1 Bing. N. C. 126, 272, and cited as to "Retailer of Beer," Woodf. 709), can scarcely be of any use on a question of construction, for it was determined on a point of pleading.

MARGARINE is not sold "by Retail," s. 6, Margarine Act, 1887, by being spread on bread, which bread, with the margarine on it, is sold in a Restaurant for consumption there (*Moore* v. *Pearce*, 1895, 2 Q. B. 657; 65 L. J. M. C. 7; 73 L. T. 400; 44 W. R. 94; 59 J. P. 805).

Retailing Poisons; *V.* KEEP OPEN.

RETAIL BAKEHOUSE. — Quâ, and by, s. 102, Factory and Workshop Act, 1901, "'Retail Bakehouse,' means, any BAKEHOUSE or Place (not being a FACTORY) the bread, biscuits, or confectionery, baked in which are sold, not wholesale but, by Retail in some Shop or Place occupied with the Bakehouse."

RETAIL LICENSE. — In a contract relating to the sale of a public-house, "Retail License" means, the ordinary Retail License, without any Condition whatever (*Modlen* v. *Snowball*, 4 D. G. F. & J. 143; 29 Bea. 641; 31 L. J. Ch. 44; 10 W. R. 24; 5 L. T. 299).

RETAILER. — Retailer of Beer; *V.* RETAIL.

"If a person takes a house, or part of a house, either in his own name or the name of any other person, and then, either personally or by his agent, makes sales of Spirits by Retail, he carries on business there as a Retailer of Spirits, notwithstanding he keeps no spirits there, and the spirits which he sells there are kept in and delivered from a store in another town where he carries on the business of a Wine and Spirit Merchant" (*Stallard* v. *Marks*, 47 L. J. M. C. 91; 3 Q. B. D. 412; 38 L. T. 566; 26 W. R. 694): *Vf*, RETAIL. *Stallard* v. *Marks*, also shows that the assistant employed at such a place is not a "bonâ fide Traveller" within the proviso to s. 17, 30 & 31 V. c. 90; *V.* TRAVELLER.

Quâ the Tobacco Acts, 1840 and 1842, "Manufacturer of, Dealer in, and Retailer of, TOBACCO," includes, "manufacturers of, dealers in, and retailers of, SNUFF, and Snuff Millers" (s. 14, 5 & 6 V. c. 93).

RETAIN. — A testamentary direction to "retain and SET APART" a percentage of profits of a business as a Reserve Fund against losses and contingencies, is a direction for ACCUMULATION within the Thellusson Act, and, if there be no direction for payment of debts, it is void after 21 years (*Re Cox*, W. N. (1900) 89).

To "retain" property, means, to keep it (per Patteson, J., *Glaholm* v. *Rowntree*, 6 A. & E. 717). *Cp*, RECOVER.

"To 'retain' is, 'to keep in pay,' 'to hire'" (per Parke, B., *Elderton* v. *Emmens*, 6 C. B. 176); but not, necessarily, to find actual and appropriate employment; the consideration must be paid whether the person retained be employed or not: *V.* EMPLOY. Yet, *semble*, "the word 'retain' does not, necessarily, show that there was a consideration" (per Ashhurst, J., *Elsee* v. *Gatward*, 5 T. R. 151).

A Solicitor, though "retained" for an action, "need not be employed throughout its course" (per Truro, C., *Emmens* v. *Elderton*, 4 H. L. Ca. 629); but if there be an agreement to retain at so much *per annum*, that imports a retainer for one year at least (*Emmens* v. *Elderton*, 4 H. L. Ca. 624; 13 C. B. 495).

An agreement to retain A. as one's "*Permanent*" Solicitor, imports no durable appointment, and the principal is not precluded from withdrawing the retainer; for "permanent," in such an agreement, denotes no more than a general, as distinguished from an occasional, employment (*Ib.* 4 C. B. 479; 13 C. B. 495). *Vf*, Add. C. 866.

Trust property "still retained"; *V.* STILL.

As to an Exor's Right of Retainer to pay his own claim against his testator's estate in priority to other creditors; *V.* Wms. Exs. 884: *Re Giles*, 1896, 1 Ch. 956; 65 L. J. Ch. 419: *Re Taylor*, 1894, 1 Ch. 671; 63 L. J. Ch. 424: *Trevor* v. *Hutchins*, 1896, 1 Ch. 844; 65 L. J. Ch. 738: *Re Beeman*, 1896, 1 Ch. 48; 65 L. J. Ch. 190: *Re Gilbert*, 1898, 1 Q. B. 282; 67 L. J. Q. B. 229: *Re Hayward*, 49 W. R. 296; 1901, 1 Ch. 221; 70 L. J. Ch. 156: AGENT AND PATIENT: SECURED CREDITOR: TAKE AND APPROPRIATE.

Pauper Child under 16 to "retain" his Parent's Settlement; *V.* CHILD, p. 307.

Retaining WALL; *V. Stevens* v. *Metrop District Ry*, 54 L. J. Ch. 737; 29 Ch. D. 60.

RETIRE.—"If an Acceptor 'retires' a Bill at maturity, he takes it entirely from circulation, and the Bill is, in effect, paid; but if an Indorser 'retires' it, he merely withdraws it from circulation in so far as he himself is concerned, and may hold the Bill with the same remedies as he would have had, had he been called upon in due course, and had paid the amount to his immediate Indorsee" (per Jervis, C. J., *Elsam* v. *Denny*, 23 L. J. C. P. 190; 15 C. B. 87: *vthc*, *Bell* v. *Buckley*, 11 Ex. 631; 25 L. J. Ex. 163).

Retire from a Partnership; *V.* WITHDRAW.

RETIRED PAY.—*V. Re Ward*, cited INCOME: GRATUITY: PENSION.

RETIREMENT.—"Retirement" of an Army Officer; *V. Johnstone* v. *Cox*, 16 Ch. D. 571; 29 W. R. 351; 50 L. J. Ch. 216; 43 L. T. 690.

RETIRING TRUSTEE.—"Trustees by paying money into Court *retire* from their trust, and cannot thereafter exercise the powers of the

trust" (Lewin, 412, 413, citing *Re Coe*, 4 K. & J. 199: *Re Williams*, 4 Ib. 87: *Re Tegg*, 15 L. T. 236; 15 W. R. 52: *Re Nettlefold*, 59 L. T. 315: *Re Mulqueen*, 7 L. R. Ir. 127). *Va*, DECLINING TRUSTEE.

RETRACT.—"A Condition of Sale that no person shall retract his bidding was originally suggested to me by the case of *Payne* v. *Cave* (3 T. R. 148), and it has now become a common condition. But I always thought it one that could not be enforced. In *Jones* v. *Nanney* (13 Price, 99), Mr. Baron Wood suggested the difficulties. . . . But such a condition in a sale by Order of the Court is binding on the persons who consent to the sale, and upon their agents (*Freer* v. *Rimner*, 14 Sim. 391)." Sug. V. & P. 14.

Retractation of RENUNCIATION of Probate; *V. Re Stiles*, 67 L. J. P. D. & A. 23; 1898, P. 12: *Re Thacker*, 1900, P. 15; 69 L. J. P. D. & A. 1.

RETREAT.—Quà Inebriates Acts (*V.* INEBRIATE), a "'Retreat,' means, a house licensed by the Licensing Authority . . . for the reception, control, care, and curative treatment, of HABITUAL Drunkards" (s. 3 (3 *b*), 42 & 43 V. c. 19).

V. ASYLUM.

RETROSPECTIVE.—"*Nova constitutio futuris formam imponere debet, non præteritis*" (2 Inst. 292), *i.e.* unless there be clear words to the contrary, statutes do "not apply to a past, but to a future, state of circumstances" (per Alderson, B., *Moon* v. *Durden*, 2 Ex. 40): *Vf*, *Re Chapman*, cited SHALL. *Vh*, BROUGHT: HAS BEEN: IS: MAINTAIN: SHALL HAVE BEEN: Maxwell, ch. 8, s. 4: Broom's Maxims, ch. 1, s. 2.

RETURN.—This word in the Limitation Act, 1623, 21 Jac. 1, c. 16, does not imply that a plaintiff, — beyond seas when the cause of action arose, — has been in this country before; for, as regards a plaintiff who was never in this country before, it means, coming within the jurisdiction having been beyond seas when the cause of action arose (*Strithorst* v. *Græme*, 3 Wils. 145; 2 Bl. W. 723: *Lafond* v. *Raddock*, 22 L. J. C. P. 217; 13 C. B. 813: *Pardo* v. *Bingham*, 39 L. J. Ch. 170; 4 Ch. 735). *Cp*, ABSENT.

A Condition to a legacy, that the legatee "return" to a place, means, that he come back to that place; and the condition is not performed if he die, or is lost at sea, whilst returning (*Priestley* v. *Holgate*, 26 L. J. Ch. 448; 3 K. & J. 286: *Sprigg* v. *Sprigg*, 2 Vern. 394). So, if the word is "arrive" (*Burgess* v. *Robinson*, 3 Mer. 7). *Vh*, 2 Jarm. 12, 13.

An appointment of A. as Exor of a Will "if and when he shall return to England," becomes effective on his returning to England for a visit of 6 months, though that be 8 years after the death of the testator and though A. (during such visit) remains domiciled out of England at the place whence he came (*Re Arbib and Class*, cited LITIGATION); in *the*

Coleridge, C. J., pointed out that the reading might have been different if the words had been "return *to reside* in England."

"Return *to his Work*"; a person is prevented "from returning to his work" in a Factory who, though he returns to the Factory, is incapable to work when there (*Lakeman* v. *Stephenson*, 37 L. J. M. C. 57; L. R. 3 Q. B. 192; 9 B. & S. 54).

A "Return" of Election Expenses, if *bonâ fide*, is a "Return" within s. 33 (5), Corrupt and Illegal Practices Prevention Act, 1883, though it be not a "true Return" as prescribed by subs. 1 of the same section (*Mackinnon* v. *Clark*, 1898, 2 Q. B. 251; 67 L. J. Q. B. 68, 763; 79 L. T. 83; 47 W. R. 19).

Quà Taxes Management Act, 1880, 43 & 44 V. c. 19, "'Return,' includes, any list, statement, declaration, account, schedule, or estimate in writing, by whomsoever made, or from whomsoever required, in conformity with the directions of this Act or the Tax Acts" (s. 5).

The Return to a Writ, or Commission, is a Certificate from the proper person of what has been done under it (Cowel: Jacob).

V. PROCURE: SALE ON TRIAL.

RETURN DAY. — In County Court proceedings, the "Return Day" means, the day *originally* appointed for the hearing (*R.* v. *Leeds Co. Co.*, 55 L. J. Q. B. 365; 16 Q. B. D. 691; 54 L. T. 873; 34 W. R. 487: *Vf*, Co. Co. Act, 1888, s. 186).

V. DAY OF HEARING.

RETURNED NOTE. — "'Returned Note' is an expression which is perfectly understood in the City of London to designate a Note which has been dishonoured" (per Bolland, B., *Hedger* v. *Steavenson*, 2 M. & W. 808; 6 L. J. Ex. 192).

RETURNING FROM. — *V.* GOING TO.

RETURNING OFFICER. — Quà Municipal Elections, "Returning Officer," means, "the Mayor, or other Officer, who, under the law relating to Municipal Elections, presides at such elections" (subs. 1, s. 20, 35 & 36 V. c. 33: *Vf*, 35 & 36 V. c. 60, s. 2). The Mayor of a Municipal Borough divided into Wards is not the "Returning Officer" (s. 88 (2), 45 & 46 V. c. 50, *cp*, s. 53) for a Ward thereof; even if, through his decision, an election of Councillor for that Ward is, in fact, decided, *e.g.* when he declares a Candidate for a Ward disqualified and, as a consequence, only as many candidates remain as there are vacancies to fill (*Harmon* v. *Park*, 50 L. J. Q. B. 227; 6 Q. B. D. 323; 44 L. T. 81; 29 W. R. 750). *V.* CONDUCT.

Quà Parliamentary Elections, "Returning Officer," applies "to every person or persons to whom, by virtue of his or their Office under any law custom or statute, the execution of any writ or precept doth or shall

belong for the election of a Member or Members to serve in Parliament, by whatever name or title such person or persons may be called" (s. 101, 6 & 7 V. c. 18). *Vf*, 17 & 18 V. c. 102, s. 38.

Quà Salmon Fishery Acts, "Returning Officer," means, "the Chairman of any Board of Conservators, or any person appointed by writing under his hand, to conduct the elections of Boards of Conservators in the manner" prescribed (s. 4, 36 & 37 V. c. 71).

RE-VALUATION. — *V.* GENERAL RE-VALUATION.

REVELAND. — *V.* TAINLAND.

REVENUE. — *V.* PROFITS.

Land belonging to an Educational Institution, worked profitably for farming purposes by the Institution, is not one of its "*Dependencies*" within subs. 6, Art. 712, Municipal Code of Quebec; it is possessed in order "to DERIVE a Revenue therefrom" within subs. 3 of the same Article, and is therefore not exempt from taxation (*Quebec Seminaire* v. *Limoilou*, 1899, A. C. 288; 68 L. J. P. C. 34; 80 L. T. 331, herein approving *St. Gabriel* v. *Les Sœurs de la Congrégation*, 12 Canada S. C. Rep. 45, and over-ruling *Verdun* v. *Les Sœurs de Notre Dame*, Dorion's App. Ca. 163, and *St. Roch* v. *Quebec Seminary*, 10 Quebec Law Rep. 335).

"Revenue *Charge*"; *V. Hutton* v. *West Cork Ry*, 52 L. J. Ch. 377, 689; 23 Ch. D. 654; 48 L. T. 626; 49 L. T. 420; 31 W. R. 542, 827: *Mid. G. W. Ry* v. *Dublin & Meath Ry*, 4 Ry & Can Traffic Ca. 145.

Revenue *Credit*; *V. Bishop* v. *Smyrna & Cassaba Ry*, 1895, 2 Ch. 596; 64 L. J. Ch. 806.

Inland Revenue; *V.* INLAND.

Revenue *Laws*; *V.* GAME LAWS.

REVENUES. — "PROPERTY, ASSETS, and Revenues," in a Co's Debentures; *V. Page* v. *International Agency*, 62 L. J. Ch. 610; 68 L. T. 435: UNDERTAKING.

REVEREND. — This is not a Title of honour or dignity; but merely a laudatory epithet or mark of respect, which people may inscribe on the tombstone of, *e.g.* a Wesleyan Minister (*Keet* v. *Smith*, 45 L. J. P. C. 10; 1 P. D. 73).

REVERSE. — "Stop and reverse"; *V.* SLACKEN.

The reversal of a Jdgmt, "is the making it void for error" (Jacob).

REVERSION. — "A 'Reversion' has two intendments, — the one is, an Estate left continuing during the PARTICULAR ESTATE, which is the most common sense; the other is, the returning of the land after the particular estate ended, which is the natural sense of the word according to the definition of the Latin-tongue, so that the Reversion of the land

and the Land when it reverts is all one" (per Staunford, J., *Throckmerton* v. *Tracy*, 1 Plowd. 160 a).

"'*Reversion*,' *Reversio* commeth of the Latine word *revertor*, and signifieth a returning againe" (Co. Litt. 142 b). A "Reversion" is the undisposed of interest in land which reverts to the grantor after the exhaustion of the particular estates, — *e.g.* for years, for life, or in tail, — which he may have created. "There cannot, in the usual and proper sense of the term, be a Reversion expectant upon an estate in fee-simple" (per Selborne, C., *A-G. Ontario* v. *Mercer*, 52 L. J. P. C. 86; 8 App. Ca. 767); and though in the Writ of Escheat the word "revert" is employed, yet an Escheat is not properly a Reversion (Ib.).

A REMAINDER, on the other hand, is that "residue of an estate in land, depending upon a particular estate and created together with the same; and in law *Latine* it is called *remanere*" (Co. Litt. 49 a); *e.g.* a grant of an estate for life to A. and subject thereto to B. in fee; the estate of B. is a Remainder.

Vf, Termes de la Ley: Jacob: 2 Bl. Com. ch. 11: 2 Cru. Dig., Title 17: Wms. R. P. Part 2, ch. 1: Goodeve, 234, 235.

In brief, the meaning of, and difference between, these words are expressed as follows, — The Reversion is what is left; and the Remainder is that which is created by the grant after the existing possession. Both words are technical phrases. And though it is said in the Touchstone (p. 249) that "a Reversion may be granted by the name of Remainder, or a Remainder by the name of a Reversion"; yet it needs a very strong context for such a construction. Thus the word "Reversion" as used in s. 8, Prescription Act, 1832, will not be read as including "Remainder" (*Symons* v. *Leaker*, 54 L. J. Q. B. 480; 15 Q. B. D. 629; 33 W. R. 875; 1 Times Rep. 564. *Vf*, *Laird* v. *Briggs*, 50 L. J. Ch. 260; 19 Ch. D. 22).

As to effect of a grant of "the Reversions" in a conveyance of the Fee Simple; *V. Burton* v. *Barclay*, 9 L. J. O. S. C. P. 231; 7 Bing. 745.

As to whether the word "Reversion" will raise Cross-Remainders; *V.* 2 Jarm. 553.

Even before s. 28, Wills Act, 1837, a devise of "REMAINDER" or "Reversion" carried the fee (2 Jarm. 284; *Sv*, 285).

Contingent Remainder; *V.* CONTINGENT.

V. IMMEDIATE REVERSION: LEASEHOLD REVERSION: PERSON ENTITLED: POSSESSION: PURCHASE.

"Run with the Reversion"; *V.* RUN WITH THE LAND.

REVERT. — Property to "revert to the debtor," s. 35, Bankry Act, 1883; *V. Bailey* v. *Johnson*, 40 L. J. Ex. 189; 41 Ib. 211; L. R. 6 Ex. 279; 7 Ib. 263: *Vth*, *Ex p. Morier*, 12 Ch. D. 491.

"Then the same to revert back"; *Re Norman*, W. N. (79) 175

Vf, FRIENDS AND RELATIONS.

REVIEW. — It is not to "Review" a Weekly Payment under clause 12, Sch 1, Workmen's Comp Act, 1897, to show that it was wrong; that would be obtaining an appeal against the award; to "review," here, means, if the Workman gets well or better or worse, or some change of circumstances arises, since the award, then it may be modified (*Crossfield* v. *Tunian*, 1900, 2 Q. B. 629; 69 L. J. Q. B. 790; 82 L. T. 813; 48 W. R. 609).

REVISING. — "Revising *Authority*," quà Elections (Scot) Corrupt and Illegal Practices Act, 1890, 53 & 54 V. c. 55, "means, the Sheriff" (s. 2).

"Revising Barrister"; *V.* BARRISTER.

REVIVE. — Revival of a revoked Will; *V. McLeod* v. *McNab*, cited CONFIRM: *Re Dennis*, 1891, P. 326: *Re Chilcott*, 1897, P. 223; 66 L. J. P. D. & A. 108; 77 L. T. 372; 46 W. R. 32: RATIFY: PUBLICATION, at end.

REVOKE. — "'Revocation,' is the calling back of a thing granted" (Cowel: Jacob).

As to what amounts to a Rescindment, Renunciation, or Revocation, of a *Contract*; *V. Hochster* v. *De la Tour*, 22 L. J. Q. B. 455; 2 E. & B. 678, on *whcv*, *Johnstone* v. *Milling*, 16 Q. B. D. 460; 55 L. J. Q. B. 162: Add. C. 155 *et seq*: Leake, 681 *et seq*.

A clause of Redemption in a *Mortgage*, is not a "Power of Revocation" within the Mortmain Acts, 9 G. 2, c. 36, s. 1, 9 G. 4, c. 85, s. 1, 51 & 52 V. c. 42, subs. 3 s. 4 (*Doe* d. *Graham* v. *Hawkins*, 2 Q. B. 212; 10 L. J. Q. B. 285).

As to what is a Revocation of a *Will*; *V.* Wms. Exs. 107 *et seq*: Jarm. ch. 7: BURN: DESTROY: TEAR. Whatever is done, the *animus revocandi* is essential; *V.* DEPENDENT. To draw a pen through several parts of a Will, to write on it "*This is revoked*," and then throw it into the waste-paper basket, is not a Revocation (*Cheese* v. *Lovejoy*, 46 L. J. P. D. & A. 66; 2 P. D. 251; 25 W. R. 853). *Vf*, *Cadell* v. *Wilcocks*, 1898, P. 21; 67 L. J. P. D. & A. 8; 78 L. T. 83; 46 W. R. 394: *Chichester* v. *Quatrefajas*, 1895, P. 186; 64 L. J. P. D. & A. 79; 72 L. T. 475; 43 W. R. 667: *Re Hodgkinson*, 62 L. J. P. D. & A. 116; 1893, P. 339: *Re Gilbert*, 1893, P. 183; 62 L. J. P. D. & A. 111: *Margary* v. *Robinson*, 56 L. J. P. D. & A. 42; 12 P. D. 8. A general revoking clause revokes all previous Wills, including such as may have executed a Power of Appointment (*Sotheran* v. *Dening*, 20 Ch. D. 99: *Re Kingdon*, 55 L. J. Ch. 598; 32 Ch. D. 604: *Cadell* v. *Wilcocks*, sup). *V.* CANCEL.

REVOLT. — "Make Revolt in a Ship," 11 & 12 W. 3, c. 7, s. 9, would not include force used against the Master to prevent him from committing unlawful homicide (*R.* v. *Rose*, 2 Cox C. C. 329: *The Shepherdess*, 5 Rob. C. 266).

REWARD.—The practice which sprang up at Mercer's Hospital, Dublin, and continued till 1868, of buying, at the market price of the day, the appointment of Physician or Surgeon to the Hospital and paying part of the purchase money amongst the medical Board (*i.e.* the Physicians and Surgeons at the time attending the Hospital) and the residue to the Retiring Physician or Surgeon, or his representatives on a death vacancy, was a contravention of the statute providing that Physicians and Surgeons should attend "without Fee or Reward"; for it was a "'Reward' to the physicians and surgeons attending the hospital who, by the position which their services gave them, acquired a direct pecuniary benefit by appointing, so far as they could do so, an incoming physician or surgeon who bought the place at the market price in which they shared" (per Johnson, J., *R.* v. *Auchinleck*, 28 L. R. Ir. 424, 425).

"Reward" for a Vote, *e.g.* 5 & 6 W. 4, c. 76, s. 54, includes giving an EMPLOYMENT (*Harding* v. *Stokes*, 5 L. J. Ex. 178; 2 M. & W. 233).

"Pecuniary Reward"; *V.* MONEY, p. 1217.

As to an offer of a "Reward"; *V. Carlill* v. *Carbolic Smoke Ball Co*, cited GAMING CONTRACT: OFFER.

V. MILITARY REWARD: RECOVERY.

RICE.—*V.* CORN.

RICH.—*V.* PROVE.

Duke of RICHMOND'S ACT.—Regulation of Railways Act, 1868, 31 & 32 V. c. 119.

RIDE.—A horse ridden does not include a horse driven; *e.g.* a Yeomanry Officer was exempt from Turnpike Toll in respect of the horse "*rode* by him in going to or returning from" exercise, &c (s. 32, 3 G. 4, c. 126); but if, instead of riding his horse, he drove it in a gig, the horse was not exempt from Toll (*Humphrey* v. *Bethel*, 35 L. J. M. C. 150; L. R. 1 C. P. 215; 30 J. P. 231; H. & R. 221). *Cp*, DRIVE: OVERDRIVE.

RIDER.—*V.* DRIVE.

RIDGE.—*V.* SELION.

RIDING.—Quà Prison Act, 1877, 40 & 41 V. c. 21, "'Riding,' means, any Riding, Division, or Parts, of a County, having a separate Court of Quarter Sessions" (s. 58).

"The Three Ridings" of Yorkshire; *V.* Yorkshire Registries Act, 1884, 47 & 48 V. c. 54, s. 3.

RIGGING.—"'Rigging the Market,' is going into the market pretending to buy shares by a person whom you put forward to buy them,

who is not really buying them but only pretending to buy them, in order that they may be quoted in the public papers as bearing a premium which premium is never paid" (per Malins, V. C., *Rubery* v. *Grant*, 42 L. J. Ch. 20; L. R. 13 Eq. 447). *Vh*, *R.* v. *Berenger*, 3 M. & S. 67: *R.* v. *Aspinall*, 46 L. J. M. C. 145; 2 Q. B. D. 48: *Scott* v. *Brown*, 1892, 2 Q. B. 724; 61 L. J. Q. B. 738; 67 L. T. 782.

V. POOL: PRICE.

RIGHT.—"'*Right*,' *Jus*, *sive rectum*, (which Littleton often useth) signifieth properly, and specially in writs and pleadings, when an estate is turned to a right, as by discontinuance, disseisin, &c, where it shall bee said, *quòd jus discendit et non terra*. But (Right) doth also include the estate *in esse* in conveyances; and therefore if tenant in fee simple make a lease for yeares, and release all his right in the land to the lessee and his heires the whole estate in fee simple passeth. And so commonly in fines, the right of the land includeth and passeth the state of the land; as *A. cognovit tenementa prædicta esse jus ipsius*, *B.*, *&c.* And the statute (West. 2, c. 3) saith, *jus suum defendere*, (which is) *statum suum*. And note that there is *jus recuperandi*, *jus intrandi*, *jus habendi*, *jus retinendi*, *jus percipiendi*, *jus possidendi*" (Co. Litt. 345 a, b; *Vh*, Elph. 204–209). *V.* JUS.

"'Right' is where one hath a thing that was taken from another wrongfully, as by disseisin, discontinuance, or putting out, or such like, and the challenge or claime that he hath who should have the thing, is called Right" (Termes de la Ley, *Droit*).

The saving of every "Right, Claim, Privilege, Franchise, Exemption, or Immunity," in s. 179, Thames Conservancy Act, 1857 (20 & 21 V. c. cxlvii), means a vested right of property, not a mere general right as one of the public (*Kearns* v. *Cordwainers' Co*, 28 L. J. C. P. 285; 6 C. B. N. S. 388). *Vf*, PRACTICE.

Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66. "'Right,' includes, estate, interest, equity, and power" (s. 95). *Va*, "Rights," Trustee Act, 1893, s. 50.

"ENJOYMENT *as of* Right," s. 5, Prescription Act, 1832, 2 & 3 W. 4, c. 71, means, "an Enjoyment had, not secretly or by stealth or by tacit sufferance or by permission asked from time to time on each occasion or even on any occasions of using it; but an Enjoyment had, openly and notoriously (without particular leave at the time) by a person claiming to use it as a Matter of Right, whether by User though not strictly legal, or by Deed conferring the right, or by Parol if claimed by user for 20 years" (*Tickle* v. *Brown*, 5 L. J. K. B. 123; 4 A. & E. 382); but "I cannot understand why enjoyment 'by tacit sufferance' for the prescribed period should not confer a right" (per Cozens-Hardy, J., *Gardner* v. *Hodgson's Co*, 69 L. J. Ch. 373; 1900, 1 Ch. 592; jdgmt revd, 1901, 2 Ch. 198). *Vf*, *Olney* v. *Gardiner*, 8 L. J. Ex. 102; nom. *Onley*

v. *Gardiner*, 4 M. & W. 496: *Arkwright* v. *Gell*, 8 L. J. Ex. 201; 5 M. & W. 203: *Kinlock* v. *Nevile*, 10 L. J. Ex. 248; 6 M. & W. 795: *Mason* v. *Shrewsbury & Hereford Ry*, L. R. 6 Q. B. 578: *Ladyman* v. *Grave*, 6 Ch. 763: *Outram* v. *Maude*, 17 Ch. D. 405; 50 L. J. Ch. 785: *Chamber Colliery Co* v. *Hopwood*, 55 L. J. Ch. 859; 32 Ch. D. 549: *Tone* v. *Preston*, 24 Ch. D. 739; 53 L. J. Ch. 50: ACTUALLY ENJOYED.

"*Claiming* Right," s. 2, Prescription Act, 1832, has the same meaning as "*As of* Right" in s. 5 (*Tickle* v. *Brown*, sup).

"*Touching* the Right" to Tithes, s. 45, Tithe Act, 1836, does not mean "touching the TITLE to Tithes as between rival claimants" but, connotes only questions relating to the titheability of particular lands (*Shepherd* v. *Londonderry*, cited HINDER).

Right "acquired or accrued"; *V.* ACQUIRE: ACCRUE.

"Rights," &c, "*occupied or enjoyed*"; As to what rights of road, water-course, &c, will pass in a conveyance under the general words "All Rights, &c, to the said heredits belonging, or occupied or enjoyed therewith, or reputed as part parcel or member thereof"; *V. Watts* v. *Kelson*, 40 L. J. Ch. 126; 6 Ch. 166: *Kay* v. *Oxley*, 44 L. J. Q. B. 210; L. R. 10 Q. B. 360: *Thomas* v. *Owen*, 20 Q. B. D. 231: *Bayley* v. *G. W. Ry*, 26 Ch. D. 434: *Roe* v. *Siddons*, 22 Q. B. D. 224: APPURTENANCES: RIGHTS.

"Right of *Pasturage* usually enjoyed"; *V. Musgrave* v. *Inclosure Commrs*, L. R. 9 Q. B. 162; 43 L. J. Q. B. 80: PASTURAGE.

Right of Re-Entry; *V.* FIRST ACCRUED: *Va*, 17 & 18 V. c. 89, s. 12.

"Right in Remainder," s. 20, Real Property Limitation Act, 1833, does not include a Power of appointing Uses (*Re Devon*, 1896, 2 Ch. 562; 65 L. J. Ch. 810; 75 L. T. 178; 45 W. R. 25). "No real property lawyer in 1833 would have spoken of a Power of appointing Uses as an 'ESTATE, INTEREST, Right, or *Possibility*'" (per Chitty, J., *Ib.*).

"Right *or Penalty*," s. 230, Bankry Act, 1861, 24 & 25 V. c. 134; *V. R.* v. *Smith*, 31 L. J. M. C. 105; 9 Cox C. C. 110: *Graham* v. *Robinson*, L. R. 2 Q. B. 387.

"Rights, *Powers, or Privileges*," s. 50, 21 & 22 V. c. 98 and s. 166, P. H. Act, 1875, do not connote contractual Rights, &c, but, refer to something in the nature of a FRANCHISE (*Fearon* v. *Mitchell*, L. R. 7 Q. B. 690; 41 L. J. M. C. 170: *Spurling* v. *Bantoft*, 1891, 2 Q. B. 384; 60 L. J. Q. B. 745; 65 L. T. 584; 40 W. R. 157; 56 J. P. 132). *Vf*, RIGHTS.

"Right, Privilege, Obligation, or Liability," s. 38 (2 *c*), Interp Act, 1889; *V. Heston & Isleworth* v. *Grout*, cited DONE. The power of a Bankrupt to apply for his Discharge under the Act in operation when his bankry was adjudicated is such a "Right" (*Ex p. Raison*, 60 L. J. Q. B. 206; 63 L. T. 709; 39 W. R. 271; 8 Morrell, 11).

"Right or Liability INCURRED," s. 343 (*b*), P. H. Act, 1875; *V. Barnes* v. *Edleston*, 45 L. J. M. C. 162; 1 Ex. D. 102; 33 L. T. 822.

V. A: ABANDONMENT: BILL OF RIGHTS: EXCLUSIVE RIGHT: FIRST ACCRUED: IN HIS OWN RIGHT: PETITION: PUBLIC RIGHT: RIGHTS: RIGHTS AND CREDITS: SHARE: THE.

RIGHT AHEAD.—"Right ahead," as used in the Regns for Preventing Collisions at Sea; *V. The Fire Queen*, 56 L. J. P. D. & A. 90; 12 P. D. 147; 57 L. T. 312; 36 W. R. 15.

RIGHT AND TITLE.—The addition to a devise of lands of all testator's "Right and Title" thereto, would even before the Wills Act, 1837, pass the fee (*Sharp* v. *Sharp*, 4 Moore & P. 445); so of the word "Interest" therein (*Andrew* v. *Southouse*, 5 T. R. 292: 2 Jarm. 285).

RIGHT AT LAW.—*V.* RIGHT IN EQUITY.

RIGHT CLOSE.—Writ of, *V.* SOCAGE.

RIGHT DELIVERY.—Payment of Freight "on Right Delivery of the Cargo," means, that the payment and delivery are to be concurrent acts (*Paynter* v. *James*, L. R. 2 C. P. 348).

RIGHT HEIR MALE.—*V. Re Grayson*, 48 L. J. Ch. 354: *Dawes* v. *Ferrers*, 2 P. Wms. 1; 8 Vin. Ab. 317.

RIGHT HEIRS.—"In my judgment the expression 'my own right heir,' or 'right heirs,' means, according to the law of England, the heir or heirs of the testator at Common Law" (per Fry, J., *Re Garland*, 47 L. J. Ch. 714; 9 Ch. D. 213), who, if more than one, *e.g.* females, take as joint tenants (*Berens* v. *Fellowes*, 56 L. T. 391; 35 W. R. 356; 3 Times Rep. 425: *Vf*, PARCENERS).

A devise to the "right heirs" of Husband and Wife, is one to the child of both answering the description of heir to each; and, if no preceding estate be given to the father and mother, such child takes as a PURCHASER (*Roe* v. *Quartley*, 1 T. R. 630).

Vh, *Hawes* v. *Hawes*, 14 Ch. D. 614.

In *Powell* v. *Boggis* (14 W. R. 670), "right heirs" was construed as exors and admors.

V. HEIR, pp. 858, 860.

RIGHT IN EQUITY.—A Right in Equity, as distinguished from a Right at Law, is a right, not by the COMMON LAW or by Statute but, which until recent times could only be enforced by the Court of Chancery, — a Court now absorbed into, and forming a Division of, the High Court. Starting to redress the rigidity of legal rules (*V.* Termes de la Ley, *Equitie*), the guiding light of Equity was originally the discretion

of the Chancellor. "Equity is a roguish thing: for Law we have a measure, know what to trust to: Equity is according to the Conscience of him that is Chancellor, and as that is larger or narrower so is Equity. 'Tis all one as if they should make the standard for the measure we call a Foot, a Chancellor's foot" (Selden's Table Talk). But long before Blackstone's time, Equity became, and has remained, "a laboured connected system, governed by established rules and bound down by precedents from which its Courts do not depart" (3 Bl. Com. 432). *Vh*, Story: Watson Eq.: Snell's Equity.

Notwithstanding the union of the old Courts of Law with the Court of Chancery effected by the Judicature Acts (*V.* JUDICATURE), and the assimilation of jurisdiction by ss. 24, 25, Jud. Act, 1873, the old phraseology of Right at Law as distinct from Right in Equity remains of practical importance.

An Agreement whereby a "Right in Equity" to PERSONAL CHATTELS is conferred, is a Bill of Sale (s. 4, Bills of S. Act, 1878); that means, a Right in Equity as distinct from a Right at Law (*Ex p. Hubbard, Re Hardwick*, 55 L. J. Q. B. 490; 17 Q. B. D. 690; 35 W. R. 2). Therefore, a Building Agreement which provides that all materials brought by the builder on the land shall become the property of the building-owner, is *not* a Bill of Sale (*Reeves* v. *Barlow*, cited BILL OF SALE); so, of a document which gives an Agent a COVER on goods which may come to his hands (*Morris* v. *Flipo*, 1892, 2 Ch. 352; 61 L. J. Ch. 518; 66 L. T. 320; 40 W. R. 492); for neither of those documents gives any right to any goods until the happening of some future event, and, if and when such future event happens, the right to the goods is *at Law*, agreeably to Ld Bacon's 14th Maxim, *Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum interveniente novo actu*: *Vh, Holroyd* v. *Marshall*, 33 L. J. Ch. 193; 10 H. L. Ca. 191; 7 L. T. 172; 11 W. R. 171; 9 Jur. N. S. 213, on *whcv*, *Tailby* v. *Official Receiver*, cited VAGUE. Compare *Reeves* v. *Barlow*, sup, with *Climpson* v. *Coles*, cited LICENSE.

V. BY LAW: EQUITY.

RIGHT OF ACTION.—"A 'Right of Action,' is not the power of bringing an action. Anybody can bring an action though he has no right at all. The meaning of the phrase is that, the person has a RIGHT or Claim before the action, which is determined by the action to be a valid Right or Claim" (per Esher, M. R., *A-G.* v. *Sudeley*, 1896, 1 Q. B. 354; 65 L. J. Q. B. 285).

V. CHOSE IN ACTION.

RIGHT OF APPEAL.—"Right of Appeal," *e.g.* s. 6, 38 & 39 V. c. 50, is not limited to a Right of Appeal expressly given by statute, but includes a case where a judge has given leave to appeal (*Turner* v. *G. W. Ry*, 46 L. J. Q. B. 226; 2 Q. B. D. 125).

RIGHT OF COMMON. — This expression as used in s. 1, Prescription Act, 1832, 2 & 3 W. 4, c. 71, does not include Rights in Gross, "but contemplates only those more usual and ordinary Rights of Common and *profit à prendre* which are in some way appurtenant to land, and are limited to the wants of a dominant tenement" (per Cur., *Shuttleworth* v. *Le Fleming*, 34 L. J. C. P. 311; 19 C. B. N. S. 687). *V.* COMMON.

RIGHT OF SALE. — A contractual "Right of Sale" of an article, or "Right to Sell" it, simply means that the person taking such Right is constituted an Agent for the sale of the article; it does not also mean that the person giving the Right contracts to supply the article (*Fox* v. *Smith*, 6 L. R. Ir. 319): *Semble*, if "the," and not merely "a" Right of Sale be given that imports a sole or exclusive agency (per Ball, C., *Ib.*). *V.* A: THE: EXCLUSIVE RIGHT.

RIGHT OF WAY. — This phrase has (1) a Legal, and (2) a Popular, meaning. In its legal sense, it connotes the right or easement which one man has over the land of another, and, in that sense, a man cannot have a Right of Way over his own land: but in its popular sense, "Right of Way" means, the right of passing over a particular road or place which, of course, is inherent in the ownership of such road or place. For a discussion as to the sense in which the phrase is used quà the right, given by s. 55, Ry C. C. Act, 1845, to recover against a Ry Co for special damage done by their interference with a ROAD, *V. Llewellyn* v. *Glamorgan Vale Ry*, 1898, 1 Q. B. 473; 67 L. J. Q. B. 305; 78 L. T. 70; 46 W. R. 290.

V. WAY: WAYS.

RIGHT TO BID RESERVED. — *V.* RESERVED BIDDING.

RIGHTS. — "Rights or Interests, arising from or in connection with" the production of a Literary or Artistic Work, which "are *subsisting and valuable*" at the date of an Order in Council under the International Copyright Acts (proviso to s. 6, 49 & 50 V. c. 33), means, quà "Rights," such legal rights as those of a Translator or Adapter; but "Interests" have a much wider meaning and include, *e.g.* the Interest of the owner of a Trade-Mark to advertise it, or of a Publisher to sell his stock of the work or to produce a second edition, or of a Bandmaster "to recoup and to obtain a return for the outlay he has been put to in purchasing a piece of music, in training his band, in its performance, and (possibly) adapting it to its different parts for his men" (*Moul* v. *Groenings*, 1891, 2 Q. B. 443; 60 L. J. Q. B. 715; 65 L. T. 327; 39 W. R. 691, espy jdgmt of Smith, J.: *Schauer* v. *Field*, 1893, 1 Ch. 35; 62 L. J. Ch. 72; 68 L. T. 81; 41 W. R. 201). Whether such a "Right or Interest" is "subsisting and valuable" is a question of fact in each case, on *whv* the cases just cited.

The "Rights" which were extinguished by s. 20, Artizans and Labourers Dwellings Improvement Act, 1875, 38 & 39 V. c. 36, repld s. 22, 53 & 54 V. c. 70, include inchoate or nascent rights; their deprival is "Loss" to be compensated (*Barlow* v. *Ross*, 24 Q. B. D. 381; 59 L. J. Q. B. 183; 62 L. T. 552; 38 W. R. 372; 54 J. P. 660; 6 Times Rep. 200). *V.* RIGHT.

A statutory reservation of "all Rights *accrued*" under a repealed statute, does not save a mere right to take advantage of the repealed statute without anything done by the person seeking to set up such right (*Abbott* v. *Minister for Lands*, 72 L. T. 402; 1895, A. C. 425; 64 L. J. P. C. 167). *V.* ACCRUE.

The "Rights, Privileges, or Duties," of a Municipal Corporation, the Costs of defending which may (without extraneous sanction) be paid out of the Borough Fund, are those relating to its existence, powers, or property (*A-G.* v. *Brecon*, 10 Ch. D. 204; 48 L. J. Ch. 153; 40 L. T. 52; 27 W. R. 332); not such matters as an alteration in the price of gas to be supplied for public lighting (*A-G.* v. *Swansea*, 1898, 1 Ch. 602; 67 L. J. Ch. 356; 78 L. T. 412; 46 W. R. 534; 62 J. P. 408). *Vf*, RIGHT: *Leith* v. *Leith Harbour Commrs*, cited PURSUANCE: NECESSARILY.

"Property and Rights" in a Co's mortgaging powers; *V.* PROPERTY, p. 1584.

V. CIVIL RIGHTS: CUSTOMARY RIGHTS: NATURAL RIGHTS.

RIGHTS AND CREDITS. — A Bequest of "Rights and Credits" will pass the general personal estate (*Hutchinson* v. *Hutchinson*, 13 Ir. Eq. Rep. 322).

RIGOROUS. — "Rigorous Imprisonment," s. 18, 47 & 48 V. c. 31, probably, refers to s. 53 of the Indian Penal Code (Act XLV. of 1860), wherein it is defined to mean, Imprisonment "with Hard Labour." By s. 73 of the Indian Penal Code, on a conviction for an offence punishable with "rigorous imprisonment," the Court may order solitary confinement during a portion of the imprisonment to which he is sentenced. *V.* SENTENCE.

RING AWASH. — *V.* STOCK AWASH.

RINGING THE CHANGES. — This trick amounts to THEFT (*R.* v. *Hollis*, 12 Q. B. D. 25; 53 L. J. M. C. 38).

RIOT. — "'Riot' is where three (at the least) or more, do some unlawfull act; as to beat a man, enter upon the possession of another, or such like" (Termes de la Ley). *Vf*, 2 Hawk. P. C. 622: Jacob: 11 Encyc. 291–294.

"A Riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public; or a lawful assembly may become a Riot if the persons assembled form and proceed to execute an unlawful purpose to

the terror of the people, although they had not that purpose when they assembled" (Steph. Cr. 49, 50). *Vf*, *State* v. *Russell*, 45 N. Hamp. 84.

Vf, Arch. Cr. 1045: Rosc. Cr. 793: REBELLION: ROUT: UNLAWFUL ASSEMBLY. *Cp*, CIVIL COMMOTION: LEVY WAR.

RIOTOUSLY. — Compensation may be given for damage occasioned "by any persons *riotously and tumultuously* assembled together," s. 2 (1), Riot (Damages) Act, 1886, 49 & 50 V. c. 38, though the assembly be in a private place (*Gunter* v. *Metrop. Police*, 5 Times Rep. 58).

RIPARIAN. — "'Ripariæ,' from *Ripa*, a Bank; in the Stat. Westm. 2, c. 47. Signifies Water or River running between the Banks, be it salt or fresh, 2 Inst. fol. 478" (Cowel).

"Riparian *Authority*," quà and by s. 112, P. H. London Act, 1891, "means any SANITARY Authority under this Act, and any Sanitary Authority under the Public Health Act, 1875, whose district, or part of whose district, forms parts of, or abuts on, any part of the said Port [of London], and any Conservators, Commissioners, or other persons having authority in or over any part of the said Port."

A Riparian *Owner* is one whose land abuts on, and is part of the bank of, a RIVER or STREAM, whether it be tidal or non-tidal (*Lyon* v. *Fishmongers Co*, 46 L. J. Ch. 68; 1 App. Ca. 662). "I am of opinion that private riparian rights may and do exist in a tidal navigable river. The most material differences between the stream above and the stream below the limit of the tides are, that in an estuary or arm of the sea there exist, by the Common Law, public rights in respect of navigation and otherwise which do not generally (in this country) exist in the non-tidal parts of the stream; and that the *fundus* or BED of the non-tidal parts of the stream belongs, generally, to the riparian proprietors, while in the estuary it belongs, generally, to the Crown" (per Ld Selborne, *Ib.* 1 App. Ca. 682; 46 L. J. Ch. 78): *whcvf*, as to the rights of riparian owners and the foundation of those rights: *Va*, *Bickett* v. *Morris*, L. R. 1 Sc. & D. App. 47: *Orr Ewing* v. *Colquhoun*, 2 App. Ca. 839: Angell on Watercourses.

RISK. — "The fallacy in the defendant's argument arises from the double meaning of the word 'Risk.' That means, both the voyage commenced with necessary conditions to make the under-writers liable, and also the chance of loss during its performance" (per Bramwell, L. J., *Bradford* v. *Symondson*, 7 Q. B. D. 464; 50 L. J. Q. B. 586: *Rodocanachi* v. *Elliott*, L. R. 8 C. P. 663, 667, 668: *V.* LOST OR NOT LOST). "It is said that the Risk on a vessel, under a policy to a place generally without any provision as to her safety there, terminates on the vessel being safely anchored at her Port of Destination, in the usual place and manner; and this, I think, is the correct rule" (per Amphlett, B., *Stone* v. *Marine Insrce*, 1 Ex. D. 86; 45 L. J. Ex. 361).

"Including *Risk of Craft*"; *V. Gen. Insrce of Trieste* v. *Royal Ex. Assrce*, 2 Com. Ca. 144. "Including *all Risks of Craft* to and from the Vessel" will cover carriage in a Lighter belonging to the assured (per Mathew, J., *Paul* v. *N. America Insrce*, 15 Times Rep. 534, rejecting *Sparrow* v. *Caruthers*, 2 Stra. 1236, and *Strong* v. *Natally*, 1 B. & P. N. R. 16).

"Including *all Risks whatsoever* . . . until safely delivered to Consignees"; this clause (called the *Warehouse to Warehouse Clause*) is so usually inserted in Marine Policies on Goods that it is incorporated into a Re-Insrce in the usual form (*Marten* v. *Nippon Insrce*, 3 Com. Ca. 164).

"Taking up a Risk"; *V. Byas* v. *Miller*, 3 Com. Ca. 40.

Land Risk; *V.* SEA INSURANCE.

V. INTERIOR: MERCHANT'S RISK: OBVIOUS: OWN RISK: OWNER'S RISK: PASSENGER'S RISK: SHIP'S RISK: STEAM NAVIGATION: WITHOUT RISK.

RISK BEGINS TO RUN.—*V.* ATTACHES.

RISK OF BOATS.—"Save Risk of Boats, so far as Ships are liable thereto," engrafted on an Exception of Perils of the Sea, does not take away that Exception quà goods put into a boat and intended to be thereby conveyed from ship to shore but lost by a PERIL OF THE SEA (*Johnston* v. *Benson*, 4 Moore C. P. 90).

RISK OF COLLISION.—In Art. 14 of Regulations for Preventing Collisions at Sea, 1879, repld Art. 17, Regns, &c, 1897, "Risk of Collision," means, "a probability or reasonable chance of collision" (1 Maude & P. 599, citing *The Sylph*, 2 Spinks, 75: *The Ericsson*, Swabey, 38: *The Mangerton*, Ib. 120).

V. COLLISION.

RISK OF CRAFT.—*V.* RISK: WITHOUT RISK.

RISKS OF THE SEA.—"All Risks and Dangers of the Sea, &c"; *V. Castle* v. *Playford*, L. R. 7 Ex. 98; 41 L. J. Ex. 44; 26 L. T. 315; 20 W. R. 440: PERIL OF THE SEA.

RITE.—"The terms 'Rite' and 'Ceremony,' as used in the first Prayer Book and from thence imported into our Present Prayer Book, are terms, so to speak, of Ecclesiastical and Ritual Art; and must be construed with reference to their use in contemporaneous and other works of writers upon Ritual, unless they receive a different meaning from a comparison of other passages or parts in the Prayer Book or Statute in which they are found" (per Sir R. Phillimore, *Martin* v. *Mackonochie*, L. R. 2 A. & E. 130). "There is no doubt that the terms 'Rites and

Ceremonies' are sometimes used in the sense contended for by the defts," — *i.e.* an Entire Service, such as Masses for the Dead, or Services for particular Festivals; or Customs, such as Creeping to the Cross, and the like, which were abolished at the Reformation, — " but, on the whole, the result of my examination of the authorities leads me to the conclusion that there is a legal distinction between a 'Rite' and a 'Ceremony'; the former consisting in Services expressed in words, the latter in gestures or acts preceding, accompanying, or following, the utterance of these words" (Ib. 135, 136). The actual decision in that case was reversed by the P. C. (L. R. 4 A. & E. 279; 38 L. J. Ecc. 1), but, *semble*, without affecting the above definitions. *Vf*, ORNAMENT.

V. DIVINE SERVICE: MINISTRATION: SACRIFICE.

RIVER. — *V.* SEA: STREAM: THAMES.

As to what is to be considered River as distinguished from what is SEA; *V. Horne* v. *Mackenzie*, 6 Cl. & F. 628: MOUTH: NAVIGABLE: TIDAL RIVER.

"River," quà Clyde Navigation Act, 1858; *V. Clyde Nav.* v. *Laird*, 8 App. Ca. 658.

Quà Drainage (Ir) Act, 1842, 5 & 6 V. c. 89, "River," extends "to all rivers, lakes, canals, streams and estuaries" (s. 159): quà Land Drainage Acts, 1847, "rivulets" is added to that def (10 & 11 V. c. 38, s. 20, c: 113, s. 17).

Quà Fisheries (Ir) Acts, 1842, and 1850, "River," extends "to tributaries of rivers, and to all other streams and watercourses" (13 & 14 V. c. 88, s. 1, enlarging def in 5 & 6 V. c. 106, s. 113).

Quà SALMON Fisheries Acts, "'River,' shall include such portion of any stream or lake, with its TRIBUTARIES, and such portion of any estuary sea or sea-coast, as may from time to time be declared (in manner hereinafter provided) to belong to such River: 'Salmon River,' shall mean, any River, as above defined, frequented by salmon or young of salmon" (s. 3, 28 & 29 V. c. 121: on *whv*, *R.* v. *Grey*, 35 L. J. M. C. 198; 7 B. & S. 434; L. R. 1 Q. B. 469; 14 L. T. 477; 14 W. R. 671; 12 Jur. N. S. 685); *Vf*, as to "Salmon River," 41 & 42 V. c. 39, ss. 5, 6.

Quà Salmon Fisheries (Scot) Act, 1862, 25 & 26 V. c. 97, "River, shall include tributaries, and any lake from or through which any river flows" (s. 2).

Quà Trout (Scot) Acts, 1845, and 1860, "River," "Water," or "Loch," means and includes, "any stream, burn, mill-pool, mill-lead, mill-dam. sluice, pond, cut, canal, and aqueduct, and every other collection or run of water in which trouts and other fresh water fish breed, haunt, or are found or preserved" (8 & 9 V. c. 26, s. 10; 23 & 24 V. c. 45, s. 9).

Rivers and Lake Improvements, Sch 3, British North America Act, 1867; *V. A-G. Canada* v. *A-G. Ontario*, cited EXCLUSIVE RIGHT.

"Perils of Rivers," held, in America, to include Canal Navigation in a Marine Insrce (*Protection Insrce* v. *Wilson*, 6 Ohio St. 553).

V. SEVERAL FISHERY.

RIVER FISH. — *V.* FRESHWATER FISH.

ROAD. — "The word 'Road,' used in a Public Act, means, in my opinion, a PUBLIC ROAD, — a road over which the PUBLIC have rights" (per Bramwell, B., *Curtis* v. *Embery*, 42 L. J. M. C. 40; L. R. 7 Ex. 369; 21 W. R. 143), *i.e.* a road "open to all Her Majesty's subjects" (per Halsbury, C., *Caledonian Ry* v. *Turcan*, 67 L. J. P. C. 71).

But the context will not infrequently show that "Road" is used loosely as including both Public and Private roads, *e.g.* in ss. 39, 42–51, Ry C. C. (Scot) Act, 1845, and the corresponding sections in the Act for England. Yet, even in such cases, the Private Road so indicated means a WAY over which some strangers to the ownership of land have private rights; it does not include a drive or path or mode of access to a messuage which is within the CURTILAGE of such messuage (*Caledonian Ry* v. *Turcan*, 1898, A. C. 256; 67 L. J. P. C. 69).

A Road, generally, includes its Footpaths (per Parke and Taunton, JJ., *Loveridge* v. *Hodsoll*, 2 B. & Ad. 602). *V.* FOOTPATH.

"Roads" in s. 32, Ry C. C. Act, 1845, does not include a Tram, or Rail, Road (*Morris* v. *Tottenham Ry*, 1892, 2 Ch. 47; 61 L. J. Ch. 215); in s. 53, Ib., "Road," "means, road other than that to be made or changed under the Act" (per Wightman, J., *Tanner* v. *South Wales Ry*, 5 E. & B. 628).

Stat. Def. — 33 & 34 V. c. 70, s. 2, c. 78, s. 3; 50 & 51 V. c. 65, s. 12. — *Ir.* 14 & 15 V. c. 92, s. 25.

V. CART ROAD: HIGHWAY: MAIN ROAD: PUBLIC ROAD: ROADS: STATUTE LABOUR: STREET: TURNPIKE ROAD.

As to an implied grant of Right of Way; *V.* ABUT.

Nautically, "a 'Road' is an open passage of the SEA, that receives its denomination commonly from some part adjacent, which, though it lie out at sea yet, in respect of the situation of the land adjacent and the depth and wideness of the place, is a safe place for the common riding or anchoring of Ships; as Dover Road, Kirkley Road, Hung Road" (Hale, De Portibus Maris, ch. 2). *Cp*, PORT: HAVEN.

"Road *Authority*," quà Tramways Act, 1870, 33 & 34 V. c. 78; *V.* s. 3, on *whv*, *Wolverhampton Tramways Co* v. *G. W. Ry*, 56 L. J. Q. B. 190; 56 L. T. 892. Such Road Authority does not lose its character or privileges by entering into an agreement (under s. 11 (4), Loc Gov Act, 1888) for the repair of MAIN ROADS by the District Council (*Stockport & Hyde* v. *Chester County Council*, 61 L. J. Q. B. 22; 65 L. T. 85; 39 W. R. 606; 55 J. P. 808).

"Road Authority"; Other Stat. Def., Gas and Waterworks Facilities

Act, 1870, 33 & 34 V. c. 70, s. 2: Locomotives Amendment (Scot) Act, 1878, 41 & 42 V. c. 58, s. 9: Probate Duties (Scot and Ir) Act, 1888, 51 & 52 V. c. 60, s. 3 (3): Telegraph Act, 1892, 55 & 56 V. c. 59, s. 9.

ROADS. — "Dangers of Roads" in the Exceptions in a BILL OF LADING; *V. Rothschild* v. *Royal Mail Steam Packet Co*, 21 L. J. Ex. 275, 276; 7 Ex. 734: DANGERS.

"Roads" in a *Mining Lease*; *V. Beaufort* v. *Bates*, 31 L. J. Ch. 481; 3 D. G. F. & J. 381; 10 W. R. 200; 6 L. T. 82.

V. ROAD.

ROADSIDE WASTE. — "Roadside Waste," s. 11 (1), Loc Gov Act, 1888, does not include large strips of waste land which are private property, even though they lie open to and adjoin a HIGHWAY (*Curtis* v. *Kesteven Co. Co.*, 60 L. J. Ch. 103; 45 Ch. D. 504; 63 L. T. 543; 39 W. R. 199).

Quà presumption of ownership; *V. Gery* v. *Redman*, 45 L. J. Q. B. 267; 1 Q. B. D. 161.

ROADWAY. — Quà London Bg Act, 1894, "'Roadway,' in relation to any STREET or WAY, means and includes, the whole space open for TRAFFIC, whether carriage traffic and foot traffic or foot traffic only" (subs. 3, s. 5).

V. CENTRE: PAVE: PRESCRIBED.

ROAST. — "Roasted Chicory," "Roaster of Chicory"; *V.* DRIED CHICORY.

ROB. — *V.* ROBBERY.

To say of a man "thou hast robbed a Church," implies that the act was in a felonious manner and is actionable, especially if the speaker goes on to indicate a material robbery, *e.g.* by adding "and thou hast pulled off the lead" (*Benson* v. *Morley*, Cro. Jac. 153). *V.* SACRILEGE. So, to say of the plt that he has "robbed" another, is actionable Slander *per se*, for that word sufficiently describes an offence punishable by law (*Tomlinson* v. *Brittlebank*, 4 B. & Ad. 630; 2 L. J. K. B. 105).

ROBBERS. — "The nature of the transaction" (a Bill of Lading) "shows clearly therefore that the word 'Robbers' means, not 'Thieves' but, robbers *by force* to whom the term is more usually applied, although in common parlance it is often applied to every description of theft. It is explained also by the word with which it is associated, 'Pirates,' who certainly take by force and not by stealth. We have no doubt therefore that, in this Bill of Lading, this is the proper meaning of the word 'Robbers'; and this being so, the loss in this case was not by Robbers" (per Pollock, C. B., *Rothschild* v. *Royal Mail Steam Packet Co*, cited ROADS: *Vh*, 1 Maude & P. 353). *V.* THIEVES: DANGERS: ROBBERY.

ROBBERY. — "'*Robberie.*' *Roboria*, properly is when there is a felonious taking away of a man's goods from his person" (Co. Litt. 288 a).

"'Robberie' is when a man taketh anything from the person of another feloniously" (Termes de la Ley: *Vf*, Cowel: Jacob).

"If a man take any thing, how little soever it be, from a man's person, feloniously, it is called *Robbery*" (Doctor and Student, Di. 1, ch. 8).

Robbery is Theft, with the additional circumstance that the thing taken "is on the body or in the immediate presence of the person from whom it is taken, and that the taking is by actual violence intentionally used to overcome or prevent his resistance, or by threats of injury to his person, property, or reputation" (Steph. Cr. 224). *Vf*, *R.* v. *Francis*, cited IMMEDIATELY.

Vf, Arch. Cr. 488; Rosc. Cr. 800.

Cp, PIRACY: RAPINE: ROB: ROBBERS: THEFT: THIEVES.

ROD. — A "Rod, Pole, or Perch, in length," is 5½ Imperial Standard Yards (s. 11, 41 & 42 V. c. 49). *V.* YARD.

A Square Rod, Pole, or Perch, is 30¼ Square Yards (s. 12, Ib.).

ROD AND LINE. — Quà Salmon Fishery Acts, "Rod and Line," means, "single rod and line" (s. 4, 36 & 37 V. c. 71). *Va*, A.

A Night-line is an "INSTRUMENT or Device" to catch fish, within s. 36, 28 & 29 V. c. 121, and is not within the exception of a "Rod and Line," nor is its use excused by a License to use a Rod and Line (*Williams* v. *Long*, 37 S. J. 253; 57 J. P. 217).

Cp, "Net and Coble," sub NET.

ROGUE AND VAGABOND. — For the catalogue of those who are "Rogues and Vagabonds"; *V.* s. 4, Vagrancy Act, 1824, 5 G. 4, c. 83; 1 & 2 V. c. 38, s. 2; 34 & 35 V. c. 108, s. 7; 36 & 37 V. c. 38, s. 3; 61 & 62 V. c. 39: Steph. Cr. 130: 12 Encyc. 401–404: CHARGEABLE.

"'Rogue,' signifies an idle sturdy Beggar" (Cowel). For an early, if not the first, definition of "Roges, Vacaboundes, and Sturdy Beggers," *V.* s. 5, 14 Eliz. c. 5. For a history of the legislation hereon, *V. A-G.* v. *Merthyr Tydvil*, cited IDLE AND DISORDERLY PERSON.

V. CONJURATION: FORTUNES: FOUND: INCORRIGIBLE ROGUE: VAGABOND.

"Thou art a Traitorly Rogue," is actionable Slander (*Brunt* v. *Spencer*, 2 Keble, 47).

"Rogue *Money*," in Scotland, was a fund assessed by the Freeholders of shires to defray the charges of apprehending, subsisting, and prosecuting criminals (11 G. 1, c. 26); its assessment, collection, and management was transferred to the Commrs of Supply by the Rep. People (Scot) Act, 1832 (s. 44), and its mode of assessment and purposes were

amended by 2 & 3 V. c. 65, which latter Act was repealed by s. 34, Police (Scot) Act, 1857, 20 & 21 V. c. 72, the provisions of which Act supply the place of Rogue Money.

ROLLING STOCK. — Quà Railway Rolling Stock Protection Act, 1872, 35 & 36 V. c. 51, " 'Rolling Stock,' includes, waggons, trucks, carriages of all kinds, and locomotive engines used on railways " (s. 2).

Vh, *Easton Estate Co* v. *Western Waggon Co*, cited WORK.

ROLLS. — *V.* FRENCH BREAD.

ROLT'S ACT. — Chancery Regulation Act, 1862, 25 & 26 V. c. 42, repealed by 46 & 47 V. c. 49.

ROMILLY'S ACTS. — Charities Procedure Act, 1812, 52 G. 3, c. 101:

Corruption of Blood Act, 1814, 54 G. 3, c. 145:

Treason Act, 1814, 54 G. 3, c. 146.

Lord ROMILLY'S ACTS. — Administration of Estates Act, 1833, 3 & 4 W. 4, c. 104:

Leases Act, 1849, 12 & 13 V. c. 26, amended by 13 & 14 V. c. 17:

Judgments (Ir) Act, 1849, 12 & 13 V. c. 95:

Registration of Assurances (Ir) Act, 1850, 13 & 14 V. c. 72.

RONCARIA. — " *Roncaria* or *Runcaria* signifieth land full of brambles and briers, and is derived of *roncier*, the French word which signifieth the same, and as much as *senticetum* " (Co. Litt. 5 a).

ROOD. — A Rood of Land is " 1210 square yards, according to the Imperial Standard Yard " (s. 12, 41 & 42 V. c. 49). *V.* YARD.

Rood, Rood Loft, Rood Beam, in a Church; *V. St. John the Baptist, Timberhill*, 1895, P. 71.

ROOFED IN. — Houses had been completely roofed in, but they had shop projections with flat roofs, which roofs had only been covered with wood and had not received their intended zinc coverings; held, that the houses were " roofed in " within a Building Agreement (*Lowther* v. *Heaver*, 58 L. J. Ch 482; 41 Ch. D. 248). *Cp*, *Johnston* v. *Ewing*, cited ERECTED.

ROOT. — *V.* PRODUCT.

A good Root of TITLE to Realty requires, as a general rule, that the " first abstracted documents should purport to deal with the entire legal and equitable estates in the property; or should, at least, afford *primâ facie* evidence that the title to such legal and equitable estates was, at the date of such documents, consistent with the title as subsequently

deduced; they should not be dependent for their validity upon any previous instrument; and should contain nothing raising a fair doubt whether the parties claiming the interests there purported to be dealt with were in fact entitled so to deal with them" (Dart, 338).

ROPE WORKS. — *V.* NON-TEXTILE FACTORIES.

ROS. — *V.* BRUERA.

ROSE'S ACT. — Parochial Registers Act, 1812, 52 G. 3, c. 146.

ROTATION. — "Any Rotation"; *V.* LIBERTY TO CALL.

ROUGH DRAFT. — A document may be a perfected Agreement though headed "Rough Draft" (*Gray* v. *Smith*, 58 L. J. Ch. 803; 43 Ch. D. 208).

ROUND BALE. — *V.* BALE.

ROUNDING. — *V.* POINT.

ROUT. — "'Rout,' is when people doe assemble themselves together, and after doe proceed, or ride, or goe forth, or doe move by the instigation of one or more who is their leader: This is called a Rout, because they doe move and proceed in Routs and numbers.

"Also where many assemble themselves together upon their owne quarels and braules: as if the inhabitants of a Towne will gather themselves together to breake hedges, pales or such like, to have Common there, or to beat another that hath done to them a common displeasure, or such like, that is a Rout, and against the law, although they have not done or put in execution their mischievous intent. See the statute 1 Ma. c. 5" (Termes de la Ley).

"A Rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled" (Steph. Cr. 49).

Vf, Arch. Cr. 1045: Rosc. Cr. 798: RIOT: UNLAWFUL ASSEMBLY.

ROUTE. — *V.* REASONABLE ROUTE.

ROVER. — Rover at Sea; *V.* PIRATE.

ROYAL. — *V.* CROWN: MAJESTY.

ROYAL ARMS. — As to what is such a resemblance to the "Royal Arms" as to be inadmissible as part of a TRADE-MARK, *V. Re König and Ebhardt*, cited ROYAL CROWN.

ROYAL ASSENT. — As to the Royal Assent which is the final sanction to perfect an Act of Parliament, *V.* 1 Bl. Com. 184: PREROGATIVE.

ROYAL BURGH. — *V.* BURGH.

ROYAL COURTS OF JUSTICE. — *V.* 42 & 43 V. c. 78, s. 28.

ROYAL CROWN. — "What is a 'Royal Crown'?" — inadmissible as part of a TRADE-MARK — "It appears to me that it is that which appears on the Royal Arms, and is perfectly familiar to us all, and may be described as, a circlet surmounted by two arches" (per Stirling, J., *Re König and Ebhardt*, 1896, 2 Ch. 236; 65 L. J. Ch. 404).

ROYAL FISH. — The Sturgeon, Porpoise, and Whale only: not Salmon, or Lamprey (Hale, De Jure Maris, ch. 7). Blackstone omits the Porpoise (1 Com. 290).

ROYAL FRANCHISE. — *V.* FRANCHISE.

ROYAL MINES. — *V.* Note at end of MINE: ROYALTIES.

ROYAL PALACE. — A Royal Palace is a "house" belonging to the Reigning Monarch as part of the Royal possessions (33 H. 8, c. 12); but in order that it may be exempt from the execution of Civil Process it must be a house where the Monarch is "then demurrant or abiding, in his Royal Person" (s. 1, Ib.: *A-G.* v. *Dakin*, L. R. 4 H. L. 338; 39 L. J. Ex. 113). When a house has been a Royal Residence and is kept up as Hampton Court Palace is, — *e.g.* is provided out of the Civil List with a Guard of honour and a Chaplain, and the Monarch has a pew in its Chapel, and the gardens and vineries are kept in order at the royal expense and partly for the royal enjoyment, — that is strong evidence that it is still a Royal *Palace*, but it is insufficient to constitute it a Royal *Residence*, which means, a Palace to which the Monarch "could immediately return and reside in his own person, if he were pleased to do so" (per Ellenborough, C. J., *Winter* v. *Miles*, 10 East, 580); therefore, Hampton Court Palace, though a Royal Palace, is not a Royal Residence (*A-G.* v. *Dakin*, sup): but in 1809, Kensington Palace was a Royal Residence (*Winter* v. *Miles*, sup), and Holyrood Palace is so now (*Strathmore* v. *Laing*, 2 Wilson & Shaw, 6). The Tower was a Royal Palace within 33 H. 8, c. 12 (*R.* v. *Burchet*, 3 Inst. 140), though it could hardly now be called a Royal Residence.

ROYAL PARKS. — *V.* PARK.

ROYAL PREROGATIVE. — *V.* PREROGATIVE.

ROYAL RESIDENCE. — *V.* ROYAL PALACE.

ROYAL VOYAGE. — *V.* VOYAGE.

ROYALTIES. — "In its primary and natural sense 'Royalties' is merely the English translation or equivalent of '*Regalitates*,' '*Jura*

regalia,' 'Jura regia.' 'Regalia' and 'regalitates,' according to Ducange, are 'jura regia'; and Spelman (Gloss. Arch.) says, '*Regalia dicuntur jura omnia ad fiscum spectantia.*' The subject was discussed with much fullness of learning in *Dyke* v. *Walford* (5 Moore P. C. 434), where a Crown grant of *jura regalia*, belonging to the County Palatine of Lancaster, was held to pass the right to *bona vacantia*. 'That it is a *jus* (said Mr. Ellis in his able argument, Ib. p. 480) is indisputable; it must also be *regale*; for the Crown holds it generally through England by Royal prerogative and it goes to the successor of the Crown, not to the heir or personal representative of the sovereign. It stands on the same footing as the right to escheats, to the land between high and low water mark, to felons' goods, to treasure trove and other analogous rights.' With this statement of the law their Lordships agree" (per Selborne, C., *A-G. Ontario* v. *Mercer*, 52 L. J. P. C. 89; 8 App. Ca. 767). So "Royalties," in a grant from the Crown, will include gold and silver mines (*A-G. British Columbia* v. *A-G. Canada*, 58 L. J. P. C. 92; 14 App. Ca. 295: *Vf, Mines Case*, 1 Plowd. 330). *Vf, Listowel* v. *Gibbings*, 9 Ir. Com. Law Rep. 223.

In *Keble* v. *Hickringill* (11 Mod. 74) the Court said that "Royalty" included Free WARREN; but in *Pannell* v. *Mill* (3 C. B. 633), Channell, arg., said that "*Pickering* v. *Noyes* (4 B. & C. 639) is a distinct authority to show that 'Royalties' will not include Free Warren." In either view a RESERVATION in a Lease of all timber trees, &c, "and also all Royalties whatsoever to the premises belonging or in anywise appertaining," will not reserve a right to enter on the lands to pursue kill and take Birds of Warren (*Pannell* v. *Mill*, 3 C. B. 625; 16 L. J. C. P. 91).

In its secondary senses the word "Royalties" signifies, in mining leases, that part of the *reddendum* which is variable, and depends upon the quantity of minerals gotten (*A-G. Ontario* v. *Mercer*, sup: *Vh, Greville-Nugent* v. *Mackenzie*, cited RENT: *Listowel* v. *Gibbings*, sup); or the agreed payment to a patentee on every article made according to the patent, on *whv Re Graydon*, cited PERSONAL LABOUR.

The power to appoint a gamekeeper given, by 22 & 23 Car. 2, c. 25, to lords of "*Manors and other Royalties*," was limited, so far as "Royalties" were concerned, to such Royalties as were inferior to Manors (*Ailesbury* v. *Pattison*, 1 Doug. 28).

RUBBISH. — "Rubbish," s. 11, Harbours Act, 1814, 54 G. 3, c. 159, can only be made applicable to deposits of such a nature and of such a quantity as can be washed down to the sea (*United Alkali Co* v. *Simpson*, 1894, 2 Q. B. 116; 63 L. J. M. C. 141; 71 L. T. 258; 42 W. R. 509; 58 J. P. 607).

"Rubbish," 57 G. 3, c. 29, s. 59, are things which have become valueless to the owner and the property in which he has abandoned (*Filbey* v. *Combe*, 2 M. & W. 677; 6 L. J. M. C. 132).

"Dust, Ashes, and Rubbish" of "houses and tenements of Inhabitants," s. 87, 10 & 11 V. c. 34, did not comprise dust, ashes, or rubbish, of Manufactories (*Lyndon* v. *Stanbridge*, 26 L. J. Ex. 386; 2 H. & N. 45: *Vf*, Refuse).

RULE. — "Good Rule and Government": *V.* Peace.

"Rule," or "Order," s. 18, 1 & 2 V. c. 110; *V. Shaw* v. *Neale*, 6 H. L. Ca. 581; 27 L. J. Ch. 444; 6 W. R. 635: *Vf*, Recovered or Preserved.

V. General Rule.

RULES. — Stat. Def., 38 & 39 V. c. 60, s. 4; 50 & 51 V. c. 57, s. 19; 56 & 57 V. c. 39, s. 79.

"Rules *of Court*"; *V.* s. 14, Interp Act, 1889: *Vf*, Arb. Act, 1889, s. 27; Jud. Act, 1873, s. 100; Jud. Act (Ir) 1877, s. 3; Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, s. 3.

"Rule-Making Authority," "Statutory Rules"; *V.* 56 & 57 V. c. 66, s. 4.

V. Bye Law.

RULES or BYE LAWS. — As to what are "Rules or Bye Laws of the Employer," s. 1 (4), Employers Liability Act, 1880, 43 & 44 V. c. 42; *V. Whatley* v. *Holloway*, 6 Times Rep. 190. In that case Fry, L. J., referring to the compromises manifest in the statute, said, "Every word represents a conflict or struggle of thought"; and therefore, he said, the Act was to be construed with great care.

RUM. — "Rum," sold simply as such, must not be reduced more than 25 degrees under proof (Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30, s. 6); *Sv*, Gin.

RUN. — "Trains to run in conjunction" with other trains; *V. Caledonian Ry* v. *G. N. Ry*, 2 Ry & Can Traffic Ca. 383.

RUN WITH THE LAND. — "A Covenant is said to 'Run *with the Land*' when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. A covenant is said to 'Run *with the Reversion*' when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion" (Woodf. 172, citing *Spencer's Case*, 5 Rep. 16 a: *Vth*, 1 Sm. L. C. 65).

Under a Lease, "no covenant runs with the land except it touch the thing demised" (per Martin, B., *Stevens* v. *Copp*, L. R. 4 Ex. 25; 38 L. J. Ex. 31; 17 W. R. 166; 19 L. T. 454). *V.* Touch.

V. as to what covenants run with the land, Platt Cov., Part 4, ch. 1, s. 5: Pollock's Principles of Contract, 7 ed., 237 *et seq*: Woodf. 172 *et seq*: Add. C. 208 *et seq*: Leake, 1037: *Austerberry* v. *Oldham*, *cited* Highway, p. 878: "Privity of Estate," Privy: Assigns: Spirituous Liquor.

Note. A purchaser with notice, is charged with a covenant (*Tulk* v. *Moxhay*, 11 Bea. 571; 18 L. J. Ch. 83), if it be of a *restrictive* character (*Haywood* v. *Brunswick Bg Socy*, 51 L. J. Q. B. 73; 8 Q. B. D. 403: *Hall* v. *Ewin*, 57 L. J. Ch. 95; 37 Ch. D. 74: *Lond. & S. W. Ry* v. *Gomm*, 51 L. J. Ch. 530; 20 Ch. D. 562: *Mackenzie* v. *Childers*, 59 L. J. Ch. 188; 43 Ch. D. 265: *Andrew* v. *Aitken*, 52 L. J. Ch. 294; 22 Ch. D. 218: *Warton* v. *Robinson*, 29 S. J. 606, 607).

RUNAGATE. — To call one a "Runagate" is not Slander unless there be special damage (*Cockaine* v. *Hopkins*, 2 Lev. 214).

RUNCARIA. — *V.* RONCARIA.

RUNCORN. — *V.* MANCHESTER.

RUNNING AGREEMENT. — Quâ Mer Shipping Act, 1894, a Running Agreement with the crew of a Foreign-going Ship (*V.* FOREIGN) is, where the voyages of the ship average less than 6 months in duration, and the agreement extends over two or more voyages (subs. 5, s. 115: *Vh*, subss. 6, 7, 8, 9 of this section).

RUNNING AWAY. — The act of vagrancy by "Running Away" and leaving wife or child chargeable to the parish, s. 4, Vagrancy Act, 1824, may be committed by walking away; but "in order to be within the meaning of the statute, the person must either abscond or so conceal himself that the parish authorities cannot find him, or he must absent himself by going a long distance" (per Erle, C. J., *Cambridge* v. *Parr*, 30 L. J. M. C. 242; 10 C. B. N. S. 99; 25 J. P. 518). *Note*: the offence is not complete until the wife or child becomes chargeable (*Reeve* v. *Yeates*, 31 L. J. M. C. 241; 1 H. & C. 435).

V. DESERTION: PERSISTENT.

RUNNING DAYS. — "The meaning of 'Running Days' is that the freighter shall not waste time in loading and unloading" (per Abinger, C. B., *Pringle* v. *Mollett*, 6 M. & W. 83).

"Working days vary in different ports and different countries; and merchants and ship-owners, thinking it would be desirable to count LAY DAYS irrespective of the particular customs of particular ports, introduced the phrase 'Running Days' as distinguished from Working Days. The phrase 'Running Days' is a well-known nautical phrase, and means, all the days in which in ordinary course the ship is running, and by that phrase is meant the whole of every day, during both day and night. They are the days during which if the ship were at sea she would be running. Therefore 'Running Days' comprehends every day, including Sundays and holidays. In *Brown* v. *Johnson* (11 L. J. Ex. 373; 10 M. & W. 331), Ld Abinger said, 'I think the word *Days* and *Running Days* mean the same thing — namely, consecutive days, *unless there be*

some particular custom'" (per Esher, M. R., *Neilsen* v. *Wait*, 55 L. J. Q. B. 89; 16 Q. B. D. 72: In *Neilsen* v. *Wait* a special custom of the port of Gloucester was affirmed by which "Running Days" does not mean consecutive days).

As to day from which Running Days are to be calculated; *V. Davies* v. *M'Veagh*, 48 L. J. Ex. 686; 4 Ex. D. 265: *Murphy* v. *Coffin*, 12 Q. B. D. 87; *vthc*, *The Carisbrook*, 59 L. J. P. D. & A. 37; 15 P. D. 98: *Pyman* v. *Dreyfus*, 24 Q. B. D. 152; 59 L. J. Q. B. 13. Hereon, observe that these Days mean, days of the week, and not periods of 24 hours (*The Katy*, 1895, P. 56; 64 L. J. P. D. & A. 49; 71 L. T. 709; 43 W. R. 290: *Cp*, DAY); but, in the absence of a fixed day, a charterer is entitled to "a fair working day" on which to begin (*Commercial S. S. Co* v. *Boulton*, L. R. 10 Q. B. 346; 33 L. T. 707), yet if once a day is treated as a LAY DAY (no matter how little of its working time remains), the Running Days begin (*The Katy*, sup), so, *semble*, a charterer should not, unless obliged, begin loading or unloading late on a Saturday afternoon.

V. DAYS: WORKING DAYS: DEMURRAGE.

RUNNING FREE. — In the Regulations for Preventing Collisions at Sea, 1879, "Running Free" is probably used as opposed to CLOSE-HAULED (1 Maude & P. 599). *Vh*, *The Privateer*, 9 L. R. Ir. 105.

RUNNING LANDING NUMBERS. — "These words are in practice treated as referring to the order in which bales are entered in the dock landing book" (Lowndes, 200).

RUNNING POWERS. — *V. Ayles* v. *S. E. Ry*, 37 L. J. Ex. 104; L. R. 3 Ex. 146.

RURAL. — "Rural *Authority*"; Stat. Def., Loc Gov Act, 1888, s. 100; Open Spaces Act, 1887, 50 & 51 V. c. 32, s. 1; P. H. Act, 1875, s. 5; P. H. Act, 1890, s. 11.

Rural *Deans*, "seem to have been deputies of the Bishop, planted all round his diocese better to inspect the conduct of the Parochial Clergy" (1 Bl. Com. 383, 384); their duties "are now clearly those of inspection and report only, and are ancillary to, and not conflicting with, those of the Archdeacon" (Phil. Ecc. Law, 213). *Cp*, DEAN. Stat. Def., 34 & 35 V. c. 43, s. 3.

"Rural *District*," "Rural *Sanitary District*"; *V.* DISTRICT.

Rural *Industries*; *V.* PURPOSES. *Cp*, INDUSTRIAL EMPLOYMENT.

"Rural *Parish*," quà Loc Gov Act, 1894, means, "every Parish in a Rural Sanitary DISTRICT" (subs. 2, s. 1).

"Rural Sanitary Authority"; *V.* SANITARY.

RUSCARIA. — "A man grants *omnes ruscarias suas*, the soile where *rusci*, *i.e.* kne-holme, or butcher's pricks, or broome doe growe shall

passe, and so in the verse in the Register it is called; but in F. N. B., fol. 2, in the verse *pischaria* is put instead of *ruscaria*" (Co. Litt. 5 a).

Lord John RUSSELL'S ACTS. — Corporation and Test Act, 9 G. 4, c. 17:
Representation of the People Acts, 1832, 2 & 3 W. 4, cc. 45, 65, 88:
For the reform of Municipal Corporations, 5 & 6 W. 4, c. 76:
Tithe Act, 1836, 6 & 7 W. 4, c. 71:
Marriage Act, 1836, 6 & 7 W. 4, c. 85:
Births and Deaths Registration Act, 1836, 6 & 7 W. 4, c. 86:
For the removal of Jewish Disabilities, 8 & 9 V. c. 52.

RUSSELL-GURNEY'S ACTS. — Criminal Law Amendment Act, 1867, 30 & 31 V. c. 35:
Larceny Act, 1868, 31 & 32 V. c. 116:
Medical Act, 1876, 39 & 40 V. c. 41, enabling women to take Medical Degrees.

RUST. — As to the frequent exception in a Bill of Lading of "Rust, Leakage, and Breakage"; *V.* LEAKAGE AND BREAKAGE.

Lord RUTHERFURD'S ACTS. — Entail Amendment Act, 1848, 11 & 12 V. c. 36:
Court of Session Act, 1850, 13 & 14 V. c. 36.

RUTLAND. — Statute of Rutland; *V.* DIVIDEND.

SACRAMENT—SAFE

SACRAMENT. — "The word *Sacramentum* signified, in its general meaning, an OATH. The later Fathers of the Church applied the term to designate a Holy Mystery. The English Church expresses most clearly the Catholic Doctrine defining a Sacrament to be, 'an Outward and Visible Sign of an Inward Spiritual Grace given unto us, ordained by Christ Himself, as a means whereby we receive the same, and a pledge to assure us thereof'" (Phil. Ecc. Law, 483).

V. CHURCH: RITE.

SACRIFICE. — *V.* GENERAL AVERAGE SACRIFICE.

"Sacrifice" has been applied to the Lord's Supper by Divines of eminence, not in the sense of a true propitiatory or Atoning Sacrifice effectual as a Satisfaction for sin but, in the sense of a RITE which calls to remembrance and represents before God the one True Sacrifice (*Sheppard* v. *Bennett*, L. R. 4 P. C. 371; 41 L. J. Ecc. 1). But in the 39 Articles "Sacrifice" means *the* Atoning Sacrifice (*Voysey* v. *Noble*, 40 L. J. Ecc. 22). *V.* REAL PRESENCE.

SACRILEGE. — Sacrilege is the "felonious taking of any goods out of a Parish Church, or other Church or CHAPEL" (s. 10, 1 Edw. 6, c. 12: 2 Hale P. C. 365); and such goods are not confined to things used for Divine Service, — the felonious taking of anything out of (or belonging to, *Benson* v. *Morley*, cited ROB) a Church or Chapel, which taking is a "violation of the sanctity of the place," is Sacrilege (*R.* v. *Catherine Rourke*, Russ. & Ry. 386); in *thlc* the woman was convicted at Kingston Lent Assizes, 1819, of stealing an iron pot (value 6*d.*) used for burning charcoal to air the vaults of the church, and a snatch-block (value 4*s.*) for raising weights when the bells wanted repairing; and the judges (Easter Term, 1819) were unanimously of opinion "that a Capital Sentence ought to be passed on the prisoner." *Note*: Sacrilege is now punished by s. 50, Larceny Act, 1861, which, moreover, extends the offence to "Meeting-house, or other Place of Divine Worship," as well as to a Church or Chapel. *Vh*, 2 Russ. Cr. Bk. 3, ch. 2: Arch. Cr. 606, 607: Rosc. Cr. 816: Jacob.

SACRISTAN. — *V.* SEXTON.

SADDLE. — *V.* BELONGING.

SAFE. — "Safe and practicable" for Navigation; *V. The Oporto*, 66 L. J. P. D. & A. 12, 49; 1897, P. 249; 75 L. T. 599.

SAFE CUSTODY. — "Safe Custody," s. 76, Larceny Act, 1861; *V. R.* v. *Cooper*, 43 L. J. M. C. 89; L. R. 2 C. C. R. 123; 38 J. P. 341: *R.* v. *Fullagar*, 41 L. T. 448; 44 J. P. 57: *R.* v. *Newman*, 51 L. J. M. C. 87; 8 Q. B. D. 706.

V. EXPRESSLY FOR SAFE CUSTODY.

SAFE LOADING PLACE. — A place where a vessel can be rendered safe for loading by reasonable measures of precaution, is a "Safe Loading Place" within the terms of a Charter Party (*Smith* v. *Dart*, 14 Q. B. D. 105; 54 L. J. Q. B. 121; 52 L. T. 218; 33 W. R. 455; 1 Times Rep. 99).

SAFE PORT. — "It seems that a PORT into which a ship cannot enter when fully laden is not a 'Safe Port'" (1 Maude & P. 320, *n*, citing *General Steam Nav. Co* v. *Slipper*, 11 C. B. N. S. 493; 31 L. J. C. P. 185. *Vf*, MANCHESTER: *Capper* v. *Wallace*, 49 L. J. Q. B. 350; 5 Q. B. D. 163); and that meaning cannot be widened by a local custom to lighten ships to enable them to go to the place named as a "Safe Port" (*Reynolds* v. *Tomlinson*, 1896, 1 Q. B. 586; 65 L. J. Q. B. 496; following *The Alhambra*, 50 L. J. P. D. & A. 36; 6 P. D. 68). And, "although the ship can physically get into it (as far as navigation and what may be called the natural incidents are concerned), yet if that would be at the certain risk of confiscation, then the place is not a 'Safe Port'" (per Blackburn, J., *Ogden* v. *Graham*, 31 L. J. Q. B. 29; 1 B. & S. 773).

Va, *Duncan* v. *Köster*, *The Teutonia*, 41 L. J. Adm. 57; L. R. 4 P. C. 171: *Nobel Co* v. *Jenkins*, cited RESTRAINTS OF KINGS: *Smith* v. *Dart*, cited SAFE LOADING PLACE: HARBOUR.

V. NEAR THERETO AS SHE MAY SAFELY GET.

SAFELY. — *V.* NEAR THERETO AS SHE MAY SAFELY GET.

"Safely and securely," in a Declaration in Bailment, meant "with due care" (*Ross* v. *Hill*, 15 L. J. C. P. 182; 3 Dowl. & L. 788; 2 C. B. 877).

SAFETY. — As to the usual phrase in a Marine Insurance, "until she hath moored at anchor 24 hours in Good Safety"; *V. Lidgett* v. *Secretan*, L. R. 5 C. P. 190; 39 L. J. C. P. 196; 22 L. T. 272, and the authorities there cited and discussed: Arn. ss. 488–491.

As to a Warranty of a Ship's "Safety," or being "Well," on a stated day; *V. Blackhurst* v. *Cockell*, 3 T. R. 360.

"Safety *Cartridges*," quà Explosives Act, 1875, 38 & 39 V. c. 17, "means, Cartridges for Small Arms of which the case can be extracted from the small arm after firing, and which are so closed as to prevent any explosion in one cartridge being communicated to other cartridges" (s. 108).

"Place of Safety"; *V.* PLACE, p. 1490.

SAID. — "Said," or "the said," has reference to the last antecedent (*Esdaile* v. *Maclean*, 15 M. & W. 277; 16 L. J. Ex. 71: *Va*, *Wigmore* v. *Wigmore*, W. N. (72) 93), *e.g.*, *V. Hall* v. *Warren*, 9 H. L. Ca. 420. But, on a context, an opposite conclusion was reached in *R.* v. *Countesthorpe*, 2 B. & Ad. 487, and in *Healy* v. *Healy*, Ir. Rep. 9 Eq. 418.

V. AFORESAID: DEMISED. *Cp*, SUCH.

SAID APPEAL. — *V. R.* v. *Eyre*, 7 E. & B. 619; 26 L. J. M. C. 125.

SAID CHILDREN. — *V. Dickason* v. *Foster*, 4 L. T. 628.

SAID COMMISSIONERS. — Quà Drainage (Ir) Act, 1845, 8 & 9 V. c. 69, "said Commissioners," means, "the Commissioners, or any two of them, acting in execution of the said recited Act (5 & 6 V. c. 89) and this Act" (s. 21).

SAID ESTATE. — *V. Markham* v. *Hutt*, W. N. (66) 17.

SAID TRUSTEES. — "The power of appointment of New Trustees is sometimes given 'to the said Trustees,' and then the question arises whether a sole survivor can appoint. It is conceived that 'the said Trustees' means, the persons or person representing the trust for the time being under the Settlement, and that the survivor can therefore exercise the power" (Lewin, 787).

SAIL. — "It is clear that a warranty to 'sail,' without the word '*from*,' is not complied with by the vessel's raising her anchor, getting under sail, and moving onwards, unless at the time of the performance of these acts she has everything ready for the performance of the voyage, and such acts are done as the commencement of it, nothing remaining to be done afterwards" (per Abbott, C. J., *Lang* v. *Anderdon*, 3 B. & C. 499; 3 L. J. O. S. K. B. 62: *vthc*, *Graham* v. *Barras*, 5 B. & Ad. 1011; 3 N. & M. 125).

"'Sail' is a technical word, and means 'Start on Voyage'" (per Byles, J., *Barker* v. *McAndrew*, 34 L. J. C. P. 195; 18 C. B. N. S. 759: *Vh*, 1 Maude & P. 500: *Thompson* v. *Gillespy*, 24 L. J. Q. B. 340; 5 E. & B. 209). "A vessel has sailed the moment she is unmoored and got UNDER-WAY, in complete preparation for the voyage, *with the purpose* of proceeding to sea without further delay at the Port of Departure. Ld Mansfield said, 'To constitute a Sailing under this Warranty, the vessel at the time of sailing must be, *in the contemplation of the Captain*, at absolute and entire liberty to proceed to her Port of Delivery in a mathematical line if it were possible' (*Thellusson* v. *Staples*, 1 Doug. 366, *n*), — referring, probably, to her being ready so far as her preparations and equipments for the voyage are concerned" (Phillips on Insrce, s. 772, cited and adopted by Mathew, J., *Sea Insrce* v. *Blogg*, 1898, 1 Q. B. 27;

2 Ib. 398; 67 L. J. Q. B. 22, 757; 3 Com. Ca. 5, 218; 47 W. R. 71: *Vf*, READY FOR SEA). Therefore, where a vessel, being fully equipped, left her moorings with the intention of proceeding to sea, she was held to have then sailed, although, owing to the wind, she stayed for two days about half a mile nearer the mouth of the harbour (*Cockrane* v. *Fisher*, 4 L. J. Ex. 328; 1 Cr. M. & R. 809); *secus*, where the movement from the mooring towards the mouth of the harbour was merely for the more convenient sailing at a later time (*Sea Insrce* v. *Blogg*, sup), or where the vessel starts but, being under-manned, is compelled to put back (*Sharp* v. *Gibbs*, 1 H. & N. 801).

An Agreement "to sail," without more, means, to sail at once, *i.e.* within a reasonable time "having regard to the weather and the possibility of moving the ship" (per Esher, M. R., *Oriental S. S. Co* v. *Tylor*, 63 L. J. Q. B. 131; 1893, 2 Q. B. 518).

Cp, LEAVE: but "DEPART," and "DESPATCH," are, *semble*, synonymous with "Sail."

"Now sailed, or about to sail"; *V.* NOW, towards end.

Vf, FINAL SAILING: VOYAGE.

SAIL WITH CONVOY. — *V.* CONVOY.

SAILING. — *V.* SAIL: FINAL SAILING.

SAILING VESSEL. — Sailing Vessel "under-way," or "at anchor"; *V. The Indian Chief*, 14 P. D. 24; 58 L. J. P. D. & A. 25; 60 L. T. 240, cited UNDER-WAY.

V. VESSEL. *Cp*, STEAMSHIP.

SAILOR. — *V.* SEAMAN: MARINER.

ST. LAWRENCE. — "St. Lawrence" is considered to include both the gulf and river of that name (*Birrell* v. *Dryer*, 9 App. Ca. 345).

Lord ST. LEONARDS' ACTS. — Wills Act Amendment Act, 1852, 15 & 16 V. c. 24:

Land Tax Redemption (No. 2) Act, 1853, 16 & 17 V. c. 117:

Law of Property Amendment Acts, 1859, and 1860, 22 & 23 V. c. 35; 23 & 24 V. c. 38:

Crown Debts and Judgments Act, 1860, 23 & 24 V. c. 115:

Sale of Land by Auction Act, 1867, 30 & 31 V. c. 48.

Vf, SUGDEN'S ACTS.

SAKE. — "The priviledge called 'Sake' is for a man to have the amerciaments of his tenants in his owne Court" (Termes de la Ley).

Cp, SOKE.

SALARY. — "'Salarie' is a word often used in our bookes, and it signifies a recompence or consideration given unto any man for his paines

bestowed upon another mans businesse" (Termes de la Ley, *Salarie*). *Vf*, Jacob.

The earnings of a Commercial Traveller, whose employment is at so much a year terminable by a week's notice, are "Salary" within s. 53 (2), Bankry Act, 1883 (*Ex p. Brindle*, 56 L. T. 498; 35 W. R. 596). *Vf*, INCOME.

"Salary or Remuneration"; *V.* REMUNERATION.

"Salary," quà County Officers and Courts (Ir) Amendment Act, 1885, 48 & 49 V. c. 71; *V.* s. 1.

V. FULL SALARIES: IN RECEIPT: WAGES. *Cp*, STIPEND.

SALE. — "'Sale' undoubtedly, in general, implies an EXCHANGE *for money*; and is so defined in Benjamin on Sale" (per Wills, J., *Coats* v. *Inl. Rev.*, 66 L. J. Q. B. 436; affd Ib. 732; 1897, 2 Q. B. 423: *Vf*, *G. N. Ry* v. *Inl. Rev.*, cited RELEASE: *Paine* v. *Cork Co*, cited SELL). Probably, that rule applies to Trustees acting under an ordinary Power of Sale; but the Court may, under s. 120 (*a*), Lunacy Act, 1890, authorize a sale of a lunatic's realty in consideration of a Perpetual Rent-charge (*Re Ware*, 1892, 1 Ch. 344; 61 L. J. Ch. 279; 66 L. T. 389).

"'Sale' is co-relative to 'Purchase'" (per Channell, J., *West London Syndicate* v. *Inl. Rev.*, cited EQUITABLE), and "*primâ facie*, means, a sale effectual in point of law, including the execution of a contract where the law requires a contract in writing" (per Buckley, J., *Rosenbaum* v. *Belson*, cited PROCURE).

"A 'Sale' supposes a Seller, and also, I think, a Conveyance" (per Bramwell, B., *A-G.* v. *Wyndham*, 1 H. & C. 574; 32 L. J. Ex. 6: *Cp*, *Denn* v. *Diamond*, 4 B. & C. 243). *V.* DISPOSITION.

"A Sale implies that there shall be one who sells and another who buys" (per Cockburn, C. J., *King* v. *England*, 33 L. J. Q. B. 145; 4 B. & S. 782); accordingly, it was held in that case, that a landlord does not "sell" distrained goods, within s. 2, 2 W. & M., sess. 1, c. 5, if he tokes them at their appraised value, a proceeding which will not give him the property in goods distrained belonging to a third person. But in some circumstances, *e.g.* under s. 8, Heritable Securities (Scot) Act, 1894, 57 & 58 V. c. 44, a man may be both seller and buyer (*Inl. Rev.* v. *Tod*, cited DECREE).

"The word, 'Sale,' virtually includes within it the word 'MORTGAGE,' which is practically a sale" (per Romilly, M. R., *Bennett* v. *Wyndham*, 23 Bea. 526); accordingly, it was there held that a prohibition against raising a charge by sale prevented its being done by mortgage.

Quà Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, "'Sale,' 'sell,' and cognate words, include, 'alienation,' and 'alienate,' with or without VALUABLE consideration" (s. 57).

Quà and by s. 8, Tithe Rent-charge (Ir) Act, 1900, 63 & 64 V. c. 58, "Sale" "does not include a Mortgage, or a Marriage or other Family

Settlement or Arrangement, or a sale in any Court to the owner of the land sold."

Goods are not "sold" within s. 1, Mercantile Law Amendment Act, Scotland, 1856, 19 & 20 V. c. 60, until the purchaser has acquired an enforceable *jus ad rem* in respect of such goods (*Seath* v. *Moore*, 55 L. J. P. C. 54; 11 App. Ca. 350).

Quà Sale of Goods Act, 1893, "'Sale,' includes, a Bargain and Sale, as well as a Sale and Delivery" (s. 62). *Vh*, Chalmers on the Act: 11 Encyc. 349–360.

The supply at a price by a CLUB to one of its members of Intoxicants to be consumed by him off the premises, is not a "sale" within s. 3, Licensing Act, 1872 (*Graff* v. *Evans*, 51 L. J. M. C. 25; 8 Q. B. D. 373; 30 W. R. 380; 46 L. T. 347; 46 J. P. 262: *Newell* v. *Hemingway*, 58 L. J. M. C. 46; 60 L. T. 544; 53 J. P. 324). *V.* DRUNKEN PERSON. As to Place of Sale, *V.* inf.

Where goods are "sold" under a *fi. fa.*, the 14 days from the time of their "sale," under s. 87, Bankry Act, 1869, repld s. 46, Bankry Act, 1883, will begin to run when the sale is *completed* which the writ authorizes, *i.e.* the end of the last day of sale (*Jones* v. *Parsell*, 52 L. J. Q. B. 672; 11 Q. B. D. 430: *Re Cripps, Ross, & Co*, 58 L. J. Q. B. 19). *V.* "Proceeds of Sale," inf.

As to when a sale is *perfected* within ss. 6–9, Sale of Food and Drugs Act, 1875; *V. Kirk* v. *Coates*, 55 L. J. M. C. 182; 16 Q. B. D. 49: *Fecitt* v. *Walsh*, 60 L. J. M. C. 143; 1891, 2 Q. B. 304; 55 J. P. 726.

When a statute directs an Officer to sell goods he has *levied under an Execution*, that involves that such a sale gives the purchaser a good Title to the goods, even as against their true owner, *e.g.* the sale contemplated by s. 87, Bankry Act, 1869 (per Mellish, L. J., *Ex p. Villars*, 43 L. J. Bank. 76; 9 Ch. 432), or the sale by the Bailiff directed by the concluding words of s. 156, Co. Co. Act, 1888 (*Goodlock* v. *Cousins*, 1897, 1 Q. B. 558; 66 L. J. Q. B. 360: 76 L. T. 313; 45 W. R. 369), or the sale of a Distress under 2 W. & M. sess. 1, c. 5 (*V.* per Cockburn, C. J., *King* v. *England*, 33 L. J. Q. B. 145; 4 B. & S. 782).

So quà Real Estate, "a Common Law Power enables the Donee to pass the LEGAL ESTATE; but it is the execution, not the creation, of the Power which effects the transmutation of estate. The legal estate before the execution remains in the creator of the power or his grantee or heir at law, as the case may be. Thus, a devise by A. that his exors do sell his lands, gives the exors a power to pass the legal estate to the purchaser; the exors themselves take no estate — that descends to the heir at law until the power is executed — but they have the power of nominating the purchaser as the person to take the legal estate, and, on their doing so, the estate at once vests in him in the same way as if the testator had named him as his devisee (*Stafford* v. *Buckley*, 2 Ves. sen.

179: *Warneford* v. *Thompson*, 3 Ves. 513: *Smith* v. *Camelford*, 2 Ves. 698)" : Farwell, 1, 2.

Vf, inf as to Powers of Sale.

Commission on sale of Leaseholds, calculation of; *V. Biggs* v. *Gordon*, 8 C. B. N. S. 638.

Contract relating to the sale of Goods; Matter relating or incidental to sale of Leaseholds; *V.* RELATING.

V. CONTRACT OF SALE: FAULTS: HOLD.

"Contract of Sale of LAND," s. 1, V. & P. Act, 1874, includes a Contract for a LEASE, the context of the phrase being s. 2, the first rule of which relates to Leases (*Jones* v. *Watts*, 43 Ch. D. 574; 62 L. T. 471; 38 W. R. 725): *V.* VENDOR. But as to whether a Power of Sale includes a power to grant Leases, *V. Jervoise* v. *Clarke*, 6 Mad. 96: *Evans* v. *Jackson*, 8 Sim. 217.

"Sales under the *Lands C. C. Act*," &c, R. 11, Sch 1, Part 1, Solrs Rem Ord, mean, "Transactions" (*Re Burdekin*, 1895, 2 Ch. 136; 64 L. J. Ch. 561; 72 L. T. 639; 43 W. R. 534, *V.* espy jdgmt of Lopes, L. J.).

"*Conveyance* on Sale"; *V.* CONVEYANCE: DECREE.

Covenant against "the sale of Liquors"; *V.* PUBLIC HOUSE.

Covenant against "the Sale," as compared with one against being a "Seller by Retail," of Spirituous Liquors; *V.* SPIRITUOUS LIQUOR: RETAIL.

V. DISPOSITION, as to "Sale, Mortgage, or other Disposition."

"Sale, Mortgage, or Charge"; *V.* MORTGAGE OR CHARGE.

Place where a Contract of Sale is made; *V.* MADE.

Place of Sale of *Intoxicants*; *V. Pletts* v. *Campbell*, 1895, 2 Q. B. 229; 64 L. J. M. C. 225; 43 W. R. 634; 73 L. T. 344; 59 J. P. 502, disapproving *Stretch* v. *White*, 25 J. P. 485: but *Pletts* v. *Campbell* was distd in *Pletts* v. *Beattie*, 1896, 1 Q. B. 519; 65 L. J. M. C. 86; 74 L. T. 148; 60 J. P. 185: *Vf*, *Morrison* v. *Stubbs*, 61 J. P. 486: *Stephenson* v. *Rogers*, 80 L. T. 193. *Cp*, EXPOSE.

POWER OF ATTORNEY, as to construction of clause in, empowering sales; *V. Hawksley* v. *Outram*, 1892, 3 Ch. 359; 62 L. J. Ch. 215; 67 L. T. 804: such a power does not authorize a PLEDGE (*Jonmenjoy Coondoo* v. *Watson*, cited NEGOTIATE).

Power of Sale; *V.* sup.

Power to "make Sales and Arrangements"; *V.* ARRANGEMENT.

Power enabling a Sale or Exchange of property, authorizes its PARTITION.

Power of Sale, generally, authorizes a MORTGAGE (*V.* Farwell, 558; *Vf*, Ib. ch. 16: ante, p. 1781).

Power to raise money by "Sale or Mortgage," authorizes a Mortgage with a Power of Sale (*Bridges* v. *Longman*, 24 Bea. 27: *V.* Farwell, 449).

"*Proceeds* of Sale," s. 87, Bankry Act, 1869, meant, the amount actually realized by the sale (*Turner* v. *Bridgett*, 51 L. J. Q. B. 374;

8 Q. B. D. 392), as distinguished from money paid to the sheriff for, and with the assent of, the exon creditor to prevent a sale (*Ex p. Brooke*, 9 Ch. 301; 43 L. J. Bank. 49: *Stock* v. *Holland*, 43 L. J. Ex. 112; L. R. 9 Ex. 147).

A Guarantee for the deficiency of a secured debt remaining after the "sale" of the *Security*, is not available until such sale is completed (*Moor* v. *Roberts*, 3 C. B. N. S. 830). *Cp*, BOUGHT.

V. BY WEIGHT: FOR SALE: PURCHASE: RETAIL: SAMPLE: SELL: SELLER.

SALE ON TRIAL. — "Other instances of sales, dependent on conditions precedent, are afforded by 'Sales on Trial,' or 'Approval,' and by the bargain known as 'Sale *or Return*.' In the former class of cases there is no sale till the approval is given, either expressly, or by implication resulting from keeping the goods beyond the time allowed for trial. In the latter case the sale becomes absolute, and the property passes only after a reasonable time has elapsed, without the return of the goods" (Benj. 590, 591, cited with approval *Elphick* v. *Barnes*, 5 C. P. D. 326; 49 L. J. C. P. 701). But, *semble*, sales on "Approval" are now put on the same footing as those "on Sale or Return" by R. 4, s. 18, Sale of Goods Act, 1893.

In sales "on Trial," the Buyer has the whole of the agreed time in which to exercise his OPTION (Benj. 591); and, in the absence of negligence on his part, the loss of the subject-matter before that time falls on the seller (*Elphick* v. *Barnes*, sup).

In the bargain "Sale or Return," the Receiver of the goods solely has the Option of returning them; the Supplier cannot demand their return, and can only sue for their price or value (per Esher, M. R., *Kirkham* v. *Attenborough*, 1897, 1 Q. B. 201; 66 L. J. Q. B. 149; 75 L. T. 543; 45 W. R. 213). The property passes to such receiver and the transaction is concluded when (1) he signifies acceptance to the seller, or (2) he retains the goods (without notice of rejection) beyond the fixed time, or (where there is no time fixed) beyond a reasonable time, or (3) he does any "act adopting the transaction" (R. 4, s. 18, Sale of Goods Act, 1893); and such lastly mentioned act means, some act "inconsistent with anything except his being the purchaser" (per Lopes, L. J. *Kirkham* v. *Attenborough*, sup), *e.g.*, as held in that case, pledging the goods.

Vf, *Moss* v. *Sweet*, 16 Q. B. 493; 20 L. J. Q. B. 167: *Ray* v. *Barker*, 4 Ex. D. 279; 48 L. J. Ex. 569: *Ex p. Wingfield*, 10 Ch. D. 591: *Harper* v. *Granville-Smith*, 7 Times Rep. 284: Benj. 591, 592.

Where a time is specified in a "Sale or Return" bargain, it will be reckoned from the receipt of the goods by the buyer (*Jacobs* v. *Harbach*, 2 Times Rep. 419).

SALE OR RETURN. — *V.* SALE ON TRIAL.

SALEABLE COMMISSION. — "Saleable Commission" in the Army, prior to the Royal Warrant of 20th July 1871, abolishing Purchase in the Army; Stat. Def., 34 & 35 V. c. 86, s. 3. *V.* REGULATION.

SALEABLE UNDERWOOD. — What were "Saleable Underwoods" within 43 Eliz. c. 2, was a question of fact (*R.* v. *Narberth North*, 9 A. & E. 815: *Vf*, *R.* v. *Mirfield*, 10 East, 224: *R.* v. *Ferrybridge*, 1 B. & C. 379–383, *n*); and in *Fitzhardinge* v. *Pritchett* (36 L. J. M. C. 49; L. R. 2 Q. B. 135) it was held that Beech trees of 30 years' growth might be cut and managed as "Saleable Underwood" so as to be rateable under that statute.

Note: the provisions of that statute as to "saleable underwoods" were repealed by Rating Act, 1874. *V.* PLANTATION.

As to what passes under a Grant of "Saleable Underwoods"; *V.* WOOD: Touch. 95.

V. UNDERWOOD: PROPERTY OTHER THAN LAND.

SALICETUM. — "*Salicetum* doth signifie a wood of willowes, *ubi salices crescunt.* These trees in our bookes are called *sawces*" (Co. Litt. 4 b).

SALIVA. — "By the grant of the boillourie of salt, it is said that the soile shall passe, for it is the whole profit of the soile. And this is called *saliva*, of the French word *salure* for a salt-pit; and you may read *de saliva* in Domesday, and *selda* signifieth the same thing; and where you shall reade in records *de lacertâ in profunditate aquæ salsæ*, there *lacerta* signifieth a fathom" (Co. Litt. 4 b). But a little further on it is said, "*Selda* is a wood of sallows, willows, or withies"; *Va*, SELDA: Touch. 95. Cowel gives the word as "Salina," and, sub *selda*, thought Coke mistaken in taking "selda" for a salt pit.

SALMON. — Quà Salmon and Freshwater Fisheries Acts, "Salmon," includes "all migratory fish of the genus Salmon; — whether known by the names hereinafter mentioned, *i.e.* salmon, cock or kipper, kelt, laurel, girling, grilse, botcher, blue cock, blue pole, fork tail, mort, peal, herring peal, may peal, pugg peal, harvest cock, sea trout, white trout, sewin, buntling, guiniad, tubs, yellow fin, sprod, herling, whiting, bull trout, whitling, scurf, burn tail, fry, samlet, smoult, smelt, skirling or scarling, parr, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling; or by any other local name" (s. 4, Salmon Fishery Act, 1861, 24 & 25 V. c. 109). In s. 9 of that Act, "Salmon," includes "TROUT, Char, and all FRESHWATER FISH" (s. 9, 41 & 42 V. c. 39). *V.* SEA FISH.

Quà Salmon Fisheries (Scot) Acts, "Salmon," means and includes, "salmon, grilse, sea trout, bull trout, smolts, parr, and other migratory fish of the salmon kind" (s. 2, 25 & 26 V. c. 97).

Quà Fisheries (Ir) Acts, "Salmon," extends to and includes, "grilse, peall, sea trout, samlets, par, and all other fish of the salmon kind, and the spawn and fry thereof" (s. 1, 13 & 14 V. c. 88).

V. FRY: YOUNG SALMON.

"'Salmon, Trout, and Char,' shall include part of any such fish respectively" (s. 6, *d*, 55 & 56 V. c. 50).

"Salmon *Conservators*"; Stat. Def., 51 & 52 V. c. 54, s. 14.

"The Salmon Fisheries (Scotland) Acts, 1828 to 1868," "The Salmon and Fresh water Fisheries Acts, 1861 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

"Salmon *Fishing*"; *V.* NET.

"Salmon *River*"; *V.* RIVER.

V. FISHERY: FISHING.

SALT. — In the memorandum of a Policy of Insurance, "Salt" does not include Saltpetre (1 Park, 245: 2 Arn. s. 883).

To "Salt an Invoice," means, the addition of a commission to the price at which goods have been purchased (*Ex p. Johnson*, 30 L. J. Bank. 38).

SALVAGE. — "The taking care of goods left by the tide upon the banks of a navigable river, communicating with the sea, may in a vulgar sense be said to be Salvage; but it has none of the qualities of Salvage, in respect of which the laws of all civilized nations, the laws of OLERON and our own laws in particular, have provided that a recompense is due for the saving, and our law has also provided that this recompense should be a lien upon the goods which have been saved" (per Eyre, C. J., *Nicholson* v. *Chapman*, 2 Bl. H. 257), *i.e.* "the service must be successful" (*The Edward Hawkins*, 31 L. J. P. M. & A. 46).

"Salvage, in its simple character, is the service which those who recover PROPERTY from loss or danger at SEA, render to the owners, with the responsibility of making restitution, and with a lien for their reward. It is personal, in its primary character at least" (per Ld Stowell, *The Thetis*, 3 Hagg. Adm. 48: *Vf*, *Aitchison* v. *Lohre*, 4 App. Ca. 755; 49 L. J. Q. B. 123).

Life Salvage; *V.* ss. 544, 545, Mer Shipping Act, 1894: BELONGING: *The Pacific*, cited PART, p. 1412.

By the original law of the Admiralty Court, Salvage is claimable only for a SHIP, her Apparel and Cargo (including flotsam, jetsam, and lagan), and the Wreck of these, and Freight; by statute, Life Salvage is added (*The Gas Float Whitton No. 2*, 1896, P. 42; 65 L. J. P. D. & A. 17; 44 W. R. 263; affd in H. L., 1897, A. C. 337; 66 L. J. P. D. & A. 99; 76 L. T. 663).

Quà Part 9, Mer Shipping Act, 1894, "'Salvage,' includes, all expenses properly incurred by the Salvor in the performance of the Salvage Services" (s. 510).

"Salvage due under this Act," s. 552, Mer Shipping Act, 1894, refers to all cases in which Salvage may become payable by the decree of any Court having jurisdiction under the Act to determine salvage disputes (*The Fulham*, 1899, P. 251; 68 L. J. P. D. & A. 75; 47 W. R. 598; 81 L. T. 19).

"Reasonable amount of Salvage," ss. 458, 460, Mer Shipping Act, 1854, repld ss. 546, 547, Mer Shipping Act, 1894; *V. Beardnell* v. *Beeson*, 9 B. & S. 315.

Principles governing the Amount of Salvage; *V. The William Beckford*, 3 Rob. C. 355: *The Glengyle*, 1898, P. 97; 1898, A. C. 519; 67 L. J. P. D. & A. 12, 48, 87; 78 L. T. 801; 46 W. R. 308.

An agreement to equitably apportion Salvage, is not an agreement to "*abandon*" Salvage, within s. 182, Mer Shipping Act, 1854, repld s. 156, Mer Shipping Act, 1894 (*The Wilhelm Tell*, 1892, P. 337; 61 L. J. P. D. & A. 127).

Salvage "for Owners' and Charterers' Equal Benefit," "means, the NET pecuniary result of salvage operations" (per Bigham, J., *Booker* v. *Pocklington S. S. Co*, 1899, 2 Q. B. 694; 69 L. J. Q. B. 10; 81 L. T. 524).

Vh, Park, ch. 8: Kennedy on Salvage: Abbott, Part 3, ch. 10: Carver, Part 2, ch. 11: Fisher, Part 3, ch. 1, s. 2, subs. 8, Part 5, ch. 5, s. 2.

V. DURESS: SALVOR: TOWAGE: WITHOUT BENEFIT OF SALVAGE.

"A TOTAL LOSS, in the language of *Fire Insrce*, does not mean, as in Marine Insrce, the total destruction of the property, but its destruction or injury to such an extent as to render the insurer liable to pay the total sum insured. A ship may be, and perhaps often is, caught by a hurricane and lost with all hands on board; but a fire rarely totally destroys the insured property. The residue remaining after the fire is termed the Salvage" (Bunyon on Fire Insrce, 4 ed., 168).

Salvage allowances and lien to Mtgees, Trustees, &c, quà outlay in preserving the subject-matter of the mtge, trust, &c; *V.* Fisher, ss. 524–530: *Securities & Properties Corp* v. *Brighton Alhambra*, 62 L. J. Ch. 566; 68 L. T. 249: *Re Montagu*, cited REBUILDING: *Re Waldegrave*, W. N. (99) 240.

But the general principle is that the doctrine of Maritime Salvage "has no application to goods on land, nor to anything except ships or goods in peril at sea. With regard to ordinary goods on which labour or money is expended with a view of saving them or benefiting the owner, there can be only one principle upon which any claim for repayment can be based — and that is, if you can find facts from which the law will imply a contract to repay or to create a lien" (per Bowen, L. J., *Falcke* v. *Scottish Insrce*, 56 L. J. Ch. 714; 34 Ch. D. 249: *Vf*, *Re Winchilsea*, 58 L. J. Ch. 20; 39 Ch. D. 168).

SALVOR. — Quà Mer Shipping Act, 1894, "'Salvor,' means (in the case of salvage services rendered by the officers or crew, or part of the

crew, of any ship belonging to Her Majesty) the person in command of that ship" (s. 742).

SAME. — "The same," generally refers to the last preceding antecedent (Co. Litt. 20 b, 385 b); but need not, necessarily, mean the whole of the premises indicated (*Rolfe* v. *Thompson*, cited SAMPLE).

As to the antecedent to which "the same" refers; *V. Huskisson* v. *Lefevre*, 26 Bea. 160; but "the word 'same' may grammatically refer to more than one antecedent" (per Jessel, M. R., *Court* v. *Buckland*, 45 L. J. Ch. 216; 1 Ch. D. 605). A devise of "my estate called L." to A. for life, "and after his decease I give *the same*" unto B., without words of limitation, was held to give B. only a life interest (*Doe* d. *Lean* v. *Lean*, 10 L. J. Q. B. 60; 1 Q. B. 229). But this case was on a Will made previously to the Wills Act, 1837, and seems to have turned on the word "ESTATE" as implying merely local situation, rather than as laying down that because A. was to have a life estate, therefore B. was to have "the same": *Vf*, 2 Jarm. 282.

"Unless *the same* shall have been otherwise determined," s. 25, Comp Act, 1867; *V.* per Ld Herschell, *Ooregum Co* v. *Roper*, cited OTHERWISE, p. 1373.

The antecedent of "the same" in s. 9, 41 V. c. 16, is "MACHINERY," and not merely the part in motion, and therefore it was an offence within that section to employ a child under 14 to clean the fixed part of machinery in motion (*Pearson* v. *Belgian Mills*, 1896, 1 Q. B. 244; 74 L. T. 101; 65 L. J. M. C. 48; 44 W. R. 334; 60 J. P. 151), and to the same effect is the replacing provision, s. 13, Factory and Workshop Act, 1901, which avoids the use of "the same."

"Same BUSINESS," covenant against; *V. Ashby* v. *Wilson*, cited COFFEE-HOUSE. To CARRY ON "the same Business," does not mean that it must be done in a Shop; it means, selling similar goods (*Brampton* v. *Beddoes*, 11 W. R. 268; 13 C. B. N. S. 538; 7 L. T. 679).

"Same *Cause*"; *V.* CAUSE.

"Same *Circumstances*"; *V.* inf.

"Same *Conditions*"; *V.* inf.

"Same *Covenants*"; *V.* inf.

"Same *Curtilage*," in def of DRAIN, s. 250, Metrop Man. Act, 1855; *V.* CURTILAGE.

"Same *Description*" of Goods; *V. G. W. Ry* v. *Sutton*, inf.

"Same FORM"; *V.* inf.

"Same *Ground*," in a Commercial Traveller's contract of service; *V. Mumford* v. *Gething*, 29 L. J. C. P. 105; 7 C. B. N. S. 305.

"Same INTEREST"; — "Numerous persons having the Same Interest," R. 9, Ord. 16, R. S. C., includes only those who have a common interest in some property or proprietary right; the phrase does not include persons who may be assumed to be interested in a tort (*Temperton* v. *Russell*,

1893, 1 Q. B. 435; 62 L. J. Q. B. 412; 68 L. T. 425; 41 W. R. 321). Growers of fruit, flowers, &c, who use Covent Garden Market have such a proprietary right in the Cart Stands in the Market; for under the Regulation of Covent Garden Market Act, 1828, 9 G. 4, c. cxiii, they have preferential rights to resort to such Stands (*Ellis* v. *Bedford*, 1899, 1 Ch. 494; 68 L. J. Ch. 289; 80 L. T. 332; 47 W. R. 385; affd in H. L. 70 L. J. Ch. 102; 1901, A. C. 1). *Vf, Wood* v. *McCarthy*, 1893, 1 Q. B. 775; 62 L. J. Q. B. 373; 69 L. T. 431; 41 W. R. 523.

"Same *Manner*," "Same Time and Manner," "Same Terms and Conditions"; *V.* AFORESAID: FEME. *Cp*, MANNER.

"Same *Offence*," s. 6, Habeas Corpus Act, 1679, 31 Car. 2, c. 2; *V. A-G. Hong Kong* v. *Kwok-a-Sing*, 42 L. J. P. C. 64; L. R. 5 P. C. 179.

"The expression 'Passing only over the same *Portion of the Line*,' s. 90, Ry C. C. Act, 1845, appears to us to mean, passing between the same points of departure and arrival, and passing over no other part of the line. This is the natural interpretation of the words; it was adopted by Cranworth, C., in *Finnie* v. *Glasgow Ry* (2 Macq. 77), and by the Court of Session in the recent case of *Murray* v. *Glasgow & S. W. Ry* (11 Sess. Ca. 205); and there is no decision in which any other interpretation has been put on the expression" (per Lindley, L. J., delivering jdgmt of C. A., *Manchester, S. & L. Ry* v. *Denaby Main Co*, 54 L. J. Q. B. 110; 14 Q. B. D. 209; affd by H. L., 55 L. J. Q. B. 181; 11 App. Ca. 97).

And the immediately following "expression 'Under the same *Circumstances*,' must now be taken to mean, under like circumstances *as regards the services performed* by the Railway Company in receiving, carrying, and delivering, the goods,—*V. G. W. Ry* v. *Sutton*, 38 L. J. Ex. 177; L. R. 4 H. L. 226: *Lond. & N. W. Ry* v. *Evershed*, 48 L. J. Q. B. 22; 47 Ib. 284; 46 Ib. 289; 3 App. Ca. 1029; 3 Q. B. D. 134, 254" (per Lindley, L. J., *Manchester, S. & L. Ry* v. *Denaby Main Co*, sup). *Vf, Hull, &c, Ry* v. *Yorkshire, &c, Coal Co*, 56 L. J. Q. B. 261.

"Same *Premium and Conditions*"; *V.* WARRANTED HIGHEST RATE. *Cp*, SUBJECT TO.

"Same *Qualification*"; *V.* QUALIFICATION.

"Same *Rent and Covenants*," "Same *Form*"; "On the whole, it is indisputably settled that the words 'Under the same Rent and Covenants' are not, of themselves, sufficient to include the covenant for RENEWAL. Nor will a covenant to grant a lease 'in the same FORM' include the covenant for Renewal" (1 Platt, 724; *Vf*, Ib. 713–724).

"Same or similar *Services*," s. 27 (2), Ry & Canal Traffic Act, 1888, 51 & 52 V. c. 25; *V. Mansion House Assn* v. *Lond. & S. W. Ry*, 1895, 1 Q. B. 927; 64 L. J. Q. B. 529; 72 L. T. 507; 9 Ry & Can Traffic Ca. 20.

"Same *State of Investment*"; *V. Re Morris, Bucknill* v. *Morris*, 54 L. J. Ch. 388; 52 L. T. 462; 33 W. R. 445; W. N. (85) 31: INVESTMENT.

In the "same STREET"; *V. A-G.* v. *Edwards*, cited IN, p. 925.

"Same *Town or Place*"; *V.* TOWN.

"Same *Transaction*, or series of transactions," R. 1, Ord. 16, R. S. C.; *V. Stroud* v. *Lawson*, 1898, 2 Q. B. 44; 67 L. J. Q. B. 718; 46 W. R. 626; 78 L. T. 729: *Oxford and Cambridge Universities* v. *Gill*, 1899, 1 Ch. 55; 68 L. J. Ch. 34; 79 L. T. 338: *Drincqbier* v. *Wood*, 1899, 1 Ch. 393; 68 L. J. Ch. 181; 79 L. T. 548; 47 W. R. 252: *Ellis* v. *Bedford*, sup.

"Upon the same *Trusts and Purposes*"; *V. Re North*, 76 L. T. 186; discussing *Re Perkins*, 67 L. T. 743.

"Same VOYAGE"; *V. Gether* v. *Capper*, 15 C. B. 696; 24 L. J. C. P. 69; 25 Ib. 260.

V. LIKE: SIMILAR.

SAMPLE. — "A sale by Sample, only has reference to the *quality* of the article sold" (per Parke, B., *Nichol* v. *Godts*, 23 L. J. Ex. 315; 10 Ex. 191). In that case the contract was for "Foreign Refined Rape Oil, warranted only equal to Samples," and it was held that the buyer was not bound to accept Oil which corresponded with the samples, but was not Foreign Refined Rape Oil. *Va, Azemar* v. *Casella*, 36 L. J. C. P. 263; L. R. 2 C. P. 677: and *Cp, Heyworth* v. *Hutchinson*, 36 L. J. Q. B. 270; L. R. 2 Q. B. 447.

But a sale "per Sample," simpliciter, is a warranty that the bulk shall be equal to the sample (*Parker* v. *Palmer*, 4 B. & Ald. 387); yet a sale by Sample does not exclude implied warranty of merchantable quality respecting such matters as the sample would not disclose to a purchaser using ordinary skill and diligence (*Mody* v. *Gregson*, 38 L. J. Ex. 12; L. R. 4 Ex. 49: *Drummond* v. *Van Ingen*, 56 L. J. Q. B. 563; 12 App. Ca. 284; 57 L. T. 1; 36 W. R. 20). *V.* REPORT.

Quà Sale of Goods Act, 1893, a sale by Sample implies, "That the bulk shall correspond with the sample in quality"; that "the buyer shall have a reasonable opportunity of comparing the bulk with the sample"; and "that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample" (s. 15).

V. Perkins v. *Bell*, cited ACCEPTANCE.

The "Sample," *e.g.* of MILK, to be forwarded to the Analyst under s. 3, 42 & 43 V. c. 30, need not be *all* the Sample procured by the Inspector (*Rolfe* v. *Thompson*, 1892, 2 Q. B. 196; 61 L. J. M. C. 184; 67 L. T. 295; 56 J. P. 425); and, when a Sample is procured under that section, the Inspector need not deliver a third of it to the seller under s. 14, 38 & 39 V. c. 63 (*Rouch* v. *Hall*, 50 L. J. M. C. 6; 6 Q. B. D. 17; 44 L. T. 183; 29 W. R. 304). *V.* ARTICLE DEMANDED: PREJUDICE OF PURCHASER.

SANCTION. — "Sanction" not only means prior APPROVAL; generally, it also means, Ratification (*Re De la Warr*, 16 Ch. D. 587; 50

L. J. Ch. 383; 51 Ib. 407; 29 W. R. 350; 44 L. T. 56: *the* was on s. 17, Settled Estates Act, 1877, repld s. 36, S. L. Act, 1882, where the word is "APPROVE"). *V.* RATIFY. *Cp*, AUTHORIZE.

But the regulation, R. 317, Bankry Rules, 1886, that no Member of a Committee of Inspection shall derive PROFIT from any transaction in the bankry "except under and with the Sanction of the Court," means, that the sanction must be obtained *before* the transaction is commenced (*Re Gallard*, 1896, 1 Q. B. 68; 65 L. J. Q. B. 199; 73 L. T. 457; 44 W. R. 121). *Cp*, CONSENT: PERMISSION. So, the "Sanction" of the Court or Committee of Inspection, under s. 12 (1, 4), Comp Winding-up Act, 1890, must, as a rule, be obtained beforehand (*Re London Metallurgical Co*, 1897, 2 Ch. 262; 66 L. J. Ch. 635; 76 L. T. 829; 45 W. R. 601).

"Sanction," by a Liquidator, of a Transfer of Shares, s. 131, Comp Act, 1862, "means, approval; and implies a power of disapproval" (per Lindley, L. J., *Re National Bank of Wales*, cited SHARE).

SANCTUARY. — Sanctuary was "a priviledged place by the Prince for the safegard of mens lives which are offenders, being founded upon the law of mercie, and upon the great reverence, honour, and devotion which the Prince beareth to the place whereunto hee granteth such a priviledge" (Termes de la Ley: *Vf*, Cowel: Jacob: 4 Bl. Com. 332, 365, 436). But "no Sanctuary, or Privilege of Sanctuary, shall be hereafter admitted or allowed in any case" (s. 7, 21 Jac. 1, c. 28, an Act repealed by 26 & 27 V. c. 125, without reviving this privilege, *V.* s. 1).

SANITARY. — "Sanitary *Act*"; Stat. Def., 46 & 47 V. c. 37, s. 2: "Sanitary *Acts*," *V.* P. H. Act, 1875, s. 4, and Sch 5, Part 1.

"Sanitary *Authority*"; Stat. Def., Alkali, &c, Works Regn Act, 1881, 44 & 45 V. c. 37, ss. 27, 29; Allotments Act, 1887, 50 & 51 V. c. 48, s. 17; Canal Boats Act, 1877, 40 & 41 V. c. 60, s. 14; Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, s. 93; London (Equalization of Rates) Act, 1894, 57 & 58 V. c. 53, s. 4; P. H. Ireland Act, 1878, s. 2; P. H. London Act, 1891, s. 99; Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75, ss. 20, 21, 22; 54 & 55 V. c. 40, s. 52: "RURAL Sanitary Authority," P. H. Act, 1875, s. 5; 40 & 41 V. c. 60, s. 14; 41 & 42 V. c. 77, s. 38; 53 & 54 V. c. 70, ss. 93, 96. — *Ir.* 46 & 47 V. c. 60, s. 3: "URBAN Sanitary authority," P. H. Act, 1875, s. 5; 38 & 39 V. c. 17, ss. 108, 116; 40 & 41 V. c. 60, s. 14; 41 & 42 V. c. 77, s. 38; 53 & 54 V. c. 70, ss. 93, 96; 55 & 56 V. c. 59, s. 9. *V.* PORT.

"Any General Act relating to Water Works, or any Act for improving the Sanitary CONDITION of Towns and Populous Districts," s. 93, W. W. C. Act, 1847, is not restricted to a Sanitary Act relating to the conduct of Water Works; the phrase must receive its plain and literal interpretation as indicating an Act for the PUBLIC welfare and for the

health of the community, *e.g.* the Public Health (Building in Streets) Act, 1888, 51 & 52 V. c. 52 (*Grand Junction W. W. Co* v. *Hampton*, 79 L. T. 176; 67 L. J. Q. B. 903).

"Sanitary CONVENIENCE," quà Public Health Acts, "includes, urinals, waterclosets, earth-closets, privies, ashpits, and any similar convenience" (P. H. Act, 1890, s. 11; P. H. London Act, 1891, s. 141, which latter omits "ashpits").

"Sanitary *District*"; *V.* DISTRICT.

"Sanitary *Inspector*"; Stat. Def., P. H. Scotland Act, 1897, s. 3.

"Sanitary PURPOSES," quà Public Health Acts, "means, any object or purposes of the Sanitary Acts" (P. H. Act, 1875, s. 4; P. H. Ireland Act, 1878, s. 2).

"Sanitary *Work*," quà Public Health Acts, "*means*, any existing or future building or work constructed by, or vested in or under the control of, a Local Authority under the powers or for the purposes of so much" of the P. H. Act, 1875, "or of any General or Local Act or Provisional Order, as relates to the construction or maintenance of any Works of Sewerage, Drainage, Sewage Disposal, Lighting, or Water Supply; and *includes*, any fixtures, pipes, fittings, or apparatus, connected with any such work and belonging to or used by the Local Authority" (s. 2, 46 & 47 V. c. 37).

SANS RECOURS. — An Indorsement of a BILL OF EXCHANGE or Promissory Note (*V.* ENDORSE), with the added words "Sans Recours," or "Without Recourse to me," exonerates the Indorser from responsibility (Byles, 181); so, in the United States, of "at the Indorsee's OWN RISK" (*Rice* v. *Stearns*, 3 Mass. 225: *Mott* v. *Hicks*, 1 Cowen, 512: Byles, 6th American ed., 242). But it transfers the Indorser's own interest in the document (per Patteson, J., *Morris* v. *Walker*, 15 Q. B. 598).

An Indorsement of a BILL OF LADING directing the shipowner to deliver to the Indorsee, "looking to him for all Freight, Without Recourse to us," exonerates the Indorser from liability to Freight, if it be proved that the shipowner accepted the Indorsement; but such proof is not furnished by merely proving that the Indorsement was on the Bill when that document was handed to the Master; it must be proved that he saw and accepted the Indorsement (*Lewis* v. *McKee*, 36 L. J. Ex. 6; 38 Ib. 62; L. R. 2 Ex. 37; 4 Ib. 58).

SATISFACTION. — "*Nota*, 'in satisfaction,' and 'in full satisfaction' is all one" (Co. Litt. 213 a). *Vf*, ACCORD: GREE: FOR, towards end.

A DEED acknowledging a payment "in Full Satisfaction" (or, *semble*, "in Satisfaction") of rights, may amount to a Release, and, if those rights relate to property, it may amount to a "CONVEYANCE on Sale" (*Garnett* v. *Inl. Rev.*, cited RELEASE).

"Satisfaction" to be made for taking the SURFACE of land, *e.g.* for a Canal, includes an obligation to make compensation for the subjacent minerals which must be left for support (*Lond. & N. W. Ry* v. *Evans*, 1893, 1 Ch. 16; 62 L. J. Ch. 1; 67 L. T. 630; 41 W. R. 149). *V.* SOIL.

"Satisfaction for all DAMAGE," s. 16, Ry C. C. Act, 1845; *V. Re Gower's Walk Schools* v. *London, Tilbury & Southend Ry*, 59 L. J. Q. B. 162; 24 Q. B. D. 326; 62 L. T. 306; 38 W. R. 343; 6 Times Rep. 390: "Compensation for any Damage"; *V. Colac* v. *Summerfield*, 1893, A. C. 187; 62 L. J. P. C. 64; 68 L. T. 769.

"Making or tendering Satisfaction" for damage done in the exercise of statutory powers, does not imply a Condition Precedent to the right of entry; but means that the act shall not be done without compensation being made (*Lister* v. *Lobley*, or *Hoxley*, 6 L. J. K. B. 200; 7 A. & E. 124: *Bentley* v. *Manchester, S. & L. Ry*, 1891, 3 Ch. 222; 60 L. J. Ch. 641).

To "make Satisfaction" to a Creditor, s. 36, Judgments Act, 1838, 1 & 2 V. c. 110, is to pay his debt (*Hitching*, or *Kitching* v. *Croft*, 10 L. J. Q. B. 18; 12 A. & E. 586); in scarcely any connection could the term also connote that the debtor is to obtain the goodwill and pleasure of his creditor (*Eagleton* v. *East India Co*, 3 B. & P. 55).

"When a testator gives a direction that a particular thing shall be taken by any one 'in or towards Satisfaction' of his Share, and the thing spoken of exists and belongs to the testator, I cannot doubt that, according to the plain and obvious meaning, he *gives* that thing; and this plain meaning is not controlled or varied, but rather corroborated, by adding such words as 'and shall be brought into HOTCHPOT and accounted for accordingly'" (per Rigby, L. J., *Re Cosier*, 1897, 1 Ch. 325; 66 L. J. Ch. 236; *Sv, S. C.* in H. L. nom. *Wheeler* v. *Humphreys*, 1898, A. C. 506; 67 L. J. Ch. 499).

As to the doctrine of Satisfaction of *Legacies*; *V.* ADEMPTION: 2 White & Tudor, 366–415: Wms. Exs. 1183 *et seq*: Theobald, 666–684.

When a STREET has been in the possession of a Local Authority for a considerable time and they have done nothing, it must be assumed that it is sewered to their "Satisfaction," s. 150, P. H. Act, 1875, "although, as a matter of fact, they have not come to such a determination at all" (per Kekewich, J., *Handsworth* v. *Derrington*, cited SEWERED, stating effect of jdgmt of Esher, M. R., *Bonella* v. *Twickenham*, 57 L. J. M. C. 1; 20 Q. B. D. 63; 58 L. T. 299; 36 W. R. 50: *Vf, Rishton* v. *Haslingden*, cited STREET, and consider *Simmonds* v. *Fulham*, 1900, 2 Q. B. 188; 69 L. J. Q. B. 560; 82 L. T. 497; 48 W. R. 574; 64 J. P. 548, wherein *Bonella* v. *Twickenham* was distd). In *Handsworth* v. *Derrington*, the sewering was held not to have been done to such "Satisfaction." *Vf*, FRONTING, *Note*.

A thing to be done if it appear "to the Satisfaction of" the Judge

that it ought to be done, does not exempt his ruling from being reviewed (*Beaufort* v. *Crawshay*, cited PERMANENT).

V. SATISFACTORY: SACRIFICE.

SATISFACTORY. — Where one party has to perform a contractual obligation to the "SATISFACTION" of the other, *e.g.* furnish "Proof satisfactory" of death or accident, this does not give that other the power to act capriciously, — he can only ask for a reasonable fulfilment of the obligation (*Braunstein* v. *Accidental Insrce*, 31 L. J. Q. B. 17; 1 B. & S. 782: *Sv*, quà a Works Contract, *Stadhard* v. *Lee*, 32 L. J. Q. B. 75; 3 B. & S. 364). So, a condition to furnish a Title "satisfactory" to the purchaser, only entitles him to make usual objections (*Lord* v. *Stephens*, 1 Y. & C. Ex. 222). So, services or conduct to the "Satisfaction" of an employer, means, such as ought reasonably to satisfy him, of which the jury are to judge (per Esher, M. R., *Petty* v. *Ophir Concessions*, Times, 17th Dec 1890).

As to an Architect's Certificate of satisfactoriness; *V.* CERTIFICATE.

"Satisfactory *Evidence*," s. 64, Tithe Act, 1836, 6 & 7 W. 4, c. 71; though under this section a sealed copy of a Tithe Commutation Map is "Satisfactory Evidence" of its accuracy, that is only so for the purposes of the Act, and not on questions of ownership (*Wilberforce* v. *Hearfield*, 46 L. J. Ch. 584; 5 Ch. D. 709). *V.* SUFFICIENT EVIDENCE.

Satisfactory Proof, quà a Life Policy; *V. Moore* v. *Woolsey*, 24 L. J. Q. B. 40; 4 E. & B. 243. *Vf*, PROVE.

V. CORRECT.

SATISFACTORILY SOLD. — *V.* CAUTION.

SATISFIED. — "I desire it to be understood as my clear opinion that a Term does not become 'satisfied,' within 8 & 9 V. c. 112, unless the beneficial interest in the charge secured by the term, the beneficial interest in the whole charge, and the beneficial interest in the whole estate, are united and merged in one person" (per James, L. J., *Anderson* v. *Pignet*, 42 L. J. Ch. 312; 8 Ch. 180; 27 L. T. 740; 21 W. R. 150: *Va*, cases there cited, and *Shaw* v. *Johnson*, 30 L. J. Ch. 646; 1 Dr. & Sm. 412; 4 L. T. 461; 9 W. R. 629).

To be "satisfied" with a state of things, means, to be honestly satisfied in your own mind; it does not, by itself, mean that reasonable care is to be taken to make enquiries before being satisfied, *e.g.* a constable acts properly if he is, in his own mind, honestly "satisfied that it is necessary for the public safety or the welfare of an alleged lunatic" to remove the latter to a Workhouse under s. 20, Lunacy Act, 1890 (*Harward* v. *Frost*, 14 Times Rep. 306).

"Satisfied *his Contempt*," 53 G. 3, c. 127; *V. Dean* v. *Green*, 8 P. D. 79: *Ex p. Bell Cox*, 20 Q. B. D. 1; nom. *Cox* v. *Hakes*, 15 App. Ca. 506; 60 L. J. Q. B. 89.

Exon "withdrawn, satisfied, or stopped"; *V.* WITHDRAWN.

SAVE. — "Can Save"; *V.* LEFT.
Despatch Money for time "saved"; *V.* DESPATCH.

SAVINGS. — "Savings" of Income of Trust Funds, may well bear the sense of, something in the hands of the trustees not paid over; and includes a proportionate part of an Annuity for the time being between the last payment and the death of the annuitant (*Re Rosenthall*, 6 W. R. 139).

Wife's Savings; *V. Finlay* v. *Darling*, cited ENTITLED, p. 630: *Askew* v. *Rooth*, cited PURCHASED.

"Savings, Provisoes, and Indemnities," 6 G. 3, c. 53; *V. Miller* v. *Salomons*, 21 L. J. Ex. 161; 7 Ex. 475, on app. *Salomons* v. *Miller*, 22 L. J. Ex. 169; 8 Ex. 778.

Savings *Banks*, are of, at least, three kinds, (1) Post Office Savings Bank, on *whv*, The Post Office Savings Bank Acts, 1861 to 1893 (*V.* Sch 2, Short Titles Act, 1896); (2) Trustee Savings Banks, on *whv*, The Trustee Savings Banks Acts, 1863 to 1893 (*Ib.*); (3) Seamen's Savings Bank, on *whv*, s. 148, Mer Shipping Act, 1894.

When an Act speaks of a "Savings Bank," the phrase is generally defined to mean the two firstly mentioned kinds of Savings Bank, *e.g.* 45 & 46 V. c. 51, s. 14; 54 & 55 V. c. 21, s. 16; 56 & 57 V. c. 69, s. 5; 57 & 58 V. c. 47, s. 16; but quà Mer Shipping Act, 1894, "'Savings Bank,' means, a Seamen's Savings Bank under this Act, or a Trustee Savings Bank, or a Post Office Savings Bank" (s. 141).

"Savings Bank ANNUITY," "Savings Bank INSURANCE"; Stat. Def., 56 & 57 V. c. 69, s. 5.

"Savings Bank *Authority*," "means, as regards any Trustee Savings Bank, the Trustee of that Bank; and as regards the Post Office Savings Bank, the Postmaster-General" (56 & 57 V. c. 69, s. 5; 43 & 44 V. c. 36, s. 5).

"Savings Bank YEAR," "means, with reference to a Trustee Savings Bank, the year ending on the 20th day of November; and with reference to the Post Office Savings Bank, the year ending on the 31st day of December" (s. 5, 56 & 57 V. c. 69; s. 11 (4), 54 & 55 V. c. 21; s. 14, 45 & 46 V. c. 51).

SAWCES. — *V.* SALICETUM.

SAY. — "Say ABOUT": "In *M'Connel* v. *Murphy* (L. R. 5 P. C. 203; 21 W. R. 609; 28 L. T. 713) where the sale was 'of all the spars manufactured by A., say about 600,' the words 'say about 600' were held to be words of expectation and estimate only, not amounting to an understanding that the quantity should be 600. The effect of the word 'say' when prefixed to the word 'about' was considered as emphatically marking the vendor's purpose to guard himself against being supposed to have made any absolute promise as to quantity" (Benj.

684: *Va*, Blackb. 216). But in a Charter-Party a contract to deliver "a full and complete cargo . . . say about" a specified quantity, the words "say about" would bear a different meaning from what they would in an ordinary contract, and would not be mere words of expectation, but are words of limitation and therefore of contract (*Morris* v. *Levison*, 45 L. J. C. P. 409; 1 C. P. D. 155; 34 L. T. 576; 24 W. R. 517: *V.* Abbott, 241: Blackb. 216).

"Say *From*": In a contract for sale "say from 1,000 to 1,200 gallons," these are words of expectation (*Gwillim* v. *Daniel*, 4 L. J. Ex. 174; 2 Cr. M. & R. 61). But in *Tanvaco* v. *Lucas* (28 L. J. Q. B. 150, 301; nom. *Tamvaco* v. *Lucas*, 1 E. & E. 582), a contract for "about 2,000 quarters, *say from* 1,800 to 2,200 quarters," was, in view of its other stipulations, construed as fixing a minimum and maximum limit.

"Say, *not less than*": In a contract for sale of wool "Say not less than 100 packs," these are not mere words of expectation; but amount to a contract to deliver at least that quantity (*Leeming* v. *Snaith*, 16 Q. B. 275; 20 L. J. Q. B. 164: *Va*, *Bourne* v. *Seymour*, 24 L. J. C. P. 202; 16 C. B. 337: NOT LESS).

If against the total of the items of a Solr's Bill he adds "say" a lesser sum than the total, yet still it is that total which is the amount of the bill quà the costs of its taxation (*Re Carthew*, 54 L. J. Ch. 134).

Vf, as to the use of the word "Say," *Philips* v. *Astling*, 2 Taunt. 211.

V. MORE OR LESS: THEREABOUTS.

SCAFFOLDING.—BUILDING, exceeding 30 feet in HEIGHT, "CONSTRUCTED or repaired by means of a Scaffolding," s. 7 (1), Workmen's Comp Act, 1897, is a phrase exactly copied from s. 23 (2), Factory and Workshop Act, 1895, 58 & 59 V. c. 37, and which appeared in a slightly different form in the Sch to 57 & 58 V. c. 28. Quà the firstly mentioned Act it has occasioned much difficulty. Probably, whether any particular building arrangement is a "Scaffolding" or not, is a mixed question of law and fact; the inclination, probably, being to support the conclusion reached at the trial (*Hoddinott* v. *Newton*, 1901, A. C. 49; 70 L. J. Q. B. 150; 84 L. T. 1; 49 W. R. 380: *Ferguson* v. *Green*, 17 Times Rep. 41; 1901, 1 Q. B. 25; 70 L. J. Q. B. 21; 83 L. T. 461; 49 W. R. 105; 64 J. P. 819).

It is clear that a "Scaffolding" may be inside as well as outside a building (*Hoddinott* v. *Newton*, sup), and in *Maude* v. *Brook* (1900, 1 Q. B. 575; 69 L. J. Q. B. 322; 82 L. T. 39; 48 W. R. 290; 64 J. P. 181), Smith and Rigby, L. JJ., held that that construction extends to the inside of a room in a building; but it is submitted that the preferable opinion was given by Collins, L. J., when, in the same case, he said, "In my opinion the Scaffolding contemplated by the statute is, one system of scaffolding for the whole building by means of which it is being constructed or repaired."

A ladder placed outside a building one end of a plank being tied to one of its rungs, is not a "Scaffolding" (*Wood* v. *Walsh*, cited REPAIR); but planks and trestles may be a "Scaffolding" (*Hoddinott* v. *Newton*, sup), and in *Maude* v. *Brook* (sup) the majority of the Court held that trestles with loose planks laid across to enable the workman to plaster the ceiling of a room 9 feet high, formed a "Scaffolding"! *Sv*, the jdgmt of Collins, L. J.

Vf, *Veazey* v. *Chattle*, 1902, 1 K. B. 494; 71 L. J. K. B. 252; 85 L. T. 574; 50 W. R. 263; 66 J. P. 389: *Marshall* v. *Rudeforth*, 1902, 2 K. B. 175; 71 L. J. K. B. 781: PLANT.

SCANDALOUS. — A pleading is "Scandalous," R. 27, Ord. 19, R. S. C., which alleges anything unbecoming the dignity of the Court to hear, or is contrary to good manners, or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading (*Millington* v. *Loring*, 50 L. J. Q. B. 214; 6 Q. B. D. 190; 29 W. R. 207: *Christie* v. *Christie*, 2 L. J. Ch. 544; 8 Ch. 499). *Vf*, Ann. Pr.

For examples of Scandalous pleading; *V. Blake* v. *Albion Assrce*, 45 L. J. C. P. 663; 24 W. R. 677: *Lee* v. *Ashwin*, 1 Times Rep. 291: *Coyle* v. *Cuming*, 27 W. R. 529: *Duncan* v. *Vereker*, W. N. (76) 64: *Bright* v. *Marner*, W. N. (78) 211. *Cp*, FRIVOLOUS OR VEXATIOUS.

SCENE. — Representation of "any Scene or Object," s. 2, Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68; *V. Hanfstaengl* v. *Empire Palace*, 63 L. J. Ch. 455.

SCHEDULE. — *V.* INVENTORY: TERRIER.

As to when a Schedule is restrictive, *V.* SET FORTH.

SCHEME. — "Scheme of ARRANGEMENT of his AFFAIRS"; *V.* Bankry Act, 1890, ss. 3, 6: Wms. Bank. 62 *et seq*: Baldwin, 635 *et seq*. *Cp*, "Deed of Arrangement," sub DEED: CESSION.

Scheme of Arrangement quà Companies; *V.* Joint Stock Companies Arrangement Act, 1870, 33 & 34 V. c. 104: Buckl. 630: 2 Palmer Co. Prec. 783. *Cp*, RECONSTRUCTION.

"A Scheme *legally established*," s. 29, 18 & 19 V. c. 124, means, a document, sanctioned by some properly constituted authority, containing directions for the administration of a CHARITY; and does not include the Instrument of Foundation of the Charity (*Re Mason's Orphanage*, 1896, 1 Ch. 54; 65 L. J. Ch. 439; 74 L. T. 161; 44 W. R. 339).

Stat. Def. — 52 & 53 V. c. 40, s. 17.

SCHISM. — They are guilty of Schism who "separate themselves from the Communion of Saints, as it is approved by the Apostles' rules in the Church of England, and combine themselves together in a New Brotherhood; accounting the Christians who are conformable to the doc-

trine government rites and ceremonies of the church of England to be profane, and unmeet for them to join with in Christian Profession" (9th, Canons Ecc. 1604).

SCHOFIELD'S ACT. — Parliamentary Costs Act, 1865, 28 & 29 V. c. 27.

SCHOLAR. — To say of a PHYSICIAN "thou wert never Scholar, and art not worthy to speak to a Scholar," is Slander *per se*, although it be urged that "a Physitian may be no good Scholar and yet a good Physitian" (*Cawdry* v. *Highley*, cited FOOL).

SCHOLARSHIP. — Quà Oxford University Act, 1854, 17 & 18 V. c. 81, "Scholarship," includes, "the Bursaries appropriated to any College in Scotland" (s. 48): quà Welsh Intermediate Education Act, 1889, 52 & 53 V. c. 40, "'Scholarship,' includes Exhibition, or other Educational EMOLUMENT" (s. 17): *V.* EDUCATIONAL ENDOWMENT.

SCHOOL. — Stat. Def., 17 & 18 V. c. 81, s. 48; 25 & 26 V. c. 43, s. 10; 31 & 32 V. c. 118, s. 2; 40 & 41 V. c. 48, s. 2; 56 & 57 V. c. 42, s. 15; 62 & 63 V. c. 32, s. 14. — *Ir.* 61 & 62 V. c. 30, s. 3 (10).

"Burgh School"; *V.* BURGH.

"School House"; Stat. Def., 8 & 9 V. c. 118, s. 167; 33 & 34 V. c. 75, s. 3; 51 & 52 V. c. 42, s. 6.

"School of Learning," 43 Eliz. c. 4, includes a school for the education of gentlemen's sons (*A-G.* v. *Lonsdale*, 1 Sim. 109: *Va*, *A-G.* v. *Nash*, 3 Bro. C. C. 588).

"Other Schools"; *V. Re Stockport Schools*, cited OTHER, p. 1365.

"School Board Rate"; Stat. Def., 60 & 61 V. c. 16, s. 1 (2).

"School Year"; Stat. Def., 54 & 55 V. c. 56, s. 10.

V. CERTIFIED: CHARITY SCHOOL: DISCIPLINE: EDUCATION: ELEMENTARY: ENDOWED: FREE GRAMMAR SCHOOL: GRAMMAR SCHOOL: HOUSE, p. 894: NON-VESTED NATIONAL SCHOOL: PARISH SCHOOL: PUBLIC ELEMENTARY SCHOOL: PUBLIC SCHOOL: RAGGED SCHOOL: RECOGNIZED: SCIENCE: SUNDAY SCHOOL: TECHNICAL: VOLUNTARY SCHOOL.

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

SCHOOLMASTER. — *V.* MASTER: TUTOR.

SCIENCE. — "Science," in its general meaning is not confined to pure or speculative science but, includes applied science (per Ld Macnaghten, *Inl. Rev.* v. *Forrest*, 15 App. Ca. 353, 354; 60 L. J. Q. B. 290).

Quà Public Libraries (Ir) Acts (*V.* PUBLIC LIBRARY), "Science and Art," and "Schools of Science and Art," "include the science and art of Music, and schools of Music, respectively" (s. 3, 40 & 41 V. c. 15).

V. ART.

Scientific Societies Act, 1843, 6 & 7 V. c. 36, s. 1, exempts from *Local*

Rates premises "belonging to any society instituted for purposes of *Science, Literature, or the Fine Arts, exclusively,*" if supported wholly or in part by annual VOLUNTARY CONTRIBUTIONS, and not making (and the rules of which expressly prohibit, *R.* v. *Jones,* inf) any "dividend, gift, division, or bonus, in money," to its members; and which has obtained a certificate from the Registrar of Friendly Societies.

The following societies have been held *exempt*: —

Royal Manchester Institution (*R.* v. *Manchester,* 20 L. J. M. C. 113; 16 Q. B. 449): The Linnæan Society of London (*Linnæan Socy* v. *St. Anne, Westminster,* 23 L. J. M. C. 148; 3 E. & B. 793): The Royal Medical and Chirurgical Society of London (*R.* v. *Royal Med. and Chir. Socy,* 21 J. P. 789; 30 L. T. O. S. 133): The Birmingham New Library (*Ex p. Birmingham,* 18 L. J. M. C. 89; nom. *Churchwardens of Birmingham* v. *Shaw,* 10 Q. B. 868): The Bradford Library and Literary Society (*R.* v. *Bradford Library,* 28 L. J. M. C. 73; 5 Jur. N. S. 513; nom. *Bradford Library Socy* v. *Churchwardens of Bradford,* 1 E. & E. 88): The Liverpool Library (*Liverpool Library* v. *Liverpool,* 29 L. J. M. C. 221): The Royal College of Music (*Royal Coll. Music* v. *Westminster,* 1898, 1 Q. B. 809; 67 L. J. Q. B. 540; 78 L. T. 441; 62 J. P. 357). *Sv,* as to some of the foregoing, *Savoy* v. *Art Union,* 1896, A. C. 296; 65 L. J. M. C. 161; 74 L. T. 497; 45 W. R. 34; 60 J. P. 660.

The following societies have been held *not exempt*: —

The Religious Tract Society (*R.* v. *Jones,* 15 L. J. M. C. 129; 8 Q. B. 719, the precise ground of that decision was that the rules of the Society did not expressly prohibit dividends to members; but Denman, C. J., at the conclusion of his jdgmt, said "Upon the words of this statute I greatly doubt whether, under the words 'literary societies,' a religious society can be included": *V.* that dictum cited with approval, *Scott* v. *St. Martin-in-the-Fields,* 25 L. J. M. C. 42; 5 E. & B. 558): a Society for the purposes of Education (*R.* v. *Pocock,* 15 L. J. M. C. 132; 8 Q. B. 729: *R.* v. *Temple,* 22 L. J. M. C. 129; 2 E. & B. 160): a Society, — *e.g.* The Russell Institution, or the Cambridge Philosophical Society, — one of whose staple objects is to provide a news-room; for readers of the news of the day are not, whilst so employed, "cultivating science, literature, or the fine arts" (*Russell Institution* v. *St. Giles and St. George, Bloomsbury,* 23 L. J. M. C. 65; 3 E. & B. 416: *Purchas* v. *Holy Sepulchre,* 24 L. J. M. C. 9; 4 E. & B. 156): a Society whose primary object is the private convenience or amusement of its members (*R.* v. *Brandt,* 20 L. J. M. C. 119; 16 Q. B. 462: *R.* v. *Gaskell,* 21 L. J. M. C. 29; 16 Q. B. 472), or one of whose objects is to give to individuals the practical benefits of science (*Jenner Institute* v. *St. George's,* 69 L. J. Q. B. 814; 83 L. T. 344: *Vf, R.* v. *Institution of Civil Engineers* and *Re Royal College of Surgeons,* inf): The Birmingham News Room (*R.* v. *Phillips,* 17 L. J. M. C. 83; 8 Q. B. 745): The Greenwich Society for the Acquisition and Diffusion of Useful Knowledge (*Purvis*

v. *Traill*, 18 L. J. M. C. 57; 3 Ex. 344): The London Art Union (*Savoy* v. *Art Union*, sup): The London Library (*Clarendon* v. *St. James, Westminster*, 20 L. J. M. C. 213; 10 C. B. 806): The Royal Agricultural Society (*Royal Agricultural Socy* v. *St. George, Hanover Sq.*, 39 S. J. 557): The United Service Institution (*R.* v. *St. Martin-in-the-Fields*, 21 L. J. M. C. 53; 17 Q. B. 149): The Zoological Society (*R.* v. *Zoological Socy*, 23 L. J. M. C. 139; nom. *Marylebone Vestry* v. *Zoological Socy*, 3 E. & B. 807): The Working Men's Educational Union, one of whose objects was the discussion of social and political subjects after the manner of a debating club (*Scott* v. *St. Martin-in-the-Fields*, sup): The Institution of Civil Engineers; for "Science" ceases to be science, within the meaning of the exemption, when it is acquired, communicated, or made use of, for the advantage of an individual, or of the members of a particular profession or section of the public (*R.* v. *Institution of Civil Engineers*, 49 L. J. M. C. 34; 5 Q. B. D. 48; 28 W. R. 253: in *the* Field, J., said, "No doubt it has been thought that the Court of Queen's Bench, in some of the earlier cases, carried the exemption at least to its furthest limits, but all the later cases are in favour of its stricter limitation").

One of the exemptions from *Property Duty* in s. 11 (3), Customs and Inland Revenue Act, 1885, 48 & 49 V. c. 51, is for property legally APPROPRIATED and applied "for the promotion of Education, Literature, Science, or the Fine Arts." The word "exclusively" does not appear here; "but, I apprehend that the meaning of this clause of exemption is that the property or income shall be, if not exclusively, yet certainly in the main and as its chief object, devoted to the promotion of education, literature, science, or the fine arts" (per Lord President, *Socy of Writers to the Signet* v. *Inl. Rev.*, 14 Sess. Ca. 4th Ser. 34); accordingly, it was there held that the property of the Society of Writers was not exempt. But though that rule of interpretation was adopted in *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; affd in H. L. nom. *Inl. Rev.* v. *Forrest*, 60 L. J. Q. B. 281; 15 App. Ca. 334; 39 W. R. 33; 54 J. P. 772), yet, on the facts, the majority of the Court of Appeal held that that Institution was exempt from the Property Duty. And though in that case Coleridge, C. J., and Field, J. (in Q. B. D.), Lopes, L. J. (in C. A.), and Halsbury, C. (in H. L.), held that the absence of "exclusively" made no difference, yet as the judgment in the Q. B. D. was over-ruled and neither that of Lopes, L. J., nor that of Halsbury, C., was adopted, it would seem that the absence of that word did make some difference, and, to some extent, explains why the property of the Civil Engineers Institution is not exempt from Local Rates, but is exempt from Property Duty. Without that explanation it seems difficult to reconcile the two cases: *Vh*, jdgmt of Kay, L. J., *Art Union* v. *Savoy*, 63 L. J. M. C. 263; 1894, 2 Q. B. 617.

The holding of Examinations with the view to granting professional qualifications, is not for "*Promotion* of Science"; therefore the property of the Royal College of Surgeons is not exempt under the section last considered, except as to such minor parts thereof, *e.g.* the Museum, as can be shown to be for scientific purposes (*Re Royal College of Surgeons*, 1899, 1 Q. B. 871; 68 L. J. Q. B. 613; 80 L. T. 611; 47 W. R. 452: *Vf, Jenner Institute* v. *St. George's*, sup).

V. EDUCATION: JOINT STOCK COMPANY: SCIENTIFIC: *Cp*, LITERARY.

SCIENTER. — "Scienter," is the prior KNOWLEDGE of the quality or condition of a thing, *e.g.* in an action against the owner of a dog for damage caused by the dog biting Mankind, you must prove the Scienter, *i.e.* that the owner knew of his dog's propensity to bite Mankind (*Osborn* v. *Chocqueel*, 1896, 2 Q. B. 109; 65 L. J. Q. B. 534): *Vh*, Rosc. N. P. 777: Add. T. 133. Quà such damage to Cattle or Sheep, the Scienter is not necessary (s. 1, Dogs Act, 1865, 28 & 29 V. c. 60).

In an action on an Express Warranty, Scienter is immaterial and irrelevant, *e.g.* proof that the SELLER of goods knew that they were not according to warranty is not required (*Williamson* v. *Allison*, 2 East, 446).

SCIENTIFIC. — "Literary or Scientific Institution"; *V.* LITERARY.
"Scientific Investigation"; *V.* PROLONGED EXAMINATION.
V. SCIENCE.

SCOLD. — "'Scolds,' in a legal sense, are troublesome and angry women, who, by their brawling and wrangling amongst their neighbours, break the public peace, increase discord, and become a public nuisance to the neighbourhood" (Jacob, adopted in *United States* v. *Royall*, 3 Cranch, 622).

SCOT. — Scot is "a customary contribution laid upon all subjects according to their ability" (Spelm. 505: *Va*, Cowel). In *Waller* v. *Andrews* (7 L. J. Ex. 67; 3 M. & W. 312), "Scots," in a tenant's agreement to pay all outgoings, rates, taxes, scots, &c, was treated as an extensive word, and was held to include an extraordinary ASSESSMENT by the Commissioners of Sewers for work of permanent benefit (*Vh*, 2 Platt, 170). *V.* OUTGOING.

In Termes de la Ley, "Scot" is not spoken of as a contribution or burden; the definition there given is, "'Scot,' that is to be quit of a certaine Custome, as of common tallage made to the use of the Sheriffe or Bayliffe."

SCOT AND LOT. — Those who pay "Scot and Lot," are those who pay to Church and Poor (per Hardwicke, C., *A-G.* v. *Parker*, 3 Atk. 557; 1 Ves. 43). *Cp*, SCOT: LOT AND COPE.

But, probably, the primary meaning is to *pay* Scot, *i.e.* one's portion of local taxation, and to *bear* Lot, *i.e.* to serve in turn the local offices (*V.* Creasy on the Constitution, 3 ed., 271). "Bear" is, however, applied to both, as in the phrase "bearing neither Scot, Lot, nor other Charges" (Cowel, *Scot*).

Vf, as to Scot and Lot Boroughs, Hallam's Const. Hist., 8 ed., 40–47.

SCOTALE. — "'Scotale' is an extortion prohibited by the statute of Charta de Foresta, c. 7, and it is where any officer of the Forest keepes an ale-house, to the intent that he may have the custome of the inhabitants within the Forrest to come and spend their money with him, and for that he shall winke at their offences committed within the Forrest" (Termes de la Ley: *Vf*, Cowel).

SCOTCH EDUCATION DEPARTMENT. — *V.* s. 12 (7), Interp Act, 1889.

SCOTLAND. — "Coasts of Scotland"; *V.* COAST.

SCOUNDREL. — *V.* CHEAT.

SCRIP. — Strictly speaking, the "Scrip," or "Scrip Certificate," of a Co, is a Certificate, transferable by delivery, entitling its holder to *become* a Shareholder or Bondholder in respect of the shares or bonds therein mentioned.

"In some companies nothing is required to convert scrip-holders into shareholders. Companies constituted on this principle are called Scrip Companies, and, in them, Scrip and Shares are synonymous. . . . Usually, however, a person entitled to Scrip, does not acquire the rights of an actual Shareholder until his scrip certificates have been delivered up and exchanged for share certificates, nor until his name has been inserted upon the Co's register of shareholders" (Lindley Comp. 66).

It has been said that "Scrip" quà companies under Comp Act, 1862, has "ceased to exist, and has been abolished by the legislature" (per Turner, L. J., *Elkington's Case*, 36 L. J. Ch. 595; 2 Ch. 518): *Sv*, last par of this def. In its original sense, "Scrip" is still used quà Foreign Loans (*Goodwin* v. *Robarts*, 1 App. Ca. 476; 45 L. J. Ex. 748), Banking Companies (*Rumball* v. *Metropolitan Bank*, 2 Q. B. D. 194; 46 L. J. Q. B. 346), and Railway Companies (*McIlwraith* v. *Dublin Trunk Ry*, 7 Ch. 134; 41 L. J. Ch. 262), and those cases show that such Scrip is NEGOTIABLE. *Note*: the jdgmt in *Goodwin* v. *Robarts* (sup) when in Ex. Cham. (44 L. J. Ex. 157; L. R. 10 Ex. 337), contains a review of the history of the law quà Negotiable Instruments.

"Scrip" is popularly used as meaning, the CERTIFICATE of actual Shares in a Co (per Turner, L. J., *Elkington's Case*, sup).

Receipt on Scrip certificate; *V. London & Westminster Bank* v. *Inl. Rev.*, cited RECEIPT.

SCRIVENER. — A "Scrivener" is a person to whom money or other property is entrusted for the purpose of lending it out to others, at a profit payable to his principal, but also at a commission or bonus for himself whereby he seeks, wholly or in part, to gain his livelihood (*Harrison* v. *Harrison*, 1 Esp. 555: *Lott* v. *Melville*, 3 Sc. N. R. 346; 9 Dowl. 882; 3 M. & G. 52: *Ex p. Malkin*, 1 Rosc. 406; 2 Ib. 27: *Hutchinson* v. *Gascoigne*, Holt N. P. 507: *Ex p. Gem*, 2 Mont. D. & D. 99; 5 Jur. 683: per Parke, B., *Wilkinson* v. *Candlish*, 19 L. J. Ex. 166; 5 Ex. 97: *Ex p. Dufaur*, 20 L. J. Bank. 38; 2 D. G. M. & G. 246). In *Adams* v. *Malkin* (3 Camp. 539, 540), Gibbs, C. J., citing Boswell's Life of Johnson, said, that Jack Ellis was the last of the separate profession of Scriveners; and the reporter adds this note from the Life, — "Johnson; loq. It is wonderful, Sir, what is to be found in London. The most literary conversation that I ever enjoyed was at the table of Jack Ellis, a money Scrivener, behind the Royal Exchange, with whom, at one period, I used to dine generally once a week."

Note: the business of a Scrivener is not within the ordinary scope of the business of a SOLICITOR (*Harman* v. *Johnson*, 22 L. J. Q. B. 297; 2 E. & B. 61). As to the position that a Solr occupies quà money entrusted to him for investment, *V. Dooby* v. *Watson*, 57 L. J. Ch. 867; 39 Ch. D. 183.

V. CHEVISANCE.

SCULPTURE. — "Matter of INVENTION in Sculpture," s. 1, Sculpture Copyright Act, 1814, 54 G. 3, c. 56, includes, original Casts of fruit, flowers, or leaves (*Caproni* v. *Alberti*, 40 W. R. 235; 65 L. T. 785; 8 Times Rep. 146).

SCUTAGE. — "'Escuage,' is called in Latine 'Scutagium,' that is, Service of the Shield" (Termes de la Ley, *Escuage*).

SCUTIGER. — *V.* ESQUIRE.

SEA. — "The Sea is either that which lies within the body of a COUNTY, or without.

"The part of the Sea which lies not within the body of a County, is called the Main Sea, or Ocean. *V.* HIGH SEAS.

"The narrow sea, adjoining to the COAST of England, is part of the wast and demesnes and dominions of the King of England, whether it lie within the body of any County or not. *V.* SEA COAST.

"This is abundantly proved by that learned treatise of Master Selden called *Mare Clausum*; and therefore I shall say nothing therein, but refer the reader thither" (Hale, De Jure Maris, ch. 4).

Quà Sea Fisheries Regn Act, 1888, 51 & 52 V. c. 54, "'Sea,' includes, the Coast up to HIGH WATER Mark" (s. 14).

The Thames at Woolwich is not "the Sea" within s. 1, Burial of Drowned Persons Act, 1808, 48 G. 3, c. 75 (*Woolwich* v. *Robertson*, 50

L. J. M. C. 87; 6 Q. B. D. 654). In that case Mathew, J., said, " 'Sea' is used, in this Act, in its ordinary and popular sense, and, in that sense, 'Sea' is always used as distinguished from 'RIVER.'" *Cp*, CREEK.

"At Sea"; *V.* MARINER.

Ship "proceeding *to Sea*"; *V.* PROCEED TO SEA.

V. BEYOND SEAS: PERIL OF THE SEA: REALM.

SEA BIRD.—*V.* WILD BIRD.

SEA COAST.—"The COAST is, properly, not the SEA but, the land which bounds the Sea; it is the limit of the Land Jurisdiction, and of the parishes and manors (bordering on the sea) which are part of the land of the County. This limit, however, and its character, varies according to the state of the Tide; when the tide is in and covers the land, it is Sea; when the tide is out, it is Land as far as low-water mark: between high and low water mark it must, therefore, be considered as *divisum imperium*" (per Sir J. Nicholl, *R.* v. *Forty Nine Casks of Brandy*, 3 Hagg. Adm. 275). *V.* ENGLAND: FORESHORE: SHORE.

Note. As to the 3 miles from the Coast over which the Sea Jurisdiction extends, *V. R.* v. *Keyn*, 46 L. J. M. C. 17; 2 Ex. D. 63, and the numerous authorities therein cited: *R.* v. *Cunningham*, Bell C. C. 72: TERRITORIAL WATERS.

"Sea," or "Sea Coast," quà Fisheries (Ir) Act, 1846, 9 & 10 V. c. 3, extends "to all places where the tide ebbs and flows" (s. 87).

"Sea Coast and Inland Fisheries," s. 91, British North America Act, 1867; *V. A-G. Canada* v. *A-G. Ontario*, cited EXCLUSIVE RIGHT.

SEA FISH.—"On looking at the Acts of Parliament, I find the terms 'Floating Fish' and 'Shell Fish' (10 & 11 W. 3, c. 24), and that 'Floating Fish' is used in contradistinction to 'Shell Fish' (31 G. 3, c. 51, s. 2), and 'Sea Fish' synonymously with 'Floating Fish'" (per Ellenborough, C. J., *Bridger* v. *Richardson*, 2 M. & S. 572); in *the* the opinion of the Court was (though a decision thereon was unnecessary) that "Sea Fish" in 3 Jac. 1, c. 12, meant Floating Fish, and did not include Shell Fish.

SALMON, is not a "Sea Fish" within s. 4, Fisheries (Ir) Act, 1842, 5 & 6 V. c. 106 (*R.* v. *Mayo Jus.*, 20 L. R. Ir. 69).

Quà Sea Fisheries Acts, "Sea Fish" does "not include SALMON as defined by any Act relating to Salmon; but save as aforesaid" means, "fish of all kinds found in the SEA," and includes, "Lobsters, Crabs, Shrimps, Prawns, Oysters, Mussels, Cockles, and other kinds of crustaceans and shell fish" (s. 14, 51 & 52 V. c. 54: *Vf*, s. 5, 31 & 32 V. c. 45). *V.* SHELL FISH.

SEA FISHERMAN.—Quà Sea Fisheries Acts, "Sea Fisherman," means, a person whose occupation is to catch "SEA FISH" as that latter

phrase is defined for those Acts (s. 5, 31 & 32 V. c. 45; s. 28, 46 & 47 V. c. 22).

SEA FISHERY. — *V.* FISHERY.

"The Sea Fisheries *Acts*, 1843 to 1893"; *V.* Sch 2, Short Titles Act, 1896.

Sea Fishery *Officers*; *V.* s. 8, 31 & 32 V. c. 45: British Sea Fishery Officers, and Foreign Sea Fishery Officers; *V.* s. 11, 46 & 47 V. c. 22.

"*Purposes* of Sea Fisheries"; *V.* PURPOSES.

SEA FISHING. — Quà Sea Fisheries Acts, "Sea Fishing," means, the act of catching "SEA FISH" as that latter phrase is defined for those Acts (s. 5, 31 & 32 V. c. 45; s. 28, 46 & 47 V. c. 22).

"Sea Fishing BOAT," quà Sea Fisheries Acts, "includes, every Vessel, of whatever size and in whatever way propelled, which is used by any person in Sea Fishing, or in carrying on the business of a SEA FISHERMAN" (s. 5, 31 & 32 V. c. 45; s. 28, 46 & 47 V. c. 22; s. 9, 56 & 57 V. c. 17). *Cp*, "Fishing Boat," sub FISHING.

SEA FLOOD. — *V.* INFRA.

SEA-GOING. — A Stevedore "is not, in any sense, a Seaman or a Sea-Going Person" (per Wills, J., *R.* v. *City of London Court*, cited SEAMAN).

A "Sea-Going" SHIP, s. 109, Mer Shipping Act, 1854, ss. 260, 261, Mer Shipping Act, 1894, means, a Ship which goes to SEA, using that word in its widest meaning, and does not include a vessel plying upon, or in the estuary of, a River (*Salt Union Co* v. *Wood*, 1893, 1 Q. B. 370; 62 L. J. M. C. 75; 68 L. T. 92; 41 W. R. 301; 57 J. P. 201).

SEA GREENS. — Sea Greens are "grounds overflowed by the Sea in Spring Tides" (Jacob).

SEA GROUNDS. — By the grant of "Sea Grounds," the soil, and not an easement merely, passes; "for, generally speaking, the soil passes by the word 'Ground'; as by the word 'WOOD,' the soil in which the Wood grows passes" (per Bayley, J., *Scratton* v. *Brown*, 4 B. & C. 496).

SEA INSURANCE. — Quà Revenue Act, 1884, 47 & 48 V. c. 62, "Sea Insurance," includes, "any insurance of Goods Wares or Merchandize or Property of any description whatever, for any Transit which includes (not only a Sea Risk but also) any Land Risk from the commencement of such transit to the place of Shipment or from the place of Discharge of the ship to the ultimate destination covered by the insurance, or in warehouse while waiting or being forwarded for shipment, or after discharge and while waiting to be forwarded, or being forwarded to the ultimate destination covered by the insurance, or any other land risk incidental to the transit insured" (s. 8) *Cp*, SHIP'S RISK.

"Policy of Sea Insurance"; *V.* POLICY.

SEA POSTAGE. — *V.* POSTAGE.

SEA SHORE. — *V.* FORESHORE: SEA COAST: SHORE.

SEA WALL. — *V. Keighley's Case*, 10 Rep. 139: *Hudson* v. *Tabor*, 2 Q. B. D. 290; 46 L. J. Q. B. 463: *Fobbing Commrs* v. *Regina*, 56 L. J. M. C. 1; 11 App. Ca. 449.

SEAL. — A Seal is essential to a DEED.

"Under the hands and seals"; an impression made with ink, by means of a wooden block, is a sufficient sealing (*R.* v. *St. Paul, Covent Garden*, 14 L. J. M. C. 109; Sug. Pow. 231, 232: *Sprange* v. *Barnard*, 2 Bro. C. C. 585). "And if the party seal the deed with any seal besides his own, or with a stick, or any such like thing which makes a print, it is good" (Touch. 57). In *Re Sandilands* (L. R. 6 C. P. 411; nom. *Re Mayer*, 40 L. J. C. P. 201), it was held that a deed was proved to have been "sealed," though no seal was affixed to it, because pieces of ribbon were inserted in the parchment opposite to the signatures on which seals were to have been put, and the attestation clause stated the deed to have been "signed, sealed, and delivered"; but, when cited, that case seems always to be distinguished as an exceptional application of an undoubted principle (*V. National Provincial Bank* v. *Jackson*, 33 Ch. D. 1; 55 L. T. 458; 34 W. R. 597: *Re Balkis Co*, 58 L. T. 300: *Re Smith*, 67 L. T. 64).

As to when the seal to a deed by an Incorporated Co may, by an outside person, be assumed to have been properly affixed, *V. County of Gloucester Bank* v. *Rudry*, cited GOODWILL, p. 829; distinguishing *D'Arcy* v. *Tamar, &c, Ry*, cited QUORUM: *Vf, Re Bank of Syria*, cited QUORUM.

V. L. S.: SIGNED.

Quà Seal Fishery Act, 1875, 38 & 39 V. c. 18, "'Seal,' *means*, the harp or saddleback seal, the bladdernosed or hooded seal, the ground or bearded seal, and the floe seal or floe rat; and *includes*, any animal of the seal kind which may be specified in that behalf by an Order in Council under this Act" (s. 6).

Seal Fishery (North Pacific) Act, 1895, 58 & 59 V. c. 21, applies "to the animal known as the fur seal, and to any marine animal specified in that behalf by an Order in Council" (subs. 1, s. 7).

SEALED. — The Seal of a Court, with the words "Sealed with the Seal of the Court," proves itself, and will be taken judicial notice of (*Doe* d. *Duncan* v. *Edwards*, 8 L. J. Q. B. 98; 9 A. & E. 554; 1 P. & D. 408).

As to when the Court whose seal is to be used has no seal; *V. Re Court Bureau Co*, W. N. (91) 9.

SEAM. — *V.* VEIN OR SEAM: IRON.

SEAMAN. — Quà Mer Shipping Act, 1894, "'Seaman,' includes, every person (except Masters, Pilots, and Apprentices duly indentured and registered) employed or engaged in any capacity *on Board* any SHIP" (s. 742: *Vth, The Wilhelm Tell*, 61 L. J. P. D. & A. 128). But "the employment must be to do the work of the SHIP (per Jeune, P., *The Ruby*, 1898, P. 59; 67 L. J. P. D. & A. 28); therefore a SHIP'S HUSBAND is not a "Seaman" within s. 10, 24 & 25 V. c. 10 (*S. C.*). "A seaman may well be held to be 'EMPLOYED or engaged . . . on Board' ship, although at the particular point of time he may have been sent ashore on duties connected with the ship, such as obtaining stores or provisions, or taking a letter to the ship's agent" (per Russell, C. J., *R.* v. *Lynch*, 1898, 1 Q. B. 61; 67 L. J. Q. B. 59; 77 L. T. 568; 46 W. R. 205). A Stevedore "is not, in any sense, a Seaman or a Seagoing Person" (per Wills, J., *R.* v. *City of London Court*, 59 L. J. Q. B. 429); but, quà the right to a Maritime LIEN for WAGES, a Care-taker, of a vessel in dock for repairs preparatory to a voyage, is a Seaman (*S. C.* 59 L. J. Q. B. 427; 25 Q. B. D. 339), even though such care-taker be a woman (*The Jane and Matilda*, 1 Hagg. Adm. 187). *Vf*, CREW.

The exception of "Seamen" from the Conspiracy and Protection of Property Act, 1875 (*V.* s. 16), does not avail for sea-faring men generally, but only for such as are actually "employed or engaged" within the def of "Seaman" in s. 742, Mer Shipping Act, 1894 (*R.* v. *Lynch*, sup).

"Seaman," in the Navy; Stat. Def., Seamen's Clothing Act, 1869, 32 & 33 V. c. 57, s. 3: "Seaman or Marine," 28 & 29 V. cc. 72, 73, 111, s. 2.

In a warranty in the margin of a Marine Policy, "Seamen besides Passengers," means, persons belonging to the ship's company, including cook, surgeon, boys, &c (*Bean* v. *Stupart*, 1 Doug. 14).

"Distressed Seamen"; *V.* PASSENGER.

Advance Notes; *V.* ADVANCE.

"Seaman's Property"; Stat. Def., 32 & 33 V. c. 57, s. 3.

V. BRITISH SEAMAN: DEDUCTION: DRUNK: HOME: MARINER.

SEARCH. — To "enter or be," on land "in Search or Pursuit of Game," &c, s. 30, Game Act, 1831, 1 & 2 W. 4, c. 32, the Game sought for must be live game (*Kenyon* v. *Hart*, 34 L. J. M. C. 87; 6 B. & S. 249: *Tunton* v. *Jervis*, 43 J. P. 784; 68 Law Times, 37); but if the Justices find that the shooting from outside the land and the entering to pick up the game, is all one connected act they will be upheld if they reach the conclusion that there was a "Pursuit" of Game within the section, which pursuit began whilst the Game was alive (*Osbond* v. *Meadows*, 31 L. J. M. C. 238; 12 C. B. N. S. 10; 6 L. T. 290; 10 W. R. 537: *Sv*, obs in *Kenyon* v. *Hart*, sup), and that is so though there be an interval of some hours between the shooting and the entry and at the time of the entry some other person may have taken away the dead game (*Horn* v. *Raine*,

78 L. T. 654; 67 L. J. Q. B. 533; 62 J. P. 420). *Vh, Dyer* v. *Park*, 38 J. P. 294.

V. ENTERING OR BEING.

A Reservation of power "to search for, dig, bore, sink, win, work, lead and carry away," Minerals, must be exercised by under-ground mining (*Bell* v. *Wilson*, cited MINE, p. 1204).

Quà Registration of Births and Deaths, "*General* Search," means, "a Search during any number of successive hours, not exceeding six, without stating the object of the search"; and "*Particular* Search," means, "a Search over any period, not exceeding five years, for any given entry" (s. 42, 37 & 38 V. c. 88; s. 32, 43 & 44 V. c. 13).

A similar provision is made quà Marriages in Ireland (s. 3, 26 & 27 V. c. 90).

V. WARRANT.

SEASON. — "Shipment during the Season"; *V.* SHIPMENT.

V. ENGAGEMENT.

SEASONABLE TIME. — In the claim of a Custom to walk and ride over certain arable land at all Seasonable Times, what is a "Seasonable Time" is a question partly of law and partly of fact; but when the corn is standing on the land is not a "Seasonable Time" for the exercise of such a Custom (*Bell* v. *Wardell*, Willes, 202).

SEASONABLE WOOD. — *Semble*, "Seasonable Wood" is as nearly as possible equivalent to "COPPICE" (*V.* per Kay, L. J., *Dashwood* v. *Magniac*, cited TIMBER).

SEAWORTHY. — By being Seaworthy "is meant that the ship shall be in a fit state as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured, at the time of sailing upon it. If the assurance attaches before the voyage commences, it is enough that the state of the ship be commensurate to the then risk; and, if the voyage be such as to require a different complement of men, or state of equipment in different parts of it, — as if it were a voyage down a canal or river and thence across to the open sea, — it would be enough if the vessel were, at the commencement of each stage of the navigation, properly manned and equipped for it. But the assured makes no warranty to the underwriters that the vessel shall continue seaworthy, or that the master or crew shall do their duty during the voyage, and their negligence or misconduct is no defence to an action on the policy where the loss had been immediately occasioned by the perils insured against" (per Parke, B., delivering the jdgmt in *Dixon* v. *Sadler*, 5 M. & W. 414; 9 L. J. Ex. 50; affd 8 M. & W. 895; adopted *Biccard* v. *Shepherd*, 14 Moore P. C. 494: *Bouillon* v. *Lupton*, 15 C. B. N. S. 113; 33 L. J. C. P. 37: *Davidson* v. *Burnand*, L. R. 4 C. P. 117:

Quebec Mar. Insrce v. *Commercial Bank of Canada*, L. R. 3 P. C. 234; 39 L. J. P. C. 53: and *Hedley* v. *Pinkney Co*, inf. *Vf*, *Ballantyne* v. *Mackinnon*, 1896, 2 Q. B. 455; 65 L. J. Q. B. 395, 616; 75 L. T. 95; 45 W. R. 70). Insufficient ventilation of a Cattle Ship, or an insufficiency of men to attend to the cattle, is a breach of a warranty of Seaworthiness (*Sleigh* v. *Tyser*, 69 L. J. Q. B. 626; 1900, 2 Q. B. 333; 82 L. T. 804).

"An exception from loss from unseaworthiness does not restrict the implied warranty (*Quebec Mar. Insrce* v. *Commercial Bank of Canada*, sup). Where the ship is not seaworthy when she sails on her voyage, this is not remedied by her becoming so afterwards and before loss (*S. C.*; following *Forshaw* v. *Chabert*, 3 Brod. & B. 158, and over-ruling *Weir* v. *Aberdeen*, 2 B. & Ald. 320, 324, on this point)." Rosc. N. P. 424.

The ordinary Exceptions of Accidents, &c, in a Bill of Lading, do not apply until the voyage has commenced, and therefore the implied warranty of Seaworthiness is not excluded by them (*Steel* v. *State Line S. S. Co*, 3 App. Ca. 72: *Tattersall* v. *National S. S. Co*, 53 L. J. Q. B. 332; 12 Q. B. D. 297: *The Glenfruin*, 54 L. J. P. D. & A. 49; 10 P. D. 103; 52 L. T. 769; 33 W. R. 826), not even when the Exceptions are couched in very wide terms (*Maori King* v. *Hughes*, 1895, 2 Q. B. 550; 64 L. J. Q. B. 744; 65 Ib. 168; 73 L. T. 141; 44 W. R. 2).

For express clauses which will limit the implied warranty; *V. The Cargo ex Laertes*, 56 L. J. P. D. & A. 108; 12 P. D. 187; 57 L. T. 502; 36 W. R. 111. *Sv*, DANGERS: GOOD SHIP.

Where a Charter-Party voyage is divided into stages of navigation, the warranty attaches at the commencement of each stage (*Thin* v. *Richards*, 1892, 2 Q. B. 141; 62 L. J. Q. B. 39; 66 L. T. 584; 40 W. R. 617).

"The warranty of Seaworthiness has always been relative. Though absolute when it attaches, its precise extent and limitations are relative and vary according to the standard which the parties must have been supposed to contemplate as applicable to the adventure" (per Collins, L. J., *The Vortigern*, 1899, P. 158, 159; 68 L. J. P. D. & A. 57; 4 Com. Ca. 165; 80 L. T. 382; 47 W. R. 437, instancing *Burges* v. *Wickham*, 33 L. J. Q. B. 17; 3 B. & S. 669).

The implied obligation of the Owner to use all reasonable means to insure the "Seaworthiness of the Ship, *for the Voyage*," s. 5, Mer Shipping Act, 1876, repld, s. 458, Mer Shipping Act, 1894, applies only to equipment; a ship is not unseaworthy within this phrase by reason of non-employment or mis-employment of appliances, if the appliances are at hand for use (*Hedley* v. *Pinkney Co*, 1894, A. C. 222; 63 L. J. Q. B. 419; 70 L. T. 630; 42 W. R. 497).

Vf, *Small* v. *Gibson*, 20 L. J. Q. B. 152; 16 Q. B. 128; nom. *Gibson* v. *Small*, 4 H. L. Ca. 353: *Clapham* v. *Langton*, 34 L. J. Q. B. 46;

5 B. & S. 729: *Gilroy* v. *Price*, 1893, A. C. 56; 68 L. T. 302; 7 Asp. 314: *Dobell* v. *Rossmore Co*, 1895, 2 Q. B. 408; 64 L. J. Q. B. 777: *Queensland Bank* v. *P. & O. Steam Nav.*, 1898, 1 Q. B. 567; 67 L. J. Q. B. 402; 46 W. R. 324; 78 L. T. 67; 2 Com. Ca. 228: *The Pentland*, 13 Times Rep. 430: Park, ch. 11: Abbott, 376–389: Arn. ss. 686–726: Scrutton, 69–74: Carver, ss. 17, 144: 8 Encyc. 169–172.

V. DUE DILIGENCE: READY FOR SEA.

SECOND COUSIN. — A testamentary gift to "Second Cousins" of the testator, applies only to persons having the same great-grandfather or great-grandmother as himself, unless the nature of the gift or the wording of the Will, shows that other persons were meant to be included (*Re Parker, Bentham* v. *Wilson*, 49 L. J. Ch. 587; 50 Ib. 639; 15 Ch. D. 528; 17 Ib. 262; 28 W. R. 823; 29 Ib. 855; 44 L. T. 885, *whcv*, for obs by Jessel, M. R., on *Mayott* v. *Mayott*, 2 Bro. C. C. 125: *Vf*, *Bridgnorth* v. *Collins*, 15 Sim. 538). But where there are no real "Second Cousins," then First Cousins once removed will take; but not first cousins twice removed (*Slade* v. *Fooks*, 8 L. J. Ch. 41; 9 Sim. 386: *Re Bonner, Tucker* v. *Good*, 51 L. J. Ch. 83; 19 Ch. D. 201: *Wilks* v. *Bannister*, 54 L. J. Ch. 1139; 30 Ch. D. 512: Wms. Exs. 965).

Vf, *Charge* v. *Goodyer*, 3 Russ. 140: *Glasier* v. *Foyster*, 39 S. J. 656: 99 Law Times, 284.

V. COUSIN: FIRST COUSIN.

SECOND DEGREE. — *V.* PRINCIPAL IN SECOND DEGREE.

SECOND EDITION. — *V.* BOOK, p. 205.

SECOND HAND. — Quà Part 4, Mer Shipping Act, 1894, "'Second' Hand,' means, with respect to a FISHING Boat, the Mate, or person next to the skipper, in authority or Command on board the boat" (s. 370).

SECOND MARRIAGE. — *V.* BIGAMY: MARRY: WIDOW.

"So long as she continues unmarried"; *V.* UNMARRIED.

SECOND MORTGAGE. — *V.* PUISNE.

SECOND OFFENCE. — "When a 'Second Offence' is the subject of distinct punishment, it is an offence committed after *conviction* of a first" (Maxwell, 427, citing 2 Inst. 468: *Vf*, 1 Hale P. C. 686); and a penalty for a Second Offence can only be inflicted where both convictions are under the same enactment, although each might be supported by the same evidence (*Ex p. Anthers*, or *Authers*, 58 L. J. M. C. 62; 22 Q. B. D. 345; 60 L. T. 454).

SECOND SON. — *V.* FIRST SON: SEVENTH.

SECONDARY. — " 'Secondary' is the technical medical word for a disease which is not the primary cause of death. If a man falls through the ice and is drowned, that is death by Accident; but if he walks home in his wet clothes, and catches a cold which settles on his lungs, and he dies, that is death from a 'Secondary Cause'" (per Mellish, arg. *Smith* v. *Accident Insrce*, 39 L. J. Ex. 214; L. R. 5 Ex. 302, *Vh*, jdgmt Kelly, C. B.: the case, however, was decided on another point. *Va*, *Fitton* v. *Accidental Death Insrce*, 34 L. J. C. P. 28; 17 C. B. N. S. 122). *V.* ACCIDENT.

Secondary *Conveyance*; Secondary *Evidence*; *V.* PRIMARY.

SECRET COMMISSION. — *V.* BRIBERY: SECRET PROFIT.

SECRET DISPOSITION. — "Secret Disposition of the DEAD BODY of the said child," to conceal the birth thereof, s. 60, 24 & 25 V. c. 100; these words "include cases in which the body is placed in a situation where it is not likely to be found, except by accident or upon search; although the body is in no way concealed from any one who happens to go to that place" (Steph. Cr. 170, citing *R.* v. *Brown*, L. R. 1 C. C. R. 244; 39 L. J. M. C. 94; 22 L. T. 484: *Va*, *R.* v. *Perry*, Dears. 471; 24 L. J. M. C. 137: *R.* v. *Cook*, 22 L. T. 216. In a note, the learned author asks, — "If a woman were to leave a child's body by night in the middle of a street, or to drop it by day in a crowd of people, there would be an effectual concealment of the birth, but would there be a 'Secret Disposition' of the body?").

SECRET PROFIT. — In all fiduciary relationships, — *e.g.* Cestui que Trust and Trustee, Company and its Directors, Master and Servant, Principal and Agent, — the fundamental rule is that, the person entrusted with, or employed to discharge, a duty, is not to make a Secret Profit thereby, for "a Watch-Dog has no right, without the knowledge of his master, to take a sop from a possible Wolf" (per Bowen, L. J., *Re North Australian Co*, 1892, 1 Ch. 341; 61 L. J. Ch. 135); the sop belongs to the master.

Quà Cestui que Trust and Trustee; *V.* Lewin, ch. 10: Godefroi, ch. 13:

Company and its Directors; Hamilton, 378–381: *Re Sale Hotel Co*, 78 L. T. 368: *Gluckstein* v. *Barnes*, 1900, A. C. 240; 69 L. J. Ch. 385:

Master and Servant, — and

Principal and Agent; *V.* BRIBERY: *Morison* v. *Thompson*, 43 L. J. Q. B. 215; L. R. 9 Q. B. 480; 30 L. T. 869; 22 W. R. 859: *De Bussche* v. *Alt*, cited ACQUIESCENCE: per Bowen, L. J., *Boston Deep Sea Fishing Co* v. *Ansell*, 39 Ch. D. 363, 364; 59 L. T. 345: MANAGING OWNER.

SECRET TRUST. — "When property is vested in a person for purposes not declared by the instrument devising or granting it, and it appears that but for the testator's or grantor's confidence that those pur-

poses would be fulfilled the devise or grant would not have been made, a Secret Trust is created; and, on the ground that fraud would be committed by the devisee or grantee if he did not fulfil those purposes, that trust may in Equity be enforced against him" (Godefroi, ch. 12, *whv* hereon).

Vh, Re Stead, 1900, 1 Ch. 237; 69 L. J. Ch. 49; 81 L. T. 751; 48 W. R. 221, and cases there cited: Lewin, 64.

SECRETARY. — Stat. Def., Comp C. C. Acts, 1845, s. 3; Vestries Act, 1850, 13 & 14 V. c. 57, s. 4. — *Scot.* 20 & 21 V. c. 71, s. 3; 25 & 26 V. c. 54, s. 1; 57 & 58 V. c. 58, s. 54; 60 & 61 V. c. 38, s. 3.

Note signed "for A. B. & Co, — C. D., Secretary," does not make the Secretary personally liable (*Alexander* v. *Sizer*, 38 L. J. Ex. 59; L. R. 4 Ex. 102). If, however, a person signs in a way so as to make himself individually liable, he will not escape liability by adding "Secretary" to his signature (*Bottomley* v. *Fisher*, 1 H. & C. 211; 31 L. J. Ex. 417). *Cp*, MANAGER: DIRECTOR.

A Promissory Note to the "Secretary *for* the TIME BEING" of a Co or other body, is bad because the payee is uncertain, for it cannot be known at the making of the document who will be Secretary when it matures (*Storm* v. *Stirling*, 3 E. & B. 832; 23 L. J. Q. B. 298). *Vf*, *Timms* v. *Williams*, 3 Q. B. 413; 11 L. J. Q. B. 210.

V. CHIEF: COLONIAL.

SECRETARY OF GRAND JURY. — Stat. Def., *Ir.* 40 & 41 V. c. 49, s. 3; 41 & 42 V. c. 24, s. 1; 46 & 47 V. c. 42, s. 13 (3). *V.* GRAND JURY.

SECRETARY OF STATE. — The general Stat. Def. of this phrase is provided by s. 12 (3), Interp Act, 1889.

Quà Conversion of India Stock Act, 1887, 50 & 51 V. c. 11, *V.* s. 9; Diplomatic Salaries, &c, Act, 1869, 32 & 33 V. c. 43, *V.* s. 3; East India Loan Act, 1893, 56 & 57 V. c. 70, *V.* s. 2; East India Unclaimed Stock Act, 1885, 48 & 49 V. c. 25, *V.* s. 2; Indian Railways Act, 1894, 57 & 58 V. c. 12, *V.* s. 2; Oude and Rohilkund Railway Purchase Act, 1888, 51 & 52 V. c. 5, *V.* s. 2; South Indian Railway Purchase Act, 1890, 53 & 54 V. c. 6, *V.* s. 2. — *Ir.* 39 & 40 V. c. 77, s. 20.

"Secretary of State *for War*," "Secretary of State for the War Department"; Stat. Def., 30 & 31 V. c. 98, s. 3, c. 128, s. 3, c. 140, s. 2; 35 & 36 V. c. 68, s. 16; 37 & 38 V. c. 92, s. 5; 51 & 52 V. c. 32, s. 11. — *Ir.* 31 & 32 V. c. 60, s. 2.

Vf, ONE, towards end.

SECURE. — The direction in s. 32, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85, to "secure" a gross or annual sum to a wife, does not authorize an Order for payment direct to the wife; but means, that the

sum is to be secured in such a way as to provide for her (*Medley* v. *Medley*, 51 L. J. P. D. & M. 74; 7 P. D. 122).

The words "or otherwise secure," in s. 10, Distress for Rent Act, 1737, 11 G. 2, c. 19, enlarge the word "impound" with which they are there associated, and give it a wider meaning than if it had been used alone (per Tindal, C. J., *Thomas* v. *Harries*, 1 M. & G. 702; 9 L. J. C. P. 308; 1 Sc. N. R. 524: *Vf*, *Jones* v. *Beirnstein*, cited POSSESSION, p. 1516). *V.* IMPOUND.

"I hereby *undertake* to secure the moneys you may have advanced or may hereafter advance"; held, insufficient, as not necessarily showing anything beyond a past consideration (*Raikes* v. *Todd*, 8 L. J. Q. B. 35; 8 A. & E. 846). *Cp*, ADVANCE: GIVEN: HAVING.

SECURED. — *V.* AMOUNT.

On a sale of a Leasehold Ground-Rent it was described as "*amply* secured"; it was really secured by an Underlease which was for a longer term than the lessor had, and therefore operated as an Assignment of the original lease, and there was no power of distress; but the Conditions stated that the purchaser should not object by reason of the term being in excess of the term granted by the original lease, inasmuch as the deeds "may be inspected for 10 days immediately preceding the day of sale by intending purchasers": the purchaser was, under those Conditions, held bound to complete, although it was certainly doubtful whether the Ground-Rent was properly secured (*Smith* v. *Watts*, 28 L. J. Ch. 220; 4 Drew. 338). *Cp*, WELL SECURED.

Sum "secured by an EXPRESS Trust," s. 10, 37 & 38 V. c. 57; *V. Re Davis*, cited LEGACY: *Williams* v. *Williams*, 1900, 1 Ch. 152; 69 L. J. Ch. 77; 81 L. T. 804; 48 W. R. 245.

SECURED CREDITOR. — A "Secured Creditor" is one who has security for his debt; *V.* SECURITY.

In language nearly identical with that in the Bankry Act of 1869 (s. 16, subs. 5), the Bankry Act, 1883 (s. 168), defines a "Secured Creditor," for bankry purposes, as, "a person holding a Mortgage, Charge, or Lien, on the property of the *debtor*, or any part thereof, as a Security for a debt due to him from the debtor": *Va*, s. 4, Bankry (Ir) Amendment Act, 1872. Accordingly, such a "Secured Creditor," *e.g.* in s. 9, Bankry Act, 1883, cannot be defined as a person holding a security as against the whole or some part of the debtor's estate; that definition would be too wide; the SECURITY must be of the kind prescribed, *i.e.* (1) MORTGAGE, (2) CHARGE, or (3) LIEN, "on the property of the Debtor," on *whv*, *Re Perkins*, 59 L. J. Q. B. 226; 24 Q. B. D. 613; "the Debtor" being the bankrupt, and therefore a petitioning creditor against a Surety to him, is not a "Secured Cr," quà such proceedings, by holding an unrealized security from his Principal Debtor

(*Re Hodges*, 3 Manson, 329). The appointment of one of the plaintiffs (judgment creditors) as Receiver, without security, of the stock in trade of the defendant, does not make the plaintiffs "Secured Creditors" as against a Bankry Trustee (*Re Dickinson, Ex p. Charrington*, 22 Q. B. D. 187; 58 L. J. Q. B. 1: *vthc, Re Potts, Ex p. Taylor*, 1893, 1 Q. B. 648; 62 L. J. Q. B. 392; 69 L. T. 74; 41 W. R. 337). So, generally of a Receiver (*Croshaw* v. *Lyndhurst Ship Co*, 1897, 2 Ch. 154; 66 L. J. Ch. 576; 76 L. T. 553; 45 W. R. 570); so, of a Sequestrator who has not obtained an Order for sale (*Re Hastings*, 61 L. J. Q. B. 654; 67 L. T. 234). So, an Indorsee from the Payee of a Promissory Note collaterally secured by a Guarantee which guarantee is transferred to him, does not hold the guarantee as a security on the property of the Payee; and, on the bankry of the latter, may prove without deducting the value of the guarantee (*Re Hallett*, 63 L. J. Q. B. 676; 1894, 2 Q. B. 256; 70 L. T. 891).

In an Administration of a deceased's estate, or of a Liquidating Co, the phrase "Secured and Unsecured Creditors," &c, in s. 10, Jud. Act, 1875, incorporates the bankry rule which provides for payment of debts *pari passu*, except wages and rates and taxes (*Re Whitaker*, 1901, 1 Ch. 9; 70 L. J. Ch. 6, over-ruling *Re Maggi, Winehouse* v. *Winehouse*, 51 L. J. Ch. 560; 20 Ch. D. 545; 30 W. R. 729, and *Smith* v. *Morgan*, 49 L. J. C. P. 410; 5 C. P. D. 337). An Exor's right of retainer (*V.* RETAIN) does not make him a "Secured Cr." within this section (*Lee* v. *Nuttall*, 12 Ch. D. 64, 65).

Secured Creditor quà proving in a Bankry or Co's Winding-up, includes a mtgee who has realized the mtged property (*Re London, &c, Hotels Co*, 1892, 1 Ch. 639; 61 L. J. Ch. 273; 66 L. T. 19; 40 W. R. 298).

V. CREDITOR.

SECURELY. — *V.* SAFELY.

The Side Entrance itself of a Disused Mine must be "securely *fenced*," s. 13, 35 & 36 V. c. 77, whether on enclosed ground or not (*Foster* v. *Owen*, 62 L. J. M. C. 7; 67 L. T. 712; 41 W. R. 240; 57 J. P. 87).

SECURITIES. — *V.* GOVERNMENT SECURITIES: PUBLIC SECURITIES: REAL SECURITY: SECURITY: SECURITY FOR MONEY: STOCKS.

"Securities," s. 16, Bankry Act, 1869; *V. Re Frith*, 48 L. J. Bank. 122; 12 Ch. D. 337. "Securities" to be specified in a Bankry Proof of Debt, includes Bills given as collateral security for a mtge, even though they are not being included in the proof (*Re Ruthen*, 5 Manson, 227).

Stat. Def. — Bankry (Scot) Act, 1856, 19 & 20 V. c. 79, s. 4; Conv & L. P. Act, 1881, s. 2 (xiv); Conveyancing (Scot) Act, 1874, 37 & 38 V. c. 94, s. 3; Court of Chancery (Funds) Act, 1872, 35 & 36 V. c. 44, s. 3; Mortgage Debenture (Amendment) Act, 1870, 33 & 34 V. c. 20, s. 4; S. L. Act, 1882, s. 2 (10, viii); Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, s. 3; Trustee Act, 1893, s. 50.

A power of *Investment* in such "Securities" as may be thought proper, does not authorize the purchase of a limited Banking Co's Shares not fully paid-up (*Murphy* v. *Doyle*, cited FUNDS, towards end). *Note*: that "Securities," quà Conv & L. P. Act, 1881, S. L. Act, 1882, and Trustee Act, 1893 (*V.* sup), "includes, Stocks, Funds, and Shares."

"Securities," quà a Banker's General LIEN, mean, "such securities as Promissory Notes, Bills of Exchange, Exchequer Bills, Coupons, Bonds of Foreign Governments," &c but, *semble*, not Title Deeds (*Wylde* v. *Radford*, 33 L. J. Ch. 53; 9 L. T. 471; 9 Jur. N. S. 1169; 12 W. R. 38).

"*Other* Securities," s. 12, Judgments Act, 1838, 1 & 2 V. c. 110, "I think, means, only Securities *ejusdem generis* with the Securities particularly mentioned in the section; and I doubt whether the section can be held to apply to goods in PLEDGE" (per North, J., *Re Rollason*, 56 L. J. Ch. 769; 34 Ch. D. 495; 56 L. T. 303; 35 W. R. 607). So, a bequest of "Foreign Bonds and other Securities," was held to pass Foreign Securities only, although the testator had large investments in British Funds (*Ferguson* v. *O'Gilby*, 2 Dr. & War. 548). *Vf*, SECURITY FOR MONEY.

A testamentary direction that funds shall be invested in, *e.g.* Consols, "and in *no other* Securities," ought to be observed by the Court even as regards CASH UNDER THE CONTROL OF THE COURT (*Re Ovey*, 1900, 2 Ch. 524; 69 L. J. Ch. 804, herein not following *Re Wedderburn*, 47 L. J. Ch. 743; 9 Ch. D. 112).

SECURITY. — A "Security," speaking generally, is anything that makes the money more assured in its payment or more readily recoverable; as distinguished from *e.g.* a mere I. O. U. which is only evidence of a debt. *V.* SECURITIES.

Thus, Bank Notes, Bills of Exchange, Promissory Notes, and Cheques, are "Securities" (Byles, *V.* espy Preface to 1 ed.). *Vf*, *Brown* v. *Inl. Rev.*, cited MARKETABLE SECURITY: SECURITY FOR MONEY: *Sv*, SECURITY FOR DEBT.

And writing is not necessary; for a parol deposit of deeds to secure a debt creates an Equitable Mortgage (Fisher, 16 *et seq*: Coote, ch. 31) and is obviously a "Security."

"Security," quà Local Loans Act, 1875, 38 & 39 V. c. 83, "means, any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer, issued under this Act" (s. 34); quà Public Works Loans Act, 1875, 38 & 39 V. c. 89, "'Security,' includes, a mortgage" (s. 51); quà Public Works Loans Act, 1899, 60 & 61 V. c. 51, "'Security of a Local Rate,' includes, a security guaranteed by any such Local Rate" (s. 12).

A *Foreign Attachment* out of the Lord Mayor's Court (*Levy* v. *Lovell*, 49 L. J. Ch. 305; 14 Ch. D. 234; 28 W. R. 602), or an attachment in

the Tolzey Court of Bristol (*Ex p. Sear*, 51 L. J. Ch. 448; 17 Ch. D. 74), gives no "Security" for the debt sued for, the object of either process being merely to compel the appearance of the defendant.

A *Garnishee Order*, as soon as served on the garnishee, created a "Security" to the judgment creditor on the debt therein comprised; *V.* CHARGE for cases hereon: but the Order must now be completed "by receipt of the debt" to be good as against bankruptcy (Bankry Act, 1883, s. 45).

Money paid into Court to abide the event of an action is a Security to the other litigant who, if he succeeds, becomes thereby a SECURED CREDITOR (*Ex p. Tate, Re Keyworth*, 43 L. J. Bank. 102; nom. *Ex p. Banner, Re Keyworth*, 9 Ch. 379; 30 L. T. 620: *Ex p. Bouchard, Re Moojen*, 48 L. J. Bank. 105; 12 Ch. D. 26: *Re Ford*, 1900, 2 Q. B. 211; 69 L. J. Q. B. 690; 81 L. T. 648; 48 W. R. 688), even though there be a denial of liability by the payer (*Re Gordon*, 1897, 2 Q. B. 516; 66 L. J. Q. B. 768; 46 W. R. 31).

A *Seizure* of Goods under a *fi. fa.* (even before sale) gave the execution creditor a "Security" within s. 12, Bankry Act, 1869 (*Slater* v. *Pinder*, 40 L. J. Ex. 146; 41 Ib. 66; L. R. 6 Ex. 228; 7 Ib. 95; 19 W. R. 778; 20 Ib. 441: *Ex p. Rocke, Re Hall*, 40 L. J. Bank. 70; 6 Ch. 795; 19 W. R. 1129; 25 L. T. 287); but no such security was created until seizure (*Ex p. Williams*, 41 L. J. Bank. 38; 7 Ch. 314; 20 W. R. 430); and when the *fi. fa.* was for a sum exceeding £50 and was against a trader, it was defeasible under s. 87. An execution against goods, to be good against bankruptcy, must now be "completed by Seizure and Sale" (Bankry Act, 1883, s. 45: *Vth*, ss. 46, 145).

Seizure of Land under an *elegit* (*Ex p. Abbott, Re Gourlay*, 50 L. J. Ch. 80; 15 Ch. D. 447), or lodging an *elegit* with a Sheriff who is remaining in possession under a former *elegit* (*Ex p. Shaw*, W. N. (84) 60), or the appointment of a Receiver (*Ex p. Evans, Re Watkins*, 49 L. J. Bank. 7; 13 Ch. D. 252; 28 W. R. 127; 41 L. T. 565), gives a Security on land within the Bankry Act, 1869, which is not taken away by s. 45, Bankry Act, 1883. But that latter section is fatal to a Receivership of goods (*Re Dickinson, Ex p. Charrington*, 58 L. J. Q. B. 1; 22 Q. B. D. 187), and *elegit* does not now extend to goods (s. 146, Bankry Act, 1883); *V.* SECURED CREDITOR.

A *Verdict* before judgment, is probably not a "Security" (*Jones* v. *Thompson*, 27 L. J. Q. B. 234; E. B. & E. 63); but "a Judgment is, in every sense of the word, a Security to a creditor for payment of his claim" (per Kelly, C. B., *West Ham* v. *Ovens*, 42 L. J. M. C. 29; L. R. 8 Ex. 37).

A power to Borrow on "ANY Security" of a Co, authorizes a charge on UNCALLED CAPITAL (*Newton* v. *Anglo-Australian Co*, 1895, A. C. 244; 64 L. J. P. C. 57; 72 L. T. 305; 43 W. R. 401: *Vf*, PROPERTY, p. 1584).

"FOREIGN Security"; *V.* s. 82 (1 *b*), Stamp Act, 1891.

Landlord's security for Rent in the Liquidation of a Co; *V. Re Oak Pits Co*, 51 L. J. Ch. 768; 21 Ch. D. 322; 30 W. R. 760: *Re New Oriental Bank*, 1895, 1 Ch. 753; 64 L. J. Ch. 439; 72 L. T. 419; 43 W. R. 523.

LOAN "upon Security of any *Lands*," s. 1, 2 & 3 V. c. 37, did not comprise a Warrant of Attorney to enter up jdgmt for money borrowed, though, when entered up, the jdgmt would be a charge on land under s. 13, 1 & 2 V. c. 110 (*Lane* v. *Horlock*, 16 L. J. Q. B. 87).

"REASONABLE Security" for payment of so much in the £, s. 3 (9), Bankry Act, 1890, does not contemplate the requirement of such a Security as a prudent person would require for the re-payment of a loan; the phrase means, a reasonable Chance, or Commercial Probability, that the required payment will be made, or that the money therefor will be realized by the Scheme of Arrangement (per Williams, J., *Re Bottomley*, 10 Morr. 262).

V. APPROVED SECURITIES: CHARGE: HERITABLE: LIEN: MARKETABLE SECURITY: MORTGAGE: NEGOTIABLE: PERSONAL SECURITY: REAL SECURITY: SECURED CREDITOR: SECURITY FOR MONEY: SUBSTITUTED: VALUABLE.

SECURITY FOR COSTS. — "Security for Costs," R. 6, Ord. 65, R. S. C.; *Vth*, Ann. Pr.

SECURITY FOR DEBT. — A Building Agreement which forfeits to the landlord the materials which may be brought on the land on breach by the builder of his obligations, is not a LICENSE to take possession of chattels as "Security for any Debt," and therefore is not a BILL OF SALE requiring registration under s. 4, Bills of S. Act, 1878 (*Brown* v. *Bateman*, 36 L. J. C. P. 134; L. R. 2 C. P. 272: *Blake* v. *Izard*, 16 W. R. 108: *Ex p. Newitt, Re Garrud*, 51 L. J. Ch. 381; 16 Ch. D. 522: *Reeves* v. *Barlow*, 53 L. J. Q. B. 192; 11 Q. B. D. 610; 12 Ib. 436). *Vh, Ex p. Jay, Re Harrison*, 14 Ch. D. 19: *Re Yates, Batcheldor* v. *Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563: *Climpson* v. *Coles*, cited LICENSE: AUTHORITY OR LICENSE. *Sv, Church* v. *Sage*, 67 L. T. 800; 41 W. R. 175.

An Assignment of "all Book and other Debts, and all Securities for such Debts"; held, not to pass an honoured cheque, uncashed at the date of the assignment, which had been given for a debt which, if unpaid, would have passed (*Hadley* v. *Hadley*, cited PAYMENT, p. 1435).

SECURITY FOR MONEY. — Mortgages are "Securities for Money" (*Dicks* v. *Lambert*, 4 Ves. 725: *Ogle* v. *Knipe*, L. R. 8 Eq. 434; 38 L. J. Ch. 692). So, a bequest of "Securities for Money" will *primâ facie* pass Stock in the Funds (*Bescoby* v. *Pack*, 1 Sim. & St. 500; 2 L. J. O. S. Ch. 17): but not Bank Stock (*Ib.*: *Ogle* v. *Knipe*, sup:

Re Maitland, 74 L. T. 274); nor Shares in a Company (*Hudleston* v. *Gouldsbury*, 10 Bea. 547: *Re Maitland*, sup: *M'Donnell* v. *Morrow*, 23 L. R. Ir. 591); nor an unpaid Legacy (*Re Mason*, 34 Bea. 494; 34 L. J. Ch. 603). Such a bequest will pass a Vendor's Lien for unpaid purchase-money (*Callow* v. *Callow*, 58 L. J. Ch. 698; 42 Ch. D. 550: *Sv*, *Goold* v. *Teague*, 7 W. R. 84; 32 L. T. O. S. 251; 5 Jur. N. S. 116, *svthlc* disapproved, Sug. V. & P. 684; Dart, 827, *n*). So it will pass a Life Policy (*Lawrance* v. *Galsworthy*, 3 Jur. N. S. 1049); also Bonds (*Dicks* v. *Lambert*, sup: *Mainland* v. *Upjohn*, 41 Ch. D. 142; 58 L. J. Ch. 366), and Bills of Exchange, Promissory Notes, and Cheques (*Barry* v. *Harding*, 1 J. & La T. 475): but not Bank Notes, for they are Money (*Southcot* v. *Watson*, 3 Atk. 233). It would not pass money merely evidenced as due by an I. O. U. (*Barry* v. *Harding*, sup); nor a sum shown to be due by a Banker's Deposit Note (*Hopkins* v. *Abbott*, 44 L. J. Ch. 316; L. R. 19 Eq. 222); still less a mere Debt (*Re Mason*, 34 L. J. Ch. 603; 11 Jur. N. S. 835): but it would seem that money due on a Judgment would pass (*West Ham* v. *Ovens*, 42 L. J. M. C. 29; L. R. 8 Ex. 37). *Vh*, Wms. Exs. 1056.

A bequest of "Securities for Money," prior to the Conv & L. P. Act, 1881, if uncontrolled by context, passed the legal estate in mortgaged hereditaments (1 Jarm. 699: Wms. Exs. 1056: Lewin, 244: *Rippen* v. *Priest*, cited MORTGAGE); *Sv*, s. 30 of that Act as regards testators dying after Dec 31st 1881.

"Securities for Money," s. 12, Judgments Act, 1838, 1 & 2 V. c. 110, includes an exon debtor's Life Policy (*Stokoe* v. *Cowan*, 30 L. J. Ch. 882; 29 Bea. 637: *sthc*, not followed in Ireland, *Alleyne* v. *Darcy*, 5 Ir. Ch. Rep. 55: *Re Sargeant*, 7 L. R. Ir. 66); it is doubtful whether this phrase includes Exchequer Bills (*Ex p. Chaplin*, 3 Y. & C. 397). *Vf*, SECURITIES.

"Security for the Payment of Money," s. 3, Bills of Sale Act, 1882, is made "whenever the grantor binds himself to pay money to the grantee, whatever may be the reason" (per Esher, M. R., *Hughes* v. *Little*, 56 L. J. Q. B. 98; 18 Q. B. D. 32; 55 L. T. 476; 35 W. R. 36). *Vf*, *Manchester*, *S. & L. Ry* v. *North Central Wagon Co*, 58 L. J. Ch. 219; 13 App. Ca. 554; 59 L. T. 730; 37 W. R. 305.

"Security for Payment of Money," s. 1, Carriers Act, 1830, 11 G. 4 & 1 W. 4, c. 68, does not include an incomplete Bill of Exchange (*Stoessiger* v. *S. E. Ry*, 3 E. & B. 549; 23 L. J. Q. B. 293: *Vf*, *McCall* v. *Taylor*, 19 C. B. N. S. 301; 34 L. J. C. P. 365).

Generally, an incomplete Bill of Exchange is not a Security for Money or for Payment of Money (*R.* v. *Hart*, 6 C. & P. 106: *Goldsmid* v. *Hampton*, 5 C. B. N. S. 94); but where Acceptances were placed in an agent's hands which needed only his own name as Drawer to make them complete, it was held that they were, in his hands, "Securities for the Payment of Money," within s. 75, Larceny Act, 1861, 24 & 25 V. c. 96

(*R.* v. *Bowerman*, 1891, 1 Q. B. 112; 60 L. J. M. C. 13; 63 L. T. 532; 39 W. R. 207; 55 J. P. 373).

"Bond, Covenant, or Instrument," "being the only, or principal, or primary, Security" for Money, Stamp Act, 1891, Sch 1; *V.* INSTRUMENT: *United Realization Co* v. *Inl. Rev.*, 1899, 1 Q. B. 361; 68 L. J. Q. B. 218; 79 L. T. 556; 47 W. R. 381.

V. MONEY: SECURITY.

SEDITION. — Sedition, is the attempt "to bring into hatred or contempt the person of" the Reigning Monarch, "or the Government and Constitution of the United Kingdom as by law established, or either House of Parliament, or to excite His Majesty's subjects to attempt the alteration of any matter in Church or State as by law established otherwise than by lawful means" (s. 1, Criminal Libel Act, 1819, 60 G. 3 & 1 G. 4, c. 8); "or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects" (Stephen Cr. 65).

Vh, *R.* v. *Lambert*, 2 Camp. 398: *R.* v. *Vincent*, 9 C. & P. 91: Arch. Cr. 938–951.

As to what are Seditious Words, *V.* Odgers, ch. 19.

SEDUCTION. — *V.* SERVANT, at end.

Seduction of a Wife, gave rise at Common Law to the action for Criminal Conversation (3 Bl. Com. 139, 140); but that action was abolished by 20 & 21 V. c. 85, s. 59, and by s. 33, Ib., a husband may, in a matrimonial cause, claim damages from an adulterer.

Cp, ABDUCTION.

SEE. — *V.* DIOCESE.

Stat. Def. — *Ir.* 14 & 15 V. c. 73, s. 1.

SEE BACK. — "See Back," on the face of a Railway Cloak Room Ticket and printed thereon in such a way as to give reasonably sufficient intimation that there are Conditions on the back (which is a question for the jury), gives to the person taking it notice of the Conditions on the back of it, under which the article is accepted for custody (*Parker* v. *S. E. Ry*, 46 L. J. C. P. 768; 2 C. P. D. 416); and it follows that a similar notification on any other Ticket would charge the person taking it with notice of the Conditions on its back. But the "See Back," or "See Over," must not be in small type (per Wright, J., *G. N. Ry* v. *Palmer*, 1895, 1 Q. B. 862; 64 L. J. Q. B. 320; 72 L. T. 287; 43 W. R. 316). The ticket must not be folded up so that the intimation is not visible unless the ticket is opened and read (*Richardson* v. *Rowntree*, 1894, A. C. 217; 63 L. J. Q. B. 283; 70 L. T. 817). *Vf*, *Stirling* v. *Lond. & S. W. Ry*, 12 Times Rep. 69: *Roche* v. *Cork Ry*, 24 L. R. Ir. 256, 257: *Kent* v. *Mid. Ry*, 44 L. J. Q. B. 18; L. R. 10 Q. B. 1; 23 W. R. 25.

SEE FIT. — *V.* THINK FIT.

SEED. — *V.* BLOOD.

SEED BARLEY. — *V.* BARLEY.

SEEDS. — "To Dye Seeds"; *V.* DYE.
"To kill Seeds," quà 32 & 33 V. c. 112, "means, to destroy, by artificial means, the vitality or germinating power of such seeds" (s. 2).

SEEK. — "Seek a livelihood"; *V.* LIVELIHOOD.
"Seeks only"; *V.* ONLY.

SEEM MEET. — A power to justices "to make such Order thereon as to them shall seem meet," s. 44, Highway Act, 1835, 5 & 6 W. 4, c. 50, does not authorize an Order for illegal charges (*Barton* v. *Piggott*, 44 L. J. M. C. 5; L. R. 10 Q. B. 86). *Vf*, THINK FIT.

SEIGNIOR. — The Lord of a Manor (Cowel): "Seignior in Grosse," "is a Lord, but of no Mannor, and therefore can keep no Court" (Ib.): "Seignory," a Manor or Lordship (Ib.). *Vf*, GROSS, p. 839: 11 Encyc. 453, 454.

SEIZE. — *V.* SEIZURE.

SEIZED. — This word, in its relation to real estate, is "one of the most technical words in our law — a word that has no meaning except technical. It has not got into vernacular use that I am aware of" (per James, L. J., *Leach* v. *Jay*, 47 L. J. Ch. 877: *Vf*, *Kilwick* v. *Maidman*, 1 Burr. 107).

"'Seisin,' or *seison*, is common aswel to the English as to the French, and signifies in the common law possession, whereof *seisina* a Latin word is made, and *seisire*, a verbe" (Co. Litt. 153 a); actual entry is, generally speaking, necessary to make a seizin (2 Bl. Com. 209: ENTITLED: Co. Litt. 29 a, *Sv*, the exceptions there stated and Hargrave's note thereon, also Co. Litt. 31 a. *Va*, Cowel, *Seisin*: Wms. R. P. Part 1, ch. 7: 11 Encyc. 454–456). Therefore, a devise of "all real estate of which I may die seized," will not pass real estate to which the testator is entitled, but of which he has not acquired the actual possession (*Leach* v. *Jay*, 47 L. J. Ch. 876; 9 Ch. D. 42; 39 L. T. 242; 27 W. R. 99). *Vf*, *Re Huddleston*, 1894, 3 Ch. 595; 64 L. J. Ch. 160; 43 W. R. 139: ACTUAL SEIZIN.

But though "seized" is a strong technical expression and has its proper relation only to realty, yet if it be the only word relating to realty in a testamentary gift the other expressions of which relate to personalty, it will not be sufficient to pass realty (*Jones* v. *Robinson*, 47 L. J. C. P. 673; 3 C. P. D. 344).

A Gift of all Freehold heredits in A. of which testator was "seized or possessed" under a specified Settlement; held to pass a share in the

proceeds of sale of freeholds in A. to which share (but not to any freeholds) the testator was entitled under the Settlement (*Re Lowman*, 1895, 2 Ch. 348; 64 L. J. Ch. 567; 72 L. T. 816).

A Recital that a person is "seized of *or otherwise well entitled to*" a property, does not operate as an estoppel that he is seized of the *legal* estate (*Heath* v. *Crealock*, 10 Ch. 22; 44 L. J. Ch. 157): *Cp*, FACT: ENTITLED, p. 628.

An allegation in a Pleading that a person was "seized" of property, is ambiguous, but, after verdict to that effect, it is a sufficient allegation of a Seizin in Fee (*Harris* v. *Beavan*, 4 Bing. 646).

An allegation of a Seizin in Fee, virtually includes an occupation of the property, unless the contrary be shown (*Bullard* v. *Harrison*, 4 M. & S. 387, 392), and, certainly, does not imply that the property was not then under lease (*Johnson* v. *Faulkner*, 2 Q. B. 925; 11 L. J. Q. B. 193).

Quâ Lunacy Acts and Trustee Acts, "Seized" is applicable to or includes "any *vested* estate for life or of a greater description, and shall extend to estates at Law and in Equity, in Possession or in Futurity, in any Lands" (13 & 14 V. c. 60, s. 2; 54 & 55 V. c. 65, s. 28).

"Seized in FEE SIMPLE," in the exception to 17 G. 3, c. 26, for the Registration of Annuities, included a Tenant for Life with a GENERAL POWER of appointment (*Halsey* v. *Hales*, 7 T. R. 194).

"Seized of the FREEHOLD and INHERITANCE"; *V. Malmesbury* v. *Malmesbury*, 31 Bea. 407.

"Seized *or entitled*," s. 78, District Courts New South Wales Act, 1858; *V. Godfrey* v. *Poole*, 57 L. J. P. C. 78; 13 App. Ca. 497; 58 L. T. 685.

"Seized of or entitled in fee," s. 17, 1 W. 4, c. 65; *V. Re Clark*, 14 W. R. 378; 1 Ch. 292; 35 L. J. Ch. 314; 13 L. T. 732.

Covenant "to stand seized"; *V.* 4 Cru. Dig. 106–112.

V. ENTITLED: SEIZIN.

Meat is not "seized" within ss. 116, 117, P. H. Act, 1875, if, having been purchased, it is, with the consent of the purchaser, taken by an inspector of Nuisances to a Justice for condemnation (*Vinter* v. *Hind*, 52 L. J. M. C. 93; 10 Q. B. D. 63). So, as to an Article "seized," s. 47, 54 & 55 V. c. 76; *V.* per Hawkins, J., *R.* v. *Dennis*, 1894, 2 Q. B. 458; 63 L. J. M. C. 166; 71 L. T. 436; 42 W. R. 586; 58 J. P. 622. *Vf*, *Billing* v. *Prebble*, cited BELONG.

V. SEIZURE.

SEIZED JOINTLY.—This phrase in s. 10, Trustee Act, 1850, 13 & 14 V. c. 60, is not to be construed as referring only to a strictly legal JOINT TENANCY, but will include PARCENERS (*Re Greenwood*, 54 L. J. Ch. 623; 27 Ch. D. 359).

SEIZIN.—*V.* SEIZED: ACTUAL SEIZIN: PRIMER SEISIN.

"Instrument of Seizin"; *V. Eglinton Trustees* v. *Inl. Rev.*, 3 H. & C.

871; 34 L. J. Ex. 225. In that case Pollock, C. B., said the Scotch equivalent for "Seizin" is "Sasine" (3 H. & C. 887).

V. Williams on Seisin.

The Seisin of Chattels, *V.* 1 L. Q. Rev. 324: The Mystery of Seisin, 2 Ib. 481: The Beatitude of Seisin, 4 Ib. 24, 286.

SEIZURE. — The ordinary and natural meaning of "Seizure" is a forcible taking possession (per Cave, J., *Johnston* v. *Hogg*, 52 L. J. Q. B. 343; 10 Q. B. D. 432. *Va*, *Vinter* v. *Hind*, 52 L. J. M. C. 93: 10 Q. B. D. 63: *Svthlc*, *Mallinson* v. *Carr*, cited KNOWINGLY, p. 1046).

Seizure of part of the goods in the house by virtue of a *fi. fa.* in the name of the whole, is a good seizure of all (per Holt, C. J., *Cole* v. *Davis*, 1 Raym. Ld, 724. *Va*, *Gladstone* v. *Padwick*, 40 L. J. Ex. 154; L. R. 6 Ex. 203).

An execution against Lands is "completed by Seizure," within s. 45 (2), Bankry Act, 1883, as soon as the sheriff has delivered the lands to the execution creditor (*Re Hobson*, 55 L. J. Ch. 754; 33 Ch. D. 493; 55 L. T. 255; 34 W. R. 786: *Cp*, DELIVERED IN EXECUTION).

V. ACTUAL: EXECUTED: QUOUSQUE: SEIZED.

In a warranty by owners of a ship against "CAPTURE and Seizure," in a Marine Insurance, the word "Seizure" has its ordinary and natural meaning and is not a Term of Art, and includes the forcible taking possession of a vessel and abandoning her as soon as the cargo has been plundered; "Seizure" is not equivalent to, but is less exigent than, "Capture," as the latter word involves the idea of keeping what has been seized (*Johnston* v. *Hogg*, sup, and *dicta* there cited). "Seizure" even in this connection is not confined to a belligerent, hostile, or wrongful, seizure (*Powell* v. *Hyde*, 25 L. J. Q. B. 65; 5 E. & B. 607: *Kleinwort* v. *Shepard*, 28 L. J. Q. B. 147; 1 E. & E. 447: *Cory* v. *Burr*, 51 L. J. Q. B. 95, 468; 52 Ib. 657; 8 Q. B. D. 313; 9 Ib. 463; 8 App. Ca. 393). *Vf*, *Robinson Gold-Mining Co* v. *Alliance Assrce*, 1902, 2 K. B. 489; 71 L. J. K. B. 942.

It has been said in America that a "Capture" is a taking by Military Power; a "Seizure" a taking by Civil Authority (*United States* v. *Athens Armory*, 2 Abb. 137).

V. ARREST.

Lord SELBORNE'S ACT. — Powers of Appointment Act, 1874, 37 & 38 V. c. 37.

Vf, PALMER ACT.

SELDA. — Cowel gives these various meanings to "Selda," — a seat or stool; a window; a shop, shed, or stall; and says that "*Selda*, also in Doomsday signifies a Wood of Sallows, Willows, and Withyes." *Vf*, SALIVA.

SELECT. — *V.* APPROPRIATE.
Power to select; *V.* RELATIONS.
Cp, ELECTION.

SELF. — "For Firm and Self"; *V.* FOR, p. 741.
"Self-governing COLONY," quâ Colonial Boundaries Act, 1895, 58 & 59 V. c. 34, means, Canada, Newfoundland, New South Wales, Victoria, South Australia, Queensland, Western Australia, Tasmania, New Zealand, Cape of Good Hope, or Natal (s. 1 and Sch).
Self Defence; *V.* 3 Bl. Com. 3, 4 Ib. 183: Steph. Cr. Art. 200. "Son Assault Demesne"; *V.* DEMESNE, at end.
Self Murder; *V.* SUICIDE: 4 Bl. Com. 189.

SELION. — "By the grant of a selion of land, *selio terræ*, a ridge of land which containeth no certainty, for some be greater and some be lesser; and by the grant *de unâ porcâ*, a ridge doth passe. *Selio* is derived of the French word *sellon*, for a ridge" (Co. Litt. 5 b: *Va*, Termes de la Ley: Cowel). *V.* PORCA TERRÆ: BUTT.

SELL. — *V.* ASSIGN: ATTEMPT: CONVEY: MORTGAGE, towards end: PARTITION: SALE: SELLER: VEND.
A Power to "sell, means, in the absence of any context, a power to sell *for money*; and a person who exercises such a power is bound to sell for money" (per Stirling, J., *Paine* v. *Cork Co*, 69 L. J. Ch. 158: *V. Coats* v. *Inl. Rev.*, and *Re Ware*, cited SALE). The power to "sell" of a Liquidator in the Winding-up of a Co is so restricted under s. 95, Comp Act, 1862, except as it is widened by s. 161; that latter section is the limit of his power thereunder and it is not competent for a Co, even by its Articles, to confer additional power or to deprive Dissentient Shareholders of their rights under the section (*Paine* v. *Cork Co*, 1900, 1 Ch. 308; 69 L. J. Ch. 156; 82 L. T. 44; 48 W. R. 325); but where a sale is under the *Mem of Assn*, *V. Doughty* v. *Lomagunda Reefs*, 1902, 2 Ch. 837; 71 L. J. Ch. 888.
An authority to "sell" property includes an authority to sign a binding contract therefor (*Rosenbaum* v. *Belson*, cited PROCURE).
As to Power to sell, *Vf*, SALE.
"Sell or expose for sale" Goods; *V.* EXPOSE.
"Sell, publish, or expose to sale," any Printed Book; *V.* IMPORT FOR SALE.
"Sells Intoxicating Liquor," s. 13, Licensing Act, 1872; *V.* SUFFER.
Quâ Public Parks (Scot) Act, 1878, 41 & 42 V. c. 8, "sell" includes, "convey by way of FEU or contract of ground annual" (s. 27).

SELLER. — Quâ Sale of Goods Act, 1893, "'Seller' means, a person who sells, or agrees to sell, Goods" (subs. 1, s. 62): the "Seller" of Goods quâ Part 4, of that Act, "includes, any person who is in the

position of a Seller, *e.g.* an Agent of the Seller, to whom the Bill of Lading has been indorsed, or a Consignor or Agent who has himself paid, or is directly responsible for, the price" (subs. 2, s. 38). *V.* SCIENTER: UNPAID SELLER.

The PERSON who is the "Seller" of POISON within s. 17, Pharmacy Act, 1868, 31 & 32 V. c. 121, is the person who keeps the shop, or actually conducts the business of the place, where the sale is transacted, even though he only sell the article on commission for another person, living elsewhere and having no control over the shop or place (*Templeman* v. *Trafford*, 51 L. J. M. C. 4; 8 Q. B. D. 397); under s. 15 of that Act the "Seller" includes a shopkeeper's assistant who performs the physical act of transfer (*Pharmaceutical Socy* v. *Wheeldon*, 59 L. J. Q. B. 400; 24 Q. B. D. 683; 62 L. T. 727; 54 J. P. 407: *Vf, Pharmaceutical Socy* v. *London & Prov. Supply Assn*, cited PERSON). But if a Florist receives an order for a poison, *e.g.* a Weed-killer, which order he merely sends on to the manufacturer, receiving from the latter a commission on the order, the florist is not the "seller" within s. 15 (*Pharmaceutical Socy* v. *White*, 1900, 1 Q. B. 454; 69 L. J. Q. B. 289; 81 L. T. 821; 48 W. R. 335; 64 J. P. 168).

So, quà Sale of Food and Drugs Act, 1875, s. 6, the PERSON who is the "Seller" of an article "not of the nature, substance, and quality," demanded, may be a servant of the tradesman, although his subordinate position precludes him from having been the person who had purchased the article for sale and whereby (possibly) he is deprived of the defence furnished by s. 25 (*Hotchin* v. *Hindmarsh*, 1891, 2 Q. B. 181; 60 L. J. M. C. 146; 39 W. R. 607; 55 J. P. 775: *Brown* v. *Foot*, cited KNOWINGLY: *Vf*, WRITTEN WARRANTY).

V. NATURE: REPRESENT. But *cp*, *Williamson* v. *Norris*, 79 L. T. 415; 47 W. R. 94; 62 J. P. 790; 68 L. J. Q. B. 31, on s. 3, Licensing Act, 1872.

Cp, VENDOR.

SELWYN'S ACT. — Probate Duty Act, 1859, 22 & 23 V. c. 36.

SEMBLE. — It seems.

SEND. — "A threatening letter is 'sent' when it is dropped in the way of the person for whom it is destined, so that he may pick it up (*R.* v. *Jepson*, *R.* v. *Lloyd*, 2 East P. C. 1115, 1122: *R.* v. *Wagstaff*, Russ. & Ry. 398); or is affixed in some place where he would be likely to see it (*R.* v. *Williams*, 1 Cox C. C. 16); or is placed on a public road near his house so that it may, however indirectly, reach him, which it eventually does after passing through several hands (*R.* v. *Grimwade*, 1 Den. 30. *Va*, *R.* v. *Jones*, 5 Cox C. C. 226): although in none of these cases would the paper be popularly said to have been 'sent'" (Maxwell, 336). But to "send" a threatening letter within the BLACK ACT did

not include its being *taken* by the writer (*R.* v. *Hammond*, Leach, 444).

Notices of Chargeability or of Appeal were authorized to be sent "By Post or otherwise" (s. 79, 4 & 5 W. 4, c. 76; s. 10, 14 & 15 V. c. 105); they were, accordingly, "sent," within s. 9, 11 & 12 V. c. 31, on the day when in the ordinary course of post they ought to have been delivered (*R.* v. *Slawstone*, 21 L. J. M. C. 145; 18 Q. B. 388: *R.* v. *Richmond*, 27 L. J. M. C. 197; E. B. & E. 253; 31 L. T. O. S. 115).

As regards all Acts passed after Dec 31st 1889, a document is served "By Post," "by properly addressing, pre-paying, and posting, a letter containing the document, and (unless the contrary is proved) to have been effected at the time at which the letter would be delivered in the ordinary course of post" (s. 26, Interp Act, 1889). *V.* Ordinary Course.

"Send out, deliver, remove, or receive," Spirits exceeding the quantity of 1 gallon without a Permit, ss. 105, 107, 43 & 44 V. c. 24; *V. Leese* v. *Jennings*, 79 L. T. 300.

SENIOR. — *V.* Eldest: Premier.

"Senior Alderman," s. 64, Mun Corp (Ir) Act, 1840, 3 & 4 V. c. 108, means, senior in actual office (*Gribbin* v. *Kirker*, Ir. Rep. 7 C. L. 30).

SENTENCE. — A covenant in a Charter-Party to employ a captured ship "as soon as Sentence of Condemnation shall have passed," connotes that the Sentence must be a legal one (*Unwin* v. *Wolseley*, 1 T. R. 674).

"Sentence of Imprisonment," quâ Colonial Prisoners Removal Act, 1884, 47 & 48 V. c. 31, "*means*, any sentence involving confinement in a Prison, whether combined or not with labour, and whether known as penal servitude, imprisonment with hard labour, rigorous imprisonment, imprisonment, or otherwise; and *includes*, a sentence awarded by way of commutation, as well as an original sentence passed by the Court" (s. 18).

V. Definitive.

SENTICETUM. — *V.* Roncaria.

SEPARATE. — The condition of an Annuity in a Separation Deed provided that the annuity should be payable during the joint lives of the husband and wife so long as they should "live separate"; held, that an occasional Cohabitation was not a breach of such latter part of the condition; to do that the evidence must show a joint intention of continuing to live together (*Robinson* v. *Robinson*, 89 Law Times, 119: *Rowell* v. *Rowell*, 1900, 1 Q. B. 9; 69 L. J. Q. B. 55; 81 L. T. 429).

V. Living Apart: Neglect: Separately: *Cp*, Associate.

SEPARATE BUILDING.—*V.* DISTINCT.

SEPARATE BUSINESS.—Of a Wife; *V.* SEPARATELY.

SEPARATE COVENANT.—Where A. covenants with B. "and as a Separate Covenant" with C. to do or refrain from doing a certain thing, "Separate" is a technical word equivalent to the technical word "SEVERAL," and clearly connotes a several obligation (*Keightley* v. *Watson*, 3 Ex. 716, 720, 721; 18 L. J. Ex. 339); but, *semble*, "as a *distinct* covenant" is not such a technical phrase (*Hopkinson* v. *Lee*, 6 Q. B. 964; 14 L. J. Q. B. 101: *svthc* considered in *Keightley* v. *Watson*).

V. COVENANT: JOINTLY AND SEVERALLY: SEVERAL COVENANT.

SEPARATE DWELLING-HOUSE.—*V.* DISTINCT: DWELLING-HOUSE.

SEPARATE ESTATE.—*V.* SEPARATE PROPERTY: SEPARATE USE.

SEPARATE MAINTENANCE.—A provision for a Married Woman for "Separate Maintenance" may make it for her SEPARATE USE (*Re Tharp*, 3 P. D. 76). *Vf*, COMFORTABLE MAINTENANCE.

SEPARATE OCCUPATION.—Separate Occupation, entitling a person to be separately rated, depends on his occupation, and has nothing to do with structural division (*Allchurch* v. *Hendon*, 1891, 2 Q. B. 436; 61 L. J. M. C. 27; 65 L. T. 450; 40 W. R. 86). In that case, Esher, M. R., said, "'*Structural Division*,' is a phrase invented by the judges at a time when, in the statute of Elizabeth as to the Poor Rate and in the Franchise Acts, they were labouring to determine what was to be an Occupation which (in one case) would give a liability to be rated and (in the other) the right to the franchise. The phrase was in use for a long time," but now "is an exploded phrase and an exploded doctrine for all purposes whatever." *V.* HOUSE, p. 893: OCCUPATION, p. 1311.

SEPARATE PRISON JURISDICTION.—*V.* JURISDICTION.

SEPARATE PROPERTY.—This phrase in s. 1, M. W. P. Act, 1882, does not comprise property over which a married woman has a GENERAL POWER of Appointment (*Re Armstrong*, 55 L. J. Q. B. 578; 21 Q. B. D. 264; 34 W. R. 709; 2 Times Rep. 745: *Vh*, *Re Roper*, 39 Ch. D. 482, *svthc* per Lindley, M. R., *Re Hughes*, cited FEME: *Mayd* v. *Field*, 3 Ch. D. 587); nor property subject to a RESTRAINT ON ALIENATION (*Leak* v. *Driffield*, 59 L. J. Q. B. 89; 24 Q. B. D. 98; 61 L. T. 771; 38 W. R. 93: *Braunstein* v. *Lewis*, 64 L. T. 265: *Pelton* v. *Harrison*, 1891, 2 Q. B. 422; 60 L. J. Q. B. 742; 65 L. T. 514; 39 W. R. 689; *vthlc*, *Re Wheeler*, 1899, 2 Ch. 717; 68 L. J. Ch. 663).

"Separate Property," s. 7, M. W. P. Act, 1870; *V. Re Davies*, cited LESS.

A Contingent Remainder is not such property (*Re Shakespear, Deakin* v. *Lakin*, 55 L. J. Ch. 44; 30 Ch. D. 169; 53 L. T. 145; 33 W. R. 744); but a Vested Remainder is (*Loibl* v. *Fraser*, 37 S. J. 601).

V. JOINT TENANCY, towards end.

Note. As to binding Separate Property by contract, *V.* M. W. P. Act, 1893, which, as from its date, nullifies hereon such cases as *Re Shakespear*, sup, and *Palliser* v. *Gurney*, 56 L. J. Q. B. 546; 19 Q. B. D. 519; 35 W. R. 760.

ALIMONY is not "separate" property in the sense that it is chargeable by the wife with her debts (*Anderson* v. *Hay*, 7 Times Rep. 113). *V.* JUDGMENT.

"Criminal Proceedings for the protection and security" of a wife's "own Separate Property," s. 12, M. W. P. Act, 1882, do not include a prosecution for Libel (*R.* v. *Lord Mayor of London*, 16 Q. B. D. 772; 55 L. J. M. C. 118).

V. SEPARATE USE.

SEPARATE PUBLICATION.—*V.* SEPARATELY: PUBLICATION.

SEPARATE QUARTER SESSIONS.—As to this phrase in s. 150, Mun Corp Act, 1882, 45 & 46 V. c. 50; *V. St. Lawrence, Ramsgate* v. *Kent Jus.*, 51 J. P. 262; 3 Times Rep. 519.

V. QUARTER SESSIONS.

SEPARATE USE.—A "Separate Use" was the creation of Courts of Equity; it is applicable to both Real and Personal Property; its effect is to give a married woman, with respect to the property subject to it, "an independent personal status, and to make her, in Equity, a Feme Sole (*V.* FEME). It is of the essence of the Separate Use, that the married woman shall be independent of, and free from the control and interference of, her husband. With respect to Separate Property, the feme covert is, by the form of trust, released and freed from the fetters and disability of coverture, and invested with the rights and powers of a person who is *sui juris*. To every estate and interest held by a person who is *sui juris*, the Common Law attaches a right of alienation; and accordingly, the right of a feme covert to dispose of her Separate Estate was recognized and admitted from the beginning until Ld Thurlow devised the clause against anticipation (*V. Hulme* v. *Tenant*, cited FEME: *Parkes* v. *White*, 11 Ves. 209, 221: *Vf*, RESTRAINT ON ALIENATION). It would be contrary to the whole principle of the doctrine of Separate Use to require the consent or concurrence of the husband in the act or instrument by which the wife's Separate Estate is dealt with or disposed of" (per Westbury, C., *Taylor* v. *Meads*, 34 L. J. Ch. 207; 4 D. G. J. & S. 603, 604).

"What words create a trust for Separate Use, has often been a subject of dispute. The principle of construction is stated to be, that the marital right is not to be excluded except by expressions which leave no doubt of the intention" (2 Jarm. 24, *n*: *Va*, Elph. 297).

"'Separate' is the proper technical word for excluding the marital right: 'Sole' is not equivalent; and *primâ facie* a devise or bequest direct to a *single* woman (including the testator's widow) for her 'sole' use will not create a separate estate" (2 Jarm. 25, *n*, citing *Gilbert* v. *Lewis*, 1 D. G. J. & S. 38; 32 L. J. Ch. 347: *Lewis* v. *Mathews*, L. R. 2 Eq. 177; 35 L. J. Ch. 638). *Vf*, SOLE: OWN SOLE USE.

But "no particular form of words is *necessary* in order to vest property in a married woman to her Separate Use. That intention though not expressed in terms, may be inferred from the nature of the provisoes annexed to the gift" (per Brougham, C., *Stanton* v. *Hall*, 2 Russ. & My. 180).

If, too, the woman were married, or her marriage were in contemplation, at the date of the instrument to be construed, that fact would be of importance, as it would induce the Court the more readily to believe that words pointing to an independent enjoyment were intended to create a Separate Use (2 Jarm. 25, *n*: *Va*, cases hereon collected, Elph. 298, 299).

For the cases as to what words have been held to create a Separate Use; *V.* 2 Jarm. 24, *n*: Theobald, 558: Elph. 297–301: Lewin, 922–924: Watson Eq. 388–390: Story, s. 1382: Matthews' Law of Married Women. *Va*, COMFORTABLE MAINTENANCE: SEPARATE MAINTENANCE.

"Property acquired by a married woman and becoming her Separate Estate by virtue of the M. W. P. Act, 1882, is not 'property settled to her Separate Use' within the meaning of these words as used in an exception to a covenant for settling a wife's future property in a Settlement before 1883" (Elph. 296, citing *Re Stonor*, 24 Ch. D. 195; 52 L. J. Ch. 776: *Va*, *Re Whitaker*, 56 L. J. Ch. 251; 34 Ch. D. 227; 35 W. R. 217). In a discussion of the lastly cited case (31 S. J. 376, 377), it has been said that "the practical effect of the decision is that the words 'for her separate use' should be always added after a gift, limitation, or bequest, to a married woman."

V. SEPARATE PROPERTY.

Semble, a gift to a married woman for her "Separate Use," will not take the property out of a *Covenant to settle* (3 Davidson's Prec., 3 ed., 199, 200: *Re Alnutt*, *Pott* v. *Brassey*, 52 L. J. Ch. 299; 22 Ch. D. 275; differing from *Re Mainwaring*, L. R. 2 Eq. 487. *Va*, *Scholfield* v. *Spooner*, 26 Ch. D. 94).

V. OWN USE AND BENEFIT: PARAPHERNALIA: PIN MONEY: RESTRAINT ON ALIENATION: SAVINGS.

SEPARATELY. — A wife may engage in or carry on an Employment, Trade, or Occupation, "separately from her husband," s. 2, M. W. P.

Act, 1882, in the house in which they are living together; "separately," in that connection, does not mean "bodily separate" but, means, without the husband's interference (*Ashworth* v. *Outram*, 46 L. J. Ch. 687; 5 Ch. D. 923; 37 L. T. 85; 25 W. R. 896: *Lovell* v. *Newton*, 4 C. P. D. 7; 27 W. R. 366: *Re Dearmer*, 53 L. T. 905: as to proof, *V. Re Whittaker*, 21 Ch. D. 657; 51 L. J. Ch. 737). So, in order to render a wife subject to the Bankry Laws (s. 1 (5), Ib.), she must not only have Separate Estate but also "carry on a TRADE separately from her husband," *i.e.* her trade must be one in which the husband has no share or right of interference (*Re Helsby*, 63 L. J. Q. B. 261; 69 L. T. 864); but "separately" does not mean that the husband may not help (and help very much) in carrying on the wife's trade (*Re Edwards*, 11 Times Rep. 338; 43 W. R. 509). It is not carrying on a "trade" within this enactment for a woman to let rooms in her house, she supplying no food to such lodgers (*Re Parkinson*, 9 Times Rep. 388). *V.* CARRY ON, pp. 266, 267.

"Neglect causing a Wife to leave and live separately and apart"; *V.* NEGLECT.

By Bills of Sale Act, 1878, s. 7, "No Fixtures or Growing Crops shall be deemed, under this Act, to be 'separately *assigned or charged*' by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such Fixtures are affixed, or in the land on which such Crops grow, is also conveyed or assigned to the same persons or person. The same rule of construction shall be applied to *all* deeds or instruments including Fixtures or Growing Crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any Bankruptcy, Liquidation, Assignment for the Benefit of Creditors, or Execution of any process of any Court, which shall take place or be issued after the commencement of this Act." *Vth*, *Re Yates*, *Batcheldor* v. *Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112; 59 L. T. 47; 36 W. R. 563: *Small* v. *National Prov. Bank*, 1894, 1 Ch. 686; 63 L. J. Ch. 270; 70 L. T. 492; 42 W. R. 378: *Re Brooke*, 1894, 2 Ch. 600; 64 L. J. Ch. 21: *Re Calvert*, 1898, 2 I. R. 501. A mtge, whether of freeholds or leaseholds, which comprises Fixtures and which gives the mtgee power to sell the Fixtures separately from the land, amounts to a BILL OF SALE quà the Fixtures (*Johns* v. *Ware*, 1899, 1 Ch. 359; 68 L. J. Ch. 155; 80 L. T. 112; 47 W. R. 202: *Re Yates*, sup).

Part of a HOUSE "separately *occupied* as a dwelling"; *V.* DWELLING-HOUSE: SEPARATE OCCUPATION.

Lodgings *occupied* "separately and as Sole Tenant," s. 4 (2), Rep People Act, 1867, s. 4 (2), Rep People (Ir) Act, 1868, s. 4, Rep People (Scot) Act, 1868; *Vh*, s. 6 (3), 41 & 42 V. c. 26: *Fitzgerald* v. *Kinsella*,

18 W. R. 149: LODGER, p. 1120. If a man's wife lodges with him, he none the less occupies "separately and as sole tenant" (*Hamilton* v. *Paton*, W. N. (99) 175).

BOOK "separately *published*," s. 2, Copyright Act, 1842, includes each one of a series of literary compositions, clearly distinguishable from one another, although published in one volume and under one general title (*Johnson* v. *Newnes*, 1894, 3 Ch. 663; 63 L. J. Ch. 786; 43 W. R. 572). As to what is publishing an essay, &c, "separately or singly," within s. 18, Ib.; *V. Mayhew* v. *Maxwell*, 1 J. & H. 312; *vthc*, and hereon, *Cox* v. *Land and Water Co*, L. R. 9 Eq. 329, 330: *Vf*, *Smith* v. *Johnson*, 33 L. J. Ch. 137; 9 L. T. 437: PERIODICAL: PUBLICATION.

V. SEPARATE.

SEPARATION. — *V.* JUDICIAL SEPARATION: LIVING APART: SEPARATE: *Cp*, ASSOCIATE.

Allowance during separation; *V.* DURING.

"Separation of the Crop"; *V. Black* v. *Clay*, cited DETERMINATION.

Separation Deed; *V.* ALIMONY: COMMENCED: CONDONATION: USUAL.

SEPTUM. — "An Inclosure, a Close; and is so called because it is encompassed *cum sepe et fossa*, with a hedge and a ditch, or, at least, with a hedge" (Cowel); "it signifies any place paled in" (Jacob).

SEPULCHRE. — "Sépulture Ecclésiastique"; *V. Brown* v. *Montreal Curé*, L. R. 6 P. C. 157; 44 L. J. P. C. 1.

SEQUESTRATION. — "'Sequestration' is the setting aside of a thing in controversie from the possession of both those that contend for it" (Termes de la Ley): it is *Voluntary*, when both parties consent; *Necessary*, when ordered by a Judge (Cowel).

The Sequestration of a BENEFICE "is this, that the proceeds of the Benefice are taken by an officer appointed by the Bishop for the purpose; but, in other respects, the position of the Incumbent, except so far as it may be expressly altered by the statute, remains the same" (per Chitty, J., *Lawrence* v. *Edwards*, cited MINISTER). *Vf*, as to the effect of a Sequestration of a Benefice, *Re Lawrence*, 1896, P. 244: *Lawrence* v. *Adams*, 75 L. T. 410: *Pack* v. *Tarpley*, 8 L. J. M. C. 93; 9 A. & E. 468: Phil. Ecc. Law, 1003–1012, 1074.

"'Sequestration' is a word large enough to apply to all Sequestrations" (per North, J., *Re Wanzer*, 60 L. J. Ch. 494); and as used in s. 163, Comp Act, 1862, includes a Scotch proceeding in sequestration by a landlord against a tenant for future rent (*Ib.*, 1891, 1 Ch. 305; 60 L. J. Ch. 492; 39 W. R. 343). An ARREST of a vessel by the Admiralty Court is also a "Sequestration" within that section (*Re Australian Nav. Co*, L. R. 20 Eq. 325; 44 L. J. Ch. 676; on *whcv*, *Re Belfast Co*, 1894, 1 I. R. 331).

Sequestration to enforce payment into Court or other act; *V.* R. 6 and 7, Ord. 43, R. S. C., on *wht*, Ann. Pr.

"Sequestration," in Scotland, sometimes is equivalent to "Liquidation," *e.g.* s. 3 (3), 49 & 50 V. c. 23.

Sequestrator; *V.* CREDITOR, p. 434.

SERIAL. — *V. Johnson* v. *Newnes*, cited SEPARATELY: PERIODICAL.

SERIOUS. — What is "Serious and WILFUL MISCONDUCT" of a Workman, s. 1 (2), Workmen's Comp Act, 1897, is a question of fact having regard to the whole matter of each case; breach of Rules, even those under the Coal Mines Regn Act, 1887, does not, necessarily, constitute such Misconduct (*Rumboll* v. *Nunnery Colliery Co*, 80 L. T. 42; 63 J. P. 132). *Vf*, *Rees* v. *Powell Duffryn Co*, 64 J. P. 164: *Reeks* v. *Kynoch*, 18 Times Rep. 34: *John* v. *Albion Co*, 18 Times Rep. 27: EMPLOYMENT: MISCONDUCT.

SERJEANT-AT-ARMS. — *V. G.* v. *L.*, 1891, 3 Ch. 127, *n*; 60 L. J. Ch. 706, *n*: 3 Bl. Com. 444.

SERJEANT-AT-LAW. — *V.* 3 Bl. Com. 27: 6 Bing. N. C. 232–239. *V.* PREMIER.

SERJEANTY. — "'*Grand* Serjeanty,' is where a man holdeth of the King certaine land by the Service of carrying his Banner or Lance, or to leade his Host, or to be his Carver or Butler at his Coronation.

"'*Petit* Serjeanty,' is when one holdeth of the King, paying to him yeerly a Bow, a Sword, a Speare, and such like, and that is but SOCAGE, in effect" (Termes de la Ley, *Grand Serjeanty*). Later on (*Petit Serjeanty*) the learned author says that the Bow should be "without string."

Vf, quà Grand Serjeanty, Litt. ss. 153–158; Co. Litt. 105 b–108 a; 2 Bl. Com. 73 *et seq*: — quà Petit Serjeanty, Litt. ss. 159–161; Co. Litt. 108 a–108 b; 2 Bl. Com. 81 *et seq*.

Note: 12 Car. 2, c. 24, which converted the old Military Tenures (of which Serjeanty was one) into FREE AND COMMON SOCAGE, preserved the Honorary Service of Grand Serjeanty.

V. TENURE.

SERVANT. — In determining whether a person is entitled to participate in a *Bequest* to "Servants" regard must be had to, —

1. The Nature of the Service;
2. Its duration;
3. Its conditions.

1. It seems an obvious thing to say that there must be the relationship of master and servant between the testator and the person claiming as "servant"; therefore, a coach-man supplied, with a carriage and horses,

by a job-master is not a "servant" of the job-master's customer (*Chilcot* v. *Bromley*, 12 Ves. 114: *Cp*, *Howard* v. *Wilson*, 4 Hagg. Ecc. 107: Wms. Exs. 1007). When, however, there is the relationship of master and servant, the word "Servants," in a bequest and uncontrolled by a context, is very comprehensive. Thus a Land Agent and House Steward, who resided out of the testator's house and had a salary of £300 a year, with permission to use his unemployed time as land agent to several large neighbouring landed proprietors, was held to be included in a bequest to "all my Servants and day labourers" (*Armstrong* v. *Clavering*, 27 Bea. 226: *Sv*, *Townshend* v. *Windham*, inf). So an out-door servant, continuously employed at weekly wages, is within a legacy to "servants"; but a person employed at weekly wages, only a few months in the year, to carry letters to the post is not within the phrase (*Thrupp* v. *Collett*, 26 Bea. 147).

2. When a testator gives to his servants a year's wages, those, and only those, *hired* by the year are included; — the time when the wages have been paid being only useful to determine the nature of the hiring, and being immaterial where the hiring can otherwise be proved to have been a yearly one (*Booth* v. *Dean*, 2 L. J. Ch. 162; 1 My. & K. 560: *Blackwell* v. *Pennant*, 22 L. J. Ch. 155; 9 Hare, 551).

3. A bequest to "Servants," *simpliciter*, includes, as a general rule, those, and only those, who pass their whole time in the testator's service; and does not include such servants as Stewards of Courts or persons occasionally employed (*Townshend* v. *Windham*, 2 Vern. 546: *Thrupp* v. *Collett*, sup: *Cp*, *Armstrong* v. *Clavering*, sup); but a regular servant's temporary absence would not disentitle him (*Herbert* v. *Reid*, 16 Ves. 486). So, service being the cause of such a bequest, only those servants who are in the testator's service at the time of his death (from which date his Will generally speaks) are, as a general rule, entitled under a bequest to "servants" (*Jones* v. *Henley*, 2 Ch. Rep. 162); though, of course, if the phrase, controlled and properly construed by its context, is *designatio personarum*, a person so designated would take whether in the service or not at the testator's decease (*Parker* v. *Marchant*, 11 L. J. Ch. 223; 1 Y. & C. Ch. 290, cited 1 Jarm. 325, for the proposition that a gift to "servants," *simpliciter*, means servants *at the date of the Will*; *Va*, Theobald, 248: but it is submitted that the rule to be deduced from *Jones* v. *Henley* and *Parker* v. *Marchant* is as here stated: *Va*, *Re Sharland*, 1896, 1 Ch. 517; 65 L. J. Ch. 280; 74 L. T. 20: Wms. Exs. 1009). When indeed the condition of being in the service "at the time of my decease" is expressly annexed to a gift to "servants," then it is essential to any one taking thereunder that the contract for service should be absolutely unbroken by both of the parties thereto at the time of the decease; and a wrongful dismissal by the master or a rescission by the servant, or other determination of the service, however reached, in the testator's lifetime, would prevent a person from claiming

under such a conditional bequest to "servants" as that just mentioned (*Darlow* v. *Edwards*, 32 L. J. Ex. 51; 1 H. & C. 547; 6 L. T. 905; 10 W. R. 700: *Venes* v. *Marriott*, 31 L. J. Ch. 519: *Note*, "living *with* me" does not mean "living in my house," but means "living in my service": per Turner, V. C., *Blackwell* v. *Pennant*, sup). The condition of being on testator's "*domestic* establishment," is not fulfilled in the case of a head gardener living in one of the testator's cottages but not dieted by him (*Ogle* v. *Morgan*, 1 D. G. M. & G. 359; 16 Jur. 277). *V.* DOMESTIC SERVANT: HOUSEHOLD, at end: MENIAL SERVANT.

Though the priority *in Bankruptcy* which "Servants" have long had to payment of their wages (*V.* now s. 40 (*b*), Bankry Act, 1883) was doubtless intended primarily for, yet it is not the exclusive privilege of, domestic servants. Therefore a Commercial Traveller (*Ex p. Neal*, Mont. & M'A. 194), or a Mate of a Vessel (*Ex p. Homberg*, 2 Mont. D. & D. 642; 6 Jur. 898), or a Seaman (*Re Dawson*, 1 Fon. B. C. 229), is within the word "servant" as so used in the Bankry Act. But though a yearly hiring is not necessary to constitute a "servant" within the section just referred to, yet there must be a general and continuous hiring as distinguished from a mere transitory engagement. Therefore a coach-guard and servants at a weekly salary (*Ex p. Skinner*, Mont. & B. 417; 3 Dea. & C. 332), or an accountant occasionally employed (*Ex p. Butler*, 28 L. T. O. S. 375), or a public singer (*Ex p. Harcourt*, 31 L. T. O. S. 188), or a non-resident music-master or a drill-master to a school, who attends the school to give lessons at so much per lesson (*Ex p. Walter*, 42 L. J. Bank. 49; L. R. 15 Eq. 412; 21 W. R. 523), is not within the section. *Note:* by s. 1 (1 *c*), 51 & 52 V. c. 62 "Wages of any LABOURER or WORKMAN, not exceeding £25, whether payable for time or for piece work," are now entitled to the priority, an enactment which supersedes such discussions as those in *Ex p. Allsop*, 32 L. T. 433: *Re Field*, 4 Morr. 63.

"Servant," quà Poor Law Officers Superannuation Act, 1896, 59 & 60 V. c. 50, "includes every servant regularly employed at WAGES" by any Authority charged with the administration of the relief of the poor (s. 19).

The Secretary of a Company in receipt of a salary of £50 a quarter and subject to dismissal at a quarter's notice, is not a "Servant, *Labourer, or Workman*," within the Wages Attachment Abolition Act, 1870, 33 & 34 V. c. 30 (*Gordon* v. *Jennings*, 51 L. J. Q. B. 417). In *the* Grove, J., said, "In one sense a Secretary of State is a 'servant,' but it could not have been intended that this Act should apply to such a case."

Every person actually engaged in the performance of a contract of carriage, is a "Servant" of the *Carrier* within s. 8, Carriers Act, 1830, 11 G. 4 & 1 W. 4, c. 68; and therefore where a Carrier employs a person, *e.g.* the proprietor of a receiving house, and such person employs an

assistant, such assistant is a "servant" in the employ of the Carrier within the section (*Machin*, or *Machu* v. *Lond. & S. W. Ry*, 17 L. J. Ex. 271; 2 Ex. 415). And "where a person is employed by two railways, and receives goods without any instructions as to the railway by which they are to be sent, it may be that the goods are not received for either of the railways; but when he has determined by which railway they are to be sent, he then holds them for that railway" (per Esher, M. R., *Stephens* v. *Lond. & S. W. Ry*, 56 L. J. Q. B. 173; 18 Q. B. D. 121; 56 L. T. 226; 35 W. R. 161; 51 J. P. 324, citing *Syms* v. *Chaplin*, 6 L. J. K. B. 25; 5 A. & E. 634).

"Servants," s. 7, Ry and Canal Traffic Act, 1854, include Agents employed by a Ry Co to do work which it is under contract to execute (*Doolan* v. *Mid. Ry*, 2 App. Ca. 792; approving *Machin* v. *Lond. & S. W. Ry*, sup).

As to who is a "Servant *or other Person*" who may dwell in a house for its protection without rendering it liable to the *Inhabited House Duty*, s. 13 (2), 41 V. c. 15, seems to have been very much a question for the Tax Commrs: therefore, where they found that a Cashier resided (alone) as a caretaker and was such a "Servant or other person," the Court refused to disturb their finding (*Rolfe* v. *Hyde*, 50 L. J. Q. B. 481; 6 Q. B. D. 673); but in a very similar case (the clerk care-taker, however, having his wife children and a servant with him), the Court of Appeal reversed the finding of the Commrs, and held that the building was liable to the Duty (*Yewens* v. *Noakes*, 50 L. J. Q. B. 132; 6 Q. B. D. 530). Apparently to remedy that uncertainty, s. 24, Customs and Inland Revenue Act, 1881, 44 & 45 V. c. 12, refers to the section just cited, and enacts that "the term 'Servant' shall be deemed to mean and include, only a Menial or Domestic Servant employed by the occupier; and the expression 'Other Person' shall be deemed to mean, any person of a similar grade or description not otherwise employed by the occupier, who shall be engaged by him to dwell in the house or tenement solely for the protection thereof": *Vth*, *Weguelin* v. *Wyatt*, 54 L. J. Q. B. 308; nom. *Weguelin* v. *Wayall*, 14 Q. B. D. 838: *London Library* v. *Carter*, 6 Times Rep. 161; 34 S. J. 231. *Vf*, DOMESTIC SERVANT: MENIAL SERVANT.

"Clerk or Servant"; *V.* CLERK, p. 325.

Servant quà action for Seduction; *V.* Rosc. N. P. 895 *et seq*: Add. T. 586–592.

V. FARM SERVANT: MALE SERVANT: OFFICER, p. 1326: POSSESSION: SERVANT IN HUSBANDRY: SERVANTS: WORKMAN.

SERVANT IN HUSBANDRY. — A "Servant in Husbandry" is a person, whether male or female, whose *chief* employment is in works of husbandry; *i.e.* the culture or keeping of the ground, or the management or working of horses or cattle, or the gathering in of crops, or any other work strictly pertaining to the manual labour required by farmers.

Therefore a Farm Bailiff is not (*Davis* v. *Berwick*, 3 E. & E. 549; 30 L. J. M. C. 84), but a Dairy-maid, who also does household work, is, a Servant in Husbandry (*Ex p. Hughes*, 23 L. J. M. C. 138). *Cp*, AGRICULTURAL.

V. FARM SERVANT.

SERVANTS. — "If a man have a licence for himself 'and his Servants' to hunt in a chase, park, or warren, at his pleasure; this is a licence of profit; for by vertue of those words 'for himself and his servants,' the grantee hath a property in the thing hunted, because he may justify hunting by his servants, which is more than a licence of pleasure" (Manwood, *Hunting*, pl. 17. *Vf*, *Wickham* v. *Hawker*, 10 L. J. Ex. 153; 7 M. & W. 72: FREE LIBERTY). *Vf*, HUNTING: PROFIT À PRENDRE.

SERVE. — To "serve," or to "contract to serve," connotes becoming a servant to some one else. "There is a very plain distinction between becoming the servant of an individual, and contracting to do certain specific work. The same person may contract to do work for many others, and cannot, with any propriety, be said to have contracted to 'serve' each of them" (per Bayley, J., *Hardy* v. *Ryle*, 9 B. & C. 611, 612).

An Industrial Trainer living in a Work-house does not "serve" the Master of the Work-house, within s. 3, Rep People Act, 1884, nor does a Soldier so "serve" under every one of superior rank to himself in the same regiment (*Adams* v. *Ford*, 55 L. J. Q. B. 13; 16 Q. B. D. 239; 53 L. T. 666; 34 W. R. 64; 49 J. P. 711: *Atkinson* v. *Collard*, 55 L. J. Q. B. 19; 16 Q. B. D. 254; 53 L. T. 670; 34 W. R. 75; 50 J. P. 23). A Farm Labourer who by the terms of his hiring is allowed, but not obliged, to occupy a cottage on the farm, does not occupy it *by virtue of Service* (*Marsh* v. *Estcourt*, 59 L. J. Q. B. 100; 24 Q. B. D. 147).

A Successive Occupation partly by Service and partly as an Ordinary Tenant, qualifies for the parliamentary franchise (*Nicholson* v. *Yeoman*, cited SUCCESSIVE). In *thc*, Coleridge, C. J., said, "It is a satisfaction to the Court to find that this question has been (*Torish* v. *Clark*, 18 L. R. Ir. 285) decided in the same manner as this Court now decides it."

V. INHABIT.

Notice to be "served"; *V.* SERVED.

Service of Notice of Appeal from Justices; *V.* COURT OF SUMMARY JURISDICTION.

An Apprentice "duly and truly" serves his Master, quà a qualification to Membership of a Company or other Privilege, if, with his master's consent, he is actually employed otherwise than by the Master (*Richardson* v. *Colne Fishery Co*, 77 L. T. 501).

SERVED. — A Notice may generally be either in writing or oral: if directed to be "given," or is spoken of as to be "received" (*Thompson*

v. *Ayling*, 19 L. J. Ex. 55; 4 Ex. 614), it may be in either of those modes; but if it is to be "left" or "served," then there is an implication that the notice is to be written (*Wilson* v. *Nightingale*, 15 L. J. Q. B. 309; 8 Q. B. 1034: *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, espy jdgmt of Coleridge, C. J., in *thlc*). But "serve," does not enjoin *personal* service; and, as used in R. 186, Bankry Rules, 1886, a prepaid registered letter suffices (*Re McGrath*, 24 Q. B. D. 466). *Vf*, s. 26, Interp Act, 1889.

So, there is a sufficient notice, under s. 31, Vaccination Act, 1867, if the Justices are satisfied that it has reached the right person (*Holloway* v. *Coster*, 1897, 1 Q. B. 347; 66 L. J. Q. B. 293; 76 L. T. 57; 45 W. R. 319; 61 J. P. 218); so, of a notice to be "served ON" the holder of a License under s. 42, Licensing Act, 1872 (*Ex p. Portingell*, 1892, 1 Q. B. 15; 61 L. J. M. C. 1; 65 L. T. 603; 40 W. R. 102; 56 J. P. 276). In *thlc*, Esher, M. R., said, "I think the expression 'serve on' is equivalent to '*give or deliver unto*,'" which latter words do not connote personal service (*R.* v. *Leicester Freemen*, 15 Q. B. 671). *Semble*, a notice may be "delivered" without being in writing: *V.* DELIVER.

"Served by Post"; *V.* BY POST: ORDINARY COURSE: SEND.

V. NOTICE.

The statement that a man has "served" a PUBLIC ANNUAL OFFICE to which he was "DULY and legally appointed," imports that he executed the Office "for himself and on his own account" within s. 6, 3 & 4 W. & M. c. 11 (*R.* v. *Anderson*, 16 L. J. M. C. 25; 9 Q. B. 663).

An Execution "served" has the same meaning as an Execution "EXECUTED" within s. 9, 21 Jac. 1, c. 19 (per Patteson, J., *Wray* v. *Egremont*, 4 B. & Ad. 125).

V. SERVICE.

SERVI. — *V.* VILLANI.

SERVICE. — "In my service at the time of my decease"; *V.* SERVANT.

In feudal times, and still quà Copyholds, "Service" "is that Service which the Tenant, by reason of his FEE, oweth unto his Lord" (Cowel). *Cp*, SUIT, at end.

"Service of the Church"; *V.* "Open Prayer," sub OPEN.

Service of NOTICE; *V.* SERVED: *Vf*, Bankry Rules, 1886, R. 89–92; Comp Act, 1862, Sch 1, Table A, Art. 95–97, Sch 2, Form B, Art. 35, 36; Conv & L. P. Act, 1881, s. 67; 27 & 28 V. c. 114, s. 7.

"Service by Post"; *V.* BY POST.

"Service" by a Ry Co; *V.* INCIDENT.

Service Franchise; *V.* SERVE.

V. ACTUAL MILITARY SERVICE: CHRISTIAN SERVICE: DIVINE SERVICE: KNIGHT'S SERVICE: MILITARY SERVICE: NAVAL SERVICE: ON ACTIVE SERVICE: PRISON: PUBLIC SERVICE: RECORDED: SERVE: SERVICES: SUBSTITUTED: TENURE: WHOLE.

SERVICE LINE. — Quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, " 'Service Line,' means, any Electric Line through which ENERGY may be supplied, or intended to be supplied, by the Undertakers to a CONSUMER, either from any MAIN or directly from the premises of the Undertakers " (Sch, s. 1).

SERVICE OF GOD. — A bequest for " the Service of God " (*Re Darling*, 1896, 1 Ch. 50; 65 L. J. Ch. 62; 73 L. T. 382), or for " the Service of my Lord and Master, and, I trust, Redeemer " (*Powerscourt* v. *Powerscourt*, 1 Moll. 616), is a good CHARITY.

V. RELIGIOUS.

SERVICE OF THE SHIP. — Master, Seaman, or Apprentice, receiving " Hurt or INJURY in the Service of the Ship," s. 228, Mer Shipping Act, 1854, repld, s. 207, Mer Shipping Act, 1894, includes an injury received from an occurrence causing the wreck of the ship (*Lord Advocate* v. *Grant*, 1 Sess. Ca. 4th Ser. 447). *Vf*, 1 Maude & P. 208, *n* (*i*).

Cp the above sections with s. 138, P. H. Act, 1875; s. 152, P. H. Ireland Act, 1878; s. 83, P. H. London Act, 1891; s. 179, P. H. Scotland Act, 1897.

SERVICEABLE. — " Good and Serviceable Repair "; *V.* GOOD REPAIR.

SERVICES. — *V.* CUSTOM: SERVICE.

Annuity for " Services and collecting rents "; *V. Re Muffett*, 56 L. J. Ch. 600; 39 Ch. D. 534; 56 L. T. 685; 51 J. P. 660.

Per-centage to Directors on Net Profits of a Co " as remuneration for their Services," connotes that the transactions from which such profits arise should, generally, be attributable to the ordinary working of the Co by the Directors (*Frames* v. *Bultfontein Mining Co*, cited NET, p. 1266).

" Entire Services "; *V.* ENTIRE: WHOLE.

" Services incidental to the duty of a Carrier "; *V.* INCIDENT.

Salvage Services; *V.* SALVAGE.

" Same or Similar Services "; *V.* SAME.

SERVIENT. — Servient Tenement; *V.* EASEMENT.

SERVITUDE. — *V.* EASEMENT, at end.

" Penal Servitude "; *V.* PENAL.

SESSIONAL DIVISION. — Stat. Def., 48 & 49 V. c. 23, s. 23.

SESSIONS. — " 'Sessions,' in our law, is a sitting of Justices in Court upon their Commission, as the Sessions of OYER AND TERMINER " (Termes de la Ley). *Cp*, TO BE PASSED.

" Sessions," s. 35 (5), Loc Gov Act, 1888; *V. Re Dover and Kent Co. Co.*, cited QUARTER SESSIONS.

Next Quarter Sessions; *V.* NEXT.

" Court of Session "; *V.* COURT.

V. GENERAL OR QUARTER SESSIONS: PETTY SESSIONS: PRESENTMENT: SITTING: SPECIAL.

SET. — To " set " premises is, *semble*, nearly, if not quite, the same as to " LET " them: a lessee's covenant not to " let, set, or demise," the premises " for the *whole or any part* of the term," restrains an Assignment as well as an Underlease (*Greenaway* v. *Adams*, 12 Ves. 395); but where the covenant merely forbade the lessee to " set or let " the premises, the Court of Appeal in Ireland held that the natural and legal meaning of those words was to prohibit an Underlease but did not extend to an Assignment, there being no additional words (as in *Greenaway* v. *Adams*) to give them that further meaning (*Re Doyle and O'Hara*, 1899, 1 I. R. 113). *Cp*, ASSIGN.

SET APART. — To " set apart " land for a particular purpose, does not require that the setting apart should be irrevocable (*Re Ponsford and Newport School Bd*, 1894, 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502; 42 W. R. 358). Therefore, land acquired by a private Cemetery Co for the purpose of a BURIAL Ground, which they have adapted for that purpose by inclosing it and providing it with a chapel and using part of it for burials, is " set apart for the purposes of interment," within s. 1, 44 & 45 V. c. 34, as amended (and also applied to 47 & 48 V. c. 72) by ss. 2 and 4, 50 & 51 V. c. 32, although the land has never been consecrated; and the Co has power to sell or let any part of it (*Ib.*); *secus*, as regards the site of a Church where intramural interment has taken place (*Re Ecclesiastical Commrs and New City of London Brewery*, 1895, 1 Ch. 702; 64 L. J. Ch. 646; 72 L. T. 481; 43 W. R. 457; 11 Times Rep. 296; followed in *A-G.* v. *London Parochial Charities*, 1896, 1 Ch. 541; 65 L. J. Ch. 242).

" Retain and set apart "; *V.* RETAIN.

SET FIRE. — In Arson, " as to what constitutes 'setting fire,' it is not necessary that flame should be seen (*R.* v. *Stallion*, 1 Moody, 398); but it is not sufficient that wood should be scorched black (*R.* v. *Russell*, C. & M. 541). It is sufficient if the wood has been at a red heat (*R.* v. *Parker*, 9 C. & P. 45). I suppose the question is, whether the thing burnt has, or has not, begun to be decomposed by the action of the fire " (Steph. Cr. 318, *n* 3). *Vf*, Arch. Cr. 616–663: Rosc. Cr. 248–259: BURN: FIRE.

SET FORTH. — It is submitted that where there are, in the operative part of a deed, clear and unambiguous words of description of the lands or chattels to be thereby conveyed, such words will not be restricted by a statement that such lands or chattels are " described," or " men-

tioned," or "specified," or "set forth," in a Schedule which gives an imperfect enumeration (*Walsh* v. *Trevanion*, 19 L. J. Q. B. 458; 15 Q. B. 733: *Re Royal Marine Hotel Co*, 1895, 1 I. R. 368: *Baker* v. *Richardson*, 6 W. R. 663: *Cp*, *Goodtitle* v. *Southern*, and like cases, cited OCCUPATION, p. 1312). But this principle was not applied in *Wood* v. *Rowcliffe* (20 L. J. Ex. 285; 6 Ex. 407), where it was held that a Bill of Sale of "all the household goods of every kind and description whatsoever in A., more particularly mentioned and set forth in" a Schedule, only passed the goods mentioned in the Sch; and that, indeed, will be the effect if it can be seen that the intention was that the Sch should be an exhaustive enumeration (*Walsh* v. *Trevanion*, sup). *Vf*, *Re Craig*, Ir. Rep. 4 Eq. 158: GENERALITY.

V. TRULY SET FORTH.

SET OFF. — A legal Set-Off is, — "Where there are mutual debts (*V.* DEBT) between the plaintiff and defendant, or if either party sue or be sued as exor or admor (where there are mutual debts between the testator or intestate and either party), one debt may be set against the other" (s. 13, 2 G. 2, c. 22; s. 4, 8 G. 2, c. 24). *V.* now as to Set-Off and Counter-Claim, R. 3, Ord. 19, R. S. C., and notes thereon in Ann. Pr.: 11 Encyc. 478, 479. As used in R. S. C., "Set-Off," and "Counter-Claim," "confer definite and independent remedies upon a deft against the plt" (per Brett, L. J., *Pellas* v. *Neptune Marine Insrce*, 5 C. P. D. 39); probably, a "Counter-Claim" may be defined as, a Claim independent of, and separable from, the plt's claim and which formerly would have had to be enforced by a cross action.

V. ADMITTED SET-OFF.

In the application of the Factors Act, 1889, to Scotland, "Set off" means and includes "Compensation" (s. 1, 53 & 54 V. c. 40). *V.* FACTOR.

SET OUT. — Where an Award under the Inclosure Act, 1845, 8 & 9 V. c. 118, after making compensation to the Lord of the Manor, proceeds to "set out, allot, and award," other parts of the Common to other persons, those words convey the whole LEGAL ESTATE in the several allotments, to the exclusion of the Lord (*Simcoe* v. *Pethick*, 1898, 2 Q. B. 555; 67 L. J. Q. B. 919; 79 L. T. 432, considering *A-G.* v. *Meyrick*, 1893, A. C. 1; 62 L. J. Ch. 313; 68 L. T. 174; 57 J. P. 212).

"Setting out of Souldiers," 43 Eliz. c. 4 (*V.* CHARITY), *semble*, means, to raise or equip (*Re Stephens*, W. N. (92), 140).

SET OVER. — *V.* ASSIGN: UNDERLEASE.

SET UP. — Trade, &c, "Set up and commenced," s. 100, Sch D, Case 1, R. 1, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Ryhope Co* v. *Foyer*, 7 Q. B. D. 485; 45 L. T. 404; 30 W. R. 87.

"Set up or CARRY ON the business or profession of a SURGEON"; *V. Palmer* v. *Mallett*, 36 Ch. D. 411; 57 L. J. Ch. 226; 58 L. T. 64; 36 W. R. 460: or business of a *House Agent*, *V. Farebrother* v. *England*, 92 Law Times, 129.

A Power of Advancement to "set up in business" a beneficiary, does not authorize an advance to pay debts, or (if the beneficiary be a woman) to set up her husband in business (*Talbot* v. *Marshfield*, cited ADVANCEMENT).

MACHINERY "set up," means, generally, completed, *e.g.* in a contract to "deliver and set up" (*Armitage* v. *Haigh*, 9 Times Rep. 287). *V.* ERECT: ERECTED.

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

SETTING DOG.—"A 'Setting Dog,' means, any dog who stops at his Game" (per Buller, J., *Briarly* v. *Athorpe*, 5 B. & Ald. 321, *n*); but quà s. 4, 5 Anne, c. 14, "it is essential that it must be kept or used to kill game" (*Ib.*: *Hayward* v. *Horner*, 5 B. & Ald. 317). *Cp*, GREYHOUND.

SETTLE. — As to construction of Covenants to settle property; *V.* AGREED AND DECLARED: ALREADY: DURING: ENTITLED: SETTLED: Elph. ch. 31: Vaizey, ch. 4, ss. 10, 11: "Interest which shall fall into possession," *Sweetapple* v. *Horlock*, 48 L. J. Ch. 660; 11 Ch. D. 745: *Re Jackson*, 13 Ch. D. 189.

A general covenant to settle, will not embrace an interest that would be subject to FORFEITURE thereby (*Re Crawshay*, 60 L. J. Ch. 583; 1891, 3 Ch. 176; 65 L. T. 72; 39 W. R. 682).

As to what is a sufficient CONSIDERATION for a covenant to settle; *V. Stephens* v. *Green*, 1895, 2 Ch. 148; 64 L. J. Ch. 546; 72 L. T. 574; 43 W. R. 465.

As to construction of Marriage Articles, and the Form of Settlement in pursuance of such Articles; *V.* Elph. ch. 32: Vaizey, ch. 4: 44 S. J. 357, 358: *Grier* v. *Grier*, L. R. 5 H. L. 688: *Re Gundry*, 1898, 2 Ch. 504; 67 L. J. Ch. 641: *Viditz* v. *O'Hagan*, 1899, 2 Ch. 569; 68 L. J. Ch. 553, revd, 1900, 2 Ch. 87; 69 L. J. Ch. 507; 82 L. T. 480; 48 W. R. 516.

As to construction of Testamentary Directions to settle Realty; *V.* 2 Jarm. 344–355; and Personalty, Ib. 567, 578: *Loch* v. *Bagley*, L. R. 4 Eq. 122.

V. STRICT ENTAIL: STRICT SETTLEMENT.

"I do hereby settle on my wife," certain property, held by Malins, V. C., to create a valid Declaration of Trust, though the Document was ineffectual as an Assignment (*Baddeley* v. *Baddeley*, 48 L. J. Ch. 36; 9 Ch. D. 113: *Svthc*, *Hayes* v. *Alliance Assrce*, 8 L. R. Ir. 149). It is, however, now well settled that "an intention to give or assign will not

be aided in Equity unless the act of gift or assignment, in pursuance of such intention, is complete, or unless the donor has done all in his power to make it complete" (2 White & Tudor, 859, and cases there cited).

V. COMING.

SETTLED. — A fund bequeathed to a married woman for her SEPARATE USE, is otherwise "settled" within an exception in a covenant to Settle (*Kane* v. *Kane*, 50 L. J. Ch. 72; 16 Ch. D. 207): *V.* ALREADY.

Settled, or Stated, ACCOUNT; *V.* Dan. Ch. Pr. 418: R. 8, Ord. 20, R. S. C., on *whv* Ann. Pr.

"The meaning of a 'Settled' ESTATE, whether in legal or popular language, as contradistinguished from an estate in FEE SIMPLE, is understood to be one in which the powers of alienation, of devising, and of transmission according to the ordinary rules of descent, are restrained by the limitations of the Settlement: it would be a perversion of language to apply the term 'settled' to an estate taken out of settlement, and brought back to the condition of an estate in fee simple" (per Cockburn, C. J., delivering the jdgmt in *Micklethwait* v. *Micklethwait*, 28 L. J. C. P. 127; 4 C. B. N. S. 858; affd 29 L. J. C. P. 75). In *thc* the phrase to be construed was in a Shifting Clause in a Will, in the event of a second son succeeding to "the property *settled on the marriage*" of his father.

"Settled *Estates*," quà Settled Estates Act, 1877, signifies, "all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a SETTLEMENT" (s. 2); *Vth*, *Re Dendy*, 46 L. J. Ch. 417; 4 Ch. D. 879; 25 W. R. 410: *Re Laing*, 35 L. J. Ch. 282; L. R. 1 Eq. 416; 14 W. R. 328: *Re Morgan*, 49 L. J. Ch. 577: *Re Horn*, 29 L. T. 830: *Re Shepheard*, 39 L. J. Ch. 173; L. R. 8 Eq. 571; 21 L. T. 525: *Collett* v. *Collett*, L. R. 2 Eq. 203: *Re Greene*, 11 L. T. 301: *Re Goodwin*, 3 Giff. 620: *Re Williams*, 20 W. R. 967: SUCCESSION. When an INFANT is owner, the land is "Settled Estate" within that def (s. 41, Conv & L. P. Act, 1881, on *whv*, *Liddell* v. *Liddell*, 52 L. J. Ch. 207; 31 W. R. 238: *Re Sparrow*, 1892, 1 Ch. 412; 61 L. J. Ch. 260; 66 L. T. 276; 40 W. R. 326).

"Settled LAND," quà S. L. Act, 1882, is "Land, and any estate or interest therein, which is the subject of a SETTLEMENT" (subs. 3, s. 2); *Vth*, *Re Wells*, 48 L. T. 859; 31 W. R. 764: *Re Horne*, 57 L. J. Ch. 790; 39 Ch. D. 84: *Re Freme*, 1894, 1 Ch. 1; 63 L. J. Ch. 139; 69 L. T. 613; 42 W. R. 119: *Ex p. Castle Bytham*, 1895, 1 Ch. 348; 64 L. J. Ch. 116; 71 L. T. 606; 43 W. R. 156: *Ex p. Bath and Wells, Bp*, 1899, 2 Ch. 138; 68 L. J. Ch. 524; 81 L. T. 69. When an INFANT is owner, the land is "Settled Land" (s. 59, Ib., on *whr*, *Liddell* v. *Liddell*, and *Re Sparrow*, sup). "Settled Land" in s. 13 (4), S. L. Act, 1890, "comprises *all* the land which is in the Settlement upon the same trusts" (per Smith, L. J., *Re Gerard*, 1893, 3 Ch. 252; 63 L. J. Ch. 32).

Quà, and by, s. 6, Land Transfer Act, 1897, the above def of "Settled Land" is made applicable to that section. It is also applicable to the Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66 (*V.* s. 95).

"The Settled Land Acts, 1882 to 1890"; *V.* Sch 2, Short Titles Act, 1896. *Note*: as to the policy of these Acts, *V.* per Ld Macnaghten, *Bruce* v. *Ailesbury*, 1892, A. C. 356; 62 L. J. Ch. 95.

"Settled PROPERTY," quà Part 1, Finance Act, 1894, "means property comprised in a SETTLEMENT . . . , whether relating to Real Property or Personal Property, which is a 'Settlement' within the meaning of s. 2, S. L. Act, 1882, or, if it related to Real Property, would be a 'Settlement' within the meaning of that section; and includes a Settlement effected by a Parol Trust" (subs. 1 *h*, *i*, s. 22); *Vth*, *A-G.* v. *Owen*, and *A-G.* v. *Coulson*, 1899, 2 Q. B. 253; 68 L. J. Q. B. 779; 81 L. T. 121; 63 J. P. 611: as "Settled Property" is used in s. 5 (1) of the Act, *V. Re Webber*, 1896, 1 Ch. 914; 65 L. J. Ch. 544: as used in s. 5 (2), *V. Re Studdert*, 1900, 2 I. R. 400; affd in H. L. nom. *Inl. Rev.* v. *Priestley*, 1901, A. C. 208; 70 L. J. P. C. 41: *Inl. Rev.* v. *Stewart*, W. N. (98), 198.

Property settled "*before*" Finance Act, 1894, as used in s. 21 (1); *V. A-G.* v. *Dodington*, 1897, 2 Q. B. 373; 66 L. J. Q. B. 684; 77 L. T. 299; 45 W. R. 657; 61 J. P. 644; 13 Times Rep. 533.

In the application of the Finance Act, 1894, to Scotland "'settled property' shall not include property held under Entail" (s. 23).

"Property settled," s. 5, Matrimonial Causes Act, 1859; *V. Dormer* v. *Ward*, cited PROPERTY, p. 1585: SETTLEMENT.

Bequest by a Wife of her husband's "Settled *Funds*"; *V. Moysey* v. *Stuart*, 23 L. T. 644.

V. NOT SETTLED: TO BE SETTLED.

Insrce to pay "same Percentage on this policy as may be settled" by another Office, means, that when that other Office has agreed the amount of loss and accepted liability and nothing remains to be done except to pay, then it has "settled" the amount of the claim on its policy; but there is no such settlement if the amount of loss by the insured has been ascertained by arbitration, but the insured's claim is defeated by its own fraudulent exaggeration (*Beauchamp* v. *Faber*, 3 Com. Ca. 308).

V. RECEIPT.

SETTLEMENT. — Quà *Settled Land Acts*, a "Settlement," is "any Deed, Will, Agreement for a Settlement or other agreement, Covenant to Surrender, Copy of Court Roll, Act of Parliament, or other INSTRUMENT, *or any number of instruments*, whether made or passed before or after or partly before and partly after the commencement of this Act (S. L. Act, 1882), under or by virtue of which instrument or instruments any LAND, or any estate or interest in land, stands for the time being limited to, or in trust for, any persons by way of SUCCESSION" (s. 2 (1), S. L. Act, 1882); and "every Instrument whereby a TENANT FOR LIFE,

— in consideration of Marriage or as part or by way of any Family Arrangement, not being a security for payment of money advanced, — makes an Assignment of, or creates a Charge upon, his estate or interest under the Settlement, is to be deemed one of the instruments creating the Settlement; and not an instrument vesting in any person any right as Assignee for Value within the meaning or operation of" s. 50, S. L. Act, 1882 (s. 4, 53 & 54 V. c. 69). *Note*: where the "Settlement" under the S. L. Acts, is created by more Instruments than one it is frequently called a *Compound* Settlement.

The Original Settlement alone is "the Settlement" within the above def (*Re Knowles*, 54 L. J. Ch. 264; 27 Ch. D. 707; 51 L. T. 655; 33 W. R. 364: *V. Re Byng*, 1892, 2 Ch. 219; 61 L. J. Ch. 511; 66 L. T. 754; 40 W. R. 457: UNDER): *Sv, Re Ailesbury and Iveagh*, 1893, 2 Ch. 345; 62 L. J. Ch. 713; 69 L. T. 101; 41 W. R. 644: *Re Mundy and Roper*, 1899, 1 Ch. 275; 68 L. J. Ch. 135; 79 L. T. 583; 47 W. R. 226: *Vh, Re Freme*, 1894, 1 Ch. 1; 63 L. J. Ch. 139; 69 L. T. 613; 42 W. R. 119.

Vf, on the above def, and as to what is a Compound Settlement, *Re Ailesbury and Iveagh*, sup: *Re Meade*, 1897, 1 I. R. 121: *Re Tibbits*, 1897, 2 Ch. 149; 66 L. J. Ch. 660; 77 L. T. 88; 46 W. R. 3: *Re Monson*, 67 L. J. Ch. 176; 1898, 1 Ch. 427; 78 L. T. 225; 46 W. R. 330: *Re Powys-Keck and Hart*, 1898, 1 Ch. 617; 67 L. J. Ch. 331; 78 L. T. 287; 46 W. R. 389: *Re Du Cane and Nettlefold*, 1898, 2 Ch. 96; 67 L. J. Ch. 393; 78 L. T. 458; 46 W. R. 523.

A married woman's RESTRAINT ON ALIENATION does not create a "Settlement" within this def (*Bates* v. *Kesterton*, 1896, 1 Ch. 159; 65 L. J. Ch. 108; 73 L. T. 656; 44 W. R. 150); nor does a limitation to her for life, remainder as she may appoint, remainder to herself in fee (*Re Pocock and Prankerd*, 1896, 1 Ch. 302; 65 L. J. Ch. 211; 73 L. T. 706; 44 W. R. 247: *Sv, S. C.* sub TENANT FOR LIFE).

"Settlement" in ss. 32, 33, S. L. Act, 1882, is not to be read in the strict sense of s. 2 (1), but rather in the wide and popular way of "settled" in s. 69, Lands C. C. Act, 1845 (*Ex p. Castle Bytham*, 1895, 1 Ch. 348; 64 L. J. Ch. 116; 43 W. R. 156; 71 L. T. 606: *Re Byron*, 53 L. J. Ch. 152; 23 Ch. D. 171; 48 L. T. 515; 31 W. R. 517).

The *Finance Act*, 1894, by s. 22 (1 *i*), adopts the def of "Settlement" as given in s. 2, S. L. Act, 1882; *Vth, A-G.* v. *Fairley*, 1897, 1 Q. B. 698; 66 L. J. Q. B. 454; 76 L. T. 526; 45 W. R. 589, the ruling in *whc* is confirmed by s. 14, Finance Act, 1898, on *whv, A-G.* v. *Clarkson*, 1900, 1 Q. B. 156; 69 L. J. Q. B. 81; 81 L. T. 617; 48 W. R. 216.

V. SETTLED.

Quà, and by, s. 47, *Bankry Act*, 1883, "Settlement" includes, "any conveyance or transfer of property," and, as used in that section, "is not confined to a regular Settlement with trusts declared and other usual attributes to a formal settlement, but may include any mere transfer of property, where the object is to preserve the property (whatever its

form) for the enjoyment of another person " (per Cave, J., *Re Player, No. 2*, 54 L. J. Q. B. 556). Therefore, a gift of money to be invested in a particular manner, *e.g.* in Shares in a Ship, is a " Settlement " within the section (*Re Player, No. 1*, 54 L. J. Q. B. 553; 53 L. T. 768); but a gift of money to a child for maintenance, or even to set him up in business, is not (*Re Player, No. 2*, 54 L. J. Q. B. 554; 15 Q. B. D. 682). So, the gift of an important chattel intended to be preserved by the donee, *e.g.* a present of diamonds by a man to his wife, is such a " Settlement," and so of money given to buy such a chattel (*Ex p. Brown, Re Vansittart*, 1893, 1 Q. B. 181; 62 L. J. Q. B. 277; 67 L. T. 592; 41 W. R. 32: *Re Tankard*, 1899, 2 Q. B. 57; 68 L. J. Q. B. 670; 80 L. T. 500; 47 W. R. 624). *Vf, Ex p. Todd*, 19 Q. B. D. 187: *Re Plummer*, 1900, 2 Q. B. 790; 69 L. J. Q. B. 936; 83 L. T. 387; 48 W. R. 634: *Re Harrison and Ingram*, 1900, 2 Q. B. 710; 69 L. J. Q. B. 942; 83 L. T. 189; 49 W. R. 2.

Quà a clause in an *Inclosure Act*, " Settlement " has been held to include limitations in a copyhold surrender and grant (*Doe* d. *Sweeting* v. *Hellard*, 9 B. & C. 803).

" Any Settlement," s. 19, *Married Women's Property Act*, 1882 (with which nothing in the Act is to INTERFERE) includes a Settlement which is only binding on the husband, *e.g.* one to which the wife was a party when she was an INFANT (*Re Stonor*, 52 L. J. Ch. 776; 24 Ch. D. 195: *Stevens* v. *Trevor-Garrick*, 1893, 2 Ch. 307; 62 L. J. Ch. 660: *Hancock* v. *Hancock*, 57 L. J. Ch. 396; 38 Ch. D. 78: *Buckland* v. *Buckland*, 1900, 2 Ch. 534; 69 L. J. Ch. 648; 82 L. T. 759; 48 W. R. 637: *Note, Re Queade*, 54 L. J. Ch. 786; 33 W. R. 817, is over-ruled).

" Settlements," s. 5, Matrimonial Causes Act, 1859; *V. Worsley* v. *Worsley*, L. R. 1 P. & D. 648; 38 L. J. P. & M. 43: *Jump* v. *Jump*, 8 P. D. 159; 52 L. J. P. D. & A. 71: *Chalmers* v. *Chalmers*, 68 L. T. 28: *Dormer* v. *Ward*, cited PROPERTY, p. 1585: *Hubbard* v. *Hubbard*, 1901, P. 157; 70 L. J. P. D. & A. 34.

Wife's Equity to a Settlement; *V.* EQUITY.

Quà *Stamp Acts*, a Settlement is, " any INSTRUMENT, whether voluntary or upon any good or valuable consideration, other than a *bonâ fide* pecuniary consideration, whereby any *Definite and Certain Principal Sum of Money* (whether charged or chargeable on lands or other hereditaments or heritable subjects or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any *Definite and Certain Amount of Stock*, or any Security, is settled or agreed to be settled in any manner whatsoever " (Sch Stamp Acts, 1870, and 1891): as to the words italicized, *V. Sanville* v. *Inl. Rev.*, 23 L. J. Ex. 270; 10 Ex. 159: *Onslow* v. *Inl. Rev.*, 1891, 1 Q. B. 239; 60 L. J. Q. B. 138; 39 W. R. 373: DEFINITE. Nothing " is settled or agreed to be settled," within that def, where proceeds of realty subject to a Settlement are invested in Stock, and then (on the appointment of a New Trustee) there

is made the ordinary vesting declaration quà the Stock (*Massereene* v. *Inl. Rev.*, 1900, 2 I. R. 138): *Vf*, *Re Stucley*, L. R. 5 Ex. 85; 39 L. J. Ex. 86.

Vh, Vaizey: Wolstenholme Conveyancing Acts: 11 Encyc. 480–525.

"Settlement" has also received statutory definition in and for the following Acts; —

Ancient Monuments Protection Act, 1882, 45 & 46 V. c. 73; *V.* s. 11:

Harbours and Passing Tolls Act, 1861, 24 & 25 V. c. 47; *V.* s. 2:

Labourers (Ir) Act, 1885, 48 & 49 V. c. 77; *V.* s. 23:

Land Drainage Act, 1861, 24 & 25 V. c. 133; *V.* s. 6 (4):

Landed Property (Ir) Improvement Act, 1860, 23 & 24 V. c. 153; *V.* s. 6:

Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46; *V.* s. 70:

Leases for Schools (Ir) Act, 1881, 44 & 45 V. c. 65; *V.* s. 1:

Leasing Powers Act for Religious Worship in (Ir), 1855, 18 & 19 V. c. 39; *V.* s. 1:

Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66; *V.* s. 95:

Record of Title Act (Ir), 1865, 28 & 29 V. c. 88; *V.* s. 2.

V. DEED: EQUITY: MARRIAGE SETTLEMENT: PROTECTOR OF THE SETTLEMENT: STRICT SETTLEMENT: TRUSTEE: VOID: VOLUNTARY SETTLEMENT.

The Act of Settlement, is 12 & 13 W. 3, c. 2; *V.* Sch 1, Short Titles Act, 1896.

V. BRITISH SETTLEMENT.

Pauper Settlement; *V.* CHILD, towards end: PARISH: PAUPER: RESIDENCE: TERM: WIDOWED MOTHER.

SETTLER. — *V.* SQUATTER.

SETTLOR. — "Settlor, Disponer," s. 2, Sucn Dy Act, 1853; *V. A-G.* v. *Maule*, 56 L. T. 611; 3 Times Rep. 236.

SEVEN, 14 or 21 YEARS. — *V.* OR, p. 1347.

SEVENTH. — *Semble*, a gift to a person's 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, &c, Child, indicates the person to take according to the order of his birth (*West* v. *Primate of Ireland*, 3 Bro. C. C. 148).

SEVERAL. — Sometimes read "RESPECTIVELY"; *V. Woodstock* v. *Shillito*, 6 Sim. 416: 1 Jarm. 505.

A Building Contract to do the "several works" therein mentioned or referred to, will not be read distributively as if "several" were "respective"; "several," in such a connection, means, "divers" and comprehends "all the works that are to be done, and not each portion of them" (per Mathew, J., *Cunliffe* v. *Hampton Wick*, 2 Hudson, 263), so that the time during which the builder is to make good defects, runs

from the COMPLETION of *all* the works, and not from the completion of that part where the defect arises (*Ib.*).

V. JOINT: JOINTLY AND SEVERALLY: SEPARATE COVENANT: SEVERALTY.

SEVERAL COVENANT. — A Several Covenant is "a covenant by two or more severally, *i.e.* separately" (Jacob): *Vf*, Platt Cov. 115. *V.* SEPARATE COVENANT: *Cp*, JOINT.

SEVERAL FISHERY. — *V.* FISHERY.

"Several Fishery" is not a Term of Art (*Holford* v. *Bailey*, cited SOLE, at end).

Quà Fisheries (Ir) Acts (and, *semble*, of general acceptation), "Several Fisheries," means and includes, "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, 13 & 14 V. c. 88: *Vf*, s. 114, 5 & 6 V. c. 106).

Note. The owner of a Several Fishery in a Public Navigable River is, *primâ facie*, owner of the BED of the river (*Hindson* v. *Ashby*, 1896, 2 Ch. 1; 65 L. J. Ch. 515; 74 L. T. 327; 60 J. P. 484). So, of a Several Fishery on the FORESHORE (*A-G.* v. *Emerson*, 1891, A. C. 649; 61 L. J. Q. B. 79; 65 L. T. 564; 55 J. P. 709), or in a Non-navigable River (*Ecroyd* v. *Coulthard*, 66 L. J. Ch. 751; 67 Ib. 458; 1898, 2 Ch. 358; 78 L. T. 702). *Vf*, *Hanbury* v. *Jenkins*, 70 L. J. Ch. 730: FISHERY, p. 727.

SEVERAL PASTURAGE. — *V.* PASTURAGE.

SEVERAL TENANCY. — *V.* ENTIRE.

SEVERALLY. — A gift to two or more "severally," or with a limitation to their heirs "as they shall severally die" (*Sheppard* v. *Gibbons*, 2 Atk. 441) creates a tenancy in common.

V. JOINTLY AND SEVERALLY: SUCCESSIVELY.

SEVERALTY. — "He that holds lands or tenements in Severalty, or is Sole Tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him in point of interest during his estate therein" (2 Bl. Com. 179).

V. SEVERAL.

SEVERANCE. — A Contingent Legacy only bears interest from its vesting, unless a Severance of it be directed *for the benefit of the legatee*, as distinguished from severance as a mere facility in distribution (*Festing* v. *Allen*, 5 Hare, 575: *Dundas* v. *Wolfe-Murray*, 32 L. J. Ch.

151; 1 H. & M. 425: *Re Judkin*, 53 L. J. Ch. 496; 25 Ch. D. 743: *Re Dickson*, 54 L. J. Ch. 212, 510: *Re Medlock*, 55 L. J. Ch. 738). A direction "from and after" the death of a Tenant for Life to "raise and pay" a contingent legacy, does not create such a severance (*Re Inman*, 1893, 3 Ch. 518; 69 L. T. 374; 62 L. J. Ch. 940). *Cp*, TO BE PAID.

As to how severance of a JOINT TENANCY may be effected, *V.* Partition Acts, 1868 and 1876: *Re Wilks*, 1891, 3 Ch. 59; 60 L. J. Ch. 696; 65 L. T. 184; 40 W. R. 13: *Palmer* v. *Rich*, 1897, 1 Ch. 134; 66 L. J. Ch. 69; 75 L. T. 484; 45 W. R. 205: Seton, ch. 46: Goodeve, ch. 9: Wms. R. P., Part 1, ch. 6: PARTITION.

Severance of land by a Railway; *V.* MATERIAL DETRIMENT.

SEVERED. — Where the owner of land occupies it himself and demises the right of sporting to another, that right is "severed" from the occupation of the land within s. 6 (2), Rating Act, 1874, 37 & 38 V. c. 54 (*Kenrick* v. *Guilsfield*, 49 L. J. M. C. 27; 5 C. P. D. 41, distinguishing *R.* v. *Battle*, 36 L. J. M. C. 1; L. R. 2 Q. B. 8).

SEVERN. — Severn "is a wild unruly river, and many times shifts its channel" (Hale, De Jure Maris, ch. 4).

V. TRIBUTARY: CREEK.

SEWAGE. — Quà Metrop Man. Act, 1858, 21 & 22 V. c. 104, "Sewage," means and includes, "the contents of the Sewers before" such contents have been deodorized (s. 32: *V.* DEODORIZE).

There is no prescribed def of "Sewage" in the P. H. Act, 1875, but, quà that Act, it includes liquids (not injurious to health) coming from manufacturing processes, as well as ordinary house sewage (per Charles, J., *Peebles* v. *Oswaldthistle*, 66 L. J. Q. B. 106; 1897, 1 Q. B. 384; revd on another point nom. *Pasmore* v. *Oswaldtwistle*, 1898, A. C. 387; 67 L. J. Q. B. 635; and followed on this point in *Eastwood* v. *Honley*, 1900, 1 Ch. 781; 69 L. J. Ch. 470; 83 L. T. 22; 48 W. R. 614; 64 J. P. 792).

V. FILTHY WATER.

Where the effluent water from a sewage farm flows into a pool, the cleansing levelling and concreting the bottom of that pool to prevent the accumulation of Sewage, is a work "for Sewage PURPOSES" within s. 32, P. H. Act, 1875 (*Wimbledon* v. *Croydon*, 56 L. J. Ch. 159; 32 Ch. D. 421; 55 L. T. 106).

SEWER. — "'Sewer,' comes from the word to 'sew,' *i.e.* to drain, and has a much more extended signification; embracing works on the largest scale, such as draining the Fens of Lincolnshire by means of canals, &c" (per Kindersley, V. C., *Sutton* v. *Norwich*, 27 L. J. Ch. 742, cited by Byrne, J., *Newcastle-upon-Tyne* v. *Houseman*, 43 S. J. 140; 63 J. P. 87); in *thlc* the Ouseburn (a tidal stream) was held to be

included in "Sewer" as used in s. 63, Newcastle-upon-Tyne Improvement Act, 1870.

As used in the Statute of Sewers, 23 H. 8, c. 5, a Sewer, "is a fresh water trench, compassed in on both sides with a bank, and is a small current or little river" (Callis, 80); "a passage or gutter to carry water into the Sea or a River" (Cowel). But more largely, it has been said that "Sewer" properly means, "a Sea-fence, a protection against sea tides, whatever its construction" (per Toulmin Smith, cited in note E. B. & E. 426, where also is cited Spelman's derivation). It certainly included a Wall (*Isle of Ely Case*, 10 Rep. 140), and in that comprehensive sense it is used in ss. 68, 204, Metrop Man. Act, 1855 (*Poplar* v. *Knight*, E. B. & E. 408; 28 L. J. M. C. 37). *Cp*, GUTTER.

A "Sewer" is, *primâ facie*, a Common Sewer, and "is Common and Public in its nature" (per Buller, J., *Dore* v. *Gray*, 2 T. R. 365).

Broadly speaking and as now most frequently used, "Sewer" means, the duct that carries away the sewage of more houses, or other buildings, than one; as contrasted with "Drain" draining only one: *V.* DRAIN, p. 571.

For the Stat. Def. of "Sewer" as used in the P. H. Act, 1875, *V.* DRAIN; a def repeated in P. H. Ireland Act, 1878, s. 2, and adopted for P. H. Act, 1890 (*V.* subs. 3, s. 11), and for 55 & 56 V. c. 57 (*V.* s. 5), a similar def having been previously provided for Metrop Man. Act, 1855 (*V.* s. 250).

As used in the P. H. Act, 1875, "Sewer" should receive "the largest possible interpretation" (per Kay, J., *Acton* v. *Batten*, 54 L. J. Ch. 251; 28 Ch. D. 283; 52 L. T. 17; 49 J. P. 357); but even so, it means something that *carries away* Sewage or Surface Water, which a Cesspool, though it drains several houses, does not (*Meader* v. *West Cowes*, 1892, 3 Ch. 18; 61 L. J. Ch. 561; 67 L. T. 454: *Button* v. *Tottenham*, 78 L. T. 470: *Vh*, *Durrant* v. *Branksome*, cited FILTHY WATER). A Manhole is part of a "Sewer" (*Swanston* v. *Twickenham*, 48 L. J. Ch. 623; 11 Ch. D. 838); but a rising main sewer, sewage carriers and effluent culverts for Sewage Farm purposes, are not entitled to the exemption from Rates as is an ordinary underground "Sewer," for they are adjuncts to the farm and capable of BENEFICIAL Occupation (*Leicester* v. *Beaumont Leys*, 70 L. T. 659; 63 L. J. M. C. 176: *Ystradyfodwg* v. *Newport*, 1900, 1 Q. B. 365; 69 L. J. Q. B. 280; 82 L. T. 58; 48 W. R. 382; 64 J. P. 293). *Vf*, *R.* v. *Godmanchester*, 35 L. J. Q. B. 125; L. R. 1 Q. B. 328; 5 B. & S. 886: *London Co. Co.* v. *Erith*, cited BENEFICIAL, p. 181.

"Existing Sewer"; *V.* EXISTING.

"Sewer made by any person for his *own profit*," s. 13 (1), P. H. Act, 1875; *V.* OWN PROFIT.

"Sewer made and used for the purpose of draining, preserving, or improving, LAND, under any Local or Private Act of Parliament," s. 13 (2), P. H. Act, 1875, includes, a Sewer made by a Ry Co pursuant to s. 68,

Ry C. C. Act, 1845, if that Act be expressly incorporated into the Co's Special Act (*Lond. & N. W. Ry* v. *Runcorn*, 1898, 1 Ch. 561; 67 L. J. Ch. 28, 324; 78 L. T. 343; 46 W. R. 484; 62 J. P. 643).

"Sewer" as used in Metrop Man. Act, 1855; *V. Bateman* v. *Poplar*, 56 L. J. Ch. 149; 33 Ch. D. 360; 55 L. T. 374; 2 Times Rep. 860; 4 Ib. 137: *Pilbrow* v. *St. Leonard, Shoreditch*, 1895, 1 Q. B. 33, 433; 64 L. J. M. C. 29, 130; 72 L. T. 135; 43 W. R. 342; 59 J. P. 68: *St. Martin-in-the-Fields* v. *Bird*, 1895, 1 Q. B. 428; 64 L. J. Q. B. 230; 71 L. T. 868; 43 W. R. 194; 60 J. P. 52: *Kershaw* v. *Taylor*, 1895, 2 Q. B. 471; 64 L. J. M. C. 245; 73 L. T. 274; 44 W. R. 28; 59 J. P. 726: *Florence* v. *Paddington*, W. N. (95) 143; 12 Times Rep. 30: *R.* v. *St. Matthew, Bethnal Green*, 1896, 2 Q. B. 319; 1898, A. C. 190: 65 L. J. M. C. 215; 67 L. J. Q. B. 234; 75 L. T. 60; 44 W. R. 697; 46 Ib. 353; 60 J. P. 582; 62 Ib. 116, 532; 12 Times Rep. 448, 521; 14 Ib. 68: *Holland* v. *Lazarus*, 61 J. P. 262; 66 L. J. Q. B. 285: *Greater London Property Co* v. *Foot*, 1899, 1 Q. B. 972; 68 L. J. Q. B. 628; 80 L. T. 390; 47 W. R. 541; 63 J. P. 420; 15 Times Rep. 311.

Semble, Once a Sewer, always a Sewer; *V. St. Leonard, Shoreditch* v. *Phelan*, 1896, 1 Q. B. 533; 65 L. J. M. C. 111; 74 L. T. 285; 44 W. R. 427; 60 J. P. 244: *Appleyard* v. *Lambeth*, 76 L. T. 442; 66 L. J. Q. B. 27, 347.

"Sewer Authority"; Stat. Def., 28 & 29 V. c. 75, s. 3, repealed by P. H. Act, 1875, and Sewer Authorities replaced by the Authorities mentioned in Part 2, thereof.

Commissioners of Sewers; *V.* Termes de la Ley, *Sewers*.

V. FRONTING, *Note*: MAKE: NECESSARY.

SEWERED. — "What is meant by a STREET being 'Sewered,' s. 150, P. H. Act, 1875, is, that it is 'sewered as a Street,' as a certain space devoted to traffic with an interval between the houses, and as comprising the houses on either side. It would be wrong to say a street is 'sewered' when all you have is a series of sewers draining some of the houses on one side in one direction, and the houses of another side in another direction, not forming part of one system" (per Kekewich, J., *Handsworth* v. *Derrington*, 1897, 2 Ch. 438; 66 L. J. Ch. 691; 77 L. T. 73; 61 J. P. 518). *Vf*, SATISFACTION, towards end.

SEX. — Ownership of Lands will not qualify a woman to be put on the Parochial Electoral Register under the Loc Gov Act, 1894; not because that conclusion is opposed to s. 3 (2), which says that "no person shall be disqualified *by sex*," but because a woman-owner not being on the Parliamentary Register, is not in conformity with s. 2 (1), — that non-conformity is a fact, and is not less a fact because *it* results from sex (*Drax* v. *Ffooks*, 1896, 1 Q. B. 238; 65 L. J. Q. B. 270; 74 L. T. 43; 44 W. R. 393; 60 J. P. 214). *Vf*, PAROCHIAL ELECTOR: *Cp, R.* v. *Crosthwaite*, cited PERSON, p. 1466.

V. FEMALE: GENDER: LEGAL INCAPACITY: PROHIBITED: PUER.

SEXTON. — "The Sexton, segsten, segerstane, sacristan (*sacrista*, the keeper of the holy things belonging to the divine worship) seems to be the same with the Ostiarius (*V.* OSTIARY) in a Roman Church" (Phil. Ecc. Law, 1516). *Vf*, 62 J. P. 291: *St. Margaret, Rochester* v. *Thompson*, 40 L. J. C. P. 213; L. R. 6 C. P. 445: *White* v. *Norwood Burial Bd*, 55 L. J. Q. B. 63; 16 Q. B. D. 58.

SHACK. — "'Shack' is a peculiar name of Common, used in the Countrey of Norfolke; and Cattell go to Shack, is as much to say, as to goe at liberty, or to goe at large" (Termes de la Ley). *Vf, Corbet's Case*, 7 Rep. 5 a: *Cheesman* v. *Hardham*, 1 B. & Ald. 710, 711.

SHAFT. — Quà the Acts relating to Mines, "Shaft" includes, Pit; V. 35 & 36 V. c. 77, s. 41; 50 & 51 V. c. 58, s. 75.
V. WORKING SHAFT.

Lord SHAFTESBURY'S ACT. — Liberty of Religious Worship Act, 1855, 18 & 19 V. c. 86.

SHALL. — Too much care cannot be employed in using or construing this word. Its various meanings range under two general classes according as it is used, —

I. As implying *futurity*; or

II. As implying a *mandate*, or giving *permission* or *direction*.

I. If something is agreed to be done if or when something else "shall" happen, this contemplates futurity; and things that have happened and are existent at the time of the agreement will not accomplish the condition precedent to the fulfilment of the agreement. Thus where by a Marriage Settlement certain specific property belonging to the lady was settled, and in a subsequent part of the settlement there was a covenant to settle all property to which the lady "at any time during the said intended coverture *shall become* seized, possessed of, or entitled unto"; it was held that this covenant did not include property to which the lady was entitled at the date of the settlement and which was not specifically mentioned therein (*Wilton* v. *Colvin*, 3 Drew. 617; 25 L. J. Ch. 850; 27 L. T. O. S. 289; in *whc* the previous authorities are very fully reviewed: *Va, Archer* v. *Kelly*, 29 L. J. Ch. 911). Where, however, there is one title to a property at the date of the settlement but that title becomes changed into another and a larger title, then the idea of futurity is accomplished, and property so circumstanced would be comprised in a covenant to settle future acquired property; *e.g.* where a tenant in remainder at the date of the settlement becomes a tenant in possession after the settlement (*Maclurcan* v. *Lane*, 7 W. R. 135; 5 Jur. N. S. 56). *Vf*, ENTITLED, pp. 629, 630.

"Shall *be born*," in the absence of a context, are words of futurity; and, in a Will, mean persons born after its date (*Gibbons* v. *Gibbons*, 50 L. J. P. C. 45; 6 App. Ca. 471).

Sometimes, however, "shall" includes past time. Thus, in a divesting clause, if donee of property "shall *become bankrupt*," seems "to mean, simply being bankrupt" (per Kindersley, V. C., *Seymour* v. *Lucas*, 29 L. J. Ch. 843; 1 Dr. & Sm. 177); and in such a case it is immaterial whether the bankruptcy has happened before, or shall have happened after, the making of the instrument (*Seymour* v. *Lucas*, sup: *Manning* v. *Chambers*, 1 D. G. & S. 282; 16 L. J. Ch. 245: per Lindley, L. J., *Re Akeroyd*, 63 L. J. Ch. 32; 1893, 3 Ch. 363: *V.* HEREAFTER): *Va*, TO BE BORN. So, too, in an independent (as distinguished from a substitutionary) testamentary gift to the issue of a deceased member of a Class, the words "shall die" or "shall happen to die" do not, necessarily, point to a future death, so as inevitably to exclude the issue of a member of the class who may have died before the date of the Will (*Loring* v. *Thomas*, 30 L. J. Ch. 789; 1 Dr. & Sm. 497: *Christopherson* v. *Naylor*, cited SHARE: *Vf*, 2 Jarm. 771). So, where there is a bequest to two or more named persons at 21, and if either "shall die" under that age then his share to go to the survivor or survivors; if one be dead at the date of the Will, his share goes to the survivor or survivors (*Re Sheppard*, 1 K. & J. 269). So, "a SURRENDER to such uses as the testator 'shall' by Will appoint, applied to a Will antecedently executed, it being considered that the Surrender referred to that Will which should be in existence at testator's death" (1 Jarm. 58, citing *Spring* v. *Biles*, 1 T. R. 435, *n*). So, s. 1, 9 & 10 V. c. 66, excluded from the period necessary to give a Pauper a status of irremovability the time during which he "shall" receive relief from a parish in which he did not reside; held, that that included a case where such relief had been given before the Act passed (*R.* v. *Christchurch*, 12 Q. B. 149; 18 L. J. M. C. 28).

On the other hand, when a statute makes an alteration in the law and says it "shall" have effect, without more, that is a reason for not giving the alteration a retrospective operation (*Re Chapman*, 1896, 1 Ch. 323; 65 L. J. Ch. 170; 73 L. T. 658; 44 W. R. 311; revd on another point, 1896, 2 Ch. 763; 65 L. J. Ch. 892; 75 L. T. 196; 45 W. R. 67). *Vf*, as to retrospective operation of statutes, RETROSPECTIVE.

II. Whenever a statute declares that a thing "shall" be done, the natural and proper meaning is that a peremptory mandate is enjoined. But where the thing has reference to —

a. The time or formality of completing any Public act, not being a step in a litigation, or accusation; or,

b. The time or formality of creating an Executed contract whereof the benefit has been, or but for their own act might be, received by individuals or private companies or private corporations, —

the enactment will generally be regarded as merely directory, unless there be words making the thing done void if not done in accordance with the prescribed requirements.

The word "Shall" has been held, in the following cases, only

Directory:

As regards the time fixed for the appointment of Overseers under 43 Eliz. c. 2, s. 1 (*R.* v. *Sparrow*, 2 Stra. 1123), or under 54 G. 3, c. 91 (*R.* v. *Staffordshire*, 10 L. J. M. C. 166; nom. *R.* v. *Sneyd*, 9 Dowl. 1001); and as regards the time fixed by 8 G. 4, c. xxix, for the Election of Guardians for the Borough of Norwich (*R.* v. *Norwich*, 1 B. & Ad. 310), by 13 G. 3, c. 78, s. 1, for appointment of Surveyors of Highways (*R.* v. *Denbighshire*, 4 East, 142), or by 54 G. 3, c. 84, s. 1, for holding Quarter Sessions (*R.* v. *Leicester*, 5 L. J. O. S. M. C. 95; 7 B. & C. 6); "and there can be no doubt that the same construction will be put upon" the statutes (11 G. 4 & 1 W. 4, c. 70, s. 35; 4 & 5 W. 4, c. 47), regulating the time for holding Quarter Sessions (*V.* 4 Chitty's Statutes, 3 ed., 154, citing Dickinson on Quarter Sessions, 65. All the various statutes as to the time for holding Quarter Sessions have always been held directory, Dick. Q. S., 6 ed., 65):

As regards the transmission of a Conviction by justices to the next Quarter Sessions, under 7 & 8 G. 4, c. 30, s. 40 (*Charter* v. *Greame*, 13 Q. B. 216; 18 L. J. M. C. 78):

As regards the time for delivering Burgess Lists and holding Courts for their revision under the Municipal Corporation Act (5 & 6 W. 4, c. 76), s. 18, repld Mun Corp Act, 1882, Part 3 (*R.* v. *Rochester*, 27 L. J. Q. B. 45; 7 E. & B. 910: *Hunt* v. *Hibbs*, 29 L. J. Ex. 222; 5 H. & N. 123):

As regards the time and manner of making out (under ss. 5, 13) the Lists of persons entitled to vote, or (under ss. 47, 48, Parliamentary Voters Registration Act, 1843, 6 V. c. 18) the time when the Lists of Voters are to be signed and delivered to the sheriff or returning officer (*Morgan* v. *Parry*, 25 L. J. C. P. 141; 17 C. B. 334: *Brumfitt* v. *Bremner*, 30 L. J. C. P. 33; 9 C. B. N. S. 1: *Vf, Wells* v. *Stanforth*, 55 L. J. Q. B. 12; 16 Q. B. D. 244; 54 L. T. 183; 50 J. P. 631):

As regards stamping the Official Mark on the *back* of a Ballot Paper (*Akers*, or *Ackers* v. *Howard*, 55 L. J. Q. B. 273; 16 Q. B. D. 739; 54 L. T. 651; 34 W. R. 609; 50 J. P. 519):

As regards the time for depositing the valuation list and transmitting it to the Assessment Committee pursuant to s. 42, Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67 (*R.* v. *Ingall*, 46 L. J. M. C. 113; 2 Q. B. D. 199); the time for delivering to the Commissioners of Stamps a return of the names and places of abode of the partners in a Banking Co pursuant to s. 5, 7 G. 4, c. 46 (*Bosanquet* v. *Woodford*, 13 L. J. Q. B. 93; 5 Q. B. 310; D. & M. 419: *Steward* v. *Dunn*, 13 L. J. Ex. 324; 12 M. & W. 655; 1 Dowl. & L. 642); the time for registering at the County Court a

Directory:

married woman's Protection Order pursuant to s. 21, 20 & 21 V. c. 85 (*Re Farraday*, 31 L. J. P. & M. 7; 2 Sw. & Tr. 369):

As regards the 3 calendar months after Avoidance of a Benefice within which the Bishop is to direct the surveyor to report upon dilapidations under s. 29, Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43 (*Caldow* v. *Pixell*, 46 L. J. C. P. 541; 2 C. P. D. 562):

As regards the requirement of 33 H. 8, c. 39, that Bonds to the King shall be made payable to him, his heirs or *executors*, a Bond to him, his heirs or *successors* being held to be within the statute (*Yale* v. *The King*, 6 Brown P. C. 27, 28):

As regards Consent of father to the marriage of a minor under s. 16, Marriage Act, 1823, 4 G. 4, c. 76 (*R.* v. *Birmingham*, 8 B. & C. 29; 6 L. J. O. S. M. C. 67; 2 M. & R. 230):

As regards the Form of making a Poor Rate, under s. 2, Parochial Assessments Act, 1836, 6 & 7 W. 4, c. 96, — except the signature of Justices which is peremptory (*R.* v. *Fordham*, 11 A. & E. 73; 9 L. J. M. C. 3):

As regards the obligation to produce Overseers' Certificate, under s. 2, Beerhouse Act, 1840, 3 & 4 V. c. 61, prior to the Excise granting a License to sell beer, &c, under that statute (*Thompson* v. *Harvey*, 28 L. J. M. C. 163; 4 H. & N. 254):

As regards the Questions to be asked a Recruit under s. 55, Mutiny Act, 13 & 14 V. c. 5, that Act repealed by 38 & 39 V. c. 66, and these Questions replaced by s. 80, Army Act, 1881 (*Wolton* v. *Gavin*, 16 Q. B. 48; 20 L. J. Q. B. 73):

As regards the Particulars to be stated in a doctor's certificate for the detention of a Lunatic under s. 46, 8 & 9 V. c. 100, repld s. 28 (2), Lunacy Act, 1890 (*Re Shuttleworth*, 16 L. J. M. C. 18; 9 Q. B. 651):

As regards taking Security on an appointment by Quarter Sessions of a County Treasurer under County Rates Act, 1738, 12 G. 2, c. 29, s. 6 (*R.* v. *Patteson*, 4 B. & Ad. 9; 2 L. J. K. B. 33; 1 N. & M. 612):

As regards the Court of Bankry, "one would not hold it to be obligatory if it could be avoided" (per Esher, M. R., *Re Thurlow*, 64 L. J. Q. B. 481), in *whc* it was held that "shall adjudge," s. 20 (1), Bankry Act, 1883, does not deprive the Court of the power to adjourn given by subs. 2, s. 105 (1895, 1 Q. B. 724; 64 L. J. Q. B. 479; 72 L. T. 642; 43 W. R. 403: *So, Re Pinfold*, p. 1855, post). So it was directory as regards the Formalities prior to a Sale by a Bankruptcy Assignee under s. 7, 1 G. 4, c. 119 (*Doe* d. *Phillips* v. *Evans*, 2 L. J. Ex. 179; 1 Cr. & M. 450; 3 Tyr. 339), and is so as regards s. 72 (1), Bankry Act, 1883 (per Esher, M. R., *Re Gallard*, 1892, 1 Q. B. 532; 61 L. J. Q. B. 425; 66 L. T. 452; 40 W. R. 385):

Directory:

As regards the things to be done by a Local Board before entering into a Contract under s. 85, P. H. Act, 1848 (*Nowell* v. *Worcester*, 9 Ex. 457; 23 L. J. Ex. 139: *Sv*, *Frend* v. *Dennett*, inf, p. 1856, and *Note* inf):

As regards the requirement in a Local Improvement Act that all contracts should be signed by the Commissioners, or any three of them, or by their Clerk (*Cole* v. *Greene*, 13 L. J. C. P. 30; 6 M. & G. 872):

As regards Registration of Mortgages and Charges of a Joint Stock Co, under s. 43, Comp Act, 1862 (*Ex p. Valpy & Chaplin*, 7 Ch. 289: *Wright* v. *Horton*, 56 L. J. Ch. 873; 12 App. Ca. 371; 56 L. T. 782; 36 W. R. 17; 52 J. P. 179):

As regards the provision of s. 108 of the statute (6 & 7 W. 4, c. cviii) incorporating the Thames Haven Dock & Ry Co, that the business of the Company should be carried on by *twelve* Directors (*Thames Haven Dock & Ry* v. *Rose*, 12 L. J. C. P. 90; 4 M. & G. 552; 5 Sc. N. R. 524: *sthe* not followed in *Re Alma Spinning Co*, cited QUORUM):

As regards the provisions in a private Act as to the mode of keeping the Register of Proprietors in an Incorporated Co (*Southampton Dock Co* v. *Richards*, 1 M. & G. 448: *London Grand Junction Ry* v. *Freeman*, 2 Ib. 606):

As regards the Countersigning by Secretary, of a bill or note of a Joint-Stock Co, pursuant to s. 45, 7 & 8 V. c. 110 (*Allen* v. *Sea Assrce*, 9 C. B. 574; 19 L. J. C. P. 305: *Aggs* v. *Nicholson*, 1 H. & N. 165; 25 L. J. Ex. 348):

As regards s. 4, 1 & 2 V. c. 117 (*Goodman* v. *De Beauvoir*, 4 Ry Ca. 384).

Note. If a statute directs the time or manner of doing a thing, the penalty (if any) for non-compliance with the direction will be incurred, though such non-compliance may not affect the validity of the act (*Hunt* v. *Hibbs*, 29 L. J. Ex. 222; 5 H. & N. 123). *Vf*, DIRECT.

For an example of a peremptory "shall" being controlled otherwise by a context, *V. York & North Mid Ry* v. *The Queen*, 1 E. & B. 863.

Cp, MUST.

The word "Shall" and words in their ordinary meaning obligatory, have, in the following cases, been held,

Peremptory:

As regards the 3 days, inclusive of Sunday, within which an Appeal Case from Justices "shall" be transmitted to the Court and notice given to the respondent, pursuant to s. 2, 20 & 21 V. c. 43 (*Peacock* v. *The Queen*, 4 C. B. N. S. 264; 27 L. J. C. P. 224: *Woodhouse* v. *Woods*, 29 L. J. M. C. 149: *Morgan* v. *Edwards*, Ib. 108: *Pennell* v. *Uxbridge*, 31 L. J. M. C. 92: *Vf*, TRANSMIT), except where the appellant has done

Peremptory:

all that he can in order to comply with the statute (*V.* jdgmt *Morgan* v. *Edwards*), and is hindered by the offices of the Court being closed (*Mayer* v. *Harding*, L. R. 2 Q. B. 410; 9 B. & S. 27, note *a*; 17 L. T. 140; 32 J. P. 421), or by respondent not being to be found, and service of notice of appeal in that case being effected on his solicitor within the 3 days (*Syred* v. *Carruthers*, 27 L. J. M. C. 273; E. B. & E. 469):

As regards requirement in R. 18, Summary Jurisdiction Rules, 1886, that application for Special Case "shall be made in writing" (*South Staffordshire W. W. Co* v. *Stone*, 19 Q. B. D. 168; 56 L. J. M. C. 122; 57 L. T. 368; 36 W. R. 76; 51 J. P. 662: *Lockhart* v. *St. Alban's*, 21 Q. B. D. 188; 57 L. J. M. C. 118; 36 W. R. 800; 52 J. P. 420):

As regards Notice of Appeal under s. 8, Mayor's Court of London Procedure Act, 1857, the time for which cannot be extended (*Kirby* v. *N. British Insrce*, 1896, 2 Q. B. 99; 65 L. J. Q. B. 527), and so of the deposit for security for costs under the same section (*Morgan* v. *Bowles*, 1894, 1 Q. B. 236; 63 L. J. Q. B. 84):

As regards the time for an Appeal from County Court and giving security for its costs under s. 14, 13 & 14 V. c. 61 (*Stone* v. *Dean*, 27 L. J. Q. B. 319; E. B. & E. 504: *Va, Barker* v. *Palmer*, 51 L. J. Q. B. 110: *Note*, this section repealed, and its provisions replaced by s. 120, Co. Co. Act, 1888, and *vth* R. 12, 16, Ord. 59, R. S. C.):

As regards Adjudication in Bankry (s. 20 (1), Bankry Act, 1883) being consequent when the creditors have not availed themselves of the opportunity by that section given them of deciding otherwise (*Re Pinfold*, 1892, 1 Q. B. 73; 61 L. J. Q. B. 161: *Sv, Re Thurlow*, p. 1853, ante):

As regards the 21 days, within which, after its receipt, the Bishop is to send to an accused clergyman a copy of the complaint against him, pursuant to s. 9, Public Worship Regulation Act, 1874, 37 & 38 V. c. 85 (*Howard* v. *Bodington*, 2 P. D. 203):

As regards the time for Taxing costs under s. 3, Parliamentary Costs Act, 1865, 28 & 29 V. c. 27 (*Williams* v. *Swansea Canal Nav.*, 37 L. J. Ex. 107; L. R. 3 Ex. 158):

As regards the provision, s. 1, Justices' Clerks' Fees Act, 1753, 26 G. 2, c. 14, that table of Justices' Clerks' Fees should be made at one Quarter Sessions and should be approved at "the next succeeding Quarter Sessions" (*Bowman* v. *Blyth*, 26 L. J. M. C. 57; 27 Ib. 21; 7 E. & B. 26, 47):

As regards Confirmation of Provisional License under s. 22, Licensing Act, 1874, when the premises are built "IN ACCORDANCE WITH THE PLANS," &c (per Coleridge, C. J., *R.* v. *London Jus.*, cited LICENSE):

Peremptory:

As regards the number of Overseers to be appointed by 43 Eliz. c. 2, s. 1 (*R.* v. *Loxdale*, 1 Burr. 445):

As regards Fine to be imposed "not less" than a stated amount; *V.* NOT LESS:

As regards Indorsement on Appeal Case stated by Revising Barrister pursuant to s. 42, 6 V. c. 18 (*Wanklyn* v. *Woollett*, 16 L. J. C. P. 144; 4 C. B. 86: *Sv, Burton* v. *Brooks*, 21 L. J. C. P. 7; 11 C. B. 41; 2 Lutw. 197, and *McKeowne* v. *Bradford*, 7 Ir. Jur. N. S. 169):

As regards the Form of a Municipal Nomination Paper under s. 1 (2), 38 & 39 V. c. 40, repealed (*Henry* v. *Armitage*, 52 L. J. Q. B. 165; revd, but only on the facts, 32 W. R. 192):

As regards the requirements for creating a Mortgage of a Ship under ss. 55, 66, Mer Shipping Act, 1854, repld ss. 24, 31, Mer Shipping Act, 1894 (*Liverpool Borough Bank* v. *Turner*, 29 L. J. Ch. 827; 30 Ib. 379: *Sv*, "Beneficial Interest," sub BENEFICIAL):

As regards requirement that contracts above £10 by Local Board should be under Seal, &c, pursuant to s. 85, P. H. Act, 1848 (*Frend* v. *Dennett*, 27 L. J. C. P. 314; 4 C. B. N. S. 576: *Sv, Nowell* v. *Worcester*, sup, p. 1854, and *Note* inf); and now, under s. 174, P. H. Act, 1875, that every contract by Urban Authority above £50 shall be under seal (*Young* v. *Royal Leamington Spa*, 51 L. J. Q. B. 292; 52 Ib. 713; 8 App. Ca. 517, following *Hunt* v. *Wimbledon*, 48 L. J. C. P. 207; 4 C. P. D. 48. *Va*, EXCEED: *Melliss* v. *Shirley*, 16 Q. B. D. 446), and shall specify its work, materials, matter or things, price, time for performance, and pecuniary penalty for non-performance (*British Wire Co* v. *Prescot*, 1895, 2 Q. B. 463; 73 L. T. 383; 64 L. J. Q. B. 811; 44 W. R. 224; 59 J. P. 552):

As regards Registration in Natal of document regulating Community of Goods between Spouses (*Taylor* v. *Sturrock*, cited VOID):

As regards the provisions for Arbitration in s. 180, P. H. Act, 1875 (*Re Gifford and Bury*, 57 L. J. Q. B. 181; 20 Q. B. D. 368; 58 L. T. 522; 36 W. R. 468; 52 J. P. 119):

As regards an Arbitration Agreement; *V. Crump* v. *Adney*, 2 L. J. Ex. 150; 1 Cr. & M. 355; 3 Tyr. 270:

As regards the formalities of Sealing and Signature by Directors of contracts by Incorporated Ry and Dock Companies (*Cope* v. *Thames Haven Dock & Ry*, 18 L. J. Ex. 345; 3 Ex. 841: *Diggle* v. *London & Blackwall Ry*, 19 L. J. Ex. 308; 5 Ex. 442: *Finlay* v. *Bristol & Exeter Ry*, 21 L. J. Ex. 117; 7 Ex. 409. *V. Note*, inf):

As regards the ordinary requirement in a Building Contract against Extras without written instructions of the Architect (*Lamprell* v. *Billericay Union*, 18 L. J. Ex. 282; 3 Ex. 283):

Semble, as regards the notice by a tenant of an intended claim under s. 7, Agricultural Holdings (England) Act, 1883 (*Schofield* v. *Hincks*, 37 W. R. 157).

Note. — It was said by counsel in *Young* v. *Royal Leamington Spa*, sup, that *Nowell* v. *Worcester*, sup, might be considered as over-ruled by *Frend* v. *Dennett*, sup. But it is submitted that the two cases are quite in harmony. The first case (*Nowell* v. *Worcester*) decided that the preliminaries which a local board were required to observe under s. 85, P. H. Act, 1848, *before* entering into a contract were directory and, so to speak, a matter between themselves and their constituents: but the latter case (*Frend* v. *Dennett*) decided that the *contract itself* must be vouched in the manner prescribed by the section.

It seems difficult to reconcile *Cope* v. *Thames Haven Dock & Ry*, and the other two cases cited with it *supra*, with *Cole* v. *Greene*, *Allen* v. *Sea Assurance*, and *Aggs* v. *Nicholson*, sup, or with sound reasoning. There seems to be no PUBLIC POLICY (like that so forcibly dwelt on in the jdgmt of Lindley, L. J., in *Young* v. *Royal Leamington Spa*) in letting a Ry Co keep an advantage for which they have not paid, simply because the contract under which they have obtained that advantage happens to lack the formality required by the Act establishing the Company. The cases now under criticism seem those referred to by Lindley, L. J. (51 L. J. Q. B. 296), where, referring to executed contracts for corporations, he says, — "The cases on this subject are very numerous and conflicting, and they require review and authoritative exposition by a Court of Appeal."

There is no magic in incorporation as distinguished from any other mode of association for private profit; and it is suggested that *Cope* v. *Thames Haven Dock & Ry* and other similar cases should be over-ruled, and that the rule of such cases as *Aggs* v. *Nicholson* should be adopted for all kinds of association for private purposes, whether by incorporation or otherwise, so that the canon of construction should run thus: —

In a contract entered into by a *public* body, whether corporate or incorporate, for the public benefit, the formalities which the legislature says "shall" be observed are obligatory, and in their absence no rights arise whether the contract be executed or executory: But

In a contract entered into by a *private* association, whether corporate or incorporate, the formalities prescribed (whether by statute, articles of association, or otherwise) for the validation of its contracts are matters chiefly exigent as between the direction and its constituents; and therefore if the contract be *executed* the private association must pay on the assumpsit *quasi ex contractu*, even if not *ex contractu*, though the prescribed contract formalities may be absent; but no rights would arise out of such a contract the prescribed formalities of which were absent so long as such contract remained merely *executory*. *Vh*, obs of Brett, L. J., in *Hunt* v. *Wimbledon*, 48 L. J. C. P. 211: *Henderson* v. *Australian Royal Mail Steam Co*, 5 E. & B. 409: *Sv*, *Church* v. *Imperial Gas Light and Coke Co*, 7 L. J. Q. B. 118; 6 A. & E. 858.

For a curious instance of "shall" being used, in the same section, as compulsory and also as optional, *V.* per Bowen, L. J., *Cooke* v. *New*

River Co, 57 L. J. Ch. 389; 38 Ch. D. 56; 58 L. T. 830; on app, 14 App. Ca. 698.

V. SHALL AND LAWFULLY MAY: MAY: *Vf*, Maxwell, 286–303: Wilberforce, 193–206.

"Shall" read "should"; *V. Lomax* v. *Holmeden*, 3 P. Wms. 176.

SHALL AND LAWFULLY MAY: SHALL AND MAY: SHALL AND MAY AND THEY ARE HEREBY EMPOWERED.—"The words '*Shall and Lawfully May*' are, in their ordinary import, *obligatory*, and ought, according to established rule, to have that construction, unless it would lead to some absurd or inconvenient consequence, or be at variance with the intent of the legislature, to be collected from other parts of the Act" (per Parke, B., delivering the jdgmt in *Chapman* v. *Milvain*, 19 L. J. Ex. 230; 1 L. M. & P. 209; 5 Ex. 61). Accordingly, it was held that those words in s. 9, Country Bankers Act, 1826, 7 G. 4, c. 46, rendered it necessary for actions by or against a Banking Company to be brought in the name of its Public Officer. *Va, Steward* v. *Greaves*, 10 M. & W. 711; 12 L. J. Ex. 109: *Re London & Eastern Banking Corporation*, 27 L. J. Ch. 457; 2 D. G. & J. 484; 4 K. & J. 273: *Watts* v. *Shuttleworth*, 5 H. & N. 243; 29 L. J. Ex. 229.

So the words "*Shall and May*," in 7 & 8 V. c. 110, s. 66, were held obligatory (*V.* MAY, p. 1175). But though for the offence of allowing an unauthorized person to act in his name, a Solicitor "*shall and may* be struck off the Roll, and for ever after disabled from practising," s. 32, 6 & 7 V. c. 73; yet the infliction of so heavy a penalty has been held not imperative, so that a lesser punishment might be imposed (*Re Grayston*, 4 Times Rep. 749; 58 L. J. Q. B. 451, *n*: *Re Lamb*, 58 L. J. Q. B. 450; 23 Q. B. D. 477, on *whlcv*, *Re Kingdon and Wilson*, 1902, 2 Ch. 242; 71 L. J. Ch. 604: *Re Sykes*, 34 S. J. 285: Times, 19th Feb 1890): on the other hand, "shall and may" has been held imperative (*Re Two Solicitors*, 28 S. J. 90: *Re Eede*, 59 L. J. Q. B. 376; 25 Q. B. D. 228; 38 W. R. 683: *Re Kelly*, 1895, 1 Q. B. 180; 64 L. J. Q. B. 129; 71 L. T. 843; 43 W. R. 191).

The words in Poor Relief Act, 1819, 59 G. 3, c. 12, s. 17, whereby Churchwardens and Overseers "*Shall and May and they are hereby Empowered*" to accept, take, and hold, real property belonging to a parish, are imperative (*St. Nicholas, Deptford* v. *Sketchley*, 17 L. J. M. C. 17; 8 Q. B. 394).

V. SHALL: MAY: IT SHALL BE LAWFUL.

SHALL AND MAY BE LAWFUL.—*V.* IT SHALL BE LAWFUL.

SHALL AND WILL.—"Shall and will release," *semble*, is not an actual RELEASE, but only a covenant to release (per Holroyd, J., *Thomas* v. *Courtnay*, 1 B. & Ald. 8).

SHALL BE.—"Shall be begotten"; *V.* To be born.
"Shall be born"; *V.* Shall, p. 1851: To be born.
"Shall be brought"; *V.* Brought.
"Shall be settled"; *V.* Agreed and declared: Settled.

SHALL BECOME.—*V.* Become.
"Shall become entitled"; *V.* Entitled.

SHALL HAVE BEEN.—This phrase gives a statute a Retrospective operation, *e.g.* a married woman whose husband "shall have been" convicted of an Aggravated Assault upon her, s. 4, 58 & 59 V. c. 39 (*Lane* v. *Lane*, 65 L. J. P. D. & A. 63; 1896, P. 133; 74 L. T. 557).
Vf, *R.* v. *Birwistle*, 58 L. J. M. C. 158: *Cp*, Has Been: Is.

SHALL THINK FIT.—*V.* Think fit.

SHAMEFUL.—A correct newspaper report headed "Shameful Conduct" is Libel, though the report itself be protected (*Clement* v. *Lewis*, 3 Brod. & B. 297; 3 B. & Ald. 702).

SHAPE.—"Shape or Configuration" of an article of manufacture, preamble to s. 2, 6 & 7 V. c. 65, repld, s. 60, Patents, &c, Act, 1883 (*V.* Design); *V. Millingen* v. *Picken*, 1 C. B. 799; 14 L. J. C. P. 254: *Rogers* v. *Driver*, 20 L. J. Q. B. 31; 16 Q. B. 102: *Windover* v. *Smith*, 11 W. R. 323; 7 L. T. 776: *Margetson* v. *Wright*, 2 D. G. & S. 420: *Moody* v. *Tree*, 40 W. R. 558.
V. Pattern.

SHARE.—"'Share,' *primâ facie*, would not apply to Real Estate" (per Turner, V. C., *Stokes* v. *Salomons*, 9 Hare, 83; 20 L. J. Ch. 343).
Where there is a testamentary gift to two or more, and the Will speaks of the "Share" of either, a Tenancy in Common is created (*Gnat* v. *Laurence*, Wight. 395: *Ive* v. *King*, 21 L. J. Ch. 560; 16 Bea. 46: *Hobgen* v. *Neale*, L. R. 11 Eq. 48). So, a bequest in shares to be appointed by a person who is not named, or who fails to appoint, creates a tenancy in common in equal shares (1 Jarm. 361, citing *Robinson* v. *Wheelwright*, 21 Bea. 214: *Salusbury* v. *Denton*, 26 L. J. Ch. 851; 3 K. & J. 529).
A Substitutional bequest of a legatee's "Share" will not take effect if the legatee die in the testator's lifetime, because in that case the legatee could not take a share (*Re Roberts*, *Tarleton* v. *Bruton*, 53 L. J. Ch. 1023; 27 Ch. D. 346; affd 30 Ch. D. 234; 53 L. T. 432, following *Stewart* v. *Jones*, 3 D. G. & J. 532, and dissenting from *Unsworth* v. *Speakman*, 46 L. J. Ch. 608; 4 Ch. D. 620). But would this be so if the legatee were a child of the testator, leaving issue living at testator's death? *V.* s. 33, Wills Act, 1837. Observe also that *Re Roberts* and *Stewart* v. *Jones* were distd in *Re Pinhorne*, 1894, 2 Ch. 276; 63 L. J. Ch. 607; 42

W. R. 438; 70 L. T. 901, *whle* was followed in *Re Powell*, 1900, 2 Ch. 525; 69 L. J. Ch. 788; 83 L. T. 24. *Va, Re Sheppard*, 1 K. & J. 269, cited SHALL, p. 1851: *Neatherway* v. *Fry*, Kay, 182; 23 L. J. Ch. 222: 2 Jarm. 767.

Where a CLASS of beneficiaries under a Will is to be ascertained at the testator's death (or, *semble*, at any other definite time), but the period of distribution is postponed to a later time, a substitutional gift of the "Shares" of deceased beneficiaries applies, *primâ facie*, only to beneficiaries who become members of the Class and die before the period of distribution (per North, J., *Re Hannam*, 1897, 2 Ch. 39; 66 L. J. Ch. 471; 76 L. T. 681; 45 W. R. 613; vindicating *Thornhill* v. *Thornhill*, 4 Mad. 377, and the opinion of Romilly, M. R. in *Ive* v. *King*, sup, and in *King* v. *Cleaveland*, *No. 1*, 28 L. J. Ch. 74; 26 Bea. 26; and distinguishing *Smith* v. *Smith*, 6 L. J. Ch. 175; 8 Sim. 353, *Collins* v. *Johnson*, 4 L. J. Ch. 226; 8 Sim. 356, *n*, *Jones* v. *Frewin*, 12 W. R. 369, and *Habergham* v. *Ridehalgh*, 39 L. J. Ch. 545; L. R. 9 Eq. 395).

As to the value of the word "Share," in a substitutionary bequest to the issue of a deceased member of a class, for the purpose of avoiding the Rule in *Christopherson* v. *Naylor* (1 Mer. 320; 2 Jarm. 771, *i.e.* that persons claiming as substitutionary legatees must point out the original legatee in whose place they demand to stand, and such original legatee must have been living at the date of the Will, *e.g.* under a gift to children with a substitution of their issue of any as "shall happen to die in my lifetime," only the issue of the children living at the date of the Will can claim); *V. Re Smith* (in note to *Re Sibley*), 5 Ch. D. 494; 46 L. J. Ch. 387; *vthc*, *Re Webster*, 52 L. J. Ch. 769; 23 Ch. D. 737: But *Re Smith* was not followed by Stirling, J., in *Re Chinery* (57 L. J. Ch. 804; 39 Ch. D. 614), nor by the Court of Appeal in *Re Musther* (59 L. J. Ch. 296; 43 Ch. D. 569), nor by North, J., in *Re Brown* (58 L. J. Ch. 420): *Vf*, *Re Wood*, 1894, 3 Ch. 381; 63 L. J. Ch. 790.

Issue to take Parent's Share; *V.* ISSUE.

Vf, as to Substitutionary gifts, Hawk. ch. 19.

As to value of "Share" for construing legacy as VESTED; *V.* 1 Jarm. 856.

The "share" of a Residuary Legatee, consists of what remains after all equities between him and the estate have been settled (*Willes* v. *Greenhill*, 29 Bea. 376).

"Share" does not carry an accruing share (2 Jarm. 711: Wms. Exs. 1082), unless aided by the context (2 Jarm. 712, 713); but "it seems that 'Share *and Interest*' will carry accrued shares proprio vigore" (Ib. 714), *e.g.* an assignment of "all the Part, Share, and Interest," of A. in a reversionary bequest, carried an accrued share (*Re Lawrence*, 45 S. J. 78). *Vf*, ACCRUE.

A Devise of "my Share" would, even before the Wills Act, 1837, generally carry the fee (2 Jarm. 285): *Vh*, *Orange* v. *Martyn*, W. N. (86) 8.

Agreement by a father in Marriage Articles to leave the bride "A share" of his property, does not mean an equal share; it means "some share:—some part," and is satisfied by a substantial legacy (*Re Fickus*, 1900, 1 Ch. 331; 69 L. J. Ch. 161; 81 L. T. 749; 48 W. R. 250); if the phrase were "*her* share" it would, probably, mean, the share of his Personalty to which his daughter would be entitled if he were to die intestate (*Laver* v. *Fielder*, 32 L. J. Ch. 365; 32 Bea. 1).

"Equal Child's Share"; *V.* EQUAL.

"Part" or "Share"; *V.* PART, towards end.

Where a "Power simply authorizes an Appointment of the Shares to be taken by the objects, the Power necessarily ceases when there is only one object, for he, of course, must take the whole" (Sug. Pow. 416).

V. PARTICIPATE.

"Share" in a *Company*; *V.* per Farwell, J., *Borland's Trustee* v. *Steel*, 1901, 1 Ch. 279; 70 L. J. Ch. 51.

Under a bequest of "Shares" in a Co, the Co's Ordinary STOCK, as well as Shares, will pass (*Trinder* v. *Trinder*, L. R. 1 Eq. 695: *Morrice* v. *Aylmer*, 44 L. J. Ch. 214; 45 Ib. 614; 10 Ch. 148; L. R. 7 H. L. 717), but not DEBENTURE STOCK (*Re Bodman*, 1891, 3 Ch. 135; 61 L. J. Ch. 31; 65 L. T. 522; 40 W. R. 60), unless there is nothing else to satisfy "Shares" (*Re Weeding*, 1895, 2 Ch. 364; 65 L. J. Ch. 743; 74 L. T. 651: *Vf*, DEBENTURE, towards end). A bequest of "two Ordinary Shares" in the G. N. Ry of Ireland, was held to mean £200 of its Stock, the Co never having had Shares but Stock only, and proof being furnished that £100 Stock was often referred to as one share (*Brannigan* v. *Murphy*, 1896, 1 I. R. 418).

A bequest by a shareholder of all and every his "Shares *and Interest*" in an Insrce Co, "and all the ADVANTAGES to be derived therefrom," did not pass a Policy on his own life effected with the Co, even though he was obliged to effect it and part of its bonuses had to be added to the capital of the Co (*Harington* v. *Moffat*, 22 L. J. Ch. 775; 4 D. G. M. & G. 1).

Parol Evidence to explain "Shares" in a Co was rejected in *Millard* v. *Bailey*, L. R. 1 Eq. 378; 35 L. J. Ch. 312.

"Shares, Stock," &c, in an Investment Clause; *V.* DEBENTURE, at end: MORTGAGE, pp. 1228, 1229.

A bequest of a "Share, *Right, and Interest*" in the GOODWILL of a Partnership, and in its real and personal estate, does not pass a debt due to the testator from the partnership (*Re Beard, Simpson* v. *Beard*, 57 L. J. Ch. 887; 58 L. T. 629; 36 W. R. 519: distd, *Re Barfield*, 84 L. T. 28).

A "Share" in a Co, "does not denote rights only, it denotes obligations also; and when a Member transfers his Share he transfers all his rights and obligations as a shareholder as from the date of the transfer. He does not transfer rights to dividends or bonuses already de-

clared, nor does he transfer liabilities in respect of calls already made; but he transfers his rights to future payments and his liabilities to future calls" (per Lindley, L. J., *Re National Bank of Wales*, 66 L. J. Ch. 225, 226); therefore, a TRANSFER with the SANCTION of the Liquidator under s. 131, Comp Act, 1862, makes the transferee a "Present" Member, and the transferor a "Past" Member of a Liquidating Co within s. 38 (*S. C.*, 1897, 1 Ch. 298; 66 L. J. Ch. 222; 76 L. T. 1; 45 W. R. 401).

An Agreement for Transfer of "Shares" in a Co about to be formed, means, in the absence of a contrary stipulation, that the Co's Shares must in all respects be equal (*McIlquham* v. *Taylor*, 1895, 1 Ch. 53; 63 L. J. Ch. 758; 71 L. T. 679).

Semble, it is doubtful whether, on an agreement to purchase shares in a Co, there is an implied condition that the Co shall be in existence at the stipulated time for delivery; *V. Nicholl* v. *Carey*, 11 Times Rep. 526.

Allotment Letters may, if there be no Shares, be regarded as a good execution of an order to buy "Shares" in a specified Co (*Mitchell* v. *Newhall*, 15 L. J. Ex. 292; 15 M. & W. 308).

"Share" is not infrequently interpreted to include Stock; *V.* 30 & 31 V. c. 127, s. 3; 46 & 47 V. c. 30, s. 2. — *Scot.* 13 & 14 V. c. 83, s. 38; 30 & 31 V. c. 126, s. 3.

Purchase by a Co of its own shares; *V.* PURCHASE, p. 1623.

"Share *Capital*," quà Light Railways Act, 1896, 59 & 60 V. c. 48, "includes, any CAPITAL, whether consisting of Shares or of Stock, which is not raised by means of borrowing" (s. 28).

"Share of PROFITS," s. 2 (3 *d*), Partnership Act, 1890; *V. Re Young*, 1896, 2 Q. B. 484; 65 L. J. Q. B. 681; 75 L. T. 278; 45 W. R. 96.

"Share *Warrant*"; *V.* Comp Act, 1867, ss. 27–30: "Share Warrant to Bearer"; *V.* s. 4, Finance Act, 1899, 62 & 63 V. c. 9.

V. STOCK.

SHARE AND SHARE ALIKE. — The phrase "'Share and Share alike' has the same meaning as 'equally to be divided'" (Sug. Pow. 656, citing *Phillips* v. *Garth*, 3 Bro. C. C. 64: *Elmsley* v. *Young*, 2 My. & K. 780), and the beneficiaries take as TENANTS IN COMMON (*Rudge* v. *Barker*, Ca. t. Talb. 124: *Heathe* v. *Heathe*, 2 Atk. 122: *Perry* v. *Woods*, 3 Ves. 204 a: *Ashford* v. *Haines*, 21 L. J. Ch. 496: 2 Jarm. 257: Wms. Exs. 1327). *V.* ALIKE: EQUALLY.

Accordingly, this phrase, as a context, will control such words as "Legal Representatives" to mean Next of Kin (*King* v. *Cleaveland*, cited LEGAL REPRESENTATIVES, p. 1082).

But this phrase may, like "EQUALLY," be controlled by a strong context to create a Joint Tenancy (*Armstrong* v. *Eldridge*, 3 Bro. C. C. 215, 216).

There may be a Tenancy in Common as regards the persons designated, but a Joint Tenancy as between substitutionary issue; thus, a gift to

"Sons and Daughters who shall be then living and the Issue of any then dead (such Issue standing *in loco parentis*), share and share alike," was held by North, J., to be a tenancy in common as between the sons and daughters and issue, but that the issue, as between themselves and quà the share they took, were joint tenants, there being no words of severance as between *them* (*Re Yates*, 1891, 3 Ch. 53; 64 L. T. 819; 39 W. R. 573).

V. RELATIONS.

SHARE-BROKER. — A person who occasionally sold shares for friends was held not a "Share-broker" within the late Bankry definition of "TRADER" (*Re Cleland*, cited GOODS OR COMMODITIES).

V. BROKER: *Cp.* JOBBER.

SHAREHOLDER. — "Shareholder," quà 7 & 8 V. c. 110, repealed by Comp Act, 1862; *V. Bailey* v. *Universal Provident Assn*, 1 C. B. N. S. 557; 26 L. J. C. P. 87: *Wilkinson* v. *Anglo-Californian Co*, 18 Q. B. 728; 21 L. J. Q. B. 327.

Quà Comp C. C. Acts, "Shareholder," means, "Shareholder, Proprietor, or MEMBER, of the Company; and, in referring to any such Shareholder, expressions properly applicable to a PERSON shall be held to apply to a Corporation" (8 & 9 V. c. 16, s. 3, c. 17, s. 3). *Vth*, and for a comparison between "Shareholder" and "Subscriber," *Galvanized Iron Co* v. *Westoby*, 21 L. J. Ex. 302; 8 Ex. 17: *Waterford Ry* v. *Pidcock*, 22 L. J. Ex. 146; 8 Ex. 279.

Quà Comp Act, 1862, "Shareholder," "only means the person who holds the shares by having his name on the register" (per Chitty, J., *Re Wala Wynaad Mining Co*, 52 L. J. Ch. 88; 21 Ch. D. 849; 30 W. R. 915). *Vf*, *Portal* v. *Emmens*, 46 L. J. C. P. 179; 1 C. P. D. 664: *Kippling* v. *Todd*, 47 L. J. C. P. 617; 3 C. P. D. 350: *Burke* v. *Lechmere*, L. R. 6 Q. B. 297; 40 L. J. Q. B. 98.

V. HOLDING: IN HIS OWN RIGHT: *Cp*, STOCKHOLDER.

Stat. Def. — Burghs Gas Supply (Scot) Act, 1876, 39 & 40 V. c. 49, s. 3.

SHARES. — *V.* SHARE: STOCK: STOCKS.

SHAWE. — *V.* GRAVA.

SHEBEEN. — Quà Public Houses Act Amendment (Scot) Act, 1862, 25 & 26 V. c. 35, "Shebeen," means and includes, "every house, shop, room, premises, or place, in which spirits, wine, porter, ale, beer, cyder, perry, or other exciseable liquors, are trafficked in by RETAIL, without a Certificate and Excise License in that behalf" (s. 37). *V.* INN: TRAFFICKING.

SHED. — Arson of "Hovel, Shed, or Fold," s. 1, 7 & 8 V. c. 62, repld s. 11, Malicious Damage Act, 1861, 24 & 25 V. c. 97; a "Shed," there, connotes its popular meaning of a temporary building for stowing away things (*R.* v. *Amos*, 20 L. J. M. C. 103; 5 Cox C. C. 222).

SHEEP. — *V.* CATTLE. It was at one time held that an Indictment for stealing a "Sheep" was not supported by proof of stealing a LAMB (*R.* v. *Loom*, Moody, 160); but that was over-ruled by *R.* v. *Spicer* (1 Den. 82).

SHEEPHEAVES. — "Small plots of pasture often in the middle of a waste . . . the soil of which may or may not be in the lord, but the pasture is certainly a private property, and is leased and sold as such" (Cooke, Inclosure Acts, 44).

SHEEPWALK. — *V.* FOLDCOURSE.

SHEET OF LETTER-PRESS. — As to this phrase in def of "BOOK," Copyright Act, 1842; *V. Hildesheimer* v. *Dunn*, 64 L. T. 452; W. N. (91) 66: *Hollinrake* v. *Truswell*, 1894, 3 Ch. 420; 63 L. J. Ch. 719; 71 L. T. 419: *Clementi* v. *Golding*, 2 Camp. 25; 11 East, 244: *Hime* v. *Dale*, 2 Camp. 27 *n*: *White* v. *Geroch*, 2 B. & Ald. 298; 1 Chitty, 26.

SHEET OF MUSIC. — *V.* COPY.

SHELL FISH. — Quà Sea Fisheries Regn Acts, "Shell Fish," includes, "all kinds of molluscs and crustaceans" (s. 1 (3), 57 & 58 V. c. 26).

Semble, that the right in the public to take shell fish on the sea shore does not include a right to take away shells which are thrown upon the sea shore (*Bagott* v. *Orr*, 2 B. & P. 472).

V. SEA FISH: FISH.

SHERIFF. — *Vh*, Co. Litt. 109 b, 168 a: 1 Bl. Com. 339, 4 Ib. 292: Jacob: 11 Encyc. 530–535.

"Sheriff," quà Bankry Act, 1883, includes "any Officer charged with the EXECUTION of a Writ or other Process" (s. 168), *i.e.* the Officer analogous to the Sheriff: and therefore when the Serjeant-at-Mace, having a levy warrant to execute from the Lord Mayor's Court, finds an Officer in possession under a *fi. fa.*, and (according to custom) entrusts that officer with the warrant to realize the amount leviable thereunder, the Serjeant-at-Mace is the officer to be served with notice under s. 46 (2), Bankry Act, 1883 (*Ex p. Warren, Re Holland*, 54 L. J. Q. B. 320; 15 Q. B. D. 48; 53 L. T. 68; 33 W. R. 572). That latter section is replaced by s. 11, Bankry Act, 1890, under subs. 2 of which neither the Bailiff who levies nor the Man in Possession is the "Sheriff" within the

above def, for neither is "charged with the Execution" of the *ft. fa.* (*Bellyse* v. *M'Ginn*, 1891, 2 Q. B. 227; 65 L. T. 318).

A def similar to that contained in s. 168, Bankry Act, 1883, is provided for Sale of Goods Act, 1893 (*V.* subs. 2, s. 26), and for Stannaries Act, 1887, 50 & 51 V. c. 43 (*V.* s. 2).

Quà Lands C. C. Act, 1845 (*V.* s. 3), and Ry C. C. Act, 1845 (*V.* s. 3) the def includes, "UNDER-SHERIFF, or other legally competent Deputy."

Other Stat. Def. — 23 & 24 V. c. 112, s. 47; 25 & 26 V. c. 93, s. 3. — *Ir.* 34 & 35 V. c. 65, s. 3; 60 & 61 V. c. 20, s. 7.

"Sheriff," as respects Scotland in Acts passed after 1st Jan 1890, includes a Sheriff Substitute (s. 28, Interp Act, 1889); for the prior stat defs, *V.* 27 & 28 V. c. 33, s. 2; 31 & 32 V. c. 101, s. 3; 39 & 40 V. c. 70, s. 51: for defs subsequent to the Interp Act, *V.* 54 & 55 V. c. 32, s. 7; 55 & 56 V. c. 55, s. 4; 56 & 57 V. c. 52, s. 2; 57 & 58 V. c. 40, s. 7. *V.* CHAIRMAN.

"Sheriff of Chancery," "Sheriff Clerk of Chancery"; Stat. Def., 31 & 32 V. c. 101, s. 3.

"Sheriff's Small Debt Court," means, the Court established under Small Debt (Scot) Act, 1837, 7 W. 4 & 1 V. c. 41; *e.g.* s. 3, 40 & 41 V. c. 28.

"Sheriff Substitute," quà Small Debt (Scot) Act, 1837, includes, Steward Substitute (s. 37).

"Offence" by Sheriff; *V.* OFFENCE.

"Officer of a Sheriff"; *V.* OFFICER, p. 1327.

SHERIFF CLERK. — In Acts relating to Scotland, "Sheriff Clerk" includes Steward Clerk (s. 7, Interp Act, 1889).

Vf, 55 & 56 V. c. 17, s. 3; 58 & 59 V. c. 36, s. 7.

SHERIFFDOM. — In Acts relating to Scotland, "Sheriffdom" includes a Stewartry (s. 7, Interp Act, 1889). *Vf*, COUNTY: SHIRE.

SHERRY. — *V.* "Foreign Wine," sub FOREIGN.

SHEW. — *V.* SHOW, and following defs.

SHEWN. — *V.* SHOWN.

SHIFTING CLAUSE. — *Vh*, Butler's note to Co. Litt. 327 a: Vaizey, 1262: *Fleeming* v. *Howden*, L. R. 1 Sc. & D. App. 372: *Buckhurst Peerage*, 2 App. Ca. 1: Such a clause is to be construed, "if not strictly, at all events not so as to carry it beyond the purpose for which it was designed" (per Turner, L. J., *Langdale* v. *Briggs*, 8 D. G. M. & G. 391; 26 L. J. Ch. 27: *Vf*, *Hearle* v. *Hicks*, 8 Bing. 475; 1 Cl. & F. 20; 6 Bligh, N. S. 37: *Leslie* v. *Rothes*, 1894, 2 Ch. 499; 63 L. J. Ch. 617; 71 L. T. 134). *Cp*, FORFEITURE.

SHIFTING LIEN.—*V.* IN OR UPON: *Va*, LIEN.

SHIFTING USE.—*V.* SPRINGING.

SHIP.—"Ship," technically taken, designates a particular species of SEA-GOING vessel, square-rigged throughout, which carries three masts with tops and yards to each of them. It has also a generic sense, as designating a vessel of burden, irrespective of rig, and without regard to the particular means of locomotion (1 Arn., 5 ed., 18, 19. *Vf, Hill* v. *Patten*, 8 East, 375: *Forbes* v. *Aspinall*, 13 East, 323).

Quà Mer Shipping Acts, "'Ship' shall include every description of VESSEL used in NAVIGATION, not propelled by oars" (s. 2, Mer Shipping Act, 1854, replaced and re-enacted by s. 742, Mer Shipping Act, 1894). In *Re Ferguson* (40 L. J. Q. B. 110; L. R. 6 Q. B. 291; 19 W. R. 746), Blackburn, J. (pointing out that "include" in that def did not connote an exclusive application), said,—"Whether a ship is propelled with oars or not, she is still a ship. Most small vessels use something of the kind to propel them. The vessels which came over in the Armada, with perhaps a thousand men on board, were rowed by hundreds of slaves. Yet no one could say they were not Ships. I can only suggest that 'Every vessel that substantially goes to SEA is a Ship.' I do not mean to say that every little boat that goes a mile or two outside a harbour is a ship, but that where it is really and substantially the business of a vessel to go to SEA, it is a ship. If the absence of oars were the test of a ship, this would take in the case of river steamers which never go to sea. Whenever the vessel is substantially a SEA-GOING vessel, whether it be decked or not decked, it would be a Ship," within the meaning of the Merchant Shipping Act. Accordingly, in that case it was held that a Coble of 10 tons burthen, 24 feet in length, decked forward only, with two moveable masts and a sail for each, and which coble was accustomed to go 20 miles out to sea, and was usually under sail, but was sometimes propelled by oars, was a "Ship." But a vessel to be a "Ship" within the def, need not, necessarily, have been to sea. A launched unfinished vessel intended for navigation is a "Ship" (*The Andalusian*, 46 L. J. P. D. & A. 77; 2 P. D. 231; 3 Ib. 182); so is a Coble (*Re Ferguson*, sup: *Ex p. Hutchinson*, W. N. (71) 30); so, a Mud-Hopper, used for dredging purposes, not fitted with oars or other means of propulsion, and generally moved by towing, is a "Ship" (*The Mac*, 51 L. J. P. D. & A. 81; 7 P. D. 126). But a small electric Steam Launch, drawing 3 feet and used for pleasure on the artificial foreshore sea-water lake at Southport, is not such a "Ship" because it is not "USED in Navigation" (*R.* v. *Southport*, 62 L. J. M. C. 47; nom. *Southport* v. *Morris*, 1893, 1 Q. B. 359; 68 L. T. 221; 41 W. R. 382; 57 J. P. 231). So, a stationary Beacon, *e.g.* a Gas Float, is not a "Ship *or* Boat" within s. 458, Mer Shipping Act, 1854, repld s. 546, Mer Shipping Act, 1894 (*The Gas Float Whitton*, cited WRECK, towards end: *V.* SALVAGE).

Note: the Mer Shipping Act, 1854, was, generally speaking, only applicable to BRITISH SHIPS; *Vh, Union Bank of London* v. *Lenanton*, 47 L. J. C. P. 409; 3 C. P. D. 243: SHIPS AND VESSELS. *Sv, Chalmers* v. *Scopenich*, 1892, 1 Q. B. 735; 61 L. J. M. C. 117; "ANY Ship," s. 111, Mer Shipping Act, 1894, includes a Foreign, as well as a British, ship (*R.* v. *Stewart*, 1899, 1 Q. B. 964; 68 L. Q. B. 582; 80 L. T. 660; following *Hart* v. *Alexander*, 36 Sc. L. R. 64: *Va, The Mecca*, inf).

A def like that in the Mer Shipping Acts has been provided for "Ship" quà and by the following Acts; —

Admiralty Court Act, 1861, 24 & 25 V. c. 10; *V.* s. 2:

Factory and Workshop Act, 1901; *V.* s. 104:

Merchant Shipping (Liability of Shipowners) Act, 1898; 61 & 62 V. c. 14; *V.* s. 4.

Quà Court of Admiralty (Ir) Act, 1867, 30 & 31 V. c. 114, the def is "any description of Vessel used in Navigation, not *exclusively* propelled by oars" (s. 2); whilst in Explosives Act, 1875, 38 & 39 V. c. 17, it is, "every description of Vessel used in *Sea* Navigation, whether propelled by oars *or otherwise*" (s. 108), a def (minus the word "sea") adopted for Petroleum Act, 1871, 34 & 35 V. c. 105 (s. 2).

But quà P. H. Scotland Act, 1897, the def is wider still, and, there, "'Ship' includes, any sailing or steam ship, vessel, or boat, not belonging to Her Majesty or any Foreign Government" (s. 3); quà Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73, the def is, "every description of ship, boat, or other floating craft" (s. 7); and, *semble*, the climax is reached by that for Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, where the def of "Ship" includes, "any description of boat, vessel, floating battery, or floating craft; also any description of boat, vessel, or other craft or battery, made to move either on the surface of, or under, water, or sometimes on the surface of and sometimes under water" (s. 30).

Other Stat. Def. — Naval Prize Act, 1864, 27 & 28 V. c. 25, s. 2; Post Office (Offences) Act, 1837, 1 V. c. 36, s. 47; Seaman's Fund Winding-up Act, 1851, 14 & 15 V. c. 102, s. 2.

"Ship," and also "Vessel," in the County Courts Admiralty Jurisdiction Acts, 1868 and 1869 (31 & 32 V. c. 71; 32 & 33 V. c. 51), have the same meaning as "Ship" in the Merchant Shipping Act, 1854, and do not give jurisdiction to try collisions between barges propelled by oars only (*Everard* v. *Kendall*, 39 L. J. C. P. 234; L. R. 5 C. P. 428). *V.* DAMAGE: DAMAGE BY COLLISION.

The Bills of Sale Acts are not *in pari materiâ* with the Merchant Shipping Acts, and the exemption from Registration of an Assignment of a "Ship or Vessel" under the former Acts (s. 4, Bills of S. Act, 1878), is not confined to such ships or vessels as require registration under the Merchant Shipping Acts (*Union Bank of London* v. *Lenanton*, 47 L. J. C. P. 409; 3 C. P. D. 243: *Gapp* v. *Bond*, 19 Q. B. D. 200; 56 L. J.

Q. B. 438; 57 L. T. 437; 35 W. R. 683; 3 Times Rep. 621); *thlc* shows that the exemption, quà Bills of Sale, includes a dumb barge propelled by oars.

A Ship may cease to be a Ship, *e.g.* by being converted into a Coal-hulk (*European & Australian Royal Mail Co* v. *P. & O. Co*, 14 L. T. 704: *vthc*, *The Gas Float Whitton*, sup). *Semble*, a ship temporarily sunk remains a "Ship" quà an Insrce against "Collision with any Ship" (*Chandler* v. *Blogg*, cited COLLISION).

"Ship," by itself, is, probably, equivalent to "Ship and its APPURTENANCES" (per Abbott, C. J., *Gale* v. *Laurie*, 5 B. & C. 156: per Wills, J., *Re Salmon and Woods, Ex p. Gould*, 2 Morr. 137). Whether that is precisely so or not, a liability measured by the value of the "Ship" in question (*Gale* v. *Laurie*, sup), or a mortgage of a "Ship" (*Re Salmon and Woods*, sup: *Coltman* v. *Chamberlain*, 59 L. J. Q. B. 563; 25 Q. B. D. 328; 39 W. R. 12), includes everything without which it would not be prudent to send the ship to sea, *e.g.* fishing stores and gear, spare sails, duplicate anchors, steering apparatus, lights for lighting the vessel, &c.

"Ship," quà a Marine Insrce, includes, the OUTFIT of a Ship, *e.g.* coals, stores, and provisions (*Forbes* v. *Aspinall*, 13 East, 325: *Brough* v. *Whitmore*, 4 T. R. 210: *The Glenlivet*, 1893, P. 172). *Cp*, HULL: *V.* FURNITURE.

"Ship and Equipment," quà Foreign Enlistment Act, 1870, 33 & 34 V. c. 90, includes, "a ship and everything in or belonging to a ship" (s. 30).

"Ship" will sometimes be read as "Owners of the ship," *e.g.* damage to "Ship" by COLLISION, includes damage which the owners have sustained by her detention as well as her injury (*Heard* v. *Holman*, 34 L. J. C. P. 239; 19 C. B. N. S. 1; 12 L. T. 455; 13 W. R. 745).

"ANY Ship," ss. 4, 5, 6, 7 and 10, Admiralty Court Act, 1861, 24 & 25 V. c. 10, means, any ship anywhere, whether British, Colonial, or Foreign (*The Mecca*, 1895, P. 95; 64 L. J. P. D. & A. 40; 71 L. T. 711; 43 W. R. 209).

"Arrived Ship"; *V.* ARRIVE.

"Ship of a FOREIGN State," quà Mail Ships Act, 1891, 54 & 55 V. c. 31, "means, a ship entitled to sail under the flag of a Foreign State" (s. 9).

"Her Majesty's Ships"; *V.* ONE, towards end: "Any of Her Majesty's Ships of War," *V.* 27 & 28 V. c. 25, s. 2: "Ship of War," *V.* 27 & 28 V. c. 24, ss. 2, 3.

"Ship *laden* with a GRAIN cargo"; Stat. Def., Mer Shipping Act, 1894, s. 456.

"Ship lost or not lost"; *V.* LOST OR NOT LOST.

"Ship stranded, sunk, or burnt"; *V.* BURN: STRANDING.

"Ship trading"; *V.* TRADING.

"Agreement made in relation to the *Use or Hire* of Any Ship,"

s. 2 (1), 32 & 33 V. c. 51, includes a Charter-Party (*The Alina*, 5 Ex. D. 227), and also a Bill of Lading (*Pugsley* v. *Ropkins*, 1892, 2 Q. B. 184; 61 L. J. Q. B. 645; 40 W. R. 596; 67 L. T. 369). *V.* ADMIRALTY CAUSE.

V. BRITISH SHIP: COASTING VESSEL: COLLISION: COMMAND: DISBURSEMENTS: EMIGRANT: FOREIGN: GABBERT: GOOD SHIP: HOME-TRADE SHIP: PASSENGER SHIP: SEA-GOING: SHIPS AND VESSELS: STEAMSHIP: UNSAFE: VESSEL.

TO SHIP. — Dues on Timber "shipped or unshipped within the Harbour or River"; held, that to attach a tow-rope to a log of timber, or a number of logs loosely connected, at one of the ends for the purpose of towing, is not to "ship" the Timber; and that to cast off the tow-rope is not to "unship" it: qy, whether a Raft of Logs so constructed as to be capable of being navigated, can be said to be "unshipped" when, on reaching its destination, it is taken to pieces and landed (*Clyde Nav.* v. *Laird*, 8 App. Ca. 658).

V. SHIPPED: UNSHIPPING.

SHIP DAMAGE. — In a Charter-Party between the East India Company and the owners of a ship taken into their service was the following clause, "But nevertheless the said part owners shall not be charged with any sum of money in respect of goods damaged on board the said ship, either in her outward or homeward-bound voyage, but such as shall, by the condition and appearance of the package thereof, or by some other reasonable proof, appear to be Ship Damage"; part of the homeward-bound cargo was damaged in a storm; held, that this was not "Ship Damage," within the meaning of the clause, which is imputable only to such damage as happens by the insufficiency of the ship, or the neglect of those who have charge of her (*East India Co* v. *Tod*, 1 Brown P. C. 405).

SHIP LETTER. — Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "Ship Letter," means, "a Letter transmitted inwards or outwards over seas by a Vessel not being a PACKET Boat" (s. 47).

SHIP MONEY. — "Ship Money" (s. 2, 16 Car. 1, c. 14) was an imposition charged on the ports, towns, cities, boroughs, and counties, of this realm to provide and furnish ships for the King's service (Preamble, Ib.). In *R.* v. *Hampden* (3 State Trials, 825) it was decided "that when the good and safety of the Kingdome in generall is concerned and the whole Kingdome in danger, the King might by Writ under the Great Seale of England command all the Subjects of this his Kingdome at theire charge to provide and furnish such number of Ships with Men Victuals and Munition, and for such time as the King should thinke fit, for the defence and safegard of the Kingdome from such danger and

perill, and that by Law the King might compell the doing thereof in case of refusall or refractarinesse; and that the King is the sole Judge both of the danger and when and how the same is to be prevented and avoided" (Preamble, 16 Car. 1, c. 14); for "the Dominion of the Sea, as it is an antient and undoubted Right of the Crown of England, so it is the best security of the land; it is impregnable so long as the sea is well guarded. . . . The Wooden Walls are the best walls of this kingdom" (per Coventry, L. K., *R.* v. *Hampden*, 3 State Trials, 837, 838). But that decision and the prior extrajudicial opinions, "were and are contrary to and against the Laws and Statutes of this Realm, the right of property, the libertie of the Subjects, former resolutions in Parliament, and the Petition of Right made in the third yeare of the Reign of his Majestie that now is" (s. 2, 16 Car. 1, c. 14).

SHIP PAPERS. — Quà Naval Prize Act, 1864, 27 & 28 V. c. 25, "'Ship Papers,' includes, all books, passes, sea briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings, delivered up or found on board a captured ship" (s. 2).

V. SHIPPING DOCUMENTS.

SHIPBUILDING YARD. — By s. 93 and Sch 4, Part 2 (24), Factory and Workshop Act, 1878, repld Sch 6, Part 2 (25), Factory and Workshop Act, 1901, "Non-Textile Factories and Workshops," includes "'Shipbuilding Yards,' *i.e.* any premises in which any ships, boats, or vessels, used in NAVIGATION, are made, finished, or repaired"; "the legislature contemplated by that expression premises in which something like the BUSINESS of building or repairing ships was being carried on, and not that the repair of a single ship should constitute the whole premises where it is being carried on a 'Shipbuilding Yard'" (per Romer, L. J., *Spencer* v. *Livett*, 69 L. J. Q. B. 341). Accordingly, it was there held that a ship under repair in a DOCK, is not a "FACTORY" within s. 7 (2), Workmen's Comp Act, 1897 (1900, 1 Q. B. 498; 69 L. J. Q. B. 338; 82 L. T. 75; 48 W. R. 323; 64 J. P. 196). *Vf*, subs. 3 of the latter section.

SHIPMENT. — *V. Caffin* v. *Aldridge*, cited CARGO.

"Shipment," "For Shipment," is equivalent to "To be shipped"; *V.* SHIPPED.

"Shipment by Steamer or Steamers," "means, that if a considerable portion of the goods under the contract in question are shipped by steamer within the time, that is to be a Shipment which will satisfy the contract, and one which the purchaser cannot reject because another portion is not shipped in time" (per Mellish, L. J., *Brandt* v. *Lawrence*, 46 L. J. Q. B. 237; 1 Q. B. D. 344). *Vf*, *Reuter* v. *Sala*, 4 C. P. D. 239.

Goods sold "for Shipment" to a named place, means a real shipment; therefore, where alkali was sold "for shipment to France," and the buy-

ers directed their carrying vessel to touch at Treport but to carry on the cargo to London, that was merely going through the form of a shipment to France, and was a breach of the contract (*Berk* v. *Day*, 13 Times Rep. 475).

"Shipment *during the Season*" to Cronstadt; held to mean, "not the average or ordinary time at which the River Neva was closed by ice (if, indeed, it were possible to ascertain it) but, the actual time at which, in that particular year, it was closed" (*Lessing* v. *Horsley*, 7 Times Rep. 352).

V. SHIP.

SHIPOWNER. — Quà Part 7, Mer Shipping Act, 1894, "'Shipowner,' includes the MASTER of the ship, and every other person authorized to act as Agent for the OWNER, or entitled to receive the freight, demurrage, or other charges, payable in respect of the ship" (s. 492, adopted from s. 66, 25 & 26 V. c. 63).

SHIPPED. — "To be shipped," means, to be put on board (*Bowes* v. *Shand*, or *Shand* v. *Bowes*, 46 L. J. Q. B. 561; 2 App. Ca. 455, distinguishing *Alexander* v. *Vanderzee*, L. R. 7 C. P. 530: *Wancke* v. *Wingren*, 58 L. J. Q. B. 519. *Vh*, Benj. 569).

"Shipped on board"; *V.* RECEIVED.

"Shipped *for Exportation*"; *V.* EXPORTATION.

"Shipped *for Sale*"; *V. Witham* v. *Vane*, W. N. (81) 79.

"Goods shipped"; *V. Ribble Nav. Co* v. *Hargreaves*, 25 L. J. C. P. 97; 17 C. B. 385.

V. ON BOARD: TO SHIP.

SHIPPER. — The "Shipper" of goods, "means, the man who puts the goods into the vessel, with the intention of taking them to their destination" (per Jervis, C. J., *Ribble Nav. Co* v. *Hargreaves*, 25 L. J. C. P. 99; 17 C. B. 405).

SHIPPER'S RISK. — *V.* SHIP'S EXPENSE.

SHIPPING DOCUMENTS. — *V. Tamvaco* v. *Lucas*, 30 L. J. Q. B. 234; 31 Ib. 296; 1 B. & S. 185; 3 Ib. 89: *North of England Oil Cake Co* v. *Archangel Insrce*, L. R. 10 Q. B. 254; 44 L. J. Q. B. 121.

"All the Shipping Documents"; *V. Cederberg* v. *Borries*, cited ALL, at end.

V. SHIP PAPERS.

SHIPPING NECESSARIES. — *V.* NECESSARIES: DISBURSEMENTS.

SHIPPING PURPOSES. — Quà Harbours and Passing Tolls, &c, Act, 1861, 24 & 25 V. c. 47, "Shipping Purposes," includes, "the constructing or doing any work or thing that conduces to the safety or con-

venience of ships, or that facilitates the shipping or unshipping of goods, and the management and superintending the same; and shall also include, the maintenance of any lifeboat, or other means of preserving life in case of shipwreck" (s. 2).

SHIPPING VALUE. — In a Marine Insrce, "Shipping Value," "includes, not only the cost but, the premiums of insurance" (per Blackburn, J., *Anderson* v. *Morice*, L. R. 10 C. P. 614).

SHIPS AND VESSELS. — The Order in Council of 18th Feb 1854, exempted from compulsory pilotage "*Ships and Vessels* trading to ports between Boulogne and the Baltic on their outward passages"; *British* ships and vessels are alone comprised in that exemption (*The Vesta*, 51 L. J. P. D. & A. 25; 7 P. D. 240).

V. SHIP: VESSEL.

SHIP'S EXPENSE. — "Goods to be transhipped and forwarded at Ship's Expense"; *V. Stuart* v. *British & African Steam Nav. Co*, 32 L. T. 257: SHIP'S RISK: OWNER'S RISK.

SHIP'S HUSBAND. — A Ship's Husband — who is frequently but not necessarily a part owner — is an Agent "to do what is necessary to enable the Ship to prosecute her voyage and earn freight" (*Barker* v. *Highley*, 32 L. J. C. P. 270; 15 C. B. N. S. 27), and generally to act for the owners "in regard to all the affairs of the ship in the Home Port" (Story on Agency, s. 35). *Vh*, Abbott, 100 *et seq*: Carver, s. 36.

As such, a Ship's Husband is not a SEAMAN.

SHIP'S RISK. — A Charter-Party provided that the cargo should be taken from the shore to the ship "At the Ship's Risk"; in the course of transit of the cargo from the shore to the ship a portion of the cargo was lost, not by the negligence of the shipowner; the Charter-Party contained the usual clause excepting loss occasioned by "Perils of the Sea": in an action against the shipowner to recover the value of the portion of the cargo lost; held, that the meaning of "At the Ship's Risk," was to place the goods during their transit from the shore to the ship in the same position as if they were on board; and that, as the cargo was lost by the Perils of the Sea, the loss came within that exception, and the action could not be maintained (*Nottebohm* v. *Richter*, 56 L. J. Q. B. 33; 18 Q. B. D. 63; 35 W. R. 300; 3 Times Rep. 30).

Cp, Land Risk, sub SEA INSURANCE.

V. SHIP'S EXPENSE: OWNER'S RISK: RISK.

SHIPWRECK. — *V.* WRECK.

SHIRE. — *V.* COUNTY.

Quà Berwickshire Courts Act, 1853, 16 & 17 V. c. 27, "Shire," or "SHERIFFDOM,"-includes "Commissariat" (s. 1).

SHOOT. — To "shoot at" a person, ss. 11 and 12, 9 G. 4, c. 31, repld s. 18, 24 & 25 V. c. 100, may be done by presenting a loaded gun barrel at him and discharging it by striking the percussion cap on it with some hard substance, *e.g.* a pocket knife (*R.* v. *Coates*, 6 C. & P. 394).

Attempt to shoot; *V.* ATTEMPT.

Cp, LOADED ARM.

SHOOTING. — *V.* FOWLING: HUNTING.

SHOP. — The word "Shop" implies a place where a *retail trade* is carried on; a Blacksmith's shop is rather a WAREHOUSE than a Shop (*R.* v. *Chapman*, 7 J. P. 132), so of a Carpenter's shop (per Alderson, B., *R.* v. *Sanders*, 9 C. & P. 79).

"In order to constitute a *Shop*, there must be some structure of a more or less permanent character" (per Mellor, J., *Hooper* v. *Kenshole*, 46 L. J. M. C. 162; 2 Q. B. D. 127: *Vf*, PLACE, p. 1484); it must be "something more than a mere place for sale; it imports a place for storing also, where the commodities admit of storing" (per Mellor, J., *Pope* v. *Whalley*, 34 L. J. M. C. 80; 6 B. & S. 303: *Va*, *Llandaff Co* v. *Lyndon*, 30 L. J. M. C. 105; 8 C. B. N. S. 515: *Fearon* v. *Mitchell*, 41 L. J. M. C. 170; L. R. 7 Q. B. 690: *McHole* v. *Davies*, 45 L. J. M. C. 30; 1 Q. B. D. 59). These cases were on the phrase "Own Shop" as used in the exception to s. 13, Markets and Fairs Clauses Act, 1847, 10 V. c. 14, and they are here referred to thereon; but they seem of general application. A vessel moored in a canal is not a "Shop" within the exception (*Wiltshire* v. *Baker*, 31 L. J. M. C. 10, *n*; 5 L. T. 355); but a wooden shed affixed to a house and supported on wooden posts is within it (*Ashworth* v. *Heyworth*, 10 B. & S. 309; L. R. 4 Q. B. 316; 38 L. J. M. C. 91: *Va*, *Wiltshire* v. *Willett*, 31 L. J. M. C. 8; 11 C. B. N. S. 237; 5 L. T. 355). *Vf*, MARKET OVERT.

If a photographer takes a private house on the ground floor of which he displays and sells photographs, albums, or such like things, he converts the house into a shop, even though he make no structural alteration in the building (*Wilkinson* v. *Rogers*, 2 D. G. J. & S. 62; 12 W. R. 119, 284: *V.* CONVERT).

"A Tavern would not come within the definition of 'Shop,'" in an exception from a covenant requiring a property generally to be used for private houses (per Huddleston, B., *Coombs* v. *Cook*, Cab. & El. 75: *Vf*, *Hall* v. *Box*, 18 W. R. 820: Dart, 138: *Cp*, *Savoy Hotel Co* v. *London Co. Co.* inf).

Conversely, although LICENSED PREMISES "might, for some purposes, in strictness be called a 'Shop,' because goods in the shape of beer, spirits, &c, are sold therein by retail, it is not, necessarily, a 'Shop' within the House Tax Acts" (per Ld Brampton, *Grant* v. *Langston*, 69 L. J. P. C. 73, also cited HOUSE, p. 893).

A Market Stall is not a "Shop" within s. 30, Municipal Corporations

(Ir) Act, 1840, 3 & 4 V. c. 108 (*Lovell* v. *Callaghan*, 1894, 2 I. R. 346).

There is no law in Scotland, — as there certainly is none in England, — whereby, on a Lease of a "Shop," there is an inherent prohibition against the use of it occasionally for the sale of goods by Public AUCTION (*Keith* v. *Reid*, L. R. 2 Sc. & D. App. 39).

"Shop for the sale of any Goods or Commodities other than Foreign Wine," s. 3, Refreshment Houses Act, 1860, 23 & 24 V. c. 27, includes the premises of a Brewer who has a Spirit Dealer's Retail License, or (probably) who has a Brewer's License to sell beer WHOLESALE (*R.* v. *Bishop*, 50 J. P. 167).

Quà *Pawnbrokers Act*, 1872, 35 & 36 V. c. 93, "'Shop,' includes, dwelling-house and warehouse, or other place of business, or place where business is transacted" (s. 5). *Vf*, PAWN.

Quà *Shop Hours Act*, 1892, 55 & 56 V. c. 62, "Shop," "*means*, Retail and Wholesale shops, markets, stalls, and warehouses, in which Assistants are employed for HIRE; and *includes*, Licensed PUBLIC HOUSES and REFRESHMENT HOUSES of any kind" (s. 9). Within that def, a Newspaper Stall may, for some purposes, be a "Shop" (*Smith* v. *Kyle*, 71 L. J. K. B. 16); and an Hotel, even of such a superior character as the Savoy Hotel, London, is a "Public House" (*Savoy Hotel Co* v. *London Co. Co.*, 1900, 1 Q. B. 665; 69 L. J. Q. B. 274; 82 L. T. 56; 48 W. R. 351; 64 J. P. 262: *Cp*, *Coombs* v. *Cook*, sup). "IN OR ABOUT a Shop," s. 3, Ib., means, in or about a shop or its business; therefore, it is an offence against this section to employ a YOUNG PERSON more than 74 hours a week, whether in a shop or about its business (*Collman* v. *Roberts*, 1896, 1 Q. B. 457; 65 L. J. M. C. 63; 74 L. T. 198; 44 W. R. 445; 60 J. P. 184).

"Shop," s. 3, 24 & 25 V. c. 97, is not, necessarily, a completed building (*R.* v. *Manning*, cited BUILDING, p. 228).

"Open Shop"; *V.* KEEP OPEN.

V. OFFICE, p. 1325: *Cp*, BEER-HOUSE with BEER-SHOP.

SHOP FRONT. — A condition in a letting agreement related to a "Shop Front"; held, that that phrase was not explainable by another document relating to the same premises (*Doe* d. *Nash* v. *Birch*, 1 M. & W. 402; 5 L. J. Ex. 185).

"Shop Front," s. 26 (2, 5), Metropolitan Bg Act, 1855, repld s. 73 (3, 8), London Bg Act, 1894; *V. St. Mary, Islington* v. *Goodman*, 58 L. J. M. C. 122; 23 Q. B. D. 154; 61 L. T. 44.

SHOPKEEPER. — *V.* MERCHANT.

SHORE. — The Shore of the Sea "is that ground that is between the *ordinary* high-water and low-water mark. This doth, *primâ facie*

and of Common Right, belong to the King, both in the Shore of the SEA and in the Shore of the Arms of the Sea" (Hale, De Jure Maris, ch. 4). *Vf*, Callis, 54. BANK: CREEK: MARETTUM.

"The rule of the Civil Law was, *Est autem littus maris quatenus hybernus fluctus maximus excurrit.* This is certainly not the doctrine of our law. All the authorities concur in the conclusion that the right (of the Crown to the Sea-shore) is confined to what is covered by 'Ordinary' tides. By *hybernus fluctus maximus* is clearly meant Extraordinary high tides, though, speaking with physical accuracy, the winter tide is not, in general, the highest. Land covered only by these extraordinary tides is not what is meant by the Sea Shore" (per Cranworth, C., *A-G.* v. *Chambers*, 23 L. J. Ch. 666; 4 D. G. M. & G. 206; 2 W. R. 636). The phrase "Ordinary Tides," in this connection, does not include the Spring tides at the Equinox, although happening in the usual order of nature; it means, those tides which are of common occurrence (per Alderson, B., and Maule, J. *Ib.*).

"Ordinary Tides, or Nepe Tides," are those "which happen between the full and change of the Moon; and this is that which is properly *Littus maris*, sometimes called MARETTUM, sometimes WARETTUM" (Hale, De Jure Maris, ch. 6), and the precise meaning of that rule is, that the *medium filum* of all tides throughout the year, — including the Spring tides and the ordinary Equinoctial tides, — gives the limit, in the absence of usage, to what is the Sea Shore (*A-G.* v. *Chambers*, sup: *Lowe* v. *Govett*, 1 L. J. K. B. 224; 3 B. & Ad. 863). *Vf*, Hall on the Sea Shore, 8 *et seq.*

Cp, FORESHORE.

"'Shore,' denotes that specific portion of the Soil by which the Sea is confined to certain limits. That term is wholly inapplicable to the grant of a Privilege or Easement; it, of necessity, comprehends the soil itself. . . . The Crown, by the grant of the 'Sea Shore,' would convey, not that which at the time of the grant is between the high and low water marks, but that which from time to time shall be between these two termini. Where the grantee has a freehold in that which the Crown grants, his freehold shifts as the Sea recedes or encroaches" (per Bayley, J., *Scratton* v. *Brown*, 4 B. & C. 496, 498).

"Shore," quà Thames Conservancy Act, 1894, "means, the shores of the Thames so far as the tide flows and re-flows between high and low water marks at ordinary tides" (s. 3). *V.* BED.

In the absence of evidence to the contrary, the Shore is EXTRA-PAROCHIAL (*R.* v. *Musson*, 27 L. J. M. C. 100; 8 E. & B. 900). Modern usage is admissible to show that it is parcel of an adjoining MANOR (*Beaufort* v. *Swansea*, 3 EX. 413).

"Shore RISK"; *V.* INTERIOR.

V. KELP-SHORE: ON SHORE: ON THE SHORE: STRAND.

SHORT BLAST. — "Short Blast," means, "a blast of about one second's duration" (Art. 28, Regns for Preventing Collisions at Sea, 1897); a "Prolonged Blast" is "a blast of from 4 to 6 seconds' duration" (Art. 15, Ib.).

SHORT INTEREST. — In a Marine Insrce, "'Short Interest' means, no more than a Short Profit on the Cargo to the extent of the whole sum insured" (per Ellenborough, C. J., *Eyre* v. *Glover*, 16 East, 220).

SHORT NOTICE. — "'Short Notice of Trial,' in any Order or Consent, shall be taken to mean, 4 days" (s. 103, Com. Law Pro. Amendment Act, Ir., 1853, 16 & 17 V. c. 113); a def of general acceptation. So, quà R. S. C., "'Short Notice of Trial' shall be 4 days notice, unless otherwise ordered" (R. 14, Ord. 36): 10 days is the ordinary notice (Ib.), except under Ord. 18 *a*, when the notice is 21 days (R. 2).

SHORT TITLE. — It is believed that the modern practice of giving a short descriptive title to an Act of Parliament began with the Clauses Consolidation Acts of 1845. The Short Titles of existing Acts prior thereto, and of subsequent Acts which have not in themselves a short title, are provided by The Short Titles Act, 1896.

SHOW. — "Show his Ticket"; *V.* DELIVER.

SHOW A LIGHT. — To "show from her stern . . . a White, or Flare-up, Light," by a Ship which is being OVERTAKEN, Art. 10, Regns for Preventing Collisions at Sea, 1897, connotes that the flashing of a light (a thing done on a sudden) is sufficient; but a fixed light may also be sufficient (per Hannen, P., *The Stakesby*, 59 L. J. P. D. & A. 72; 15 P. D. 166; 63 L. T. 115; 39 W. R. 80: *Svth*, *The Breadalbane*, 7 P. D. 186; 46 L. T. 204, *The Pacific*, 53 L. J. P. D. & A. 67; 9 P. D. 124, and *The Imbro*, 58 L. J. P. D. & A. 49; 14 P. D. 73; 60 L. T. 936; 37 W. R. 559). If a Flash Light is used, "one short exhibition is not sufficient for the safety of the vessels; the light should be shown from time to time so long as the vessel in which it is shown continues to be an Overtaken one" (per Hannen, P., *The Essquibo*, 13 P. D. 53; 58 L. T. 596). "Where a Fixed Light is permissible, care must be taken that it shall not be visible over the space where the side lights can be seen" (Abbott, 14 ed., 931, citing *The Main*, cited OVERTAKEN: *The Imbro*, sup: *The Palinurus*, 57 L. J. P. D. & A. 21; 13 P. D. 14; 58 L. T. 533).

SHOW CAUSE. — Where a party has to "Show Cause," that, by necessary implication, allows the other side to answer (per Brett, L. J., *Davis* v. *Spence*, 1 C. P. D. 721: *Girvin* v. *Grepe*, 49 L. J. Ch. 63; 13 Ch. D. 174: *Svthlc*, for cases to the contrary).

"Cause Shown"; *V.* CAUSE: SHOWN.

SHOW OF BUSINESS. —*V.* OUTWARD MARK.

SHOW OF HANDS. —*V.* VOTE.

SHOWN. — Primâ facie evidence, — that a child is "not shown" to be unfit to be vaccinated, &c, s. 31, 30 & 31 V. c. 84, — is given by proving that there has been no Notification of the vaccination (*Over* v. *Harwood*, 1900, 1 Q. B. 803; 69 L. J. Q. B. 272; 48 W. R. 608; 64 J. P. 326).

V. SHOW CAUSE.

SHRIMPS. —*V.* SEA FISH.

SI CONTINGAT. —*V.* IF.

SICA. — "'Sica, Sicha,' a DITCH" (Jacob).

SICH. — "Is a little current of water which is dry in summer; a water furrow or gutter" (Jacob).

SICK. — A Bequest for "Sick, Aged, and Impotent Persons," held to indicate that Hospital, not Educational, purposes were intended (*A-G.* v. *Northumberland*, 5 Times Rep. 237, 719).

Persons "not under 50 years of age" are "*aged*" within 43 Eliz. c. 4 (*Re Wall, Pomeroy* v. *Willway*, 42 Ch. D. 510; 59 L. J. Ch. 172; 61 L. T. 357). *Vf, Thompson* v. *Corby*, 27 Bea. 649; 8 W. R. 267: *Re Dudgeon*, 74 L. T. 613: *Browne* v. *King*, 17 L. R. Ir. 454.

A bequest for pensioning "Old and Worn-out Clerks" of a firm, is a good CHARITY; it comes within both of the words "aged" and "impotent" in 43 Eliz. c. 4 (*Re Gosling*, 48 W. R. 300; 16 Times Rep. 152; W. N. (1900) 15).

SICKNESS. — "Sickness," means, disease (per Campbell, C. J., *R.* v. *Huddersfield*, 26 L. J. M. C. 171); therefore, pregnancy is not, of itself, "Sickness" within s. 4, Poor Removal Act, 1846, 9 & 10 V. c. 66 (*S. C.* 26 L. J. M. C. 169; 7 E. & B. 794); but a woman may be "ill" from pregnancy, *V.* ILL.

Incurable Blindness is such a "Sickness" (*R.* v. *Bucknell*, 3 E. & B. 587; 2 W. R. 427; 23 L. T. O. S. 142); but is Lunacy such a "Sickness"? *Vth, R.* v. *Manchester*, 26 L. J. M. C. 1; 6 E. & B. 919.

Lunacy is "Sickness" within the relief clause in the Rules of a FRIENDLY SOCIETY (*Burton* v. *Eyden*, 42 L. J. M. C. 115; L. R. 8 Q. B. 295; 37 J. P. 693, in *whc* Archibald, J., said, "There can be no doubt that Insanity is a species of Sickness": *Va, R.* v. *Swindon*, 42 J. P. 407).

Inability to work from mere old age, is not "Sickness" (*Dunkley* v. *Harrison*, 51 J. P. 227).

"Sickness, or other SUFFICIENT CAUSE," enabling a County Court Judge to suspend or stay judgment, order, or execution, s. 153, Co. Co. Act, 1888, connotes that the "other Sufficient Cause" must be "an external cause which would, for instance, prevent the debtor from exercising his industry" (per Wills, J., *Attenborough* v. *Henschell*, 1895, 1 Q. B. 833; 64 L. J. Q. B. 255; 72 L. T. 192; 43 W. R. 283; 59 J. P. 150); that case decides that there must be something more than a mere inability to pay.

"Permanent Sickness"; *V.* PERMANENT.

V. DISEASE: ILLNESS: CAUSED BY: UNSOUND MIND: 11 Encyc. 549–551.

SIDE. — "No doubt, in a certain context, the word 'Side' might be so used as to be shown, by that context, to be contra-distinguished from the top, or bottom, or end, of a subject of quadrilateral or any other figure. But for this purpose a determining context is necessary. In the absence of such a context, it is accurate, both in scientific and in ordinary language, to say that a quadrilateral table has four sides. In the (Communion) Rubrics not only is there no context to exclude the application of that term to the shorter as well as the longer sides, but the effect of the context is just the reverse" (per Cairns, C., delivering jdgmt of P. C., *Ridsdale* v. *Clifton*, 2 P. D. 341; 46 L. J. P. C. 60, 61; 36 L. T. 865: *Svthc, Read* v. *Lincoln, Bp*, cited NORTH SIDE).

"The Side or Sides of any *Carriage-way or Cartway*," s. 51, 27 & 28 V. c. 101, means, any land forming part of the Highway, though not part of the metalled road; but does not include land not part of the highway, though by the side of the road (*Easton* v. *Richmond*, 41 L. J. M. C. 25; L. R. 7 Q. B. 69). A similar construction was given to "Sides" of a Turnpike Road in s. 5, 9 G. 4, c. 77 (*Beckett* v. *Upton*, 5 E. & B. 629; 25 L. J. Q. B. 70; 4 W. R. 52; 26 L. T. O. S. 88; 19 J. P. 741).

To speak of a thing being on the "Side" of some other thing, "contemplates some degree of proximity" (per Fry, L. J., *Ravensthorpe* v. *Hinchcliffe*, 59 L. J. M. C. 22; 24 Q. B. D. 168). "It is doubtful, to say no more, whether a building 300 or 400 yards distant from another building can be said to be on one *side* of it," within s. 3, 51 & 52 V. c. 52, which prohibits the bringing forward of a building beyond the FRONT MAIN WALL of the house or building "on either side" of it (Ib.); but a finding by Justices that a house 64 feet from another house is on the "side" of that other, will not be interfered with (*Warren* v. *Mustard*, 61 L. J. M. C. 18; 66 L. T. 26; 56 J. P. 502), yet, *semble*, a similar decision by a Local Board of Health would be reversed (*R.* v. *Ormesby*, 43 W. R. 96). *Vf, A-G.* v. *Edwards*, 1891, 1 Ch. 194; 63 L. T. 639.

Building "erected on the side of a NEW STREET," s. 85, Metrop Man.

Act, 1862, includes a building erected at a corner formed by the junction of an old and a new street, although its main entrance is in the old street (*London Co. Co.* v. *Lawrence*, 1893, 2 Q. B. 228; 62 L. J. M. C. 176; 69 L. T. 344; 41 W. R. 688; 57 J. P. 617). *Vf*, IN.

"This side" of; *V.* GIBRALTAR.

"Relations on my Side"; *V.* RELATIONS.

SIDELINGS. — Are "meers betwixt or on the sides of ridges of arable land" (Jacob).

SIDING. — "Siding, or Branch Railway, not belonging to the Co," s. 4, Ry and Canal Traffic Act, 1894; *V. North Staffordshire Ry* v. *Salt Union*, 10 Ry & Can Traffic Ca. 161: *Salt Union* v. *North Staffordshire Ry*, Ib. 179: *Portway* v. *Colne Valley, &c, Ry*, Ib. 211: *Pidcock* v. *Manchester, S. & L. Ry*, 9 Ib. 45.

SIDEWAY. — *V.* CAUSEWAY.

SIGHT. — *V.* AT SIGHT: PRESENCE.

"Loss of Sight in Both Eyes," in an Accident Insrce, means, totally blind; therefore, where the insured was a one-eyed man when the insrce was effected, and the insurer by himself or his agent knew of that fact, and after the insrce the insured loses by accident the sight of his only eye, he is entitled to recover the amount payable under the policy as on the "loss of sight in both eyes" (*Bawden* v. *London, &c, Assrce*, 1892, 2 Q. B. 534; 61 L. J. Q. B. 792).

SIGN. — *V.* SKY SIGN.

SIGNED: SIGNATURE. — Speaking generally, a Signature is the writing, or otherwise affixing, a person's name, or a mark to represent his name, by himself or by his authority (*R.* v. *Kent Jus.*, 42 L. J. M. C. 112; L. R. 8 Q. B. 305), with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so written or affixed. In *Morton* v. *Copeland* (16 C. B. 535), Maule, J., said, "Signature, does not, necessarily, mean writing a person's Christian and surname, but any mark which identifies it as the act of the party," but the reporter adds in a note, "provided it be proved or admitted to be genuine, and be the accustomed mode of signature of the party."

Without more, "to sign" is not the same as "to SUBSCRIBE."

The minute requisite of a Signature will vary according to the nature of the document to which it is affixed; *e.g.* —

1. Deeds;
2. Wills;
3. Contracts;
4. Bills of Exchange and Promissory Notes;

5. Solicitors' Bills;
6. Electioneering Pape
7. Judge's Orders and Legal Proceedings;
8. Office Copies: —

and "in every case where a statute requires a particular document to be signed by a particular person, it must be a pure question on the construction of the statute whether the signature by an AGENT is sufficient" (per Bowen, L.J., *Re Whitley*, 55 L. J. Ch. 541; 32 Ch. D. 337; 54 L. T. 912; 34 W. R. 505: *Vf*, inf).

1. *Deeds.* — At common law "a Deed may be good, albeit the party that doth seal it doth never set his name or his mark to it, so as it be duly sealed and delivered" (Touch. 60). Since the Statute of Frauds (29 Car. 2, c. 3), however, it has been a question whether a deed is within its provisions as being an "agreement" and therefore required to be signed. Blackstone thinks it is (2 Com. 306), and herein he is cited and followed by Hilliard in his Edition of the Touchstone (*n.* 2, p. 56). Mr. Preston, on the contrary, thinks that a Deed is not within the Statute and does not require signing (Touch. *n.* 24, Preston's Ed.). In *Cooch* v. *Goodman* (11 L. J. Q. B. 225; 2 Q. B. 580), the point was discussed but not decided; and in *Aveline* v. *Whisson* (4 M. & G. 801; 12 L. J. C. P. 58), the point was conceded in the negative without argument. This view was strengthened in *Cherry* v. *Heming* (19 L. J. Ex. 63), where all the judges (Parke, Alderson, Rolfe, and Platt) gave it as their opinion (*obiter*) that a Deed is not within the Statute and does not require signing. Thus the weight of authority is against the necessity of signature to a Deed; still, "it would certainly be most unwise to raise the question by leaving any Deed sealed and delivered, but not signed" (Wms. R. P. 127). If it should ultimately be held that a Deed generally must be signed, then, as also in all those particular cases where signature is expressly required, it would seem that the kind of signature may be the same as that required to Wills.

2. *Wills.* — S. 9, Wills Act, 1837, requires that all Wills "shall be signed at the FOOT or end thereof by the testator or by some other person in his presence and by his direction." Perhaps the most common error as regards the requisites of this signature is the tracing a former signature with a dry pen. This generally happens where there have been alterations made in a Will since its execution and where accordingly a re-execution of the Will is necessary, but "it cannot be too well understood that tracing with a dry pen is not equivalent to a signature" (per Cresswell, J. O., *Re Cunningham*, 29 L. J. P. M. & A. 71). It will be observed that a dry pen adds nothing to a document, makes no mark or sign upon it: hence its inutility. But when there is a mark or sign (or, *semble*, a SEAL, per Bayley, B., *Doe* d. *Phillips* v. *Evans*, 2 L. J. Ex. 183: *Sv*, *Re Byrd*, inf), made to a Will, which mark or sign was intended by the testator to be, or to stand for, his name, then

the Court is not nice as to the kind of mark or sign which is employed. "Whether the mark is made by a pen, or some other instrument cannot make any difference"; and therefore a stamped impression of a testator's signature is sufficient (*Jenkyns* v. *Gaisford*, 32 L. J. P. M. & A. 122; 3 Sw. & Tr. 93; 11 W. R. 854). The mark of the testator (and, it seems, whether he can or cannot write) is a sufficient signature even though his name is not placed against the mark (*Re Field*, 3 Curt. 752: *Baker* v. *Dening*, 8 A. & E. 94; nom. *Taylor* v. *Dening*, 2 Jur. 775; and, particularly, *Re Bryce*, 2 Curt. 325), or even where a wrong name is written against the mark; for in that case "the execution is perfect as soon as the mark is affixed," and therefore, "it matters not what some one else may have written against the mark" (per Cresswell, J. O., *Re Douse*, 31 L. J. P. M. & A. 172: *Va*, *Re Clarke*, 27 Ib. 18). So, if a testator, or witness, writes a name, *not his or her real name*, but intended to represent that real name, the signature will be good. Thus where a woman whose name was "Glover" signed her name as "Reed" (that being the name of her deceased first husband) the signature was held good (*Re Glover*, 5 Notes of Ca. 553; 11 Jur. 1022); and signature in an assumed name is good (*Re Redding*, 2 Rob. Ecc. 339; 14 Jur. 1052). But errors of this kind appear only to be good when done by mistake; and where an attesting witness signed her husband's name instead of her own, it having been desired that the Will should have the appearance of being attested by the husband, the signature was held invalid (*Pryor* v. *Pryor*, 29 L. J. P. M. & A. 114: *Re Leverington*, 55 L. J. P. D. & A. 62; 11 P. D. 80). *Vf*, SUBSCRIBE: PRESENCE.

Signature by *initials* is good (*Re Wingrove*, 15 Jur. 91: *Re Savory*, Ib. 1042: *Re Hinds*, 16 Ib. 1161). Affixing a Seal, it has been said, is not a signing (*Re Byrd*, 3 Curt. 117; *Vf*, 1 Jarm. 78: *Sv*, per Bayley, B., *Doe* d. *Phillips* v. *Evans*, sup). The hand of a testator may be guided if he is unable from illness to do without that aid (*Wilson* v. *Beddard*, 12 Sim. 28); but the ceremony of execution must be complete whilst the testator is living, for where an intending testator tries to sign his Will, but fails from weakness, the court has no power to decree probate (*Re Wilson*, 2 Curt. 854). *Vf*, 1 Jarm. 82, 78, 79: Wms. Exs. 78; and as to what is an acknowledgment of a testator's signature to a Will, *V.* ACKNOWLEDGMENT.

3. *Contracts.* — At common law a Contract did not require any writing; but by the Statute of Frauds a great many Contracts must be in writing and "signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized," a provision which, quà s. 17 of the Statute, is replaced in similar terms by s. 4, Sale of Goods Act, 1893. Observe, first, who is to sign, — "the party to be charged"; the signature of the person seeking to enforce the contract is not necessary (*Laythoarp* v. *Bryant*, 2 Bing. N. C. 735: *Vth*, Sug. V. & P. 129); therefore, a written signed proposal with the necessary details to support a Contract, accepted

by word of mouth, may be enforced by the acceptor against the proposer, though an agreement based on the proposal could not be enforced against such an acceptor (*Warner* v. *Willington*, 3 Drew. 523; 25 L. J. Ch. 662: *Smith* v. *Neale*, 2 C. B. N. S. 67; 26 L. J. C. P. 143; 29 L. T. O. S. 93: *Liverpool Banking Co* v. *Eccles*, 28 L. J. Ex. 122: *Peek* v. *North Staffordshire Ry*, 29 L. J. Q. B. 97). As to the character of the requisite signature to a contract; — In the first place, all that has been said as to the signature of a Will by a stamped impression, or a mark, or initials, or (it seems) a wrong name, is equally applicable to the signature of a Contract under the Statute of Frauds (*V.* cases collected Add. C. 38, 39: Leake, 234: but "whether a signature by initials would suffice, seems not to have been decided expressly," Benj. 220). But in a Contract, the latitude as to the manner of signing is carried much farther than in a Will. The signature may appear at the top or bottom or in the body of the contract (*Knight* v. *Crockford*, 1 Esp. 189: *Sims* v. *Landray*, 1894, 2 Ch. 318; 63 L. J. Ch. 535; 70 L. T. 530; 42 W. R. 621); and a learned judge has even stated the rule thus widely, — "If the name appears on the contract and be written by the party to be bound, or by his authority, and issued *or accepted* by him, or intended by him as the memorandum of a contract, that is sufficient" (per Blackburn, J., *Durrell* v. *Evans*, 31 L. J. Ex. 345; 1 H. & C. 174, in *whc* the previous cases hereon were collected: *Svthc*, *Murphy* v. *Böese*, L. R. 10 Ex. 126; 44 L. J. Ex. 40: *Va*, Rosc. N. P. 316: Dart, 269–272). Thus, in *Schneider* v. *Norris* (2 M. & S. 286, following *Saunderson* v. *Jackson*, 2 B. & P. 238), the name of the seller was printed on a bill of parcels, but he wrote thereon the name of the purchaser, and that was held to be an adoption by the seller of his own printed name, and a signature within the Statute of Frauds. Assuming that case to be the law then, *à fortiori*, tracing a former signature with a dry pen, though not a sufficient signing of a Will, would be a sufficient signature to a Contract. *Schneider* v. *Norris* has, however, not passed entirely unquestioned, for in *Jenkyns* v. *Gaisford* (sup), Cresswell. J. O., said, "I always had some scruple about that case." Still *Schneider* v. *Norris* was repeatedly cited as an authority in *Durrell* v. *Evans* (sup), and was followed in *Tourret* v. *Cripps* (48 L. J. Ch. 567; 27 W. R. 706) and in *Evans* v. *Hoare* (1892, 1 Q. B. 593; 61 L. J. Q. B. 470; 66 L. T. 345; 40 W. R. 442): *Va*, *Jones* v. *Victoria Dock Co*, 46 L. J. Q. B. 219; 2 Q. B. D. 314: *Hucklesby* v. *Hook*, W. N. (1900) 45: *Bleakley* v. *Smith*, 11 Sim. 150: Blackb. 66–72: Benj. ch. 7: NOTE.

Generally speaking, all contractual documents may be signed by a duly authorized AGENT (per Blackburn, J., *R.* v. *Kent Jus.*, 42 L. J. M. C. 112; L. R. 8 Q. B. 305: per Bowen, L. J., *Re Whitley*, sup: *Browne* v. *Kinsella*, 24 L. R. Ir. 98).

An Auctioneer is Agent to sign for Vendor and Purchaser, quà the Statute of Frauds (*Emmerson* v. *Heelis*, 2 Taunt. 38: *Glengall* v. *Bar-*

nard, 6 L. J. Ch. 25: *Sims* v. *Landray*, sup, on *whlcv*, *Potter* v. *Peters*, 64 L. J. Ch. 359, 360; 72 L. T. 624); but the authority does not extend to the Clerk of the Auctioneer, and even the Auctioneer must sign not later than at the end of the auction (*Bell* v. *Balls*, 1897, 1 Ch. 663; 66 L. J. Ch. 397; 76 L. T. 254; 45 W. R. 378). So, documents under the Companies Act, 1862, do not need a personal signature, and therefore a Memorandum of Association may be signed by an Agent, who need not be authorized by deed (*Re Whitley*, sup). So, of a Building Socy's INSTRUMENT OF DISSOLUTION (*Dennison* v. *Jeffs*, 1896, 1 Ch. 611; 65 L. J. Ch. 435; 74 L. T. 270; 44 W. R. 476; disapproving *Second Edinburgh Socy* v. *Aitken*, 19 Sess. Ca. 4th Ser. 603; 29 Sc. L. R. 456). *Vf*, IN WRITING.

But an ACKNOWLEDGMENT under Ld Tenterden's Act, 9 G. 4, c. 14, to take a case out of the Statute of Limitations, must be signed by the person himself (*Hyde* v. *Johnson*, 5 L. J. C. P. 291; 3 Sc. 289; 2 Bing. N. C. 776: *Williams* v. *Mason*, 21 W. R. 386): *Va*, HIMSELF: HIS HAND: OWN CONSENT: *Toms* v. *Cuming*, inf, sub "*Electioneering Papers.*"

As to when the individual signature of a Partner will bind his Firm; *V. Brogden* v. *Metropolitan Ry*, 2 App. Ca. 666.

4. *Bills of Ex. and Promissory Notes.* — "No person is liable as Drawer, Indorser, or Acceptor, of a *Bill* who has not signed it as such: provided that

"(1) Where a person signs a Bill in a Trade or Assumed name, he is liable thereon as if he had signed it in his own name:

"(2) The signature of the name of a Firm, is equivalent to the signature by the person so signing of the names of all persons liable as partners in that Firm"

(s. 23, Bills of Ex. Act, 1882); and so of the Maker or Indorser of a Promissory Note (s. 89, Ib.).

"(1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

"(2) In the Case of a Corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal" (s. 91, Ib.).

As to signature PER PROCURATION; *V.* s. 25, Ib.; and by an Agent, s. 26.

5. *Solicitor's Bills, &c.* — By s. 37, 6 & 7 V. c. 73, no action can be brought on a Solicitor's Bill until one month after its delivery, "and which Bill shall either be *subscribed* with the *proper hand* of such Solicitor (or in case of a partnership, by any of the partners, either with his own name or with the name or style of such partnership), or of the executor, administrator, or assignee, of such Solicitor, or be enclosed in or accom-

panied by a letter, subscribed in like manner, referring to such Bill"; *Vth, Re Bush*, 14 L. J. Ch. 6; 8 Bea. 66: *Pilgrim* v. *Hirschfeld*, 12 W. R. 51: *Penley* v. *Anstruther*, 52 L. J. Ch. 367: *Ingle* v. *M'Cutchan*, 53 L. J. Q. B. 311; 12 Q. B. D. 518.

The doctrine of *Durrell* v. *Evans*, sup, p. 1882, as expressed in *Evans* v. *Hoare*, sup, is applicable to Agreements IN WRITING relating to a Solr's Costs (*Re Frape*, 62 L. J. Ch. 477; 1893, 2 Ch. 284; 68 L. T. 558; 41 W. R. 417).

6. *Electioneering Papers.* — Signatures to Electioneering Papers have a few special requirements distinct from other classes of signatures. In the first place, an Objector must sign the Objection HIMSELF, and not by an Agent (*Toms* v. *Cuming*, 7 M. & G. 88; 14 L. J. C. P. 67: *Lewis* v. *Roberts*, 31 L. J. C. P. 51; 11 C. B. N. S. 23); but a Claim to vote need not be personally signed by the Claimant (*Davies* v. *Hopkins*, 27 L. J. C. P. 6: *Brown* v. *Tombs*, 1891, 1 Q. B. 253; 60 L. J. Q. B. 38; 64 L. T. 114; 55 J. P. 359). So, the signature to a Voting Paper, *semble*, need not be a personal act, for in *R.* v. *Avery* (21 L. J. Q. B. 430), Campbell, C. J., said, "the burgess is to sign, *or to have another to write his name for him* in the shape of a signature." This was, however, an obiter dictum; the point decided in that case being that where a party is required merely to sign his name to an electioneering paper, his usual mode of signature is sufficient. If, however, there were only an initial for the *Surname*, this would seem not enough; for the object of this kind of signature is not merely to authenticate the document but also to give strangers notice who is the party by whom the signature is made. Accordingly, in the days of open voting, a voting paper had to be signed by the voter's *correct name*; with this exception, if the Burgess Roll mentioned him by a wrong name he might vote in the name by which he was therein mentioned (*R.* v. *Thwaites*, 22 L. J. Q. B. 238). And so, if a mark be used to sign an Electioneering Paper, it would seem that there must be the correct name of the person written against the mark; for a mere mark would not, *semble*, complete such a signature, as it would if the document were a Will or Contract. For the same reason the legibility of the signature, though wholly immaterial in a Will or Contract if it can be in any manner identified, may become an objection to a signature to an Electioneering Paper; but if such a signature is illegible by itself, but can be made out by reference to the register of voters or other extraneous public document, it will be sufficient (*Trotter* v. *Walker*, 32 L. J. C. P. 60). It appears, however, from that case that if the illegibility were purposely in order to deceive, or if it were an utter illegibility, the signature to an electioneering paper would not be sufficient. The rule laid down in *Jenkyns* v. *Gaisford*, sup (*i.e.* that a stamped impression of a signature to a Will is sufficient) has been extended to signatures of electioneering papers (*Bennett* v. *Brumfitt*, 37 L. J. C. P. 25); but, *semble*, an Objector must himself, with his own hand,

impress his signature (*Toms* v. *Cuming*, sup). Where the CHRISTIAN NAME is required to be given, it is not necessary that it should be written at full length; a well known contraction will be sufficient (*R.* v. *Bradley*, 30 L. J. Q. B. 180). In *thlc* Wightman and Hill, JJ., said (*obiter*) that a mere initial for the Christian name would not be sufficient; but the contrary was held in *Bowden* v. *Besley* (57 L. J. Q. B. 473; 21 Q. B. D. 309; 59 L. T. 219; 36 W. R. 889; 52 J. P. 536), if, as in that case, the person signing is sufficiently identified thereby: *Vf*, NAME. Where an Objector delivers to Overseers a list of the persons he objects to (instead of giving a separate notice in respect of each person), the list is well signed though the signature of the Objector thereon precedes, instead of following, the list of names (*Sutton* v. *Wade*, 1891, 1 Q. B. 269; 60 L. J. Q. B. 28; 63 L. T. 588; 39 W. R. 223).

A Revised List of Voters is "signed" by the Revising Barrister, the Clerk of the Peace, or Town Clerk (6 V. c. 18, ss. 41, 47, 48), by the official manually writing his own name (per Byles, J., *Brumfitt* v. *Bremner*, 30 L. J. C. P. 33; 9 C. B. N. S. 1).

7. *Judge's Orders and Legal Proceedings.* — A Judge's Order is well signed by a stamped similitude of the Judge's signature being impressed thereon by his clerk at chambers (*Blades* v. *Lawrence*, 43 L. J. Q. B. 133; L. R. 9 Q. B. 374).

But Particulars in a County Court Action are not "signed" by the Plaintiff's Solicitor, so as to entitle him to the costs thereof, if his name is only lithographed thereon (*R.* v. *Fitzroy-Cowper*, 59 L. J. Q. B. 26; 24 Q. B. D. 60; 38 W. R. 207; in the Appeal Court, Esher, M. R., was for reversing this decision, but Fry, L. J., agreed with it, and so the appeal fell through, 59 L. J. Q. B. 265; 24 Q. B. D. 533; 38 W. R. 408; 62 L. T. 583); but his name written by his authorized Clerk suffices (*France* v. *Dutton*, 1891, 2 Q. B. 208; 60 L. J. Q. B. 488; 39 W. R. 716; 64 L. T. 793: *Va*, R. 10 *a*, Ord. 6, Co. Co. Rules, 1892).

Notice of a Poor Rate Appeal is to be signed by the Appellant or his "Attorney on his behalf," Poor Rate Act, 1801, 41 G. 3, c. 23, s. 4; that is complied with if the Notice be signed, in the Appellant's name and with his authority, by his Solr's Clerk (*R.* v. *Kent Jus.*, 42 L. J. M. C. 112; L. R. 8 Q. B. 305; 21 W. R. 635; 37 J. P. 644). *Semble*, that a Notice is not a Condition Precedent to Quarter Sessions entering and respiting the Appeal (*R.* v. *De Grey*, 1900, 1 Q. B. 521; 69 L. J. Q. B. 341; 82 L. T. 324; 48 W. R. 348; 64 J. P. 375).

The signature of a Town Clerk to a Notice under s. 266, P. H. Act, 1875, is well made by its being printed thereon (*Brydges* v. *Dix*, 7 Times Rep. 215, in *whc*, *R.* v. *Fitzroy-Cowper*, sup, was commented on as being only of special application).

8. *Office Copies.* — By s. 45, Insolvent Debtor's Act (1 G. 4, c. 119), it was provided that proceedings thereunder should be proved by "a true copy, *signed* by the Officer certifying the same to be a true copy"; and

it was held, upon a liberal construction, that such a requirement would be satisfied by the office copy being vouched by the seal of the court (per Bayley, B., *Doe* d. *Phillips* v. *Evans*, 2 L. J. Ex. 181, 183).

"Last Annual Balance Sheet, signed"; *V.* LAST.

SIGNED, ENTERED, OR OTHERWISE PERFECTED. — This phrase in R. 130, Bankry Rules, means, that the time for appealing a Bankry Order begins as soon as the Order becomes operative (*Re Helsby*, 1894, 1 Q. B. 742; 63 L. J. Q. B. 265; 70 L. T. 144; 42 W. R. 218).

SIGNED, SEALED, AND DELIVERED. — A *Will* signed and sealed by the testator, duly attested, and declared by the testator to be his Will, is a good execution of a Power requiring him to execute it by an Instrument in Writing, "signed, sealed, and *delivered*," by him (*Smith* v. *Adkins*, 41 L. J. Ch. 628; L. R. 14 Eq. 402). *V.* DELIVERY.

A *Policy* "signed, sealed, and delivered," is complete and binding as against the party executing it, though, in fact, it remains in his possession, unless there is some particular act required to be done by the other party to declare his adoption of it; and it is not necessary that the assured should formally accept or take away the Policy in order to make the Delivery complete (*Xenos* v. *Wickham*, 36 L. J. C. P. 313; L. R. 2 H. L. 296). *Vf*, *Standing* v. *Bowring*, 31 Ch. D. 282: *Babington* v. *O'Connor*, 20 L. R. Ir. 254.

SILENCE. — Mere silence, in the negotiation of a contract, is not the same as to SUPPRESS when there is a duty to disclose, which latter would avoid the contract (per Chitty, J., *Turner* v. *Green*, 64 L. J. Ch. 539; 1895, 2 Ch. 205, citing per Campbell, C., *Walters* v. *Morgan*, 3 D. G. F. & J. 718). *Vf*, *M'Kenzie* v. *British Linen Co*, 6 App. Ca. 82. *V.* MATERIAL EVIDENCE: STANDING BY.

SILK. — Silk watch-guards and silk dresses are included in the phrase "Silks in a manufactured or unmanufactured state" as used in s. 1, Carriers Act, 1830 (*Bernstein* v. *Baxendale*, 28 L. J. C. P. 265; 6 C. B. N. S. 259; over-ruling *Davey* v. *Mason*, C. & M. 50). So also is silk hose (per Willes, J., citing *Hart* v. *Baxendale*, in *Bernstein* v. *Baxendale*, 28 L. J. C. P. 267). So also is elastic silk webbing, composed of $\frac{1}{3}$rd silk and $\frac{2}{3}$rds india rubber and cotton, the silk being the most valuable of the materials and the webbing being called in the trade "silk web" as distinguished from cotton web (*Brunt* v. *Mid. Ry*, 33 L. J. Ex. 187; 2 H. & C. 889; 12 W. R. 380). The statute speaks of silks "wrought up or not wrought up with other materials"; but that does not mean that any fabric that has silk in it, is necessarily "silk" within the meaning of the Act. The Court in *Brunt* v. *Mid. Ry* (sup) refused to define how much admixture of silk would make a fabric "silk," and held that

in cases of doubt it would be a question for the jury. Pollock, C. B., said, "The line is shifted according to circumstances." But the summary of the facts in that case as given in the jdgmt of Martin, B., seems to supply as good an indication as could probably be stated as to what the test should be: he said, "We have here a fabric of which the most valuable portion is silk; the face of it is silk and the object of the manufacturer is to give it a face of silk; and an ignorant person would say it was silk."

"*Soft or Organzine* Silk"; *V. Elliott* v. *Turner*, 15 L. J. C. P. 49; 2 C. B. 446.

V. WASTE SILK.

SILVA CÆDUA. — "'Sylva Cædua,' wood under 20 years growth; Coppice-wood" (Cowel). *Vf*, SYLVA.

SILVER. — "Silver" in s. 1, Revenue Act, 1867, 30 & 31 V. c. 90, does not mean pure silver, but merely what in common parlance is called silver (*Young* v. *Cook*, 47 L. J. M. C. 28; 3 Ex. D. 101).

V. METALS: MINE, *Note* at end: GILD AND SILVER: PLATE.

SIMEON'S ACTS. — Administration of Estates Act, 1798, 38 G. 3, c. 87:

Transfer of Stock Act, 1800, 39 & 40 G. 3, c. 36.

SIMILAR. — "Similar *Business*"; *V. Drew* v. *Guy*, 1894, 3 Ch. 25: 63 L. J. Ch. 547; 71 L. T. 220; 58 J. P. 803: SAME.

"Similar *Covenants*"; *V. Re Tebb*, W. N. (79) 100: SAME: RENEWAL.

"Similar *Houses*," in a V. & P. contract; *V. Re Hare and O'More*, 45 S. J. 79; 70 L. J. Ch. 45.

"Similar *License*" in def of "New License"; *V. R.* v. *Antrim Jus.*, cited NEW LICENSE.

Dock Charges for ARTICLES of a "Similar *Nature*, Package, Value, and Quality"; *V. Southampton Dock Co* v. *Hill*, 16 C. B. N. S. 567; 12 W. R. 806; 10 L. T. 462.

"Similar *Services*"; *V.* SAME.

"Similar *Structure*"; *V.* PIER.

V. LIKE: SUCH.

SIMONY. — "Simony, is the corrupt PRESENTATION of any one to an Ecclesiastical Benefice, for money, gift, or reward" (2 Bl. Com. 278; 4 Ib. 62). *Vh*, *Wright* v. *Davies*, 46 L. J. C. P. 41; 1 C. P. D. 638: *Lee* v. *Flack*, 1896, P. 145: Phil. Ecc. Law, 854–878: Jacob.

V. CORRUPT: IMMORAL.

SIMPLE CONTRACT. — "Debts by Simple CONTRACT, are such where the contract upon which the obligation arises is neither ascer-

tained by Matter of RECORD, nor yet by DEED or Special Instrument, but mere oral evidence, the most simple of any; or by Notes unsealed, which are capable of more easy proof, and (therefore only) better, than a verbal promise" (2 Bl. Com. 465, 466). *Cp*, SPECIALTY.

SIMPLE FEE. — *V.* FEE SIMPLE.

SIMPLE LARCENY. — "Simple Larceny is 'the felonious taking, and carrying away, of the personal goods of another'" (4 Bl. Com. 229), *i.e.* THEFT. So, in the application of 45 & 46 V. c. 56, to Scotland "'Simple Larceny' means Theft" (s. 36).

SIMPLE TRUST. — "The *Simple* Trust is where property is vested in one person *upon trust* for another; and the nature of the trust, not being prescribed by the settlor, is left to the construction of law. In this case the CESTUI que Trust has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the LEGAL ESTATE as the Cestui que Trust directs.

"The *Special* Trust, is where the machinery of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not, as before, a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts" (Lewin, 16).

Cp, CONSTRUCTIVE: RESULTING TRUST.

SIMULTANEOUSLY. — When it is said that the FIRST PUBLICATION of a BOOK may take place "simultaneously" in the United Kingdom *and* elsewhere, that means, on the same day (*Cocks* v. *Purday*, 17 L. J. C. P. 273; 5 C. B. 860: *Boosey* v. *Purday*, 18 L. J. Ex. 378; 4 Ex. 145).

SINE DIE. — *V.* WITHOUT DAY.

SINE QUA NON. — *V.* CAUSA CAUSANS.

SINECURE. — When a Clerk in Holy Orders has a Living without Cure of Souls, he has a Sinecure, *e.g.* if a Clerk presented is distinct from the Vicar (1 Bl. Com. 386). *Vf*, CANON.

SINGING. — *V.* PUBLIC SINGING: PUBLIC BALL.

SINGLE ARBITRATOR. — *V. Re Eyre and Leicester*, cited ARBITRATION, towards end.

SINGLE LETTER. — Quâ Post Office (Offences) Act, 1837, 1 V. c. 36, "Single LETTER," means, "a letter consisting of one sheet or piece of paper, and under the weight of an ounce" (s. 47).

Note. The "Single Letter" of the def suggests a "DOUBLE" and a "TREBLE" Letter, and recalls that, when Queen Victoria ascended the throne, postage was charged on a letter, not only according to its weight and the distance of its journey but also, according as to whether it contained or not one or more enclosures, a regulation involving a frequent examination of letters by the light of a candle.

SINGLE POSTAGE. — "'Single POSTAGE' shall mean, the postage chargeable for a SINGLE LETTER" (s. 47, 1 V. c. 36).

SINGLE PRIVATE DRAIN. — *V.* DRAIN.

SINGLE WOMAN. — A "Single Woman," within the Bastardy Laws Amendment Act, 1872, 35 & 36 V. c. 65, s. 3, includes a Widow (*Antony* v. *Cardenham*, Fort. 309; 2 Bott, 6 ed., 194: *R.* v. *Wymondham*, 12 L. J. M. C. 74; 2 Q. B. 541; 2 G. & D. 690), and also a Married Woman living apart from her husband (*R.* v. *Pilkington*, 2 E. & B. 546; nom. *Ex p. Grimes*, 22 L. J. M. C. 153: *R.* v. *Collingwood*, 17 L. J. M. C. 168; 12 Q. B. 681); but not a woman single at the time of the birth of her child who has since married and is living with her husband (*Stacey* v. *Lintell*, 48 L. J. M. C. 108; 4 Q. B. D. 291; 27 W. R. 551; 43 J. P. 510), even though she took out the summons before her marriage, and service of it was prevented by the putative father (*Tozer* v. *Lake*, 4 C. P. D. 322; 41 L. T. 280; 43 J. P. 656).

V. FEME: SPINSTER: UNMARRIED.

SINGLY. — Publishing "separately or singly"; *V.* SEPARATELY.

SINGULAR. — In Acts of Parliament passed after 1850, the singular includes the plural, and *vice versa* (s. 1 *b*, Interp Act, 1889).

SINK. — "Warranted free from particular average unless the Ship is stranded, *sunk*, or burnt"; a ship is not "sunk" within this phrase if she springs a leak and thereby takes in a great deal of water which presses her down very low and much wets the cargo, but notwithstanding which she gets into port (*Bryant & May* v. *London Assrce*, 2 Times Rep. 591). *V.* STRANDING: BURN.

"'Sink into the Residue,' points to a charge which had been previously provided out of the fund in which it was to sink; otherwise the expression 'sink into the residue' would hardly be appropriate" (per Cranworth, C., *Johnson* v. *Webster*, 4 D. G. M. & G. 483; 24 L. J. Ch. 302; 3 W. R. 84; 24 L. T. O. S. 178). *Vf*, FALL.

V. EASEMENT: SEARCH.

SINKING FUND. — "Sinking Fund" for the redemption of Debentures, does not, necessarily, connote accumulation at compound

interest, or any like mode of application (*Re Chicago & N. W. Granaries Co*, 1898, 1 Ch. 263; 67 L. J. Ch. 109; 77 L. T. 677).

SIR. — *V.* DEAR SIR.

SIREN. — A kind of fog signal; *V.* LIGHTHOUSE

SISTER. — *V.* BROTHER.

SITE. — "The term 'Site,' in relation to a house, building, or other erection, shall mean, the whole space to be occupied by such house, building, or other erection, between the level of the bottom of the foundations and the level of the BASE of the walls" (s. 14, Metrop Man. Act, 1878). That definition, provided for Part II. of the Act cited, was applied to a Bye Law made by the Metrop Bd of Works (*Blashill* v. *Chambers*, 14 Q. B. D. 479).

A like def is provided for P. H. Ireland Act, 1878; *V.* s. 41.

SITTING. — "To lose £10 at one 'Time' is to lose it by a single stake or bet; to lose at one 'Sitting' is to lose it in a course of play where the company never parts, though the person may not be actually gaming the whole time" (per Blackstone, J., *Bones* v. *Booth*, 2 Bl. W. 1226). Therefore money won between one evening and the next in a continuous bout of gaming, except when the party adjourned to dine together, was won at one "Sitting," within s. 2, 9 Anne, c. 14 (*S. C.*). That was an action in which the losing party sued to recover back his losings; and it was there suggested that had the action been brought by an Informer (*V.* the section), the Court would have held the Sitting broken into two by the dinner. *Cp*, ONE TIME.

Quà Vice Admiralty Courts Act Amendment Act, 1867, 30 & 31 V. c. 45, "'Sit' or 'Sitting,' shall mean, sit or sitting for the exercise of judicial powers, whether in Court or in Chambers" (s. 3).

V. SESSIONS.

SITUATE. — *V.* IN: *Crompton* v. *Jarratt*, 54 L. J. Ch. 1109; 30 Ch. D. 298: *Hibon* v. *Hibon*, cited MESSUAGE.

"Wheresoever situate," is a context which may make EFFECTS comprise realty (*Hall* v. *Hall*, 1892, 1 Ch. 361; 61 L. J. Ch. 289; 40 W. R. 277; 66 L. T. 206).

V. LOCALLY SITUATE.

SITUATION. — That is a sufficient description "of the Situation of the House or Shop" — in a Notice of application for a License under s. 7, Wine and Beerhouse Act, 1869, 32 & 33 V. c. 27 — which gives a reasonable identification; such identification will vary according to the circumstances of the locality in which the house or shop is, *e.g.* if the

locality be a little village it would be sufficient to state that it is situated in that village, or, if a small town, enough will generally be done if the street of that town be given (*R.* v. *Penkridge Jus.*, cited DESCRIPTION); but if the house or shop has a number such number should be given.

"Situation of the Property in respect of which he is enrolled," Form 2, Sch, Municipal Elections Act, 1875, 38 & 39 V. c. 40; *V. Soper* v. *Basingstoke*, 46 L. J. C. P. 422; 2 C. P. D. 440. That Form is replaced by Form I, Sch 8, Mun Corp Act, 1882, which does not retain this phrase.

V. PUBLIC SITUATION.

SIX MONTHS. — "A Six months" NOTICE TO QUIT, means, a notice served six months prior to the day the tenancy is to be determined, and is not, necessarily, equivalent to a "half-year's" notice, six lunar months may frequently suffice (*Walker* v. *Constable*, 3 Wils. 25: *Flower* v. *Darby*, 1 T. R. 159: *Rogers* v. *Hull Dock Co*, 34 L. J. Ch. 165: *Wilkinson* v. *Calvert*, 47 L. J. C. P. 679; 3 C. P. D. 360: *Barlow* v. *Teal*, 54 L. J. Q. B. 400; 15 Q. B. D. 501; 1 Times Rep. 491. *Sv*, *R.* v. *Chawton*, cited MONTH: *Morgan* v. *Davies*, 3 C. P. D. 260; 39 L. T. 60). Of course, if 6 "calendar" months are stipulated, the months must be reckoned by the Calendar notwithstanding a local custom to the contrary (*Travers* v. *Mason*, 45 W. R. 77).

V. BY LAW: CALENDAR MONTH: HALF A YEAR: MONTH.

SIXTH. — *V.* SEVENTH.

SKETCH. — Quà Official Secrets Act, 1889, 52 & 53 V. c. 52, "'Sketch,' includes, any PHOTOGRAPH, or other mode of representation, of any place or thing" (s. 8).

SKILL. — When a skilled person "is employed, there is on his part an implied warranty that he is of skill *reasonably competent* to the task he undertakes, — *spondes peritiam artis*" (*Harmer* v. *Cornelius*, 5 C. B. N. S. 246; 28 L. J. C. P. 85); *i.e.* not the very highest skill (*Rich* v. *Pierpoint*, 3 F. & F. 35) but, "that ordinary degree of skill and knowledge which would reasonably be expected" from one acting in the particular employment and circumstances (*Jenkins* v. *Betham*, 15 C. B. 189).

Vh, quà the Medical Profession, *Lamphier* v. *Phipos*, 8 C. & P. 479: *Rich* v. *Pierpoint*, sup: — A Solicitor, *Godefroy* v. *Dalton*, 6 Bing. 468: *Donaldson* v. *Haldane*, 7 Cl. & F. 762: *Purvess* v. *Landell*, 12 Ib. 91: *Lewis* v. *Collard*, 23 L. J. C. P. 32; 14 C. B. 208: — A Parliamentary Agent, *Bulmer* v. *Gilman*, 4 M. & G. 108: — An Architect, *Le Lievre* v. *Gould*, 1893, 1 Q. B. 491; 62 L. J. Q. B. 353: *Rogers* v. *James*, 2 Hudson, 113: — A Surveyor and Valuer, *Jenkins* v. *Betham*, sup: *Turner* v. *Goulden*, 43 L. J. C. P. 60; L. R. 9 C. P. 57: — A House

Agent, *Heys* v. *Tindall*, 30 L. J. Q. B. 362; 1 B. & S. 296: — A Scene Painter, *Harmer* v. *Cornelius*, sup.

Cp, NEGLIGENCE: ORDINARY CARE.

SKIMMED MILK. — "Skimmed Milk," means, MILK from which the cream which naturally rises to the surface has been skimmed in the ordinary manner; therefore, where the evidence only shows that the milk has been deprived of its butter fat, there is a "Disclosure" of that alteration (s. 9, 38 & 39 V. c. 63) if it is described as "Skimmed Milk" (*Jones* v. *Davies*, 69 L. T. 497; 57 J. P. 808: *Platt* v. *Tyler*, 58 J. P. 71); *secus*, if the evidence shows that the butter fat has been extracted to a greater extent than would result from mere skimming, *e.g.* by a Separator (*Petchey* v. *Taylor*, 78 L. T. 501; 62 J. P. 360). *V.* ABSTRACTION.

SKIN. — In the Mem of a Policy of Marine Insrce it has been held in the United States that "Skins" includes Deerskins (*Bakewell* v. *United Insrce*, 2 Johns. C. A. 246), but that "Skins and Hides" does not include FURS (*Astor* v. *Union Insrce*, 7 Cowen, 202).

SKY SIGN. — Stat. Def., s. 125, London Bg Act, 1894, replacing s. 2, London Sky Signs Act, 1891; *Vh, London Co. Co.* v. *Carwardine*, 68 L. T. 761; 57 J. P. 181; 62 L. J. M. C. 40: *R.* v. *Vaughan*, 12 Times Rep. 193, on *whcv*, *London Co. Co.* v. *Savoy Hotel Co*, 12 Times Rep. 468: *Tussaud* v. *London Co. Co.*, 57 J. P. 184; 9 Times Rep. 64.

SLACK. — *V.* IRON.

SLACKEN. — The obligation, where there is Risk of COLLISION, to "slacken speed, or stop and reverse if necessary," Art. 18, Regns for Preventing Collisions at Sea, 1884, repld Art. 23 of the Regns of 1897, does not connote an instantaneous compliance; "a short, but a very short, time must be allowed" (*The Ngapoota*, 1897, A. C. 391; 66 L. J. P. C. 88, approving *The Emmy Haase*, 53 L. J. P. D. & A. 43; 9 P. D. 81).

SLANDER. — A Slander is falsely and maliciously —

1. To speak words whereby a punishable crime, or a contagious or filthy disease, is imputed to another, or whereby "unchastity or adultery" is imputed "to any woman or girl" (54 & 55 V. c. 51), or to speak words which may tend to disinherit or deprive another of an estate, or which are defamatory quâ another's office, profession, or trade; in either of these cases the law implies INJURY, and an action is maintainable without SPECIAL Damage:

2. To speak defamatory words of another in consequence whereof he or she sustains some actual Special Damage, capable of appreciation in money.

Slander of TITLE, is falsely and maliciously to write or speak defamatory words affecting the title of another to real or personal property.

V. WORDS: INNUENDO. *Cp*, LIBEL, *whva* for reference to treatises on Libel and Slander.

SLAUGHTERER. — Quà P. H. London Act, 1891, " 'Slaughterer of Cattle or Horses,' means, a person whose business it is to kill any description of CATTLE or HORSES, Asses, or Mules, for the purpose of the flesh being used as butcher's meat " (s. 141, replacing s. 12, 37 & 38 V. c. 67); a like def is provided for P. H. Scotland Act, 1897 (s. 3). *Cp*, KNACKER. *V.* SLAUGHTER-HOUSE.

SLAUGHTER-HOUSE. — Quà P. H. Act, 1848, " Slaughter-house," means and includes, " the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering CATTLE, HORSES, or animals of any description, for SALE " (s. 2; replaced and re-enacted by s. 4, P. H. Act, 1875); a like def is provided for P. H. Ireland Act, 1878 (s. 2); but quà P. H. London Act, 1891 (s. 141), and quà P. H. Scotland Act, 1897 (s. 3), " 'Slaughter-house' means, any building or place used for the purpose " of the business of SLAUGHTERER as therein defined. *Cp*, KNACKER.

" Slaughter-house," as used in s. 126, Towns Improvement Clauses Act, 1847, and Loc Gov Act, 1858, includes, not merely the premises where the actual slaughtering of cattle takes place but also, the premises used for processes connected with or incident to the slaughtering (*Hides* v. *Littlejohn*, 74 L. T. 24).

" Place for slaughtering "; *V.* PLACE, towards end.

As to what is a valid regulating Bye Law; *V. Collman* v. *Mills*, cited PERMIT.

The business of a slaughter-house keeper is not, *per se*, " offensive " (*Rapley* v. *Smart*, cited OFFENSIVE, p. 1320).

Vh, 11 Encyc. 560, 561.

SLAVE COURT. — " Slave Court," " British Slave Court "; Stat. Def., 36 & 37 V. c. 88, s. 2.

SLAVE-TRADING. — " Each of the following acts, and every contract to do any one of them, is an act of slave-trading: — (*a*) To deal or trade in, purchase, sell, barter, or transfer, slaves or persons intended to be dealt with as slaves: (*b*) To carry away or remove slaves or other persons as or in order to their being dealt with as slaves: (*c*) To import or bring into any place whatsoever slaves or other persons as or in order to their being dealt with as slaves: (*d*) To ship, tranship, embark, receive, detain, or confine on board any vessel, slaves or other persons, for the purpose of their being carried away or removed as or in order to their being dealt with as slaves; or for the purpose of their being imported into any

place whatever as or in order to their being dealt with as slaves: (*e*) To fit out, man, navigate, equip, despatch, use, employ, let, or take to freight, or on hire, any vessel, in order to do any act of slave-trading before mentioned: (*f*) To lend or advance, or become security for the loan or advance of, money, goods, or effects, employed or to be employed in any act of slave-trading before mentioned: (*g*) To become guarantee or security for agents employed, or to be employed, in any act of slave-trading before mentioned: (*h*) To engage in any other manner in any act of slave-trading before mentioned, directly or indirectly, as a partner, agent, or otherwise: (*i*) To ship, tranship, lade, receive, or put on board of any vessel, money, goods, or effects, to be employed in any act of slave-trading before mentioned: (*j*) To take the charge or command, or to navigate, or enter and embark on board any vessel in any capacity, knowing that such vessel is employed in any act of slave-trading before mentioned, or is intended to be so employed upon the voyage or upon the occasion in which the embarkation takes place: (*k*) To insure slaves or property employed or intended to be employed in slave-trading" (Steph. Cr. 77, 78, epitomising Slave Trade Act, 1824, 5 G. 4, c. 113, s. 2). *V.* Ib. Art. 114, as to Piratical Slave Trading. *Vf*, Arch. Cr. 512: Rosc. Cr. 744.

Quà Slave Trade Act, 1873, 36 & 37 V. c. 88, "'Slave Trade,' when used in relation to any particular treaty, does not include anything declared by such treaty not to be comprised in the term or in such treaty" (s. 2).

V. EXISTING.

SLAVERY. — *V.* per Hargrave, arg. *Sommersett's Case*, 20 State Trials, 25, 26.

SLIDING SCALE ACT. — *V.* BOUGHT: PEEL'S ACTS.

SLIP. — "The 'Slip' (quà a Marine POLICY), is in practice the complete and final contract between the parties, fixing the terms of the insurance and the premium; and neither party can, without the assent of the other, deviate from the terms thus agreed on without a breach of faith, for which he would suffer severely in his credit and future business" (per Blackburn, J., *Ionides* v. *Pacific Insrce*, L. R. 6 Q. B. 684. *Vf*, *Cory* v. *Patton*, L. R. 7 Q. B. 308; 9 Ib. 577; 41 L. J. Q. B. 195 *n*; 43 Ib. 181: *Morrison* v. *Universal Marine Insrce*, L. R. 8 Ex. 199; 42 L. J. Ex. 115). It is, however, not a "Policy of Insrce" at all, and therefore not a "Policy of Sea Insrce" within the Stamp Act, 1891, nor is it even a contract to issue a policy; "it is a Contract of Sea Insrce not enforceable" (per Mathew, J., *Home Marine Insrce* v. *Smith*, 1898, 1 Q. B. 829; affd 1898, 2 Q. B. 351; 67 L. J. Q. B. 554, 777; 78 L. T. 734; 46 W. R. 661).

As to its admissibility to explain what policies are referred to in a Re-

Insrce; *V. Lower Rhine Insrce* v. *Sedgwick*, cited ORIGINAL POLICY. *Vf, Royal Exchange Assrce* v. *Tod*, 8 Times Rep. 669.

As to effect of the "Slip" quà Fire Insrce; *V. Thompson* v. *Adams*, 23 Q. B. D. 361.

"Accidental Slip or Omission"; *V.* ACCIDENTAL: MISTAKE.

SLIT. — Any division of the flesh or gristle of the nose, whether perpendicular or transverse, was a "slitting" within the COVENTRY ACT (*R.* v. *Carrol*, 1 East P. C. 395; Leach, 55: *Vf, R.* v. *Coke*, 1 East P. C. 396).

SLOPS. — Slops to Seamen, are articles of clothing, tobacco, &c, supplied to Seamen by the Master of a Ship during a voyage; *Vh, The Parkdale*, 1897, P. 53; 66 L. J. P. D. & A. 10; 75 L. T. 597; 45 W. R. 368.

SMALL. — It is laid down in Com. Dig. 'Franchise' (F.), 13, that "a Corporation which has a head may give a personal command, and do small acts without deed — as it may retain a servant, a cook, butler," &c. As regards the working of the P. H. Act, 1875, the Legislature "intended to get rid of any discussion as to what were Small Matters" (per Brett, L. J., *Hunt* v. *Wimbledon*, 48 L. J. C. P. 212), and therefore by s. 174 has put the limit at £50: *Vf*, SHALL, p. 1856: *Sv, Eaton* v. *Basker*, cited EXCEED.

Bequest of "Small Balance"; *V.* BALANCE.

Small Debt Court; *V.* SHERIFF.

"The Small Debt (Scotland) Acts, 1837 to 1889"; *V.* Sch 2, Short Titles Act, 1896.

A Small Dwelling, quà Small Dwellings Acquisition Act, 1899, 62 & 63 V. c. 44, is "where in the opinion of the Local Authority, the MARKET VALUE of the house" does not exceed £400 (subs. 1, s. 1).

The representation by a Vendor of Leasehold property that the term is renewable on payment of a "Small *Fine*" is indefinite and puts the purchaser upon enquiry; but it may be fraudulent (*Fenton* v. *Browne*, 14 Ves. 149: Dart, 111).

"A Small HOLDING," quà Purchase of Land (Ir) Act, 1891, 54 & 55 V. c. 48, "means a holding of a rateable value of less than £10, or any higher sum fixed by the Congested Districts Board" (s. 42): quà Small Holdings Act, 1892, 55 & 56 V. c. 31, a "Small Holding," means land acquired by a County Council under and for the Act, "and which exceeds one acre, and either does not exceed 50 acres or (if exceeding 50 acres) is of an annual value for the purposes of the Income Tax not exceeding £50" (subs. 2, s. 1).

Small Tithes; *V.* TITHES.

SMITE. — "A threatening posture, though an ASSAULT at Common Law even without a blow, is not a 'Smiting'" within s. 2 of the Act

against quarrelling and fighting in Churches and Churchyards, 5 & 6 Edw. 6, c. 4 (*Jenkins* v. *Barrett*, 1 Hagg. Ecc. 15). *Vh*, *Wilson* v. *Greaves*, 1 Burr. 240.

V. BRAWLING.

SMOKE. — *V.* NUISANCE.

SNARE. — "Snare . . . or other like Instrument"; *V. Jones* v. *Davies*, cited OTHER, p. 1365. In that case Day, J., said, "A Snare is an instrument of destruction; it is not a Net; neither is a Net a Snare." *Cp*, ENGINE: *V.* NET.

SNATCH. — *V.* STROKEHALL.

SNOW. — *V.* DUST: NUISANCE.

SNUFF. — Quà Tobacco Acts, 1840, and 1842, "Snuff," includes, "all snuff work and snuffs of every description, except where, in terms or by the context, a more limited construction shall appear to be intended" (s. 14, 5 & 6 V. c. 93).

SO. — "So," when used in connection with something to be done, — *e.g.* "so completed," or "so altered," — imports the doing of the thing in the manner and so as to satisfy the requirements previously prescribed (*V.* per Smith, J., *G. W. Ry* v. *Halesowen Ry*, 52 L. J. Q. B. 479: *Vf*, *Dyke* v. *Gower*, cited MILK).

"So devised," means "hereinbefore devised" (*Giles* v. *Melsom*, L. R. 6 H. L. 24; 42 L. J. C. P. 122).

SO AS. — "So as not to violate"; *V.* VIOLATE.

SO DOING. — "For so doing"; *V. Paterson* v. *Gas Light & Coke Co*, cited NEW OCCUPIER.

SO FAR AS. — A perfect Direction or Convention, wrong in itself, is not vitalized by a proviso that it is to be operative only "so far as," "so long as," or "as near as," the rules of law will permit; nor will such phrases, by themselves, control the construction: — but where there is a Covenant to Settle property, or it can be seen that a Trust is Executory, these and such like phrases may have application to prevent an infraction of the law, *e.g.* to avoid a construction of a bequest of chattels as heir-looms that would be obnoxious to the rule against perpetuities (*Potts* v. *Potts*, 3 J. & La T. 353; 1 H. L. Ca. 671). *Vh*, *Tollemache* v. *Coventry*, 2 Cl. & F. 611; 8 Bligh, N. S. 547: *Scarsdale* v. *Curzon*, 29 L. J. Ch. 249; 1 J. & H. 40 (*whlc* contains an elaborate discussion of the cases by Wood, V. C.): *Christie* v. *Gosling*, 35 L. J. Ch. 667: *Churchill* v. *Churchill*, L. R. 5 Eq. 49, 50; 37 L. J. Ch. 96: *Talbot* v.

Jevers, L. R. 20 Eq. 255: *Harrington* v. *Harrington*, 40 L. J. Ch. 716; L. R. 5 H. L. 87: *Exmouth* v. *Praed*, 52 L. J. Ch. 420; 23 Ch. D. 158: *Re Johnson, Cockerell* v. *Essex*, 53 L. J. Ch. 645; 26 Ch. D. 538: *Re Hill*, 86 L. T. 336.

So a covenant in RESTRAINT OF TRADE too wide in its terms and therefore inoperative, is not saved by being expressed to be "so far as the law allows"; the parties must themselves agree and properly state the limits of time and space within which the covenant is to operate (*Davies* v. *Davies*, 36 Ch. D. 359; 56 L. J. Ch. 962; 36 W. R. 86).

"So far as applicable"; *V.* APPLICABLE.

Maritime Lien for DISBURSEMENTS or Liabilities, as well as WAGES, "so far as the Case permits," s. 1, 52 & 53 V. c. 46, repld s. 167 (2), Mer Shipping Act, 1894; *V. Morgan* v. *Castlegate S. S. Co*, cited "Maritime Lien," sub LIEN, p. 1099.

"So far as Circumstances admit"; *V. Westacott* v. *Stewart*, 1898, 1 Q. B. 552; 67 L. J. Q. B. 421; 78 L. T. 256; 46 W. R. 379; 62 J. P. 229.

"So far as is reasonably practicable"; *V.* REASONABLY PRACTICABLE. *V.* POSSIBLE.

SO ILL. — "So ill as not to be able to travel"; *V.* ILL.

SO LONG AS. — *V.* QUAMDIU.

SO NEAR THERETO. — *V.* NEAR THERETO AS SHE MAY SAFELY GET.

SO SOON AS. — *V.* WHEN.

Portions to be paid "as soon as CONVENIENTLY could be," construed "presently," because, under the circumstances, "it was then convenient they should have their portions" (*Trafford* v. *Ashton*, 1 P. Wms. 419).

SO THAT. — *V.* IF: *Re Jones*, cited DISPOSAL.

SO VALUED. — Security "so valued," Sch 2, R. 12 *a*, Bankry Act, 1883, refers to R. 11, and means, "the Assessed Value in the Proof" (*Re Vautin*, 1899, 2 Q. B. 549; 68 L. J. Q. B. 971, considering *Ex p. Taylor*, 13 Q. B. D. 128).

SOBER AND TEMPERATE HABITS. — The question as to whether a man is of "Sober and Temperate Habits," within a declaration leading to a Life Policy, is peculiarly one for the jury (*Life Assn of Scotland* v. *M'Blain*, Ir. Rep. 9 Eq. 176).

V. STRICTLY TEMPERATE.

SOCAGE. — "To hold in Socage, is to hold of any Lord lands or tenements, yeelding to him a certaine rent by the yeare for all manner

of services," of which tenure there were three kinds, — (1) Socage in Free Tenure, (2) Socage in Ancient Tenure, (3) Socage in Base Tenure: —

"Socage in *Free Tenure*, is when one holdeth of another by FEALTY and certaine rent for all manner of services;

"Socage of *Ancient Tenure*, is that where the people held in ANCIENT DEMESNE, which use no other writ to have then the writ of Right close, which shall be determined according to the custome of the Mannour, and the Monstraverunt, for to discharge them when their Lord distreyneth them for to doe other services that they ought not to doe;

"Socage in *Base Tenure*, is where a man holdeth in ancient demesne that may not have the Monstraverunt, and for that it is called the base tenure" (Termes de la Ley).

Vh, Litt. ss. 117–132: Co. Litt. 85 b–93 b: FRANK FERME.

Socage in Free Tenure came to be called FREE AND COMMON SOCAGE, and was the origin of modern FREEHOLD; *Vh*, Wms. R. P. Part 1, ch. 5.

SOCHEMANS: SOKEMANNI. — *V.* COLEBERTI. "'Socmans, alias Sokemans, *Socmanni*,' are such Tenants as hold their lands and tenements by SOCAGE tenure, of which there are several kinds, viz. *Sokemans* of Frank-tenure; Sokemans of Base-tenure; and Sokemans of ANCIENT DEMESNE, which last seem most properly to be called Socmans" (Cowel): *Vf*, Termes de la Ley, *Sockmans*.

SOCIETIES. — "Such Charities, Societies, and Institutions, . . . as S. shall nominate"; *V. Re Douglas*, 56 L. J. Ch. 913; 35 Ch. D. 472; 56 L. T. 740; 35 W. R. 786.

SOCIETY. — *V.* BUILDING SOCIETY: TERMINATING: FRIENDLY SOCIETY: INDUSTRIAL AND PROVIDENT SOCIETY.

Quà and by s. 28, Friendly Soc. Act, 1875, "Society," includes, "all Industrial Assurance Companies assuring the payment of money on the death of children under the age of 10 years"; *Vth*, *Newbold Socy* v. *Barlow*, 1893, 2 Q. B. 128; 62 L. J. M. C. 124; 68 L. T. 798; 41 W. R. 543; 57 J. P. 565.

Other Stat. Def. — Friendly Soc. Act, 1875, s. 30; 46 & 47 V. c. 47, s. 2.

An Industrial or Provident "Society" is not a Company (*G. N. Ry* v. *Coal Co-operative Socy*, cited COMPANY, towards end).

SOCKE. — "Socke" (Termes de la Ley, *Priviledges*), or "Sok" (Ib., *Sok*), "that is suit of men in your Court, according to the custome of the realme" (Ib., *Sok*: *Vf*, 2 Inst. 230). *V.* SOKE.

SODOMY. — "Every one commits the felony called Sodomy who (*a*) carnally knows any animal; or (*b*) being a male, carnally knows

any man or any woman (per anum)" (Steph. Cr. 114). *Vf*, Arch. Cr. 879–881: Rosc. Cr. 828: 1 Encyc. 27: Cowel, *Buggery*: INFAMOUS CRIME.

SOIL. — This word (and notably in Inclosure Acts) frequently means the SURFACE of the land only, and does not include MINERALS (*Wakefield* v. *Buccleuch*, 36 L. J. Ch. 179; L. R. 4 Eq. 613; 15 W. R. 247; 15 L. T. 462, following *Pretty* v. *Solby*, 26 Bea. 606; 33 L. T. O. S. 72. *Wakefield* v. *Buccleuch* was reversed, L. R. 4 H. L. 377; 39 L. J. Ch. 441, but on another ground, *V.* espy jdgmt of Hatherley, C.); but in the absence of a context it would mean down to the centre of the earth (*Vh*, *Micklethwait* v. *Winter*, 20 L. J. Ex. 313; 6 Ex. 644: *Townley* v. *Gibson*, 2 T. R. 701): *Vf*, *Lond. & N. W. Ry* v. *Evans*, cited SATISFACTION.

Power to "open and break up Soil and PAVEMENT" of Streets, &c.; *V.* OPEN, p. 1342.

V. BED: DUST: SUBSOIL: WATER.

SOJOURN. — A Sojourning means something more than "travelling," and applies to a temporary, as contradistinguished from a permanent, residence (*Henry* v. *Ball*, 1 Wheaton, 5). *Cp*, GUEST.

SOKE. — A manor or lordship (Elph. 620, citing Spelm., *Soca*; for example *V. Beauchamp* v. *Winn*, L. R. 6 H. L. 243). *Vf*, Jacob.

V. SOCKE. *Cp*, SAKE.

SOKEMANNI. — *V.* SOCHEMANS.

SOLD. — *V.* BOUGHT: LAID UP: PURCHASED: SALE.

SOLDIER. — A militiaman "is a soldier to all intents and purposes" (per Campbell, C. J.), and within the proviso to s. 1, Poor Removal Act, 1846, 9 & 10 V. c. 66 (*Horton* v. *Leeds*, 25 L. J. M. C. 38; 5 E. & B. 595); but a workman employed in an Army Works Corps was held not to be a Soldier, though he be subject to the Mutiny Act (*Cook* v. *Paxton*, 4 H. & N. 368: *Sv*, s. 190 (6), Army Act, 1881, inf).

A person in the military service of the late East India Company, was a "Soldier" within s. 11, Wills Act, 1837 (*Re Donaldson*, 2 Curt. 386): *V.* ACTUAL MILITARY SERVICE. *Cp*, ON ACTIVE SERVICE.

Quà Army Act, 1881, "'Soldier,' does not include an OFFICER as defined by this Act, but (with the modifications in this Act contained in relation to Warrant Officers and Non-Commissioned Officers) does include a Warrant Officer not having an honorary Commission, and a Non-Commissioned Officer, and every person subject to Military Law during the time that he is so subject" (subs. 6, s. 190).

"The persons subject to Military Law as Soldiers," are enumerated in s. 176, Army Act, 1881; an Army Pensioner acting as Canteen Sergeant

or Steward is included therein (*Ex p. Flint*, 33 W. R. 936); *Vf, Marks* v. *Frogley*, 1898, 1 Q. B. 888; 67 L. J. Q. B. 605; 78 L. T. 607; 46 W. R. 548: TRAINING. As to what is Military Law, *V. Ex p. Milligan*, 4 Wallace, 141, 142: MARTIAL LAW.

Quà Pensions and Yeomanry Pay Act, 1884, 47 & 48 V. c. 55, "'Soldier,' includes, a discharged soldier" (s. 7).

V. POLICE.

SOLE. — The way in which this word (when used quà benefits to be taken by married women) has been judicially interpreted, is not a little curious.

Mr. Hawkins in his Treatise on Construction of Wills (p. 116) lays it down broadly that, "a gift to or for the sole *Use or Benefit* of a woman means, *primâ facie*, Separate Use"; *i.e.* that "sole" and "separate," in this connection are synonymous terms. For this he cites several authorities; *Va, Barnes* v. *Forsyth*, 1 W. R. 142; 20 L. T. O. S. 244.

But in *Gilbert* v. *Lewis* (32 L. J. Ch. 347; 1 D. G. J. & S. 38; 11 W. R. 223), Westbury, C., on a review of the same authorities came to an opposite conclusion; and, in a dictum, intimated that a mere gift to the "sole" use of a woman would not give her a separate estate.

That dictum, however, was cited by Mr. Hawkins (p. 118) only to discredit it; adding that, "In *Ex p. Killick* (3 Mont. D. & D. 487), Knight-Bruce, V. C., said, 'I apprehend it is clear that when property is given to a woman whether married or unmarried, for her own *sole* use and benefit, it is vested in her for her separate use, free from the control of the marital right.'"

In *Spirett* v. *Willows* (34 L. J. Ch. 365; 1 Ch. 520; 13 W. R. 329), Ld Westbury re-asserted the doctrine of *Gilbert* v. *Lewis*; and in *Massy* v. *Rowen* (L. R. 4 H. L. 288) it was again decided that the word "sole," is not equivalent to "separate" use unless such a meaning is plainly deducible from the context (*e.g.* as in *Re Tarsey*, 35 L. J. Ch. 452; L. R. 1 Eq. 561). But yet in *Re Fox* (28 S. J. 738), Chitty, J., whilst deferring to *Massy* v. *Rowen*, said that some meaning must be attached to the word "sole," and if from the rest of the Will no other meaning could be gathered, then the word was equivalent to "separate." This, if correct, would seem to shift the onus as laid down in *Massy* v. *Rowen*, under which a context was required to give "sole" the meaning of "separate": *Va*, SEPARATE USE: 1 White & Tudor, 662: Seton, 899.

"For her sole *Use and Disposal*," excludes the marital right and gives the wife a Separate Use (*Prichard* v. *Ames*, T. & R. 222: *Bland* v. *Dawes*, 50 L. J. Ch. 252; 17 Ch. D. 794). *V.* DISPOSAL. So, a Jointure, in a Marriage Settlement, "without power of anticipation," the intended wife's "sole and separate receipt to be a complete and ONLY discharge," gives the wife a Separate Use with a restraint on alienation (*Re Molyneux*, Ir. Rep. 6 Eq. 411).

Under a limitation to trustees to the use of a married woman, "for her own sole and separate use," the legal estate will pass to her notwithstanding that phrase (*Williams* v. *Waters*, 14 M. & W. 166).

"For her Sole Use," in a *Life Policy* effected by a Married Woman; *V. Re Suse, Ex p. Dever*, 18 Q. B. D. 660; 56 L. J. Q. B. 552; 3 Times Rep. 400.

"Sole and unmarried," "Sole and intestate"; *V.* UNMARRIED.

Feme Sole; *V.* FEME.

"Sole and Exclusive FISHERY," is equivalent to "SEVERAL FISHERY" (*Holford* v. *Bailey*, 18 L. J. Q. B. 109; 13 Q. B. 426). So, "Sole" is synonymous with a "Several" right of Pasturage (*Hopkins* v. *Robinson*, 2 Lev. 2).

SOLE AGENT. — Where A. appoints B. as his "Sole Agent" in a district, A. is not entitled to appoint any other agent in that district, nor to effect therein any sales or transactions connected with his business except through B.'s agency (*Snelgrove* v. *Ellringham Colliery Co*, 45 J. P. 408). But an agreement that B. shall be merely the "Sole Agent" of a business, though for a defined period, does not import that the business shall be continued during that period (*Rhodes* v. *Forwood*, 1 App. Ca. 256; 47 L. J. Ex. 396: *Emanuel* v. *Fermière de Vichy Cie*, W. N. (89) 150: *Hamlyn* v. *Wood*, 1891, 2 Q. B. 488; 60 L. J. Q. B. 734; 65 L. T. 286; 40 W. R. 24: *Sv*, *Turner* v. *Goldsmith*, cited AGENT, at end).

Cp, "Exclusive Right" to supply goods, sub EXCLUSIVE RIGHT; "Entire Services," sub ENTIRE; "Whole Time," sub WHOLE.

As to Revocation of a Sole Agency, *V. Vynior's Case*, 8 Rep. 81 b: *Doward* v. *Williams*, 6 Times Rep. 316: *Noah* v. *Owen*, 2 Ib. 364.

SOLE CORPORATION. — *V.* CORPORATION.

SOLE EXECUTOR. — "It seems doubtful whether even the appointment, by subsequent Will, of a 'Sole Executor' amounts, *per se*, to a revocation of the first. *V.* for revocation, *Re Lowe*, 3 Sw. & Tr. 478; 33 L. J. P. M. & A. 155: *Re Baily*, L. R. 1 P. & M. 628: — Contra, *Geaves* v. *Price*, 3 Sw. & Tr. 71; 32 L. J. P. M. & A. 113: *Re Leese*, 2 Sw. & Tr. 442; 31 L. J. P. M. & A. 169: *Re Morgan*, L. R. 1 P. & D. 323." 1 Jarm. 175.

SOLE FISHERY. — *V.* SOLE: FISHERY.

SOLE HEIR. — "I make my cousin, Giles Bridges, my *Sole Heir* and my Executor"; held to pass testator's lands and the fee simple therein (*Tayler* v. *Web*, Style, 301, 307, 319 and *Marret* v. *Sly*, 2 Sid. 75, cited and commented on in note (*d*), 1 Jarm. 357: *Va*, *Doe* d.

Gillard v. *Gillard*, cited EXECUTOR: *Va*, *Parker* v. *Nickson*, 32 L. J. Ch. 397; 1 D. G. J. & S. 177: ACKNOWLEDGE).

SOLE NAME OF A DECEASED PERSON. — These words, at commencement of s. 25, Trustee Act, 1850, include the case of stock in the name of two deceased persons as being in the name of the survivor (Seton, 4 ed., 523: *Vh*, Seton, 6 ed., 1253, commenting on the replacing clause, s. 35, Trustee Act, 1893). *V.* SOLE TRUSTEE.

SOLE PASTURAGE. — *V.* SOLE.

SOLE TENANT. — *V.* SEPARATELY: SEVERALTY.

SOLE TRUSTEE. — This phrase in s. 23, Trustee Act, 1850, 13 & 14 V. c. 60, included two or more Trustees who were solely entitled to any trust property (*Re Hartnall*, 21 L. J. Ch. 384; 5 D. G. & S. 111: *Re Hyatt*, 51 L. J. Ch. 742; 21 Ch. D. 846: *Vh*, Lewin, 814: Watson Eq. 1020). *Note*: this section and s. 24 are replaced by s. 35, Trustee Act, 1893.

SOLELY. — Building "used solely" for a Literary or Scientific Institution, R. 6, s. 61, Income Tax Act, 1842; *V. Musgrave* v. *Dundee Magistrates*, cited LITERARY.

House occupied "solely" for TRADE or BUSINESS, s. 13 (1, 2), Customs and Inl. Rev. Act, 1878, 41 V. c. 15, does not include a house occupied not only for business but also for the actual dwelling of persons, not mere caretakers, who are the servants of the occupier (per Charles, J., *Lambton* v. *Kerr*, 1895, 2 Q. B. 233; 64 L. J. Q. B. 749; 43 W. R. 541). *Vf*, *Grant* v. *Langston*, cited HOUSE, p. 895: PURPOSES: SERVANT, towards end.

A Vehicle sometimes used for the purpose of advertising, — being (as one sometimes sees) painted and placarded as an advertisement, or used for carrying about a band in order to make public announcement, — is not used "solely" in the course of Trade so as to give exemption from duty, within s. 19 (6), Inland Revenue Act, 1869, 32 & 33 V. c. 14 (*Speak* v. *Powell*, 43 L. J. M. C. 19; L. R. 9 Ex. 25).

V. WHOLLY.

SOLEMNIZATION. — The "Solemnization" of a MARRIAGE, — as the word is used in a Marriage Settlement as thus, "until the solemnization of the said intended marriage," — means, the consummation of a valid and effectual marriage; and the uses or trusts "until" that event are not defeated by the solemnization of an illegal marriage, although it may seem that an illegal marriage was in the contemplation of the parties (*Chapman* v. *Bradley*, 33 L. J. Ch. 139; 33 Bea. 61; 4 D. G. J. & S. 71; 12 W. R. 140: *Pawson* v. *Brown*, 49 L. J. Ch. 193; 13 Ch. D. 202:

Neale v. *Neale*, 79 L. T. 629; 15 Times Rep. 20: *Addington* v. *Mellor*, 29 S. J. 131).

As to this Solemnization generally, *V.* Phil. Ecc. Law, ch. 7: 11 Encyc. 567–572.

SOLEMNLY. — Where a thing, *e.g.* an oath, has to be done "solemnly," that "does not merely mean religiously, but means with all due solemnities" (per Brett, M. R., *A-G.* v. *Bradlaugh*, 54 L. J. Q. B. 213, 219–221; 14 Q. B. D. 667).

SOLICIT. — Soliciting a Servant to defraud his Master; *V. R.* v. *De Kromme*, 66 L. T. 301; 56 J. P. 682.

V. ACCESSORY: *Cp*, AID OR ABET.

An Agreement not to "curry or solicit" custom within a named district, is broken by a letter soliciting business received in the district though posted outside it (*Cullard* v. *Taylor*, 3 Times Rep. 698). *V.* CARRY ON, pp. 265, 266.

To obtain contributions to a Silver Watch Club is to "solicit, take, or receive, an order" for silver, within s. 17, Revenue Act, 1867, 30 & 31 V. c. 90 (*Killick* v. *Graham*, 1896, 2 Q. B. 196; 65 L. J. M. C. 180; 75 L. T. 29; 44 W. R. 669; 60 J. P. 534).

Vf, CALL UPON: TRAVELLER.

SOLICITOR. — *V.* ATTORNEY.

"Solicitor," in England, means, "Solicitor of the Supreme Court of Judicature in England" (s. 4, 40 & 41 V. c. 25; s. 4, 51 & 52 V. c. 65: *Vf*, 44 & 45 V. c. 44, s. 1); so, in Ireland, the def is, Solicitor of the Court of Judicature in Ireland (s. 78, Jud. Act (Ir), 1877); the Scotch equivalent is "Law Agent," or "Enrolled Law Agent" (45 & 46 V. c. 49, s. 52 (5); 46 & 47 V. c. 51, s. 68), or "Writer, or Agent" (41 & 42 V. c. 49, s. 74), and so, the Annual Certificate to be taken out by an English or Irish "Solicitor" bears the same Stamp Duty as that for a Scotch "Law Agent, or Writer to the Signet" (Sch 1, Stamp Act, 1891, tit. *Certificate*).

In a High Court action, a Solr to one of the parties remains his Solr as long as anything more has to be done in the action, unless his authority is revoked (*Pole* v. *Dick*, 29 Ch. D. 351; 54 L. J. Ch. 940; 52 L. T. 457; 33 W. R. 585); but that case left it doubtful as to whether the Solr's authority continued until the expiration of the time for appealing to the Court of Appeal. That doubt is solved by R. 3, Ord. 7, R. S. C., which provides that, if there be no Change of Solr, the "Solicitor shall be considered the Solr of the party until the final conclusion of the Cause or Matter, whether in the High Court or the Court of Appeal." But that doctrine only applies to the High Court; a Notice of appeal against a Bastardy Order is not well served on the Solr who obtained the Order,

SON. — The word "Son" is quite as flexible as the word "Heir," and can as easily be read "Issue Male" as the word "Heir" can be turned into "Son" (*Jenkins* v. *Clinton*, 26 Bea. 108; nom. *Jenkins* v. *Hughes*, 30 L. J. Ch. 870). *Vf*, DEFAULT: HEIR, pp. 859, 860: ISSUE: MALE.

"If the word 'Son' be used, not as a *designatio personæ* but, with the view to the whole CLASS, or as comprising the whole of the Male Descendants severally and successively, then it is the manifest intention of the testator to give an Estate Tail" (per Bayley, J., *Mellish* v. *Mellish*, 2 B. & C. 533).

For a collection and discussion of the cases upon the construction of "Son" as a word of LIMITATION, *V.* 2 Jarm. 401 *et seq*: *Svth*, *Beauchant* v. *Usticke*, W. N. (80) 14. Whenever that word is so construed it creates an estate in Tail Male (*Mellish* v. *Mellish*, sup: 2 Jarm. 400: *Va*, Watson Eq. 1390).

As to a limitation in a *Deed*, as compared with one in a *Will*, to a particular son; *V.* Watson Eq. 1385.

As to a devise to "*a* Son"; *V. Ashburner* v. *Wilson*, cited ONE.

In an appointment of the remainder of a fund "to be equally divided among my Sons," the sons take as a Class (*Fitzroy* v. *Richmond*, 28 L. J. Ch. 750; 27 Bea. 190).

"Either Sons or Daughters," following ISSUE, will control "Issue" to mean "Children" (*Farrant* v. *Nichols*, 15 L. J. Ch. 259; 9 Bea. 327).

"Sons and Daughters," mean legitimate ones; unless those that are illegitimate are indicated (*Vh*, *Edmunds* v. *Fessey*, 29 Bea. 235; 30 L. J. Ch. 279: *Re Fish*, 1894, 2 Ch. 83; 63 L. J. Ch. 437; 70 L. T. 825; 42 W. R. 520: DAUGHTER: CHILD: NEPHEW: RELATIONS).

"*Who being a Son or Sons* shall attain 21," in a limitation which contemplates all the children, will not exclude daughters (*Re Daniel*, 45 L. J. Ch. 105; 1 Ch. D. 375).

Vh, Chitty Eq. Ind. 7678–7684.

V. ELDEST: FIRST SON: OTHER SONS.

SON ASSAULT DEMESNE. — *V.* DEMESNE, at end.

SON TORT. — Executor de son tort; *V.* EXECUTOR.
Trustee de son tort; *V.* TRUSTEE.

SONG. — *V.* DRAMATIC: PUBLIC SINGING.

SOON AS. — *V.* POSSIBLE: SO SOON AS.

SOONER DETERMINATION. — May be rejected as insensible; *V.* TERM.

SORCERY.—*V.* CONJURATION: WITCH: WITCHCRAFT. Cowel defines the old offence of Sorcery as "Divination by Lóts."

SORT.—"Sort," in the expression "kind or sort," is, probably, synonymous with "QUALITY" or "NATURE" (*V.* DYE).

SOUGH.—A Sough is an underground Drain or Watercourse (*Chamber Colliery Co* v. *Hopwood*, 32 Ch. D. 555, 556). *Vf*, *Arkwright* v. *Gell*, 8 L. J. Ex. 201; 5 M. & W. 203.

SOUND.—"I think the word 'Sound,'"—in a warranty of a horse,—"means that the animal is sound and free from disease at the time he is warranted" (per Parke, B., *Kiddell* v. *Burnard*, 9 M. & W. 670; 11 L. J. Ex. 269; C. & M. 291). In the same case Alderson, B., said, "The word 'Soundness' is explained and qualified by reference to the purposes for which the warranty is given. Any disease, therefore, which tends to impede the use for which the horse is designed, is an unsoundness," "use," there, meaning present use (*Elton* v. *Brogden*, 4 Camp. 281). Thus, a Cough, unless it be of quite a temporary character, is unsoundness (*Shillitoe* v. *Claridge*, 2 Chitty, 425: *Elton* v. *Brogden*, sup); but in *Garment* v. *Barrs* (2 Esp. 673) Eyre, C. J., held that a temporary injury or hurt capable of being speedily cured or removed, is not unsoundness.

Mere badness of shape, though rendering a horse incapable of work, is not unsoundness (per Alderson, B., *Dickinson* v. *Follett*, 1 Moo. & R. 299); but convexity in the cornea of the eye, making the horse short-sighted and given to shying, is unsoundness (*Holyday* v. *Morgan*, 28 L. J. Q. B. 9; 1 E. & E. 1).

Neither Roaring (*Bassett* v. *Collis*, 2 Camp. 523: *Onslow* v. *Eames*, 2 Starkie, 81), nor Crib-biting (*Broennenburgh* v. *Haycock*, Holt N. P. 630), is unsoundness.

Bone spavin in the hock is unsoundness, though producing no present apparent lameness (per Tindal, C. J., *Watson* v. *Denton*, 7 C. & P. 85); so is a visible splint on the fore leg, producing subsequent lameness, though the warranty be limited to the condition "at the time of the contract," because the jury found that the seeds of unsoundness were then existing (*Margetson* v. *Wright*, 1 L. J. C. P. 128; 8 Bing. 454; 1 Moore & S. 622).

A nerved horse (*Best* v. *Osborne*, Ry. & Moo. 290), or one chest-foundered (*Atterbury* v. *Fairmanner*, 8 Moore C. P. 32), is unsound.

A receipt "for a grey four-year-old colt, warranted sound in every respect," is a warranty only for the soundness, not for the age (*Budd* v. *Fairmanner*, 1 L. J. C. P. 16; 8 Bing. 48; 1 Moore & S. 74).

Vf, Add. C. 560: Rosc. N. P. 486: Benj. 612: Oliphant's Law of Horses, ch. 4.

V. VICE: WARRANTED SOUND.

Note. What was once regarded as a doctrine that a "Sound Price," *i.e.* a full price, implied a Warranty, was rejected by Mansfield, C. J., as a popular error (*V.* note to *Broennenburgh* v. *Haycock*, sup).

Breach of Contract "sounding in Damages"; *V.* LIQUIDATED DAMAGES, p. 1105.

SOURCE. — "Source of Water Supply," quà P. H. London Act, 1891, "means, any stream, reservoir, aqueduct, pond, well, tank, cistern, pump, fountain, or other work or means for the supply of water, whether actually used or capable of being used for the supply of water or not" (s. 141).

SOUTH AFRICA. — For Union of, *V.* South Africa Act, 1877, 40 & 41 V. c. 47. *V.* AS THE QUEEN DIRECTS.

V. SELF.

SOUTH SEA. — *V.* BUBBLE ACT.

SOVEREIGN. — *V.* CROWN: QUEEN.

"Soveraigne of the house" (Litt. s. 202), "is the chiefe of the house" (Co. Litt. 136 b).

SOWING. — *V.* PLOUGHING.

SPACE. — "Space occupied by the GOODS," s. 85 (2), Mer Shipping Act, 1894, means (when the "Goods" are Horses or Cattle) the space occupied by the animals with reasonable facilities for their movements (*Richmond Hill S. S. Co* v. *Trinity House*, 1896, 2 Q. B. 134; 65 L. J. Q. B. 561; 75 L. T. 8; 45 W. R. 6).

"Open Space"; *V.* OPEN, p. 1341.

SPARE. — What can be "spared"; *V. Beverley* v. *A-G.*, 15 Bea. 546; revd 27 L. J. Ch. 66; 6 H. L. Ca. 310. *Cp*, LEFT.

SPAWN. — *V.* FRY: OYSTER SPAT.

SPEAKER. — Quà Parliamentary Elections Act, 1868, 31 & 32 V. c. 125, "'Speaker' shall be deemed to include Deputy Speaker; and, when the Office of Speaker is vacant, the Clerk of the House of Commons, or any other Officer for the time being performing the duties of the Clerk of the House of Commons, shall be deemed to be substituted for and to be included in the expression 'the Speaker'" (s. 4).

SPECIAL. — A Special *Act of Parliament*, is one that is "directed towards a special object, or special class of objects" (per Ld Hatherley, *Garnett* v. *Bradley*, 3 App. Ca. 950; 48 L. J. Q. B. 188); its antithesis is, a General or PUBLIC ACT OF PARLIAMENT: *Vh, R.* v. *D'Oyly*, 12 A. & E. 139: *Baird* v. *Tunbridge Wells*, 1894, 2 Q. B. 867; 64 L. J.

Q. B. 145; 1896, A. C. 434; 65 L. J. Q. B. 451: *Hill* v. *Haire*, 1899, 1 I. R. 87. "The rule that a Special Act is not repealed by a subsequent General Act, unless an intention to repeal is expressed or necessarily implied, is laid down in numerous cases, of which *Hawkins* v. *Gathercole* (24 L. J. Ch. 332; 6 D. G. M. & G. 1), *Thorpe* v. *Adams* (40 L. J. M. C. 52; L. R. 6 C. P. 125), and *Fitzgerald* v. *Champneys* (30 L. J. Ch. 777) are good examples" (per Smith, L. J., *Baird* v. *Tunbridge Wells*, 64 L. J. Q. B. 151).

"Special Act"; Stat. Def., 8 & 9 V. cc. 16, 18, 20, s. 2; 10 & 11 V. cc. 14, 15, 16, 17, 34, 65, 89, s. 2; 34 & 35 V. c. 113, s. 3; 36 & 37 V. c. 48, s. 3; 37 & 38 V. c. 40, s. 4; 62 & 63 V. c. 19, s. 1. — *Scot.* 8 & 9 V. cc. 17, 19, 33, s. 2; 16 & 17 V. c. 93, s. 2. — *Ir.* 34 & 35 V. c. 109, s. 3.

"Special *Advertisement*" of a Notice under Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, means an advertisement thereof "published once in at least two LOCAL NEWSPAPERS" (s. 3); under County Voters Registration (Scot) Act, 1861, 24 & 25 V. c. 83, such an advertisement "shall be inserted once in at least two NEWSPAPERS published in the county, or, if there be no newspaper or only one newspaper published therein, in any newspaper or newspapers published in a county adjoining thereto" (s. 2).

"Special *Application or Appropriation*" of Donation to a CHARITY, s. 62, Charitable Trusts Act, 1853; *V. Sons of Clergy Corp* v. *Skinner*, 1893, 1 Ch. 178; 62 L. J. Ch. 148; 67 L. T. 751; 41 W. R. 461.

"Special AREAS" in Vermin Destruction (Victoria) Act, 1890; *V. King* v. *Cheyne*, 1900, A. C. 622; 69 L. J. P. C. 136.

A Special *Case*, is a written statement of the facts in a litigation, agreed to by the parties, so that the Court may decide the questions in issue according to law: *V.* VERDICT. *Vh*, 3 Bl. Com. 378: Ord. 34, R. S. C., on *whv* Ann. Pr.

"Special *Cause*" for (in Ireland) depriving a successful litigant of costs after a trial by jury, s. 53, 40 & 41 V. c. 57: — In an action of Seduction the woman was 35 years of age and readily consented, the parties were poor, and the jury only gave £10 damages, which the presiding judge thought as much as could have been reasonably expected; held, that there was no "Special Cause" for depriving the plaintiff of costs (*Wilson* v. *M'Mains*, 20 L. R. Ir. 582: *Cp*, GOOD CAUSE).

The "Special *Circumstances*" sufficient to enable a client to get taxation of his *Solicitor's Bill after* payment (6 & 7 V. c. 73, s. 41), may be matters appearing on the face of the Bill (*Re Robinson*, L. R. 3 Ex. 4; 37 L. J. Ex. 11), and must, speaking generally but not exhaustively, consist of pressure, or there must be a specified overcharge so gross as to amount to fraud (*Re Harrison*, 16 L. J. Ch. 170; 10 Bea. 57: *Re Lacey*, 53 L. J. Ch. 287; 25 Ch. D. 301: *Re Boycott*, 55 L. J. Ch. 835; 29 Ch. D. 571). The majority of the Court of Appeal in *Re Boycott* ad-

hered to this rule (which culminated in *Re Harrison*), and therefore the disapproval of it in *Re Dearden* (23 L. J. Ex. 14), and in *Re Newman* (36 L. J. Ch. 843; 2 Ch. 707; 15 W. R. 1189) is much lessened. But in *Re Norman* (55 L. J. Q. B. 202; 16 Q. B. D. 673; 54 L. T. 143: 34 W. R. 313) and *Re Cheesman* (1891, 2 Ch. 289; 60 L. J. Ch. 714; 64 L. T. 602; 39 W. R. 497) the Court of Appeal declined to be bound by any rigid rule defining these "Special Circumstances." *Vf, Watson* v. *Rodwell*, 11 Ch. D. 150; 48 L. J. Ch. 209: *Re Griffith*, 53 L. J. Ch. 303. Charging a Scale Fee where none applicable is a "special circumstance" (*Re Pybus*, 56 L. J. Ch. 921; 35 Ch. D. 568; 57 L. T. 362; 35 W. R. 770). So, where, on payment, a right to tax is reserved (*Re Williams*, 65 L. T. 68: *Cp*, UNDER PROTEST). *Vh*, 11 Encyc. 615–618.

Special Circumstances under s. 37, 6 & 7 V. c. 73, justifying an allowance to a Solr of Costs of Taxation though ⅛th of his Bill is knocked off; *V. Re Paull*, 53 L. J. Ch. 871; 54 Ib. 134; 27 Ch. D. 485; 32 W. R. 940; 50 L. T. 585; 51 L. T. 435: *Re Mackenzie*, 69 L. T. 751; 41 W. R. 530: *Sv, Re Carthew*, 53 L. J. Ch. 927; 54 Ib. 134; 27 Ch. D. 485; 32 W. R. 940; 51 L. T. 435.

Protracted litigation is a "Special Circumstance" within R. 15, Ord. 58, R. S. C. (*Va*, R. 113, Bankry Rules, 1883), justifying an unusually large deposit as *Security for Costs* on an Appeal (*Re McHenry*, 55 L. J. Q. B. 496; 17 Q. B. D. 351; 35 W. R. 20: *svthc, Re Phillips*, 1896, 2 Q. B. 122; 65 L. J. Q. B. 648). Insolvency, or other proved inability to pay costs of appeal if the appellant should be unsuccessful, is generally the "Special Circumstance" acted on under Rule 15 for ordering a deposit as security for costs on an appeal to the Court of Appeal, but the Rule is not confined to such cases (*Weldon* v. *Maples*, 57 L. J. Q. B. 224; 20 Q. B. D. 331; 57 L. T. 672; 36 W. R. 154: *Brooke* v. *Kavanagh*, 21 L. R. Ir. 474: *Svth, McDougall* v. *Copestake*, 34 S. J. 347). If the appeal is seen to be frivolous (*Usill* v. *Hales*, 47 L. J. C. P. 380; 3 C. P. D. 206), or the appellant be a foreigner having no assets in England (*Grant* v. *Banque Franco-Egyptienne*, 47 L. J. C. P. 41), there would be such a "Special Circumstance." *Vf*, Ann. Pr.

Special Circumstances for *Stay of Execution* pending an application for a New Trial; *V. Monk* v. *Bartram*, 1891, 1 Q. B. 346; 60 L. J. Q. B. 267; 64 L. T. 45; 39 W. R. 310.

"Special Circumstances," s. 73, Court of Probate Act, 1857, 20 & 21 V. c. 77; *V. Re Wensley*, 51 L. J. P. D. & A. 21; 7 P. D. 13: *Re Clayton*, 55 L. J. P. D. & A. 26; 11 P. D. 76; 34 W. R. 444; 50 J. P. 263: *Re Grundy*, 37 L. J. P. & M. 21; L. R. 1 P. & D. 459: *Re Richardson*, 40 L. J. P. & M. 36; L. R. 2 P. & D. 244: *Re Woodfall*, 42 L. J. P. & M. 64; L. R. 3 P. & D. 108: *Re Hale*, 44 L. J. P. & M. 45: *Re Bond*, 23 W. R. 597; 33 L. T. 71: *Re Farrands*, 24 W. R. 1018: *Wells* v. *Brook*, 25 W. R. 463: *Re Clarke*, Ib. 82; 46 L. J. P. D. & A. 16: *Re Turner*, 56 L. J. P. D. & A. 41; 12 P. D. 18; 57 L. T.

372; 35 W. R. 384: *Re Eccles*, 61 L. T. 652; W. N. (89) 198: *Re Minshull*, 14 P. D. 151: *Re Wash*, 1892, P. 230; 61 L. J. P. D. & A. 123; 67 L. T. 355: *Re Crawshay*, 1893, P. 108; 62 L. J. P. D. & A. 91; 68 L. T. 260; 41 W. R. 303: *Re Shoosmith*, 1894, P. 23; 63 L. J. P. D. & A. 64; 70 L. T. 809: *Re Peck*, 29 L. J. P. M. & A. 95; 2 Sw. & Tr. 506, followed in *Re Harling*, 1900, P. 59; 69 L. J. P. D. & A. 32; 81 L. T. 791: *Re Potter*, 1899, P. 265; 68 L. J. P. D. & A. 97; 81 L. T. 234.

"Special Circumstances" in NAVIGATION, within Articles 27 and 29, Regns for Preventing Collisions at Sea, 1897; *V. The Sanspareil*, 1900, P. 267; 69 L. J. P. D. & A. 127; 82 L. T. 606.

The "Special Circumstances" justifying a *Change of Venue* of an Election Petition (s. 11 (11), Parl. El. Act, 1868) include local intimidation (*Sligo*, 1 O'M. & H. 300), or a great saving of expense (*Arch* v. *Bentinck*, 18 Q. B. D. 548; 56 L. J. Q. B. 458; 56 L. T. 360; 35 W. R. 476); but something more than mere inconvenience must be shown (*Tewkesbury*, 49 L. J. C. P. 685; 5 C. P. D. 544: *Cirencester*, 1893, 1 Q. B. 245; 62 L. J. Q. B. 231). *Vh*, *Stepney*, 37 S. J. 29.

Special *Commissioners*; *V.* COMMISSIONERS.

Special *Constables* are persons (not legally exempt from serving as Constables) who are resident in a disquieted parish, township, or place, or its neighbourhood, whom two or more justices shall call upon to act as Special Constables (s. 1, Special Constables Act, 1831, 1 & 2 W. 4, c. 41: *R.* v. *Vincent*, 9 C. & P. 91: *R.* v. *Porter*, Ib. 778); but "all persons willing to act," wherever resident, may be appointed (s. 1, Special Constables Act, 1835, 5 & 6 W. 4, c. 43). A Special Constable has all the authority of an ordinary CONSTABLE, and remains a constable until his services are determined under s. 9, 1 & 2 W. 4, c. 41 (*R.* v. *Porter*, sup).

As to the "Special *Contract*" prescribed in s. 6, *Carriers Act*, 1830, and in s. 7, Ry and Canal Traffic Act, 1854; *V. Peek* v. *North Staffordshire Ry*, 32 L. J. Q. B. 241; 10 H. L. Ca. 473: *Lewis* v. *G. W. Ry*, 47 L. J. Q. B. 131; 3 Q. B. D. 195: *Kirby* v. *G. W. Ry*, 18 L. T. 658.

The "Special Contract" under the *Pawnbrokers Act*, 1872, 35 & 36 V. c. 93, does not prevent the pawnbroker from recovering the balance of his loan remaining due after the sale of the pledge (*Jones* v. *Marshall*, 59 L. J. Q. B. 123; 24 Q. B. D. 269).

"Special Contract," s. 18, *Prisons Act*, 1842, 5 & 6 V. c. 98; *V. Bramston* v. *Colchester*, 6 E. & B. 246; 25 L. J. M. C. 73; 4 W. R. 491.

"Special *County Account*," "Special *County Purposes*"; Stat. Def., Loc Gov Act, 1888, s. 68. *Cp*, GENERAL COUNTY PURPOSES.

"Special DAMAGE," in Contract or in Tort, when shown and how pleaded, *V.* jdgmt by Bowen, L. J., *Ratcliffe* v. *Evans*, 1892, 2 Q. B. 524; 61 L. J. Q. B. 535; 66 L. T. 794; 40 W. R. 578. That learned

judge there points out that "such Damage is called variously in old authorities 'Express Loss,' 'Particular Damage' (*Cane* v. *Golding*, Style, 169, 176), 'Damage in Fact,' 'Special or Particular Cause of Loss' (*Lawe* v. *Harwood*, Cro. Car. 140: *Tasburgh* v. *Day*, Cro. Jac. 484)": also that "Special Damage" has been used to denote the actual and particular loss to an individual from a Public Nuisance (*Iveson* v. *Moore*, 1 Raym. Ld, 486: *Rose* v. *Groves*, 12 L. J. C. P. 251; 5 M. & G. 613). *Vf*, SLANDER.

"Special *Directions*" from Guardians authorizing a prosecution under the Vaccination Acts; *V. R.* v. *Brocklehurst*, 1892, 1 Q. B. 566; 61 L. J. M. C. 48; 65 L. T. 714; 40 W. R. 64; 56 J. P. 182; 17 Cox C. C. 409.

"Special *Executor*": *V.* PERSONAL REPRESENTATIVES.

"Special *Expenses*," s. 68, Loc Gov Act, 1888; *V. Bury St. Edmunds* v. *West Suffolk Co. Co.*, 1898, 2 Q. B. 246; 67 L. J. Q. B. 750; 78 L. T. 624; 47 W. R. 16; 62 J. P. 486.

"Special Expenses," ss. 229, 230, P. H. Act, 1875; *V. Darenth Valley* v. *Dartford*, 56 L. J. Q. B. 615; 19 Q. B. D. 270; 57 L. T. 233; 36 W. R. 43: *Lanc. & Y. Ry* v. *Bolton*, 15 App. Ca. 323; 60 L. J. Q. B. 118: *Sheffield* v. *Bradfield*, 7 Times Rep. 571: *Jersey* v. *Uxbridge*, cited GENERAL EXPENSES: *Horn* v. *Sleaford*, 1898, 2 Q. B. 358; 67 L. J. Q. B. 724; 78 L. T. 722; 62 J. P. 502.

"Special *Grounds*" justifying an Order for Costs on the Higher Scale (R. 9, Ord. 65, R. S. C.) must relate to the importance or difficulty of the cause or matter, *e.g.* as requiring a class of witnesses more than usually expert and expensive; but the largeness of the amount involved, and charges of misrepresentation or fraud, are not such Grounds (*Williamson* v. *N. Staffordshire Ry*, 55 L. J. Ch. 938; 32 Ch. D. 399; 55 L. T. 452: *Paine* v. *Chisholm*, 1891, 1 Q. B. 531; 60 L. J. Q. B. 413; 39 W. R. 353: *Assets Development Co* v. *Close*, 1900, 2 Ch. 717; 69 L. J. Ch. 715; 83 L. T. 162). *Vf*, Ann. Pr.

"Special Grounds" for admitting further evidence on an Appeal, R. 4, Ord. 58, R. S. C.; *V. Re Chennell*, 47 L. J. Ch. 583; 8 Ch. D. 492: *Arnison* v. *Smith*, 58 L. J. Ch. 645: Ann. Pr.

"Special Grounds" for excusing a Husband from joining a Co-Respondent in a Divorce Action, s. 28, 20 & 21 V. c. 85, must be shown by satisfactory affidavits (*Jones* v. *Jones*, 65 L. J. P. D. & A. 101; 1896, P. 165), one by the husband, uncorroborated, being insufficient (*Barber* v. *Barber*, 65 L. J. P. D. & A. 58; 1896, P. 73). As to what are such Grounds, *V. Hooke* v. *Hooke*, 27 L. J. P. & M. 61; 1 Sw. & Tr. 183: *Quicke* v. *Quicke*, 31 L. J. P. & M. 28; 2 Sw. & Tr. 419: *Jinkings* v. *Jinkings*, L. R. 1 P. & D. 330: *Saunders* v. *Saunders*, 66 L. J. P. D. & A. 57; 1897, P. 89.

Vf, "Special Leave" and "Special Reasons," inf.

A Special "*Indorsement*" of a BILL OF EXCHANGE, "specifies the

person to whom, or to whose order, the Bill is to be payable" (s. 34 (2), Bills of Ex. Act, 1882). *Vh*, Chalmers, 111: Byles, 178–182. *Cp*, RESTRICTIVE INDORSEMENT.

A Special Indorsement of a Writ, under R. 6, Ord. 3, R. S. C., must contain particulars of goods, &c, sued on, giving dates, so as to clearly show what the action is for (*Parpaite* v. *Dickinson*, 38 L. T. 178; 26 W. R. 479: *Walker* v. *Hicks*, 47 L. J. Q. B. 27; 3 Q. B. D. 8: *Godden* v. *Corsten*, W. N. (79) 190), or a reference to an account rendered giving such particulars (*Aston* v. *Hurwitz*, 41 L. T. 521). For examples, *V.* Appendix C. s. 4, of the Rules; *Va*, *Smith* v. *Wilson*, 49 L. J. C. P. 96; 4 C. P. D. 392; 5 Ib. 25: *Bickers* v. *Speight*, 22 Q. B. D. 7; 58 L. J. Q. B. 42; 37 W. R. 139: Ann. Pr.: 11 Encyc. 643–648.

Special *Jurors*; *V.* s. 6, Juries Act, 1870, 33 & 34 V. c. 77, the Sch to which contains the Exemptions.

Where a thing cannot be done "without Special *Leave*," that means, "without leave granted on Special Grounds" (*Thompson* v. *Partridge*, 4 D. G. M. & G. 796; 2 W. R. 113; 23 L. J. Ch. 158; 22 L. T. O. S. 181: *Re Malcolmson*, Ir. Rep. 10 Eq. 488). *Vf*, "Special Grounds," sup.

"The 'Special *License*' mentioned in the Statute of Marlbridge, 52 H. 3, c. 23, s. 2, is commonly expressed by the well-known phrase 'WITHOUT IMPEACHMENT OF WASTE'" (*Woodhouse* v. *Walker*, 49 L. J. Q. B. 611; 5 Q. B. D. 404).

Marriage by Special License; *V.* 25 H. 8, c. 21: the right of the Archbishop of Canterbury to grant these Licenses is preserved by s. 20, Marriage Act, 1823, 4 G. 4, c. 76, and by s. 1, Marriage Act, 1836, 6 & 7 W. 4, c. 85. *Vh*, *Doe* d. *Egremont* v. *Grazebrook*, 12 L. J. Q. B. 221; 4 Q. B. 406; 3 G. & D. 334: Phil. Ecc. Law, 612, 613.

"Special *Limits*"; *V.* GENERAL LIMITS.

"Special *Meeting*," connotes that the persons to be convened shall have notice of the purpose of the meeting (per Alderson, B., *Cutbill* v. *Kingdom*, 1 Ex. 504).

The "Special *Occasion*" for giving an Innkeeper an extension of hours (s. 29, 35 & 36 V. c. 94), must be determined by the Justices to whom the application is made (*Devine* v. *Keeling*, 34 W. R. 718; 50 J. P. 551; 2 Times Rep. 692). *Vf*, "Special Permission," inf.

"Special *Occupant*" of an estate PUR AUTRE VIE, ss. 3, 6, Wills Act, 1837; *V. Mountcashell* v. *More-Smyth*, 1896, A. C. 158; 65 L. J. P. C. 12; 74 L. T. 321: *Re Sheppard*, 1897, 2 Ch. 67; 66 L. J. Ch. 445; 76 L. T. 756; 45 W. R. 475: *Re Michell*, 1892, 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375: *Northen* v. *Carnegie*, 28 L. J. Ch. 930; 4 Drew. 587: *Wall* v. *Byrne*, 2 J. & La T. 118: *King* v. *King*, 1899, 1 I. R. 30.

"Special *Order*"; *V.* Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, Sch s. 1; Factory and Workshop Act, 1901, s. 156: *Cp*, "Special Act," sup.

"Special *Permission*" for keeping Licensed Premises open during particular times; *V.* s. 6, Public Houses Acts Amendment (Scot) Act, 1862, 25 & 26 V. c. 35; s. 2, 50 & 51 V. c. 38. *Vf*, "Special Occasion," sup.

Special *Power of Appointment*, how executed; *V.* POWER: *Re Hayes*, 69 L. J. Ch. 691: *Re Huddleston*, cited MY: *Re Sharland*, 1899, 2 Ch. 536; 68 L. J. Ch. 747; 81 L. T. 384: Farwell, ch. 5. *Cp*, GENERAL POWER.

Special *Property* in Animals *feræ naturæ*, and goods; *V.* 2 Bl. Com. 391 *et seq.*

Notice specifying "Special *Purpose*" of a Vestry Meeting, s. 1, 58 G. 3, c. 69; *V. R.* v. *Powell*, 42 L. J. M. C. 129; L. R. 8 Q. B. 403: *Rand* v. *Green*, 30 L. J. C. P. 80; 9 C. B. N. S. 470: *Smith* v. *Deighton*, 8 Moore P. C. 179.

"Special *Reason*"; *V.* IF THEY SHALL THINK FIT.

"Special Reasons" for modifying the rules relating to the Discharge of a Bankrupt, s. 8 (2), Bankry Act, 1890; *V. Re Stevens*, 1898, 2 Q. B. 495; 67 L. J. Q. B. 932; 79 L. T. 80; 47 W. R. 61, *whc* shows that a recommendation to mercy by a jury, would not be such a Reason.

Special *Resolution*; *V.* RESOLUTION.

Special *Services* by a Railway Co; *V. Lanc. & Y. Ry* v. *Gidlow*, cited "Services Incidental," sub. INCIDENT.

A Special *Sessions* of Justices, is a Special Petty Sessions called for some particular purpose; *Vh*, s. 3, 32 & 33 V. c. 47; s. 7, 7 & 8 V. c. 33: where there is no statutory provision the Clerk gives a reasonable convening notice (*R.* v. *Worcestershire Jus.*, 2 B. & Ald. 228). Special Sessions for transferring Alehouse Licenses; *V.* ss. 4, 5, Alehouse Act, 1828, 9 G. 4, c. 61: — for revising Jury Lists; *V.* s. 10, Juries Act, 1825, 6 G. 4, c. 50: — for hearing Poor Rate Appeals, s. 6, Parochial Assessments Act, 1836, 6 & 7 W. 4, c. 96, on *whv* Stone, tit. *Poor Rates.*

"Special Session"; Stat. Def., Licensing Act, 1872, s. 77; 53 & 54 V. c. 59, s. 12 (9).

Special *Tail*; *V.* TAIL.

A Special *Train* is not, necessarily, one ordered by a passenger or a body of passengers; but includes a train specially provided by a Railway Company in substitution for, or in addition to, their ordinary service (*Walker* v. *Lond. & S. W. Ry*, Times, 18th May 1882): *Va*, ORDINARY TRAIN: TRAIN.

Special Trust; *V.* SIMPLE TRUST.

Special Verdict; *V.* VERDICT.

The "Special and Distinctive *Word or Words*," capable of registration under s. 10, Trade Marks Registration Act, 1875, must have been used before the Act, solely and not in combination with any device, *i.e.* the word or words must alone have been the trade-mark (*Re Palmer*,

24 Ch. D. 504: *Re Chorlton*, 53 L. T. 337; 34 W. R. 60); and not one indicating a person, or type, or giving a description of the article (*Re Harrison*, 59 L. J. Ch. 22; 42 Ch. D. 691). *Vf*, DISTINCTIVE.

SPECIALLY. — "Specially *authorized* Societies," s. 8 (5), Friendly Soc. Act, 1875; *V. Peat* v. *Fowler*, 55 L. J. Q. B. 271; 34 W. R. 366: FRIENDLY SOCIETY.

"Specially *indorsed*" Writ; *V.* Special *Indorsement*, sub SPECIAL: R. 6, Ord. 3, R. 1, Ord. 14, R. S. C., and thereon Ann. Pr.

"Specially *limited*"; *V. Morris* v. *Duncan*, cited RECOVER.

"Specially *qualified*"; *V.* QUALIFIED: EXPERT: SKILL.

SPECIALTY. — A "Specialty" is a contract under SEAL; and a "Specialty Debt" is an obligation secured by such a contract, *e.g.* a Bond, or Mortgage. So, also an obligation arising under a statute is a "Specialty" within the meaning of the Statutes of Limitation; *e.g.* an action under 2 Edw. 6, for carrying away corn without setting out tithes (*Talory* v. *Jackson*, Cro. Car. 513); an action for an Escape (*Jones* v. *Pope*, 1 Wms. Saund. 36); or for Calls on a Shareholder in a Co formed by Act of Parliament (*Cork & Bandon Ry* v. *Goode*, 22 L. J. C. P. 198; 13 C. B. 826), or under the Comp Act, 1862 (ss. 16, 75, 90, 134: *Buck* v. *Robson*, 39 L. J. Ch. 821; L. R. 10 Eq. 629); or Debentures issued by a Co under statutory powers (*Re Cornwall Ry*, 1897, 2 Ch. 74; 66 L. J. Ch. 561; 76 L. T. 832; 46 W. R. 5); or for Dues authorized by Parliament (*Shepherd* v. *Hills*, 25 L. J. Ex. 6; 11 Ex. 55). But a penalty under a Bye-law of a Co founded by Charter under the Great Seal, is not a "Specialty," for such a liability springs out of the member's implied consent to obey the bye-laws, which is in effect a contract without specialty (*Tobacco Pipe Co* v. *Loder*, 20 L. J. Q. B. 414; 16 Q. B. 765); so also the mere recital in a deed of a simple contract debt does not make the debt a specialty (*Ivens* v. *Elwes*, 24 L. J. Ch. 249; 3 Drew. 25), so, of an acknowledgment by deed of such a debt (*Brook* v. *Harwood*, 37 L. J. Ch. 209; 3 Ch. 225); but if the deed secures such debt, the debt merges and becomes a Specialty (*Commrs of Stamps* v. *Hope*, 1891, A. C. 476; 60 L. J. P. C. 44; 65 L. T. 268), so if the deed agrees to give a specialty security (*Saunders* v. *Milsome*, L. R. 2 Eq. 573).

As to Rent; *V. Kidd* v. *Boone*, 40 L. J. Ch. 531; L. R. 12 Eq. 89: *Re Hastings*, 47 L. J. Ch. 137; 6 Ch. D. 610.

The action of DEBT upon "Bonds and Specialties" given by 3 W. & M. c. 14, against Heirs and Devisees of Obligors, did not extend to damages on a covenant, for the context limited the "Specialties" to those on which the action of Debt lay (*Wilson* v. *Knubley*, 7 East, 128).

Cp, PAROL: SIMPLE CONTRACT.

SPECIE. — Quà a Marine Insrce where goods are insured against TOTAL Loss free of AVERAGE, "it is well settled that if the Goods in-

sured arrive at the Port of Destination existing *in specie*, the Underwriters are not liable although the goods are of no value whatever. Some question has arisen as to the meaning of 'Specie.' The primitive meaning of the word is, undoubtedly, 'Appearance'; and it is in this sense that it is commonly applied to Memorandum articles. Thus, if a box of a chariot is lost and nothing but the wheels remain, these cannot be said to have the appearance of a chariot, and, consequently, the article no longer exists *in specie*, and the underwriters are liable as for a TOTAL Loss with Salvage (*Judah* v. *Randal*, 2 Caines Ca. 324). But it has been held that the value of the article has nothing to do with its existence *in specie*. Thus, fish though absolutely spoiled (*Cocking* v. *Fraser*, Park, 247), and corn which was putrid (*Neilson* v. *Columbian Insrce*, 3 Caines Rep. 108), were both held to exist *in specie*. And pork has been held not to lose its identity by being roasted (*Skinner* v. *Western Marine Insrce*, 19 La. 273)": Parsons Maritime Law, 381, cited by Mellish arg. *Duthie* v. *Hilton*, L. R. 4 C. P. 141: *Vf*, *Cambridge* v. *Anderton*, 2 B. & C. 691: *Saunders* v. *Baring*, 34 L. T. 419: *The Knight of St. Michael*, 14 Times Rep. 191.

But there is now (at least in England) a perfectly well-known test applicable to such cases as those just referred to. "That test is, whether, as a matter of business, the NATURE of the thing has been altered. The Nature of a thing is not, necessarily, altered because the thing itself has been damaged; wheat or rice may be damaged, but may still remain the things dealt with as wheat or rice in business. But if the Nature of the thing is altered and it becomes, for business purposes, something else so that it is not dealt with by business people as the thing which it originally was, — if it is so changed in its nature by the Perils of the Sea as to become an unmerchantable thing which no buyer would buy and no honest seller would sell, — then there is a TOTAL Loss" (per Esher, M. R., *Asfar* v. *Blundell*, 1896, 1 Q. B. 127, 128; 65 L. J. Q. B. 141).

SPECIFICALLY: SPECIFIC. — A mortgage or charge "specifically *affecting*" the property of a Joint Stock Co, s. 43, Comp Act, 1862, means one created by the Company itself (*Re General Horticultural Co*, 29 S. J. 555).

"Specifically *bequeathed*"; *V.* BEQUEATHED, and Specific *Bequest*, inf.

The statute establishing Poor Rates (43 Eliz. c. 2) imposed no liability on any mines, except coal mines (*Morgan* v. *Crawshay*, 40 L. J. M. C. 202; L. R. 5 H. L. 304). The Rating Act, 1874 (37 & 38 V. c. 54, s. 3), made all mines assessable to the poor rate; but, by s. 8, a lessee, till then exempt from being rated, became during the continuance of his lease entitled to deduct from his rent one-half of the rate unless he had "specifically *contracted* to pay such rate in the event of the abolition of the said exemption." A lessee of an iron mine who became liable to poor

rate under that latter Act, and who before its passing had contracted to pay his rent "free from all deductions whatsoever" and also to pay "all manner of taxes, rates, assessments, charges, and impositions whatsoever, parliamentary or parochial, which now are or which shall at any time hereafter" be payable in respect of the mine, was held *not* to have "specifically" contracted himself out of the benefit of s. 8 (*Chaloner* v. *Bolckow*, 47 L. J. C. P. 562; 3 App. Ca. 933: *Devonshire* v. *Barrow Hæmatite Steel Co*, 46 L. J. Q. B. 435; 2 Q. B. D. 286: *V.* IMPOSITION). "The meaning of the word 'specific' is the reverse of 'general.' You cannot give to a general covenant the force of a specific agreement with regard to a particular tax; and a covenant in a lease to pay 'all taxes, rates, assessments, charges, and impositions whatsoever' cannot be regarded as a 'specific' covenant" (per Ld Hatherley, *Chaloner* v. *Bolckow*, sup).

The words "Household furniture and effects, Implements of husbandry," in a Schedule to a Bill of Sale, do not "specifically" *describe* such goods within s. 4, Bills of Sale Act, 1882; for the word requires "that amount of separation of one class of articles from another which any business inventory would give" (per Brett, M. R., *Roberts* v. *Roberts*, 53 L. J. Q. B. 313; 32 W. R. 605; 13 Q. B. D. 794). So, a Bill of Sale, by a picture dealer, stating Pictures as being so many, — *e.g.* 300 Oil Pictures in gilt frames, 20 water-colour pictures, — would be insufficient (*Witt* v. *Banner*, 20 Q. B. D. 114; 36 W. R. 115; 57 L. J. Q. B. 141; 58 L. T. 34; 3 Times Rep. 759). But in a Bill of Sale by a private person, "12 Oil Paintings in gilt frames" was held sufficiently specific (*Cooper* v. *Huggins*, 34 S. J. 96). Ordinary cows are not specifically described as "21 Milch Cows" if nothing more be added (*Carpenter* v. *Deen*, 23 Q. B. D. 566; 61 L. T. 860; 5 Times Rep. 647); but in that case Lopes, L. J. (who dissented from the decision), said that Sheep should be more definitely described, and that Horses are customarily described by their colour, *e.g.* "Bay Mare," "Chestnut Gelding." *Carpenter* v. *Deen* was followed in *Davies* v. *Jenkins* (1900, 1 Q. B. 133; 69 L. J. Q. B. 187; 81 L. T. 788; 48 W. R. 286). In the case of a small farm in Wales, a description of "All my Farming Stock, comprising 4 Horses, 5 Cows," and mentioning other animals by number only and defining them in no other way, was held sufficient (*Jones* v. *Roberts*, 34 S. J. 254); in *this* the identification was aided by the localizing words "all my farming stock" (*Vh*, per Cotton, L. J., *Carpenter* v. *Deen*, sup). So, by "Roan horse, *Drummer*; brown mare and foal; 3 rade carts," the chattels were "specifically described" (*Hickley* v. *Greenwood*, 59 L. J. Q. B. 413; 25 Q. B. D. 277; 63 L. T. 288; 38 W. R. 686). So, where a Bill of S., under the heading "Study," had an item of "1800 Volumes of Books, as per catalogue," which catalogue was not annexed, it was held that the books were "specifically described" within the section (*Davidson* v. *Carlton Bank*, 1893, 1 Q. B. 82; 62 L. J. Q. B. 111; 67 L. T. 641; 41

W. R. 132). *Vf, Seed* v. *Bradley,* cited "Maintenance of the Security," sub MAINTENANCE, p. 1143.

To *deny* "specifically" a statement in a Pleading, R. 13, Ord. 19, R. S. C., you "must deal specifically with each allegation of fact" of which you do not admit the truth (R. 17, Ib.). *Vth, Thorp* v. *Holdsworth,* 3 Ch. D. 637; 45 L. J. Ch. 406: *Harris* v. *Gamble,* 7 Ch. D. 877; 47 L. J. Ch. 344: *Adkins* v. *North Metrop Tramways,* 63 L. J. Q. B. 361; 10 Times Rep. 173: Ann. Pr.: *Cp,* NEGATIVE PREGNANT.

"Specifically *devised*"; *V. Giles* v. *Melsom,* L. R. 6 H. L. 24; 42 L. J. C. P. 122.

A Specific *Bequest,* "in the first place, is a *part* of the testator's property. A General Bequest may or may not be a part of the testator's property. A man who gives £100 money or £100 stock, may not have either the money or the stock, in which case his exors must raise the money or buy the stock; or he may have money or stock sufficient to discharge the legacy, in which case the exors would probably discharge it out of the actual money or stock. But in the case of a General legacy it has no reference to the actual state of the testator's property, it being only supposed that the testator has sufficient property which, on being realized, will procure for the legatee that which is given to him; while in the case of a Specific bequest it must be of a part of the testator's property itself. In the next place, it must be a part emphatically, as distinguished from the whole. It must be, what has been sometimes called, a severed or distinguished part. It must not be the whole, in the meaning of being the totality of the testator's property, or the totality of the general residue of his property after having given legacies out of it. But if it satisfy both conditions, —that it is (1) a part of the testator's property itself, and (2) is a part as distinguished from the whole or from the whole of the residue, — then it appears to me to satisfy everything that is required to treat it as a Specific Legacy. I hope the definition which I have attempted to give will be more successful than those which have been attempted before, but I can only express that hope with some degree of trepidation" (per Jessel, M. R., *Bothamley* v. *Sherson,* L. R. 20 Eq. 308, 309; 44 L. J. Ch. 590, 591). But a Residuary *Devise* is specific in its nature, quà Marshalling Assets (*Hensman* v. *Fryer,* 3 Ch. 420; 37 L. J. Ch. 97; 16 W. R. 162), and quà LOCKE KING'S ACTS (*Gibbins* v. *Eyden,* L. R. 7 Eq. 371; 38 L. J. Ch. 377; 17 W. R. 481; 20 L. T. 516: *Hannington* v. *True,* 33 Ch. D. 197; 55 L. J. Ch. 914; 35 W. R. 103; 55 L. T. 549).

Specific LEGACY; *V.* per Selborne, C., *Robertson* v. *Broadbent,* 8 App. Ca. 812; 53 L. J. Ch. 266: *Re Huddleston,* 1894, 3 Ch. 595; 64 L. J. Ch. 157; 43 W. R. 139: INVESTED: SUM: Wms. Exs. 1019: Theobald, 112.

"Specific *Cause*" of Profits falling short, No. 4, 3rd set of Rules,

Sch D, s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Ryhope Co* v. *Foyer*, 7 Q. B. D. 485; 45 L. T. 404.

"Specific *Goods*," quà Sale of Goods Act, 1893, means, "goods identified and agreed upon at the time a Contract of Sale is made" (subs. 1, s. 62).

"Specific *Performance* of a Contract, is its actual execution according to its stipulations and terms; and is contrasted with Damages or Compensation for the non-execution of the contract" (Fry, s. 3). *Vh*, Fry, passim: Story, ss. 712–793: 2 White & Tudor, 416–534: 11 Encyc. 653–688.

A "Specific *Sum*," charged by Settlement on realty and exempt from Legacy Duty by the proviso to s. 4, Legacy Duty Act, 1805, 45 G. 3, c. 28, is not confined to a precise amount fixed by the Settlement, but includes an amount named by the Settlement which may be reduced by the donee of a power thereunder, *e.g.* a power to appoint a rent-charge *not exceeding* £700 a year (*A-G.* v. *Hertford*, 14 L. J. Ex. 266; 14 M. & W. 284: *Pickard* v. *A-G.*, 9 L. J. Ex. 329; 6 M. & W. 348).

Specific *Trust*; *V.* PARTICULAR TRUST.

V. SPECIFY.

SPECIFICATION. — The Specification to accompany an application for the grant of a PATENT may be either (1) Provisional, or (2) Complete (s. 5, 46 & 47 V. c. 57): Form B in Sch 1 to that Act is that of a Provisional Specification; Form C that of a Complete Specification. *Vh*, per Halsbury, C., *Vickers* v. *Siddell*, 60 L. J. Ch. 105; 15 App. Ca. 496: *Nuttall* v. *Hargreaves*, 1892, 1 Ch. 23; 61 L. J. Ch. 94; 65 L. T. 597; 40 W. R. 200.

V. QUANTITY SURVEYOR.

SPECIFIED. — "Specified Article"; *V.* ARTICLE.

"Specified Person," in def of PROMISSORY NOTE; *V. Storm* v. *Stirling*, cited SECRETARY.

V. SET FORTH.

SPECIFY. — A Marine Policy issued by an Association and signed by A. B., Manager, "per procuration of the several members of the Association every member bearing his equal proportion according to the sums mutually insured therein," and which did not by itself afford the means of ascertaining who the insurers were to be, did not "specify" the *Names* of the Subscribers or Underwriters within the meaning of s. 7, 30 V. c. 23 (*Re Arthur Average Assn*, 44 L. J. Ch. 569; 10 Ch. 542: *Vth*, *Smith* v. *Anderson*, 15 Ch. D. 247). But as regards the statute (35 G. 3, c. 63, s. 2) the language of which was employed in s. 7, 30 V. c. 23, it has been held that if the insurers constitute a firm, the name of the firm will be a sufficient specification of the subscribers

(*Reid* v. *Allan*, 19 L. J. Ex. 39; 4 Ex. 326: *Dowdall* v. *Allan*, 19 L. J. Q. B. 41: referring to which cases it has been said, "it may easily be held that a partnership name is a sufficient specification"; per James, L. J., *Re Arthur Average Assn*, 44 L. J. Ch. 576).

Order by Ry Commrs requiring a Ry or Canal Co to "specify the *Nature and Detail* of such other Expenses," s. 14, Regn of Railways Act, 1873; *V.* NATURE, p. 1242.

"Notice specifying *Particular Breach*," s. 14, Conv & L. P. Act, 1881; *V.* NOTICE, p. 1292.

Where a Co agrees to sell its Undertaking and a part of the bargain is that the Directors and Secretary shall receive from the purchaser compensation for loss of Office, and the Notice to Shareholders of a meeting to sanction the agreement refers to the agreement simply as "an agreement for the Sale of the Undertaking and Assets," the Notice does not sufficiently "specify the PURPOSE for which the meeting is called" within s. 71, Comp C. C. Act, 1845, even though it be followed by a circular which states that "the Directors and Secretary have agreed to retire on being paid a lump sum as compensation for their loss of office" (*Kaye* v. *Croydon Tramways Co*, 1898, 1 Ch. 358; 67 L. J. Ch. 222; 78 L. T. 237; 46 W. R. 405).

The Notice "specifying the intention to propose" a *Special* RESOLUTION, under s. 51, Comp Act, 1862, must fairly state the nature and object of the Resolution, so that it may be "intelligible to the minds of the class of men to whom the notice is addressed" (per Chitty, J., *Henderson* v. *Bank of Australasia*, 59 L. J. Ch. 796; 45 Ch. D. 330). *Vh*, *Re Bridport Old Brewery Co*, 2 Ch. 191: *Re Silkstone Fall Co*, 1 Ch. D. 38: *Imperial Bank of China* v. *Bank of Hindustan*, 6 Eq. 91: 1 Palmer Co. Prec., Forms 450 *et seq.*

V. SPECIFIC.

SPEECH. — Report of, *V.* AUTHOR.

SPEED. — *V.* CONVENIENT SPEED: MODERATE SPEED.

SPEND. — "Does not spend"; *V.* LEFT.

V. EXPEND.

"Spending *Authority*"; Stat. Def., Agricultural Rates Act, 1896, 59 & 60 V. c. 16, s. 9, and Sch.

SPENT MADDER. — *V. Turner* v. *Mucklow*, 8 Jur. N. S. 870; 6 L. T. 690.

SPINSTER. — "'Spinster,' is the addition usually given to all unmarryed Women from the Viscount's Daughter downward" (Cowel).

A bequest for "Spinsters" is Charitable (*Thompson* v. *Corby*, 27 Bea. 649; 8 W. R. 267). *Cp*, WIDOW.

Following, and a little amplifying, the rule on the phrase WITHOUT HAVING BEEN MARRIED, Romer, J., held that an ultimate trust, in a Marriage Settlement, on the wife's Next-of-kin as if she had died "a Spinster and intestate," excluded only the husband, and that her child by a former marriage was entitled (*Re Forbes*, W. N. (99) 6).

V. FEME: UNMARRIED.

SPIRIT GROCER. — *V.* s. 81, Licensing Act, 1872, 35 & 36 V. c. 94: *Dowling* v. *O'Loughlin*, Ir. Rep. 11 C. L. 488.

SPIRIT MERCHANT. — *V.* MERCHANT.

SPIRITS. — "We think that nothing can be taken to be 'Spirits' within the meaning of 6 G. 4, c. 80 (*V.* s. 101), which does not come under the definition of an inflammable liquid produced by distillation, either pure or mixed only with ingredients which do not convert it into some article of commerce not known in common parlance under the generic appellation of 'Spirits'" (per Pollock, C. B., delivering the jdgmt, *A-G.* v. *Bailey*, 17 L. J. Ex. 12; 1 Ex. 281). It was there also said that 7 W. 4, c. 72, and 5 & 6 V. c. 25, were strongly confirmatory of this view; and it was held that Sweet Spirits of Nitre were not "Spirits" within the enactment.

By s. 6, Inland Revenue Act, 1868, 31 & 32 V. c. 124, "Spirits" as used in ss. 17, 18, Illicit Distillation (Ir) Act, 1831, 1 & 2 W. 4, c. 55, includes "all Spirits whatsoever, whether completely distilled or otherwise."

Quà Refreshment Houses Act, 1860, 23 & 24 V. c. 27, "Any FERMENTED Liquor containing a greater proportion than 40 per cent of PROOF Spirit shall be deemed and taken to be "'Spirits'" (s. 21).

Quà Spirits Acts, 1880, 43 & 44 V. c. 24, "'Spirits,' means, Spirits of any description; and includes, all liquors mixed with spirits, and all mixtures, compounds, or preparations, made with spirits" (s. 3); and "'Spirits of Wine,' means, rectified spirits of the strength of not less than 43 degrees above proof" (Ib.).

V. BRITISH SPIRITS: FOREIGN: LOW WINES: PLAIN SPIRITS: SPIRITUOUS LIQUOR. *Cp*, BEER.

SPIRITUAL. — "Temporal or Spiritual Injury, Damage, Harm, or Loss," s. 2, Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51; — A Priest may "throw the whole weight of his character into the scale; but he may not appeal to the fears, or terrors, or superstition, of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or disadvantage, or of punishment hereafter. He must not, *e.g.* threaten to excommunicate, or to withhold the Sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular

candidate as a sin, or as an offence involving punishment here or hereafter" (per Fitzgerald, J., *Longford*, 2 O'M. & H. 16: *Va*, *Tipperary*, Ib. 31).

Corporation Spiritual; *V.* CORPORATION.

"'Law Spiritual': That is the Ecclesiasticall Lawes allowed by the lawes of this realm, viz. which are not against the Common Law (whereof the King's prerogative is a principal part), nor against the statutes and customes of the realm: and regularly, according to such ecclesiasticall lawes, the Ordinarie and other ecclesiasticall judges doe proceed in causes within their conusance" (Co. Litt. 344 a). *Cp*, "Law Temporal," sub TEMPORAL.

Lord Spiritual; *V.* PARLIAMENT: PEER.

V. ECCLESIASTICAL PERSON: RELIGION.

SPIRITUALISM. — *V. Monck* v. *Hilton*, cited PALMISTRY: OTHERWISE, p. 1370.

SPIRITUALITY. — "Spiritualities of a Bishop, *Spiritualia Episcopi*, are those Profits which he receives as a Bishop, not as a Baron of the Parliament. Such are the duties of his Visitation, his benefit growing from ordaining and instituting Priests, Prestation Money, that is, *subsidium charitativum* which upon reasonable cause he may require of his Clergy, and the benefit of his Jurisdiction" (Cowel). *Vf*, TEMPORALITY.

SPIRITUOUS LIQUOR. — A covenant not to use premises "as an Inn, Public-house, or Tap-room, or for the SALE of Spirituous Liquors, or ale, or beer," is broken if such Liquors, &c, are sold in any form or manner, *e.g.* in bottles (*Fielden*, or *Feilden* v. *Slater*, 38 L. J. Ch. 379; L. R. 7 Eq. 523; 20 L. T. 112; 17 W. R. 485: *Cp*, *Jones* v. *Bone*, cited RETAIL). *V.* PUBLIC HOUSE.

A Covenant in the Lease of a tied Public-house that the Lessee shall purchase his beverages from the Lessor, implies, as a condition, that the Lessor shall be willing to supply the same of a good marketable kind (*Luker* v. *Dennis*, 7 Ch. D. 227; 47 L. J. Ch. 174: *Vf*, *Doe* d. *Calvert* v. *Reid*, 10 B. & C. 849; 8 L. J. O. S. K. B. 328). Such a covenant, if made with the Lessor "and his ASSIGNS," will RUN WITH THE LAND (*Clegg* v. *Hands*, 59 L. J. Ch. 477; 44 Ch. D. 503; 38 W. R. 433; 6 Times Rep. 233), even when the Assigns of the Lessee are not named (*White* v. *Southend Hotel Co*, 1897, 1 Ch. 767; 66 L. J. Ch. 387). And where the covenant is to purchase from "the Lessor, or his firm, or his or their SUCCESSORS IN BUSINESS," that means what it says, and so long as the lessor can and will supply he is the person entitled to the covenant; failing him, then his "Successors in Business" are entitled thereto, and you cannot read into the covenant "his exors admors or assigns" after the word "Lessor," although the lease provides that "where the context allows" you may do so, for the context there does not allow the

insertion of those words (*Birmingham Breweries* v. *Jameson*, 67 L. J. Ch. 403; 78 L. T. 512: *Vf*, *Manchester Brewery Co* v. *Coombs*, 82 L. T. 347; 1901, 2 Ch. 608; 70 L. J. Ch. 814). A similar conclusion will be reached if the intention is clear that the benefit of such a covenant is to go with the business of the covenantee, even though his "Successors and Assigns" are not mentioned (*John* v. *Holmes*, cited ASSIGNS, p. 131).

Vf, EXCLUSIVE RIGHT.

Quâ North Sea Fisheries Act, 1893, 56 & 57 V. c. 17, "'Spirituous Liquors,' shall include, every liquid obtained by distillation, and containing more than 5 per centum of alcohol" (s. 9). *V.* SPIRITS.

"Spirituous Liquors" in the first part of s. 12, Tippling Act, 24 G. 2, c. 40 (probably) means (as it does in the subsequent part of the section) distilled spirituous liquors, so that wine, beer, &c, are not included in the section, but only "Spirits" in the popular meaning of that word, *e.g.* brandy, whisky, gin. The section extends to Spirits mixed with water (*Scott* v. *Gillmore*, 3 Taunt. 226: *Gilpin* v. *Rendle*, cited 4 C. & P. 368, 369, *n*); but in *Wyatt* v. *Mackenzie* (44 S. J. 583, 584), Grantham, J., divided soda-water from the whisky with which it was mixed, and gave judgment for the value of the soda-water. The section is amended by 25 & 26 V. c. 38. *Vf*, INTOXICATING LIQUOR: ITEM: ONE TIME.

SPITTING OF BLOOD.—"Spitting of Blood," in a Life Insrce Proposal, means, spitting of blood from some disease; but if the proposer suffers from spitting of blood, without knowing the cause, the fact should be stated (*Geach* v. *Ingall*, 14 M. & W. 95; 15 L. J. Ex. 37).

SPITTLE-HOUSE.—"'Spittle-house,' mentioned in the Act for Subsidies, 15 Car. 2, c. 9, is a corruption from HOSPITAL, and signifies the same thing; or it may be taken from the Teutonick 'Spital,' which denotes an Hospital or Almes-house" (Cowel).

SPLIT.—Splitting, or Dividing, causes of action; *V.* CAUSE OF ACTION.

Conveyances of realty are void when made "to multiply Voices, or to *split or divide* the interest" "among several persons to enable them to vote at elections," s. 7, 7 & 8 W. 3, c. 25; that enactment was "merely declaratory of the common law, and avoids such conveyances only as are actually tainted with fraud" (1 Rogers, 226, *whv* for cases supporting that proposition). *Vf*, s. 4, Rep People Act, 1884, on *whv* 1 Rogers, 229, 230.

SPOIL.—"Without impeachment of waste, *except Spoil or Destruction*"; as to the force of this exception, *V.* per Romilly, M. R., *Vincent* v. *Spicer*, 25 L. J. Ch. 591; 22 Bea. 380.

V. WILFUL AND MALICIOUS. *Cp*, BOOTY: PRIZE.

SPOLIATION. — "Spoliation, is an injury done by one Clerk or Incumbent to another, in taking the fruits of his Benefice without any right thereunto, but under a pretended title" (3 Bl. Com. 90).

SPONTE. — *V.* WILLINGLY.

SPORTING. — *V.* HUNTING.

A "Sporting Paper or Periodical," in a restrictive agreement on the sale of such a paper as *Bell's Life*, does not include one devoted to athletic sports and which deliberately excludes all racing and betting intelligence, *e. g.* the *Athletic News* (*McFarlane* v. *Hulton*, cited PUBLICATION).

SPRAG. — *V.* MATERIALS.

SPRAYING. — Quà Seed Supply and Potatoe Spraying (Ir) Act, 1898, 61 & 62 V. c. 50, "'Spraying Machine,' means, any machine for spraying potatoes for the purpose of preventing or curing disease therein; and 'Spraying Material,' means, any material used in such machines" (s. 10).

SPRING. — "What is a Spring (of water)? Is it where a defined channel of water first starts?" (per Herschell, C., *Bradford* v. *Pickles*, 64 L. J. Ch. 102). "A 'Spring of Water,' both in law and ordinary language, is a definite source of water. When we talk of a Spring of Water we mean a source of water of a definite, or nearly definite, area. The word 'Spring' comes from the water springing or bubbling up. It may be an underground spring which supplies a Well, and we say that water 'wells up.' It may be above the ground, *e.g.* the ordinary spring from which a small stream or rivulet runs. But those are definite things. A Spring of Water, means, a source of water of a definite and well-marked extent existing in nature" (per Jessel, M. R., *Taylor* v. *St. Helen's*, cited WATERCOURSE). *Vf*, STREAM: Callis, 83. *Cp*, PUBLIC WELL.

"Spring Tide"; *V.* SHORE: TIDE: 26 & 27 V. c. 114, s. 19.

SPRINGING. — EXECUTORY limitations of realty in a WILL are called "Executory Devises," — in a DEED they are called "Springing or Shifting Uses" (Challis, R. P., 2 ed., 65, 66). "Phrases which properly refer to the mode of their limitation are, in practice, often confused or used interchangeably with phrases which properly refer to the nature of the interest taken under such limitations. This usage is especially frequent with respect to Executory Devises, *e.g.* an Executory Interest arising by Executory Devise, is often briefly styled an 'Executory Devise'" (Ib.). A "Springing Use" is an estate in realty which arises, by its own vigour, on the happening of an event or series of events, and which

takes unto itself the legal estate in the realty by virtue of the Statute of Uses, 27 H. 8, c. 10.

Vh, Wms. R. P., Part 2, ch. 3: "Contingent Remainder," sub CONTINGENT.

SPRING-RICE'S ACT. — Executors Act, 1830, 11 G. 4 & 1 W. 4, c. 40.

SPRUCE BEER. — *V.* BEER.

SQUARE. — S. 5, 27 G. 3, c. 28, imposed a Duty on all Cast-plate Glass which was to be "*squared* into plates of a superficies not less than 1485 inches"; whereon Eyre, C. B. (*A-G.* v. *Cast-Plate Glass Co*, 1 Anstr. 44), said, "I have no doubt in saying, that the legislature used the word 'Square' not in the strict, but in the common acceptation, confining it to rectangular, but not to equilateral, figures." *Cp*, SQUARE MILE.

Quà London Bg Act, 1894, "'Square,' applied to the measurement of the AREA of a Building, means, the space of 100 superficial feet" (subs. 23, s. 5, a def adapted from 7 & 8 V. c. 84, s. 2).

SQUARE BALE. — *V.* BALE.

SQUARE MILE. — The Land Act Amendment Act, 1875, of New South Wales, 39 V. No. 13, s. 31, provides that the holder of Crown lands under lease for pastoral purposes, may, in virtue of intended improvements, apply for the right of pre-emption of such land, "provided that no such application to purchase as aforesaid shall be made for more than one Square Mile within each block of 5 Miles Square out of each lease, or a proportionate quantity out of any holding of less area"; held, that "Square Mile" and "Miles Square" meant, areas of those dimensions, and not land geometrically square (*Robertson* v. *Day*, 49 L. J. P. C. 9; 5 App. Ca. 63). *Cp*, SQUARE.

SQUATTER. — A Squatter, in unsettled lands of a Colony, means, "a person who has taken possession of a piece of land and occupied it by buildings or by cultivation, and has, by so taking possession of it, asserted a right to it" (*Hoggan* v. *Esquimalt & Nanaimo Ry*, 1894, A. C. 429; 63 L. J. P. C. 99; 70 L. T. 888). *Semble*, "Settler" is synonymous (*Ib.*).

STAB. — *V.* CUT: WOUND. *Cp*, SLIT.

STABLE. — *Semble*, a "Stable" is a place for Horses; a Cow-house is not a "Stable" (*R.* v. *Haughton*, cited OUTHOUSE); nor is a Lumber-shed, though originally built for and used as a stable (*R.* v. *Colley*, 2 Moo. & R. 475).

Stables, as part of a dwellinghouse, quà House Tax; *V.* BELONGING, p. 178.

Training Stables; *V. Lambton* v. *Kerr*, cited BELONGING: SOLELY.

"Stable" belonging to a specified house; *V. Maitland* v. *Mackinnon*, cited BELONGING.

V. MANSION: NUISANCE: WORKPLACE.

STABLESTAND.—"'Stablestand' is a terme of the Forrest lawes, and it is when one is found standing in the Forest with his bow bent ready to shoot at any Deere, or with his Greyhounds in a lease ready to slip" (Termes de la Ley, citing Manwood, 133 b). *Vf*, Cowel.

STACK.—Stack of Hay; *V.* COCK OF HAY.

A quantity of Straw packed on a lorry, in course of transmission to market, and left for the night in the yard of an Inn, is not a "Stack *of Straw*" within "Stack of corn, grain, pulse, tares, hay, *straw*, haulm, stubble," s. 17, Malicious Damage Act, 1861, 24 & 25 V. c. 97 (*R.* v. *Satchwell*, 42 L. J. M. C. 63; L. R. 2 C. C. R. 21; 28 L. T. 569; 21 W. R. 642).

A score of Faggots piled one upon another in a loft, is not a "Stack of Wood" within s. 17, 7 & 8 G. 4, c. 30, repld s. 17, Malicious Damage Act, 1861 (*R.* v. *Aris*, 6 C. & P. 348).

STADIUM.—"By the grant of *Stadium*, *Ferlingus*, or *Quarentena terræ*, doth pass a furlong or furrow long, which anciently was the 8th part of a mile" (Touch. 96: *Va*, Co. Litt. 5 b). "And *de ferlingis et quarentenis* you shall read divers times in the book of Domesday" (Co. Litt. 5 b).

V. QUARENTINE.

STAFF.—*V.* PERMANENT.

STAGE.—*V.* ENTERTAINMENT.

Where a Court, Judge, or Arbitrator, has the power, *e.g.* to amend, strike out, refer, state a case, &c, "at any Stage *of the Proceedings*," the power applies so long as anything remains to be done to complete the Jdgmt or Award, *e.g.* the assessment of damages after jdgmt determining the liability (*The Duke of Buccleuch*, 1892, P. 201; 61 L. J. P. D. & A. 57; 40 W. R. 455: per Halsbury, C., *Tabernacle Bg Socy* v. *Knight*, 1892, A. C. 298; 62 L. J. Q. B. 50; 67 L. T. 483; 41 W. R. 207). But where the proceedings are complete, *e.g.* when the Award has been made in an arbitration, the power is gone (*Re Palmer and Hosken*, 1898, 1 Q. B. 131; 67 L. J. Q. B. 1; 77 L. T. 350; 46 W. R. 49). *Cp*, PENDING.

Every CULPRIT, and his or her wife or husband, is "a Competent Witness for the DEFENCE at *every* Stage of the Proceedings" (s. 1, Crim. Ev. Act, 1898), *i.e.* at every stage where a denial may be pleaded; therefore, a Culprit cannot be sworn and give evidence before the Grand Jury

(*R.* v. *Rhodes*, 1899, 1 Q. B. 77; 68 L. J. Q. B. 83; 79 L. T. 360; 47 W. R. 121; 62 J. P. 774), nor, *semble*, in Indictable cases, before the committing Justices (per Hawkins, J., *Anon.*, 43 S. J. 36).

Goods remain in "a *Stage, Process or Progress, of Manufacture,*" s. 3, 7 & 8 G. 4, c. 30, if they be not brought into a condition fit for sale, although their texture be complete (*R.* v. *Woodhead*, 1 Moo. & R. 549).

STAGE CARRIAGE. — Quà Metropolitan Public Carriage Act, 1869, 32 & 33 V. c. 115, "Stage Carriage," means, "any carriage for the conveyance of Passengers, which plies for HIRE in any Public Street Road or Place within the limits of this Act, and in which the passengers or any of them are charged to pay separate and distinct, or at the rate of separate and distinct, fares for their respective places or seats therein" (s. 4). *Vf*, METROPOLITAN: HACKNEY CARRIAGE: OMNIBUS: CAB: STAGE WAGGON.

Other Stat. Def. — Dublin Carriage Act, 1853, 16 & 17 V. c. 112, s. 80.

STAGE PLAY. — Quà Theatres Act, 1843, 6 & 7 V. c. 68, "Stage Play," includes, "every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other ENTERTAINMENT of the Stage, or any part thereof; Provided always, that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which, by the Justices of the Peace or other persons having authority in that behalf, shall be allowed in any lawful FAIR, feast, or customary meeting of the like kind" (s. 23). A Duologue is within that def (*Thorne* v. *Colson*, 25 J. P. 101). Dancers descending from rocks on to the stage with daggers in their hands and dancing in mimic warfare, the conclusion of the dance being accentuated by some of the dancers standing in triumph over the others, and who retire at the approach of a new set of dancers with palm leaves in their hands, the latter making an avenue to receive a première danseuse who dances a pas seul, and then all form a group with palm leaves and other stage properties, is, *semble*, a "Stage Play"; but whether such, or any such like, performance is or is not a Stage Play is rather a question of fact than of law (*Wigan* v. *Strange*, 35 L. J. M. C. 31; L. R. 1 C. P. 175; H. & R. 41; 13 L. T. 371; 14 W. R. 103). *V.* DRAMATIC.

STAGE WAGGON. — By a Local Turnpike Act (4 G. 4, c. xxx), persons who had paid any toll for the passing of any horse and carriage through a toll-gate, were exempt from paying toll again that day, but it was provided that the tolls payable in respect of horses drawing any "Stage-Coach, Diligence, Van, Caravan, *Stage-Waggon*, or other Stage-Carriage," should pay on re-passing; held, that "Stage-Waggon" signified a Waggon that went and returned regularly from a fixed place to

some other fixed place, at certain definite times (*R.* v. *Ruscoe*, 7 L. J. M. C. 94; 8 A. & E. 386; 3 N. & P. 428).

V. STAGE CARRIAGE.

STAGNUM. —*V.* POOL: GURGES.

STALE. — Stale Demand; *V. Re Sharpe*, 1892, 1 Ch. 154; 61 L. J. Ch. 193; 65 L. T. 76, 806; 40 W. R. 241, and cases there cited: WAIVER.

STALL. — The continuous occupation of a portion of a Market by an erection placed there for the purpose of selling goods, is a "Stall" for which Stallage is payable although the soil be not interfered with; therefore, a wooden or wicker basket (called in Norfolk, a "Ped"), having a lid which turns back, and which, when supported by a stool or pieces of wood not fixed in the soil, forms a table upon which goods are exposed for sale, is a "Stall" (*Great Yarmouth* v. *Groom*, 32 L. J. Ex. 74; 1 H. & C. 102; 7 L. T. 161; 8 Jur. N. S. 677). *Vf, Caswell* v. *Cook*, 31 L. J. M. C. 185; 11 C. B. N. S. 637.

STALLAGE AND PICKAGE. — "Stallage, is the right of putting up a stall in a fair or market, and also the money paid to the owner of the soil for so doing; Pickage, is the right of picking up the soil for that purpose, and the money paid to the owner of the soil for so doing" (Elph. 620, citing Spelm. *Stallagium*: *R.* v. *Maydenhead*, Palm. 76; 2 Rol. Rep. 155. *Vh, Great Yarmouth* v. *Groom*, cited STALL).

"'Stallage,' that is to be quit of a certaine custome exacted for the street taken or assigned in Faires and Markets." "'Piccage,' is the payment of money, or the money payd, for the breaking of the ground to set up boothes and standings in Faires" (Termes de la Ley).

STAMP. — Quà Stamp Acts, "'Stamp,' means as well a stamp impressed by means of a die as an adhesive stamp" (s. 122, Stamp Act, 1891; s. 2 (5), Stamp Act, 1870); Excise Labels are included in that def (s. 23, Stamp Act, 1891). *Vf*, 54 & 55 V. c. 38, s. 27; 33 & 34 V. c. 98, s. 2 (10). *Va*, STAMPED. *Cp*, MARK.

Quà Weights and Measures Act, 1878, 41 & 42 V. c. 49, "'Stamping,' includes, casting, engraving, etching, branding, or otherwise marking, in such manner as to be, so far as practicable, indelible; and the expression 'Stamp,' and other expressions relating thereto, shall be construed accordingly" (s. 70).

Fictitious Stamp; *V.* LAWFUL EXCUSE.

STAMPED. — Quà Stamp Acts, "'Stamped,' with reference to INSTRUMENTS and Material, applies as well to Instruments and Material impressed with stamps by means of a die as to Instruments and Mate-

rial having adhesive stamps affixed thereto" (s. 122, Stamp Act, 1891; s. 2 (6), Stamp Act, 1870): *Vf*, 54 & 55 V. c. 38, s. 27; 33 & 34 V. c. 98, s. 2 (11). *Va*, STAMP.

"Duly stamped"; *V.* DULY.

"Properly Stamped"; *V.* PROPERLY.

"Stamped Forms"; Stat. Def., 21 & 22 V. c. 100, s. 3.

STAND.—"Standing in my name," marks a bequest as SPECIFIC (*Gordon* v. *Duff*, 3 D. G. F. & J. 662; 4 L. T. 598; 7 Jur. N. S. 746; 9 W. R. 643).

"Standing to the credit"; *V.* CREDIT.

Shares "Standing in his own right"; *V.* IN HIS OWN RIGHT.

Valuation of a Partner's Share as the same "stood" at a stated date; held to mean as it stood in the books of the partnership (*Blissett* v. *Daniel*, 10 Hare, 511).

Machinery, &c, "standing" on premises; *V.* ERECTED.

"Standing NETS"; *V.* STOP.

"Standing Orders"; *V.* ORDER, p. 1351.

V. STANDING BY.

STANDARD.—"'Estandard or Standard,' signifieth an ensigne in war; but it is also used for the principall or standing measure of the King" (Termes de la Ley, *Estandard*): *Vf*, Cowel. *Cp*, BANNER.

The "Standard *Amount*," quâ adjustment of rent between occupier and landlord in consequence of agricultural grant and change in incidence of rate (s. 54, Loc Gov (Ir) Act, 1898), "means, in relation to any HOLDING, a sum equal to what is produced by a rate on the rateable value of the holding in the standard FINANCIAL YEAR, according to the standard rate of Poor Rate or County Cess, as the case requires" (subs. 6).

Standards of Fineness of Gold, Silver, and Bronze, Coins; *V.* Coinage Acts, 1870 and 1891, 33 & 34 V. c. 10; 54 & 55 V. c. 72.

Standard Gold and Silver Ware; *V.* Gold and Silver Wares Acts, 1844 and 1854, 7 & 8 V. c. 22; 17 & 18 V. c. 96. *Vf*, Plate Assay (Ir) Act, 1807, 47 G. 3, Sess. 2, c. 15; Plate (Scot) Act, 1836, 6 & 7 W. 4, c. 69.

For the Standard Weights and Measures of the United Kingdom, and how they were constructed, *V.* Weights and Measures Act, 1878, 41 & 42 V. c. 49, and its Schedules: on s. 24, *V. Bellamy* v. *Pow*, 12 Times Rep. 527; 60 J. P. 712. *V.* WEIGHT.

STANDELL.—"Is a young store Oak-Tree, which may in time make TIMBER" (Cowel); this is correct "if the word 'Oak' is expunged" (*note* to *Herring* v. *St. Paul's*, 3 Swanst. 514, where it is said, that, "as increasing the 'store' of timber, a Standell is denominated a 'Storer'").

STANDING BY. — "Standing by" is that ACQUIESCENCE in an Infringement of a Right which would make it fraudulent in the Possessor of the right to afterwards set up his right; and, firstly, the Infringer must have made a mistake as to his legal rights; secondly, he must have expended some money or have done some act (not, necessarily, upon the Possessor's land) on the faith of his mistaken belief; thirdly, the Possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the Infringer; fourthly, the Possessor of the legal right must know of the Infringer's mistaken belief of his rights; lastly, the Possessor of the legal right must have encouraged the Infringer in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right (per Fry, J., *Willmott* v. *Barber*, 15 Ch. D. 105, 106; 49 L. J. Ch. 792: applied in *Civil Service Musical Instrument Assn* v. *Whiteman*, 68 L. J. Ch. 484; 80 L. T. 685; 63 J. P. 441).

V. SILENCE: WAIVER.

STANHOPE. — *V.* TALFOURD'S ACTS.

STANLAWE. — *V.* LAW OR LAWE.

STANNARIES. — "The Stannaries" of Devon and Cornwall; *V.* Stannaries Acts, 1869 and 1887, 32 & 33 V. c. 19; 50 & 51 V. c. 43.

Stannaries Court abolished by 59 & 60 V. c. 45.

START. — Start on a Voyage; *V.* SAIL.

STATE. — "State-inspected SCHOOL," quà Truck Amendment Act, 1887, 50 & 51 V. c. 46, "means, any ELEMENTARY school inspected under the direction of the Education Department in England or Scotland, or of the Board of National Education in Ireland" (s. 7).

V. STATES.

STATED ACCOUNT. — *V.* SETTLED.

STATED PERIOD. — *V.* PERIODICAL: CERTAIN TIME.

STATEMENT OF AFFAIRS. — The Statement required to be made and signed by a liquidating or compounding Debtor under the Bankry Act, 1869, meant a full complete and detailed disclosure, not only of the affairs of his own business, but also and to the same extent of any other (even solvent) business in which he may have been a partner (*Ex p. Amor*, 52 L. J. Ch. 138; 21 Ch. D. 594; 31 W. R. 282; 48 L. T. 16).

Quà Bankry Act, 1883; *V.* s. 16, on *whv* Wms. Bank. 59: Baldwin, 164.

STATEMENT OF CLAIM. — *V.* PLEADING.

STATEMENT OF FACT.—*V.* FACT: FALSE STATEMENT.

STATES.—Quà the COMMONWEALTH of Australia, "'The States,' shall mean, such of the Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia including the Northern Territory of South Australia, as for the time being are parts of the Commonwealth, and such Colonies or Territories as may be admitted into, or established by, the Commonwealth as States; and each of such parts of the Commonwealth shall be called 'a State': '*Original* States,' shall mean, such States as are parts of the Commonwealth at its establishment" (s. 6, 63 & 64 V. c. 12).

STATION.—A Condition on a Ry Excursion Ticket that if "used for any other Station than that named, the Ticket will be forfeited," means what it says (*G. N. Ry* v. *Palmer*, 1895, 1 Q. B. 862; 64 L. J. Q. B. 316; 72 L. T. 287; 43 W. R. 316; 59 J. P. 166).

There must be something very exceptional in its circumstances to make a SIDING a "Station" within s. 14, Regn of Railways Act, 1873 (*Pelsall Coal Co* v. *Lond. & N. W. Ry*, 7 Ry & Can Traffic Ca. 36, *whc, semble*, over-rules *Harborne Ry* v. *Lond. & N. W. Ry*, 2 Ib. 169).

"TRAFFIC to and from the Stations of each Co"; *V. Central Wales Ry* v. *Lond. & N. W. Ry*, 4 Ry & Can Traffic Ca. 101.

V. COMPETITIVE: RAILWAY STATION.

"Station," quà Army Chaplains Act, 1868, 31 & 32 V. c. 83, means and includes, "any Camp, Barrack, Hospital, or Arsenal, and property adjacent thereto, the site whereof is held by, or in trust for, Her Majesty" (s. 2).

"Station beyond the Seas," quà Army Act, 1881, "includes, any place where any of Her Majesty's Forces are serving out of the UNITED KINGDOM, the CHANNEL ISLANDS, and Isle of Man" (subs. 25, s. 190). *V.* BEYOND SEAS.

Polling Station; *V.* POLLING.

"Stations of the Cross"; *V. Re St. Mark's*, 1898, P. 114.

STATION TO STATION.—An ordinary contract (and though not as Common Carriers) to carry from "Station to Station," involves an obligation to unload and deliver at the receiving station, or at least to provide proper appliances for that purpose (per Hawkins, J., *Royal National Lifeboat Inst.* v. *Lond. & N. W. Ry*, 3 Times Rep. 601).

STATIONARY.—To be "stationary," within Art. 9 of the Regns for Preventing Collisions at Sea, 1863 (*Va*, Art. 9, Regns, 1897), a Fishing Vessel must not have more way on than is necessary to keep herself under command whilst attached to her nets. If it is necessary, even for the purpose of rendering her fishing more effective, that she should have more way on, she is not "stationary," and must carry the lights of a

vessel UNDER-WAY (*The Dunelm*, 53 L. J. P. D. & A. 81; 9 P. D. 164; 32 W. R. 970: *Vthc, The Tweedsdale*, 58 L. J. P. D. & A. 41; 14 P. D. 164; 61 L. T. 371; 37 W. R. 783). *Vf, The Edith*, Ir. Rep. 10 Eq. 345. *Cp*, STRANDING.

V. FIXED ENGINE.

STATUARY.—"Statuary," obviously includes a Marble Bust chiselled by an artist or a Marble full-length Figure; *secus*, of a Terra Cotta Bust which cannot, without averment on the record, be brought within even a trade meaning of "statuary" (*Sutton* v. *Ciceri*, 15 App. Ca. 144; 62 L. T. 742).

STATUE.—*V.* PUBLIC STATUE.

STATUS.—"Alteration in the status" of members of a Co, s. 131, Comp Act, 1862; *V. Re National Bank of Wales*, cited SHARE.

STATUTE.—Is, in its primary meaning, synonymous with ACT OF PARLIAMENT.

Quà Grammar Schools Act, 1840, 3 & 4 V. c. 77, "'Statutes,' shall mean and include, all written rules and regulations by which the school, schoolmasters, or scholars, are shall or ought to be governed, whether such rules or regulations are comprised in, incorporated with, or authorized by, any Royal or other Charter or other Instrument of Foundation Endowment or Benefaction, or declared or confirmed by Act of Parliament or by Decree of any Court of Record; and also all rules and regulations which shall be unwritten and established only by usage or reputation" (s. 25).

Quà Cambridge University Act, 1856, 19 & 20 V. c. 88, "Statutes," includes, "all ordinances and regulations of the University, and all ordinances and regulations contained in any Charter, Deed of Composition, or other Instrument of Foundation or Endowment, of a College; and all bye-laws ordinances and regulations" (s. 50).

STATUTE ADULT.—Quà Part 3, Mer Shipping Act, 1894, "'Statute ADULT,' shall mean, a person of the age of 12 years or upwards; and two persons between the ages of 1 and 12 years shall be treated as one Statute Adult" (subs. 2, s. 268).

STATUTE LABOUR.—"Statute Labour," "Statute Labour Road"; Stat. Def., Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, s. 3.

STATUTE MERCHANT.—This, as also Statute Staple, was a form of security for money formerly much in use: *Vh*, Termes de la Ley: Jacob, *Statute*: 2 Bl. Com. 160: 2 Cru. Dig. Title 14.

STATUTE OF DISTRIBUTION. — 22 & 23 Car. 2, c. 10.

Devise of all testator's realty and personalty to the "person or persons who under the Statute of Distribution of Effects of Intestates would have been entitled thereto" if he had died intestate; held to mean, that the law would divide his property for him, and therefore that the realty went to the heir (*Kühne* v. *Hudson*, 39 S. J. 468). *Cp*, NEXT OF KIN.

STATUTE OF FRAUDS. — 29 Car. 2, c. 3.

STATUTE OF USES. — 27 H. 8, c. 10.

STATUTE STAPLE. — *V.* STATUTE MERCHANT.

STATUTORY. — "Statutory *Declaration*"; *V.* DECLARATION.

"Statutory DEFENCE," R. 18 *a*, Ord. 10, County Court Rules, 1889, includes a defence based on want of NOTICE under Employers' Liability Act, 1880 (*Conroy* v. *Peacock*, 1897, 2 Q. B. 6; 66 L. J. Q. B. 425; 76 L. T. 465); so, of a defence under s. 4, Sale of Goods Act, 1893 (*Brutton* v. *Branson*, 1898, 2 Q. B. 219; 67 L. J. Q. B. 827; 79 L. T. 247); so, of a defence to a Solr's claim that he has not delivered a proper Bill (*Lewis* v. *Burrell*, 77 L. T. 626). *Note*: as to what is a sufficient compliance with the Rule, *V. Eaton* v. *Tapley*, 1899, 1 Q. B. 953; 68 L. J. Q. B. 638; 47 W. R. 463; 80 L. T. 797.

Statutory *Duty*; *V.* PURSUANCE: PUBLIC DUTY.

Statutory RECEIPT by a Building Socy; *V.* Bg Socy Act, 1874, s. 42, and Sch, on *whv*, *Fourth City Bg Socy* v. *Williams*, 49 L. J. Ch. 245; 14 Ch. D. 140: *Robinson* v. *Trevor*, 53 L. J. Q. B. 85; 12 Q. B. D. 423: *Sangster* v. *Cochrane*, 54 L. J. Ch. 301; 28 Ch. D. 298: *Hosking* v. *Smith*, 58 L. J. Ch. 367; 13 App. Ca. 582: quà Yorkshire Registries Act, 1884, 47 & 48 V. c. 54; *V.* s. 3.

"Statutory *Rules*"; *V.* RULES.

"Statutory TENANCY," quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "includes judicial lease under the Land Law (Ir) Act, 1881, and any Act Amending the same; and any tenancy in respect of which a JUDICIAL RENT has been fixed under any of those Acts" (s. 95).

STAUNCH. — *V.* TIGHT.

STAY. — "Stay of Execution," means to suspend the enforcement of a Jdgmt or Order until something else happens, *e.g.* an Appeal can be heard: *Vh*, SPECIAL, p. 1910: notes Ann. Pr. to R. 17, Ord. 42, R. S. C.: R. 16, Ord. 58, on *whv* Ann. Pr.

"Stay of Proceedings," means such a suspension (R. 16, Ord. 58, R. S. C.), but, probably, the phrase is more frequently used as meaning to restrain or stop the proceedings definitely; *V.* s. 24 (5), Jud. Act, 1873, on *whv* Ann. Pr., *whva* on Summons to Stay.

STAY AND TRADE. — A Policy which covers a Ship during "her Stay and Trade," at a place, means, during her stay there for the purposes of trade; and a stay for a purpose unconnected with trade is a deviation (*African Merchants* v. *British & Foreign Marine Insrce*, 42 L. J. Ex. 60; L. R. 8 Ex. 154). *V.* DEVIATE.

STEAL. — *V.* THEFT.

STEAM BRIDGE. — Steam Ferry Boats working in chains, are commonly called Steam Bridges; *V.* PASSENGER STEAMER.

STEAM ENGINE. — *V.* ENGINE: ERECT.

STEAM LAUNCH. — Quà Thames Conservancy Act, 1894, "'Steam Launch,' includes, any VESSEL propelled by steam, electricity, or other mechanical power, not being used solely as a Tug or for the Carriage of Goods, and not being certified by the Board of Trade as a PASSENGER STEAMER to carry 200, or more, passengers" (s. 3). *Cp*, HOUSE BOAT.

V. STEAM VESSEL: STEAMSHIP.

STEAM NAVIGATION. — The breakdown of an Engine, the disabling of a Screw, and things of that kind, are RISKS of Steam NAVIGATION (per Coleridge, C. J., *Mercantile S. S. Co* v. *Tyser*, 7 Q. B. D. 73; 29 W. R. 790).

STEAM VESSEL. — Quà Regns for Preventing Collisions at Sea, 1897, and by their Preliminary Rules, "Steam Vessel," includes, "any VESSEL propelled by machinery."

Cp, STEAM LAUNCH: STEAMSHIP.

STEAMSHIP: STEAMER. — In a Bill of Lading, a Steamship or Steamer means, a SHIP in which the principal motive-power during the voyage is steam. "I am very far from saying that where it is convenient, as it often is, for a steam vessel to use sailing power instead of steam power when the wind happens to be favourable, it is necessary that the vessel should be at all times and under all circumstances propelled by steam; but the meaning of a vessel being a Steamship is that the principal motive-power used shall be the power of steam, and not sails" (per Cockburn, C. J., *Fraser* v. *Telegraph Construction Co*, L. R. 7 Q. B. 568; 41 L. J. Q. B. 250).

V. PASSENGER STEAMER: SAILING VESSEL: STEAM LAUNCH: STEAM VESSEL.

"Shipment by Steamer"; *V.* SHIPMENT.

STEEL. — *V.* IRON.

STEER. — *V.* CATTLE.

STEERAGE PASSAGE. — Quà Part 3, Mer Shipping Act, 1894, " 'Steerage Passage,' shall include, passages of all PASSENGERS except Cabin Passengers " (subs. 4, s. 268): *V. Morriss* v. *Howden*, cited PASSAGE BROKER: STEERAGE PASSENGER.

STEERAGE PASSENGER. — Quà Part 3, Mer Shipping Act, 1894, — unless the context otherwise requires, — " 'Steerage Passenger,' shall mean, all PASSENGERS except Cabin Passengers; and persons shall not be deemed *Cabin* Passengers unless, —

" (*a*) the space allotted to their exclusive use is in the proportion of, at least, 36 clear superficial feet to each STATUTE ADULT; and

" (*b*) they are messed throughout the voyage at the same table with the MASTER, or First Officer, of the ship; and

" (*c*) the fare contracted to be paid by them is in the proportion for every week of the length of the voyage (as determined under this Part of this Act for Sailing Vessels) of 30*s*. if the voyage of the ship is from the BRITISH ISLANDS to a port south of the Equator, and 20*s*. if the voyage of the ship is from the British Islands to a port north of the Equator; and

" (*d*) they have been furnished with a duly signed contract ticket in the form prescribed by the Board of Trade for Cabin Passengers " (subs. 3, s. 268).

STELL NET. — *V.* NET; STOP.

STENT NET. — *V.* NET.

STEP. — An application *to the Court* by a deft for an extension of the time for delivering Defence, is a " Step in the Proceedings " within s. 4, Arb Act, 1889 (*Ford's Hotel Co* v. *Bartlett*, 1896, A. C. 1; 65 L. J. Q. B. 166; 73 L. T. 665; 44 W. R. 241); *secus*, if such time is obtained by consent without any such application (*Chappell* v. *North*, 1891, 2 Q. B. 252; 60 L. J. Q. B. 554; 65 L. T. 23; 40 W. R. 16: *Brighton Marine Co* v. *Woodhouse*, 1893, 2 Ch. 486; 62 L. J. Ch. 697; 68 L. T. 669; 41 W. R. 488). So, a Summons for Particulars, or an Order for Interrogatories, though obtained on a summons by the adversary, is a " Step " (*Chappell* v. *North*, sup), so, of attending on the adversary's Summons for Directions (*County Theatres Co* v. *Knowles*, 1902, 1 K. B. 480; 71 L. J. K. B. 351; 86 L. T. 132); but merely requiring a Statement of Claim is not a " Step " (*Ives* v. *Willans*, 1894, 2 Ch. 478; 63 L. J. Ch. 521; 70 L. T. 674; 42 W. R. 396). So, an application to the Court for Security for Costs, is a " Step " (*Adams* v. *Cattley*, 66 L. T. 687; 40 W. R. 570); but merely filing affidavits in answer to a motion for Receiver is not (*Zalinoff* v. *Hammond*, 1898, 2 Ch. 92; 67 L. J. Ch. 370; 78 L. T. 456).

A Solicitor's letter before action is not a Step in the action (*Longstaffe* v. *Woodrow*, 38 S. J. 275).

V. FRESH STEP.

STEP-CHILDREN. — *V.* CHILD, p. 303.

STEP-DAUGHTER. — A bequest of residue to testator's "Step-daughter," held, valid in favour of a daughter by his supposed wife, though such woman had a husband living at the time of the marriage ceremony between her and the testator and which husband was living at testator's death (*Wilkinson* v. *Joughin*, 35 L. J. Ch. 684; L. R. 2 Eq. 319).

V. DAUGHTER.

STEREOTYPE. — *V.* PRINT.

STERN. — *V.* AT OR NEAR.

STETHE or STEDE. — "*Stethe* or *Stede* betokeneth properly a banke of a river, and many times a place, as *stowe* doth" (Co. Litt. 4 b).

STEVEDORE. — *V.* EMPLOYED: SEA-GOING.

STEWARD. — Steward "is a word of many significations," but in s. 78, Litt., "it signifieth an officer of justice, viz., a Keeper of Courts, &c" (Co. Litt. 61 a, b; *whv*). *Va*, Cowel: Jacob.

Quà S. L. Act, 1882, "'Steward,' includes, DEPUTY Steward, or other proper Officer, of a Manor" (subs. 10, vi, s. 2): quà Stamp Act, 1891, "'Steward' of a Manor, includes Deputy Steward" (s. 122): quà Copyhold Act, 1894, "'Steward,' includes, a Deputy Steward and a Clerk of a Manor, and any person for the time being filling the character of or acting as Steward, whether lawfully entitled or not" (s. 94).

STEWARTRY. — *V.* COUNTY, p. 420: SHERIFFDOM.

STICHE. — A SELION (Elph. 621, citing Spelm. *Selio*).

STILL. — "Still Nets"; *V.* STOP: NET.

Quà Spirits Act, 1880, 43 & 44 V. c. 24, "'Still,' includes any part of a Still, and any distilling apparatus whatever, for distilling or making SPIRITS" (s. 3).

Trust property "still *retained*" by a trustee, s. 8 (1), Trustee Act, 1888, means, property which, at the time of action brought, the trustee actually has or has the power of getting (*Thorne* v. *Heard*, 1895, A. C. 495; 64 L. J. Ch. 652: *Re Page*, 1893, 1 Ch. 304; 62 L. J. Ch. 592; 41 W. R. 357). *V.* CONVERT: RETAIN.

STINT. — Common of Pasture "without Stint," or "Sans Nombre," does not mean that you are entitled to depasture on the Common as many commonable animals as you please (*Mellor* v. *Spateman*, Wms. Saund., 6 ed., 339, 340, 346); it connotes that the number is "unmeasured" (3 Bl. Com. 239), *i.e.* not precisely ascertained. If there is no precise regulation, the number of animals cannot exceed those which are, or could be, ordinarily LEVANT AND COUCHANT on the land to which the right is annexed (*Morley* v. *Clifford*, 51 L. J. Ch. 687; 20 Ch. D. 753).

STIPEND. — A Bequest of "£100 for Masses for the repose of my soul at the Stipend of 5*s.* each"; held, in Ireland, as meaning "at the Price" of, &c, and as not involving any attempt to create a PERPETUITY (*Phelan* v. *Slattery*, 19 L. R. Ir. 177).

"One Year's Stipend"; *V.* ONE, at end.

STIPENDIARY. — Stipendiary Lands; *V.* FEUD.

Stipendiary Magistrate; *V.* MAGISTRATE.

STIPULATED. — A BILL OF SALE payable "ON DEMAND," provides no "stipulated Time of Payment" within the meaning of the Form prescribed by the Schedule to Bills of Sale Act, 1882, and is void (per Brett, M. R., and Fry, L. J., *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: *Furnivall* v. *Hudson*, 1893, 1 Ch. 335; 62 L. J. Ch. 178; 68 L. T. 378; 41 W. R. 358). The essence of the thing is that "the time must be definitely stated. Therefore, an agreement to pay 'on demand,' or on the happening of an uncertain event, or to pay a sum for which the grantor might become liable under a guarantee, will not do in a Bill of Sale" (per Lindley, M. R., *De Braam* v. *Ford*, 69 L. J. Ch. 85); but an agreement to pay "ON OR BEFORE" a fixed day will do (*S. C.*, 1900, 1 Ch. 142; 69 L. J. Ch. 82; 81 L. T. 568). *Vf*, as to what is a compliance with this requirement, *Edwards* v. *Marston*, 1891, 1 Q. B. 225; 60 L. J. Q. B. 202; 64 L. T. 97; 39 W. R. 165, also cited BALANCE.

As to a Condition of Sale that expenses of re-sale, &c, shall be recoverable as "Stipulated Damages," — "Opinions have differed whether the party should only be allowed to recover what damage he had really sustained (*Randal* v. *Everest*, Moo. & M. 41: *V. Boys* v. *Ancell*, 5 Bing. N. C. 390), or the stipulated sum (*Crisdee* v. *Bolton*, 3 C. & P. 240). But such a Condition does not preclude the seller from maintaining an action for general damages, where the purchaser breaks off from the contract altogether. It applies in case of a breach of any of the particular Conditions (*Icely* v. *Grew*, 6 N. & M. 467)": Sug. V. & P. 39, 40. *Vf*, LIQUIDATED DAMAGES.

Semble, "it is stipulated" imports an Agreement or Covenant, but not a CONDITION; yet if the phrase is "it is stipulated and conditioned," it will operate both as an Agreement or Covenant, and a Condition (*Doe* d. *Henniker* v. *Watt*, 8 B. & C. 308).

V. EXPRESSLY STIPULATED.

STIPULATION.—*V. Hill* v. *Fox*, 4 H. & N. 364.

STIRPES.—*V.* PER STIRPES.

STOCK.—"The term 'Stock' or 'Capital Stock' which is used in ss. 61–64, Comp C. C. Act, 1845, 8 V. c. 16, obviously is derived from the consideration that these were what were called joint stock companies, and that 'stock' was the short name for 'joint stock'; and 'joint stock' in my opinion is only another name for 'shares,' because the owner of part of the capital of a Company is an owner of a part of the joint stock or an owner of a share of the joint stock. The use of the term 'Stock,' appears to me merely to denote that the Company have recognized the fact of the complete payment of the shares, and that the time has come when those shares may be assigned in fragments, which for obvious reasons could not be permitted before; but that stock shall still be, *e.g.* the qualification of directors, who must possess twenty shares or whatever the number may be, and that the meetings shall be of the persons entitled to this stock, who shall meet as shareholders and vote as shareholders in the proportion of shares which would entitle them to vote before the consolidation into stock. It appears to me that the doubt which has arisen as to the identity of stock and shares has sprung from this circumstance, that it has been supposed, without sufficient attention having been paid to these provisions, that stock in a railway had some sort of analogy to stock in the public funds. It has none whatever. It is possible that *Debenture Stock* in a Railway Company may be said to have some analogy to stock in the public funds; but the joint stock capital of a Company is a perfectly different thing from stock in the public funds. In my opinion, when, in that state of things, a man has an interest in a railway, and is an owner of stock in a railway, he is said to be a Shareholder in the Company, and would call himself a shareholder in the Company" (per Cairns, C., *Morrice* v. *Aylmer*, 44 L. J. Ch. 214; 10 Ch. 148; affd 45 L. J. Ch. 614; L. R. 7 H. L. 717). It was accordingly held in that case, that a bequest of "Shares" in a Railway carried testator's Stock in that railway: *Vf*, SHARE.

Vf, as to a bequest of "Stock," *Collison* v. *Curling*, 9 Cl. & F. 88: *Kirby* v. *Potter*, 4 Ves. 750: *Sibley* v. *Perry*, 7 Ves. 522 534: *Measure* v. *Carleton*, 30 Bea. 538: *Grant* v. *Mussett*, 8 W. R. 330; 2 L. T. 133: STOCKS: BANK STOCK.

"All my Stock standing in my name *in various Companies*, together with all Bonds, &c"; *V. Re Parrott*, 53 L. T. 12; W. N. (85) 127.

"Government or other Stock," s. 201, Bankry Act, 1849, includes Ry Shares (*Ex p. Copeland*, 22 L. J. Bank. 17; 2 D. G. M. & G. 914).

"'Stock' cannot be considered as MONEY" (*Nightingall* v. *Devisme*, 1 Bl. W. 684); so an agreement to pay a per-centage on all "Money" received through A.'s means, does not entitle him to receive the per-centage on a transfer of Stock obtained by him (*Jones* v. *Brinley*, 1 East, 1).

Quà Trustee Act, 1850, "'Stock,' shall mean any fund, annuity, or security, transferable in books kept by any Company or Society established or to be established, or transferable by deed alone or by deed accompanied by other formalities, and any share or interest therein" (s. 2); a def which includes Shares in a Joint Stock Co (*Re Angelo*, 5 D. G. & S. 278), even though not fully paid-up (*Re New Zealand Trust Co*, 1893, 1 Ch. 403; 62 L. J. Ch. 262; 68 L. T. 593; 41 W. R. 457): quà Trustee Act, 1893, "'Stock,' includes fully paid-up Shares," and, as regards Vesting Orders, "includes any fund, annuity, or security, transferable in books kept by any Company or Society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein" (s. 50); *semble*, *Re New Zealand Trust Co* (sup) "holds good under the Act of 1893, so far as Vesting Orders are concerned" (Seton, 1218).

"Stock" has also received statutory definition in and for the following Acts; —

Authorities Loans (Scot) Act, 1891, 54 & 55 V. c. 34; *V.* s. 4:

Local Government (Stock Transfer) Act, 1895, 58 & 59 V. c. 32; *V.* s. 1 (2):

Lunacy Act, 1890; *V.* s. 341:

Lunacy Regn (Ir) Act, 1871, 34 & 35 V. c. 22; *V.* s. 2:

Metropolitan Board of Works (Loans) Act, 1869, 32 & 33 V. c. 102; *V.* ss. 16, 46:

Metropolitan Board of Works (Money) Act, 1885, 48 & 49 V. c. 50; *V.* s. 27:

National Debt Act, 1870, 33 & 34 V. c. 71; *V.* s. 3: 3% Stock, 2½% Stock; *V.* National Debt (Conversion of Stock) Act, 1884, 47 & 48 V. c. 23, s. 9:

Stamp Act, 1891; *V.* s. 122, on *whv*, *Furness Ry* v. *Inl. Rev.*, 33 L. J. Ex. 173; nom. *Ulverstone & Lancaster Ry* v. *Inl. Rev.*, 2 H. & C. 855.

"Goverument Stock, Funds, or Annuities," "Stock or Shares of any Public Co," s. 14, Judgments Act, 1838, 1 & 2 V. c. 110; *V. Morris* v. *Manesty*, 7 Q. B. 674; 14 L. J. Q. B. 285.

"Shares, Stock," &c, in an Investment Clause; *V.* DEBENTURE, at end: MORTGAGE, p. 1228.

V. COLONIAL: FOREIGN: GOVERNMENT STOCK: JOINT STOCK: NOMINAL: PUBLIC STOCKS: REDEEMING STOCK.

As to distinction between Ordinary Stock and Debenture Stock, *V.*

Morrice v. *Aylmer*, sup: *Re Bodman*, cited DEBENTURE STOCK: 1 Palmer Co. Prec. ch. 14.

As to effect of converting Shares into Stock; *V.* s. 29, Comp Act, 1862: *Morrice* v. *Aylmer*, sup.

"Stock liable to be converted"; *V.* LIABLE.

V. FARMING STOCK: LIVE AND DEAD STOCK.

A devise to A. and his "Stock," passed the FEE SIMPLE (*Counden* v. *Clerke*, Hob. 33).

STOCK AWASH. — Anchor carried "Stock awash," R. 20, Thames By-laws, 1872, altered to "Ring awash" by R. 11, Thames By-laws, 1898; *V. The J. R. Hinde*, 1892, P. 231; 61 L. J. P. D. & A. 91: *The Six Sisters*, 1900, P. 302; 69 L. J. P. D. & A. 139: *The Hornet*, 1892, P. 361.

STOCK CERTIFICATE. — *V.* National Debt Act, 1870, 33 & 34 V. c. 71, Part 5: "Stock Certificate to Bearer"; Stat. Def., Stamp Act, 1891, s. 108; Finance Act, 1899, 62 & 63 V. c. 9, s. 4 (4).

STOCK IN THE FUNDS. — *V.* FUNDS.

STOCK IN TRADE. — It is submitted that this phrase comprises all such chattels as are acquired for the purpose of being sold, or let to hire, in a person's trade. Setting aside a mere dictum in *Elliott* v. *Elliott* (9 M. & W. 23; 11 L. J. Ex. 3), the only authority on the interpretation of this phrase, standing alone, seems to be *Re Richardson* (50 L. J. Ch. 488; 44 L. T. 404). In that case the testator was a barge-builder, and, according to the custom of that trade, he would sometimes, on the sale of a new barge, accept an old one in part payment which he would repair and let out on hire; at the time of his death, he had 5 of such barges: held, that these barges passed under a bequest of his "Stock-in-Trade as a barge-builder."

On a dissolution of a partnership, "the Stock-in-Trade, Property, and Effects, of the business" had to be valued and a proportion thereof paid for to the retiring partner; held, that Goodwill was not to be included as within the phrase (*Chapman* v. *Hayman*, 1 Times Rep. 397); *Sv*, *Re David and Matthews*, cited GOODWILL, p. 828.

V. Dean v. *Brown*, cited OTHER, p. 1362: THAT IS TO SAY.

A bequest of "MY Stock in Trade and Trade Debts" passes it and them as existing at the death of the testator (*Ferguson* v. *Ferguson*, Ir. Rep. 6 Eq. 199, in *whc* Sullivan, M. R., rested his jdgmt mainly on *Goodlad* v. *Burnett*, cited MY).

Stat. Def. — 27 V. c. 18, s. 9, quà the then Duty on Fire Insrces. repealed by 32 & 33 V. c. 14, s. 12, and Sch C.

STOCK ON FARM. — Is synonymous with FARMING STOCK.

STOCKBROKER. — *V.* BROKER: SHARE-BROKER. *Cp,* JOBBER.

STOCKHOLDER. — "Stockholder," generally, means a Holder of Stock duly registered, *e.g.* Colonial Stock Act, 1877, 40 & 41 V. c. 59, s. 26; National Debt Act, 1870, 33 & 34 V. c. 71, s. 3: *Va,* SHAREHOLDER: STOCK.

Quà Local Authorities Loans (Scot) Act, 1891, 54 & 55 V. c. 34, "Stockholder," simply means "a holder" of Stock created thereunder (subs. 1, s. 4).

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

"Stocks, Shares, or Securities, of any Co *paying a dividend,*" — as to what investments are authorized under these words; *V. Consterdine* v. *Consterdine,* 31 Bea. 330; 31 L. J. Ch. 807.

V. PUBLIC STOCKS.

STONE. — Blocks cut with wedges from a quarry, and then reduced to certain dimensions and squared to be used as sleepers, are (in an Act imposing Toll) "Stone," as distinguished from "Merchandize" (*Fisher* v. *Lee,* 12 A. & E. 622; 10 L. J. Q. B. 1); but Coprolites are "Goods Wares or Merchandize," as distinguished from "Stone" (*Dant* v. *Moore,* 9 L. T. 381: *V.* MINE).

V. GOODS, WARES, AND MERCHANDIZE: MINE.

A Stone Avoirdupois, is 14 Imperial Standard Pounds (s. 14, 41 & 42 V. c. 49): *V.* POUND.

STOP. — EXECUTION "withdrawn, satisfied, or stopped"; *V.* WITHDRAWN.

To "stop up" a HIGHWAY, s. 2, 55 G. 3, c. 68, did not include a power to narrow a road (*R.* v. *Milverton,* 6 L. J. M. C. 73; 5 A. & E. 841; 1 N. & P. 179); power to widen was given by s. 16, 13 G. 3, c. 78. *Vf,* s. 84, Highway Act, 1835, 5 & 6 W. 4, c. 50, authorizing a stopping-up "either entirely or reserving a bridle-way or foot-way along the whole or any part or parts thereof."

"Stop and reverse"; *V.* SLACKEN.

"Stop NETS, Still Nets, or Standing Nets," in an Irish Act against killing young spawn and fry of eels and salmon, 10 Car. 1, c. 14; *V. Frewen* v. *Orr,* Long. & Town. 622, 623, 624. *Va,* FIXED ENGINE.

A Stop ORDER, is an *ex parte* Order, on a fund in Court, obtained by a person (not, necessarily, a party to the action or matter) claiming the same or a share thereof or a lien or charge thereon, and which prohibits dealings with the fund without notice to the person obtaining the Order (Dan. Ch. Pr. ch. 23, s. 4: Seton, ch. 28, s. 3: R. 12, 13, Ord. 46, R. S. C.). A *Distringas,* was a writ issued from the Court of Exchequer having a like effect on stock or shares in a Public Company; in its stead,

a new writ of Distringas was provided by s. 5, 5 V. c. 5, which was only issuable against the Bank of England; that section was repealed by 55 & 56 V. c. 19 (*Va*, R. 2, Ord. 46, R. S. C.), and the chief effect of a Distringas is now obtained by a Restraining Notice under R. 4, Ord. 46, R. S. C., which applies to "any stock standing in the books of *a* Company," on *whv* Dan. Ch. Pr. ch. 23, s. 3. *Cp*, CHARGING ORDER.

Cp, SUSPEND.

STOPPAGE. — "Stoppage of *Trains*," in a Charter-Party; *V. The Village Belle*, cited CIVIL COMMOTION.

"Stoppage *in Transitu*," is when goods have been consigned on credit and the Consignee has become bankrupt, or failed, or has declared himself insolvent (*V.* per Mellish, L. J., *Ex p. Chalmers*, 8 Ch. 289), the Consignor may, in many cases, countermand delivery and, before or at their arrival at the place of destination, may cause them to be delivered to himself or to some other person for his use (Abbott, Part 3, ch. 9): *Vf*, ss. 44–46, Sale of Goods Act, 1893: Carver, Part 2, ch. 15: Blackb. Part 3, ch. 1: Add. C. 534: Rosc. N. P. 975: Wms. Bank. 195: *Wiseman* v. *Vandeputt*, Tudor's L. C. M. L. 410: 11 Encyc. 743–746.

"Strikes or Stoppages" of *Workmen*; *V. Stephens* v. *Harris*, cited STRIKE.

STORAGE. — "'Storage Charges' comprise the cost of putting into store and the rent of the place hired; they do not include expenditure on the goods themselves," *e.g.* the cost of fodder and food to cattle is not within "Storage Charges" in R. 10 *c*, York-Antwerp Rules, 1890 (per Bigham, J., *Anglo-Argentine Agency* v. *Temperley Co*, cited GENERAL AVERAGE).

STORE. — Stat. Def., Explosives Act, 1875, 38 & 39 V. c. 17, s. 108.

Cp, WAREHOUSE.

STOREHOUSE. — "Storehouse," s. 26, 26 & 27 V. c. 65; *V. Pearson* v. *Holborn*, 1893, 1 Q. B. 389; 62 L. J. M. C. 77; 68 L. T. 351; 57 J. P. 169.

STORER. — *V.* STANDELL.

STORES. — *V.* IRON: TACKLE.

Semble, "Stores," in Maritime documents, does not include Cattle (Stevens on Stowage, 6 ed., s. 1061). *Cp*, GOODS.

Quà Public Stores Act, 1875, 38 & 39 V. c. 25, "'Stores,' includes all Goods and Chattels, and any single store or article" (s. 2; a def exactly like that in s. 3, 30 & 31 V. c. 128, which latter def is saved from repeal by 38 & 39 V. c. 25, Sch 2).

"Arms, Munitions of War, and Stores"; *V.* ARMS.

"Stores and other Effects"; *V.* EFFECTS, at end.

STOREY. — Quà London Bg Act, 1894, —

"*Basement* Storey," "means, any Storey of a BUILDING which is under the Ground Storey" (subs. 12, s. 5):

"*Ground* Storey," "means, that Storey of a Building to which there is an entrance from the outside on or near the level of the ground, and where there are two such Storeys, then the lower of the two; Provided that no Storey of which the upper surface of the floor is more than 4 feet below the level of the adjoining pavement shall be deemed to be the Ground Storey" (subs. 11, s. 5):

"*First* Storey," "means, that Storey of a Building which is next above the Ground Storey; the successive Storeys above the First Storey being the *Second* Storey, the *Third* Storey, and so on to the Topmost Storey" (subs. 13, s. 5):

"*Topmost* Storey," "means, the uppermost Storey in a Building, whether constructed wholly or partly in the roof or not" (subs. 14, s. 5).

As regards the last of these definitions, *semble*, it is of general acceptation, for a "Storey" need not, necessarily, be a room with four vertical walls; a room built into the roof is a "Topmost Storey" (*Foot* v. *Hodgson*, 59 L. J. Q. B. 343; 25 Q. B. D. 160).

House "let in different Storeys, Tenements, Lodgings, or Landings," R. 6, Sch B, House Tax Act, 1808, 48 G. 3, c. 55; *V.* per Ld Brampton, *Grant* v. *Langston*, cited HOUSE, p. 893.

STOW. — A valley (Co. Litt. 4 b); but a few lines further down "Stowe" is said to signify a place.

STOWAGE. — "Improper Stowage"; *V.* IMPROPER NAVIGATION. *Vh*, Stevens on Stowage.

STRAIGHTEN. — "Straightening of Fences"; *V.* INCLOSE.

STRAND. — "'Strond' is a Saxon word, signifying a SHORE or BANK of a Sea or any great River" (Cowel).

STRANDING. — In a Marine Insurance, "a touch and go" is not a Stranding; "in order to constitute a Stranding, the Ship must be stationary" (per Ellenborough, C. J., *Macdougle* v. *Royal Exchange Assrce*, 1 Starkie, 130; 4 M. & S. 503). "If the ship merely touches or strikes and gets off again, how much soever she may be injured, she is not stranded; but if she settles and remains for any time, this is a Stranding, without reference to the degree of damage which she sustains (*Harman* v. *Vaux*, 3 Camp. 429). A resting for 15 or 20 minutes has been held to be a Stranding, whether it be upon a bank or a rock (*Baker* v. *Towry*, 1 Starkie, 436). It is not, however, every stationary taking the ground that constitutes a Stranding. Thus, where a vessel takes the ground in the ordinary and usual course of navigation and management

in a tidal river or harbour, upon the ebbing of the tide, or from a natural deficiency of water, so that she may float again upon the flow of the tide or increase of the water, this is not a Stranding within the meaning of the Memorandum (*Magnus* v. *Buttemer*, 11 C. B. 876; 21 L. J. C. P. 119: 2 Kent Com. 323, n. (*c*): *Va*, *Corcoran* v. *Gurney*, 1 E. & B. 456; 22 L. J. Q. B. 113). So, when a vessel took the ground several times in going up a harbour in the ordinary course of navigation from the shallowness of the water, this was held to be no Stranding (*Hearne* v. *Edmunds*, 1 Brod. & B. 388). Similarly, where a vessel took the ground in a tidal harbour, where it was intended she should do so at the time she was moored, and was injured by striking against some hard substance, this was considered not to be a Stranding (*Kingsford* v. *Marshall*, 8 Bing. 458; 1 L. J. C. P. 135; 1 Moore & S. 657). *Vf*, *Bryant & May* v. *London Assrce*, 2 Times Rep. 591.

"But it is otherwise where the ground is taken under circumstances of such an accidental and unforeseen character as not to be in the usual course of navigation (*V.* jdgmt of Ld Tenterden, *Wells* v. *Hopwood*, 3 B. & Ad. 20: *Letchford* v. *Oldham*, 5 Q. B. D. 538; 49 L. J. Q. B. 458). And where a ship was improperly fastened to a pier in a basin, so that she took the ground, and, when the tide left her, she fell over and was bilged, this was held to be Stranding (*Carruthers* v. *Sydebotham*, 4 M. & S. 77: *Va*, *Bishop* v. *Pentland*, 7 B. & C. 219; 6 L. J. O. S. K. B. 6). So, where the water being drawn off from an inland navigation for the purpose of repairing it, a vessel settled accidentally upon some piles which were not previously known to be there (*Rayner* v. *Godmond*, 5 B. & Ald. 225); where a vessel, having struck upon an anchor in a harbour, was injured and in danger of sinking, and was thereupon hauled higher up the harbour and drawn upon the ground, where she remained for some time (*Barrow* v. *Bell*, 4 B. & C. 736; 4 L. J. O. S. K. B. 47); where a ship under stress of weather made a tidal harbour, but it being low water she grounded there (*Corcoran* v. *Gurney*, sup); and where a ship was run aground for the purpose of preventing further mischief (*De Mattos* v. *Saunders*, L. R. 7 C. P. 570); these were all held to be cases of Stranding": 1 Maude & P. 496. So, where a Thames barge was run ashore, partly from fear she would sink and partly for repair, that was held to be a Stranding (per Day, J., *Russell* v. *Lodge*, 6 Times Rep. 353; 89 Law Times, 120).

"The stranding of a LIGHTER, in the legal technical sense of 'stranding,' is an event of very frequent occurrence on a flat shore. The mere taking of the ground and remaining there a short time and then getting off again, would be held a 'Stranding'" (per Tindal, C. J., *Hoffman* v. *Marshall*, 2 Bing. N. C. 390).

The Warranty against AVERAGE, in an Insrce on Cargo, "unless the ship be stranded, sunk, or burnt," is not deleted if the stranding, &c, happens when the goods are not on board (*The Alsace and Lorraine*,

1893, P. 209; 62 L. J. P. D. & A. 107; 69 L. T. 261; 42 W. R. 112: *Vf, The Glenlivet*, 1893, P. 164; 62 L. J. P. D. & A. 55, also cited BURN).

V. PERIL OF THE SEA: SINK: STATIONARY.

STRANGER. — "'Stranger,' may be derived from the French, *Estrangier, aliena.* It signifies generally in our language, a man born out of the Land, or unknown; but in the Law, it hath a special signification, for him that is not privy or party to an act. As a *stranger* to a Judgment, is he to whom a Judgment doth not belong; and in this sense it is directly contrary to PARTY or PRIVY" (Cowel). *V.* CONSIDERATION.

STRANGERS IN BLOOD. — Persons who have the legal *status* of "Children" by virtue of a foreign law, applicable to their case, are not "Strangers in Blood," but are "Children" for the purpose of assessment to Legacy Duty (*Skottowe* v. *Young*, 40 L. J. Ch. 366; L. R. 11 Eq. 474: *Va, Re Goodman*, 50 L. J. Ch. 425; 17 Ch. D. 266: *Re Grove*, 40 Ch. D. 216). But where by the foreign law children, illegitimate by the law of England, are not admitted to the full status of lawful children but are merely recognized as entitled to the rights of natural children, such persons are not "Lineal Issue" but are "Strangers in Blood" (*Re Atkinson*, 51 L. J. Ch. 452; 21 Ch. D. 100). In that case the point was raised in argument but not referred to in the judgment, as to whether children illegitimate by the law of England, can, under any circumstances, be other than "Strangers in Blood" for the purpose of succession to *Real* estate in England. *V.* CHILD.

STRAW. — Stubble, or, as it is called in Cambridgeshire, Haulm, is not "Straw" within s. 17, 7 & 8 G. 4, c. 30 (*R.* v. *Reader*, 4 C. & P. 245). In the replacing enactment, s. 17, 24 & 25 V. c. 97, "haulm" and "stubble" are used as well as "straw."

STRAY. — Animals "straying" on a Highway, "implies that they were not in charge of some one who had control over them" (per Blackburn, J., *Lawrence* v. *King*, cited LYING ABOUT).

V. ESTRAY.

STREAM. — "'Stream,' is properly a current of waters running over the level at random, and be not kept in with Banks or Walls; and so Linwood saith, that *flumen* which is a stream *nihil aliud est quam ipsa aqua*" (Callis, 83).

"'Stream,' in its primary and natural sense, denotes a body of water having, as such body, a continuous flow in one direction. It is frequently used to signify running water at places where its flow is rapid as distinguished from its sluggish current in other places. I see no reason to

doubt that a subterraneous flow of water may, in some circumstances, possess the very same characteristics as a body of water running on the surface; but, in my opinion, water, whether falling from the sky or escaping from a spring, which does not flow onward with any continuity of parts but becomes dissipated in the earth's strata and simply percolates through or along those strata until it issues from them at a lower level, through dislocation of the strata or otherwise, cannot with any propriety be described as a Stream" (per Ld Watson, *McNab* v. *Robertson*, 1897, A. C. 134; 66 L. J. P. C. 28; 75 L. T. 666; 61 J. P. 468). In accordance with that def, the majority of the H. L. held that, a grant, in a Lease, of "the right to the water in the said Ponds and in the Streams leading thereto," did not include the water in a tiled drain in the lessor's adjoining land which drain intercepted water that otherwise would have found its way into the ponds. Halsbury, C., was the dissenting peer and he said, "Though it be true that the word 'Stream,' in its more usual application, does point to a definite stream within defined banks, I do not think it is confined to that meaning. We speak of a stream of tears flowing from the eyes, and we speak of blood streaming from a vein."

"A Stream of Water, in law, is water which runs in a defined course. It is that which is capable of diversion; and it has been held that it does not include the percolation of water below ground" (per Jessel, M. R., *Taylor* v. *St. Helen's*, cited WATERCOURSE). *Cp*, SPRING.

Contextually, a grant of "all Streams" has been held to mean, all Water in the land granted (*Whitehead* v. *Parks*, 27 L. J. Ex. 169; 2 H. & N. 870).

Quà Rivers Pollution Prevention Act, 1876, 39 & 40 V. c. 75, an elaborate def of "Stream" is provided by s. 20, on *whv*, *Ribble River Committee* v. *Croston*, 1897, 1 Q. B. 251; 66 L. J. Q. B. 384; 45 W. R. 348.

"Stream" is used synonymously with "RIVER" in s. 27, Salmon Fishery Act, 1861, 24 & 25 V. c. 109 (*Rolle* v. *Whyte*, L. R. 3 Q. B. 305; 37 L. J. Q. B. 118; 8 B. & S. 116).

Quà W. W. C. Act, 1847, "Streams," includes, "springs, brooks, rivers, and other running waters" (s. 3); "Owners or Occupiers" of a Stream, within s. 6 of that Act, are the Owners and Occupiers of that portion of it with which a Water Co may be interfering (*Bush* v. *Trowbridge Water Co*, cited TAKE, *whva*, as to "take or use" a Stream).

"All persons may float saw logs, and other timber rafts and craft, down all Streams in Upper Canada during the spring, summer, and autumn freshets," s. 15, Consolidated Statutes of Upper Canada, c. 48; held, that "all Streams" includes, not only streams floatable at all places but also, streams having a sufficient body of water above and below a natural impediment, although that natural impediment renders the stream, at that

particular spot, practically unfloatable (*Caldwell* v. *McLaren*, 53 L. J. P. C. 33; 9 App. Ca. 392).

"Stream," s. 97, 14 G. 3, c. 96, only applied to Artificial Streams (*Smith* v. *Barnham*, 1 Ex. D. 419, cited WATERCOURSE).

"Navigable Stream"; *V.* NAVIGABLE.

STREET. — The primary meaning of "Street" is a public (or private, *St. Mary, Islington* v. *Barrett*, 43 L. J. M. C. 85; L. R. 9 Q. B. 278: *Mid. Ry* v. *Watton*, 55 L. J. M. C. 99; 17 Q. B. D. 30; 54 L. T. 482; 34 W. R. 524; 50 J. P. 405) roadway (including its foot-paths, if any) running in front of houses or buildings, of a sufficient length and in such a continuous line, as to give the roadway the character of a "Street"; and such a roadway is more emphatically a "Street" if it has a continuous line of houses on *each* side of it. The houses need not be actually contiguous but must be so near to each other as to form a continuous line.

Note. In *Robinson* v. *Barton*, 53 L. J. Ch. 231; 8 App. Ca. 798, Ld Blackburn said that the popular and ordinary sense of the word "Street" is, a HIGHWAY *with houses on each side.* It is submitted that the legal and ordinary sense of the word "Street," does not require that there should be houses on each side of the roadway; nor that such roadway should, necessarily, be a highway. Thus in *Portsmouth* v. *Smith* (53 L. J. Q. B. 95; 13 Q. B. D. 184) Brett, M. R., said, "The word 'Street,' when popularly used, means a *Thoroughfare*, bounded *either on one or both sides* by houses": *Va*, obs of Ld Blackburn in *Portsmouth* v. *Smith*, when in H. L. 54 L. J. Q. B. 475; 10 App. Ca. 364: *Jowett* v. *Idle*, 36 W. R. 138, 530; 4 Times Rep. 101, 442: *Battersea* v. *Palmer*. cited NEW STREET, p. 1273. But, *semble*, that "roadway" should be the phrase instead of "thoroughfare," for a *cul de sac* is a Street and may be a Public Street: *V. Souch* v. *East London Ry*, 42 L. J. Ch. 477; L. R. 16 Eq. 108: per Esher, M. R., *Davis* v. *Greenwich*, 1895, 2 Q. B. 219; 64 L. J. M. C. 257; 72 L. T. 674.

Assuming that houses exist in such number and position as to impart the character of "street" to the locality, then the natural and *primâ facie* sense of the word "Street" is the *Roadway* (per Selborne, C., *Robinson* v. *Barton*, 53 L. J. Ch. 230). So, Jessel, M. R., in *Taylor* v. *Oldham* (46 L. J. Ch. 109; 35 L. T. 699; 4 Ch. D. 408) said, —

"The definition of a 'Street' is correctly laid down in the Imperial Dictionary: —'The street itself is no doubt, properly, *the paved or prepared road*; that is the street. It sometimes includes the houses along each side of it. But that is not its proper meaning. It is called a street even without houses. There are some streets with no houses. But the usual common meaning of the word *Street* is, — a road with houses on one or both sides of it.'"

It may be doubted whether, in any sense that would (except under an

interpretation clause, or except where a roadway, *e.g.* a BRIDGE, is a mere connecting link in a street, *Beaver* v. *Manchester*, 26 L. J. Q. B. 311) be recognized by the Courts, a ROADWAY would, in its primary meaning, be held a "Street," without houses or buildings (*Vf, R.* v. *Platts*, 49 L. J. Q. B. 848: *McIntosh* v. *Romford*, 5 Times Rep. 643); but the definition from the Imperial Dictionary, having received the approval of Jessel, M. R., is cited for the purpose of supporting the proposition, that it is the *roadway* which is the "Street," in the primary acceptation of that word (*Va, L. C. & D. Ry* v. *London*, 19 L. T. 250).

But when we have arrived at that conclusion we have, for practical purposes, to acknowledge that "Street" is a most flexible and ambiguous word depending on its context.

"In s. 149, P. H. Act, 1875, and the sections which follow it, the word 'Street' manifestly has the same sense as when we speak of a man going out of his house into the street"; *i.e.* its primary meaning of the roadway (per Selborne, C., *Robinson* v. *Barton*, 53 L. J. Ch. 229; 8 App. Ca. 798: *Va, Mid. Ry* v. *Watton*, sup: *Richards* v. *Kessick*, 57 L. J. M. C. 48; 59 L. T. 318; 52 J. P. 756: *Coverdale* v. *Charlton*, 48 L. J. Q. B. 128; 4 Q. B. D. 104; 40 L. T. 88; 43 J. P. 268: *R.* v. *Fullford*, inf). *V.* VEST, as to what extent the soil under, and air over, "Streets," vest in local authorities; and, if there be no such vesting, the soil is vested in the adjoining owners, and is not divested by general words in a Royal Grant (*Salt Union* v. *Harvey*, 61 J. P. 375).

But s. 157, P. H. Act, 1875, whilst manifestly comprising the roadways of "streets," also includes the power of making Bye Laws for regulating "the buildings erected or to be erected on each side of them — the whole construction — every part of those buildings external and internal" (per Selborne, C., *Robinson* v. *Barton*, sup: *Baker* v. *Portsmouth*, 47 L. J. Ex. 223; 3 Ex. D. 157. *V. Robinson* v. *Barton*, as to what particularity is required in the Bye Laws to justify a Local Authority to compel removal of disapproved buildings; *V.* NEW STREET). So, where the City of London was empowered to take land for the purpose of forming a new "Street" to the Metropolitan Meat Market, it was held that that meant not merely land for the roadway but enough for houses on both its sides (*Galloway* v. *London*, 35 L. J. Ch. 477; L. R. 1 H. L. 34; *vthc*, *Donaldson* v. *South Shields*, cited STREET WORKS: *Vf, L. C. & D. Ry* v. *London*, 19 L. T. 250).

Quà P. H. Act, 1875, the general def is contained in s. 4, whereby "'Street,' *includes*, any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not"; a def adopted by P. H. Act, 1890 (subs. 3, s. 11), and, leaving out the words in the parentheses, adopted by P. H. Ireland Act, 1878 (s. 2), in which latter form it is adopted for P. H. London Act, 1891 (s. 141), and for P. H. Scotland Act, 1897 (s. 3), but the defs in these two lastly men-

tioned Acts add, "and *whether or not there are houses in such street.*" *Vh*, *Nutter* v. *Accrington*, 48 L. J. Q. B. 487; 4 Q. B. D. 375; 40 L. T. 802; 43 J. P. 635: *R.* v. *Goole*, 1891, 2 Q. B. 212; 60 L. J. Q. B. 617; 64 L. T. 595; 39 W. R. 608; 55 J. P. 535: *Fenwick* v. *Croydon*, 1891, 2 Q. B. 216; 60 L. J. M. C. 161; 40 W. R. 124; 55 J. P. 470: *Baird* v. *Tunbridge Wells*, or *Tunbridge Wells* v. *Baird*, 1896, A. C. 434; 64 L. J. Q. B. 145; 65 Ib. 451; 74 L. T. 385; 60 J. P. 788. These definitions include a Private Road (*Hill* v. *Wallasey*, 1894, 1 Ch. 133; 63 L. J. Ch. 1; 69 L. T. 641; 42 W. R. 81).

Quà Private Street Works Act, 1892, 55 & 56 V. c. 57, "'Street,' *means* (unless the context otherwise requires), a Street as defined by the Public Health Acts, and *not being a highway* repairable by the inhabitants at large" (s. 5). *Vh*, *Rishton* v. *Haslingden*, 1898, 1 Q. B. 294; 67 L. J. Q. B. 387; 77 L. T. 620; 62 J. P. 85, explaining *Handsworth* v. *Taylor*, 69 L. T. 798.

Quà Metrop Man. Act, 1855, "'Street,' shall apply to and *include*, any highway (except the carriage way of any turnpike road), and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage" (s. 250), which def was subsequently amplified so as to include "any mews and a part thereof" (s. 112, Metrop Man. Act, 1862). *Vh*, *Ellis* v. *London Co. Co.*, 67 L. T. 558; 57 J. P. 24: *Arter* v. *Hammersmith*, 1897, 1 Q. B. 646; 66 L. J. Q. B. 460; 76 L. T. 390; 45 W. R. 398; 61 J. P. 279. "Street" in s. 53, Metrop Man. Act, 1862, includes new, as well as old, streets (*St. John, Hampstead* v. *Cotton*, 55 L. J. Q. B. 213; 56 Ib. 225; 12 App. Ca. 1; 56 L. T. 1; 35 W. R. 505; 51 J. P. 340, following *Sheffield* v. *Fulham*, 1 Ex. D. 395, and dissenting from *Sawyer* v. *Paddington*, 40 L. J. M. C. 8; L. R. 6 Q. B. 164). As to s. 78, Metrop Man. Act, 1855, *V. St. John, Hampstead* v. *Hoopel*, 54 L. J. M. C. 147; 15 Q. B. D. 652; 1 Times Rep. 584.

The above defs in the Metrop Man. Acts, are blended in London Bg Act, 1894, thus, "'Street,' *means and includes*, any highway, and any road, bridge, lane, mews, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, mews, footway, square, court, alley, or passage" (subs. 1, s. 5). *Vh*, *Wood* v. *London Co. Co.*, 64 L. J. M. C. 276; 73 L. T. 313; 44 W. R. 144; 59 J. P. 615: *svthc*, *Armstrong* v. *London Co. Co.*, 1900, 1 Q. B. 416; 69 L. J. Q. B. 267; 81 L. T. 638; 64 J. P. 197; 48 W. R. 367: *Vf*, COMMENCEMENT.

Va, Metropolis Gas Act, 1860, 23 & 24 V. c. 125, s. 4:

Metropolitan Streets Act, 1867, 30 & 31 V. c. 134, s. 3:

Thames Embankment Act, 1862, 25 & 26 V. c. 93, s. 3.

Quà Gasworks Clauses Act, 1847, 10 & 11 V. c. 15, "'Street,' shall *include*, any square, court, or alley, highway, lane, road, thoroughfare,

or public passage or place, within the limits of the Special Act" (s. 3); so, quà Waterworks Clauses Act, 1847, 10 & 11 V. c. 17 (*V.* s. 3): quà Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, "'Street,' shall extend to and include, any road, square, court, alley, and thoroughfare, within the limits of the Special Act" (s. 3): quà Town Police Clauses Act, 1847, 10 & 11 V. c. 89, "'Street,' shall extend to and include, any road, square, court, alley, and thoroughfare, or public passage, within the limits of the Special Act" (s. 3). Land on the seashore between two villages over which the inhabitants of those villages pass at high-tide but by no defined track, is not a "Street," "HIGHWAY," or "PUBLIC PLACE" within these defs (*Maddock* v. *Wallasey*, 55 L. J. Q. B. 267; 50 J. P. 404). The def in the Town Police Clauses Act, 1847 (and, *semble*, those in the others of these Acts), contemplates a passage of a public, or *quasi* public, character; therefore an approach to a Railway Station, which is the private property of the Co, but only separated from the public highway by a gutter, is not such a "Street" (*Curtis* v. *Embrey*, 42 L. J. M. C. 39; L. R. 7 Ex. 369; 21 W. R. 143), not even though a public footway passes along it (*Jones* v. *Short*, 82 L. T. 197; 69 L. J. Q. B. 473; 48 W. R. 251; 64 J. P. 247); but an open square (in front of, and let with, an hotel) over which for many years the public had freely passed except when the hotel keeper's carriages stood there, was held to be part of the "street" (*Marks* v. *Ford*, 45 J. P. 157: *Vf*, *Foinett* v. *Clark*, 41 J. P. 359).

Quà Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70, "'Street,' *includes*, any court, alley, street, square, or *row of houses*" (s. 29).

For other stat. defs. which "include" specified passages or places in the definition of "Street," *V.*,—

Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55, ss. 4 (31), 381:

Electric Lighting Acts, 1882 and 1888, 45 & 46 V. c. 56, s. 32, 51 & 52 V. c. 12, s. 4 (5):

Prevention of Cruelty to Children Act, 1894, 57 & 58 V. c. 41, s. 25:

Summary Jurisdiction (Ir) Act, 1851, 14 & 15 V. c. 92, s. 25:

Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103, s. 1.

These statutory definitions do not exclude the ordinary sense of the word "Street" (per Quain, J., *St. Mary, Islington* v. *Barrett*, 43 L. J. M. C. 87; L. R. 9 Q. B. 283, citing *Pound* v. *Plumstead*, 41 L. J. M. C. 51; L. R. 7 Q. B. 183); they simply enlarge the meaning of "Street" so as to make that word, quà the respective statutes, embrace ways and places which would not otherwise come within it. A way or place being ascertained to be a "Street," by means of the interpretation clause, the question then remains as to whether more than the roadway is included; and *that*, as before explained, will depend on the context to the word in the clause that has to be construed. It may be added that the object of the interpretation clauses being to enlarge the meaning, a Turnpike Road,

or any part of it (notwithstanding an exception in the interpretation), will be a "Street," if in fact it is a street within the ordinary meaning of that word (*R.* v. *Fullford*, inf: *Nutter* v. *Accrington*, sup: *Thomas* v. *Roberts*, 43 J. P. 574).

Quà Telegraph Act, 1863, 26 & 27 V. c. 112, "'Street,' *means*, a Public Way, situate within a city, town, or village, or between lands continuously built upon on either side, and repaired at the public expense, or at the expense of any turnpike or other public trust, or *ratione tenuræ*; including the footpaths of such way and any bridge forming part thereof" (s. 3); by s. 2, 41 & 42 V. c. 76, that def is made to also include "any Highway."

"Street *or Place*," s. 35, London Hackney Carriage Act, 1831, 1 & 2 W. 4, c. 22, means, a Public street or place (*Case* v. *Storey*, L. R. 4 Ex. 319; 38 L. J. M. C. 113). *V.* PLACE: PLY.

"Street *or Public Place*"; *V. Tunbridge Wells* v. *Baird*, sup, also cited PUBLIC PLACE.

Where a private Act used the phrase "Street *or Road*," "Street" was held to be deprived of its larger interpretation by being so associated with "ROAD" (*Bristol W. W. Co* v. *Bristol*, 5 Times Rep. 203).

Street for "Foot Traffic"; *V.* TRAFFIC. *Cp*, FOOT-PATH.

It has formerly been held that whether any given roadway is a "Street" is a question of fact for the jury or the justices (*R.* v. *Fullford*, 33 L. J. M. C. 122; 10 L. T. 346; 10 Jur. N. S. 522: *R.* v. *Dayman*, 26 L. J. M. C. 128: *Maude* v. *Baildon*, 10 Q. B. D. 394). But in *Portsmouth* v. *Smith* (53 L. J. Q. B. 95; 13 Q. B. D. 196), Brett, M. R., said, "I am unable to agree with the jdgmt in *Maude* v. *Baildon*, and think that the Court there was under a misapprehension as to what was decided in *R.* v. *Dayman*" (*V. Portsmouth* v. *Smith*, in H. L., 10 App. Ca. 364; 54 L. J. Q. B. 473: *Va*, as to *Maude* v. *Baildon* being over-ruled, *Ellis* v. *London Co. Co.* and *Wood* v. *London Co. Co.*, sup). The justices, when called on to make an Order under s. 150, P. H. Act, 1875, have jurisdiction to enquire whether the place is a "Street" (*Eccles* v. *Wirral*, 55 L. J. M. C. 106; 17 Q. B. D. 107; 34 W. R. 412; 50 J. P. 596).

V. COMMENCEMENT: CONSTRUCTION: EXISTING: HIGHWAY: NEW STREET: PUBLIC HIGHWAY: SAME: SEWERED: TURNPIKE ROAD: VEST.

As to what Buildings "form," or "front to," or are "within," a Street; *V.* FORMING.

Land bounding a Street, where a footway made; *V.* BOUNDING.

As to implied grant of Right of Way; *V.* ABUT.

For a quaint use of "Street"; *V.* Termes de la Ley, *Stallage*, cited STALLAGE AND PICKAGE.

STREET RAILWAY.—*V. Winnipeg Street Ry* v. *Winnipeg Electrical Street Ry*, 1894, A. C. 615; 64 L. J. P. C. 10; 71 L. T. 127. *Cp*, TRAMWAY. *V.* RAILWAY.

STREET REFUSE. — *V.* REFUSE.

STREET WALKER. — Is synonymous with NIGHT-WALKER in its meaning of "a woman walking the streets to pick up men" (*R.* v. *Bootie*, 2 Burr. 864, 865).

STREET WORKS. — A compulsory power to take land for "Street Works" is different from such a power to take land for a "Street"; the ruling in *Galloway* v. *London* (cited STREET, p. 1948), does not apply to a power to take land for "Street Works," which only includes land necessary for the formation of a Street, and not land on its side merely required for recoupment purposes (*Donaldson* v. *South Shields*, 68 L. J. Ch. 102, 162; 79 L. T. 685).

V. WORKS.

STRICT DUTY. — Costs incurred by an Exor who (to meet a possible charge of *devastavit*) separately defends an action brought jointly against residuary legatees and himself, are not "an outlay in the Strict Line of his Duty" within the rule (Lewin, 762), entitling him to reimbursement by his cestui que trust (*Hosegood* v. *Pedlar*, 66 L. J. Q. B. 18).

V. DUTY.

STRICT ENTAIL. — "Where lands are directed to be settled on A. and his heirs 'in Strict Entail,' there seems little doubt that A. ought to be made tenant for life only" (2 Jarm. 354, citing *Graves* v. *Hicks*, 11 Sim. 536; 5 L. J. K. B. 142; 5 A. & E. 38: *Woolmore* v. *Burrows*, 1 Sim. 526); and, as it should seem, "with remainder to his first and other sons successively in tail general, with remainder to his daughters as tenants in common in tail general, &c" (Lewin, 129, citing *Sealey* v. *Stawell*, Ir. Rep. 9 Eq. 499).

V. STRICT SETTLEMENT: CLOSELY ENTAILED: ENTAIL.

STRICT SETTLEMENT. — As to what this phrase means and what limitations would be inserted in the execution of a direction for a "Strict Settlement"; *V. Douglas* v. *Congreve*, 8 L. J. Ch. 55; 1 Bea. 71: *Bankes* v. *Le Despencer*, 11 Sim. 508; 12 L. J. Ch. 293: 2 Jarm. 344, 345, *n* (*e*), 354–356: *V.* Ib. 577 as to annexing personalty to realty in strict settlement. *Vf*, Vaizey, 1172.

In the common form of a Settlement pursuant to a direction for a "Strict Settlement," the tenant for life would be made unimpeachable for Waste (per Wood, V. C., *Davenport* v. *Davenport*, 33 L. J. Ch. 36; 1 H. & M. 779; *Sv*, Lewin, 577, 578); "but where the executory trust *in terms* gives the first taker a life estate, he is not made dispunishable for Waste" (2 Jarm. 345, *n*, citing *Davenport* v. *Davenport*, sup:

Stanley v. *Coulthurst*, L. R. 10 Eq. 259; 39 L. J. Ch. 650). *V.* WITHOUT IMPEACHMENT OF WASTE.

Where a Will of Personalty directed "the girls' shares to be settled on themselves strictly," Romilly, M. R., held, that the income of each share should, during the joint lives of one of the "girls" and her husband, be paid to her for her life, for her SEPARATE USE and without power of anticipation; and if she died first, her share to go as she should by Will appoint, or, failing appointment, to her NEXT OF KIN, but, if she survived her husband, then her share to be for herself absolutely (*Loch* v. *Bagley*, L. R. 4 Eq. 122; 15 W. R. 1103).

V. SETTLEMENT: STRICT ENTAIL.

STRICTLY TEMPERATE.—*V. Thomson* v. *Weems*, 9 App. Ca. 671.

V. SOBER AND TEMPERATE HABITS.

STRIKE.—"There is no authority which gives a legal definition of the word 'Strike'; but I conceive the word means, a refusal by the whole body of workmen to work for their employers, in consequence of either a refusal by the employers of the workmen's demand for an increase of wages, or of a refusal by the workmen to accept a diminution of wages when proposed by their employers" (per Kelly, C. B., *King* v. *Parker*, 34 L. T. 889), or, *semble*, such a refusal in consequence of any dispute between masters and men relating to the employment; in short, "a 'Strike' is properly defined as, a simultaneous cessation of work on the part of the workmen" (per Hannen, J., *Farrer* v. *Close*, L. R. 4 Q. B. 612).

An excuse for delay in fulfilling a contract on the ground of a "Strike" by workmen, means a Strike against the employer; not a mere refusal to work because an infectious disease is prevalent, or the weather is hot or wet, or such like excuse (*Stephens* v. *Harris*, 57 L. J. Q. B. 203; 3 Times Rep. 720: *Re Richardsons and Samuel*, cited LOCK-OUT).

An Exception as to LAY DAYS, in a Charter-Party, of "Strikes of Workmen," does not exonerate the charterers from liability for delay if, by any reasonable efforts, they can take delivery, even though there be a Strike at the Port of Discharge (*Bulman* v. *Fenwick*, 1894, 1 Q. B. 179; 63 L. J. Q. B. 123; 69 L. T. 651). *Cp*, *Dobell* v. *Green*, cited AS ORDERED: DETENTION BY ICE: DETENTION BY RAILWAYS. *V.* CUSTOMARY: *Saxon S. S. Co* v. *Union S. S. Co*, cited COLLIERY WORKING DAY: *Hick* v. *Raymond* and *Carlton S. S. Co* v. *Castle Co*, cited REASONABLE: *Budgett* v. *Binnington*, cited DEMURRAGE.

Vh, *Hoyle* v. *Oldham*, 1894, 2 Q. B. 372; 63 L. J. M. C. 178: *Allen* v. *Flood*, cited MALICE.

V. BOYCOTT: INTIMIDATE: LAWFUL PURPOSE: SUDDEN: TRADE UNION.

STROKEHALL. — Quà SALMON Fisheries Acts, "Strokehall, or Snatch," means and includes, "any instrument or device (whether used with a ROD AND LINE or otherwise) for the purpose of foul hooking any fish" (s. 4, 36 & 37 V. c. 71).

Cp, FIXED ENGINE.

STRONG. — *V.* TIGHT.

With Strong Hand; *V.* FORCE.

"Strong Presumption"; *V.* PRESUMPTION.

STRUCTURAL CONVENIENCE. — "Want of Structural Convenience," s. 94, P. H. Act, 1875; *V. Kinson Co* v. *Poole*, 1899, 2 Q. B. 41; 68 L. J. Q. B. 819; 81 L. T. 24; 47 W. R. 607; 63 J. P. 580. There is no nuisance attributable to want of, or defect in, a "Structural Convenience," if it arises from the want of proper cleansing (*Barnett* v. *Laskey*, cited CLEANSE).

STRUCTURAL DIVISION. — *V.* SEPARATE OCCUPATION: HOUSE, p. 893.

STRUCTURAL EXPENSES. — *V.* EXPENSES.

STRUCTURE. — *V.* BUILDING: ERECTION.

Quà Metrop Man. Acts, "no special meaning can be given to the word 'Structure,' or 'Erection,' as something distinct from a 'Building'" (per Pollock, B., *London Co. Co.* v. *Pearce*, 1892, 2 Q. B. 111; 66 L. T. 685; 40 W. R. 543; 56 J. P. 790). Therefore, "any Wooden Structure or Erection of a moveable or temporary character," s. 13, Metrop Man. Act, 1882, repld s. 84, London Bg Act, 1894, does not include a Builder's Pay Office running on wheels so as to be moveable from place to place as occasion requires (*S. C.*), nor a steam Round-about Caravan and Shooting Gallery (*Hall* v. *Smallpiece*, 59 L. J. M. C. 97: *Vf, London Co. Co.* v. *Humphreys*, 1894, 2 Q. B. 755; 63 L. J. M. C. 215; 71 L. T. 201; 43 W. R. 13; 58 J. P. 734). As to the proviso to this section, *V. London Co. Co.* v. *Candler*, cited USE.

Quà London Bg Act, 1894, there is no general statutory definition of "Structure," and, probably, no complete def can be given, but generally in this Act it connotes something of a permanent nature, *e.g.* "Structure, or Work" (ss. 78, 145) does not include the temporary seating of a completed building; so, of "Structure," s. 82; but, probably, in s. 83 and Part III, "Structure" has a wider meaning (*Venner* v. *McDonnell*, 1897, 1 Q. B. 421; 66 L. J. Q. B. 273; 45 W. R. 267; 76 L. T. 152: *Vf, Elliott* v. *London Co. Co.*, cited TRAFFIC). As regards *Dangerous* Structures, Part IX, Ib., "'Structure' includes, any building, wall, or other structure, and anything affixed to or projecting from any building

wall or other structure" (s. 102). *Note*: as to the powers of the County Council under Part IX, *V. Crisp* v. *London Co. Co.*, 1899, 1 Q. B. 720; 68 L. J. Q. B. 499; 80 L. T. 654; 63 J. P. 484.

V. PARTY STRUCTURE: PIER.

STUBBLE. — *V.* STRAW.

STUCCO-WORK. — *V.* PLASTERING.

STUFF. — *V.* HOUSEHOLD.

STURDY BEGGAR. — *V.* VAGABOND.

STURGES-BOURNE'S ACTS. — Vestries Act, 1818, 58 G. 3, c. 69:

Poor Relief Act, 1819, 59 G. 3, c. 12.

SUB-ACCOUNTANT. — *V.* PRINCIPAL ACCOUNTANT.

SUB-DEACON. — "The Sub-Deacon is he who delivers the vessels to the DEACON, and assists him in the administration of the Sacrament of the Lord's Supper" (Phil. Ecc. Law, 89).

SUBINFEUDATION. — Subinfeudation was a grant by an inferior feudatory lord of a part of his land to be held by feudal services as of himself, and not as of the lord paramount (2 Bl. Com. 91: Wms. R. P. Part 1, ch. 2, 3). The practice was finally stopped by the statute *Quia emptores*, 18 Edw. 1, c. 1.

SUBJACENT. — *V.* ADJACENT.

SUBJECT. — *V.* BRITISH SUBJECT: LIBERTY OF THE SUBJECT: ORIGINAL SUBJECT.

Stat. Def. — Legitimacy Declaration Act (Ir), 1868, 31 & 32 V. c. 20, s. 10.

SUBJECT AS AFORESAID. — As to the effect of this phrase on a Residuary Devise or Bequest; *V. Booth* v. *Coulton*, 5 Ch. 684; 39 L. J. Ch. 622; 18 W. R. 877. *Vf*, SUBJECT TO.

V., R. v. *Local Govt Bd*, 54 L. J. M. C. 104; 15 Q. B. D. 70; 53 L. T. 194; 49 J. P. 580.

SUBJECT-MATTER. — *V. Studham* v. *Stanbridge*, cited RECOVER.

SUBJECT THERETO. — The ordinary and grammatical construction of "and subject thereto" is that, it refers to the immediate antecedent in the same sentence" (per Ld Wensleydale, *Gray* v. *Golding*, 8 W. R. 371; 2 L. T. 198).

V. SUBJECT TO.

SUBJECT TO.—There is a marked distinction between a testamentary gift "*for*," and one "subject to," a particular purpose. If the particular purpose fail, then, if the gift be "for" that purpose, there will be a RESULTING TRUST for the heir or next of kin, as the case may be, or (where there is a residuary clause) the gift will fall into the residue; *secus*, if the gift be "subject to" the purpose (per Eldon, C., *King* v. *Denison*, 1 V. & B. 272: *Vf*, Lewin, 168, and cases there cited. But "for" has been read "charged with," *Abrams* v. *Winshup*, 3 Russ. 350. *Vh*, 1 Jarm. 566, 569).

"Where *lands* are devised to trustees 'subject to,' or 'charged with,' the payment of a yearly sum of money, a legal Rent-Charge is, it seems, created (*Buttery* v. *Robinson*, 3 Bing. 392; 4 L. J. O. S. C. P. 108: *Ramsay* v. *Thorngate*, 16 Sim. 575; 18 L. J. Ch. 238). But where real and personal property together are so given, it is a personal annuity (*Taylor* v. *Martindale*, 12 Sim. 158; 10 L. J. Ch. 339: *Parsons* v. *Parsons*, L. R. 8 Eq. 260), unlike rent reserved on a demise of realty and chattels, which issues out of the land alone (*Farewell* v. *Dickinson*, 6 B. & C. 251; 9 D. & R. 245)": 2 Jarm. 306, *n* (*f*).

A devise of lands "subject to and charged with" a Rent-Charge or Annuity, charges the corpus of the land with the Rent-Charge or Annuity; and, in a proper case, the Court will order arrears to be raised by mortgage of the lands (*Re Tucker*, 1893, 2 Ch. 323; 62 L. J. Ch. 442; 69 L. T. 85; 41 W. R. 505). So, of the bequest of an Annuity out of a fund and "subject thereto" the fund to be held upon trusts (*Birch* v. *Sherratt*, 36 L. J. Ch. 925; 2 Ch. 644; 16 W. R. 30). *Vf*, SUBJECT AS AFORESAID.

Formerly, "subject to" a MORTGAGE or CHARGE, in a devise of lands, were simply descriptive words, and did not indicate that the devisee was to take *cum onere* (*Serle* v. *St. Eloy*, 2 P. Wms. 386, on *whcv*, *Mellish* v. *Vallins*, 2 J. & H. 203: *Keogh* v. *Keogh*, Ir. Rep. 8 Eq. 459, 460); but now they are treated as conditional (*Keogh* v. *Keogh*, Ir. Rep. 8 Eq. 449: *Upton* v. *Hardman*, 9 Ib. 162, 163). The rule in *Serle* v. *St. Eloy* was not applied to bequests of personalty; therefore, such a bequest "subject to" the payment of testator's debts, imported a direction for the payment out of that personalty of mortgage debts on realty (*Mellish* v. *Vallins*, 2 J. & H. 194; 31 L. J. Ch. 592), and the principle of that latter case quà "subject to" remains although "debts," in such a connection, does not now include mtge debts (*V.* DEBTS).

Sometimes "subject to" a mortgage or charge, in a devise, will even now be regarded as descriptive (*Johnson* v. *Webster*, 4 D. G. M. & G. 487).

A bequest "subject to" payment of debts, &c, does not make the legatee personally liable (*Re Cowley*, 53 L. T. 494).

In an *Assignment of a Lease* "subject to" its rent and covenants, no covenant is implied by the assignee to indemnify the assignor against the

rent and covenants; the words "subject to," in that connection, being words of qualification and not of contract (*Wolveridge* v. *Steward*, 3 L. J. Ex. 360; 1 Cr. & M. 644; 3 Moore & S. 561; *Vthe*, cited Woodf. 274; Elph. 420: and *Vth*, *Moule* v. *Garrett*, L. R. 5 Ex. 132).

CONVEYANCE *on Sale* "subject (either certainly or contingently) to the payment of any money or stock," is chargeable with *ad val.* Stamp Duty on such money or stock (s. 57, Stamp Act, 1891); the object of that provision (like the provisions it replaces, *V.* TO BE) is "that, upon every purchase, *ad val.* duty shall be paid on the entire consideration which, either directly or indirectly, represents the value of the free and unincumbered corpus of the subject-matter of sale" (*Mortimore* v. *Inl. Rev.*, cited DEFINITE); therefore, where such subject-matter is a Conveyance on Sale of a Leasehold, neither the entire rent nor an apportioned part of it is at all liable to *ad val.* duty, for it is an incident of the corpus and inseparable from it (*Swayne* v. *Inl. Rev.*, 69 L. J. Q. B. 63; 1900, 1 Q. B. 172; 81 L. T. 623; 48 W. R. 197).

"Where a *Proposal or Tender* is accepted 'Subject to' the terms of a Contract being arranged and drawn up for signature, there is no concluded bargain until the terms have been arranged and a written contract executed. But an acceptance enclosing a more formal memorandum for signature is sufficient, if the memorandum contains no new terms" (Add. C. 14, and cases there cited: Woodf. 111, 112: *Va*, *Wilcox* v. *Redhead*, 49 L. J. Ch. 539: *May* v. *Thompson*, 51 L. J. Ch. 917; 20 Ch. D. 705: *Wood* v. *Silcock*, 32 W. R. 845). *V.* FINAL ARRANGEMENTS.

So, if the Court can see, from the subject-matter and the correspondence of the parties throughout, that all the essential terms of a bargain have been agreed upon and have been set down in writing (in the correspondence or otherwise), and have been signed by the party to be charged, then there is a binding contract, and the Statute of Frauds (in those cases to which it applies) has been complied with, notwithstanding that the correspondence or other writing speaks of a future formal contract to be executed between the parties (*Fowle* v. *Freeman*, 9 Ves. 351: *Rossiter* v. *Miller*, 3 App. Ca. 1124; 48 L. J. Ch. 10: *Hussey* v. *Horne-Payne*, 4 App. Ca. 311; 48 L. J. Ch. 846: *Lewis* v. *Brass*, 3 Q. B. D. 667: *Bonnewell* v. *Jenkins*, 8 Ch. D. 70; 47 L. J. Ch. 758: *Chipperfield* v. *Carter*, 72 L. T. 487: *Filby* v. *Hounsell*, 1896, 2 Ch. 737; 65 L. J. Ch. 852; 75 L. T. 270: *North* v. *Percival*, 1898, 2 Ch. 128; 67 L. J. Ch. 321; 46 W. R. 552).

But when the subject-matter is the *Sale of Realty* or an Interest in Realty (and still more strongly when it is the *granting* of a *Lease*, per Jessel, M. R., *Winn* v. *Bull*, inf), then, if the letters or other informal writing contain nothing as to conditions and would simply amount to an "OPEN" contract, and if such letters or writing say that the transaction is "subject to the preparation and approval of a formal contract," or "subject to a formal contract being prepared and signed by both parties

as approved by their solicitors," or "subject to a contract to be settled," or "subject to a proper contract," or such like words, then there is no concluded bargain until the prescribed contract is executed (*Winn* v. *Bull*, 7 Ch. D. 29; 47 L. J. Ch. 139: *Donnison* v. *People's Café Co*, 45 L. T. 187: *Hawkesworth* v. *Chaffey*, 55 L. J. Ch. 335; 54 L. T. 72: *Harvey* v. *Barnard's Inn*, 50 L. J. Ch. 750; 29 W. R. 923: *Brien* v. *Swainson*, 1 L. R. Ir. 135. *Note*, *Lloyd* v. *Nowell*, 1895, 2 Ch. 744; 64 L. J. Ch. 744, can hardly be classed here, for it related to the sale of an existing Lease, and it seems difficult to reconcile it with *Bonnewell* v. *Jenkins*, sup, a case of superior authority).

So, if it is stated in so many plain and express terms that there shall be no concluded bargain until the formal contract is executed between the parties, then such formal contract is essential (*Chinnock* v. *Ely*, 34 L. J. Ch. 399; 4 D. G. J. & S. 638: per Ld Hatherley, *Rossiter* v. *Miller*, sup).

So, where the acceptance of an offer is accompanied by written conditions constituting further terms, the acceptance is not final (*Crossley* v. *Maycock*, 43 L. J. Ch. 379; L. R. 18 Eq. 180: *Jones* v. *Daniel*, 1894, 2 Ch. 332; 63 L. J. Ch. 562; 70 L. T. 588; 42 W. R. 687).

So, the conduct of the parties, — *e.g.* correspondence subsequent to letters which in themselves would have created a concluded bargain but which subsequent correspondence treats the matter as still the subject of negotiation, — may show that there has been no concluded bargain (*Hussey* v. *Horne-Payne*, sup: the opposite dictum of Cotton, L. J., in *Bolton* v. *Lambert*, 41 Ch. D. 295; 58 L. J. Ch. 425; 37 W. R. 434, is not well founded, per Kay, J., *Bristol Aerated Bread Co* v. *Maggs*, 59 L. J. Ch. 472; 44 Ch. D. 616; 62 L. T. 416; 38 W. R. 393: *Vf*, *May* v. *Thompson*, 51 L. J. Ch. 917; 20 Ch. D. 705: *Bellamy* v. *Debenham*, 1891, 1 Ch. 412; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257). Asking the other party to say from what time "the purchase is to date," does not re-open an otherwise concluded bargain (*Simpson* v. *Hughes*, 66 L. J. Ch. 334; 76 L. T. 237).

Vf, as to when a contract is completed by a correspondence, per Plumer, V. C., *Stratford* v. *Bosworth*, 2 V. & B. 341: per Jessel, M. R., *Williams* v. *Brisco*, 22 Ch. D. 448; 48 L. T. 198: per Kekewich, J., *Wylson* v. *Dunn*, 34 Ch. D. 576: *Clack* v. *Wood*, 9 Q. B. D. 276: Redman, 138–141: Woodf. 111, 112.

"Subject to Insurance"; *V.* FREIGHT IN ADVANCE SUBJECT TO INSURANCE.

A Re-Insrce "subject to," or "with the same," terms as another Policy, incorporates those terms (*General Insrce of Trieste* v. *Royal Exchange Assrce*, 2 Com. Ca. 144: *Walker* v. *Uzielli*, 1 Ib. 452).

"Subject to the Laws and Statutes now in force," 1 Jac. 2, c. 22; *V. R.* v. *St. James, Westminster*, 5 A. & E. 391.

"Subject to Military Law"; *V.* SOLDIER.

"Subject to the Provisions of this Act," s. 19, Jud. Act, 1873; *V.*

Ormerod v. *Todmorden*, 51 L. J. Q. B. 348; 8 Q. B. D. 664; 30 W. R. 808.

Subject to a Malady, quà a Life Policy, means, to be liable to it (*Chattock* v. *Shawe*, 1 Moo. & R. 498). *Cp*, AFFLICTED.

"Subject to a Reserved Bidding"; *V.* RESERVED BIDDING.

Appointment of Fishery Officers "subject to Restrictions, &c, as to expenditure," s. 6 (1), 51 & 52 V. c. 54, implies such restrictions as were made at the time of the appointment (*R.* v. *Plymouth*, 1896, 1 Q. B. 158; 65 L. J. Q. B. 258).

"Subject to Survey"; *V.* SURVEY.

SUB-LEASE. — *V.* UNDERLEASE.

SUBMISSION. — Quà Arb Act, 1889, a "'Submission,' means, a Written Agreement to submit present or future differences to ARBITRATION, whether an arbitrator is named therein or not" (s. 27). "Written Agreement," there, means, a perfected agreement to which the parties are *ad idem* and which is embodied IN WRITING, *i.e.* an agreement evidenced by the parties' signatures (*Caerleon Tin Plate Co* v. *Hughes*, 60 L. J. Q. B. 640; 65 L. T. 118; 7 Times Rep. 619), or by which they are otherwise bound, *e.g.* an Insurer by the terms of his Policy on which he is suing (*Baker* v. *Yorkshire Insrce*, 1892, 1 Q. B. 144; 61 L. J. Q. B. 838; 66 L. T. 161), or a Litigant by his Counsel's indorsement on his brief (*Aitken* v. *Batchelor*, 62 L. J. Q. B. 193; 68 L. T. 530). *Vf*, *Re Smith and Nelson*, cited IRREVOCABLE.

S. 2, Arb Act, 1889, is enlarged by s. 25, so that "Submission," in s. 2, includes past as well as future agreements to arbitrate (*Re Williams and Stepney*, 1891, 2 Q. B. 257; 60 L. J. Q. B. 636; 65 L. T. 208; 39 W. R. 533: *vthc*, *Re Wilson and Eastern Counties Nav. Co*, 1892, 1 Q. B. 81; 61 L. J. Q. B. 237; 65 L. T. 853).

"Agreement or Submission to Arbitration *by consent*," s. 17, Com. L. Pro. Act, 1854; *Vh*, *Wadsworth* v. *Smith*, 40 L. J. Q. B. 118; L. R. 6 Q. B. 332: CONSENT: INSTRUMENT IN WRITING. A Submission under s. 25, Lands C. C. Act, 1845, is not within the phrase (*Re Harper and G. E. Ry*, L. R. 20 Eq. 39, explaining *Ex p. Harper*, L. R. 18 Eq. 539).

Act of Submission, 23 H. 8, c. 14.

SUBMITTED TO. — *V.* ACQUIESCENCE: CONSENT: STANDING BY.

SUBORDINATE. — One who is "subordinate" to another, is in the same relationship to third parties as that other; therefore, a Resident Engineer, who is "subordinate" to a Chief Engineer, is no more an agent of the contractor or contractee (*e.g.* for building works), than is the chief engineer (*Re Rio Flour Mills and De Morgan*, 8 Times Rep. 108, 292).

Subordinate *Occupation*; *V.* per Ld Davey, sub EXCLUSIVE OCCUPATION.

SUBORNATION OF PERJURY.—"Subornation of Perjury, is procuring a person to commit a perjury, which he actually commits in consequence of such procurement" (Steph. Cr. 95). *V.* PERJURY.

Vf, Arch. Cr. 1017–1019: Rosc. Cr. 740, 741.

SUBROGATION.—"'Subrogation,' is the substitution of another person in the place of a CREDITOR to whose rights he succeeds in relation to the debt. Personal Subrogation is of two sorts, (1) Conventional, and (2) Legal. The difference between them in regard to the effects of Subrogation in general, results only from the modifications of rights which are constituted by express agreement. Subrogation differs from Delegation in this respect, that it is the substitution of a New Creditor; whereas Delegation introduces a New Debtor in the place of the former, who is discharged. Subrogation differs from a TRANSFER or Assignment of a debt, and from Delegation, in the circumstance that it does not, necessarily, depend upon the creditor, but may be made independently of him. It is, properly speaking, but a fictitious cession made to one who has a right to offer payment; it is not a true cession nor sale of a debt, but such as is conceded by law and may have effect by operation of law and the act of the debtor, even without the consent of the creditor from whom the debt proceeds" (Dixon on Subrogation, 1).

Vh, Pothier on Obligations, by Evans, 160, cited *Commercial Union Assrce* v. *Lister*, 9 Ch. 485: per Selborne, C., *Blackburn Bg Socy* v. *Cunliffe*, 22 Ch. D. 70, 71; 52 L. J. Ch. 96; 48 L. T. 39; 31 W. R. 99, cited by Chitty, J., *Neath Bg Socy* v. *Luce*, 43 Ch. D. 164; 59 L. J. Ch. 7; 61 L. T. 616; 38 W. R. 124. For an example, *V. Re Kensington*, 29 Ch. D. 527; 54 L. J. Ch. 1085; 53 L. T. 19; 33 W. R. 689. *Vf*, *King* v. *Victoria Insrce*, 1896, A. C. 250; 65 L. J. P. C. 38; 74 L. T. 206; 44 W. R. 592: *Ecclesiastical Commrs* v. *Pinney*, 1900, 2 Ch. 736; 69 L. J. Ch. 844; 83 L. T. 384; 49 W. R. 82.

Cp, NOVATION.

SUBSCRIBE.—"'Subscribe,' means, to write under something," in accordance with prescribed regulations where any such exist (per Brett, M. R., *A-G.* v. *Bradlaugh*, 54 L. J. Q. B. 213; 14 Q. B. D. 667: *Vf*, *Coon* v. *Rigden*, 4 Colorado, 282). But though this is the strict primary meaning of the word, it may sometimes, *e.g.* quà the attestation of a Will, be construed as, "to give assent to, or to attest" or "written upon" (*Roberts* v. *Phillips*, 24 L. J. Q. B. 171; 4 E. & B. 450: *Re Streatley*, 1891, P. 172; 60 L. J. P. D. & A. 56; 39 W. R. 432).

"Subscribe," very frequently means, to pay money; and then it means, (1) to have made an actual payment, or (2) to agree to contribute (*Thames Tunnel Co* v. *Sheldon*, 6 B. & C. 341).

Quà a JOINT STOCK COMPANY, 7 & 8 V. c. 110 (repealed by Comp Act, 1862), defined "Subscriber" as meaning, "any person who shall have

agreed in writing to take, or have taken, any shares in a proposed company or in a company formed, and who shall not have executed the Deed of Settlement, or a deed referring thereto" (s. 3).

An obligation to "subscribe for" Shares, does not, as a general rule, connote that they must be taken personally; the obligation will be satisfied if the obligor procures an allotment of the agreed number of shares to persons approved by the Directors of the Co (*Re London & Colonial Finance Corp*, 77 L. T. 146; 13 Times Rep. 576). *Vf*, UNDERWRITE.

A statement in a Prospectus of a Co, that Share Capital has been "subscribed," is not satisfied by the fact that fully paid-up shares have been allotted in payment for property or services (*Arnison* v. *Smith*, 41 Ch. D. 348; 5 Times Rep. 413).

"Subscribe" to an Undertaking, s. 8, Comp C. C. Act, 1845; *V. Burke* v. *Lechmere*, L. R. 6 Q. B. 297; 40 L. J. Q. B. 98.

V. ATTEST: SIGNED.

SUBSCRIBER. — *V.* SHAREHOLDER.

"Subscriber"; *V. Ex p. Cookney*, 28 L. J. Ch. 12; 3 D. G. & J. 170; 26 Bea. 6; 32 L. T. O. S. 82.

A right of Voting, *e.g.* for a schoolmaster, given to "Subscribers," is exerciseable only by BONÂ FIDE subscribers, not by those who come with their money *pro hac vice* (*Nott* v. *Williams*, 48 W. R. 316).

SUBSCRIPTION or CONTRIBUTION. — A "Subscription or Contribution" for any plate, prize, or sum of money, to be awarded to the winner "of any lawful game, sport, pastime, or exercise," is excepted from the operation of the Gaming Act, 1845, 8 & 9 V. c. 109, and is legal and irrevocable (*V.* proviso to s. 18). But to be within that proviso the "Subscription or Contribution" must not itself be a Wager; and therefore if each of two or more persons stake money to form a fund for which they are to compete in a lawful game, *e.g.* a foot-race, that is a Wager, and not a "Subscription or Contribution" within the proviso (*Diggle* v. *Higgs*, 46 L. J. Ex. 721; 2 Ex. D. 422, over-ruling *Batty* v. *Marriott*, 17 L. J. C. P. 215: *Va, Trimble* v. *Hill*, 5 App. Ca. 342). So, if two men, each owning a horse, agree to ride a race each on his own horse and the winner to have both horses, that is not a "Subscription or Contribution" (*Coombes* v. *Dibble*, 35 L. J. Ex. 167; L. R. 1 Ex. 248; 4 H. & C. 375).

So, if two or more persons play at a lawful game for money, but *do not at the time stake the money*, that is not a "Subscription," but a mere bet upon which no action will lie (*Parsons* v. *Alexander*, 24 L. J. Q. B. 277; 5 E. & B. 263). So, the common "Sweep" on a horse-race, is not within the above exception but, is a lottery and illegal (*Allport* v. *Nutt*, 14 L. J. C. P. 272; 1 C. B. 989: *Gatty* v. *Field*, 15 L. J. Q. B. 408; 9 Q. B. 431).

V. GAMING CONTRACT: VOLUNTARY CONTRIBUTIONS.

SUBSEQUENT. — As to the value of this word in a covenant, in a Marriage Settlement, to settle after-acquired property; *V. Re Garnett*, 55 L. J. Ch. 773; 33 Ch. D. 300; 55 L. T. 562.

"Each subsequent £100 of rent"; *V.* EACH.

Cp, SUCCEEDING.

SUBSEQUENT ACTION. — A second action commenced after the issue of the Writ but before judgment obtained in a first action, was held to be a "Subsequent" Action within ss. 2 and 5, M. W. P. Act, 1874 (*Fear* v. *Castle*, 51 L. J. Q. B. 279; 8 Q. B. D. 380).

A "subsequent action for Infringement" of a Patent which will carry Costs as between Solr and Client, s. 31, 46 & 47 V. c. 57, means, an action quà the same Patent commenced after one in which the Court or Judge has, under the section, certified the validity of the Patent (*Automatic Weighing Machine Co* v. *International Hygienic Socy*, 6 Pat. Ca. 475: *Saccharin Corp* v. *Anglo-Continental Co*, W. N. (1900) 95).

V. ACTION.

SUBSEQUENT ASSIGNMENT. — "Subsequent," s. 4, Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68, means, subsequent to the first entry; therefore, it is not necessary, under that section, to register the assignment of a copyright to the person who first makes the entry of it (*Troitzsch* v. *Rees*, 3 Times Rep. 773: *Vf, Ex p. Walker, Re Graves*, L. R. 4 Q. B. 715; 39 L. J. Q. B. 31; 10 B. & S. 680).

V. ASSIGNMENT.

SUBSEQUENT OVERSEERS. — *V.* SUCCEEDING.

SUBSIDENCE. — *V.* CAUSE OF ACTION, p. 277.

SUBSIDY. — "'Subsidy, *Subsidium*,' signifies an Ayd, Tax, or Tribute, granted by Parliament to the King, for the urgent occasions of the Kingdom, to be levyed of every Subject according to the rate of his Land or Goods, after four shillings in the pound for Land, and two shillings eight pence for Goods" (Cowel: *Vh*, 2 Bl. Com. 307–316).

Quà Mail Ships Act, 1891, 54 & 55 V. c. 31, "'Subsidy,' includes a payment for the performance of a contract" (s. 9).

SUBSIST. — Limitations continue to "subsist," quà exemption from Estate Duty under s. 5 (3), Finance Act, 1894, so long as there is any estate created by the Settlement which has not come to an end (per Williams, J., *A-G.* v. *Wood*, 1897, 2 Q. B. 102; 66 L. J. Q. B. 522; 76 L. T. 654; 45 W. R. 663).

SUBSISTING. — Trusts "subsisting and capable of taking effect"; *V. Smyth-Pigott* v. *Smyth-Pigott*, W. N. (84) 149.

Rights or Interests "subsisting and valuable"; *V.* RIGHTS.

Cp, EXISTING.

SUBSOIL. — " 'Subsoil' includes, *primâ facie*, all that is below the actual SURFACE down to the centre of the earth (*V. Cox* v. *Glue*, 17 L. J. C. P. 162; 5 C. B. 549; 10 L. T. O. S. 374). It is, therefore, a wider term than 'MINES' or 'QUARRIES,' or even than 'Minerals' (*V. Atkinson* v. *King*, 2 L. R. Ir. 339). And an exception of 'Coals and Coal Mines' will only comprise that portion of the Subsoil which actually consists of Mines of Coal, and will not comprise any intervening or other strata (*V. Ramsay* v. *Blair*, 1 App. Ca. 704)": MacS. 20.

V. LAND: MINE: SOIL: VEST: *Metrop Ry* v. *Fowler*, and *Farmer* v. *Waterloo & City Ry*, cited APPROPRIATE.

SUBSTANCE. — "What is 'Substance'? It is *every property* a man has. So, in the statute 4 & 5 P. & M. c. 8, for the punishment of such as shall take away maidens that be inheritors, the word 'Substance' is made use of and means, *worldly wealth*"; "'Substance' includes everything that can be turned into money" (per Mansfield, C. J., *Hogan* v. *Jackson*, 1 Cowp. 307). *V.* WORLDLY ESTATE: WORLDLY GOODS.

A covenant to settle "Fortune or Substance," embraces real estate (*Scully* v. *Scully*, Sug. Prop. 104: *Vf*, FORTUNE). In *Maitland* v. *Adair* (3 Ves. 231, cited 1 Jarm. 742), "my Fortune" was, by a context, confined to personalty. *Vf*, as to "Fortune," *Bacon* v. *Cosby*, 20 L. J. Ch. 213; 4 D. G. & S. 261: "Future Fortune"; *V.* FUTURE.

"Substance" contrasted with "MATTER"; *V.* DESTRUCTIVE.

"Nature, Substance, or Quality"; *V.* NATURE.

"Substances"; *V.* MINE, at end.

"Hard and Incombustible Substances"; *V.* WALL.

In a defence to a Libel on a newspaper report of a trial, it is not a sufficient justification to say that the report was "in Substance" a true report and account of the trial (*Flint* v. *Pike*, 4 B. & C. 473; *whcv* for obs on that phrase).

"Defect in Substance," s. 1, Sum Jur Act, 1848; *V. Rodgers* v. *Richards*, 1892, 1 Q. B. 555; 66 L. T. 261; 40 W. R. 331; 56 J. P. 281; 17 Cox C. C. 474. *Cp*, VARIANCE.

V. POINT OF SUBSTANCE.

SUBSTANTIAL. — A *House* was described as "Substantial and Convenient," and having five bed-rooms; held, not a misdescription, although the house was out of repair, and the walls in some places were only half-brick thick, and some of the bed-rooms extremely small inner rooms, and without fireplace: "The description is of a 'Substantial and Convenient Dwelling-house,' a description so relative in its terms as to afford abundant opportunity for a conflict of evidence as to matters which are rather matters of opinion than of fact" (per Stuart, V. C., *Johnson* v. *Smart*, 2 Giff. 151, 156; 2 L. T. 307; 6 Jur. N. S. 815).

The Poor Relief Act, 1601, 43 Eliz. c. 2, s. 1, requires that persons

appointed Overseers shall be "Substantial *Householders.*" Where, however, a district contained only three houses, two of which were occupied by poor labourers, it was held that the appointment of all the three householders was good (*R.* v. *Stubbs*, 2 T. R. 395). In delivering the jdgmt of the Court in that case, Ashhurst, J., said, "The word 'Substantial' is a relative term. If there were a great many opulent farmers, there the appointment of a day-labourer might be improper; but here there were no other persons to serve. They are both householders with some land annexed to their houses, and one of them a proprietor. No better persons can be had than the place affords; and the want of them is no reason why the poor should not be provided for." But a servant occupying a tenement in part payment for his services, is not such a Householder (*R.* v. *Spurrell*, L. R. 1 Q. B. 72; 35 L. J. M. C. 74; 13 L. T. 364; 12 Jur. N. S. 208; 14 W. R. 81). *Vf*, OCCUPIER.

A "Substantial *Inhabitant*," liable to serve the office of Rate Collector under 11 G. 3, c. 29, must have been a resident inhabitant (*Donne* v. *Martyr*, 6 L. J. O. S. K. B. 246; 8 B. & C. 62; 2 M. & R. 98). *Vf*, RESIDE: INHABITANT.

"Substantial *Repair*"; *V.* REPAIR: GOOD REPAIR.

"Substantial *Wrong or Miscarriage*," R. 6, Ord. 39, R. S. C.; *V. Bray* v. *Ford*, 1896, A. C. 44; 65 L. J. Q. B. 213; 73 L. T. 609.

SUBSTANTIALLY. — WORKS "substantially commenced"; *V. A-G.* v. *Bournemouth*, 71 L. J. Ch. 730; 1902, 2 Ch. 714; in *whc* also *Re Dudley Trams Co*, cited CONCLUSIVE EVIDENCE, was disapproved.

Substantially infringe a Patent; *V.* per Grove, J., *Young* v. *Rosenthal*, 1 Pat. Ca. 33, 41.

SUBSTITUTE. — "'Substitute, *Substitutus*,' One placed under another to transact or do some business" (Cowel).

"Substitute for Beer"; *V.* BEER.

SUBSTITUTED. — "Collateral, or Auxiliary, or Additional, or Substituted, SECURITY," Stamp Act, 1891, Sch 1, clause 2, *Mortgage*; where a Trust Deed of a Co is to secure Debentures or Debenture Stock with power to surrender or withdraw part of the property therein comprised, and only a *small* part of such property is surrendered or withdrawn and in lieu thereof another small property is conveyed to the trustees but without any covenant for payment of the debentures or debenture stock or any declaration of trust of the newly assured property, such latter conveyance is a "Substituted Security" for the whole amount of the debentures or debenture stock, and the *ad val.* duty of 6*d.* per £100 has to be paid thereon (*Gartsides Co* v. *Inl. Rev.*, 82 L. T. 686). *Vf*, *City of London Brewery* v. *Inl. Rev.*, 1899, 1 Q. B. 121; 68 L. J. Q. B. 62; 79 L. T. 648; 47 W. R. 216.

"Substituted Service" of a Writ, Ord. 10, R. S. C.; *V.* Ann. Pr.

SUBSTITUTION. — *V.* ADDITION: LIEU: NOVATION: SUBROGATION.

Fixtures, Plant, &c, "in substitution" of others, s. 6 (2), Bills of Sale Act, 1882; *V. London & Eastern Counties Loan Co* v. *Creasy*, cited PLANT.

SUBSTITUTIONAL. — As to construction of Substitutional Gifts; *V.* 2 Jarm. 771–782: SHARE, and espy *Christopherson* v. *Naylor*, there cited.

Substitutional Legacy; *V.* CUMULATIVE.

SUBTERRANEAN WATER. — *V.* DEFINED CHANNEL: WATERS.

Vh, Grand Junction Canal Co v. *Shugar*, 6 Ch. 483: *Popplewell* v. *Hodkinson*, 38 L. J. Ex. 126; L. R. 4 Ex. 248: *Ballard* v. *Tomlinson*, 54 L. J. Ch. 454; 29 Ch. D. 115; 52 L. T. 942; 33 W. R. 533.

SUCCEED. — *V. Bagot* v. *Legge*, 34 L. J. Ch. 156.

"If any person shall have succeeded to any Trade," &c, No. 4, 3rd set of Rules, Sch D, s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Ryhope Co* v. *Foyer*, 7 Q. B. D. 485; 45 L. T. 404.

SUCCEEDING. — The phrase "Succeeding *Overseers*," s. 11, Poor Relief Act, 1743, 17 G. 2, c. 38, is not confined to Overseers who immediately succeed those who made the Rate; "succeeding," there, *semble*, means "SUBSEQUENT" (*East Dean* v. *Everett*, 30 L. J. M. C. 117; 3 E. & E. 574; 9 W. R. 312; 3 L. T. 700; 25 J. P. 565). *Cp*, SUCCESSIVE.

So, "succeeding" is sometimes, by an interp clause, made synonymous with "subsequent," *e.g.* "'Succeeding Year,' shall be deemed to refer to a year *subsequent* to the year 1851" (s. 117, 13 & 14 V. c. 69).

SUCCESSION. — A devise to A. "and his children *in succession*," gives A. an estate tail (*Tyrone* v. *Waterford*, 29 L. J. Ch. 486; 1 D. G. F. & J. 613).

Quà *Succession Duty*, "Every past or future *Disposition* of property, by reason whereof any person has or shall become BENEFICIALLY ENTITLED to any property, or the income thereof, UPON the death of any person dying after the time appointed for the commencement of this Act (19th May 1853), either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every *Devolution by Law* of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such Disposition or Devolu-

tion a '*Succession*'; and the term '*Successor*' shall denote the person so entitled; and the term 'PREDECESSOR' shall denote the settlor, disponer, testator, obligor, ancestor, or other person, from whom the interest of the Successor is or shall be derived" (s. 2, 16 & 17 V. c. 51). "In framing that Act the word 'Succession' was adopted for the purpose of denoting any property passing upon death from one person to another by virtue of any Gift or Descent, or of any Contract, *not being a bonâ fide contract of purchase or loan*" (per Westbury, C., *Floyer* v. *Bankes*, 33 L. J. Ch. 3; 3 D. G. J. & S. 306); and it does not include a conveyance or assignment by way of *bonâ fide* sale (*Fryer* v. *Morland*, 45 L. J. Ch. 817; 3 Ch. D. 675: *A-G.* v. *Brown*, 41 S. J. 454: *Sv, De Rechberg* v. *Beeton*, 38 Ch. D. 192). *Vf, A-G.* v. *Littledale*, 40 L. J. Ex. 241; L. R. 5 H. L. 290: *A-G.* v. *Middleton*, 27 L. J. Ex. 229; 3 H. & N. 125: *A-G.* v. *Sibthorp*, 28 L. J. Ex. 9; 3 H. & N. 424: *A-G.* v. *Braybrooke*, 9 H. L. Ca. 150; 31 L. J. Ex. 177: *Solicitor-General* v. *Law Reversionary Socy*, 42 L. J. Ex. 146; L. R. 8 Ex. 233: *A-G.* v. *Mander*, 74 L. T. 103; 65 L. J. Q. B. 246; 44 W. R. 413: *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; 79 L. T. 58; 47 W. R. 97: Dart, 314–318, 667–669.

"Succession," as above defined, includes "an increase of benefit in property" (per Lindley, L. J., *A-G.* v. *Robertson*, 1893, 1 Q. B. 293; 62 L. J. Q. B. 282; 68 L. T. 371; 41 W. R. 241), *e.g.*, as held in *thlc*, where income is to wife for life, remainder to husband for life, and, in default of issue, to wife absolutely, — there, the increased benefit taken by the wife on surviving her husband (there being no issue) is a "Succession."

For clause in a Settlement exonerating a Jointress from herself paying Sucn Dy, *V. Floyer* v. *Banks*, sup.

As to what words will exonerate a Beneficiary from Sucn Dy, *V.* CLEAR: DEDUCTION.

"Succession," s. 6, 52 & 53 V. c. 7; *V. A-G.* v. *Aberdare*, 1892, 2 Q. B. 684; 61 L. J. Q. B. 615: *Vf*, WHOLLY.

V. PREDECESSOR: DERIVE: DISPOSITION: INHERIT: LEGACY DUTY: UNDER.

"*By way of Succession.*" The provision in s. 2 (1), S. L. Act, 1882, that an instrument limiting or declaring trusts "for any persons By way of Succession" is a Settlement, is adopted from s. 2, Settled Estates Act, 1877, which adopted it from s. 1, 19 & 20 V. c. 120: *Vh, Re Birtle*, 11 W. R. 739; 32 L. J. Ch. 439: *Re Bardin*, 7 W. R. 711; 28 L. J. Ch. 840: *Re Goodwin*, 3 Giff. 620: *Re Horn*, 29 L. T. 830: *Collett* v. *Collett*, L. R. 2 Eq. 203; 35 Bea. 312: *Re Laing*, 35 L. J. Ch. 282; L. R. 1 Eq. 416: *Re Shepheard*, 39 L. J. Ch. 173; L. R. 8 Eq. 571: *Carlyon* v. *Truscott*, L. R. 20 Eq. 348; 44 L. J. Ch. 186: *Re Morgan*, L. R. 9 Eq. 588: *Beioley* v. *Carter*, 38 L. J. Ch. 92, 283; 4 Ch. 230: *Re Morgan*,

49 L. J. Ch. 577: Middleton on Settled Estates, 3 ed., 28, 29: Carson's Real Property Statutes, 625, 626.

V. SUCCESSOR.

"Intestate Succession"; *V.* INTESTATE.

SUCCESSIVE. — A "Successive OCCUPIER," quà the Parliamentary Franchise, is one who occupies premises, in the same Borough, or Division of a County, "in Immediate succession" (s. 28, Rep People Act, 1832; s. 26, Rep People Act, 1867); but such premises may be partly by virtue of Service and partly under Ordinary Tenancies, or wholly by or under either mode of occupation (*Torish* v. *Clark*, 18 L. R. Ir. 285; followed in *Nicholson* v. *Yeoman*, 24 Q. B. D. 145; 59 L. J. Q. B. 104; 61 L. T. 813; 54 J. P. 166). The successive occupation of LODGINGS must be in "the same house" (s. 6, 41 & 42 V. c. 26). *Vf*, "Nature of Qualification," sub NATURE. *Cp*, SUCCEEDING.

A "Successive OWNER," liable to an Improvement Rate, includes a mtgee in possession (*Blackburn* v. *Micklethwait*, 54 L. T. 539; 50 J. P. 550).

SUCCESSIVELY. — "In many cases devises to several persons *successively*, have been contended to be void on account of the uncertainty respecting the order in which the objects are to take. Where the devise is to several specified individuals in succession, the obvious rule is to hold them to be entitled in the order in which their names occur. If it be to a class of persons, constituted such in virtue of birth, — as to children, sons, or brothers, — then priority according to seniority of age may be presumed to be intended. And the circumstance of a condition being imposed on the devisees has been held not to vary the order in which they are successively entitled" (1 Jarm. 374, and *V.* cases there cited).

A devise "to the first son of T. severally and successively in tail male" must be read, "to the first, *and every other*, son," as otherwise "severally and successively" would be without meaning (*Parker* v. *Tootal*, 34 L. J. Ex. 198; 11 H. L. Ca. 143: *Vth*, 1 Jarm. 528, 2 Ib. 407).

Custom of a Manor on grant for lives "successively"; *V. Doe* d. *Nepean* v. *Goddard*, 1 B. & C. 522.

SUCCESSOR. — Is "he that followeth or cometh in another's place" (Jacob).

Quà Bankry (Scot) Act, 1856, 19 & 20 V. c. 79, "'Successor,' shall include, all persons who have succeeded to any property which was vested in a party deceased at the time of his death, — whether as heirs, heirs apparent, trustees under voluntary conveyances, representatives by deed or otherwise, executors, administrators, or nearest of kin, or as assignees, or legatees; and shall also include singular successors where they have acquired the right" (s. 4).

Quà Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, "Successors," includes, "heirs, disponees, assignees legal as well as voluntary, executors, and representatives" (s. 3).

Quà Landed Property (Ir) Improvement Act, 1860, 23 & 24 V. c. 153; *V.* s. 9.

V. SUCCESSION: SUCCESSORS: CLERGYMAN.

SUCCESSORS. — A Devise to A. "and his Successors," even prior to the Wills Act, 1837, passed the fee simple (*Webb* v. *Herring*, 1 Rolle, 399, pl. 25; 8 Vin. Ab. 209, pl. 1; 3 Bulst. 194: *A-G.* v. *Gilbert*, 10 Bea. 517); so, a bequest of personalty to an Earl, "and to his successors, *and to be enjoyed with and go with the title*," is an absolute gift notwithstanding the words italicized (*Re Johnston, Cockerell* v. *Essex*, 53 L. J. Ch. 645; 26 Ch. D. 538; 32 W. R. 634).

But a Grant "to any natural person, to have and to hold to him and his Successors, — by this he hath only an estate for his life" (Touch. 106: *Va*, Co. Litt. 8 b).

In a conveyance of a fee simple to a Corporation the apt words of limitation are "and their Successors"; and in the case of a Corporation Sole, "without these words, *Successors*, there passeth no inheritance" (Co. Litt. 8 b; *Vth*, Ib. 94 b: *Va*, FEE SIMPLE).

A Devise to a Minister of Religion "and his successors," *e.g.* "to T. W., Minister of the Roman Catholic Chapel at Kendal, and to his successors for ever," is a devise for the benefit of the office held, not of the person named, and was void under the Statute of Mortmain (*Thornber* v. *Wilson*, 24 L. J. Ch. 667; 3 Drew. 245). So, land awarded, under an Enclosure Act, to A. as "Vicar, and his successors," goes to him only in his corporate capacity, "successors" being only a word limiting the fee simple and not having the effect of making the land "SETTLED" (*Ex p. Castle Bytham*, 1895, 1 Ch. 348; 64 L. J. Ch. 116; 43 W. R. 156).

"Successors *in Estate*," quà Glebe Lands Leasing Powers (Ir) Act, 1857, 20 & 21 V. c. 47, means, "the persons entitled, for the time being after the Lessor, to the receipt of the rents of the lands comprised in any lease made under this Act" (s. 2): *Vf*, s. 1, 18 & 19 V. c. 39.

V. SUCCESSOR.

SUCCESSORS IN BUSINESS. — Neither partner of a dissolved firm is the "Successor" in business of such firm, when each partner goes his own way and carries on business for himself (*Eaton* v. *Western*, 52 L. J. Q. B. 41; 9 Q. B. D. 636).

"Successors in business," quà a Lessee's covenant to purchase goods of his Lessor; *V. Birmingham* v. *Jameson, Manchester Brewery Co* v. *Coombs*, and *John* v. *Holmes*, cited SPIRITUOUS LIQUOR.

SUCH. — "Such," like "SAID," generally refers to its last antecedent (*Vh*, per Halsbury, C., *Ex p. Barnes*, 1896, A. C. 150).

"Such," in Statutes; *V.* Dwar. 601.

"Such," in Testamentary Gifts of a substitutional character; *V. West* v. *Orr*, 47 L. J. Ch. 294; 8 Ch. D. 60: *Heasman* v. *Pearce*, 7 Ch. 285: *Miller* v. *Chapman*, 24 L. J. Ch. 409, discussed 2 Jarm. 779, 780.

As to "Such," wrongly used; *V.* Elph. 82, 403.

"Such *as shall survive*," in a devise to a CLASS, construed as, the others or other of them (*Re Tharp*, 33 L. J. Ch. 59; 1 D. G. J. & S. 453). *V.* SURVIVOR.

Power to appoint to "Such" of a CLASS, "authorizes exclusion, unless a contrary intention appear" (Farwell, 363, cited by Jessel, M. R., *Re Veale*, 46 L. J. Ch. 800 *n*; 4 Ch. D. 64). *Cp*, ALL AND EVERY: AMONG.

"Such *Bankrupt*," s. 23, 5 & 6 V. c. 122; *V. Norton* v. *Walker*, 18 L. J. Ex. 234; 3 Ex. 480.

"Such *Bill*," s. 38, Solicitors Act, 1843, 6 & 7 V. c. 73, refers back to the Bill to be delivered under s. 37, and means a Bill as between Solicitor and Client (*Re Cowdell*, 52 L. J. Ch. 246; following *Re Grundy*, 50 L. J. Ch. 467; 17 Ch. D. 108; 29 W. R. 581).

"Such *Certificate*," proviso to s. 5, 28 & 29 V. c. 27; *V. Williams* v. *Swansea Canal Nav. Co*, 37 L. J. Ex. 107; L. R. 3 Ex. 158.

"Such *Child*"; *V. Rye* v. *Rye*, 1 L. R. Ir. 413.

"Such *Covenants*" as in Original Lease; *V. Haywood* v. *Silber*, 30 Ch. D. 404; 34 W. R. 114: LIKE.

"Such *Craft*," s. 66, Watermen's and Lightermen's Amendment Act, 1859, 22 & 23 V. c. cxxxiii, means "each" craft (*Elmore* v. *Hunter*, 3 C. P. D. 116; 47 L. J. M. C. 8).

"Such *Deed*," s. 198, Bankry Act, 1861; *V. Ames* v. *Colnaghi*, 37 L. J. C. P. 159; L. R. 3 C. P. 359.

"Such *Dismissal*," in a Justice's Certificate dismissing a Complaint; *V. Skuse* v. *Davis*, 10 A. & E. 635; 8 L. J. M. C. 75.

"Such *Issue*"; *V. Re Hutchinson*, 55 L. J. Ch. 574; W. N. (86) 63: and whether prospective or retrospective, *V.* 2 Jarm. 65: *Strutt* v. *Braithwaite*, 21 L. J. Ch. 609; 5 D. G. & S. 369: *Hope* v. *Potter*, 3 K. & J. 206: *Harley* v. *Mitford*, 21 Bea. 280. "IN DEFAULT of such Issue"; *V.* 2 Jarm. 454–457: *Re Lowman*, 1895, 2 Ch. 348; 64 L. J. Ch. 567; 72 L. T. 816.

"Such," s. 9, Lands C. C. Act, 1845, in the phrase "Compensation to be paid for any permanent damage or injury to any such *Lands*," is to be rejected as insensible (*Stone* v. *Yeovil*, 24 W. R. 1073; 45 L. J. C. P. 657; 34 L. T. 874).

"Such *Lands*," s. 94, Lands C. C. Act, 1845, applies to all intersected lands, whether in a TOWN or not (*Eastern Counties Ry* v. *Marriage*, 31 L. J. Ex. 73; 9 H. L. Ca. 32).

"Such *Liquor* to bonâ fide TRAVELLERS," or to LODGERS, s. 10, Li-

censing Act, 1874, means, liquor to be consumed *on* the premises by the person supplied (*Mountifield* v. *Ward*, 1897, 1 Q. B. 326; 66 L. J. Q. B. 246; 76 L. T. 202; 45 W. R. 288; 61 J. P. 216).

"Such *List*," ss. 15 and 48, 5 & 6 W. 4, c. 76, "does not, necessarily, mean a correct and perfect list, but a list of such a kind and description as the Act requires" (per Patteson, J., *King* v. *Burrell*, 12 A. & E. 468). For a similar interp of "such," but in another context, *V.* per Wightman, J., *R.* v. *Randall*, 4 E. & B. 569.

"Such *Mines*," s. 80, Ry C. C. Act, 1845; *V. Midland Ry* v. *Miles*, 30 Ch. D. 634; 53 L. T. 381; 34 W. R. 136.

"Such *Order*," s. 15, Judgments Act, 1838, 1 & 2 V. c. 110, means, a Charging Order *nisi*; therefore, when the Order has been made absolute it cannot be rescinded under that section (*Jeffryes* v. *Reynolds*, 52 L. J. Q. B. 55: *Drew* v. *Lewis*, 1891, 1 Q. B. 450; 60 L. J. Q. B. 264).

"Such *other Order* as to the Court shall seem meet," in the prayer of a petition for winding-up a Co under supervision, enables the Court (petitioner being willing) to make a Compulsory Order (*Re Electric & Magnetic Co*, 50 L. J. Ch. 491).

A gift of "such *Parts*" of testator's property as the legatee may desire, enables the legatee to take the whole; and if the gift embraces only a class of testator's property, then the whole of such class may be appropriated by the legatee (*Arthur* v. *Mackinnon*, 48 L. J. Ch. 534; 11 Ch. D. 385). *V.* APPROPRIATE: PART: WHAT IS LEFT.

Power to let "such Parts" of testator's property "as have been usually granted or demised"; *V. Doe* d. *Bligh* v. *Colman*, 1 Bing. 28: *Va*, ANY, p. 95.

"Such *Prosecution*"; *V.* PROSECUTION.

"Such General or Quarter *Sessions*," s. 14, Vagrancy Act, 1824, 5 G. 4, c. 83, refers to the kind of Court, and not the individuals constituting a particular Sessions (*R.* v. *Warwickshire*, 4 L. J. M. C. 62; 4 N. & M. 370; 2 A. & E. 768).

"Such *Trusts* as are hereinafter declared"; *V. Hindle* v. *Taylor*, 5 D. G. M. & G. 592: *Va*, HEREIN.

"Such and the like Trusts"; *V.* LIKE.

"Such *Warrant of Attorney*," s. 4, 3 G. 4, c. 39, refers only to the Warrants of Attorney mentioned in the preceding sections (*Morris* v. *Mellin*, 6 B. & C. 446).

SUDDEN. — A STRIKE does not, of itself, create a "Sudden and Urgent NECESSITY" within s. 54, Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76 (*A-G.* v. *Merthyr Tydfil*, 1900, 1 Ch. 516; 69 L. J. Ch. 299; 48 W. R. 403; 82 L. T. 662; 64 J. P. 276).

SUE. — "To sue," *e.g.* by a Guardian for an Infant, is "sufficiently significant of a defendant; for 'to sue' is nothing more than 'to take

care of, or take upon one, the defence or tuition of the cause for the infant, or on his behalf.' And these words 'to sue' may be applied indifferently either to the demandant or plaintiff, or to the tenant or defendant, for the suit of one party or of the other must be followed. And the words 'to sue,' not only signify 'to PROSECUTE,' but also 'to defend,' or to do something which the law requires for the better prosecution or defence of the cause" (*Hesketh* v. *Lee*, 2 Saund. 95). *Cp*, DEFEND.

"'To sue,' generally speaking, means, to bring actions" (per Bayley, J., *Guthrie* v. *Fisk*, 3 B. & C. 183); accordingly it was there held that a power to a Co "to sue" in the name of their Officer, does not enable that Officer to be a good petitioning creditor in bankry on behalf of the Co, — a rule that was followed in *Re Nance*, 1893, 1 Q. B. 590; 62 L. J. Q. B. 500; 68 L. T. 733; 41 W. R. 370. *V.* SUIT.

Not to sue for future Conjugal Offence; *V.* COMMENCED.

"Sue *forth*"; *V. Re Rowe*, cited ISSUE OF ORDERS, p. 1015.

SUE AND LABOUR. — As to construction of the "Sue and Labour" Clause in a Marine Insurance; *V. Uzielli* v. *Boston Insrce*, 54 L. J. Q. B. 142; 15 Q. B. D. 11; 52 L. T. 787; 33 W. R. 293: *Lysaght* v. *Coleman*, 1895, 1 Q. B. 49; 64 L. J. Q. B. 175; 71 L. T. 830; 7 Asp. 552; 11 Times Rep. 10: *The Pomeranian*, 1895, P. 349; 65 L. J. P. D. & A. 39: 1 Maude & P. 490: Arn. ss. 22, 864–874: 8 Encyc. 202, 203.

SUEZ. — Quà Imperial Defence Act, 1888, 51 & 52 V. c. 32, and by s. 11 thereof, "'Suez Canal Shares,' means, the Suez Canal Shares held by the Treasury in pursuance of the Suez Canal Shares Act, 1876," 39 & 40 V. c. 67. *Note*: that latter Act, in its preamble, gives the text of the agreement for the purchase of these Shares by the Disraeli Ministry.

SUFFER. — An Annuity, or other life interest, only enjoyable until the beneficiary shall "suffer" anything to deprive him of the right of receiving it, is forfeited by a Garnishee Order served on the trustees (Lewin, 111, citing *Bates* v. *Bates*, W. N. (84) 129: *sthc* not followed in *Sutton* v. *Goodrich*, 80 L. T. 765, if it covered moneys actually in the trustees' hands); or by a Judgment Creditor obtaining a Charging Order (*Roffey* v. *Bent*, L. R. 3 Eq. 759), or registering his judgment as a mortgage against the lands (*Re Moore*, 17 L. R. Ir. 549); or the appointment of a Receiver (*Re Detmold*, 58 L. J. Ch. 495; 40 Ch. D. 585); or by a Bankry when the act of bankry is such as (under the old practice) neglecting to comply with a debtor's summons (*Ex p. Eyston*. 47 L. J. Bank. 62; 7 Ch. D. 145). *Vf*, *Re Sartoris*, cited WOULD: *sv*, *Ex p. Dawes*, cited WOULD.

V. PERMIT: PERMISSION.

There is no real distinction between "permit" and "suffer" in the Licensing Act, 1872, 35 & 36 V. c. 94 (per Stephen, J., *Bond* v. *Evans*,

57 L. J. M. C. 108; 21 Q. B. D. 249; 59 L. T. 411; 36 W. R. 767; 52 J. P. 613: *Va*, per Mathew, J., *Somerset* v. *Wade*, 1894, 1 Q. B. 574; 63 L. J. M. C. 127; 42 W. R. 399; 70 L. T. 452; 58 J. P. 231). Some of the sections of that Act (*e.g.* s. 14, and subs. 1, s. 16), deal with offences "KNOWINGLY" done, and in those cases, of course, knowledge by the licensed person would be an ingredient in the offence. But in other sections (*e.g.* ss. 13, 15, 17) "knowingly" does not occur; but still an offence of "permitting," or "suffering," is not committed unless the licensed person "knows of its existence, or connives at it, or wilfully shuts his eyes to it" (per Mathew, J., *Somerset* v. *Wade*, sup). In that case the innkeeper proved that he really did not know that the drunken person was drunk, and the Justices were upheld in dismissing the summons for "permitting" drunkenness. That ruling seems, at first sight, inconsistent with *Cundy* v. *Le Cocq* (cited DRUNKEN PERSON), but the conviction there was on the express words of the section for "selling liquor to a drunken person"; *V.* per Collins, J., *Somerset* v. *Wade*, sup.

Personal knowledge is not absolutely essential; therefore, under s. 17, Licensing Act, 1872, a licensed person "suffers GAMING," if he, *or his servant in charge*, knows, or ought to know, that gaming is going on (*Bosley* v. *Davies*, 45 L. J. M. C. 27; 1 Q. B. D. 84; 39 J. P. 774: *Redgate* v. *Haynes*, 45 L. J. M. C. 65; 1 Q. B. D. 89; 40 J. P. 70: *Crabtree* v. *Hole*, 43 J. P. 799: *Bond* v. *Evans*, sup), but not, *semble*, if the knowledge be confined to an irresponsible person not in charge, *e.g.* a potman (*Somerset* v. *Hart*, 53 L. J. M. C. 77; 12 Q. B. D. 360: *Sv*, *Collman* v. *Mills*, cited PERMIT).

Again, to "permit," or to "suffer," is not confined to a passive sense; therefore, under s. 13, Licensing Act, 1872, a licensed person "permits" drunkenness who supplies with more drink a person who he knows or ought to know is drunk (*Edmunds* v. *James*, 1892, 1 Q. B. 18; 61 L. J. M. C. 56; 65 L. T. 675; 40 W. R. 140; 56 J. P. 40: *Sv*, TAKE PLACE); on the other hand, that is so if he allows such a person to remain on his premises, even though no liquor be served there to such person (*Hope* v. *Warburton*, 1892, 2 Q. B. 134; 61 L. J. M. C. 147; 66 L. T. 589; 40 W. R. 510; 56 J. P. 328).

Note. The above prohibition against gaming extends to the licensed person himself and his private friends (*Patten* v. *Rhymer*, 29 L. J. M. C. 189; 3 E. & E. 1; 8 W. R. 496; 2 L. T. 352; 24 J. P. 342); but the licensed person who is himself drunk, cannot, under s. 13, be convicted of "permitting" drunkenness (*Warden* v. *Tye*, 46 L. J. M. C. 111; 2 C. P. D. 74; 35 L. T. 852: *Cp*, LICENSED PREMISES).

Vf, ALLOW: *Cp*, OMISSION.

Building "made or *suffered to continue*"; *V. Pearson* v. *Kingston-upon-Hull*, 35 L. J. M. C. 36; 3 H. & C. 921.

"A man cannot be said to 'suffer' that which he has no right to prevent" (per Field, J., *R.* v. *Staines*, 60 L. T. 261; 53 J. P. 358); there-

fore, a Local Board does not "cause or suffer" SEWAGE to flow into the Thames, within s. 64, 29 & 30 V. c. 89, if persons who have a prescriptive right to use the sewers vested in the Board do use them to carry sewage into that river (*S. C.*).

"Cause or suffer *to be conveyed or to flow*" into any Stream, &c, any gas washings; *V. Hipkins* v. *Birmingham Gas Co*, 5 H. & N. 74; 6 Ib. 250. *Cp*, CAUSE OR PERMIT: WILFULLY SUFFER.

"Duly done or suffered"; *V.* DONE.

SUFFER JUDICIAL PROCEEDING. — A debtor in difficulties owing large sums to his father-in-law consulted his father-in-law's solicitor, who told him he could only act for the father-in-law, and that the debtor must take his own course; the solicitor issued a writ for the father-in-law's claim, to which the debtor did not appear; judgment by default was obtained and debtor's goods were seized under an *elegit* and delivered to the father-in-law; the debtor then filed a liquidation petition, employing therein his father-in-law's solicitor; held, that the debtor had not "suffered" a judicial proceeding within s. 92, Bankry Act, 1869 (*Ex p. Lancaster*, 53 L. J. Ch. 1123; 25 Ch. D. 311).

SUFFERANCE. — *V.* PERMISSION: BY WHOSE.

"There is a great diversity between a TENANT AT WILL and a Tenant at Sufferance; for Tenant at Will is alwaies by right, and Tenant at Sufferance entreth by a lawfull lease, and holdeth over by wrong. A Tenant at Sufferance is he that at the first came in by lawfull demise, and after his estate ended continueth in possession and wrongfully holdeth over" (Co. Litt. 57 b). *Vh*, 1 Cru. Dig. Title 9: *Rouse's Case*, Tudor's L. C. R. P. 1.

A Sufferance WHARF, is a Wharf in the Port of London the limits of which were set out by an Order or Minute of the Commrs of Customs dated May 13, 1789, amongst which are, — Fenning's Wharf, Topping's Wharf, Chamberlain's Wharf, Cotton's Wharf, the Depot Wharf, Hay's Wharf, Beal's Wharf, Carpenter Smith's Wharf, Griffin's Wharf, Gun and Shot Wharf, Symon's Wharf, Pickle Herring Upper Wharf, Pickle Herring Lower Wharf, Mark Brown's Wharf, Davis' Wharf, Hartley's Wharf, and Butler's Wharf (11 V. c. xviii.), on *whv*, *Barber* v. *Meyerstein*, 39 L. J. C. P. 187; L. R. 4 H. L. 317.

SUFFICE. — *V.* IT SHALL SUFFICE.

SUFFICIENT. — *V.* INSUFFICIENT.

SUFFICIENT CAUSE. — As to what is "other Sufficient Cause," within s. 7 (3), Bankry Act, 1883, for refusing to make a Receiving Order; *V. Ex p. Dixon*, 53 L. J. Ch. 769; 13 Q. B. D. 118; 50 L. T. 414; 32 W. R. 837: *Ex p. Oram, Re Watson*, 15 Q. B. D. 399; 33 W. R. 890; 52 L. T. 785; 2 Morr. 199: *Re Robinson*, 22 Ch. D. 816: *Re*

Otway, 1895, 1 Q. B. 812; 64 L. J. Q. B. 521; 72 L. T. 452, *vthc*, *Re Leonard*, 1897, 1 Q. B. 473; 65 L. J. Q. B. 393; 74 L. T. 183; 44 W. R. 438: *Re Jubb*, 1897, 1 Q. B. 641; 66 L. J. Q. B. 452: *Re Shaw*, 83 L. T. 487.

As to what is "Sufficient Cause" for non-payment of rate within s. 256, P. H. Act, 1875; *V. Sheffield W. W. Co* v. *Sheffield Corp*, 55 L. J. M. C. 40; 54 L. T. 179; 34 W. R. 153; 50 J. P. 6; 2 Times Rep. 110, distinguishing *Sandgate* v. *Pledge*, 14 Q. B. D. 730.

It is not a "Sufficient Cause," s. 305, P. H. Act, 1875, against an Order under that section (authorizing a Local Authority to enter a house for the purpose of constructing a Sufficient Water-Closet, their Notice, under s. 36, not having been complied with), to show that the existing sanitary arrangements are sufficient: the Justices cannot review the Order if it is correct in itself and its conditions precedent have been complied with, the only appeal being to the Local Government Bd under s. 268 (*Robinson* v. *Sunderland*, 1899, 1 Q. B. 751; 68 L. J. Q. B. 330; 80 L. T. 262). *V.* APPEAR: SUFFICIENT PRIVY.

As to what is an entry in, or omission from, a Register of Shareholders "*without* Sufficient Cause" within s. 35, Comp Act, 1862; *V.* Buckl. 115.

Removal from Register of "any entry made *without* Sufficient Cause," s. 90 (1), Patents Designs and Trade Marks Act, 1883, does not mean that there must be an absence of Sufficient Cause at the time of the registration; "if an entry is at any time on the Register without sufficient cause, however it got there, it ought to be treated as covered by the words of the section" (*Re Batt*, 1898, 2 Ch. 441; 67 L. J. Ch. 579; 79 L. T. 208; affd in H. L. nom. *Batt* v. *Dunnett*, 68 L. J. Ch. 557; 1899, A. C. 428; 81 L. T. 94).

"Good and Sufficient Cause"; *V.* GOOD CAUSE.

"Sickness or Other Sufficient Cause"; *V.* SICKNESS.

"Reasonable or Sufficient Cause"; *V.* CAUSE. *Cp*, REASONABLE AND PROBABLE CAUSE.

Cp, SUFFICIENT REASON.

SUFFICIENT CERTIFICATE. — "Good and Sufficient CERTIFICATE" of a Life (in a lease for Lives) being still alive; *V. Randle* v. *Lory*, 6 A. & E. 218.

SUFFICIENT DEBT. — A Right in Equity to a sum of money, though not a DEBT in law, is a "Sufficient" debt to support a petition under s. 125, Bankry Act, 1883 (*Re Outram*, 63 L. J. Q. B. 308; 69 L. T. 767; 10 Times Rep. 54).

SUFFICIENT DISTRESS. — It is submitted that goods available as a "Sufficient DISTRESS," means, goods of such value in the aggregate

as may reasonably be estimated to be sufficient, when sold, to pay the rent due together with all expenses of levy and sale: *Vh, Parrey* v. *Duncan*, 7 Bing. 243; Moo. & M. 533: *Inkop* v. *Morchurch*, 2 F. & F. 501: *Gillam* v. *Arkwright*, 16 L. T. O. S. 88. *Cp*, EXCESSIVE.

A Tithe Owner in estimating whether he had a "Sufficient Distress," s. 82, Tithe Act, 1836, had to include the prospective value of growing crops, although not capable of present realization (*Ex p. Arnison*, L. R. 3 Ex. 56; 37 L. J. Ex. 57). *V.* now as to recovery of tithe rent charge, s. 2, Tithe Act, 1891.

SUFFICIENT EVIDENCE. — Anything which is duly prescribed as "Sufficient Evidence" of a fact, is enough evidence thereon to go to the jury; but the other side is not precluded from controverting it by other evidence (*Barraclough* v. *Greenhough*, 36 L. J. Q. B. 251; 8 B. & S. 623; L. R. 2 Q. B. 612); but a Certificate of Justices which (by s. 17, Lands C. C. Act, 1845) is "Sufficient Evidence" that the capital of an Undertaking has been subscribed, is, *semble*, conclusive evidence thereof (per Jessel, M. R., *Ystalyfera Iron Co* v. *Neath Ry*, L. R. 17 Eq. 142; 43 L. J. Ch. 476; 22 W. R. 149; 29 L. T. 662). *Va, Bishop* v. *Helps*, cited BY POST.

So, an Order of Discharge which was "'Sufficient Evidence' of a bankry and of the validity of the proceedings thereon," s. 49, Bankry Act, 1869, was conclusive evidence (*Lewis* v. *Leonard*, 28 W. R. 719; 49 L. J. Ex. 308; 5 Ex. D. 165; 42 L. T. 351).

An Analyst's Certificate is "'Sufficient Evidence' of the facts therein stated," s. 21, 38 & 39 V. c. 63, but it is not conclusive and may be rebutted (*Hewitt* v. *Taylor*, 1896, 1 Q. B. 287; 65 L. J. M. C. 68; 74 L. T. 51).

So, though a Certificate of a Co's required Capital having been subscribed or paid-up and an Order for Borrowing made, is "Sufficient Evidence" of the fact (s. 40, Comp C. C. Act, 1845), yet "it would not be conclusive evidence as between the Directors and the Co if no such Order had been made; still it would be sufficient evidence upon which any lender might reasonably act" (per Wood, V. C., *Fountaine* v. *Carmarthen Ry*, L. R. 5 Eq. 323).

A Receipt in a Deed or indorsed thereon, is "Sufficient Evidence," in favour of a subsequent PURCHASER, of the payment of the consideration (s. 55, Conv & L. P. Act, 1881: *Vth, Lloyd's Bank* v. *Bullock*, 1896, 2 Ch. 192; 65 L. J. Ch. 680; 74 L. T. 687; 44 W. R. 633).

V. CONCLUSIVE EVIDENCE: EVIDENCE: PRIMÂ FACIE EVIDENCE: SATISFACTORY.

Note, that *Re Dudley Trams Co*, cited CONCLUSIVE EVIDENCE, was disapproved *A-G.* v. *Bournemouth*, 71 L. J. Ch. 730; 1902, 2 Ch. 714.

SUFFICIENT FACILITIES. — *V.* FACILITIES.

SUFFICIENT INCOME. — *V. Re Pedrotti*, 29 L. J. Ch. 92; 27 Bea. 583; distd by Farwell, J., *Re Richards*, 71 L. J. Ch. 66; 1902, 1 Ch. 76; 85 L. T. 452; 50 W. R. 90.

SUFFICIENT LOAD. — *V.* ADEQUATE.

SUFFICIENT PASTURE. — The measure of what is Sufficient Pasture (*sufficientem pasturam quantum pertinet ad tenementa sua*, Statute of Merton, 20 H. 3, c. 4), to be left by a Lord of a Manor when he makes an APPROVEMENT is, that amount which will be sufficient for the full enjoyment by all the Commoners of all their existing rights, whether such rights are likely to be exercised or not (*Robertson* v. *Hartopp*, 59 L. J. Ch. 553; 43 Ch. D. 484; 62 L. T. 585; in *whc Lake* v. *Plaxton*, 10 Ex. 196; 24 L. J. Ex. 52, and *Lascelles* v. *Onslow*, 2 Q. B. D. 433; 46 L. J. Q. B. 333, were questioned, and not followed).

V. PASTURE.

SUFFICIENT PRIVY. — "A Sufficient Watercloset, Earthcloset, or Privy," s. 35, P. H. Act, 1875, does not mean a "separate" convenience for each house; if one is, in fact, "sufficient" for two or more houses in common, the statute is satisfied (*R.* v. *Clutton*, 48 L. J. M. C. 135; 4 Q. B. D. 340).

Under the same words in s. 36, Ib., the Local Authority cannot pass a general resolution requiring a particular kind of convenience to be furnished; it can only require a "sufficient" convenience in each case (*Wood* v. *Widnes*, 1898, 1 Q. B. 463; 66 L. J. Q. B. 797; 67 Ib. 254; 77 L. T. 779; 62 J. P. 117; following *Tinkler* v. *Wandsworth*, 27 L. J. Ch. 342; 2 D. G. & J. 261: *Cp, Ex p. Whitchurch* and other cases sub NECESSARY, pp. 1254, 1255). *V.* SUFFICIENT CAUSE.

The magistrate has no power to question an Order, under s. 81, Metrop Man. Act, 1855, for a "Sufficient Watercloset or Privy," &c; his power thereunder is to determine whether or not the Order has been complied with (*St. James, Clerkenwell* v. *Feary*, 59 L. J. M. C. 82; 24 Q. B. D. 703; 62 L. T. 697; 54 J. P. 676).

SUFFICIENT REASON. — The "Sufficient Reason" which, under s. 11, Com. L. Pro. Act, 1854, repld s. 4, Arb Act, 1889, would induce the Court not to stay an action regarding matters which the parties have agreed shall be determined by Arbitration, includes cases where Fraud or Immorality is charged and the person so charged objects to arbitration (*Russell* v. *Russell*, 14 Ch. D. 471; 49 L. J. Ch. 268: *Barnes* v. *Youngs*, 1898, 1 Ch. 414; 67 L. J. Ch. 263; 46 W. R. 332), or where defendant's object is delay (*Lury* v. *Pearson*, 1 C. B. N. S. 639), or he has obtained time to plead on terms of accepting short notice of trial (*Smith* v. *British Marine*, W. N. (83) 176), or where submission has been revoked (*Randell*

v. *Thompson*, 1 Q. B. D. 748; 45 L. J. Q. B. 713), or the arbitrator chosen is not impartial (*Pickthall* v. *Merthyr*, 2 Times Rep. 805).

The cases in which such "Sufficient Reason" can be shown are few and exceptional (*Russell* v. *Russell*, sup).

"Good and Sufficient Reason" for ARREST of a Ship, R. 18, Ord. 29, R. S. C.; *V. The Crimdon*, 1900, P. 171; 69 L. J. P. D. & A. 103; 82 L. T. 660; 48 W. R. 623.

"Good and Sufficient Reason" for Lessor withholding Assent to an Assignment of a Lease; *V.* UNREASONABLY.

Cp, GOOD CAUSE: GOOD REASON: SUFFICIENT CAUSE.

SUFFICIENT SECURITY. — The "Sufficient Security" which a plaintiff Co may be ordered to give under s. 69, Comp Act, 1862, is the amount of the probable costs which the deft will be put to (*Imperial Bank of China* v. *Bank of Hindustan*, 35 L. J. Ch. 678; 1 Ch. 437; 14 W. R. 811: *Dominion Brewery* v. *Foster*, 77 L. T. 507: in *thlc*, security for £600 was ordered).

"Sufficient Security," quà a Solr's duty respecting an Investment, means, sufficient in point of law, and does not comprehend an enquiry as to value (*Hayne* v. *Rhodes*, 8 Q. B. 342; 15 L. J. Q. B. 137).

SUFFICIENT WATER. — When a Charter-party provides that the ship shall "discharge in a dock as ordered on arriving, *if sufficient water*, or so NEAR THEREUNTO AS SHE MAY SAFELY GET, always afloat"; the words "if sufficient water," "are introduced in the interest of the shipowner, and restrict the generality of the power to name a dock. The obligation of the shipowner is to proceed to the dock named if there is sufficient water to enter the dock *when the order is given*; and if there is not then sufficient water, the ship is not bound to discharge in the dock named" (per Cave, J., *Allen* v. *Coltart*, 52 L. J. Q. B. 688; 11 Q. B. D. 782).

SUFFICIENT WATERCLOSET. — *V.* SUFFICIENT PRIVY.

SUFFICIENT WAYLEAVE. — *V.* WAY,

SUFFRAGAN. — "'Suffragan,' is a word used in 26 H. 8, c. 14, and it signifies a titular Bishop appointed to helpe and assist the Bishop of the Diocesse in his spirituall function" (Termes de la Ley); "a vicegerent of a Bishop" (2 Inst. 79). *Vh*, Phil. Ecc. Law, 76–80.

SUGAR. — Quà Inl. Rev. Act, 1880, 43 & 44 V. c. 20, "'Sugar,' means, any saccharine substance, extract, or syrup; and includes, any material capable of being used in brewing except malt or corn" (s. 2): quà Spirits Act, 1880, 43 & 44 V. c. 24, "'Sugar,' includes, any saccharine substance or syrup manufactured from any material from which sugar can be manufactured" (s. 3).

Vh, 30 V. c. 10.

SUGDEN'S ACTS. — Illusory Appointments Act, 1830, 11 G. 4 & 1 W. 4, c. 46:

Debts Recovery Act, 1830, 11 G. 4 & 1 W. 4, c. 47:

Infants Property Act, 1830, 11 G. 4 & 1 W. 4, c. 65:

To improve Chancery Practice, 1 W. 4, cc. 36, 46, 47, and 60; 2 & 3 W. 4, c. 58; 5 & 6 W. 4, cc. 16 and 17 (*Vh*, Jemmett's Equity Administration Acts, 2 ed.):

Judgments Act, 1839, 2 & 3 V. c. 11, amended by 18 & 19 V. c. 15:

Judgments (Ir) Act, 1844, 7 & 8 V. c. 90.

Vf, ST. LEONARDS' ACTS.

SUGGESTION. — *V.* CHARGE OF FRAUD.

SUICIDE. — "Suicide" does not, necessarily, involve the idea of a *felonious* self-destruction. To "COMMIT suicide" is for a person voluntarily to do an act (or, as it is submitted, to refrain from taking bodily sustenance), for the purpose of destroying his own life, being conscious of that probable consequence, and having, at the time, sufficient mind to will the destruction of life (*Clift* v. *Schwabe*, 17 L. J. C. P. 2; 3 C. B. 437). In that case the meaning of this word is elaborately discussed, and its history is very learnedly treated by Pollock, C. B., who, however, was in the minority of the Ex. Cham. in upholding the direction of Cresswell, J., at the trial that "Suicide" meant the voluntary self-destruction of a man who at the time was "able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent." The opposite view, and the one which received the sanction of the majority of the Court, is thus expressed by Patteson, J., "Now the words themselves," — words appearing in a Life Policy, and exonerating the insurers if the insured should "commit suicide," — "are large enough to embrace all self-destruction as well as self-murder; not, indeed, as was admitted in *Borrodaile* v. *Hunter* (12 L. J. C. P. 225; 5 M. & G. 639), to embrace cases of mere accident, or of insanity extending to unconsciousness of the act done or of its physical consequences — because such cases, although comprehended in the very words themselves, cannot be considered to have been in the contemplation of the contracting parties — but clearly embracing an act of self-destruction committed by a person who was aware of the probable consequence of the act, and intended that consequence to follow." *Clift* v. *Schwabe* was followed in *Dufaur* v. *Professional Life Assrce*, 25 Bea. 599; 27 L. J. Ch. 817; 32 L. T. O. S. 25.

Vf, Rosc. N. P. 451; Steph. Cr. 165, 166: 1 Encyc. 18, 19.

V. DIE BY HIS OWN HANDS: FELO DE SE: MURDER.

SUING. — *V.* SUE AND LABOUR.

SUIT. — Though it has been said that "Suit" is a term of wider signification than "ACTION," and may include proceedings on a Petition

(*Re Wallis*, 23 L. R. Ir. 7: *V.* DECREE: *Sv, Guthrie* v. *Fisk*, cited SUE), yet, generally speaking, the two words are very nearly synonymous (*V.* s. 100, Jud. Act, 1873; s. 3, Jud. (Ir) Act, 1877), and (except by an interp clause) neither includes a Petition (*V.* SUE: ACTION). So, a mtgee's petition for payment out of a fund in Court, is not a "Suit" to recover interest, within s. 42, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27 (*Edmunds* v. *Waugh*, L. R. 1 Eq. 418; 14 W. R. 257; 13 L. T. 739; 35 L. J. Ch. 234: *Re Marshfield*, 34 Ch. D. 721; 56 L. J. Ch. 599; 35 W. R. 491; 56 L. T. 694: *Sv, Re Stead*, 2 Ch. D. 713); still less is the mtgee's right of retainer out of proceeds of sale such a Suit (*Re Marshfield*, sup). *V.* RECOVER.

As to the effect of "Action" and "Suit" being used together; *V. Sutton* v. *Sutton*, cited CHARGED UPON.

"And for this word (Sectas) it is to be known that by release of all 'Suits,' executions are barred, for none shall have execution without suit or prayer" (*Altham's Case*, 8 Rep. 153 b). *V.* ACTIONS.

A "Suit or PROCEEDING," under s. 20, Church Discipline Act, 1840, 3 & 4 V. c. 86, is only commenced when the accused is served with a citation under ss. 9, 10 (*Ditcher* v. *Denison*, 6 W. R. 342; 31 L. T. O. S. 61).

Quà Crown Suits, &c, Act, 1865, 28 & 29 V. c. 104, "'Suit,' or 'CAUSE,' means a suit, or cause, commenced by Information" (s. 6).

Other Stat. Def. — 19 & 20 V. c. 77, s. 1, c. 92, s. 2; 20 & 21 V. c. 60, s. 4; 30 & 31 V. c. 44, s. 2.

"Costs of Suit" will not include costs of arranging or carrying out a Compromise (*Lancaster* v. *Lancaster*, 1896, P. 118; 65 L. J. P. D. & A. 34).

"Suit of Court," is that attendance which the Feudatory Tenant owes to his Lord's Court (Cowel, *Suit*: Jacob, *Suit*: 12 Encyc. 19). *Cp*, SERVICE.

V. CRIMINAL SUIT: FRESH SUIT: PROCEEDING.

SUITABILITY. — "The suitability of the premises," s. 9, Licensing Act (Ir), 1874, 37 & 38 V. c. 69, "means, suitability for the business of the sale of spirits (to be consumed elsewhere than on the premises) being conducted therein in a peaceable and orderly manner, and so that the premises shall be reasonably subject to such entry and inspection by the police as is authorized by law. The subject-matter which is to have the character of 'suitability' is, not the 'neighbourhood' but, the premises, *i.e.* (1) the structure itself, and (2) the place upon which that structure is erected" (per Palles, C. B., *R.* v. *Tyrone Jus.*, 1895, 2 I. R. 184).

SUITABLE. — Wheels "suitable only to run on the Rail" of a Tramway, s. 62, Tramways Act, 1870, 33 & 34 V. c. 78; *V. Manchester* v. *Andrews*, 5 Times Rep. 470.

"Suitable *Home*"; *V.* HOME.

"Other Suitable *Material*," in a Patent Specification; *V. Ralston* v. *Smith*, 11 H. L. Ca. 223; 35 L. J. C. P. 49: in a like connection, "Any other Suitable Driving Motion"; *V. Marsden* v. *Moser*, 73 L. T. 667; 13 Pat. Ca. 24.

"Suitable *Residence and Holding*"; *V.* RESIDE.

"Suitable to"; *V.* CORRESPOND.

SUITABLY. — *V.* PROVIDE SUITABLY.

SUITORS. — Stat. Def., Courts of Justice Building Act, 1865, 28 & 29 V. c. 48, s. 2.

SULING. — *V.* SWOLING.

SULLERYE. — "Signifieth a plow-land" (Co. Litt. 5 a). *V.* PLOW-LAND.

SULLINGS. — "Sullings are taken for elders," *i.e.* elder trees (Co. Litt. 4 b).

SUM. — "Provided the Sum or Damages sought to be recovered shall not exceed £50"; "Sum," in such a connection, means "Debt" (*Joule* v. *Taylor*, 21 L. J. Ex. 31; 7 Ex. 58).

A bequest of "the Sum of" a named amount in a named Investment, is, to some extent, an indication that the bequest is DEMONSTRATIVE; whilst the absence of such phrase rather indicates that the bequest is SPECIFIC (per North, J., *Re Pratt*, 1894, 1 Ch. 491; 63 L. J. Ch. 487; 70 L. T. 489, commenting on *Mytton* v. *Mytton*, 44 L. J. Ch. 18; L. R. 19 Eq. 30).

"Sum of Money," quà *ad val.* Stamp Duty, will, generally, mean the Principal sum; not a sum compounded of principal and interest (*Pruessing* v. *Ing*, 4 B. & Ald. 204).

"Net Sum"; *V.* CLEAR.

V. PERIODICAL: REASONABLE SUM: RECOVER: SUMS.

SUM ADJUDGED. — The "Sum Adjudged" to be paid on a Conviction, "refers to the sum in which the party is convicted, and does not include the costs" (per Crompton, J., delivering the jdgmt, *R.* v. *Warwickshire Jus.*, 25 L. J. M. C. 119; 6 E. & B. 837). But quà Sum Jur Act, 1879, 42 & 43 V. c. 49, "the expressions 'Sum adjudged to be paid by a Conviction' and 'Sum adjudged to be paid by an Order,' respectively, include any costs adjudged to be paid by the Conviction or Order, as the case may be, of which the amount is ascertained by such Conviction or Order" (s. 49). *V.* ASCERTAINED: OPINION, p. 1343.

"Sum adjudged," s. 135, P. H. Act, 1848 (repld s. 269, P. H. Act,

1875, which does not repeat the phrase) means, the sum in respect of which the adjudication was made, *i.e.* the sum adjudicated upon (*Ricardo* v. *Maidenhead*, 2 H. & N. 257).

SUM CERTAIN. — "Sum Certain," s. 28, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42, is, probably, not construed so strictly as "CERTAIN TIME"; *semble*, it is immaterial how the "Sum" becomes "certain," it being "certain" when ascertained under the written INSTRUMENT (*Geake* v. *Ross*, 44 L. J. C. P. 315: *Mildmay* v. *Methuen*, 3 Drew. 91: *Sv, Hill* v. *South Staffordshire Ry*, 43 L. J. Ch. 556; L. R. 18 Eq. 154, and per Jessel, M. R., *Ward* v. *Eyre*, 49 L. J. Ch. 659. *V.* DEMAND: LIQUIDATED DEMAND). But an assessment under s. 68, Lands C. C. Act, 1845, does not make the amount of it a "Sum Certain" within the section, so as to carry interest (per Collier, Co. Co. Judge, *Evans* v. *Lond. & N. W. Ry*, 31 S. J. 333: *Vf, Re Peruvian Guano Co*, 63 L. J. Ch. 822). Nor does the phrase cover a sum which is liable to subsequent adjustment, for "Sum Certain" "must be a certain sum which is due absolutely and in all events from the one party to the other, though it may not come, strictly speaking, within the term 'DEBT'" (per Herschell, C., *L. C. & D. Ry* v. *S. E. Ry*, 1893, A. C. 429; 63 L. J. Ch. 93; 69 L. T. 637; 58 J. P. 36).

A sum payable by a Bill of Exchange or Promissory Note is a "Sum Certain," within the Bills of Ex. Act, 1882, "although it is required to be paid —

"(*a*) With interest.

"(*b*) By stated instalments.

"(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

"(*d*) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the Bill" or Note (ss. 9, 89).

V. CERTAIN TIME: DEFINITE.

SUM CLAIMED. — "Sum Claimed," s. 460, Mer Shipping Act, 1854, repld s. 547, Mer Shipping Act, 1894, means, "the sum asked before the proceedings commenced" (per Dr. Lushington, *The William and John*, 32 L. J. P. M. & A. 103; Brown. & Lush. 49).

"Sum *in Dispute*," s. 464, Mer Shipping Act, 1854, repld s. 549, Mer Shipping Act, 1894, does not mean the sum awarded by Justices, and appealed against, but means the sum originally in litigation (*The Andrew Wilson*, 32 L. J. P. M. & A. 104; Brown. & Lush. 56). *Vf, The Generous*, L. R. 2 A. & E. 57; 37 L. J. Adm. 37.

SUM EMPLOYED. — "Sum employed as Capital"; *V.* CAPITAL EMPLOYED.

SUM IN DISPUTE.—*V.* SUM CLAIMED.

SUM OF MONEY.—*V.* SUM.
Default in "payment of a sum of money"; *V.* PAYMENT, p. 1437.

SUM PERIODICALLY.—*V.* PERIODICAL.

SUM PREVIOUSLY OFFERED.—*V.* PREVIOUSLY.

SUM RECOVERED.—*V.* RECOVER: SUM.

SUMMARILY.— Where any Act (coming into operation after 31st Dec 1879) prescribes that an offence is to be prosecuted, or a fine is to be recovered, "summarily, or on summary conviction," or that money is to be recovered "before a Court of Summary Jurisdiction," or "summarily," or "in a summary manner," in either case the SUMMARY JURISDICTION Acts apply (s. 51, 42 & 43 V. c. 49).

Quà disputes as to Salvage, under Mer Shipping Act, 1894, which are to be determined "summarily" (s. 547), that means, in England, the County Court; in Scotland, the Sheriff's Court; in Ireland, the arbitration by two Justices, or a Stipendiary Magistrate, or a Recorder, or the Chairman of Quarter Sessions (subs. 4).

Forfeitures Costs and Expenses recoverable under P. H. Act, 1875, "in a summary manner," are recoverable under the Summary Jurisdiction Acts (s. 251), or, if "below £50" may (at the option of the Local Authority) be recovered in the County Court (s. 261); so, quà P. H. London Act, 1891 (s. 117); quà P. H. Ireland Act, 1878, *V.* s. 249, and quà P. H. Scotland Act, 1897, *V.* s. 153.

Costs of an appeal to Quarter Sessions (enforceable by a Justice's warrant of distress), are "recoverable summarily before a Justice of the Peace" within s. 4 (2), Debtors Act, 1869 (*R.* v. *Pratt*, L. R. 5 Q. B. 176; 39 L. J. M. C. 73).

An Offence "dealt with summarily," s. 46 (1, 7), Army Act, 1881, 44 & 45 V. c. 58, is equally so "dealt with" whether the accused be acquitted or convicted (*Ex p. Brown*, 37 S. J. 27). *Vf*, DEAL WITH.

SUMMARY CONVICTION.— A Summary Conviction, is a Conviction before a COURT OF SUMMARY JURISDICTION, or, in other words, one under the Summary Jurisdiction Acts; *V.* 42 & 43 V. c. 19, s. 3; 55 & 56 V. c. 4, s. 7.

SUMMARY JURISDICTION.—"Summary Jurisdiction"; Stat. Def., *Ir.* 14 & 15 V. c. 93, s. 44.—*Scot.* 60 & 61 V. c. 48, s. 2.

"The Summary Jurisdiction Act, 1848," is 11 & 12 V. c. 43 (s. 13 (6), Interp Act, 1889): *V.* JERVIS' ACTS.

The Summary Jurisdiction Acts; *V.* s. 13 (7, 8, 9, 10), Interp Act, 1889: *Vf*, Table of Abbreviations *ante*; 60 & 61 V. c. 48.

V. COURT OF SUMMARY JURISDICTION.

"Questions of Law which arise in the Exercise of Summary Jurisdiction by Justices," 20 & 21 V. c. 43; *V. Sweetman* v. *Guest*, 37 L. J. M. C. 59; L. R. 3 Q. B. 262; 16 W. R. 426; 18 L. T. 52.

"OFFICER of a Court of Summary Jurisdiction"; *V.* s. 8, 44 & 45 V. c. 24.

Vh, Stone: Atkinson's Magistrates Annual Practice: 12 Encyc. 28–33.

SUMMARY MANNER. —*V.* SUMMARILY.

SUMMONED. —*V.* CONVENE.

SUMMONS. — A Summons is the process by which a PROCEEDING is commenced or by which (generally) a STEP therein is taken, *e.g.* a Chamber Summons, a County Court Summons, a Magistrate's Summons; *Va*, ORIGINATING: WRIT OF SUMMONS. *Cp*, WARRANT.

"Summons," by itself, will, probably, not include a Writ of Summons (*Towne* v. *Limerick S. S. Co*, 5 C. B. N. S. 730; 28 L. J. C. P. 217).

SUMS. —*V.* MONEY: MONEY DUE: SUM.

SUNDAY. — In the early days of Queen Elizabeth it was held that whether a day is a Sunday, or not, is triable "per paies ou calend" (Dyer, 182, pl. 55), but later on in the same reign it was ruled that the ALMANAC was sufficient (*Page* v. *Faucet*, Cro. Eliz. 227).

"Sunday," s. 1, Sunday Closing (Wales) Act, 1881, 44 & 45 V. c. 61, has only its ordinary meaning, and does not include Christmas Day (*Forsdike* v. *Colquhoun*, 11 Q. B. D. 71; 49 L. T. 136).

As to when Sunday is included or excluded in a computation of time; *V.* DAYS, on *whvf*, *Ex p. Hicks*, 44 L. J. Bank. 106; L. R. 20 Eq. 143: *Re Gilbert*, 46 L. J. Bank. 80; 4 Ch. D. 794: HOLIDAY: 12 Encyc. 34.

As to Sunday Observance Act, 1677; *V.* INSTITUTED: LABOURER: NECESSITY: ORDINARY CALLING, on *whvf*, *Bloxsome* v. *Williams*, 3 B. & C. 232: OTHER, p. 1360: PROCESS: TRADE: WORKMAN: *Va*, Phil. Ecc. Law, Part 3, ch. 12.

As to Sunday Observance Act, 1780; *V.* DISORDERLY: ENTERTAINMENT: KEEPER: MASTER: PROFANENESS.

Quà Factory and Workshop Act, 1901; *V.* ss. 34, 47, 48. As to the *Holidays*, quà that Act; *V.* s. 35.

"Traffic on Sunday"; *V.* TRAFFIC.

Note. As to Sunday being originally a Feast Day and subsequently assuming the rigidity of the Hebrew Sabbath, *V.* 185 Quarterly Review, 36: *Va*, 12 Encyc. 35.

SUNDAY SCHOOL. — Quà 32 & 33 V. c. 40, "'Sunday School,' shall mean, any SCHOOL used for giving RELIGIOUS Education gratui-

tously to children and young persons on Sunday, and, on Week Days, for the holding of classes and meetings in furtherance of the same object, and without pecuniary profit being derived therefrom" (s. 2). *Cp*, RAGGED SCHOOL.

SUNK. — *V.* SINK.

SUNKEN WRECK. — Part of the frame of a Ship sunk beneath the surface of the sea and partially embedded in the ground, and also a quantity of iron ore that had formed part of the Cargo of a ship, are "Sunken Wreck" within the Collision Clause of a Marine Insrce (*The Munroe*, 1893, P. 248). *V.* WRECK.

SUNRISE. — *V.* "Daytime," sub DAY.

SUNSET. — The Court does not take judicial notice of the ALMANAC for determining what was the hour of Sunset on a particular day; that is a fact to be proved (*Collier* v. *Nokes*, 2 C. & K. 1013). "Sunset," in the Regulations for Lighting-up Bicycles, s. 85, Loc Gov Act, 1888, means, Sunset according to the particular locality; not according to Greenwich or Dublin Mean Time as provided by the statutory def of "TIME" (*Gordon* v. *Cann*, 68 L. J. Q. B. 434; 80 L. T. 20; 47 W. R. 269; 63 J. P. 324). *Vf*, "Daytime," sub DAY.

SUPERANNUATION. — *V. Hobson* v. *Hull*, 4 E. & B. 986; 24 L. J. Q. B. 251.

"The Superannuation Acts, 1834 to 1892"; *V.* Sch 2, Short Titles Act, 1896. Quà those Acts, "'Superannuation Allowance,' includes, any pension or superannuation, or other retiring allowance" (s. 4, 55 & 56 V. c. 40).

SUPERCARGO. — A Supercargo is a person employed to go with a Cargo on voyage and oversee it and dispose of it to the best advantage (Jacob); and, "unless his authority be expressly or impliedly restrained, must, from the nature of his employment, be invested with a complete control over the cargo, and everything which immediately concerns it; that must embrace its destination" (per Ellenborough, C. J., *Davidson* v. *Gwynne*, 12 East, 396).

SUPERFICIAL YARD. — As used in a building contract; *V. Symonds* v. *Lloyd*, 6 C. B. N. S. 691.

V. YARD.

SUPERFLUOUS LAND. — "I think the cases of the *G. W. Ry* v. *May* (43 L. J. Q. B. 233; L. R. 7 H. L. 283), *Hooper* v. *Bourne* (46 L. J. Q. B. 509; 47 Ib. 437; 49 Ib. 370; 2 Q. B. D. 339; 3 Ib. 258; 5 App. Ca. 1; 28 W. R. 493; 42 L. T. 97), and *Betts* v. *G. E. Ry* (47

L. J. Ex. 461; 49 lb. 197; 3 Ex. D. 182), have now settled, beyond all controversy, what the meaning of 'Superfluous Land' (in ss. 127, 128, Lands C. C. Act, 1845) is. The test is, whether or not there is *bonâ fide* reason to believe that within no very distant time — it may be years — but that within a reasonable time, having regard to the nature of the undertaking, it will be REQUIRED for the purposes of the Undertaking" (per Manisty, J., *Hobbs* v. *Mid. Ry*, 51 L. J. Ch. 325; 20 Ch. D. 418).

"Slips of land above and below a tunnel are not superfluous lands" (per Jessel, M. R., *Rosenberg* v. *Cook*, 51 L. J. Q. B. 172; 8 Q. B. D. 162, summarizing *Re Metrop District Ry & Cosh*, 49 L. J. Ch. 277; 13 Ch. D. 607; 42 L. T. 73; 28 W. R. 685); nor land under arches which carry a railway (*Mulliner* v. *Mid. Ry*, 48 L. J. Ch. 258; 11 Ch. D. 611); nor Mines under a surface required, or which may be required, for the undertaking (*Hooper* v. *Bourne*, sup). But the whole of the land beyond the boundary wall of a railway is "superfluous," even though that wall be also a retaining wall thicker at the base than at the surface, and though part of such land would be within a line drawn on the surface vertically above the line of the footings of the wall (*Ware* v. *L. B. & S. Ry*, 52 L. J. Ch. 198).

Vf, Tomlin v. *Budd*, 43 L. J. Ch. 627; 22 W. R. 529: *Glasgow Union Ry* v. *Caledonian Ry*, L. R. 2 Sc. & D. App. 160.

When a Company sells, or offers to sell, lands as "Superfluous," that is conclusive as regards the rights of pre-emption of the adjoining owner (*Lond. & S. W. Ry* v. *Blackmore*, 39 L. J. Ch. 713; L. R. 4 H. L. 610; *svthc, Macfie* v. *Callander Ry*, 1898, A. C. 270; 67 L. J. P. C. 58; 78 L. T. 598). But a mere sale to another Company or to an individual (and *a fortiori* a mere negotiation, *Macfie* v. *Callander Ry*, sup) without giving the adjoining owner his chance of pre-emption, — though *primâ facie* evidence that the land is "Superfluous" (and in any view such a sale is *ultra vires*), — does not conclusively show that the land is "Superfluous" (*Hobbs* v. *Mid. Ry*, 51 L. J. Ch. 320; 20 Ch. D. 418: *Dunhill* v. *N. E. Ry*, 1896, 1 Ch. 121; 65 L. J. Ch. 178; 73 L. T. 644; 44 W. R. 231; 60 J. P. 228, *whlc* held that *Carington* v. *Wycombe Ry*, 37 L. J. Ch. 213; 3 Ch. 377, is not inconsistent with *Hobbs* v. *Mid. Ry*: *Vf, Beauchamp* v. *G. W. Ry*, 37 L. J. Ch. 74; 38 lb. 162; 3 Ch. 745). If, indeed, the sale be made under statutory compulsion, then it is no evidence at all that the land is "Superfluous" (*Dunhill* v. *N. E. Ry*, sup).

But if the whole Undertaking is abandoned, none of the land acquired for it can be "superfluous," and the sections above cited are inapplicable (*Re Duffy*, 1897, 1 I. R. 307): "the distinction between lands *abandoned* and lands *superfluous* is this, — In the first case, the main line has never been constructed, or, if constructed, has been left derelict; in the second case, the line has been constructed, or lands on which are to be made the necessary works of the line have been taken up, and, along with these,

other lands have been taken which are found not to be required for the purposes of the Undertaking" (per Ross, J., *Re Duffy*, sup, citing in support *Smith* v. *Smith*, L. R. 3 Ex. 282; 38 L. J. Ex. 37).

V. ABSOLUTELY SELL.

SUPERINTEND. — *V.* MANAGE.

SUPERINTENDENCE. — A "person who has Superintendence *entrusted* to him" quà Employers' Liability Act, 1880, "means a person whose sole, or principal, duty is that of superintendence, and who is not, ordinarily, engaged in MANUAL LABOUR" (s. 8); a Gang-way man is not within the phrase as used in subs. 2, s. 1 (*Shaffers* v. *General Steam Nav. Co*, 52 L. J. Q. B. 260; 10 Q. B. D. 356; 48 L. T. 228; 31 W. R. 656). *Vh*, *Kellard* v. *Rooke*, 57 L. J. Q. B. 599; 21 Q. B. D. 367; 36 W. R. 875; 52 J. P. 820: *Tate* v. *Latham*, 1897, 1 Q. B. 502; 66 L. J. Q. B. 349; 76 L. T. 336; 45 W. R. 400.

Cp, CONFORM.

"Board of Superintendence"; *V.* BOARD.

SUPERINTENDENT. — Quà Mer Shipping Act, 1894, "'Superintendent,' shall so far as respects a BRITISH POSSESSION, include, any Shipping Master, or other Officer, discharging in that Possession the duties of a Superintendent" (s. 742).

Other Stat. Def. — 47 & 48 V. c. 64, s. 16. — *Scot.* 20 & 21 V. c. 71, s. 3; 23 & 24 V. c. 92, s. 2; 25 & 26 V. c. 54, s. 1; 30 & 31 V. c. 52, s. 11.

"Superintendent of POLICE," quà application to Ireland of Licensing Act, 1872, *V.* s. 77, Ib.

SUPERINTENDING. — "Superintending Architect of Metropolitan Buildings"; *V.* s. 136 (1), London Bg Act, 1894.

SUPERIOR. — Quà Conveyancing (Scot) Act, 1874, 37 & 38 V. c. 94, "'Superior,' shall include, the Crown, the Prince and Steward of Scotland, and all subject superiors, and shall also include mid-superiors; 'Superiority,' shall include, mid-superiority" (s. 3); quà Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, "Superior," includes heirs, successors, and representatives of such superior (s. 3).

V. VASSAL.

SUPERIOR COURT. — It is submitted that, "Superior Court" is to be construed historically and that, in its primary meaning, it connotes a Court having an inherent jurisdiction, in England, to administer justice according to law, as and being a part of, or descended from, and as exercising part of the power of, the *Aula Regia*, established by William the First, which had universal jurisdiction in all matters of right and

wrong throughout the Kingdom, and over which, in its early days, the King presided in person (3 Bl. Com. 37–60). An Inferior Court is one, limited as to its area and also limited, as to its jurisdiction and powers, to those matters and things which are expressly deputed to it by its document of foundation or by a legal CUSTOM (*London* v. *Cox*, cited INFERIOR COURT, and the cases there cited by Willes, J.).

Before the Judicature Acts, the more principal Superior Courts were, "the Lords House in Parliament, the Chancery, King's Bench, Common Pleas, and Exchequer" (Bac. Ab. *Courts*, D, 1: *Vf*, 3 Bl. Com. 37–46). As there are degrees in the Peerage yet each member is a Peer, so of the Superior Courts. At one time, Error lay from the C. P. to the K. B., but that did not "in the slightest degree interfere with the doctrine that the C. P. was a Superior Court" (per Erle, C. J., *Ex p. Fernandez*, 30 L. J. C. P. 329; 10 C. B. N. S. 28). So, diversity of jurisdiction in some matters cannot be material, for the above mentioned well-known Superior Courts had, in important matters, special and separate jurisdictions without affecting their status as Superior Courts. Neither does a limited area, of itself, prevent a Court from being Superior; for the Palatine Courts are Superior Courts, "originally belonging, as they did, to the Lords Palatine to whom the Crown had granted their Counties, to hold to them and their heirs·'ita libere ad gladium sicut ipse Rex tenebat Angliam ad Coronam,' and who possessed *jura regalia* there," and (herefor citing Gilbert's Hist. of C. P. 190) "were Superior Courts, within their jurisdiction, in as ample a manner as a Court of Westminster" (per Willes, J., *Ex p. Fernandez*, 30 L. J. C. P. 339; 10 C. B. N. S. 55, 56).

Reverting to and in confirmation of the submission in the first paragraph of this def, it is to be observed that the Court of Assize is a Superior Court (*Ex p. Fernandez*, 30 L. J. C. P. 321; 10 C. B. N. S. 3), for "it is clear that the Justices in Eire (or Eyre) were a Court of equal degree with the Aula Regia. The Aula Regia was where the King was present; and the Justices in Eire were sent abroad into the different counties with all the powers and authorities of the Aula Regia, superseding all the local tribunals wherever they came. It is not at all necessary to maintain that Judges of Assize are of equal degree with the Justices in Eire: but all the books which treat of the subject agree that they possess and exercise many of the rights, privileges, and authorities of those whose functions they have superseded" (per Erle, C. J., *Ib.*, 10 C. B. N. S. 29, 30; 30 L. J. C. P. 329).

On the other hand, great antiquity and importance do not, *per se*, constitute a Court a Superior Court, for the Lord Mayor's Court of London is an Inferior Court (*V.* INFERIOR).

The Court of Admiralty was not one of the "Superior Courts of Law or Equity at Westminster," within s. 226, Com. L. Pro. Act, 1852 (*Milburn* v. *Lond. & S. W. Ry*, 40 L. J. Ex. 1; L. R. 6 Ex. 4).

"Superior Court," s. 9, 31 & 32 V. c. 71, means "Superior Court having Admiralty jurisdiction," which, *semble*, the Q. B. D. is not but the Cinque Ports Court is (*Rockett* v. *Chippingdale*, 7 Times Rep. 449).

Vh, *Hewitt* v. *Cory*, 39 L. J. Q. B. 279; L. R. 5 Q. B. 418.

Stat. Def. — 8 & 9 V. cc. 16, 18, 20, s. 3; 10 & 11 V. cc. 14, 15, 16, 17, 27, 34, 65, 89, s. 3; 22 & 23 V. c. 63, s. 5; 24 & 25 V. c. 11, s. 4; 34 & 35 V. c. 41, s. 4; 36 & 37 V. c. 48, s. 3; 38 & 39 V. c. 87, s. 4. — *Ir.* 12 & 13 V. c. 91, s. 89, c. 97, s. 133; 20 & 21 V. c. 79, s. 2.

Quà Army Act, 1881, "'Superior Court,' in the United Kingdom, means, Her Majesty's High Court of Justice, in England; the Court of Session, in Scotland; and Her Majesty's High Court of Justice, at Dublin" (subs. 29, s. 190); to a similar effect is the def in s. 55, Ry and Canal Traffic Act, 1888, 51 & 52 V. c. 25.

Other Stat. Def. — 44 & 45 V. c. 69, s. 39; 49 & 50 V. c. 57, s. 1; 53 & 54 V. c. 70, ss. 93, 95.

"Superior Court *of Appeal*," quà Ry and Canal Traffic Act, 1888, "means, as regards England, Her Majesty's Court of Appeal; as regards Scotland, the Court of Session in either Division of the Inner House; and as regards Ireland, Her Majesty's Court of Appeal" (s. 55). *Vf*, COURT, p. 425.

"Superior Courts of Great Britain and Ireland"; *V.* Appellate Jurisdiction Act, 1876, 39 & 40 V. c. 59, s. 25.

"Superior Courts of Law"; *V.* Sum Jur Act, 1857, 20 & 21 V. c. 43, s. 1. *Vf*, COURT, p. 426.

Cp, COURT: COURT OF RECORD: HIGH COURT: JUDGE: SUPREME COURT.

SUPERIOR INTEREST. — The "Superior Interests" which are to be extinguished on the sale or redemption of land in Ireland (under the Land Purchase Acts or 54 & 55 V. c. 57), are defined by s. 31 (8), 59 & 60 V. c. 47; on *whv*, *Re Alexander*, 1900, 1 I. R. 20: *Re Owen*, Ib. 151.

V. INTEREST.

SUPERIOR OFFICER. — Stat. Def., Army Act, 1881, s. 190 (7); Naval Discipline Act, 1866, s. 86.

V. OFFICER.

SUPERIOR TRADESMAN. — *V.* INFERIOR TRADESMAN.

SUPERSEDE. — "A Compulsory Order 'supersedes' a Voluntary Winding-up (of a Co) as from the date of the Order; but that does not mean that it entirely puts an end to everything that has been previously done in the voluntary winding-up" (per Cotton, L. J., *Thomas* v. *Lionite Co*, 50 L. J. Ch. 544; 17 Ch. D. 250).

V. WINDING-UP.

SUPERSTITIOUS. — Masses for the Dead are contrary to 1 Edw. 6, c. 14, and a gift therefor, by a person domiciled in England, is void as being a Superstitious Use (*West* v. *Shuttleworth*, 2 My. & K. 684; 4 L. J. Ch. 115), even though the persons to receive the gift, and by whom the masses are to be performed, are resident where such a legacy is lawful (*Re Elliott*, 39 W. R. 297). In Ireland (*Read* v. *Hodgens*, 7 Ir. Eq. Rep. 17), and some parts of Greater Britain (*Re Elliott*, sup), a bequest for Masses for the Dead is not "superstitious"; there, its peril is that it may be a PERPETUITY, *e.g.* one to the Primate of Ireland and his successors for ever (*Dillon* v. *Reilly*, Ir. Rep. 10 Eq. 152). *Vf*, *Morrow* v. *M'Conville*, 11 L. R. Ir. 236: *Small* v. *Torley*, 25 Ib. 388: for cases where this latter peril was escaped, *V. Reichenbach* v. *Quin*, 21 L. R. Ir. 138: *Bradshaw* v. *Jackman*, cited CONVENT: *Phelan* v. *Slattery*, cited STIPEND.

Cp, CHARITABLE USE.

SUPERVISION. — "Board of Supervision"; *V.* BOARD.

V. WINDING-UP.

SUPPLEMENTAL. — A Deed expressed to be "supplemental" to a previous deed, will, since the Conv & L. P. Act, 1881, have effect as though it had been endorsed on the previous deed or contained a full recital thereof (s. 53). *Cp*, ANNEX: PRIMARY.

SUPPLIED. — "Goods supplied," as used in the consideration for a guarantee; held, to mean, "Goods *to be* supplied," so that the guarantee was not for a past consideration (*Hoad* v. *Grace*, 31 L. J. Ex. 98; 7 H. & N. 494). *Vf*, GIVEN.

"Persons supplied with Water," within a W. W. Co's Act, includes an Owner whose house is tenanted if such owner be liable to pay the Water Rate (*Brock* v. *Harrison*, 1899, 1 Q. B. 958; 68 L. J. Q. B. 730; 80 L. T. 568; 47 W. R. 541; 63 J. P. 455).

V. WELL SUPPLIED: SUPPLY.

SUPPLY. — To "supply" anything, — *e.g.* Water, — means, passing it from one who has it to those who want it; you may "PROVIDE" a thing for yourself, but that is not "supplying" it (*West Surrey Water Co* v. *Chertsey*, 1894, 3 Ch. 513; 63 L. J. Ch. 806; 71 L. T. 368; 43 W. R. 6).

But a Local Authority "supply water within their District," s. 54, P. H. Act, 1875, when they have taken upon themselves the burden of carrying out the Water Supply sections of the Act, although the delivery of the water has not actually begun nor are their works completed (*Jones* v. *Conway, &c, Water Board*, 1893, 2 Ch. 603; 62 L. J. Ch. 767; 69 L. T. 265; 41 W. R. 616; 57 J. P. 501).

"The case of *East London W. W. Co* v. *St. Matthew, Bethnal Green* (cited PARTY, p. 1419) shows what, in such an Act as this, — a W. W. Co's Act, — is the meaning of the words 'Works NECESSARY for supplying water'; and that they include, works necessary for preventing waste of water" (per Esher, M. R., *Chapman* v. *Fylde W. W. Co*, 1894, 2 Q. B. 599; 64 L. J. Q. B. 15; 71 L. T. 539; 43 W. R. 1; 59 J. P. 5); "the expression 'supplying water' includes, the power of regulating the supply" (per Esher, M. R., *East London W. W. Co* v. *St. Matthew*, sup), by *e.g.* stop-valves and guard boxes. *V.* WATER WORKS.

"Source of Water Supply"; *V.* SOURCE.

The point of "Supply" of Gas, s. 6, Metropolis Gas Act, 1860, is the meter from which the gas passes into the customer's pipes (*Gaslight & Coke Co* v. *South Metrop Gas Co*, 58 L. T. 899; 36 W. R. 455; 56 L. J. Ch. 858: *Imperial Gaslight Co* v. *West London Gas Co*, 56 L. J. Ch. 862 *n.* *V.* those cases, and also *Gaslight & Coke Co* v. *South Metrop Gas Co*, 62 L. T. 126; 62 L. J. Ch. 123, as to "Supply gas *for sale*" in same section).

V. AREA: CONTRACT TO SUPPLY: GENERAL SUPPLY.

SUPPORT. — A bequest "to Support" an INSTITUTION does not offend the law of Mortmain (*Re Hedgman, Morley* v. *Croxon*, 8 Ch. D. 156: Tudor Char. Trusts, 410, 413: 1 Jarm. 230). *V.* FOUND: MAINTENANCE, p. 1143.

An agreement between a Borough and the County in which it is situate whereby the Borough pays the County so much a head for the "Support and Maintenance" of the Prisoners from the Borough, includes within that phrase the expense of keeping up the County Prison, as well as the prisoners' houseroom, food, clothing, bedding, and fuel; but not the expenses of conveying prisoners, or of their prosecution, or of keeping up County Lock-up Houses (*R.* v. *Gravesend*, 5 E. & B. 459). *Cp*, *R.* v. *Birmingham*, cited PROSECUTION.

"Maintenance and Support" of Wife; *V.* MAINTENANCE, p. 1142.

V. TOWARDS.

"Support," quà P. H. Act, 1875 (Support of Sewers) Amendment Act, 1883, 46 & 47 V. c. 37, "includes, vertical and lateral support" (s. 2).

As to right of support from neighbouring soil and houses; *V.* Gale, Part 3, ch. 4: Tudor's L. C. R. P. 784 *et seq*: *Popplewell* v. *Hodkinson*, 38 L. J. Ex. 126; L. R. 4 Ex. 248: *Jordeson* v. *Sutton Gas Co*, 1899, 2 Ch. 217; 68 L. J. Ch. 457; 80 L. T. 815: *New Moss Colliery Co* v. *Manchester, S. & L. Ry*, 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231; 45 W. R. 493: *Hamilton* v. *Graham*, L. R. 2 Sc. & D. App. 166.

SUPPOSED. — "'The supposed Cause of Action, (in a Pleading) means, the ALLEGED cause" (per Alderson, B., *Eavestaff* v. *Russell*, 10

M. & W. 366; *S. C.* 12 L. J. Ex. 176: *Vf, Scadding* v. *Eyles*, 9 Q. B. 860, 862; 15 L. J. Q. B. 364).

"Supposed to be," when prefacing a Quantity; *V. Davis* v. *Shepherd*, 35 L. J. Ch. 581; 1 Ch. 410; 15 L. T. 122.

V. ENTITLED TO VOTE.

SUPPOSITION.—*V.* FAIR AND REASONABLE.

SUPPRESS.—To "suppress" anything, is to put a stop to it when actually existing, and does not extend to preventing it by suppressing what may lead to it (*Chelsea* v. *King*, 34 L. J. M. C. 9; 17 C. B. N. S. 625).

"Fraud, or Suppression, or CONCEALMENT," of a MATERIAL FACT, on which to revoke an Order of Release under s. 82 (3), Bankry Act, 1883, must be such Suppression or Concealment as has in it some element of fraud (per Wright, J., *Re Harris*, 68 L. J. Q. B. 771; 1899, 2 Q. B. 97; 80 L. T. 499).

SUPRA PROTEST.—Acceptance, or Payment, of Bill "for Honour supra protest"; *V.* HONOUR: Chalmers, 226 *et seq*: Byles, 273 *et seq*, 309.

SUPREMACY.—Act of Supremacy, 1 Eliz. c. 1.

SUPREME COMMAND.—"I give them Supreme Command," in a father's memorandum on his son's contemplated marriage, may amount to a Deed of Gift but not to a Will (*Re Halpin*, Ir. Rep. 8 Eq. 567).

SUPREME COURT.—"The Supreme Court of this kingdom is the High Court of Parliament, consisting of king, lords, and commons, who are invested with a kind of omnipotency in making new laws, repealing and reviving old ones; and it is on the right balance of these three depends the well-being, and indeed the very being, of our constitution" (Bac. Ab. *Courts*, D, 1). *V.* PARLIAMENT.

V. now s. 13 (1), Interp Act, 1889.

Quà India; *V.* Army Act, 1881, 44 & 45 V. c. 58, s. 190 (30).

Cp, COURT: HIGH COURT: JUDGE: SUPERIOR COURT.

SURCHARGE.—To "surcharge" a Common, is "putting more cattle therein than the pasture and herbage will sustain, or the party hath a right to do" (3 Bl. Com. 237). *Vh*, Selwyn N. P. *Common*: STINT.

"Surcharge and Falsify" a settled account; *V.* Dan. Ch. Pr. 420.

SURETY.—*V.* GUARANTEE.

In the application of Employers and Workmen Act, 1875, 38 & 39 V. c. 90, to Scotland, "'Surety,' means, Cautioner" (s. 14). *Vf*, ENTER: RECOGNIZANCE.

SURETY OF THE PEACE. — Is an acknowledgment of a bond to the Crown, taken by a competent Judge or Magistrate, as a surety that the Peace shall be kept by a particular person or persons: *Vh*, Jacob: 4 Bl. Com. ch. 18: Stone, *Surety of the Peace.* For an early example, *V.* Acts, xvii. 9.

V. ENTER: GOOD BEHAVIOUR: PEACE: RECOGNIZANCE.

SURFACE. — "'Surface,' or superficies, *primâ facie*, means, of course, nothing more than the mere *vestimenta terræ*" (MacS. 19); "the top of the earth and whatsoever is upon the face thereof" (Cowel, *Superficies*). *Vh, Wakefield* v. *Buccleuch*, cited SOIL: *Sv, Lond. & N. W. Ry* v. *Evans*, cited SATISFACTION: SUPPORT. *Cp*, VEST.

For the Canons of Construction of Inclosure Acts, where Surface and Minerals are severed, *V. Bell* v. *Dudley*, 1895, 1 Ch. 182; 64 L. J. Ch. 291; 72 L. T. 14; 43 W. R. 122; 59 J. P. 199.

"Surfaces," in a Patent Specification; *V. Barber* v. *Grace*, 17 L. J. Ex. 122; 1 Ex. 339.

SURFACE DAMAGE. — "The expression 'Surface Damage' is a term well known in the North of England in the colliery districts. It is damage to the crops by using the surface, or by the smoke coming from the colliery works or pit-heaps, in respect of which compensation is payable under leases or reservations of coal, or where lords work coal by custom under copyhold lands. It is difficult to say that the injury to the foundations of a house extending to the walls and roof of the house, or the subsidence of the soil partially or wholly destroying the future fertility of the soil, is a Surface Damage; it may be damage to the house and land, but not Surface Damage" (*Allaway* v. *Wagstaff*, 4 H. & N. 688; 29 L. J. Ex. 58: *Vf, Neill's Trustees* v. *Dixon*, 7 Sess. Ca. 4th Series, 741).

V. DAMAGE.

SURGEON. — "In strictness, to act as a Surgeon something must be done by the hand" (per Knight-Bruce, L. J., *Ex p. Crabb, Re Palmer*, 25 L. J. Bank. 49).

"A Surgeon, formerly, was a mere operator, who joined his practice to that of a Barber. In latter times all that has been changed, and the profession has risen into great and deserved eminence. But the business of a Surgeon is, properly speaking, with external ailments and injuries of the limbs" (per Best, C. J., *Allison* v. *Haydon*, 4 Bing. 621). But "with a view to the recovery of a patient in a case of that description, he may, perhaps, prescribe and dispense medicine" (Ib.: *Va*, per Cresswell, J., *Apothecaries Co* v. *Lotinga*, 2 Moo. & R. 499). *V.* APOTHECARY.

Surgeons were formerly a sad lot; *V.* 34 & 35 H. 8, c. 8. *Sv*, INFERIOR TRADESMAN.

The company of Surgeons and Barbers was constituted and regulated by 32 H. 8, c. 42, which union was dissolved by 18 G. 2, c. 15, which statute incorporated, and contained regulations as to, the surgeons of London. The Royal College of Surgeons of England was incorporated by Charter, 14 Sept 1843, the subsequent Charters being 18 March 1852, 8 Sept 1859, and 20 July 1888: "Royal College of Surgeons of Scotland"; *V.* 21 & 22 V. c. 90, s. 50, the power under which section of forming such a College has not yet been exercised: The Royal College of Surgeons in Ireland was incorporated by Charter, 9 March 1784, revoked and new Charter granted 19 Sept 1828, the subsequent Charters being 24 Jan 1844, 31 Oct 1883, and 23 May 1885.

As to falsely pretending to be a Surgeon; *V.* PHYSICIAN.

Practising as a Surgeon; *V.* PRACTISE: CARRY ON.

Certifying Surgeons, quà Factory and Workshop Act, 1901; *V.* Part 8 (ii).

V. "Medical Practitioner," sub MEDICAL.

SURGERY. — *V.* PHYSIC.

SURGICAL. — *V.* MEDICAL.

SURNAME. — It seems that a bequest to a class of the "Surname" of a particular person, is more readily construed as indicating the "Family" or "Stock" of that person than if the word "NAME" were used (2 Jarm. 143, citing *Carpenter* v. *Bott*, 15 Sim. 606; 16 L. J. Ch. 433).

V. Name and Arms Clause, sub NAME.

A Candidate's Surname, *e.g.* in a Nomination for Town Councillor, may be sufficiently stated though inaccurately spelt, *e.g.* Millar for Miller (*Miller* v. *Everton*, 59 J. P. 358; 64 L. J. Q. B. 692; 72 L. T. 838).

SURPLICE FEES. — "Those fees and dues which go by the name of 'Surplice Fees,' being fees on interments, burials, marriages, and the like. With respect to Surplice Fees it is said that none are due to the Minister as of common right, but depend on special custom only" (2 Steph. Bl. 743; cited and adopted by Kay, J., *Stewart* v. *West Derby Burial Bd*, 56 L. J. Ch. 434; 34 Ch. D. 339; 56 L. T. 380; 35 W. R. 268).

SURPLUS. — "It is to the particular language and to the circumstances of each Will that we must look in order to see whether the word 'Surplus,' or 'RESIDUE,' is to be taken as indicating Surplus or Residue properly so called, or merely as indicating" a share of a particular fund (per Cranworth, C., *Southmolton* v. *A-G.*, 5 H. L. Ca. 26).

"Surplus" will not always be construed as "Overplus," in the wide

sense of whatever shall turn out to be the Overplus (*Page* v. *Leapingwell*, 18 Ves. 466). *Cp*, OVERPLUS: REMAINDER.

"Surplus" widens the meaning of "Rents, Issues, and Profits," in a residuary devise, *e.g.* of "Residuary or Surplus Rents, Issues, and Profits" (*Cust* v. *Middleton*, 34 L. J. Ch. 185: *Va*, per Hardwicke, C., *Sherrard* v. *Harborough*, Amb. 164).

"Surplus ASSETS," in the Winding-up of a Co, has no fixed legal meaning. The phrase may mean, the assets remaining (1) after payment of the Co's liabilities and the costs of winding-up, or (2) after those payments *and* recoupment of capital (*Re New Transvaal Co*, 1896, 2 Ch. 751; 65 L. J. Ch. 868, in *whc* the latter meaning was adopted, and the same was followed in *Re Peabody Co*, 104 Law Times, 128). *Vf*, *Re Anglo-Continental Corp*, cited WINDING-UP: *Re Crichton's Oil Co*, 1902, 2 Ch. 86; 71 L. J. Ch. 531. *V.* DISTRIBUTED.

"Surplus *Land*"; *V.* SUPERFLUOUS LAND.

"Surplus *Money*"; held, contextually, to pass South Sea Stock and 3¼ Per Cents (*Newman* v. *Newman*, 26 Bea. 218). *Va*, MONEY, 1215, 1216.

SURPLUSAGE. —"'Surplusage' comes of the French 'Surplus,' that is, an overplus, and signifies in the law an addition of more than needs which sometimes is the cause that a writ shall abate, but in pleading many times it is absolutely voyd, and the residue of the plea shall stand good" (Termes de la Ley).

SURRENDER. —"'*Surrender*,' *sursum redditio*, properly is a yeelding up an estate for life or yeares to him that hath an immediate estate in reversion or remainder, wherein the estate for life or yeares may drowne by mutuall agreement betweene them" (Co. Litt. 337 b; *Vth*, Butler's note, 294, where it is said "a *surrender* differs from a *release* in this respect, that the release operates by the greater estate's descending upon the less, — a surrender is the falling of a less estate into a greater"). *Vh*, Co. Litt. 338 a, *et seq*: Touch. ch. 17: 4 Cru. Dig. 84: 12 Encyc. 54–60: *Burton* v. *Barclay*, 9 L. J. O. S. C. P. 238; 7 Bing. 757: *Cp*, RELEASE: RENUNCIATION: RESIGNATION.

Surrender "by Act or Operation of Law," s. 3, Statute of Frauds, is "where the owner of a PARTICULAR ESTATE has been a party to some act, the validity of which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate had continued to exist" (per Parke, B., delivering the jdgmt, *Lyon* v. *Reed*, 13 L. J. Ex. 381; 13 M. & W. 285); or, in other words, such a Surrender (as distinguished from a Surrender by Deed, 8 & 9 V. c. 106, s. 3) is where the parties accomplish a state of things (other than a mere Agreement to surrender, or a cancellation) which is inconsistent with the continuance of the particular estate. Examples of such a Surrender are, —

1. A valid, not voidable, and perfected, Re-Demise between the same landlord and tenant (*Nicholls* v. *Atherstone*, 16 L. J. Q. B. 371; 10 Q. B. 944: *Easton* v. *Penny*, 67 L. T. 290; 41 W. R. 72), "even for a shorter term than the old term, if the new term coincides with any part of the old" (per Willes, J., *Phené* v. *Popplewell*, 31 L. J. C. P. 235; 12 C. B. N. S. 334), and which re-demise may be by parol (*Nicholls* v. *Atherstone*, sup: *Fenner* v. *Blake*, 1900, 1 Q. B. 426; 69 L. J. Q. B. 257; 82 L. T. 149; 48 W. R. 392) if for a term grantable by parol (*Forquet* v. *Moore*, 22 L. J. Ex. 35; 7 Ex. 870), though the old demise was by deed (*Whitley* v. *Gough*, Dyer, 140, pl. 43). A mere agreement for a re-demise will not suffice (*Forquet* v. *Moore*, sup):

2. "An agreement between a landlord and tenant that the tenancy shall be put an end to, if such agreement is acted on by a *change of possession*. In my opinion, it is quite immaterial whether the landlord himself takes possession or a third person" (per Keating, J., *Phené* v. *Popplewell*, sup. *Vh*, *Thomas* v. *Cook*, 2 B. & Ald. 119; 2 Starkie, 408: *Dodd* v. *Acklom*, 13 L. J. C. P. 11; 6 M. & G. 672: *Grimman* v. *Legge*, 8 B. & C. 324: *Doe* d. *Hudlestone* v. *Johnstone*, M'Cle. & Y. 141: *Johnstone* v. *Hudlestone*, 4 B. & C. 922: *Bessel* v. *Landsberg*, 14 L. J. Q. B. 355; 7 Q. B. 638: *Griffith* v. *Hodges*, 1 C. & P. 419: *Redpath* v. *Roberts*, 3 Esp. 225). A mere agreement to surrender (per Brett, L. J., *Oastler* v. *Henderson*, 46 L. J. Q. B. 607; 2 Q. B. D. 577; 37 L. T. 22: *Re Panther Lead Co*, 1896, 1 Ch. 978; 65 L. J. Ch. 499; 44 W. R. 573), or the mere acceptance of key, without some act of taking possession, will not suffice (*Oastler* v. *Henderson*, sup, in *whc*, Brett, L. J., explained *Phené* v. *Popplewell*, sup: *Wallis* v. *Hands*, 1893, 2 Ch. 75; 62 L. J. Ch. 586; 68 L. T. 428; 41 W. R. 471: *Furnivall* v. *Grove*, 30 L. J. C. P. 3; 8 C. B. N. S. 496: *Cannan* v. *Hartley*, 19 L. J. C. P. 323; 9 C. B. 634: *Whitehead* v. *Clifford*, 5 Taunt. 518):

3. Resumption of Possession by the landlord without opposition by the tenant (*Walls* v. *Atcheson*, 3 Bing. 462):

4. Though Cancellation of a Lease is not, of itself, a Surrender by Operation of Law (*Doe* d. *Courtail* v. *Thomas*, 9 B. & C. 288), yet it may be important collateral evidence thereof (*Walker* v. *Richardson*, 2 M. & W. 882; 6 L. J. Ex. 229: *Davison* v. *Gent*, 1 H. & N. 744; 26 L. J. Ex. 122).

Vh, Redman, ch. 8, s. 4: Fawcett, ch. 6, s. 2 (2): Woodf. ch. 8, s. 3: Foa on Landlord and Tenant, ch. 4: 2 Sm. L. C. 917. *Cp*, MERGER.

Surrender of Copyholds and Admittance thereon, is the method of conveyance of Copyholds, inter vivos: *Vh*, 2 Bl. Com. ch. 22: Wms. R. P., Part 3, ch. 2: Goodeve, 323–327. *Note*: the need of a Surrender to the Use of a Will was abolished by 55 G. 3, c. 192, repld s. 3, Wills Act, 1837.

"Surrender or Extinction" of Prior Interests; *V.* EXTINCTION.

Surrender of Shares, as to resolution for; *V. Eichbaum* v. *Chicago Grain Elevators*, 1891, 3 Ch. 459; 61 L. J. Ch. 28; 65 L. T. 704; 40 W. R. 153.

SURRENDERED. — *V.* DEEMED TO HAVE BEEN SURRENDERED. "Liable to be surrendered"; *V. Re Galwey*, cited BOUND.

SURROGATE. — "Is he who is appointed in the stead of another, most commonly of a Bishop or his Chancellor" (Termes de la Ley).

SURVEY. — *V.* VIEW.

A demise of land at an Acreage Rent, "subject to Survey," means, that the acreable contents shall be ascertained by actual measurement for the purpose of fixing the amount of rent (*Persse* v. *Malcolmson*, Ir. Rep. 5 C. L. 572).

SURVEYOR. — Quà Metrop Man. Acts, "Surveyor," includes, "any Officer called or to be called 'Engineer'" (s. 112, 25 & 26 V. c. 102): District Surveyor, quà London Bg Act, 1894, *V.* Part 13.

Quà P. H. Act, 1875, "'Surveyor,' *includes*, any person appointed by a *Rural* Authority to perform any of the duties of Surveyor under this Act" (s. 4). But that wide def does not extend to the "Surveyor" to be appointed by an *Urban* Authority under s. 189, and "the Surveyor" who, in an Urban District, has to make the report mentioned in s. 16, does not include a person temporarily appointed to perform the duties of a Surveyor and who is subject to dismissal at a week's notice (*Lewis* v. *Weston-super-Mare*, 58 L. J. Ch. 39; 40 Ch. D. 55; 59 L. T. 769; 37 W. R. 121). The meaning of "Surveyor" in P. H. Act, 1875, is adopted for the other P. H. Acts; *V.* P. H. Act, 1890, s. 11 (3); 55 & 56 V. c. 57, s. 5.

Other Stat. Def. — Ecclesiastical Dilapidations Act, 1871, 34 & 35 V. c. 43, s. 3; Ry C. C. Act, 1845, 8 & 9 V. c. 20, s. 3; Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, s. 3; Taxes Management Act, 1880, 43 & 44 V. c. 19, s. 5.

"Surveyor of Taxes"; *V.* Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, s. 4.

The individual members of a District Council are not Surveyors of Highways, within s. 46, Highway Act, 1835 (*Buckley* v. *Hanson*, 42 S. J. 198; 77 L. T. 664; 62 J. P. 119).

The "Surveyor or Valuer" whose Report as to the value of property will exonerate Trustees if they "reasonably believe" him "to be an *Able, Practical*, Surveyor or Valuer," s. 8 (1), Trustee Act, 1893, must be one employed and instructed by the trustees in the very matter to which the Report relates, and the Report must advise the trustees as to the particular investment (*Re Walker*, 59 L. J. Ch. 386).

"County Surveyor"; *V.* COUNTY.

V. OUTGOING SURVEYOR: QUANTITY SURVEYOR.

SURVIVE. — "Survive" imports that the person who is to survive must be living at the death of the person whom, or at the happening of the event which, he is to survive (*Gee* v. *Liddell*, 35 L. J. Ch. 640; L. R. 2 Eq. 341: *Vth*, 2 Jarm. 691).

In that case Romilly, M. R., said, "My opinion is, that the meaning of the word 'Survive' or 'Survivor' imports that a person who is to survive must be living at the time of the event which he is to survive. I have consulted several dictionaries on this subject. I have consulted Johnson and Richardson, and the authorities cited by them; and in all instances it appears to me to mean to 'outlive,' that is, to be alive at the time of a particular event, or the death of a particular person, which event or person the other is to survive. It is true that Dr. Johnson puts as one of the meanings, 'to live after another' . . . But all the passages from the English writers cited tend to the conclusion that the person who survives an event, must be living at the time when that event takes place, and that 'to live after,' is somewhat ambiguous in itself." On a context, "survive" has been construed "to live after" (*Re Clark*, 13 W. R. 115; 3 D. G. J. & S. 111; *svthc*, per Chitty, J., *Re Delany*, 39 S. J. 468). *Vh*, *Reed* v. *Braithwaite*, L. R. 11 Eq. 514; 40 L. J. Ch. 355: *Ranelagh* v. *Ranelagh*, 2 My. & K. 441; 1 L. J. Ch. 183.

Bequest, in remainder after life interests, for "*surviving* sister or sisters of my wife, or their heirs"; held, that "surviving" meant, surviving the Testator (*Stannard* v. *Burt*, 52 L. J. Ch. 355): *Vf*, *Spurrell* v. *Spurrell*, 22 L. J. Ch. 1076; 11 Hare, 54. In a similar bequest, "surviving" was held to mean, surviving the Tenant for Life (*Re Fox*, 13 W. R. 1013: *Va*, *Littlejohns* v. *Household*, 21 Bea. 29: *Re Benn*, 29 Ch. D. 839).

A gift to a CHILD, or other ISSUE, of a testator, does not LAPSE by death in the testator's lifetime if he or she leave issue, living at the testator's death, but shall take effect as if the death of the Child or other Issue of the testator had happened immediately after his death (s. 33, Wills Act, 1837); therefore, where a testator directs that in case A. (his daughter) shall "survive" him, her share shall be part of the funds comprised in her Marriage Settlement, and she dies in his lifetime leaving issue living at his death, the share intended for her becomes part of the Settlement funds (*Re Hone*, 31 W. R. 379; 52 L. J. Ch. 295; 22 Ch. D. 663; 48 L. T. 266).

V. SURVIVOR: SURVIVING TRUSTEE.

SURVIVING CHILDREN. — This phrase includes a sole surviving child (*Re Brown*, W. N. (96), 164). *Vf*, SURVIVOR: CHILD, p. 306.

SURVIVING SISTERS. — *V. Carver* v. *Burgess*, 24 L. J. Ch. 401; 18 Bea. 541.

SURVIVING TRUSTEE. — *V. Sharp* v. *Sharp*, 2 B. & Ald. 405, stated Lewin, 776: *Vf*, Lewin, 783, 785. *Cp*, CONTINUING TRUSTEE.

A Power to "Survivors" cannot be executed by last Survivor; but a Power to three or more "and the Survi*vor* of them" may be executed by the Survivor*s* (Lewin, 719: SURVIVOR).

A "Surviving Trustee," whose representatives may appoint a New Trustee, s. 31 (1), Conv & L. P. Act, 1881, repld s. 10 (1), Trustee Act, 1893, must survive, not only his nominated colleagues but also, his testator (*Nicholson* v. *Field*, 1893, 2 Ch. 511; 62 L. J. Ch. 1015; 69 L. T. 299; 42 W. R. 48). *Vf*, LAST.

SURVIVOR. — *V.* SURVIVE.

"Survivor" is "a word which has caused, perhaps, more difficulty in the interpretation of Wills than any other in the language" (per Rigby, L. J., *Re Pickworth*, cited EITHER).

"The word 'Survivor' may be either a word of limitation of an estate (denoting the interest certain persons are to take), or it may denote a class of persons" (Theobald, 594).

"If there is a life estate followed by a gift to a number of persons or the Survivors of them, the general rule of construction is that the word 'Survivors' means, those who survive the Tenant for Life; if there is not a life estate, then, *primâ facie* as a general rule, it refers to those who survive the Testator" (per Cotton, L. J., *Ralph* v. *Carrick*, 48 L. J. Ch. 810; 11 Ch. D. 873); or, as it may be otherwise stated, "the word 'Survivors' refers commonly to the time of division" (per Kay, J., *Re Mortimer*, 54 L. J. Ch. 415). This is sometimes called the Rule in *Cripps* v. *Wolcott* (4 Mad. 11); and it applies as well to Realty as to Personalty (*Re Gregson*, 34 L. J. Ch. 41; 2 D. G. J. & S. 428: *Howard* v. *Collins*, L. R. 5 Eq. 349). *Vf*, as to Period of Survivorship, Hawk. 260 *et seq*: 2 Jarm. 720–751: Theobald, 595–600; and for a context leading to the same conclusion as *Cripps* v. *Wolcott*, *V. Wordsworth* v. *Wood*, 9 L. J. Ch. 29; 1 H. L. Ca. 129.

"Survivors," generally speaking, includes "Survivor," and should be read as equivalent to "Survivors or Survivor" (*V. Re Mortimer*, sup: *Hearn* v. *Baker*, 2 K. & J. 383: *Vf*, SURVIVING CHILDREN). "But a discretionary power to four Trustees 'and the survivors of them' cannot, it seems, be executed by the last survivor" (Lewin, 719, citing *Hibbard* v. *Lamb*, 1 Amb. 309); though if it be given to "the survi*vor*," it could be executed by the survivors who might be left after the death of one (Lewin, 719). *Vf*, SURVIVING TRUSTEE.

Read as "Other."

"The question whether the word 'Survivor' (in a Will) is to be read as 'Other' has been the subject of innumerable cases; but there is one never failing guide to all the authorities, viz., — it is the duty of the

Read as "Other":—

Court to ascertain what the meaning of the testator is, and if it can satisfy itself that the word ought to be read as 'Other,' it is right to substitute the one word for the other" (per Bacon, V. C., *Re Johnson*, 53 L. J. Ch. 1117); but "when unexplained by other parts of the Will, it is to be interpreted according to its strict and literal meaning" (2 Jarm. 689). *Vf*, *King* v. *Frost*, inf, p. 2000.

For an elaborate discussion of the cases hereon, *V.* 2 Jarm. 689–710: *Vf*, Wms. Exs. 1332–1334: Theobald, 600–604: Watson Eq. 1221–1227.

Va, *Crowther* v. *Evans*, 13 L. T. 271: *Waite* v. *Littlewood*, 8 Ch. 70: *Lucena* v. *Lucena*, 47 L. J. Ch. 203; 7 Ch. D. 255: *Re Horner*, *Pomfret* v. *Graham*, 51 L. J. Ch. 43; 19 Ch. D. 186: *Re Benn*, 29 Ch. D. 839: *Re Palmer*, L. R. 19 Eq. 320; 44 L. J. Ch. 247. "In *Re Palmer*, I referred to several cases all of them authorities in favor of reading 'Survivor' as 'Other,' when it was requisite to do so in order to give effect to the intention. There is no magic in the word 'Survivor'" (per Malins, V. C., *Cross* v. *Maltby*, L. R. 20 Eq. 382).

Besides the general rule above enunciated there is, probably, no general rule that can be relied on for construing "Survivor" as "Other" besides the following one, stated by Mr. Hawkins in his work on Construction of Wills (p. 202),—

"Where there is a gift to several, or to a class, as tenants in common in tail, with remainder as to the share of each to the 'survivors' or 'surviving' devisees in tail, with a limitation over on failure of issue of *all* the devisees, the words 'survivor' or 'surviving' will be construed as 'other,' so as to create cross-remainders among the devisees by express limitation; either in a Deed or Will (*Doe* v. *Wainewright*, 5 T. R. 427; *Cole* v. *Sewell*, 2 H. L. Ca. 186: *Smith* v. *Osborne*, 6 H. L. Ca. 375)."

But in *Re Bowman*, *Whytehead* v. *Boulton* (41 Ch. D. 531; 37 W. R. 583), Kay, J., said, "It seems to me that the decisions establish the following propositions, — (1) Where the gift is to A. B. and C. equally, for their respective lives, and after the death of any to his children, but if any die without children to the survivors for life, with remainder to their children, only children of survivors can take under the gift over; (2) If, to similar words, there is added a limitation over if *all* the tenants for life die without children, then the children of a predeceased tenant for life participate in the share of one who dies without children after their parent; (3) They also participate, *although there is no general gift over*, where the limitations are to A. B. and C. equally, for their respective lives, and after the death of any to his children, and, if any die without children, to the surviving tenants for life and their respective children *in the same manner as their original shares*."

V. this last proposition acutely examined and dissented from, 33 S. J. 572: *Va*, *Re Bowman*, sup, distd in *Re Rubbins*, 79 L. T. 313, and criticised in *Re Robson*, W. N. (99) 260.

Read as "Longest Liver."

When "Survivor" "is applied to a CLASS of persons, and individuals of that class are named, the natural and obvious meaning of the word is, the Longest Liver of those who are named" (per Westbury, C., *Taaffe* v. *Conmee*, 10 H. L. Ca. 77: *vthc* discussed and distd, *Foley* v. *Gallagher*, 2 L. R. Ir. 389).

In *Re Hill to Chapman* (53 L. J. Ch. 541; 54 Ib. 595), an unsuccessful attempt was made to induce the Court to read "Survivor" as equivalent to "Longest Liver": *Vf*, *Re Pickworth*, cited EITHER. The rule, in this connection, is thus stated by Turner, L. J., in *White* v. *Baker* (29 L. J. Ch. 577; 2 D. G. F. & J. 55), — "Where there is a bequest to A. for life, and after his death to B. and C., 'or the survivor of them,' some meaning must be attached to the words 'the survivor.' They may refer to any one of three events, —

"1. To one of the persons named surviving the other;

"2. To one of them only surviving the testator; or

"3. To one of them only surviving the tenant for life: and in the absence of any indication to the contrary they are taken to refer to the latter event, as being the more probable one to have been referred to." *V.* jdgmt of Cotton, L. J., *Re Hill to Chapman*, sup, for a criticism on *White* v. *Baker*: *Vf*, *Scurfield* v. *Howes*, 3 Bro. C. C. 90: *Re Hunter*, L. R. 1 Eq. 295.

The word "Survivors," "does not mean 'Longest Livers' in the general sense, but those who are living when the particular event contemplated happens" (per Kay, J., *Re Mortimer*, *Griffiths* v. *Mortimer*, 54 L. J. Ch. 415; 33 W. R. 441). On the words of the Will under consideration in *Re Mortimer*, it was held that on the death of the last survivor of a class of tenants for life who were to take *inter se* by survivorship, the capital fell into the residue and did not belong to the estate of such last survivor. The learned judge followed *Nevill* v. *Boddam* (29 L. J. Ch. 738; 28 Bea. 554) and *Re Corbett* (29 L. J. Ch. 458; Johns. 591; 8 W. R. 257); and commented on *Maden* v. *Taylor* (45 L. J. Ch. 569) and *Davidson* v. *Kimpton* (18 Ch. D. 213; 29 W. R. 912). *Va*, per North, J., *Askew* v. *Askew* (57 L. J. Ch. 629; 36 W. R. 620), and per Privy Council, *King* v. *Frost* (15 App. Ca. 548; 60 L. J. P. C. 17). But in *Re Roper* (41 Ch. D. 409; 58 L. J. Ch. 439; 33 S. J. 350) Chitty, J., differed from *Re Mortimer*, *Re Corbett*, and *Askew* v. *Askew*, and, following *Maden* v. *Taylor* and *Davidson* v. *Kimpton*, construed "survivors" as "longest livers": *Va*, *Browne* v. *Rainsford*, Ir. Rep. 1 Eq. 384: per Monroe, J., *Re Hutchins*, 19 L. R. Ir. 223. In *Ranelagh* v. *Ranelagh* (41 W. R. 549), Chitty, J., repented of his decision in *Re Roper*, and followed *King* v. *Frost*.

V. generally as to limitations to "Survivors," Jarm. ch. 47.

In *Crozier* v. *Fisher* (4 Russ. 398; 6 L. J. O. S. Ch. 118), "Survivors," in a bequest to Children, was contextually held to mean, surviving so as to attain their respective ages of 21.

A limitation to A. B. and C., "and the survivors or survivor of them and the heirs of such survivor," makes A. B. and C. joint-tenants for life, with a contingent remainder in fee to the survivor (2 Jarm. 298; *Vf*, Ib. 251, *n*); so, of a limitation to A. B. and C. "as joint tenants and not as tenants in common, and to the survivor or longest liver of them his heirs and assigns" (*Quarm* v. *Quarm*, 1892, 1 Q. B. 184; 61 L. J. Q. B. 154; 66 L. T. 418; 40 W. R. 302).

Vh, Chitty Eq. Ind. 8012–8038.

SURVIVORSHIP.—*V.* Benefit of Survivorship.

SUSCEPTIBLE.—Goodwill is "a matter Susceptible of Valuation" within Partnership Articles (*Steuart* v. *Gladstone*, 47 L. J. Ch. 427; 10 Ch. D. 626).

SUSPECTED.—Quà Diseases of Animals Act, 1894, 57 & 58 V. c. 57, "'Suspected,' means, suspected of being diseased" (s. 59).

"Suspected of Evil"; *V.* Walk.

V. Reputed Thief.

SUSPEND.—Where there is a clause in a Lease that in case of fire the rent shall be "suspended" until the premises are re-instated, it might be contended that "suspended" means only "postponed"; but more reasonably it means "temporarily released." In this sense the word is obviously used in the following passage from the judgment in *Morrison* v. *Chadwick* (18 L. J. C. P. 192; 7 C. B. 283),—"The eviction by a landlord of his tenant from a part of the premises creates a *Suspension* of the entire rent *during the continuance of the eviction* until the tenant enters and resumes the possession—see the authorities cited in 1 Wms. Saund. 204, *n* 2" (*Va*, Suspense). But it would avoid dispute to provide that the rent shall "cease and be suspended" or shall "be suspended and cease to be payable."

As to suspending a bankrupt's Order of Discharge; *V.* s. 8, Bankry Act, 1890: Wms. Bank. 92: Baldwin, 592.

Notice by a debtor that he "has suspended, or is about to suspend, Payment," Bankry Act, 1883, s. 4 (1 *h*); "To 'suspend,' in its natural signification, rather means, something which may not be permanent than that which is. *A fortiori*, of course, a perpetual stoppage of payment would be a Suspension, and something more; but to say that 'Suspension' can mean nothing in this context but a necessarily permanent stoppage of payment, is a proposition to which I cannot agree" (per Ld Selborne, *Crook* v. *Morley*, 1891, A. C. 316· 61 L. J. Q. B. 98; 65 L. T. 389). *Vf*, Notice, p. 1291.

Semble, the execution by a debtor of a Deed of Arrangement, was a "Suspension of Payment" within ss. 211, 225, Bankry Act, 1849 (*Phillips* v. *Surridge*, 9 C. B. 743; 19 L. J. C. P. 337).

As to the old doctrine, an Action Personal once suspended always suspended, *V. Ford* v. *Beech*, 11 Q. B. 867; 17 L. J. Q. B. 116, and cases there cited. *Cp*, FORBEAR.

Cp, POSTPONE: STOP.

SUSPENSE.—"'Suspension' or 'Suspense,' is a temporal," *i.e.* temporary, "stop of a Mans Right" (Cowel).

"Suspence commeth of *suspendeo*, and in legall understanding is taken when a seigniorie, rent, profit apprender, &c, by reason of unitie of possession of the seigniorie, rent, &c, and of the land out of which they issue, are not *in esse* for a time, *et tunc dormiunt*, but may be revived or awaked. And they are said to be extinguished when they are gone for ever, *et tunc moriuntur*, and can never be revived; that is, when one man hath as high and perdurable an estate in the one as in the other" (Co. Litt. 313 a). As to Suspension, *V. Burton* v. *Barclay*, 9 L. J. O. S. C. P. 239; 7 Bing. 759: SUSPEND: *Cp*, MERGER.

As to Suspension of the Clergy; *V.* Phil. Ecc. Law, 1072.

"Suspension in Water"; *V.* SOLID MATTER.

SUSTAIN.—*V.* UPHOLD.

SUSTAINED.—"Costs sustained by reason of"; *V.* BY REASON.

SUZERAIN.—*V.* 12 L. Q. Rev. 215.

SWALLETS.—"Funnel-shaped fissures in the rock forming the Mendip Hills" (Dart, 416).

SWEAR.—*V.* OATH: PERJURY.

SWEATING.—The term "Sweating System" is obviously figurative. "It involves a system oppressive to the workman whereby an unconscionable or unjust profit is wrung from the sweat of his brow by paying him insufficient wages for his work. There is, generally, a middleman taking advantage of the circumstances in which the workman is placed and grinding down, for his own profit, below the fair rate the wages of those employed. . . . Where the system prevails the epithet 'pernicious' is not at all too strong" (per Chitty, J., *Collard* v. *Marshall*, 1892, 1 Ch. 571; 61 L. J. Ch. 268; 66 L. T. 248; 40 W. R. 473).

SWEEP.—*V.* EVENT, p. 650: SUBSCRIPTION OR CONTRIBUTION.

SWEEPAGE.—*V.* HERBAGE.

SWEETS. — "In the construction of any enactment relating to the Revenue of Excise, the expression 'Sweets, or Made Wines' shall mean, any liquor which is made from fruit and sugar, or from fruit or sugar mixed with any other material, and which has undergone a process of fermentation in the manufacture thereof" (s. 28, Revenue Act, 1889, 52 & 53 V. c. 42): for the previous def, *V.* s. 40, 43 & 44 V. c. 20.

Quâ Wine and Beerhouse Act Amendment Act, 1870, 33 & 34 V. c. 29, "'Sweets,' includes, sweets, made wines, mead, and metheglin" (s. 3).

V. WINE.

SWINDLER. — A Swindler is "a Cheat, one who lives by cheating" (Jacob).

V. CHEAT: TOUT.

SWINE. — *V.* CATTLE.

SWOLING. — A Swoling, or Suling, of land "is the same with *Carucata terræ*" (Cowel). *V.* CARUCATA.

SWORN APPRAISER. — "Sworn Appraisers," *e.g.* by whom a distress under the Tithe Act, 1836, had to be valued, must be reasonably competent, but need not be professional, appraisers (*Roden* v. *Eyton*, 6 C. B. 427).

V. APPRAISER.

SYLVA. — "'Sylva cædua,' as a rule, is equivalent to COPPICE" (per Bowen, L. J., *Dashwood* v. *Magniac*, cited TIMBER). *Vf*, 45 Edw. 3, c. 3: SILVA CÆDUA.

SYMBOL. — *V.* TRADE-MARK, towards end.

SYNDICATE. — *Semble*, "Syndicate" is not equivalent to Firm, Company, or Partnership: its use in connection with a Marine Underwriting will not convert a liability, otherwise several, into a joint liability (*Tyser* v. *Shipowners' Syndicate*, 1896, 1 Q. B. 135; 65 L. J. Q. B. 238; 73 L. T. 605; 44 W. R. 207).

Probably, "Syndicate" first came into the law relating to Companies in *New Sombrero Co* v. *Erlanger*, 48 L. J. Ch. 73; 3 App. Ca. 1218, *whcv* as to the liabilities of a Syndicate in promoting a Company.

SYNODAL. — "Is a tax paid in money to the Bishop or his Archdeacon, by the Inferior Clergy, at their Easter Visitation" (Termes de la Ley).

SYSTEM. — Death from Causes "arising within the System of the insured"; *V.* ARISING: SECONDARY.

TABERNACLE—TAIL

TABERNACLE. — *Semble*, a Tabernacle for the reception of the Reserved Sacrament is not a lawful Church ORNAMENT (*Kensit* v. *St. Ethelburga*, 1900, P. 80).

TABLE. — *V.* COMMUNION.

TABLEAUX VIVANTS. — *V. Hanfstaengl* v. *Empire Palace*, cited COPY, p. 409.

TACK. — "Tack," is the Scotch term for LEASE; *Sv*, discussion by counsel, *Sweetmeat Co* v. *Inl. Rev.*, 64 L. J. Q. B. 88.

"A Fearme, in the north parts, is called a Tacke" (Co. Litt. 5 a). *V.* FARM.

To take in Cattle to tack, is to AGIST them.

Tacking a Mortgage, is the doctrine that enables a mtgee who is secured by the LEGAL ESTATE, to tack on to that security another security which he holds on the same property and so give the latter security priority over a mesne incumbrance prior in date thereto, if he took his other security without notice of the mesne incumbrance to be so displaced: *Vh*, Fisher, Part 5, ch. 3, ss. 2, 3. *Cp*, CONSOLIDATE, at end.

Note: the doctrine does not extend to lands in Yorkshire (s. 16, 47 & 48 V. c. 54); its general application was disallowed by s. 7, V. & P. Act, 1874, but that section was repealed by s. 129, 38 & 39 V. c. 87.

TACKLE. — "It has been said that by the words 'Tackle, Furniture, Apparel, and all other her Instruments, thereunto belonging,' the Boats of a Ship are not transferred (Molloy, De Jure Mar., B. 2, c. 1, s. 8). And it has been held that Ballast is not part of the Furniture of a Merchant Ship (Ib.: *Kynter's Case*, 1 Leon. 46); and that under the words 'Stores, Tackle, Apparel, &c,' Kintlage does not pass (*Lano* v. *Neale*, 2 Starkie, 105)": 1 Maude & P. 53, *n* (*x*). *V.* FURNITURE.

An insurance upon a ship, employed in the Greenland trade, on "ship, tackle, apparel, and furniture," does not by the usage of the trade cover the fishing tackle (*Hoskins* v. *Pickersgill*, 3 Doug. 222).

TAIL. — To hold in Fee Tail, or in Tail, is "where a man holdeth certaine lands or tenements to him and to his heires *of his body* begotten"

(Termes de la Ley): that is a General Tail. A Special Tail is one that "is restrained to certain heirs of his body, and does not go to all of them in general" (Wms. R. P., Part 1, ch. 2), *e.g.* heirs of his body by a specified woman, or Tail Male.

Vh, Litt. ss. 13–31: Co. Litt. 18 b–27 b: 2 Bl. Com. 110–119: Wms. R. P., Part 1, ch. 2: Goodeve, ch. 3: Challis, ch. 20: WESTMINSTER.

"Tail Male"; *V. Trevor* v. *Trevor*, 11 L. J. Ch. 417; 13 Sim. 108; 1 H. L. Ca. 239.

Special Tail Male; *V. Pelham-Clinton* v. *Newcastle*, 49 W. R. 12; 69 L. J. Ch. 875; 83 L. T. 627; affd 1902, 1 Ch. 34; 71 L. J. Ch. 53; 85 L. T. 439; 50 W. R. 83.

"'Tenant in fee taile after possibility of Issue extinct' is, where tenements are given to a man and to his wife in Especiall Taile, if one of them die without issue, the survivor is tenant in tail after possibility of issue extinct. And if they have issue, and the one die, albeit that, during the life of the issue, the survivor shall not be said tenant in tail after possibilitie of issue extinct; yet if the issue die without issue, so as there be not any issue alive which may inherit by force of the taile, then the surviving party of the donees is tenant in taile after possibilitie of issue extinct" (Litt. s. 32; *Vf*, Ib. ss. 33, 34: Co. Litt. 27 b–28 b: *Bowles's Case*, 11 Rep. 79 b: 2 Bl. Com. 124, 125). Such a person is a TENANT FOR LIFE (Termes de la Ley, *Taile after possibility*), so, quà Settled Estates Act, 1877 (s. 2), and S. L. Act, 1882 (subs. 1, vii, s. 58); as to his "qualities and priviledges," *V.* Co. Litt. 27 b, 28 a. *Vh.* Wms. R. P., Part 1, ch. 2: Goodeve, ch. 3: Challis, ch. 20.

V. TENANT IN TAIL.

TAINI. — "*Taini*, or *thaini mediocres*," in Domesday, "were freeholders, and sometime called *milites regis*, and their land called *tainland*. . . . But *thainus regis* is taken for a baron" (Co. Litt. 5 b: *Vf*, Termes de la Ley, *Thanus*). *V.* TAINLAND.

TAINLAND. — "In the book of *Domesday*, land holden by knight's service was called Tainland, and land holden by socage was called Reveland" (Co. Litt. 86 a). But at 5 b, Co. Litt., it is said that land of freeholders generally was called Tainland; *V.* TAINI.

TAKE. — *V.* ACQUIRE: INHERIT.

"I think it will be found that in the Lands C. C. Act, 1845, the word 'take' is used in more than one sense. In the first section the word seems to be used in a general sense. In the preambles to sections 6 and 16 a distinction is drawn between 'purchase of lands by agreement,' and 'the purchase *and taking* of lands otherwise than by agreement.' In s. 68 the word 'taking' occurs, and it is clear, from *Burkinshaw* v. *Birmingham & Oxford Junc. Ry* (20 L. J. Ex. 246; 5 Ex. 475), that in that section 'take' means, actually take, as distinct from serving a notice

to treat or any other kind of constructive taking. Looking at the Lands Clauses Act as a whole, and looking at common parlance and at the language of most Acts which give compulsory powers to public bodies, I think we may say that the word 'take' ought not to be confined to taking of actual possession. When we turn to the Metropolitan Street Improvements Act, 1877 (40 & 41 V. c. ccxxxv), and compare the preamble in which the use of the word 'take' is general, with s. 5, and especially with s. 31 where the word 'take' is obviously used in a larger sense, I think the safer construction is that 'take' means, either take from the landlord what the landlord has got, — namely, his Title, — or take from the tenant and occupier what the tenant and occupier has got, — namely, Possession" (per Bowen, L. J., *Spencer* v. *Metrop Bd of Works*, 52 L. J. Ch. 258; *Sv*, as to acquiring the landlord's title, obs of Jessel, M. R., Ib. p. 253). Therefore, the conditions imposed by s. 33, Metropolitan Street Improvements Act, 1877, prior to the Authority "taking" lands, need not be complied with prior to proceeding with the preliminaries to acquiring title to such lands, such as serving notice to treat and summoning a jury (*Spencer* v. *Metrop Bd of Works*, 52 L. J. Ch. 249; 22 Ch. D. 142; 47 L. T. 459; 31 W. R. 347).

Lands entered upon and used by a Company, under s. 85, Lands C. C. Act, 1845, are lands "taken" within s. 80 of that Act (*Charlton* v. *Rolleston*, 54 L. J. Ch. 233; 28 Ch. D. 237; 51 L. T. 612).

Vf, R. v. *Manley-Smith*, 67 L. T. 197; 40 W. R. 333; 56 J. P. 729: *Church* v. *London School Bd*, 8 Times Rep. 310.

As to how far tunnelling under, or arching over, property is a "Taking"; *V. Sparrow* v. *Oxford, Worc. & Wolv. Ry*, 2 D. G. M. & G. 94; 16 Jur. 703; 19 L. T. O. S. 131: *Pinchin* v. *London & Blackwall Ry*, 5 D. G. M. & G. 851; 24 L. J. Ch. 417; 24 L. T. O. S. 125, 196; 3 W. R. 52, 125: *Re Metrop District Ry and Cosh*, 13 Ch. D. 607; 49 L. J. Ch. 277; 42 L. T. 73; 28 W. R. 685: *Tiverton Ry* v. *Loosemore*, 9 App. Ca. 480; 53 L. J. Ch. 812; 50 L. T. 637; 32 W. R. 929; 48 J. P. 372.

Lands "taken or used for the Purposes of the Works," s. 133, Lands C. C. Act, 1845; *V. Putney* v. *Lond. & S. W. Ry*, cited WORKS.

To divert part of a *Stream* by a Water Works Co, is not "*to take or use*" the Stream within s. 6, 10 V. c. 17; such diversion merely "INJURIOUSLY AFFECTS" the land (*Bush* v. *Trowbridge Water Co*, 44 L. J. Ch. 235, 645; L. R. 19 Eq. 291; 10 Ch. 459).

V. COMPULSORY POWERS: PURCHASE.

A direction to trustees "to take a *House*" for the residence of Minors, will, if not followed, entitle the minors to the money which ought to have been so expended (*Hutchinson* v. *Rough*, 40 L. T. 289).

To "take and use" a Surname; *V.* SURNAME: NAME.

"Take or use" the Title of a Profession; *V.* VETERINARY.

Game is "taken" when it is snared, though it be neither killed nor removed (*R.* v. *Glover*, Russ. & Ry. 269).

Oysters "taken within the waters of some Foreign State," proviso 1, s. 4, 40 & 41 V. c. 42, applies to oysters originally taken in foreign waters although they may have been relaid in England and stored for so long as 4 months (*Robertson* v. *Johnson*, 1893, 1 Q. B. 129; 62 L. J. M. C. 1; 67 L. T. 560; 41 W. R. 223; 57 J. P. 39: *Va, Guyer* v. *The Queen*, cited GAME, p. 795).

"Take" *Salmon* (s. 22, 36 & 37 V. c. 71), or Trout or Char (s. 7, 41 & 42 V. c. 39); *V. Gazard* v. *Cooke*, 55 J. P. 102: *Stead* v. *Tillotson*, 69 L. J. Q. B. 240; 48 W. R. 431; 64 J. P. 343. *Vf*, FOR, p. 740.

Chattels or Money are "taken" from the Owner, so as to constitute a THEFT, if obtained by frightening him (*R.* v. *McGrath*, 39 L. J. M. C. 7; L. R. 1 C. C. R. 205: *R.* v. *Lovell*, 50 L. J. M. C. 91; 8 Q. B. D. 185; 44 L. T. 319; 30 W. R. 416).

Vf, TAKE AND CARRY AWAY.

"Take" a *Girl* under 16 "out of the possession and against the will of her father or mother," &c, s. 20, 9 G. 4, c. 31, repld s. 55, 24 & 25 V. c. 100; "take," in this connection, does not imply force, actual or constructive; it means, being a party to the father, &c, being deprived of the possession of the girl, her willingness being immaterial (*R.* v. *Manktelow*, 22 L. J. M. C. 115; Dears. 159: *R.* v. *Timmins*, 30 L. J. M. C. 45). *V.* POSSESSION.

Semble, a Threatening Letter is not "sent" if taken by the writer: *V.* SEND.

"Take" *Legal Proceedings*, is to commence them; *V. Re Martin*, cited SOLICITOR.

TAKE AND APPROPRIATE. — The power to Guardians "to take and appropriate" a pauper's property to "reimburse themselves" the expenses of his burial and 12 months' maintenance, s. 16, 12 & 13 V. c. 103, only constitutes them ordinary (not preferential) creditors, and their claim does not interfere with the right of the pauper's exor to RETAIN quà his own claim (*Laver* v. *Botham*, 1895, 1 Q. B. 59; 64 L. J. Q. B. 110; 71 L. T. 570; 43 W. R. 25; 59 J. P. 454).

TAKE AND CARRY AWAY. — For the purposes of the offence of THEFT, "a *thing* is said to be taken and carried away when every part of it is moved from that specific portion of space which it occupied before it was moved (although the whole of it may not be moved from the whole of the space which it occupied), and when it is severed from any person or thing to which it was attached in such a manner that the taker has, for however short a time, complete control of it.

"An *animal* is said to be taken and driven or led away when it is caused to move from the place where it was before" (Steph. Cr. 213, 214).

Vf, Arch. Cr. 412, 432: Rosc. Cr. 556: ASPORTATION.

"'*Felonice cepit et asportavit*, feloniously took and carried away,' are necessary to every indictment" for Theft (4 Bl. Com. 307).

TAKE AWAY. — Not to "take away, or do business for," A's clients; *V.* CLIENT.

V. LEAD AWAY.

TAKE CARE. — "Take care of and provide"; *V.* PRECATORY TRUST.

TAKE DOWN. — A House or Building, or its front, is not "taken down in order to be rebuilt or altered," s. 155, P. H. Act, 1875, unless substantially the whole is removed; each case depends on its own circumstances, but a large structural alteration, involving the removal of no more than ⅔rds of the house or building or front, is not a "taking down" within the section (*A-G.* v. *Hatch*, 1893, 3 Ch. 36; 62 L. J. Ch. 857; 69 L. T. 469; 57 J. P. 825). *Cp*, NEW BUILDING.

V. DEMOLISH: UNNECESSARY INCONVENIENCE.

TAKE IN. — *V.* AGIST.

TAKE IN EXECUTION. — "The ordinary meaning of 'taken in execution' is, that the goods have been SEIZED by the sheriff; and, in ordinary language, a sheriff who has seized goods under a *fi. fa.* is said to have 'taken them in execution,'" *e.g.* as the phrase is used in s. 195, 35 G. 3, c. 73 (per Bigham, J., *Marylebone Vestry* v. *Sheriff of London*, 1900, 1 Q. B. 114; affd 1900, 2 Q. B. 591; 69 L. J. Q. B. 848; 64 J. P. 628).

The protection given to landlords by Landlord and Tenant Act, 1709, 8 Anne, c. 18, s. 1, that no goods shall "be taken BY VIRTUE of any execution" until the rent is paid, only applies where the goods are removed or sold (*White* v. *Binstead*, 22 L. J. C. P. 115: *Cocker* v. *Musgrove*, 9 Q. B. 223); because that statute was "only intended to give a landlord a remedy when deprived of his rights by removal" (per Jervis, C. J., *White* v. *Binstead*, sup: *Vf*, per Williams, L. J., *Marylebone Vestry* v. *Sheriff of London*, sup).

V. EXECUTION. *Cp*, LEVY.

TAKE IN SATISFACTION. — *V. Re Cosier*, cited SATISFACTION.

TAKE ON BOARD. — An obligation to "take on board" certain goods, is more exigent than to "put on board," and connotes that whatever care is required to be taken to ship the goods safely and securely must be taken by the obligor (per Cresswell, J., *Cooke* v. *Wilson*, 1 C. B. N. S. 163).

TAKE OR DEMAND. — For a SHERIFF, &c, to "take or DEMAND" more than his fees, is punishable under s. 29 (2 *b*), Sheriffs Act, 1887, 50 & 51 V. c. 55; he would "take" such excess if he appropriated thereto the moneys already in his hands (per Fry, L. J., *Woolford's Trustee* v.

Levy, 61 L. J. Q. B. 551); to "demand" extortionately, he must, *semble*, demand peremptorily or insistingly, — merely asserting his right to such excess, *e.g.* by claiming it in an account which he offers to submit to taxation, is not making such a "demand" (*S. C.*, 1892, 1 Q. B. 772; 61 L. J. Q. B. 546; 66 L. T. 812; 40 W. R. 483; 56 J. P. 694). In that case, Kay, J., expressed an opinion *obiter* that such "demand" only applied if money was extorted beforehand by the Officer as a condition of his doing his duty, but that opinion was not approved by the Court of Appeal (per Fry and Lopes, L. JJ., *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).

V. EXTORTION.

TAKE OR DESTROY. — A penalty for "taking or destroying" the spawn of fish (*Bridger* v. *Richardson*, 2 M. & S. 568), or for "taking or killing" fish (*R.* v. *Mallinson*, 2 Burr. 679), means, an improper taking, and not, *e.g.*, removing spawn from one bed to another.

TAKE PLACE. — The mere supply of liquor to a drunken person was held as not permitting drunkenness "to take place," within s. 13, 35 & 36 V. c. 94 (per Surrey Sessions, *Smith* v. *Eldridge*, 48 J. P. 25); *Sv, Edmunds* v. *James*, cited SUFFER.

TAKE POSSESSION. — "Take possession," "Take effect in possession"; *V.* POSSESSION.

TAKE UP. — "Take up money at interest"; *V.* BORROW.

Taking up a RISK; *V. Byas* v. *Miller*, 3 Com. Ca. 40.

TAKEN. — *V.* TAKE.

TAKER. — *V.* INHERITOR.

TALE QUALE. — *V. Wieler* v. *Schilizzi*, 17 C. B. 619; 25 L. J. C. P. 89; cited *Jones* v. *Just*, L. R. 3 Q. B. 204, 205; 37 L. J. Q. B. 94.

TALES. — A *Tales*, is when the Jury impanelled do not appear, or, appearing, are challenged, "in this case the Judge upon petition granteth a supply to be made by the Sheriffe of some men there present equal in reputation to those that were impanelled; and hereupon the very act of supplying is called a *Tales de circumstantibus*" (Termes de la Ley).

Vh, Arch. Cr. 177, 178: Rosc. Cr. 184: CHALLENGE.

TALFOURD'S ACTS. — 2 & 3 V. c. 54, repealed and replaced by Custody of Infants Act, 1873, 36 & 37 V. c. 12:

Copyright Act, 1842, 5 & 6 V. c. 45, which is sometimes called Earl Stanhope's Act.

TALLAGE. — "'Taxe, and Tallage,' are payments as tenths, fifteenes, subsidies, or such like, granted to the King by Parliament. The tenants

in ANCIENT DEMESNE are quite of these Taxes and Tallages granted by Parliament, except that the King doe taxe ancient demesne, as he may when he thinkes good for some great cause" (Termes de la Ley, *Taxe and Tallage*: *Vf*, Cowel). But this exemption of tenants in Ancient Demesne does not extend to local taxation levied by authority of Parliament, *e.g.* County Rate, Poor Rate, &c, for such taxation is not granted by Parliament to the Crown but is for the benefit of the particular locality (*R.* v. *Aylesford*, 2 E. & E. 538; 29 L. J. M. C. 83).

TALWOOD.—"'Talwood' is a term used in the statutes of 34 & 35 H. 8, c. 3, and 7 E. 6, c. 7, and 43 Eliz. c. 14, and it signifies such wood as is cut into short billets, for the sizing whereof those statutes were made" (Termes de la Ley).

TAMDIU.—*V.* QUAMDIU.

TANGIBLE.—*V.* LOCALLY SITUATE.

TAPERING.—"'Tapering,' means, gradually converging to a point" (per Ellenborough, C. J., *R.* v. *Metcalf*, 2 Starkie, 250); therefore, it was held in that case that, if a Patent is for a "tapering" brush and the Specification shows that the bristles of the brush would be of unequal length not converging to a point, the Patent is bad.

TARRY.—*V.* ELOPE.

TASTE.—*V.* VERTU.

TAUT.—*V.* TIGHT.

TAVERN.—*V.* ALEHOUSE: HOTEL, at end: PUBLIC HOUSE.

TAX.—*V.* TALLAGE: TAXES. *Cp*, IMPOST.

Quâ Taxes Management Act, 1880, 43 & 44 V. c. 19, "'Tax *Acts*,' means and includes, any Act or part of any Act relating to the Assessment, of any person land tenement heritage property or profits whatever, to the Income Tax or to the Inhabited House Duties" (s. 5).

TAXABLE.—Actual Value of a Railway "taxable"; *V. St. John* v. *Central Vermont Ry*, cited VALUE.

TAXATION.—*V.* DIRECT TAXATION: LOCAL TAXATION.

TAXED.—*V.* CHARGED: RATED OR ASSESSED.

TAXED CART.—*V. Williams* v. *Lear*, 41 L. J. M. C. 76; L. R. 7 Q. B. 285; 25 L. T. 906; 36 J. P. 644; dissenting from *Purdy* v. *Smith*, 28 L. J. M. C. 150; 1 E. & E. 511; 7 W. R. 306.

TAXED COSTS.—An agreement to pay a Solr's "Taxed Costs," means, *primâ facie*, that the Costs must be taxed by one of the Masters of the High Court (*Morgan* v. *West*, 14 L. J. Ex. 3; 13 M. & W. 388).

V. COSTS.

TAXES. — "When 'Taxes' are generally spoken of, — if the subject-matter will bear it, — they shall be intended Parliamentary Taxes given to the Crown" (per Holt, C. J., *Brewster* v. *Kidgill*, 12 Mod. 167: *Vf*, *R.* v. *Aylesford*, cited TALLAGE); and the word will include subsequent taxes of the same nature as those in being at the date of the document to be construed, but not those of a different nature (*Brewster* v. *Kidgill*, sup; nom. *Brewster* v. *Kitchin*, 1 Raym. Ld, 317; nom. *Brewster* v. *Kitchell*, 1 Salk. 198: *Vf*, Woodf. 590, 591).

The cases relating to covenants in Leases for payment of Taxes, RATES, ASSESSMENTS, IMPOSITIONS, BURDENS, CHARGES, DUTIES, and other OUTGOINGS, seem, at first sight, to run into one another; and it certainly needs a little care to harmonize them. Of course, as regards the ordinary public Taxes and the ordinary parochial Rates no difficulty of construction can well arise. Such payments would be covered by a covenant to pay Taxes and Rates. But there are a variety of things of a structural kind, — *e.g.* the cost of abating a nuisance, or of paving the path in front of the tenement, — which though primarily chargeable upon or payable by the landlord may, or may not, be thrown upon the tenant according to the more or less comprehensiveness of his covenant to pay the outgoings in respect of the property demised. It may, perhaps, be safely laid down that, where a case is not covered by authority, the growing tendency is not to throw exceptional burdens upon the tenant (espy where he holds at a rack-rent; *V.* per Jessel, M. R., *Allum* v. *Dickinson*, 52 L. J. Q. B. 191; 9 Q. B. D. 632), unless he has entered into a clear covenant to bear such burdens. And it is also probably true to say that such burdens are neither Taxes, nor Rates, nor are they "Assessments," nor (possibly) "Impositions," when those words are used in collocation with "Taxes" or "Rates" (*Hartley* v. *Hudson*, 48 L. J. C. P. 751; 4 C. P. D. 367: *Wilkinson* v. *Collyer*, 53 L. J. Q. B. 278; 13 Q. B. D. 1: *Tidswell* v. *Whitworth*, 36 L. J. C. P. 103; L. R. 2 C. P. 326): *Sv*, IMPOSITION.

The practical corollary to the last proposition is, that where a tenant's covenant only embraces "Taxes, Rates, and Assessments," he will not be liable, thereupon, to pay for exceptional works the costs of which are, by the legislature, imposed on the landlord.

But the tenant's covenant is frequently wider than this (containing, as they are sometimes called, Words of Indemnity), and it is then that difficulty arises. To solve a difficulty of this kind a somewhat close attention to the decided cases is needed. The leading case in favour of the landlord is *Thompson* v. *Lapworth*, whilst that for the tenant is *Tidswell* v. *Whitworth*. Both cases were decided by the same Court of C. P., consisting of Bovill, C. J., and Willes, Keating, and Montague Smith, JJ., — *Thompson* v. *Lapworth* being a few months later than *Tidswell* v. *Whitworth*. Both cases are dealt with inf.

Cases in Landlord's Favour:—

Where a lessee covenanted to pay rent free from "all parliamentary parochial and other rates, assessments, deductions, or abatements," and also to pay "all taxes, rates, *duties*, levies, assessments, and payments whatsoever which then were, or during the term might be, rated, levied, assessed, or imposed, upon or payable in respect of" the demised premises, he was held not entitled to deduct from his rent a payment made by him to a Local Board for paving, which but for the terms of the lease he would have been entitled to deduct (*Payne* v. *Burridge*, 12 M. & W. 727; 13 L. J. Ex. 190: *Va*, *Sweet* v. *Seager*, 2 C. B. N. S. 119, *whc* had the word "Burdens"). So, where the reservation of rent was "clear of all deductions in respect of land-tax, sewers-rate, and all other taxes, rates, and deductions, whatsoever," and the tenant covenanted to "pay and discharge all taxes, rates, *duties*, and assessments, whatsoever which during the continuance of this present demise shall be taxed, assessed, or imposed, *on the tenant or landlord*, of the premises hereby demised in respect thereof, whether parliamentary, parochial, or otherwise (except property or income-tax)"; held, that these words threw the cost of paving, under 18 & 19 V. c. 120, s. 105, and 25 & 26 V. c. 102, ss. 77 and 96, on the tenant (*Thompson* v. *Lapworth*, L. R. 3 C. P. 149; 37 L. J. C. P. 74; 16 W. R. 312: *Wix* v. *Rutson*, 1899, 1 Q. B. 474; 68 L. J. Q. B. 298: *Farlow* v. *Stevenson*, 1900, 1 Ch. 128; 69 L. J. Ch. 106; 81 L. T. 589; 48 W. R. 213); so of expense (under same statutes) of connecting house drains with sewer (*Clayton* v. *Smith*, 11 Times Rep. 374).

So, where the tenant covenanted to "bear pay and discharge" certain specified taxes and rates, "and all other taxes, rates, *duties*, and assessments, whatsoever, whether parliamentary, parochial, or otherwise, taxed, charged, rated, assessed, or imposed, upon the said demised premises or any part thereof *or upon the landlords or tenants* in respect thereof"; held, that the tenant was liable to pay the expense of abating a nuisance as directed by Justices by an Order obtained by a Sanitary Authority under s. 96, P. H. Act, 1875 (*Budd* v. *Marshall*, 50 L. J. C. P. 24; 5 C. P. D. 481: *Vf*, DUES); and a similar conclusion was reached where the covenant omitted the italicized words (*Brett* v. *Rogers*, 1897, 1 Q. B. 525; 66 L. J. Q. B. 287; 76 L. T. 26; 45 W. R. 334. *Vf*, IN RESPECT OF: *Antil* v. *Godwin*, cited OUTGOING, p. 1378).

So, where the tenant covenanted to pay "all rates, taxes, *charges*, and assessments, whatsoever which now are or may be charged or assessed upon the said premises or any part thereof, or *upon any person* or persons in respect thereof (land tax and property tax excepted)"; held, that the tenant was liable for the expense of sewering, levelling, paving, &c, a street, pursuant to s. 69, P. H. Act, 1848 (*Hartley* v. *Hudson*, 48 L. J. C. P. 751; 4 C. P. D. 367: *Cp*, *Rawlins* v. *Biggs*, inf), and so, of the

Cases in Landlord's Favour:—

expense of remedying a Nuisance arising from the drains of the house (*Smith* v. *Robinson*, 1893, 2 Q. B. 53; 62 L. J. Q. B. 509; 69 L. T. 434; 41 W. R. 588).

So, where the tenant covenanted "to bear pay and discharge the sewers' rate, tithes, rent-charge in lieu of tithes, and all other taxes, rates, assessments, and *outgoings*, whatsoever which at any time or times during the said demise should be taxed, rated, charged, assessed, or imposed, upon the said demised premises, or any part thereof, *or upon the landlord or tenant* in respect thereof, or on the rent thereby reserved"; held, that the tenant was liable to pay for the expense of connecting his house-drain with the main sewer, pursuant to s. 10, Sanitary Act, 1866, 29 & 30 V. c. 90 (*Crosse* v. *Raw*, 43 L. J. Ex. 144; L. R. 9 Ex. 209: *Vf*, OUTGOING). So, where the words were "IMPOSITIONS and Outgoings," that covered structural works done under the Factory and Workshop Act, 1891 (*Arding* v. *Economic Printing Co*, 79 L. T. 622).

Vf, *Waller* v. *Andrews*, cited SCOT.

Cases in Tenant's Favour.

But where the tenant covenanted "to pay and discharge all taxes, rates, assessments, and impositions, whatsoever (except property or income tax), *payable* IN RESPECT OF the demised premises"; held, that he was not liable to pay the expense of paving the street opposite his house, which, under the Manchester General Improvement Act, 1851, had been done by the Corporation, and charged to the landlord (*Tidswell* v. *Whitworth*, 36 L. J. C. P. 103; L. R. 2 C. P. 326, on *whcv*, *Farlow* v. *Stevenson*, sup). So, where the tenant covenanted to pay "all and all manner of taxes, rates, *charges*, assessments, and impositions, whatsoever (except land tax and landlord's property tax), at any time during the said term to be charged, assessed, or imposed, on the said premises thereby demised, or in respect thereof or of the said rent as aforesaid by authority of Parliament, or otherwise howsoever"; held, that he was not liable for the expense of abating a nuisance on the premises under the P. H. Act, 1875 (*Rawlins* v. *Biggs*, 47 L. J. C. P. 487; nom. *Rawlins* v. *Briggs*, 3 C. P. D. 368); and so of a like expense where the tenant covenanted to pay "all rates, taxes, and assessments, whatsoever which now are or during the said term shall be imposed or assessed upon the said premises, or *the landlord or tenant* in respect thereof, by authority of Parliament or otherwise (except the landlord's property tax)" (*Lyon* v. *Greenhow*, 8 Times Rep. 457). So, where (as in *Thompson* v. *Lapworth*, sup), a liability for the cost of paving, under the Metropolis Local Management Acts, was sought to be thrown on the tenant, the following words of his covenant were held insufficient for that purpose,—to pay "the sewers and main drainage

Cases in Tenant's Favour:—

rates and other district rates and assessments whatsoever, whether parliamentary, parochial, or otherwise, which now are or which at any time during the said term shall be taxed, rated, charged, assessed, or imposed, upon the said demised premises or any part thereof, or upon or payable *by the occupier or tenant* in respect thereof" (*Allum* v. *Dickinson*, 52 L. J. Q. B. 190; 9 Q. B. D. 632). And a like ruling, in reference to the same statutes and in respect of a similar cost, was arrived at where the tenant covenanted to pay "all rates, taxes, and assessments, payable in respect of the premises during the tenancy (except land tax and landlord's property tax)" (*Wilkinson* v. *Collyer*, 53 L. J. Q. B. 278; 13 Q. B. D. 1: *Baylis* v. *Jiggens*, 1898, 2 Q. B. 315; 67 L. J. Q. B. 793; 79 L. T. 78).

V. ASSESSED: CHARGED: IMPOSED: RATED OR ASSESSED: EXPENSES.

How the Cases may be Reconciled.

It will be observed that the covenant in *Payne* v. *Burridge*, *Thompson* v. *Lapworth*, *Budd* v. *Marshall*, and *Brett* v. *Rogers* threw on the tenant the burden of paying all "*Duties*"; and the comprehensiveness of that word is especially pointed out in the jdgmts of Bramwell and Baggallay, L. JJ., in *Budd* v. *Marshall*. In *Hartley* v. *Hudson* the tenant covenanted to pay all "Charges"; whilst in *Crosse* v. *Raw* and *Arding* v. *Economic Printing Co* there was the still more comprehensive word "Outgoings."

On the other hand, in the cases (except *Tidswell* v. *Whitworth* and *Rawlins* v. *Biggs*) where the tenant escaped, the covenant did not go beyond "Rates, Taxes, and Assessments" (as the controlling words), and exceptional payments of the kind under discussion are not comprised in either term of that phrase. As to *Tidswell* v. *Whitworth*, *V.* IMPOSITION.

Besides, in some of the landlord cases, the words of the tenant's covenants provided for the payment by him of the obligations, *whether charged on the landlord or tenant*; whilst in the tenant's cases (except *Baylis* v. *Jiggens* and *Lyon* v. *Greenhow*) the covenant was either silent as to this, or only embraced such obligations as were "payable by the occupier or tenant." The importance of this distinction is pointed out by Lindley, J., in *Hartley* v. *Hudson*; but in *Baylis* v. *Jiggens* (sup) Channell, J., referred to this distinction as a dictum only, and refused to hold the tenant liable though the words there were "rates, taxes, and assessments . . . which shall be imposed or assessed upon the premises, *or the landlord or tenant in respect thereof*, by authority of Parliament or otherwise": *Va*, *Lyon* v. *Greenhow*, sup. Indeed, it is difficult to see how such merely adjectival phrases as those just italicized can enlarge

How the Cases may be Reconciled:—

the essential meaning of the substantive words to which they are added so as to vary the meaning of those words.

It remains to notice *Rawlins* v. *Biggs* (one of the tenant's cases). *Hartley* v. *Hudson* shows that such an exceptional payment as now under discussion is a "Charge," and it seems a little difficult to see how the learned judge who decided *Hartley* v. *Hudson* was able to say in *Rawlins* v. *Biggs* that it was not "charged, assessed, or imposed, on the premises thereby demised, *or in respect thereof*."

As to Contracts in Leases as to Taxes, &c; *Vf*, CHARGED: Woodf. ch. 15 *et seq*: Redman, ch. 5, s. 16: Fawcett, ch. 4, s. 9.

It is held, in Ireland, that a Lessee's covenant to pay rent "clear and above all Taxes, Charges, and Impositions whatsoever (Quit Rent and Crown Rent excepted)," only includes charges on the property, and does not exonerate the Lessor from his liability, in Ireland, to a deduction for Poor Rate, that being a personal burden (*Palmer* v. *Power*, 4 Ir. Com. Law Rep. 191); and, by a like reason, where the Lessor covenants to pay "all Taxes, Charges, and Impositions," the Lessee cannot deduct a Local Improvement Rate levied on him under s. 167, Towns Improvement Clauses Act, for that also is a personal burden, and the Lessor is not liable to its deduction (*Gloster* v. *Murphy*, 1894, 2 I. R. 49). *Vf*, OVER AND ABOVE.

In Wills.

As to when a testamentary direction to pay Income free of Taxes will include Income Tax; *V.* DEDUCTION: 1 Jarm. 187, *n*. Such a direction will include Legacy Duty (*Louch* v. *Peters*, cited OUTGOING, p. 1380). As to exemption from apportionment of Estate Duty, *V. Fitzhardinge* v. *Jenkinson*, cited DEDUCTION, p. 485.

A direction, in a Will, to make deductions from the income of a tenant for life for "Taxes *or otherwise*," will include the cost of drainage works under s. 73, Metrop Man. Act, 1855 (*Re Crawley, Acton* v. *Crawley*, 54 L. J. Ch. 652; 28 Ch. D. 431; 52 L. T. 460; 33 W. R. 611; 49 J. P. 598).

"Rates, Taxes, and Deductions," quà a statutory sum in lieu of Tithes; *V. Chatfield* v. *Ruston*, cited OUTGOING, p. 1378.

V. PARLIAMENTARY: PAROCHIAL TAX: PUBLIC TAX.

TAXING MASTER.—Quà R. S. C. "'Taxing Master,' or 'Taxing Officer,' refers to and includes the Masters of the Supreme Court for the time being acting as Taxing Masters of the Taxing Department of the Central Office of the Supreme Court, or other person whose duty it is to tax costs in any Division or Department of the Supreme Court"

(R. 1, Ord. 71, as amended by R. S. C. January, 1902). Quà, Supreme Court Fund Rules, 1894, " 'Taxing Officer' means, Taxing Master in the Chancery Division of the Court, and the Master, or person whose duty it is to tax the Costs, in the other Divisions, or in Lunacy," it being added that, in causes and matters in a District Registry, " Taxing Officer " means District Registrar (R. 3: on *whv*, *Wilson* v. *Alltree*, 53 L. J. Ch. 989; 27 Ch. D. 242; 32 W. R. 897).

In a County Court, the Taxing Officer is the Registrar (s. 118, Co. Co. Act, 1888).

TAYLOR'S ACT. — Michael Angelo Taylor's Act, is 57 G. 3, c. xxix; *Vth, Gard* v. *Commrs of Sewers*, 54 L. J. Ch. 698; 28 Ch. D. 486; 52 L. T. 827: *Summers* v. *Holborn*, 1893, 1 Q. B. 612; 62 L. J. M. C 81; 68 L. T. 226; 41 W. R. 445; 57 J. P. 326: *Wyatt* v. *Gems*, 1893, 2 Q. B. 225; 62 L. J. M. C. 158; 69 L. T. 456; 42 W. R. 28; 57 J. P. 665: *Keep* v. *St. Mary, Newington*, 1894, 2 Q. B. 524; 63 L. J. Q. B. 369; 70 L. T. 509; 58 J. P. 748.

V. OBSTRUCT.

TEA. — Tea Dealer; *V. Fitz* v. *Iles*, cited COFFEE-HOUSE.

V. GREEN TEA.

TEACH AND INSTRUCT. — In the case of an outdoor apprenticeship there is an implication that the master is to perform his covenant " to teach and instruct " at the place where he and his apprentice and the latter's parent resided at the date of the deed (*Eaton* v. *Western*, 52 L. J. Q. B. 41; 9 Q. B. D. 636; 47 L. T. 593: over-ruling *Royce* v. *Charlton*, 8 Q. B. D. 1; 30 W. R. 274); but it would seem there would be no such implication in an indoor apprenticeship (*Eaton* v. *Western*, sup).

TEACHER. — Quà Elementary Education Act, 1870, 33 & 34 V. c. 75, " 'Teacher,' includes, assistant teacher, pupil teacher, sewing mistress, and every person who forms part of the educational staff of a school " (s. 3); quà Education (Scot) Act, 35 & 36 V. c. 62, the def is the same except that it adds and begins with " schoolmaster, schoolmistress " (s. 1).

V. CERTIFICATED: CLASSED.

TEAME. — *V.* THEME.

Team of Land; *V.* QUADRUGATA TERRÆ.

TEAM-WORK. — A lessee's covenant, in an Agricultural Lease, to provide " Team-work," extends to other than agricultural work, *e.g.* hauling coals; but it does not oblige the lessee to find a cart, plough, or other machine, that may be necessary for the performance of the work (*Marlborough* v. *Osborn*, 33 L. J. Q. B. 148; 5 B. & S. 67).

TEAR : TEARING. — A Will may be revoked by "tearing" it (s. 20, Wills Act, 1837), a word which includes "cutting." The "tearing," or "cutting," need not be of the whole Will; tearing or cutting off its principal part, *e.g.* either of the necessary signatures (*Hobbs* v. *Knight*, 1 Curt. 768), or even the seal, when it has been executed under seal (*Price* v. *Powell*, 3 H. & N. 341; nom. *Price* v. *Price*, 27 L. J. Ex. 409), is sufficient (1 Jarm. 141; *Va*, Ib. 131); but it is doubtful whether tearing in a fit of anger is a revocation, if the testator afterwards puts the pieces together as well as he can (*Re Colberg*, 2 Curt. 832), and if the tearing is only partial and (with the assent of the testator) is arrested before the material part of the Will is injured, there is no such tearing as will work revocation (*Doe* d. *Perkes* v. *Perkes*, 3 B. & Ald. 489). "Cutting out a particular clause, or the name of a legatee, is a revocation *pro tanto* only" (1 Jarm. 141). *Vh*, *Mills* v. *Millward*, 59 L. J. P. D. & A. 23; 15 P. D. 20.

Erasing the signature with a knife is a "tearing" that revokes (*Re Morton*, 56 L. J. P. D. & A. 96; 12 P. D. 141; 57 L. T. 501; 35 W. R. 735; 51 J. P. 680); but would that be so if the erasure were made with a pen?

V. DESTROY: CANCEL: BURN.

A tearing burning or destroying, effective to revoke, must be made by the testator or by his authority (*Re Leigh*, 61 L. J. P. D. & A. 124; 1892, P. 82: *Mills* v. *Millward*, sup: *Margary* v. *Robinson*, cited REVOKE).

V. WEAR AND TEAR.

TECHNICAL. — By s. 3, 54 & 55 V. c. 4, "Technical *Education*" in s. 1, Local Taxation (Customs and Excise) Act, 1890, includes both "Technical *Instruction*" and "Manual *Instruction*" within the meaning of the Technical Instruction Acts, of which phrases quà those Acts the def is as follows, —

"'Technical Instruction,' shall mean, instruction in the principles of Science and Art applicable to Industries, and in the application of special branches of science and art to specific industries or employments. It shall *not* include teaching the *practice* of any Trade or Industry or Employment; but, save as aforesaid, shall include, instruction in the branches of science and art with respect to which grants are, for the time being, made by the Department of Science and Art, and any other form of instruction (including modern languages, and commercial and agricultural subjects) which may, for the time being, be sanctioned by that Department by a Minute laid before Parliament, and made on the representation of a Local Authority that such a form of instruction is required by the circumstances of its district:

"'Manual Instruction,' shall mean, instruction in the use of tools, processes of agriculture, and modelling in clay wood or other material" (s. 8, 52 & 53 V. c. 76).

Those definitions are also provided for Scotland, with the addition that the sanction for Local Authority requirements may be, not only by the Department of Science and Art but also, "by the Scotch Education Department" (s. 4, 55 & 56 V. c. 63). *Vf*, 50 & 51 V. c. 64, s. 12.

For Wales and Ireland, the above definitions are blended, so that "Technical Education" quà Wales and "Technical Instruction" quà Ireland, include all that in the Acts for England and Scotland are called "Manual Instruction" as well as "Technical Instruction." So treated "Technical Instruction" quà the legislation for Ireland resembles (with some variations) that provided by 52 & 53 V. c. 76 (*V.* 62 & 63 V. c. 50, s. 30).

"Technical Education," quà Welsh Intermediate Education Act, 1889, 52 & 53 V. c. 40, "includes, instruction in —

"(i) Any of the branches of science and art with respect to which grants are for the time being made by the Department of Science and Art;

"(ii) The use of tools, and modelling in clay wood or other material;

"(iii) Commercial arithmetic, commercial geography, book-keeping, and shorthand;

"(iv) Any other subject applicable to the purposes of agriculture, industries, trade, or commercial life and practice, which may be specified in a scheme, or proposals for a scheme, of a Joint Education Committee as a form of instruction suited to the needs of the district;

but it shall *not* include teaching the *practice* of any Trade or Industry or Employment" (s. 17). *Cp*, INTERMEDIATE.

V. EDUCATION.

"Technical *School*," quà Technical Schools (Scot) Act, 1887, 50 & 51 V. c. 64, "means, a School, or department of a school, in which Technical Instruction is given" (s. 12).

TECHNICALITY. — *V.* EQUITY: FORMAL.

TEINDS. — "Court of Teinds"; *Scot.* 39 & 40 V. c. 11, s. 2.
V. FISH TEINDS.

TELEGRAM. — Quà, and by, s. 11, Post Office (Protection) Act, 1884, 47 & 48 V. c. 76, "'Telegram,' means, a written or printed MESSAGE or Communication sent to, or delivered at, a Post Office or the Office of a Telegraph Company, for transmission by TELEGRAPH; or delivered by the Post Office or a Telegraph Company as a message or communication transmitted by telegraph."

Quà Telegraph Act, 1869, 32 & 33 V. c. 73, "'Telegram,' shall mean, any Message or other Communication transmitted or intended for trans-

mission, by a Telegraph" (s. 3); that def is adopted for Electric Lighting Act, 1882, 45 & 46 V. c. 56 (s. 32).

V. POST LETTER.

TELEGRAPH. — Quà Telegraph Acts, "Telegraph," "means, a wire or wires used for the purpose of telegraphic communication, with any casing coating tube or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication"; and includes "any apparatus for transmitting messages or other communications by means of electric signals" (26 & 27 V. c. 112, s. 3; 32 & 33 V. c. 73, s. 3); a def adopted for and by s. 11, 47 & 48 V. c. 76 (*V.* TELEGRAM).

That def includes a Telephone (*A-G.* v. *Edison Telephone Co*, 50 L. J. Q. B. 145; 6 Q. B. D. 244; 43 L. T. 697; 29 W. R. 428). "The result of the definition seems to be that, any apparatus for transmitting MESSAGES by electric signals, is a Telegraph, whether a wire is used or not, and that any apparatus of which a wire used for telegraphic communication is an essential part, is a Telegraph, whether the communication is made by electricity or not. It would include, on the one hand, electric signals made, if such a thing were possible, from place to place, through the earth or the air; and, on the other hand, a set of common bells worked by wires pulled by the hand, if they were so arranged as to constitute a code of signals. . . . The various affidavits filed give a complete history of the word 'Telegraph,' and show that, from the first invention of semaphores till within the last few years, no contrivance of the sort did literally write at a distance, but that the word was applied to a variety of contrivances which, by signals perceptible sometimes by the sense of sight and sometimes by the sense of hearing, conveyed intelligence to great distances in a much shorter time than a letter could be carried" (per Stephen, J., delivering the jdgmt *S. C.* 50 L. J. Q. B. 147, 148; 6 Q. B. D. 249).

"The Telegraph *Acts*, 1863 to 1892"; *V.* Sch 2, Short Titles Act, 1896.

"Telegraph *Company*"; *V.* 32 & 33 V. c. 73, s. 3; 47 & 48 V. c. 76, s. 11.

Telegraph *Post*; *V.* POST.

Vh, 12 Encyc. 87–94.

TELEGRAPHIC AUTHORITY. — When a Shipbroker signs a Charter-Party as Agent for a named principal "by Telegraphic Authority," it is well understood in the trade that he negatives an implication of a warranty of the extent of his authority further than warranting that he has had a telegram which, if correct, authorizes such a Charter as that which he is signing (*Lilly* v. *Smales*, 1892, 1 Q. B. 456; 40 W. R. 544).

TELEGRAPHIC LINE. — Quà Telegraph Acts, "'Telegraphic Line,' means, telegraphs, posts, and any work (within the meaning of the Telegraph Act, 1863), and also any cables, apparatus, pneumatic or other tube, pipe, or thing whatsoever, used for the purpose of transmitting telegraphic MESSAGES, or maintaining telegraphic communication; and includes, any portion of a telegraphic line" as above defined (s. 2, 41 & 42 V. c. 76); a def adopted for Electric Lighting Act, 1888, 51 & 52 V. c. 12 (subs. 5, s. 4), and for Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19 (Sch, s. 1), which latter also provides that a Telegraphic Line "shall be deemed to be INJURIOUSLY AFFECTED, where telegraphic communication by means of that line is, whether through induction or otherwise, in any manner affected."

TELEPHONE. — *V.* MESSAGE: TELEGRAPH: TRANSMIT.

TEMPERANCE. — Temperance Hotel; *V.* HOTEL: INN.

TEMPERATE. — *V.* SOBER AND TEMPERATE HABITS: STRICTLY TEMPERATE.

TEMPEST. — "Damage by Tempest"; *V.* WEAR AND TEAR.

TEMPORAL. — Corporation Temporal; *V.* CORPORATION.

A Testamentary gift of "Temporal *Effects*," held to include realty (*Re Sheridan*, 17 L. R. Ir. 179).

"Temporal *Estate*" is synonymous with WORLDLY ESTATE. *Vf*, *Tanner* v. *Wise*, 3 P. Wms. 295; nom. *Tanner* v. *Morse*, Ca. t. Talb. 284: *Grayson* v. *Atkinson*, 1 Wils. 333, *whlc* is commented on 1 Jarm. 724. These cases show that a devise of all testator's "Temporal Estate," or "Worldly Estate," would even before s. 28, Wills Act, 1837, pass the FEE SIMPLE.

"'*Law* temporall.' Which consisteth of three parts, viz. First, on the Common Law, expressed in our bookes of law, and judiciall records. Secondly, on Statutes contained in acts and records of parliament. And thirdly, on Customes grounded upon reason, and used time out of minde; and the construction and determination of these doe belong to the judges of the realme" (Co. Litt. 344 a). *Cp*, "Law spiritual," sub SPIRITUAL.

TEMPORALITY. — "Temporalities of Bishops, *Temporalia Episcoporum*, be such revenues lands and tenements, and lay fees, as have been laid to Bishops Sees by Kings and other great Personages of this Land from time to time, as they are Barons and Lords of the Parliament" (Cowel).

Quà Bishops Resignation Act, 1869, 32 & 33 V. c. 111, "'Temporalities,' shall include, all real and personal property held by any Archbishop or Bishop, as such, and all fees and emoluments receivable by him by

virtue of his office: 'Spiritualities,' shall include, all episcopal and other jurisdiction, of whatever description, exerciseable by an Archbishop or Bishop" (s. 14).

V. SPIRITUALITY.

TEMPORARY. — What is a HOLDING let "for the Temporary *Convenience*, or to meet a Temporary *Necessity*" of Landlord or Tenant which (by subs. 7, s. 58) is excepted from Land Law (Ir) Act, 1881, is a mixed question of law and fact in each case, the purpose or motive of the letting being within the knowledge of both parties at the time of making the contract (*Driscoll* v. *Riordan*, 16 L. R. Ir. 235). *Vf, Butterly* v. *Carroll*, 26 L. R. Ir. 93: *Mooney* v. *Willcocks*, 28 Ib. 113: *Hughes* v. *Doyne*, 32 Ib. 31.

A Temporary NUISANCE gives a Reversioner no cause of action; *Vh, Mumford* v. *Oxford, &c, Ry*, 25 L. J. Ex. 265; 1 H. & N. 34: *Mott* v. *Shoolbred*, 44 L. J. Ch. 380; L. R. 20 Eq. 22: *Jones* v. *Chappell*, 44 L. J. Ch. 658; L. R. 20 Eq. 539: *Cooper* v. *Crabtree*, 51 L. J. Ch. 544; 20 Ch. D. 589.

RESIDENCE for a "Temporary *Purpose*," quà Income Tax Acts; *V. A-G.* v. *Coote*, 4 Price, 183.

Temporary Stop; *V.* SUSPEND: SUSPENSE.

Cp, PERMANENT: TERMINATING.

TENANCY. — Quà Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, "'Tenancy,' means, the interest in a HOLDING of a Tenant, and his successors in title, during the continuance of a tenancy; and 'Rent of a Tenancy,' means, the rent for the time being payable by such tenant or some one or more of his successors" (s. 57); a def adopted for 55 & 56 V. c. 65 (s. 7).

"Contract of Tenancy"; *V.* YEAR TO YEAR.

V. FUTURE: JOINT TENANCY: ORDINARY TENANCY: PRESENT: STATUTORY: TENANT IN COMMON.

TENANCY IN COMMON. — *V.* TENANT IN COMMON.

TENANT. — In its feudal acceptation, "Tenant" has five significations; it signifies (1) the Estate held; (2) the TENURE of the land; (3) Performance of the obligations; (4) to be bound; and (5) "to deeme or judge" (Co. Litt. 1 a, b: *Vf*, 2 Bl. Com. ch. 5).

These significations remain quà COPYHOLD land and, to some extent, in the familiar relationship of Landlord and Tenant; but "Tenant" has come to mean, in its primary signification, ownership, one who holds or owns realty, and in that sense the word is usually associated with other words denoting the quality of the ownership, *e.g.* Tenant in FEE SIMPLE, Tenant in TAIL, TENANT FOR LIFE, TENANT FOR YEARS, Tenant PUR AUTRE VIE, TERRE TENANT: VASSAL.

Quà Copyhold Act, 1894, 57 & 58 V. c. 46, "'Tenant'—

"(*a*) includes, all persons holding by Copy of Court Roll, or as Customary Tenants, or holding land subject to any manorial right or incident, and whether the land is held to them and their heirs or to two or more in succession, or for life or lives or years, and whether the land is held of a manor or not; and

"(*b*) includes, a surrenderee by way of mortgage, under a surrender entered on the Court Rolls, in possession or in receipt of the rents and profits of the land; and

"(*c*) where land is held in undivided shares, means, the person, for the time being, in receipt of at least two-thirds of the value of the rents and profits of the land" (s. 94).

Quà Purchase of Land (Ir) Act, 1885, 48 & 49 V. c. 73, "Tenant," includes, "a tenant holding under a FEE FARM grant" (s. 26).

In the ordinary relationship of Landlord and Tenant, "a Tenant is a person who holds of another; he does not, necessarily, occupy. In order to occupy, a party must be personally resident by himself or his family" (per Littledale, J., *R.* v. *Ditcheat*, 9 B. & C. 183); *Sv*, as to the latter sentence, OCCUPATION.

The assignee of a lessee (*Doe* d. *Whitfield* v. *Roe*, 3 Taunt. 402: *Williams* v. *Bosanquet*, 1 Brod. & B. 238), or a sub-lessee (*Doe* d. *Wyatt* v. *Byron*, 14 L. J. C. P. 207; 1 C. B. 623; 3 Dowl. & L. 31), was a "tenant" within s. 210, Com. L. Pro. Act, 1852; and so of ss. 172, 173, Ib., and R. 25, Ord. 12, R. S. C.: *Vh*, LANDLORD.

Quà Agricultural Holdings (England) Act, 1883, 46 & 47 V. c. 61, "'Tenant,' *means*, the holder of land, under a landlord, for a term of years, or for lives, or for lives and years, or from year to year"; and "*includes*, the exors, admors, assigns, legatee, devisee, or next-of-kin, husband, guardian, committee of the estate or trustees in bankruptcy, of a tenant, or any person deriving title from a tenant; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of such exors, admors, assigns, and other persons as aforesaid" (s. 61). In ss. 1–28, and s. 57, "Tenant," means, "a Tenant claiming compensation *under this Act*" (per Smith, L. J., *Newby* v. *Eckersley*, 68 L. J. Q. B. 264), and although s. 57 says that a tenant shall not claim "OTHERWISE than in manner authorized by this Act," that only relates to a Claim made under the Act, and not where the claim is based on an outside agreement (*S. C.*, 1899, 1 Q. B. 465; 68 L. J. Q. B. 261; 80 L. T. 314; 47 W. R. 245: *Re Pearson and I'Anson*, 1899, 2 Q. B. 618; 68 L. J. Q. B. 878; 81 L. T. 289; 48 W. R. 154; 63 J. P. 677). *Cp*, LANDLORD: *V.* HOLDING.

Quà Agricultural Holdings (Scotland) Act, 1883, 46 & 47 V. c. 62, "'Tenant,' *means*, the holder of land under a LEASE," and "*includes*, the exors, admors, assignees, legatee, disponee, or next-of-kin, husband,

guardian, curator bonis, or trustees in bankruptcy, of a tenant" (s. 42). *Cp*, LANDLORD.

"Tenant" has also received statutory definition in and for the following Acts;—

Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 V. c. 26; *V.* s. 4:

Railway Rolling Stock Protection Act, 1872, 35 & 36 V. c. 50; *V.* s. 2:

Removal Terms (Scot) Act, 1886, 49 & 50 V. c. 50; *V.* s. 3:

Sheriff Courts (Scot) Act, 1853, 16 & 17 V. c. 80; *V.* s. 50.

For the Stat. Defs. relating to the Land Laws for Ireland, *V.* 23 & 24 V. c. 153, s. 34, c. 154, s. 1; 33 & 34 V. c. 46, s. 70; 34 & 35 V. c. 92, s. 1; 44 & 45 V. c. 49, s. 57 (on *whv*, *Cowell* v. *Buchanan*, 30 L. R. Ir. 382); 55 & 56 V. c. 65, s. 7; 59 & 60 V. c. 47, s. 48.

To occupy "as Tenant," within the Acts conferring the parliamentary franchise, involves the idea of some permanent occupation (*e.g.* a Market Stall, *Hall* v. *Metcalfe*, cited OCCUPATION, p. 1313) and independent interest, and "excludes some occupations of less independence, such as of servants for their service, *e.g.* the porter to a lodge, the gardener at a dwelling in the garden, and also such as that of a surgeon to a hospital of rooms therein (*Dobson* v. *Jones*, 5 M. & G. 112; 13 L. J. C. P. 126), also the occupation of premises by objects of a charity, occupying under the permission of the trustees of the charity as in *Heartley* v. *Banks* (28 L. J. C. P. 144; 5 C. B. N. S. 40; 7 W. R. 342), and *Davis* v. *Waddington* (7 M. & G. 37; 14 L. J. C. P. 45)" (per Erle, C. J., *Cook* v. *Humber*, 31 L. J. C. P. 77; 11 C. B. N. S. 33). *Vf*, *Rogers* v. *Harvey*, 5 C. B. N. S. 3; 28 L. J. C. P. 17; 7 W. R. 17: *Smith* v. *Seghill*, L. R. 10 Q. B. 422; 44 L. J. M. C. 114: *Hughes* v. *Chatham*, 1 Lutw. 57; 5 M. & G. 54; 13 L. J. C. P. 44: *Bridgewater* v. *Durant*, 11 C. B. N. S. 7: *Fryer* v. *Bodenham*, L. R. 4 C. P. 529; 38 L. J. C. P. 185; 19 L. T. 645: *Durant* v. *Carter*, 43 L. J. C. P. 17; L. R. 9 C. P. 261, *vthlc*, *Rowland* v. *Pritchard*, 62 L. J. Q. B. 319; 68 L. T. 586: *Ford* v. *Pye*, 43 L. J. C. P. 21; L. R. 9 C. P. 269: *Hollands* v. *Chambers*, 32 L. R. Ir. 156: Rogers, Part 1, ch. 2. *Sv*, SERVICE.

Bankruptcy, does not deprive a tenant of his status of Occupation "as Tenant," quâ the franchise, if, in fact, his occupation goes on undisturbedly and he continues paying the rent as before (*Mackay* v. *McGuire*, 1891, 1 Q. B. 250; 60 L. J. Q. B. 24; 64 L. T. 83; 39 W. R. 109; 55 J. P. 214).

"*Tenant or Occupier*," entitled to vote for Conservators, s. 15, Wimbledon and Putney Commons Act, 1871; *V. Purves* v. *Wimbledon Common Conservators*, 62 L. T. 529.

"Tenant whose term has expired"; *V.* EXPIRE.

V. DESIRABLE.

TENANT AT WILL.—"Tenant at Will is, where lands or tenements are let by one man to another, to have and to hold to him at the

will of the lessor, by force of which lease the lessee is in possession" (Litt. s. 68; *Vth*, Co. Litt. 55 a). *Vh*, *Wright* v. *Tracey*, and *Brew* v. *Conole*, cited LESS. *Cp*, SUFFERANCE.

"Tenant at Will," s. 7, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27, "applies to Tenant at Will simply, and does not include a tenancy where there is a clog upon the lessor exercising his will" (per Esher, M. R., *Warren* v. *Murray*, 1894, 2 Q. B. 648; 64 L. J. Q. B. 42; 71 L. T. 458; 43 W. R. 3), *e.g.* a right in equity to demand a lease for a term of years. *Vf*, "Cestui que trust," sub CESTUI.

TENANT BY THE CURTESY.—*V.* CURTESY.

TENANT FOR LIFE.—A Tenant for Life is, as the phrase implies, one who is entitled to the benefit of property for the term of his, or some other person's, life. "Estates for Life, expressly created by deed or grant, are where a lease is made of lands or tenements to a man, to hold for the term of his own life, or for that of any other person, or for more lives than one: in any of which cases he is stiled Tenant for Life; only, when he holds the estate by the life of another, he is usually called Tenant PUR AUTRE VIE" (2 Bl. Com. 120, cited by Chitty, J., *Blaydes* v. *Selby*, 7 Times Rep. 567), —a def which is not confined to an estate under a lease, but applies whatever be the document creating the estate.

V. LIVE AND RESIDE: RENT FREE: RESIDE.

Quà Settled Land Act, 1882, "The person who is for the time being, under a Settlement, beneficially entitled to POSSESSION of Settled LAND for his life, is, for the purposes of this Act, the Tenant for Life of that land, and the Tenant for Life under that settlement" (subs. 5, s. 2): *Va*, s. 58, Ib., for an enumeration of other limited owners who have like powers under the act as Tenants for Life. Speaking broadly, the result of these enactments is that the person intended to have the INCOME of the land, is the Tenant for Life for the time being (Co. Litt. 42 a, cited by North, J., *Re Carne*, cited OCCUPATION, p. 1312: *Re Jones*, 53 L. J. Ch. 807; 26 Ch. D. 736: *Sv*, *Re Edwards*, cited OCCUPATION); and though his title be only equitable he should (subject to reasonable safeguards) be let into possession and have the custody of the deeds (*Re Wythes*, 1893, 2 Ch. 369; 62 L. J. Ch. 663; 68 L. T. 520; 41 W. R. 375): *Vf*, *Hope* v. *D'Hedouville*, 1893, 2 Ch. 361; 62 L. J. Ch. 589; 68 L. T. 516; 41 W. R. 330.

As to those who are, or have the powers of, a Tenant for Life under S. L. Act, 1882, ss. 58–63 (and quà s. 63, V. s. 7, S. L. Act, 1884); *V Re Jones*, sup: *Re Buccleuch*, 54 L. J. Ch. 401; 55 Ib. 107; 31 Ch. D. 135; 53 L. T. 733; 34 W. R. 169, followed *Re Richardson*, 1900, 2 Ch. 778; 69 L. J. Ch. 804: *Re Searle*, 1900, 2 Ch. 829; 69 L. J. Ch. 712; 83 L. T. 364: *Williams* v. *Jenkins*, 1893, 1 Ch. 700; 62 L. J. Ch. 665; 68 L. T. 251; 41 W. R. 489: *Vine* v. *Raleigh*, *No. 2*, 1896, 1 Ch. 37;

65 L. J. Ch. 103; 73 L. T. 655: *Re Pocock and Prankerd*, 1896, 1 Ch. 302; 65 L. J. Ch. 211; 73 L. T. 706; 44 W. R. 247.

On the contrary; *V. Re Hazle*, 53 L. J. Ch. 574; 54 Ib. 628; 29 Ch. D. 78; 52 L. T. 947; 33 W. R. 759: *Re Atkinson*, 31 Ch. D. 577; 54 L. T. 403; 34 W. R. 445: *Re Strangways*, 34 Ch. D. 423; 56 L. J. Ch. 195; 55 L. T. 714; 35 W. R. 83, *svthle* distd, *Re Martyn*, 69 L. J. Ch. 733; 83 L. T. 146: *Re Horne*, 39 Ch. D. 84; 57 L. J. Ch. 211; 58 L. T. 103; 36 W. R. 348: *Re Edwards*, sup. *Re Hazle* was on the phrase "Tenant for years determinable on Life."

Note. The powers of a Tenant under the S. L. Acts, are not to be prohibited or curtailed (s. 51, S. L. Act, 1882): *V.* INDUCE.

Quà, and by, s. 6, Land Transfer Act, 1897, 60 & 61 V. c. 65, "Tenant for Life" has "the same meaning as in the Settled Land Acts, 1882 to 1890"; so, quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66 (s. 95).

"Tenant for Life," s. 24, Sewers Act, 1833, 3 & 4 W. 4, c. 22, is not confined to a person holding for his own life but, includes a tenant PUR AUTRE VIE (*Blaydes* v. *Selby*, 7 Times Rep. 567).

V. "Tenant in Tail after possibility of issue extinct," sub TAIL.

As to the phrase "Tenant for life *in possession*"; *V. Re Wright to Marshall*, 54 L. J. Ch. 60; 28 Ch. D. 93; 51 L. T. 781; 33 W. R. 304.

As to constructive Gift Over on death of Tenant for Life; *V.* DEATH.

As to date of ascertaining person to take after a Tenant for Life; *V.* DEATH: WIFE.

Vh, 2 Bl. Com. ch. 8: Wms. R. P., Part 1, ch. 1: Goodeve, ch. 2: 7 Encyc. 424–436.

TENANT FOR YEARS.—"If tenements be let to a man for terme of halfe a yeare, or for a quarter of a yeare," he is a Tenant for Years (Litt. s. 67); but, *semble*, that was an old ruling quà the Writ of Waste (Co. Litt. 54 b). Ordinarily, nothing less than a yearly tenancy will satisfy the phrase "Tenant for years," or "Tenant for a term of years." Thus, a yearly tenancy is enough quà Landlord and Tenant Act, 1730, 4 G. 2, c. 28, s. 1 (*Lake* v. *Smith*, 1 B. & P. N. R. 174); but not a weekly tenancy (*Lloyd* v. *Rosbee*, 2 Camp. 453), nor a quarterly tenancy (*Wilkinson* v. *Hall*, 3 Bing. N. C. 531).

V. YEAR TO YEAR.

TENANT IN COMMON.—"Tenants in Common are they, which have lands or tenements in fee simple, fee taile, or for terme of life, &c, and they have such lands or tenements by severall titles, and not by a joynt title, and none of them know of this his severall, but they ought by the law to occupie these lands or tenements in common, and *pro indiviso* to take the profits in common. And because they come to such lands or tenements by severall titles, and not by one joynt title, and their occupa-

tion and possession shall be by law between them in common, they are called Tenants in Common" (Litt. s. 292).

"A limitation to, or trust for, several, either nominatim or as a class, with any words implying a distinctness of interest, makes them tenants in common: Co. Litt. 188 b" (Elph. 284: *Vf*, 2 Jarm. ch. 32), *e.g.* EQUALLY: SHARE AND SHARE ALIKE. They take PER CAPITA.

V. JOINT TENANT: PARTNERSHIP: RECEIVING.

TENANT IN TAIL. — Tenant in Tail "is where a man holdeth certaine lands or tenements to him and to his heires of his body begotten" (Termes de la Ley, *Taile*). *V.* HEIR: HEIRS OF THE BODY: TAIL.

Quà Fines and Recoveries Act, 1833, "'Tenant in Tail,' shall mean, not only an ACTUAL TENANT IN TAIL, but also a person who (where an Estate Tail shall have been barred and converted into a BASE Fee) would have been Tenant of such estate tail if the same had not been barred" (s. 1).

Quà the same Act, "'Tenant in Tail *entitled to a Base Fee*,' shall mean, a person entitled to a Base Fee, or to the ultimate beneficial interest in a Base Fee, and who (if the Base Fee had not been created) would have been Actual Tenant in Tail" (s. 1).

"Tenant in Tail after possibility of issue extinct"; *V.* TAIL.

TENANT-RIGHT. — Away-going future crops fall strictly within the meaning of the words "Tenant-Right yet to come," as contained in a Bill of Sale (*Petch* v. *Tutin*, 15 L. J. Ex. 280).

Vh, 12 Encyc. 98–111.

TENANT'S FIXTURES. — *V.* FIXTURES.

TENANTABLE REPAIR. — Under an obligation to keep premises in "Tenantable Repair," decorative repair is not included; papering, always, and painting, unless needed for the protection of the property, are decorative repairs; nor does the obligation extend to repairing, or restoring, what is worn out by age (*Crawford* v. *Newton*, 36 W. R. 54: *Proudfoot* v. *Hart*, 59 L. J. Q. B. 389; 25 Q. B. D. 42: *Vf*, *Wood* v. *Walsh*, and *Stanley* v. *Towgood*, cited REPAIR); but Waste, whether voluntary or permissive is a breach of the obligation (*Proudfoot* v. *Hart*, sup). "I entirely agree with what was said by Lopes, L. J., in the course of the argument, that 'Good Tenantable Repair of a house, is such repair as (taking into account the age of the house, the character of the house, and the locality in which the house is situated) a reasonably minded tenant of the class of tenants who would be likely to want such a house might reasonably require in order to make the house fit for his occupation'" (per Esher, M. R., *Proudfoot* v. *Hart*, sup).

Vf, *Moxon* v. *Townsend*, 2 Times Rep. 717: per Brett, L. J., *Truscott* v. *Diamond Rock-Boring Co*, cited NECESSARY, p. 1254.

Cp, GOOD CONDITION: GOOD REPAIR: PERFECT REPAIR: REPAIR.

TEND. — " Tending to induce "; *V.* INDUCE.

TENDER. — " ' *To tender* (de tender),' or *tendre*, is a word common both to the *English* and *French*, in *Latine offerre*; and in that sense, and with that *Latyn* word it is alwayes used in the common law " (Co. Litt. 211 a). *Vf*, Cowel.

As to requisites of a Tender, *V.* Co. Litt. 207 a, 208 a: Rosc. N. P. 701–705: 12 Encyc. 117–121: *Blumberg* v. *Life Interests Corp*, 1897, 1 Ch. 171; 1898, 1 Ch. 27; 66 L. J. Ch. 127; 67 Ib. 118; 77 L. T. 506: UNDER PROTEST.

All the precision of a strict legal Tender is not required in " tendering " Rates to Overseers under s. 30, Rep People Act, 1832 (per Maule, J.); but merely saying " I am prepared to pay them " is not sufficient (*Bishop* v. *Smedley*, 15 L. J. C. P. 73; 2 C. B. 90).

In R. 48, 49, and 50, Ord. 39, B, County Court Rules, 1892, " Tender " and " Payment into Court " are used as convertible terms (*The Vulcan*, cited FINAL DECREE).

" Making or tendering "; *V.* SATISFACTION.

On a Sale by Tender, " a Tender ought to be something which takes effect of itself and binds the tenderer in any event " (per Rigby, L. J., *South Hetton Coal Co* v. *Haswell Co*, 67 L. J. Ch. 239); therefore, where an Invitation for tenders states that " the *Highest Net Money Tender* " will be accepted, the inviter is not bound to accept an offer of " such a sum as will exceed by (a stated amount) the amount offered " by any other tenderer (*S. C.*, 1898, 1 Ch. 465; 67 L. J. Ch. 238; 78 L. T. 366; 46 W. R. 355). *Vf*, SUBJECT TO.

" Tender his Vote "; *V.* VOTE.

TENEMENT. — A Tenement, is a HOLDING of real property, — using the word " holding " in its wide meaning of the possession of realty, or of something issuing out of or being part of realty, and not as restricted by any statutory interpretation.

" ' Tenement,' includeth, not only all corporate inheritances, which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to or exercisible within the same . . . as, Rents, Estovers, Commons, or other Profits whatsoever, granted out of land " (Co. Litt. 20 a; applied in *Martyn* v. *Williams*, and *Hastings* v. *N. E. Ry*, cited LEASEHOLD REVERSION). *Vf*, inf.

" 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: *Vf*, Co. Litt. 6 a, 19 b, 20 a). And it is said that " by the grant of all Tenements, will pass as much as by the grant of all Hereditaments " (Touch. 91); but hereon Preston, in his Ed. of the Touchstone, says " this proposition is too general," and Ld Coke says that " Tenement " is a large word to grant realty, but " HEREDITAMENT " is the largest (1. Inst. 6).

"'Tenement,' though in its vulgar acceptation it is only applied to houses and other buildings, yet in its original, proper, and legal sense, it signifies everything that may be holden, provided it be of a permanent nature; whether it be of a substantial and sensible, or of an unsubstantial ideal kind" (2 Bl. Com. 16, cited by Ld Chelmsford, *Beauchamp* v. *Winn*, L. R. 6 H. L. 241: *Va*, Touch. 91). Thus, this word will include a Rabbit WARREN (*R.* v. *Piddletrenthide*, 3 T. R. 772), or an ADVOWSON (*Westfaling* v. *Westfaling*, 3 Atk. 460: *Gully* v. *Exeter, Bp.*, 4 Bing. 290; 5 L. J. O. S. C. P. 178: *Sv, Kensey* v. *Langham*, Ca. t. Talb. 145 n. *e*), or statutory local Coal Duties (per Martin, B., *A-G.* v. *Black*, L. R. 6 Ex. 82); and may include TITHES (*Powell* v. *Bull*, 1 Comyn, 265: *R.* v. *Skingle*, 1 Stra. 100: *R.* v. *Barker*, 6 A. & E. 388: *R.* v. *Ellis*, 3 Price, 323: *Sv, R.* v. *Nevill*, 8 Q. B. 452; 15 L. J. M. C. 33); and includes a PROFIT À PRENDRE (*Doe* d. *Hanley* v. *Wood*, 2 B. & Ald. 724: *Muskett* v. *Hill*, 5 Bing. N. C. 694; 9 L. J. C. P. 201: *Martyn* v. *Williams*, 26 L. J. Ex. 117; 1 H. & N. 817). So, "a DIGNITY, whether it be granted of a place or not, is a 'Tenement' within the Statute De Donis, and consequently not forfeited on an attainder for felony" (per Chitty, J., *Re Rivett-Carnac's Will*, 54 L. J. Ch. 1076; 30 Ch. D. 136, citing *R.* v. *Knollys*, 2 Salk. 509; 1 Raym. Ld, 10, and *Ferrer's Case*, 2 Eden, 373: *Sv* this decision adversely criticized, Hood & Challis on Conveyancing, 6 ed., 277).

A Freehold RENT CHARGE, is within the words "Freehold Lands, or Tenements," in s. 18, Rep People Act, 1832 (*Druitt* v. *Christchurch*, Colt. Reg. Ca. 328: *Dodds* v. *Thompson*, L. R. 1 C. P. 133; 35 L. J. C. P. 97; 14 W. R. 476).

"An annuity in fee, not being a rent charge, is an Hereditament, but not a Tenement; neither is a Condition a Tenement, but it is an Hereditament, 3 Rep. 2; 2 Bl. Com. 17; Salk. 239"; Tenement "doth not comprehend a personal Annuity in fee; and an Annuity for life is neither a Tenement or Hereditament; and an Office for life is a Tenement, and not an Hereditament" (Preston's Addns. to Touch. 91).

On the other hand, "Tenement" sometimes receives its popular meaning of "HOUSE" (*Yorkshire Insrce* v. *Clayton*, 51 L. J. Q. B. 82; 8 Q. B. D. 421). "The common people still use the word, as in the days of Blackstone, to mean a House" (per Cotton, L. J., *Dashwood* v. *Ayles*, 55 L. J. Q. B. 10); or it may, even now, sometimes be the equivalent of "Dwelling-house" (*Minifie* v. *Banger*, 55 L. J. Q. B. 10; W. N. (85) 189: per Bramwell, B., *Cornish* v. *Cleife*, 3 H. & C. 450, 451; 34 L. J. Ex. 21).

"With respect to the word 'tenements' or *tenementa*, in Co. Litt. 20 a, it is stated, 'This is the only word which the said Statute of Westm. 2, that created estates taile, useth; and it includeth not only all corporate inheritances, which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to or exercis-

ible within the same, though they lie not in tenure, therefore all these without question may be intailed.' That is a proper legal definition of 'Tenement.' I think 'Tenement,' when used at all in connection with a house or room, must mean something of the same kind, or of the same character, and a thing absolutely immoveable from the land" (per Martin, B., *Fredericks* v. *Howie*, 31 L. J. M. C. 249; 1 H. & C. 381; 6 L. T. 544: *Vf, R.* v. *Manchester W. W. Co*, 1 B. & C. 630: *R.* v. *East London W. W. Co*, 21 L. J. M. C. 49; 17 Q. B. 512: *Colebrooke* v. *Tickell*, 4 A. & E. 916; 5 L. J. K. B. 180: *Sv, R.* v. *Shrewsbury Gas Co*, 1 L. J. M. C. 18; 3 B. & Ad. 216). In *Fredericks* v. *Howie*, it was held that a portable booth used by strolling players is not a "Tenement," within s. 46, Metropolitan Police Act, 1839, 2 & 3 V. c. 47, which prohibits keeping, &c, "any House *or other Tenement*" as an unlicensed theatre. *V.* PLACE, p. 1484.

So, "Tenement" in s. 167, Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, means, property capable of visible and physical occupation, and does not include a Several Fishery (*Redington* v. *Millar*, 24 L. R. Ir. 65); and, *semble*, "Tenements," in s. 87 of the same Act, does not include Manufactories (*Lyndon* v. *Standbridge*, 26 L. J. Ex. 386; 2 H. & N. 45).

"Tenement," s. 3, Lands C. C. Act, 1845, as affected by its context "of any Tenure"; *V. G. W. Ry* v. *Swindon & Cheltenham Ry*, cited HEREDITAMENT, p. 869. *Vf*, TENURE.

"Lands, Tenements, and Heredits," 27 Eliz., c. 4, includes Copyholds (*Doe* d. *Tunstill* v. *Bottriell*, 5 B. & Ad. 131).

"Lands, Tenements, or Heredits," s. 4, Land Tax Act, 1797, 38 G. 3, c. 5, does not include a Water Co's Mains (*Chelsea W. W. Co* v. *Bowley*, 17 Q. B. 358; 20 L. J. Q. B. 520); but those words do comprise the arched tunnel of the Metropolitan 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). *Vh, Southport* v. *Ormskirk*, cited EASEMENT, p. 596.

For a collection of cases on "Tenement" as used in Poor Relief Act, 1662, 13 & 14 Car. 2, c. 12, *V.* 3 Chitty's Statutes, 3 ed., 1034. Those decisions gave the word "a much larger construction than the legislature intended" (per Denman, C. J., *R.* v. *Tadcaster*, 4 B. & Ad. 708).

"Lands or Tenements," s. 8, Statute of Frauds, does not comprise personalty (*Nab* v. *Nab*, 10 Mod. 404: *Fordyce* v. *Willis*, 3 Bro. C. C. 577).

"Tenement," s. 23, Truck Act, 1831; *V. Chawner* v. *Cummings*, cited ARTIFICER.

House "divided into and let in *different* tenements," quà Inhabited House Duty; *V.* DIVIDE: *London & Westminster Bank* v. *Smith*, 85 L. T. 747.

Dominant, contrasted with Servient, Tenement; *V.* EASEMENT.

"Tenement Factory," "Tenement Workshop"; *V.* FACTORY.

Annual Value of "Tenement supplied with Water," s. 68, W. W. C. Act, 1847, 10 & 11 V. c. 17; *V. Grand Junction W. W. Co* v. *Davies*, cited ANNUAL VALUE, p. 87.

"Other Tenements"; *V.* OTHER, p. 1364: PROPERTY OTHER THAN LAND.

TENENDUM. — The Tenendum of a Deed has the same office as the HABENDUM, and commences with the words "To hold": *V.* HAVE AND TO HOLD: 2 Bl. Com. 298, 299.

TENOR. — "Tenor of Writs, Records, &c, is the substance or purport of them; or a Transcript or copy. Tenor of a Libel hath been held to be, a transcript which it cannot be if it differs from the libel, and *juxta tenorem* imports it; but not *ad effectum*, &c, for that may import an identity in sense but not in words: 2 Salk. 417. In action of Debt, brought upon a Judgment in an inferior court, if the defendant pleads *nul tiel record*, the Tenor of the record only shall be certified; and, by Hale, C. J., it may be the same on Certiorari's: 3 Salk. 296. A return of the Tenor of an Indictment from London, on a Certiorari to remove the Indictment, is good by the City Charter; but in other cases it is usual to certify the record itself: 2 Hawk. P. C. ch. 27, ss. 26, 76" (Jacob).

In Libel the law attaches a technical meaning to the word "Tenor," as signifying either an exact copy, or a statement of the Libel verbatim. "'Tenor' has so strict and technical a meaning as to make it necessary to recite verbatim" (*R.* v. *May*, 1 Doug. 194); but the expression "MANNER AND FORM" means nothing more than a substantial recital (*Wright* v. *Clements*, 3 B. & Ald. 503). "There is a distinction to be observed between the legal terms 'Tenor' and 'Form,' and the setting out of an instrument 'according to the Tenor' or 'according to the Form.' 'Tenor' has a stricter sense than 'Form.' In the former case, an instrument must be set out *in hæc verba*, but where a Form is to be pursued the same strictness is not required" (per Crampton, J., *Mount-Cashell* v. *O'Neill*, 2 Ir. Com. Law Rep. 454). In the same strict way "Tenor" is construed in America (*Commonwealth* v. *Stevens*, 1 Mass. 203: *Commonwealth* v. *Wright*, 1 Cush. 46: *People* v. *Warner*, 5 Wend. 273). *Sv*, IN ACCORDANCE WITH THE FORM.

The Maker of a PROMISSORY NOTE, engages that he will pay it "according to its Tenor" (s. 88, Bills of Ex. Act, 1882), *i.e.* according to its exact import (*Good* v. *Walker*, 61 L. J. Q. B. 736).

An allegation that an ACCEPTANCE was presented "according to its Tenor and Effect," imports its due presentation and at its particular place of presentation (*Huffam* v. *Ellis*, 3 Taunt. 415: *Bush* v. *Kinnear*, 6 M. & S. 210).

"According to the Tenor of the *Title Deeds*," following a description of property devised, *semble*, does not enlarge the devise and is merely part of the description (*Sturgis* v. *Dunn*, 19 Bea. 135).

Executor "according to the Tenor" of a *Will*, is a phrase distinguishing an Exor of a Will from one thereby appointed, and means, a person not nominated as Exor but who is directed by a Will to do one or more of the acts which are competent to, and fall within the office of, the Exor nominated (*Re Manly*, 3 Sw. & Tr. 56; 31 L. J. P. M. & A. 198: *Re Punchard*, L. R. 2 P. & D. 369; 41 L. J. P. & M. 25: *vthlc*, *Re McKane*, 21 L. R. Ir. 1). For instances of such an Exor, *V. Re Manly*, sup: *Re McKane*, sup: *Re Spotten*, 5 L. R. Ir. 403: *Re Leven & Melville*, 59 L. J. P. D. & A. 35; 15 P. D. 22: *Re Wilkinson*, 1892, P. 227; 61 L. J. P. D. & A. 134; 67 L. T. 328: On the contrary, *V. Re Oliphant*, 30 L. J. P. M. & A. 82; 1 Sw. & Tr. 525: *Boardman* v. *Stanley*, Ir. Rep. 6 Eq. 590: *Re Punchard*, sup: *Re Lowry*, 43 L. J. P. & M. 34; L. R. 3 P. & D. 157: *Smith* v. *Kerrane*, Ir. Rep. 11 Eq. 447. *Vh*, Wms. Exs. 189.

Lord TENTERDEN'S ACTS. — Statute of Frauds Amendment Act, 1828, 9 G. 4, c. 14, amended by s. 13, 19 & 20 V. c. 97:

Prescription Act, 1832, 2 & 3 W. 4, c. 71:

Tithe Act, 1832, 2 & 3 W. 4, c. 100.

TENTHS. — *V.* TITHES.

TENURE. — "The word 'Tenure' signifies the relation of TENANT to Lord" (per Selborne, C., *A-G. Ontario* v. *Mercer*, 52 L. J. P. C. 85; 8 App. Ca. 767); "the service whereby lands and tenements be holden" (Co. Litt. 1 a).

For an account of the Old English Tenures, *V.* Littleton's Tenures: Co. Litt. 1–141 b: 2 Bl. Com. ch. 5: ARABANT: AUMONE: BASE: BURGAGE: CAPITE: CHIVALRY: COPYHOLD: CORNAGE: ESCUAGE: FRANK-ALMOIGN: KNIGHT'S SERVICE: SERJEANTY: SOCAGE: TERRA.

By s. 1, 12 Car. 2, c. 24, the Ancient English Tenures were abolished and turned into FREE AND COMMON SOCAGE, except Frank-Almoign and Copyhold, and some of the Honorary Services of Grand Serjeanty.

The chief Tenures of present importance are Freehold, Copyhold, Leasehold, Borough English, and Gavelkind. *Vh*, 2 Bl. Com. ch. 6: Wms. R. P., Part 1, ch. 5, Parts 3, 4: Goodeve, ch. 4, 6, 12: Scriven on Copyholds: Elton, Ib.: Robinson on Gavelkind: 2 Encyc. 123–128.

Cp, TENANT.

Land or Heredits of "any," or "whatever" tenure; *V.* HEREDITAMENT, p. 869; LAND, pp. 1053, 1054: the cases there cited show that "tenure" has been relied on to include leaseholds for years in a definition which otherwise would have only included realty; but in *Wilson* v. *Hood* (3 H. & C. 148; 33 L. J. Ex. 204) the word had the converse

effect of showing that realty was included in a phrase which at first sight indicated only personalty.

Ratione tenuræ; *V.* RATIONE.

TERM. — The primary signification of "Term" is, Term for Years (*Cavanagh* v. *Morrisson*, 1 Fox & Smith, 81).

"It is said by my Lord Coke, that the word 'Term,' though it is more properly applied to a term for Years, yet may mean an Estate for Life, and it is plainly in this deed used in that sense: the trustees are to permit Robert Dormer to receive the profits during the term of his life; and the estate to the children is not to commence till the end, or other sooner determination, of the said term, which by referring the relative to the last antecedent, must mean the term of his life: as to the words '*Sooner Determination*,' inserted after the estate for life, these are insensible and may be rejected; they were probably thrown in, *currente calamo*, or by following a Precedent, and if the Precedent was before the Reformation, when there was a civil death (as well as a natural) by entering into religion, it might then have a meaning" (per Hardwicke, C., *Smith* v. *Packhurst*, 3 Atk. 137). *Va*, *Wrotesley* v. *Adams*, 1 Plowd. 198.

The Term of a Lease may, for some purposes, end on one day, and, for other purposes, on another day (*St. Germains* v. *Willan*, 2 B. & C. 216).

"The word 'Term,' in a covenant in a lease, may signify either the time or the estate granted" (Woodf. 153: *Cottee* v. *Richardson*, 21 L. J. Ex. 52; 7 Ex. 143, 151).

"Term," in an Agreement for a Lease, will generally mean, the period or space of time agreed for; so that the actual grant of the lease is not a Condition Precedent to the stipulations relating to the "term" (*Wood* v. *Copper Miners' Co*, 14 C. B. 467; 23 L. J. C. P. 209: *Bowes* v. *Croll*, 6 E. & B. 255; 4 W. R. 484; 27 L. T. O. S. 77: *Martin* v. *Smith*, 43 L. J. Ex. 42; L. R. 9 Ex. 50).

"Term," s. 65, Conv & L. P. Act, 1881; *V.* s. 11, Conv Act, 1882.

Covenant not to part with "any Part of the Term"; *V.* ASSIGN.

During the Term; *V.* DURING.

Where a "Term" of periods of time is spoken of, successive time is implied. Therefore, residence for "a term of 3 years," to give a Pauper Settlement under s. 34, 39 & 40 V. c. 61, must be for three whole consecutive years, without receiving relief or otherwise coming within the proviso to s. 1, 9 & 10 V. c. 66 (*Dorchester* v. *Weymouth*, 55 L. J. M. C. 44; 16 Q. B. D. 31; 54 L. T. 52; 50 J. P. 310: *St. Olave's* v. *Canterbury*, 1897, 1 Q. B. 682; 66 L. J. Q. B. 471; 76 L. T. 517; 45 W. R. 529; 61 J. P. 371, *whlc* over-rules *R.* v. *Hartfield*, 21 L. J. M. C. 65; 17 Q. B. 746). *V.* PATIENT.

"Estate, Term, and Interest"; *V.* ESTATE AND INTEREST.

TERM CERTAIN. — "Term or number of years certain," 1 G. 4, c. 87, s. 1; — a tenancy for 99 years determinable on lives is not within

this phrase (*Doe* d. *Pemberton* v. *Roe*, 7 B. & C. 2; 5 L. J. O. S. K. B. 289), nor is a tenancy from quarter to quarter determinable by a 3 months' notice, or on the tenant losing his beer license (*Doe* d. *Carter* v. *Roe*, 12 L. J. Ex. 27; 10 M. & W. 670).

TERMINABLE. — Terminable Annuities; *V.* Sch, National Debt and Local Loans Act, 1887, 50 & 51 V. c. 16. *Cp*, PERPETUAL ANNUITY.

"Terminable Mortgage," quà 50 & 51 V. c. 23, "means, any mortgage created for securing the repayment of any loan by annual instalments, payments in the nature of a rent-charge, or otherwise, in a limited number of years" (s. 3).

TERMINAL. — "Consumer's Terminals," quà Electric Lighting (Clauses) Act, 1899, 62 & 63 V. c. 19, "means, the ends of the electric lines, situate upon any consumer's premises and belonging to him, at which the supply of ENERGY is delivered from the Service Lines" (Sch, s. 1). *V.* CONSUMER.

"Terminal *Charges*," quà Ry and Canal Traffic Act, 1888, "includes, charges in respect of stations, sidings, wharves, depots, warehouses, cranes, and other similar matters, and of any services rendered thereat" (s. 55). *Cp*, "Services incidental," sub INCIDENTAL: EXTRAORDINARY SERVICES.

"Terminal *Station*," quà Manchester, S. & L. Ry, does not include "a Junction between the Railway and a SIDING not belonging to the Co, or (in respect of merchandize passing to or from such siding) any station with which such siding may be connected": *Vh*, *Manchester, S. & L. Ry* v. *Pidcock*, 10 Ry & Can Traffic Ca. 150: *Pidcock* v. *Manchester, S. & L. Ry*, 9 Ib. 45.

TERMINATE. — An agreement for letting whereby the landlord agreed that he would not "raise the rent, nor terminate the tenancy" of the tenant or his wife; held, a demise for the lives of the tenant or his wife (*Mardell* v. *Curtis*, 43 S. J. 587). *Vf*, MOLEST: REMAIN.

TERMINATING. — A "Terminating Society," quà Building Societies Acts, "means, a Society which, by its rules, is to terminate at a fixed date, or when a result, specified in its rules, is attained; a 'Permanent Society,' means, a Society which has not, by its rules, any such fixed date or specified result at which it shall terminate" (s. 5, 37 & 38 V. c. 42).

Cp, PERMANENT: TEMPORARY.

TERMINATION. — *V.* DETERMINATION.

Termination of Risk; *V.* RISK.

TERMS. — "Contract which, *according to the Terms thereof*, OUGHT to be performed within the jurisdiction," R. 1 (*e*), Ord. 11, R. S. C.,

does not mean that the place of performance is to be stated in terms; it suffices if such place appears from the contract and its circumstances (*Reynolds* v. *Coleman*, 56 L. J. Ch. 903; 36 Ch. D. 453; 57 L. T. 588; 35 W. R. 813). *Vf*, WITHIN THE JURISDICTION.

"On such Terms," &c; *V.* JUST.

In an agreement between two Ry Companies giving Running Powers to one Co over the other's lines "on Terms to be agreed on," "Terms" includes, not only the money payment but, the traffic arrangements necessary for regulating the joint traffic (*Swansea Improvements Co* v. *Swansea & Mumbles Ry*, 3 Ry & Can Traffic Ca. 339, 359). *Vh*, *Taff Vale Ry* v. *Barry Dock & Ry Co*, 7 Ib. 52.

V. MODERATE TERMS: SAME: USUAL.

TERRA. — "'Terra' was formerly used as the ordinary term of a grant of an extensive territory" (per James, arg. *Beaufort* v. *Swansea*, 3 Ex. 415); "it may embrace, as appears from the authorities cited by Mr. James, as much as the word 'MANOR' may" (per Parke, B., Ib. 425).

Terra Affirmata, — Land let to farm (Jacob).

Terra Assisa, — *V.* ASSISUS.

Terra Boscalis, — Woody lands (Jacob).

Terra Culta, — Land tilled or manured; Inculta, uncultivated (Cowel).

Terra Debilis, — Weak or barren ground (Jacob).

Terra Dominica, — *V.* DEMESNE.

Terra Excultabilis, — Land that may be tilled (Cowel).

Terra Frusca, — Land that hath not lately been ploughed (Cowel).

Terra Giliforata, — Land held by the payment of a gilliflower (Cowel).

Terra Hydata, — Land subject to payment of hydage (Jacob).

Terra Inculta, — *V.* Terra Culta, sup.

Terra Lucrabilis, — Land gained from the Sea, or enclosed from a Waste (Cowel).

Terra Nova, — Land newly converted from Wood to Arable (Cowel).

Terra Puturata, — Forest land held by the tenure of furnishing meat to the Keepers of the forest (Cowel).

Terra Regis, — *V.* ANCIENT DEMESNE.

Terra Sabulosa, — Gravelly or sandy ground (Cowel).

Terra Testamentalis, — Land deviseable by Will (Jacob).

Terra Vestita, — Land sown with corn (Cowel).

Terra Villanorum, — *V.* NEATLAND.

Terra Wainabilis, — Tillable land (Cowel: Jacob). *Cp*, PLOW-LAND.

Terra Warennata, — Land having Free Warren (Jacob).

V. LAND: PORCA TERRÆ: QUADRUGATA TERRÆ: QUARENTENA TERRÆ.

TERRAGE. — A customary due "for the necessary unlading of goods before they come up to the common quay" (Hale, De Portibus Maris, ch. 6).

TERRE TENANT. — "Tenants of the Freehold," as distinguished from Tenants for Years, "always are in law intended within these words Tertenants" (*Brediman's Case*, 6 Rep. 58 b; cited *Re Herbage Rents Charity*, 1896, 2 Ch. 820; 65 L. J. Ch. 878). "'Terre Tenant,' is he who has the actual possession of the land, which we otherwise call the OCCUPATION" (Cowel: *Vf*, 2 Bl. Com. 91); but that is a misconception, for "it appears from a note to *Jeffreson* v. *Morton* (2 Saund. 9, *n* 9) that it generally means, the owner of the FEE SIMPLE" (per Crampton, J., *Carroll* v. *Cooke*, 1 Jebb & Sy. 41).

TERRESTRES. — *V.* FOWL.

TERRIER. — "'Terrar,' *Terrarium vel catalogus terrarum*, Is a Book or Roll, wherein the several Lands either of a single Person, or of a Town, are described, containing the quantity of Acres, Boundaries, Tenants Names, and such like, 18 Eliz. c. 17" (Cowel). *V. R.* v. *Hall*, cited COMMUNICANT, as to the admissibility in evidence of an ancient terrier.

V. INVENTORY.

TERRITORIAL WATERS. — Quà Territorial Waters Jurisdiction Act, 1878, 41 & 42 V. c. 73, "'the Territorial Waters of Her Majesty's Dominions,' in reference to the SEA, means, such part of the Sea adjacent to the Coast of the United Kingdom, or the coast of some other part of Her Majesty's Dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and, for the purpose of any offence declared by this Act to be within the jurisdiction of the Admiral, any part of the Open Sea within 1 marine league of the coast, measured from low-water mark, shall be deemed to be Open Sea within the Territorial Waters of Her Majesty's Dominions" (s. 7).

That def is adopted quà North Sea Fisheries Act, 1893, 56 & 57 V. c. 17 (s. 9).

Vh, *R.* v. *Keyn*, cited SEA COAST: ENGLAND: REALM: 12 Encyc. 131–135. *Cp*, WATERS.

TERROR. — *V.* DURESS.

TEST. — Corporation and Test Act; *V.* RUSSELL'S ACTS.

Test Action; *V. Amos* v. *Chadwick*, 47 L. J. Ch. 871; 9 Ch D. 459: *Bennett* v. *Bury*, 49 L. J. C. P. 411; 5 C. P. D. 339.

Test Ballot; *V. Britt* v. *Robinson*, cited PROCURE.

TESTAMENT. — "A Testament is the true declaration of our last Will, of that wee would to be done after our death" (Termes de la Ley). *Vf*, *Lemage* v. *Goodban*, 35 L. J. P. & M. 30; L. R. 1 P. & D. 62: per Davey, L. J., *Re Elcom*, 1894, 1 Ch. 303; 63 L. J. Ch. 397; 70 L. T. 54; 42 W. R. 279.

Littleton (s. 167) uses "Testament" as applicable to a devise of lands and tenements; but Coke's commentary thereon is, "But in law most commonly, *ultima voluntas in scriptis* is used, where lands or tenements are devised, and *testamentum*, when it concerneth chattels" (Co. Litt. 111 a). *Vf*, Wms. Exs. 6: DEVISE.

"Testament" includes a Will, CODICILS, &c; "Instrument" signifies the Will alone (*Fuller* v. *Hooper*, 2 Ves. sen. 242). *V.* INSTRUMENT: PART, p. 1412: WILL: WRITING.

A testamentary gift to an individual or a class, in like manner as he or they are entitled under the "Will" of A.; there, "Will" means, the whole testamentary instruments including codicils (*Pigott* v. *Wilder*, 26 Bea. 92).

A Deed of Gift executed as a Will and proved by extrinsic evidence to be intended to operate after the death of the grantor, is entitled to probate as a Will (*Re Slinn*, 59 L. J. P. D. & A. 82; 15 P. D. 156). *Vf*, *Milnes* v. *Foden*, 59 L. J. P. D. & A. 62; 15 P. D. 105.

Stat. Def. — New Parishes Act, 1844, 7 & 8 V. c. 94, s. 7.

As to when a Will is to be construed as *Conditional*, *i.e.* to take effect on the happening or not happening of a certain event, *V. Re Spratt*, 1897, P. 28; 66 L. J. P. D. & A. 25; 75 L. T. 518; 45 W. R. 159, in *whc* Jeune, P., reviewed the previous cases: *Halford* v. *Halford*, 1897, P. 36; 66 L. J. P. D. & A. 29; 75 L. T. 520.

Note. A Will speaks from the death of the testator unless a CONTRARY INTENTION appears (s. 24, Wills Act, 1837); as to Deeds, &c, *V.* FROM HENCEFORTH.

TESTAMENTARY CAPACITY. — *V.* UNSOUND MIND: UNDUE INFLUENCE.

TESTAMENTARY ESTATE. — This phrase in a gift of "personal and testamentary estate" carries the realty, as otherwise it would be inoperative (*Smith* v. *Coffin*, 2 Bl. H. 444: *Roe* d. *Penwarden* v. *Gilbert*, 3 Brod. & B. 85: *Doe* d. *Evans* v. *Walker*, 19 L. J. Q. B. 293; 15 Q. B. 28: 1 Jarm. 725). In *thlc* Campbell, C. J., said, "I think the words 'my Testamentary Estate' mean to include all that I can dispose of. They are *primâ facie* sufficiently large to carry both the realty and personalty."

V. ESTATE.

TESTAMENTARY EXPENSES. — "Testamentary Expenses," are those which are incident to the proper performance of the duty of an executor (*Sharp* v. *Lush*, 48 L. J. Ch. 231; 10 Ch. D. 468: *Vh*, *Brougham* v. *Poulett*, 19 Bea. 134: *Re Young*, 44 L. T. 499), including the Probate Duty, and (possibly) Estate Duty when it is the substitute for Probate Duty, *i.e.* so far as Personal Estate is concerned (*Re Clemow*, 1900, 2 Ch. 182; 69 L. J. Ch. 522; 82 L. T. 550; 48 W. R. 541: *Re*

Treasure, 1900, 2 Ch. 648; 69 L. J. Ch. 751; 83 L. T. 142; 48 W. R. 696); *secus*, of Estate Duty quà Real Estate (*Re Palmer*, W. N. (1900) 9: *Re Sharman*, 1901, 2 Ch. 280; 70 L. J. Ch. 671). The phrase does not include the costs of a Transfer of Mtge (*Sewell* v. *Bishopp*, 68 L. T. 323; 62 L. J. Ch. 615).

The costs of all proper parties to proceedings for determining the scope of, or ascertaining the persons entitled to, a Gift, are "testamentary expenses," especially when the difficulty arises from the language of the Will (*Morrell* v. *Fisher*, 4 D. G. & S. 422: *Re Groom*, 1897, 2 Ch. 407; 66 L. J. Ch. 778; 77 L. T. 154: *Re Baumgarten*, 82 L. T. 711); but, generally, the costs of ascertaining the person entitled to a legacy, &c, are payable thereout (R. 14 *b*, Ord. 65, R. S. C.: *Re Lycett*, 13 Times Rep. 373).

The costs of an Administration Action are "testamentary expenses" (*Miles* v. *Harrison*, 43 L. J. Ch. 585; 9 Ch. 316: *Harloe* v. *Harloe*, 44 L. J. Ch. 512; L. R. 20 Eq. 471; 33 L. T. 247, in *whlc* Hall, V. C., refused to follow *Gilbertson* v. *Gilbertson*, 34 Bea. 354, and *Stringer* v. *Harper*, 26 Ib. 585; 28 L. J. Ch. 643: *Miles* v. *Harrison* and *Harloe* v. *Harloe* were followed in *Sharp* v. *Lush*, sup, *Penny* v. *Penny*, 48 L. J. Ch. 691; 11 Ch. D. 440, and in *Re Chapman*, 71 L. T. 778; 11 Times Rep. 94: *Va*, *Lees* v. *Lees*, Ir. Rep. 6 Eq. 259: *Browne* v. *Groombridge*, 4 Mad. 495, on *whcv*, *Kilford* v. *Blaney*, 31 Ch. D. 56; 55 L. J. Ch. 185); but where such costs are increased by the administration of real estate such increase is borne by the real estate (*Patching* v. *Barnett*, 51 L. J. Ch. 74: *Re Copland*, 44 W. R. 94: *Sv*, *Re Middleton*, 50 L. J. Ch. 525; 30 W. R. 293).

So, the costs of a successful opposition to a Will (*Re Clemow*, sup), or even of an unsuccessful opposition to a Will the proof of which has been established under a compromise, one of the terms of which was that such costs should be paid out of the estate, are "testamentary expenses" (*Brown* v. *Burdett*, 53 L. J. Ch. 56); *secus*, where no such terms have been arranged (*Re Prince*, 1898, 2 Ch. 225; 67 L. J. Ch. 531; 47 W. R. 25), except quà the costs of the exors in upholding the Will (*Ib.*). *Semble*, that costs of properly requiring proof of Will in solemn form (when only cross-examination and non-contentiously producing additional evidence is resorted to) would be "testamentary expenses" (per Stirling, J., *Ib.*).

In *Re Clemow* (sup) the question arose on a direction in Clemow's Will to pay his "*Widow's* testamentary expenses"; the widow died intestate; held, that the costs of obtaining Letters of Administration to her estate were part of her "testamentary expenses," although there was no testament, for "'testament' has ceased to have its purely etymological meaning," and "testamentary expenses," in such a direction, means, expenses relating to the administration of deceased persons; the widow's estate being wholly personalty, it was also held that Estate Duty thereon was also payable by Clemow's trustees. *Vf*, *Re Treasure*, sup.

By s. 125 (7), Bankry Act, 1883, "testamentary expenses incurred in and about the debtor's estate" by the legal personal representative of a deceased insolvent debtor, are a preferential debt upon the estate; held, by Judge Holl at Newcastle-upon-Tyne County Court, that these words include, not merely the cost of obtaining probate but also, the reasonable expenses of investigating the position of the debtor's affairs, and generally of administering his estate prior to the bankruptcy Administration Order (*Re Turnbull*, 29 S. J. 557). The phrase also includes costs properly incurred in an Administration Action (*Re York*, 36 Ch. D. 233; 56 L. J. Ch. 552; 56 L. T. 704; 35 W. R. 609: *Re Chapman*, sup).

Funeral expenses, the ascertaining testator's debts and their amounts (including rent current at the decease), and the costs of warehousing specific legacies, are "testamentary expenses" (*Sharp* v. *Lush*, sup).

V. EXECUTORSHIP EXPENSES.

"Testamentary Expenses," s. 6, Intestates' Estates Act, 1890, 53 & 54 V. c. 29, "is merely a slip in draughtsmanship, and really means, expenses of administration" (per Chitty, J., *Re Twigg*, 1892, 1 Ch. 579; 61 L. J. Ch. 444; 66 L. T. 604; 40 W. R. 297).

TESTAMENTARY GUARDIAN. — Is a Guardian of an Infant appointed by Will; the need of, and the power of appointing, whom being shown and first enacted by 12 Car. 2, c. 24, which abolished Guardianship in Chivalry and converted the old tenures into FREE AND COMMON SOCAGE (1 Bl. Com. 462: Simpson on Infants, ch. 11, s. 4). By that statute the power was solely in the Father and he still has the primary authority; but the Mother, in certain cases, may, by deed or will, appoint a Guardian (s. 3, Guardianship of Infants Act, 1886). *Vf*, Eversley on Domestic Relations, Part 3, ch. 2, s. 3.

V. INFANT: WARD.

TESTAMENTARY MATTER. — *V.* MATTER.

TESTAMENTARY OFFICE. — Quà Probates and Letters of Administration Act (Ir) 1857, 20 & 21 V. c. 79, "'The Testamentary Office,' shall mean, the Public Registry attached or belonging to Her Majesty's Court of Probate under this Act, and the offices connected therewith" (s. 2).

TESTATOR. — "Testator," s. 2, Real Estates Charges Act, 1867, 30 & 31 V. c. 69, has its general meaning, and applies to any deceased person who has made a Will; even where such Will has not disposed of the testator's beneficial interest in the lands upon which a lien for unpaid purchase money exists (*Dowdall* v. *M'Cartan*, 5 L. R. Ir. 313, 642).

V. INTESTATE.

TESTATUM. — The Testatum Clause of a Deed, is that beginning "Now this Indenture witnesseth"; the subsequent like clauses, when

there are more than one, are also testatum clauses. Its office is to witness to the operative act to be effectuated by the deed.

TESTE. — Its *teste*, is "that part of a Writ wherein the date is contained" (Jacob). *Vh*, 1 Bl. Com. 179, 3 Ib. 274: 12 Encyc. 136.

A Will is proved, (1) in Common Form by affidavit, or (2) Per Testes, *i.e.* in Solemn Form by calling the witnesses before the Court (2 Bl. Com. 508): *Vh*, Wms. Exs. 266, 274: COMMON FORM BUSINESS.

TESTER. — "Licensed Tester" of Anchors and Chain Cables, means, "every Body of persons for the time being holding a license under this Act for the testing of anchors and chain cables in respect of any testing establishment" (s. 7 (1), 62 & 63 V. c. 23). For the Bodies to be licensed, *V.* s. 5 and Sch 1, Ib.; and for the Tests and Mode of Testing, *V.* ss. 8, 9, and Sch 2, Ib.

TESTIMONIUM. — The Testimonium Clause of a document, is that at its end beginning with "In Witness," or "As Witness." *Vh*, Co. Litt. 6 a.

In Scotland, this is called the Testing Clause, on *whv*, *Blair* v. *Assets Co*, 1896, A. C. 409.

TESTIMONY. — Proof by "Testimony," in the Civil Code of Quebec, means, proof by Oral Evidence (*Forget* v. *Baxter*, 1900, A. C. 467; 69 L. J. P. C. 101; 82 L. T. 510).

TEXTILE. — *V.* FACTORY: NON-TEXTILE FACTORIES.

THAINUS. — *V.* TAINI.

THAMES. — Quà Thames Conservancy Act, 1894, "'the Thames,' means and includes, so much of the Rivers Thames and Isis, respectively, as are between the town of Cricklade, in the County of Wilts, and an imaginary straight line drawn from the entrance to Yantlet Creek, in the County of Kent, to the City Stone opposite to Canvey Island, in the County of Essex; and so much of the River Kennet as is between the common landing-place at Reading, in the County of Berks, and the River Thames; and so much of the River Lee and Bow Creek, respectively, as are below the south boundary stones in the Lee Conservancy Act, 1868, mentioned; and all locks, cuts, and works, within the said portions of Rivers and Creeks. Provided that no dock, lock, canal, or cut, existing at the passing of this Act and constructed under the authority of Parliament and belonging to any Body Corporate established under such authority, and no bridge over the River Thames or the River Kennet belonging to or vested in any County Council or Municipal Authority or to or in any Railway Company, shall be deemed to form part of the Thames" (s. 3). For the previous defs, *V.* 29 & 30 V. c. 89, s. 2; 48 & 49 V. c. 76, s. 29. *V.* CONSERVATOR: CREEK.

Quà Watermen's and Lightermen's Amendment Act, 1859, 22 & 23 V. c. cxxxiii., "Thames" extends "from and opposite to and including Teddington Lock, in the Counties of Middlesex and Surrey, to and opposite to and including Lower Hope Point, near Gravesend, in the County of Kent; and to all docks, canals, creeks, and harbours, of or out of the said River, so far as the tide flows therein" (s. 8).

"Bed of the Thames"; *V.* BED.

In *Leary* v. *Steeves* (Times, Dec 15, 1881), where the owners of a Bill of Lading had the right to intercept the ship "at the *Mouth* of the Thames," the jury found that the "Mouth of the Thames" included East Oaze Buoy, off the Mouse Light; the witnesses for the Plaintiffs (in whose favour the verdict was found) stated that, in their opinion, "Mouth of the Thames" was a considerable space of water, the eastern limit of which was between Shoeburyness and Sheerness; one witness gave the western limit as a line between Foulness and Warden Point.

As to what is navigating a Steamboat "on the River"; *V. Rolles* v. *Newell*, cited WORKED.

THANE. — *V.* TAINI: Cowel, *Thane or Theyne.*

THAT IS TO SAY. — "'That is to say' is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties: — (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the principal clause is general in terms it may restrict it: *V*, this explained with many examples, *Stukeley* v. *Butler*, Hob. 171: *Va*, *Harrington* v. *Pole*, Dy. 77 b, pl. 38" (Elph. 622). *Sv*, *Bradley* v. *Newcastle Pilots*, 2 E. & B. 427; 23 L. J. Q. B. 35.

A Policy on a Corn Dealer's "STOCK IN TRADE, *consisting of* corn, seed, hay, straw, fixtures, and utensils in business," was confined to these enumerated things, and did not extend to hops and matting, although such latter things would, but for the restrictive words, have come within "Stock in Trade" (*Joel* v. *Harvey*, 5 W. R. 488; 29 L. T. O. S. 75).

In *Gover* v. *Davis* (30 L. J. Ch. 505; 29 Bea. 225) a bequest of "also the whole of my PROPERTY and Effects, *that is to say*, my box, clothing, and bedding, &c, &c," was held to pass a reversionary interest in a residuary estate; and in like manner Wood, V. C., held that the wide generality of "my personal property" was not cut down by being immediately followed by "*consisting of* money and clothes" (*Dean* v. *Gibson*, 36 L. J. Ch. 657; L. R. 3 Eq. 713).

V. NAMELY: COMPRISING: CONSISTING: VIDELICET.

THE. — A Reservation of full and free liberty to take "the *Coal*," &c, is not exclusive (*Sutherland* v. *Heathcote*, cited LIBERTY OF WORKING).

"The *Credit*," in a Guarantee, points to a definite credit, — "some-

thing ascertained and known" (per Bramwell, B., *Broom* v. *Batchelor*, 25 L. J. Ex. 299; 1 H. & N. 255; but the majority of the Court was against him in the conclusion, partly led up to by the dictum just cited).

Where the annual value of "the *House* occupied by" a brewer does not exceed £10 the beer brewed by him is not chargeable with duty (s. 33 (3), Inland Revenue Act, 1880, 43 & 44 V. c. 20). This means the house occupied by him *in which he lives* (*Tippett* v. *Hart*, 52 L. J. M. C. 41; 10 Q. B. D. 483). The words italicized do not actually appear in the judgment in the case cited; but they embody its principle, — Pollock, B. observing, "It was intended to get at the status of the man who brews."

Costs out of "the *Estate*," in an Order by the H. L. in an appeal in a Probate Action; held, to mean, only the PERSONAL ESTATE, as it was only over that that the Court appealed from had jurisdiction (*Charter* v. *Charter*, 24 W. R. 874; 45 L. J. Ch. 705; 34 L. T. 412). But, possibly, that ruling may be varied by Part 1, Land Transfer Act, 1897.

"The *Justice*," to hear a summons under s. 31, Vaccination Act, 1867, need not be the same Justice who signed the summons (*Southcombe* v. *Yeovil*, 1897, 1 Q. B. 343; 66 L. J. Q. B. 294; 76 L. T. 58; 45 W. R. 318; 61 J. P. 230).

"The *Minister*"; *V.* MINISTER.

"The *Property*" in goods does not pass to an Indorsee in blank of a Bill of Lading (who merely takes as a pledgee), so as to render him liable for freight under s. 1, Bills of Lading Act, 1855, 18 & 19 V. c. 111; nor (*semble*, per Ld Blackburn) would any pledgee or mortgagee be so liable (*Sewell* v. *Burdick*, 54 L. J. Q. B. 156; 10 App. Ca. 74).

"The Property," when not a sufficient description in a V. & P. Contract; *V. Shardlow* v. *Cotterill*, cited PURCHASED: *McMurray* v. *Spicer*, 37 L. J. Ch. 505; L. R. 5 Eq. 527: *secus*, *Plant* v. *Bourne*, 1897, 2 Ch. 281; 66 L. J. Ch. 643; 76 L. T. 820; 46 W. R. 59.

"The *Railway*"; *V. Bristol & Exeter Ry* v. *Garton*, 8 H. L. Ca. 477; 30 L. J. Ex. 241; 3 L. T. 251.

"The *Right* to any Relief claimed," R. 1, Ord. 16, R. S. C., and R. 1, Ord. 3, Co. Co. Rules, 1889, means, that several plaintiffs may only be joined when claiming the same relief (*Smurthwaite* v. *Hannay*, 1894, A. C. 494; 63 L. J. Q. B. 737; 71 L. T. 157; 43 W. R. 113: *Carter* v. *Rigby*, 1896, 2 Q. B. 113; 65 L. J. Q. B. 537; 74 L. T. 744; 44 W. R. 566).

"The *exclusive Right*"; *V.* EXCLUSIVE RIGHT.

V. A: FISHERY, p. 728: RIGHT OF SALE.

THEATRE. — *V.* Theatres Act, 1843, 6 & 7 V. c. 68, of which ss. 1, 18, and 25, and part of s. 2, were repealed by 37 & 38 V. c. 96, and part of s. 19 was repealed by 55 & 56 V. c. 19. *V.* PLACE, p. 1484: STAGE PLAY.

"Theatres," s. 72 (4), Licensing Act, 1872, does not include a Music Hall (*R.* v. *Inl. Rev.*, 57 L. J. M. C. 92; 21 Q. B. D. 569; 59 L. T. 378; 36 W. R. 696; 52 J. P. 390): *Vf*, *Fredericks* v. *Howie*, cited PLACE, p. 1484, and TENEMENT, p. 2029.

Vh, 12 Encyc. 138–140: Williamson's Licensing Law.

THEFT. — "'Theft' is a wrongfull taking away of another mans goods, but not from his person, with a mind to steale them against his will whose goods they were" (Termes de la Ley, *Larcenie*): *Vf*, TAKE AND CARRY AWAY. The taking must be *animo furandi*, "or, as the Civil Law expresses it, *lucri causa*" (4 Bl. Com. 232). For an example of what is *not* such a taking, *V. R.* v. *Bailey*, L. R. 1 C. C. R. 347; 41 L. J. M. C. 61; 25 L. T. 882; 20 W. R. 302: and of what *is*, *V. R.* v. *Middleton*, L. R. 2 C. C. R. 38; 42 L. J. M. C. 73; 28 L. T. 777.

"Theft is the act of dealing, from any motive whatever, unlawfully and without claim of right, with anything capable of being stolen, in any of the ways in which theft can be committed, with the intention of permanently converting that thing to the use of any person other than the general or special owner thereof" (Steph. Cr. ch. 35, *whv* for qualifications). *Vf*, Rosc. Cr. 548–594: Arch. Cr. 396–486: 7 Encyc. 306–319.

Cp, EMBEZZLE: PETTY LARCENY: RAPINE: ROBBERY. *Vf*, THIEF: THIEVES.

THEFT-BOTE. — *V.* BOTE.

THEIR. — In *Boreham* v. *Bignall* (19 L. J. Ch. 461; 8 Hare, 131), a substitutional gift to "their *Children*" was held by Wigram, V. C., as conclusively showing that one wife only of the first beneficiary was in the contemplation of the testator, and that that wife must have been the one living at the date of the Will. *V.* WIFE. *Va*, AT, p. 137.

"Their Children"; held to mean, "their respective children" (*Arrow* v. *Mellish*, 1 D. G. & S. 355: *Wills* v. *Wills*, cited AT THEIR DEATH).

In a covenant by two or more for themselves, "their *exs, ads, and ass*^{s}," the word "their" is necessarily read distributively, because the parties do not anticipate that they will have the same exs, &c; but the word will not convert a covenant otherwise joint into a separate covenant (*Whyte*, or *White* v. *Tyndall*, 13 App. Ca. 263; 57 L. J. P. C. 114; 58 L. T. 741; 52 J. P. 675).

"Their *lives*"; *V.* JOINT LIVES.

THELLUSSON'S ACT. — Accumulations Act, 1800, 39 & 40 G. 3, c. 98. This Act does not derive its popular name from a legislator, but because its need was shown by the eccentric and impolitic ACCUMULATION of Income of the estate of a deceased person which the skill of

Mr. Thellusson's professional advisers enabled him, as the law then stood, to legally direct by his Will: *V.* ELDEST.

V. LOUGHBOROUGH'S ACT.

THEM. — "Them" refers to its last antecedent; and for an application of that rule, *V. Gray* v. *Garman*, 2 Hare, 268; 12 L. J. Ch. 259.

THEME. — "'Theme' (sometimes written *theame* corruptly) is an old Saxon word, and signifieth *potestatem habendi in nativos sive villanos, cum eorum sequelis, terris, bonis et catallis.* But *teame*, sometime corruptly written *theame*, is of another signification; for it is also an old Saxon word, and signifieth where a man cannot produce his warrant of that which hee bought according to his voucher" (Co. Litt. 116 a). *Vf*, Cowel, *Teame.*

Cp, TEAME.

THEN. — "If property be given upon certain events to such persons as shall *then* be next of kin or relations of the testator, the persons standing in that relation *at the period in question*, — whether so or not (or not solely so) at the death of the testator, — are, upon the terms of the gift, entitled. But if the gift is, not to those who will then be, but to those who will or would then be entitled as, next of kin by statute, the word 'then' will be understood as referring to the period when they will be entitled in possession. The persons to take will be, not those who would have been entitled if the testator had then died but, those who would *then* be entitled if the testator, when he died, had died intestate" (2 Jarm. 139, 140).

The cases cited in Jarman for that proposition were thus dealt with by Thesiger, L. J., in *Mortimore* v. *Slater* (47 L. J. Ch. 136; 7 Ch. D. 329; affd in H. L. nom. *Mortimore* v. *Mortimore*, 48 L. J. Ch. 470; 4 App. Ca. 448): — "The cases seem to me to divide themselves into three classes. The first of those classes is the one where the word 'then,' as an adverb of time, is attached to the description of the class; and in that case, as in *Wharton* v. *Barker* (4 K. & J. 483, followed in *Valentine* v. *Fitzsimons*, 1894, 1 I. R. 93), and *Long* v. *Blackall* (3 Ves. 486), it was decided that the word 'then' imported the time at which the class so described is to be ascertained. *Wheeler* v. *Addams* (17 Bea. 417), is to a certain extent an exception to that rule; but I think that may be explained, because we find that in that case there is a reference in the limitation to one of the persons who had been a tenant for life before the limitation came into force.

"The second class of cases consists of those where words of futurity, but without the adverb of time, are attached to the description of the class, and in that class of cases we find no distinction drawn, but in every one of them we find that it was held that the words must speak from the

time of the testator's death. The cases cited on that point have been *Holloway* v. *Holloway* (5 Ves. 399), and *Doe* v. *Lawson* (3 East, 292).

"The third class of cases is that where the word 'then,' the adverb of time, is used, but where you find it used not in connection with the description of the class but in connection with the time at which the estate is to come into being. In that class of cases also, without any exception, we find it decided that you are to look at the class at the time of the testator's death. That is to be found in *Cable* v. *Cable* (16 Bea. 507), in *Bullock* v. *Downes* (9 H. L. Ca. 1), and in *Day* v. *Day* (4 Ir. Rep. Eq. 385); and it is to be observed that in all these cases we do not find that any distinction is drawn from the use of the additional words, 'as if he had died intestate,' but the point which has been looked at by the learned Judges who decided those cases has been whether the word 'then' is attached to the description of the class, or to the time when the estate is to come into possession."

"Moreover, 'then' has more meanings than one, each equally common: it may mean 'at that time' or 'in that case'; and, unless the latter meaning be excluded by the context, it will be adopted rather than construe 'next of kin according to the Statute' (the Statute being expressly referred to), as meaning something different from what the Statute says it means" (2 Jarm. 140, and cases there cited).

"Then," used twice in the same sentence, construed in the first instance as pointing to the event, and in the second as an adverb of time (*Gill* v. *Barrett*, 29 Bea. 372).

"Then," construed as an adverb of time, not of contingency (*Baker* v. *Lucas*, 1 Molloy, 481).

"Then," as an adverb of time, generally refers to the last antecedent (*Archer* v. *Jegone*, 8 Sim. 446; 6 L. J. Ch. 340: *Palmer* v. *Orpen*, 1894, 1 I. R. 32: *Re Dundalk & Enniskillen Ry*, 1898, 1 I. R. 232). *Vh*, *Heasman* v. *Pearse*, cited SUCH.

V. Humfrey v. *Humfrey*, 31 L. J. Ch. 622; 2 Dr. & Sm. 49: *Blight* v. *Hartnoll*, *No. 2*, 51 L. J. Ch. 162; 19 Ch. D. 294: *Pinder* v. *Pinder*, 28 Bea. 44; 29 L. J. Ch. 527: *Druitt* v. *Seaward*, 31 Ch. D. 234; 55 L. J. Ch. 239; 34 W. R. 180: *Re Milne*, 56 L. J. Ch. 543; 56 L. T. 852; 57 Ib. 828: *Boraston's Case*, 3 Rep. 19: Wms. Exs. 987: 84 Law Times, 114.

"Then" may be used as equivalent to "further," *e.g.* where there is a testamentary direction for payment of debts, and "then" a demise of lands (*Willan* v. *Lancaster*, 2 Jarm. 595).

V. THEN LIVING: EITHER.

"Then," in a Pleading, generally means, "at that time" (*V.* per Bosanquet, J., *Thornton* v. *Jenyns*, 1 M. & G. 184, 190); but sometimes it is ambiguous (*Stead* v. *Poyer*, 1 C. B. 782; 14 L. J. C. P. 251).

"The then VALUE"; *V. London Street Tramways Co* v. *London Co. Co.*, cited TRAMWAY.

"*Then and there*," refers to the time and place last before mentioned (*Garret* v. *Johnson*, 1 Raym. Ld, 576: *Vh*, *Davies* v. *The King*, 10 B. & C. 89). *Cp*, *R.* v. *Brownlow*, cited INSTANTLY: *Derecourt* v. *Corbishley*, cited THEREUPON.

THEN IN BEING.—*V. Leader* v. *Duffey*, 17 L. R. Ir. 279: 13 App. Ca. 294.

THEN LIVING.—"Where life interests are bequeathed to several persons in succession, terminating with a gift to a class of objects 'then living,' the word 'then' is held to point to the period of the death of the person last named (whether he is or is not the survivor of the several legatees for life), and is not considered as referring to the period of the determination of the several prior interests" (1 Jarm. 851 *n*, and cases there cited. *Vf*, Wms. Exs. 1331: Watson Eq. 1224–5, 1377: *Britnell* v. *Walton*, W. N. (69) 238: *Heasman* v. *Pearse*, cited SUCH: *Cooper* v. *Macdonald*, 42 L. J. Ch. 539; L. R. 16 Eq. 258: *Cobden* v. *Bagwell*, 19 L. R. Ir. 168: Chitty Eq. Ind. 7385–7388).

"Other Children then living," may be modified by a subsequent proviso that grandchildren should take the share "the parent would have taken if living"; *V. Re Blantern*, W. N. (91) 54.

"Then living," quà the Rule against PERPETUITIES; *V. Re Wood*, 1894, 3 Ch. 381; 63 L. J. Ch. 790; 71 L. T. 413.

V. LIVING: THEN.

THEN SURVIVING.—Burgesses "at that time surviving and remaining," to elect to vacancies in a Borough Council granted by Charter; held, to mean Burgesses for the TIME BEING (*R.* v. *Devonshire*, 1 B. & C. 618).

THENCEFORTH.—"Thenceforth," after an event, has the same meaning as "FROM AND AFTER" (*Farrer* v. *Billing*, 2 B. & Ald. 177); and it, or its equivalent "thenceforward," will not have a retroactive operation (*R.* v. *Madeley*, 15 Q. B. 49; 19 L. J. M. C. 188).

THENECIUM.—A hedge-row or dike-row (Cowel).

THEOLONIO.—A TOLL: *Vh*, *Holcroft* v. *Heel*, 1 B. & P. 400, cited arg. *Egremont* v. *Saul*, 6 A. & E. 924; 6 L. J. K. B. 205: *Cp*, CUSTOM. "Theolonium, is a barbarous word" (*Hill* v. *Priour*, 2 Show. 35).

THERE.—"Then and there"; *V.* THEN, at end.

THEREABOUTS.—By a Charter-Party a defendant undertook to load a vessel "of the measurement of 180 to 200 tons *or thereabouts*"; held, he was not exonerated because the vessel happened to be 257 tons

burthen (*Windle* v. *Barker*, 25 L. J. Q. B. 349; nom. *Barker* v. *Windle*, 6 E. & B. 675). *Vf*, MORE OR LESS.

"Or thereabouts," when qualifying an estimated quantity of *Mines*, ought to be construed in the same way as if applied to the surface (*Davis* v. *Shepherd*, 35 L. J. Ch. 581; 1 Ch. 410; 15 L. T. 122). *V.* MORE OR LESS.

A bequest of "£3000 *or thereabouts*," to be raised by accumulating income, is not void for uncertainty (*Oddie* v. *Brown*, 28 L. J. Ch. 542; 4 D. G. & J. 179, diss. Knight-Bruce, L. J.: *Vth*, 1 Jarm. 358).

V. SAY.

THEREAFTER. — "Thereafter made"; *V. Re Manning*, cited MADE, p. 1133.

V. HEREAFTER: SHALL, p. 1851.

THEREAFTER TO BE BORN. — A testamentary gift to a CLASS composed of persons who may be living at a future event, or "thereafter," or "afterwards," to be born, is an EXECUTORY Gift, and not a CONTINGENT Remainder, so that all the members of the class, whenever born, are entitled to share (*Miles* v. *Jarvis*, 52 L. J. Ch. 796; 24 Ch. D. 633, following *Re Lechmere and Lloyd*, 18 Ch. D. 524, and rejecting *Brackenbury* v. *Gibbons*, 2 Ch. D. 417). In *Dean* v. *Dean* (60 L. J. Ch. 553; 1891, 3 Ch. 150; 65 L. T. 65; 39 W. R. 568), Chitty, J., also followed, *Re Lechmere and Lloyd*, the words before him being, a devise to A. for life, and on his death to such of his children then living "as either before or after" his death should attain 21. *Vh*, *Ferguson* v. *Ferguson*, 17 L. R. Ir. 552: 40 & 41 V. c. 33.

THEREBY. — "Thereupon and thereby"; *V.* THEREUPON.

THEREOF. — "According to the ordinary rule of grammatical construction, the word 'thereof' must apply to the last antecedent" (per Cockburn, C. J., *Perry* v. *Davis*, 3 C. B. N. S. 776).

Vh, *Re Phillips*, 66 L. J. Ch. 714: *Llewellyn* v. *Glamorgan Vale Ry*, cited OWNER, p. 1390.

THERETO. — "Thereto," s. 3, Prescription Act, 1832, 2 & 3 W. 4, c. 71, does not refer to "dwelling-house," &c, but to "access and use of light"; and "the right thereto," in the section, means, "the right to the same access and use of light to and for any dwelling-house, workshop, or other building" (per Fry, L. J., *Scott* v. *Pape*, 55 L. J. Ch. 432; 31 Ch. D. 554; 54 L. T. 399; 34 W. R. 465; 50 J. P. 645). *Vth*, *Greenwood* v. *Hornsey*, 33 Ch. D. 471.

"Thereto adjoining"; *V.* ADJOIN.

"Thereunto belonging"; *V.* BELONGING: ENJOYED.

THERETOFORE. — *V. R.* v. *G. W. Ry*, 28 L. J. M. C. 246: *Portsmouth* v. *Smith*, 53 L. J. Q. B. 92; 54 Ib. 473; 13 Q. B. D. 184; 10 App. Ca. 364.

"Theretofore usually demised"; *V.* USUALLY.

THEREUNTO. — *V.* THERETO.

THEREUPON. — It is as nearly accurate as possible to say that, in its primary sense, "thereupon" is the equivalent of "IMMEDIATELY" (*Vaughan* v. *Watt*, 9 L. J. Ex. 272; 6 M. & W. 492). But "whereupon" confers a right without involving the idea of any time within which it is to be claimed or enforced (*Burslem* v. *Attenborough*, 42 L. J. C. P. 102; L. R. 8 C. P. 122).

"Thereupon, deft gave plt in charge of a policeman," in a Pleading; held, that "thereupon" was equivalent to "then and there" (*Derecourt* v. *Corbishley*, 5 E. & B. 188: *Vf*, THEN, at end); but, in another context, "thereupon" was regarded as the equivalent of "in consequence of" (*Groux Co* v. *Cooper*, 8 C. B. N. S. 814).

"Thereupon *and thereby*"; *V.* these terms distinguished, *Atkinson* v. *Raleigh*, 3 Q. B. 79; 11 L. J. Q. B. 165; 2 G. & D. 611.

V. UPON.

THEREWITH. — Land occupied "TOGETHER WITH" a house, &c (s. 25, Rep People Act, 1832), or House, &c, with any land "occupied therewith," s. 27, Ib.; "therewith," in that connection, has reference more to time than to locality; therefore, land at a distance from, if occupied at the same time as and used with, a house, &c, can be estimated for the purpose of making up a £10 borough qualification, provided the land and building be so occupied by the claimant during the qualifying year "as owner," or "as tenant under the same landlord" (*Capell* v. *Aston*, 8 C. B. 1: *Collins* v. *Thomas*, 22 L. J. C. P. 38; 12 C. B. 639; 2 Lutw. 219: *Saunders* v. *Searson*, 50 L. J. C. P. 117; 29 W. R. 289).

"Lands held therewith," s. 49, Lands C. C. Act, 1845; *V. Holt* v. *Gas Light & Coke Co*, 41 L. J. Q. B. 351; L. R. 7 Q. B. 728.

"Together with all Ways, &c, and APPURTENANCES . . . therewith used, possessed, occupied, or enjoyed, or accepted reputed taken or known as part parcel or member thereof, or as appurtenant or belonging thereunto," "are words quite large enough to convey the adjoining road *usque ad medium filum viæ*" (per Willes, J., *Simpson* v. *Dendy*, 8 C. B. N. S. 468).

"Ways now used therewith"; *V.* WAYS.

V. TOGETHER WITH.

THESE PRESENTS. — A clause in a mortgage empowered the mortgagee (who was a solicitor) to charge for all business done by him "in or about these presents"; held, that this did not enable him to charge

for business relating to the mortgaged property done by him subsequent to the mortgage; "'these presents' mean, not the property, but 'this DEED'" (per Kay, J., *Field* v. *Hopkins*, 59 L. J. Ch. 174; 44 Ch. D. 529; 62 L. T. 774). *V.* Mortgagee's Legal Costs Act, 1895, cited PROFIT.

THIEF.—To call a man a "Thief" is Slander, and needs no innuendo (*Blumley* v. *Rose*, 1 Roll. Ab. 73: *Slowman* v. *Dutton*, 10 Bing. 402: *Vf*, Odgers, 131); but the context or circumstances may show that it was a mere vague word of abuse not actionable (Odgers, 114, 115).

V. FELON: REPUTED THIEF: THEFT.

THIEVES.—The Exception of "Thieves" in a Bill of Lading, generally means the same as in a Marine Insurance, and only applies to thieves *external* to the ship (*Taylor* v. *Liverpool & G. W. Steam Co*, 43 L. J. Q. B. 205; L. R. 9 Q. B. 546; 22 W. R. 752; 30 L. T. 714). In that case Archibald, J., said (43 L. J. Q. B. 208), "No doubt these words, 'Pirates, Robbers, Thieves,' were copied originally from the ordinary Policy of Insurance, and in that Policy the word 'Thieves' refers only to a theft with violence; and as it is capable of that meaning so also it is capable of another meaning, that is, as meaning a *furtum* merely, a furtive theft. If it has that ambiguous meaning, we must consider the meaning it has finally acquired in the ordinary Policy of Insurance; and the defts (the ship-owners) not having made it clear that this is an exception for their benefit, we must hold that it has the more restrictive meaning as in the Policy of Insurance." Even if the Exception is "Thieves *of whatever kind*, whether on board or not, or by land or sea," it will not relieve the shipowner from liability for thefts committed by servants of the ship, *e.g.* the stevedore's men (*Steinman* v. *Angier Line*, 1891, 1 Q. B. 619; 60 L. J. Q. B. 425; 64 L. T. 613; 39 W. R. 392). In *thlc* Bowen, L. J., said, "About the middle of the 17th century the word 'Thieves' found its way into the list of marine casualties against which insurances were effected, and from this time forth there has been a recurring discussion, both in England and in America, as to the extent to which, in policies of insurance, effect ought to be given to this special stipulation. 'Robbery' imports violence; but 'Theft,' which properly speaking does not, may be of several kinds. There may be, the assailing thief from outside, the thief who breaks through and steals; there may be a thief on board among those who are lawfully on board; there may, lastly, be a thief among the crew. The controversy has principally turned upon the question whether the term 'Thieves' ought not to be confined to the first of these categories, viz. the depredators *outside* the ship."

V. ROBBERS: ROBBERY: THEFT.

THING.—*V.* ARTICLE: OTHER, pp. 1364, 1367: THINGS.

"Thing," in such a phrase as "Building, Erection, or Thing" in a statutory prohibition, will, generally, be read *ejusdem generis*; thus,

a lot of stones placed one upon another in the bed of a river but not fastened or cemented together, was not a "Thing" within such a phrase (*Colbran* v. *Barnes*, 11 C. B. N. S. 246).

Destructive thing; *V.* DESTRUCTIVE.

Navigable thing; *V.* NAVIGABLE.

THING IN ACTION. — *V.* CHOSE IN ACTION.

THINGS. — A bequest of "all Things," in a particular house, will not pass bonds and other choses in action (*Popham* v. *Aylesbury*, 1 Amb. 68: *Vth*, Wms. Exs. 1041, *n* (*l*)).

A residuary bequest of "all Things not before bequeathed," will not pass testator's share in leaseholds (*Cook* v. *Oakley*, 1 P. Wms. 302, cited 1 Jarm. 751, *whv*). But where there was a bequest of leaseholds, household goods, wearing apparel, tools, moneys, bonds, bills and debts, "and all Things that I may possess at my decease"; held, that freeholds passed (per North, J., *Re Turner, Arnold* v. *Blades*, 36 S. J. 28, citing *Smyth* v. *Smyth*, 8 Ch. D. 567, 568: *Sv*, *Stuart* v. *Bute*, 1 Dow 73, in *whlc* "Things" was confined to matters *ejusdem generis*).

A bequest of all "*other* Things," has a very wide meaning (*Trafford* v. *Berrige*, 1 Eq. Ca. Ab. 201). *Vf*, EVERY THING ELSE: EVERYTHING.

"Other Valuable Things"; *V.* VALUABLE, towards end.

Cp, EFFECTS.

"Goods, merchandize, or other things whatsoever"; *V.* OTHER, p. 1368.

"Things duly done"; *V.* DULY.

THINK FIT. — *V.* IF THEY SHALL THINK FIT: GENERAL POWER.

A power to Trustees to INVEST in such securities as they "think fit," means, such as they "honestly, though imprudently, think fit" (*Re Smith*, 1896, 1 Ch. 71; 65 L. J. Ch. 159; 73 L. T. 604; 44 W. R. 270: *Re Brown*, 54 L. J. Ch. 1134; 29 Ch. D. 889: *Lewis* v. *Nobbs*, 47 L. J. Ch. 662; 8 Ch. D. 591). *Cp*, DISCRETION.

So, a power to PARDON on such conditions as to the donee of the power "may seem fit" is not invalid on the ground that it would legalize torture and mutilation, for "barbarous practices are impliedly excluded" (*Watson's Case*, 9 A. & E. 783).

Vf, SEEM MEET.

In a LEASE executed under a Power to Lease "with or without fine, and rendering such rents and services as the donee should think fit," no rent whatever need be reserved (*Talbot* v. *Tipper*, Skinner, 427: *Re Molton*, 2 Ir. Com. Law Rep. 634: *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: Sug. Pow. 433–436, 816). If the power were "rendering such *yearly* rents" &c, possibly the rule would be different (*Talbot* v. *Tipper*, sup).

"As shall seem REASONABLE AND PROPER," imports as wide an authority as, "as he shall think fit" (*Taylor* v. *Mostyn*, 52 L. J. Ch. 853; 23 Ch. D. 583).

THINK NECESSARY.—*V.* NECESSARY, p. 1255.

THINK PROPER. — *V.* THINK FIT: REASONABLE AND PROPER: GENERAL POWER.

THIRD.—*V.* SEVENTH.

Third PARTY; *V.* s. 24 (3), Jud. Act, 1873: s. 6, Ord. 16, R. S. C., on *whv* Ann. Pr.

THIRDS.—By a Settlement a provision out of real and personal estate, was made for the wife "in lieu of Dower or Thirds"; held, the husband having died intestate, that the provision was in satisfaction of Dower out of realty and of Thirds out of personalty, and that the wife could claim nothing under the Statute of Distribution (*Thompson* v. *Watts*, 31 L. J. Ch. 445; 2 J. & H. 291; 6 L. T. 817); but the language of the Settlement may confine that ruling to the property comprised therein (*Sambourne* v. *Barry*, Ir. Rep. 6 Eq. 28).

THIRTY-NINE ARTICLES. — *Vh*, and as to their meanings, *Voysey* v. *Noble*, 40 L. J. Ecc. 11; L. R. 3 P. C. 357. The general rules for their exposition are, —

"On the one hand, to ascertain the true construction of those Articles of Religion and Formularies, referred to in each charge, according to the legal rules for the interpretation of statutes and written instruments; and, on the other hand, to ascertain the plain grammatical meaning of the passages which are charged as being contrary to, or inconsistent with, the doctrine of the Church" (per Westbury, C., delivering the jdgmt in the "Essays and Reviews" cases, *Williams* v. *Salisbury*, *Bp.* and *Wilson* v. *Fendall*, 2 Moore P. C. N. S. 424). But the Court "is not compelled, as in cases affecting the right to property, to affix a definite meaning to any given Article of Religion the construction of which is fairly open to doubt, even should the Court itself be of opinion (on argument) that a particular construction was supported by the greater weight of reasoning" (per Hatherley, C., delivering the jdgmt, *Voysey* v. *Noble*, 40 L. J. Ecc. 21; L. R. 3 P. C. 385). "It is a very different thing where the authority of the Articles is totally eluded, and the party deliberately declares the intention of teaching doctrines contrary to them" (per Ld Stowell, *His Majesty's Procurator* v. *Stone*, 1 Hagg. Con. 429); and in order to establish such a contrary teaching it is not necessary to show a contradiction, *totidem verbis*, of some passage in the Articles (*Voysey* v. *Noble*, sup).

THIS. — "This," is a simple word of relation, and its ordinary grammatical meaning will not be extended so as to include something else than that to which it relates (*Bryson* v. *Russell*, 54 L. J. Q. B. 144; 14 Q. B. D. 720; 52 L. T. 208; 33 W. R. 34; 49 J. P. 293).

When a clause in an Act of Parliament speaks of "this *Act*," that means, "the whole of the enactments in the Act" (per Esher, M. R., *Re Williams and Stepney*, cited SUBMISSION).

"This Act," quà Explosives Act, 1875, 38 & 39 V. c. 17, "includes, any license, certificate, byelaw, regulation, rule, and order, granted or made in pursuance of this Act" (s. 108).

"This *Side*"; *V.* GIBRALTAR.

THOROUGHFARE. — "Nearest Public Thoroughfare"; *V.* NEAREST.

V. HIGHWAY: PUBLIC HIGHWAY: OBSTRUCT.

THOUSAND. — Evidence of usage is admissible to show that "Thousand," in a contract, means some other figure than 1000, *e.g.* 1200 (*Smith* v. *Wilson*, 1 L. J. K. B. 194; 3 B. & Ad. 728).

THREAT. — "It is the essence of a Threat that it be made for the purpose of intimidating, or overcoming, the will of the person to whom it is addressed" (per Lush, J., *Wood* v. *Bowron*, cited INTIMIDATE).

A Threat of Legal Proceedings, s. 32, Patents, Designs, and Trade Marks Act, 1883, need not relate only to acts already committed, but may also be contingent warnings directed to future acts; and is not less a Threat because made in a Solr's letter "WITHOUT PREJUDICE" (per Kekewich, J., *Kurtz* v. *Spence*, 57 L. J. Ch. 238; 58 L. T. 438, explaining *Challender* v. *Royle*, 56 L. J. Ch. 995; 36 Ch. D. 425: *Vf*, CIRCULARS), or in a letter or notice of a general character (*Johnson* v. *Edge*, 1892, 2 Ch. 1; 61 L. J. Ch. 262) not referring to any patent (*Douglass* v. *Pintsch Co*, 75 L. T. 332; 65 L. J. Ch. 919; 45 W. R. 108). But "to threaten is one thing; to circulate threats by some one else, is another and different thing. *Primâ facie*, at all events, this statement is true. Evidence may be adduced to prove that the circulation of threats by some one else, is only a cloak to conceal threats really made by the person who circulates them" (per Lindley, M. R., *Ellam* v. *Martyn*, 68 L. J. Ch. 125; 79 L. T. 510; 47 W. R. 212). *Vf*, *Combined Weighing Machine Co* v. *Automatic Weighing Machine Co*, 42 Ch. D. 665; 58 L. J. Ch. 709: *Barrett* v. *Day*, 43 Ch. D. 435; 59 L. J. Ch. 464: *Skinner* v. *Shew*, 62 L. J. Ch. 196; 1893, 1 Ch. 413; 67 L. T. 696; 41 W. R. 217: DUE DILIGENCE. *Note*: as to Measure of Damages, *V. Skinner* v. *Perry*, 1894, 2 Ch. 581; 63 L. J. Ch. 826; 71 L. T. 110: AGGRIEVED, p. 57.

Threat "to limit the number of his Apprentices, or the number or description of his Journeymen, Workmen, or Servants," s. 3, 6 G. 4,

c. 129: *V. Walsby* v. *Anley*, 30 L. J. M. C. 121; 9 W. R. 271: *Shelbourne* v. *Oliver*, 30 L. T. 630: *O'Neill* v. *Kruger*, 12 W. R. 47: *Skinner* v. *Kitch*, 36 L. J. M. C. 116; L. R. 2 Q. B. 393: MOLEST.

V. ACCUSE: BESET: INTIMIDATE: MENACE.

THREATENING. — Quà Peace Preservation (Ir) Act, 1870, 33 & 34 V. c. 9, and by s. 3 thereof, "'Threatening LETTER' and 'Threatening NOTICE,' shall respectively mean and include, any letter or notice written, posted, published, circulated, sent, delivered, or uttered, contrary to" 1 & 2 W. 4, c. 44, s. 3, or 24 & 25 V. c. 97, s. 50, or 24 & 25 V. c. 100, s. 16.

THREE ESTATES. — The Three Estates of the REALM, are (1) the Lords Spiritual, (2) the Lords Temporal, and (3) the Commons; *V.* PARLIAMENT.

THREE TIMES GREATER. — Houses and Buildings are to pay Lighting Rate "Three Times Greater" than Land (s. 33, 3 & 4 W. 4, c. 90); this does not mean "greater than by three times," but means, "three times greater than," so that if the whole rate be treated as 6*d.*, Land would pay 1½*d.*, *i.e.* one-fourth (*R.* v. *Somersetshire*, 22 J. P. 431: *R.* v. *S. E. Ry*, 19 L. J. N. C. 121: *Vf*, *R.* v. *Mid. Ry*, 44 L. J. M. C. 137; L. R. 10 Q. B. 389). *V.* PROPERTY OTHER THAN LAND.

THRESHING MACHINE. — *V.* MACHINE: IMPLEMENT OF HUSBANDRY.

THROAT. — In an Indictment for Murder by cutting the "Throat" of the deceased, — "Throat" is that which is commonly called the throat, and is not confined to that part of the neck which is scientifically called the throat; therefore, the allegation is proved by showing that the jugular vein was divided, although the carotid artery was not cut (*R.* v. *Edwards*, 6 C. & P. 401).

THROUGH. — Under a grant of way from A. to B. "*in, through, and along,*" a particular way, the grantee is not justified in making a transverse road *across* the same (*Senhouse* v. *Christian*, 1 T. R. 560: *Vh*, *Wimbledon Common Conservators* v. *Dixon*, 1 Ch. D. 370; 45 L. J. Ch. 353; 24 W. R. 466; 33 L. T. 679). *V.* ACROSS.

The power enabling a Local Authority (s. 16, P. H. Act, 1875) to carry a Sewer "*into, through, or under,*" lands, is not confined to carrying it underground (*Roderick* v. *Aston*, 46 L. J. Ch. 802; 5 Ch. D. 328).

"*Through, over, or under,*" in a reservation of Wayleave Royalty; *V. G. W. Ry* v. *Rous*, L. R. 4 H. L. 650; 39 L. J. Ch. 553; 19 W. R. 169; 23 L. T. 360.

"Person through whom another person is said to claim," quà Real

Property Limitation Act, 1833, means, "any person by, through, or under, or by the act of, whom the person so claiming became entitled to the estate or interest claimed as heir, issue in tail, tenant by the curtesy of England, tenant in dower, successor, special or general occupant, exor, admor, legatee, husband, assignee, appointee, devisee, or otherwise; and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat" (s. 1). *V.* PERSON.

An INTERRUPTION is done by a person claiming "through" a covenantor for QUIET ENJOYMENT if such person acquires title by any act of Commission on the part of the covenantor, *e.g.* by such covenantor *consenting* to a jdgmt in an action of Ejectment by such person against him to which the covenantor had a good defence (*Cohen* v. *Tannar*, 1900, 2 Q. B. 609; 69 L. J. Q. B. 904; 83 L. T. 64; 48 W. R. 642); *secus*, if the covenantor's sin is one of Omission only, *e.g.* DEFAULT in performing his own covenant, or, probably, if he merely allows jdgmt to go by default against him (*Kelly* v. *Rogers*, 1892, 1 Q. B. 910; 61 L. J. Q. B. 604; 40 W. R. 516). *Note*: *semble*, that "through" is the best word for the covenantee in the phrase "claiming by, from, through, or under" the covenantor. *Vf*, CLAIMING UNDER.

"Through the Intervention"; *V.* INTERVENTION.

"Persons claiming through a Member"; *V.* PERSON.

THROUGH TOLL.—*V. Warwick and Birmingham Canal Nav.* v. *Birmingham Canal Nav.*, cited TOLL.

THROUGH TRAFFIC.—In a Railway sense, "LOCAL TRAFFIC," means, TRAFFIC arising and terminating on the railways of the Co spoken of: "Through Traffic," means, Traffic passing to from or over such railways from to or over the railways of any other Co: *Vh*, s. 25, Ry and Canal Traffic Act, 1888.

In an agreement by one Ry Co to work another Co's line "so as to develope and accommodate, not merely the Through Traffic, but also the Local Traffic of the district to be served by the railway,"—"Through Traffic" means, such Traffic as that for which the railway provides the shortest and most convenient route, and not that which may be more conveniently or economically carried by any other route (*Eastern & Midlands Ry* v. *Mid. Ry*, 5 Ry & Can Traffic Ca. 235). *Vf*, as to "Through Traffic" in an agreement, *Central Wales Ry* v. *Lond. & N. W. Ry*, 4 Ry & Can Traffic Ca. 101.

"Through Traffic Rate and Route," s. 11, Regulation of Railways Act, 1873, 36 & 37 V. c. 48; *V. Central Wales Ry* v. *G. W. Ry*, 52 L. J. Q. B. 211; 10 Q. B. D. 231; 4 Ry & Can Traffic Ca. 110, following *Greenock and Wemyss Bay Ry* v. *Caledonian Ry*, 3 Ry & Can Traffic Ca. 145: *Belfast Central Ry* v. *G. N. Ry, Ireland*, 4 Ry & Can Traffic Ca. 159. *Vf*, FORWARDING Co: USING.

THROUGHOUT. — Where a Vessel was to sail for her Loading Port by 15th March, "the Act of God . . . throughout this Charter-Party, always excepted," and was prevented by an Act of God from sailing till 18th March; held, that "throughout" might exonerate the shipowner from liability for not sailing on the 15th, but did not affect the Condition upon the performance of which the charterer contracted to load the ship (*Crookewit* v. *Fletcher*, 26 L. J. Ex. 153; 1 H. & N. 893).

TICKET. — *V.* See Back.

"Deliver up" his Ticket; *V.* Deliver.

Ticket of Leave; *V.* 16 & 17 V. c. 99, s. 9; 27 & 28 V. c. 47, ss. 4, 10, and Sch A; 54 & 55 V. c. 69, s. 5.

TIDAL LAND. — Quà Ry C. Act, 1863, 26 & 27 V. c. 92, "'Tidal Lands,' means, such parts of the bed, shore, or banks, of a Tidal Water as are covered and uncovered by the flow and ebb of the tide at Ordinary Spring Tides" (s. 3): *V.* Shore.

Va, Isle of Man Harbours Act, 1872, 35 & 36 V. c. 23, s. 3.

TIDAL RIVER. — "That is called an Arm of the Sea where the sea flows and reflows, and so far only as the sea flows and reflows" (Hale, De Jure Maris, 12; Hargr. Tracts, Pt. 1, ch. 5, p. 17 *et seq*). Therefore, a River is a Tidal River in such parts only as are within the regular ebb and flow of the highest tides (*Reece* v. *Miller*, 51 L. J. M. C. 64; 8 Q. B. D. 626: *Vf, Mussett* v. *Burch*, 35 L. T. 486: *Hudson* v. *McRae*, 33 L. J. M. C. 65; 4 B. & S. 585: *Hargreaves* v. *Diddams*, 44 L. J. M. C. 178; L. R. 10 Q. B. 582).

Quà Ry C. Act, 1863, "'Tidal River,' means, any part of a river within the flow and ebb of the tide at Ordinary Spring Tides" (s. 3). *Cp*, Tidal Land.

V. Navigable.

TIDAL WATER. — Quà Ry C. Act, 1863, "'Tidal Water,' means, any part of the Sea, or any part of a River within the flow and ebb of the tide at Ordinary Spring Tides" (s. 3): to a like effect is the def in s. 3, 35 & 36 V. c. 23; s. 108, 38 & 39 V. c. 17.

Quà Mer Shipping Act, 1894, "'Tidal Water,' means, any part of the Sea, and any part of a River within the ebb and flow of the tide at Ordinary Spring Tides, and not being a Harbour" (s. 742): to a like effect is the def in s. 3, 40 & 41 V. c. 16.

Quà Salmon Fisheries Acts, "'Tidal Waters,' shall include, the Sea, and all rivers, creeks, streams, and other water, as far as the tide flows and reflows" (s. 4, 24 & 25 V. c. 109).

TIDE. — *V.* At all times of tide: Navigable: Neap: Shore.

"Tide Permitting"; *V.* Permitting.

TIED HOUSE. — A "Tied House" usually connotes an INN or BEER-HOUSE rented from a person or firm from whom the tenant is, by agreement, compelled to purchase liquors or other commodities to be therein consumed or sold. *Vh, Rice* v. *Noakes*, cited MORTGAGE, p. 1227; affd in H. L. 1902, A. C. 24; 71 L. J. Ch. 139.

As to assigning the agreement; *V.* SPIRITUOUS LIQUOR.

Rateable Value of; *V. Bradford* v. *White*, cited ANNUAL VALUE, p. 87, *va*, p. 88: *Re London Co. Co. and City of London Brewery Co*, cited TRADE INTEREST.

TIGH. — "'Tigh, or Teage,' a close or enclosure, a croft" (Cowel).

TIGHT. — "The representation that the ship is '*Tight, Staunch, and Strong*, and every way fitted for the voyage,' seems to be equivalent to the warranty of seaworthiness and fitness, which is implied by law on the part of the shipowner" (Carver, s. 144 and cases there cited). *V.* SEAWORTHY.

TILL. — *V.* UNTIL.

TILLAGE. — "Tillage" and "AGRICULTURAL" land are synonyms (Co. Litt. 85 b, cited by Willes, J., *Vigar* v. *Dudman*, 40 L. J. C. P. 229; L. R. 6 C. P. 470). To constitute a conversion of land into Tillage "there must be a breaking of the soil for agricultural purposes; a Garden and Orchard, for the purposes of TITHES, have always been considered different from Agricultural Land, for Agricultural Tithes are Great Tithes, — the Tithes on a Garden or Orchard are Small Tithes. Tillage involves ploughing or something analogous (*V.* Johnson's Dict. by Latham, and Webster's Dict.). A distinction is made between 'Tillage,' 'PASTURE,' 'GARDEN,' and 'Orchard,' in 14 & 15 H. 8, c. 1, 27 H. 8, c. 22, and 5 & 6 Edw. 6, c. 5" (per Charles arg. *Ib.*). The planting of land with trees is not a conversion of it into Tillage, nor is the building of a house and using part of the land as an orchard, or, *semble*, as a garden for the convenience of the house, such a conversion (*S. C.* 42 L. J. C. P. 297; L. R. 6 H. L. 212).

TIMBER. — "By the term 'Timber' is meant properly such trees *only* as are fit to be used in building and repairing houses; thus Oak, Ash, and Elm, trees are considered 'timber' in all places, and under whatsoever circumstances they are grown (Co. Litt. 53 a: Craig on Trees and Woods, 11). But only trees of not less than 6 inches in diameter or 2 feet girth (allowing for irregularities of shape), appear to be reckoned or considered as 'Timber' (*Whitty* v. *Dillon*, 2 F. & F. 67)": Woodf. 657. And no wood "is timber until of 20 years' growth" (*Dunn* v. *Bryan*, Ir. Rep. 7 Eq. 143: Dart, 149, 150, citing *Foster* v. *Leonard*, Cro. Eliz. 1, and referring further as to what are, and what are not, timber trees to *Honywood* v. *Honywood*, 43 L. J. Ch. 652; L. R. 18 Eq. 306).

"Many descriptions of trees, which are not generally considered as timber, are so in some places by the custom of the country, *being there used for the purpose of building*; thus it has been laid down that Horse-chestnuts, Limes, Birch, Beech (*R.* v. *Minchinhampton*, 3 Burr. 1309), Asp, Walnut trees, and the like, may under such circumstances be deemed Timber, and are therefore protected by the law as such (*Chandos* v. *Talbot*, 2 P. Wms. 606: *Palmer's Case*, Co. Litt. 53 a, Hargrave's note 349). It has been determined that, in the county of York, Birch trees are timber, because they are used in that county for building sheep-houses, cottages, and such mean buildings (*Cumberland's Case*, Moore, 812): and it would seem that, in Hampshire, Willows have been considered as 'Timber' by the custom of the country (*Layfield* v. *Cowper*, 1 Wood, 330: *Gruffly* v. *Pindar*, Hob. 219)": Woodf. 658. *Vf, Gordon* v. *Woodford*, 27 Bea. 607; 29 L. J. Ch. 222; 1 L. T. 260: Sug. V. & P. 32. To the like effect is the passage in Dart already referred to, where it is laid down that "Timber" includes, "by local custom, Beech and various other trees; even trees which are primarily *fruit trees*, as Cherry, Chestnut, and Walnut (*Chandos* v. *Talbot*, sup)." So White-thorn may be Timber (*Palmer's Case*, sup). But though Dart does not mention the condition italicized in the passage extracted from Woodfall, viz. that to bring trees, not usually regarded as "timber," within that word, they must by the custom be "used for the purpose of building," yet, it would seem, that that at least is an important element in such a construction.

Beech trees are Timber in Buckinghamshire, but not in Oxfordshire (*Dashwood* v. *Magniac*, 1891, 3 Ch. 306; 60 L. J. Ch. 809; 65 L. T. 811).

Where Beech trees — or, as it should seem, any other trees — are by the custom of the country, and having regard to their nature and age, "Timber," "no evidence can be received to qualify its character of timber by showing that it was not deemed to be such in the county unless the tree contained 10 feet of solid wood" (Woodf. 658, citing *Aubrey* v. *Fisher*, 10 East, 446: *Chandos* v. *Talbot*, sup: Co. Litt. 53).

Larch trees are not Timber, except by a local custom (per Kay, L. J., *Dashwood* v. *Magniac*, sup: *Re Harrison*, 54 L. J. Ch. 617, 618).

"Although Pollards have been said not to be timber (Plowd. 470: Craig on Trees, 12, 13: *Phillipps* v. *Smith*, 15 L. J. Ex. 201; 14 M. & W. 589), yet, Lord King inclined to think them timber, provided their bodies were sound and good: and in an action to recover the value of Pollards under the description of 'timber and timber-like trees,' the plaintiff recovered a verdict (*Rabbett* v. *Raikes*, Suffolk Sum. Ass. 1803, cor. Macdonald, C. B.: *Channon* v. *Patch*, 5 B. & C. 897)": Woodf. 658. Dart says (149, 150), "As a general rule, Pollards would seem not to be timber; if sound, however, they may be timber by local custom"; but a little further down the latter page (and citing *Rabbett* v. *Raikes*, sup,

and 2 P. Wms. 606), it is said that timber and timber-like trees "would seem to include sound Pollards" (*Va*, Sug. V. & P. 32).

Vh, Craig on Trees and Woods, 11: Jacob: 12 Encyc. 142, 143: *Cp*, STANDELL: UNDERWOOD.

Under the words of a grant of "timber and timber-like trees now growing and being or which shall hereafter grow and be upon the said lands," Romilly, M. R., held that "thinnings" were included, and that it was for the grantee to determine what should be cut (*Gordon* v. *Woodford*, sup).

A devise for Life carries the "immediate right to the UNDERWOOD, though not to other WOOD" (per Leach, V. C., *Butler* v. *Borton*, 5 Mad. 43); therefore, an exception, from such a devise, to trustees to take "Timber or Wood" for repairs, does not include Underwood, for the exception connotes wood to which the Tenant for Life would not be entitled (*S. C.*).

ORNAMENTAL TIMBER was distinguished from ordinary Timber in *Magennis* v. *Fallon*, 2 Molloy, 590: *Va*, *Ford* v. *Tynte*, 2 D. G. J. & S. 127.

Timber "shipped or unshipped"; *V.* TO SHIP.

V. TIMBERS.

TIMBER DUES. — *V. Burstall* v. *Baptist*, 21 W. R. 485.

TIMBER ESTATE. — This phrase was first employed in *Ferrand* v. *Wilson* (4 Hare, 373; 15 L. J. Ch. 48). It has been said that a Timber Estate is, "an estate in which trees are cut, not for the immediate wants of the owner or for the value of the trees themselves but, to preserve the estate by allowing the natural succession to grow up" (per Rigby arg. *Dashwood* v. *Magniac*, 60 L. J. Ch. 813). In *thlc* Bowen, L. J. (in a characteristically learned and lucid jdgmt), defined a Timber Estate as one "which is cultivated merely for the produce of saleable timber, and where the timber is cut periodically": *Sv*, per Kay, L. J., *Ib.*

"The whole essence of a Timber Estate is that there should be a regular course of cultivation; the main object being that the timber should produce for the Tenant for Life income at periodical intervals" (per Stirling, J., *Pardoe* v. *Pardoe*, cited WASTE).

V. TIMBER: WASTE. *Cp*, MINERAL ESTATE.

TIMBER YARD. — *V. Haddock* v. *Humphrey*, cited WHARF.

TIMBERLODE. — "A Service by which Tenants were to carry timber from the woods to the Lord's house" (Jacob: *Vf*, Cowel).

TIMBERS. — "Main Timbers," in a covenant to repair, will include Iron Beams which are used as substitutes for timbers (*Manchester Bonding Warehouse Co* v. *Carr*, 49 L. J. C. P. 812; 5 C. P. D. 507).

TIME. — "Whenever any expression of Time occurs in any Act of Parliament, Deed, or other legal Instrument, the time referred to shall, unless it is otherwise specifically stated, be held, in the case of Great Britain, to be Greenwich Mean Time; and, in the case of Ireland, Dublin Mean Time" (s. 1, Statutes (Definition of Time) Act, 1880, 43 & 44 V. c. 9). *V.* DAY: OF THE CLOCK: SUNSET.

There is, probably, no general rule, in computing time from an act or event, that the day is to be inclusive or exclusive; it depends on the reason of the thing according to the circumstances (*Lester* v. *Garland*, 15 Ves. 248); but, referring to that case, Bayley, J., said, "All the authorities on the subject are reviewed by Sir W. Grant who takes this distinction, — that where the act done from which the computation is made is one to which the party against whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded" (*Hardy* v. *Ryle*, 9 B. & C. 608). Accordingly, it was there held that where the action against a Justice had, under 24 G. 2, c. 44, s. 8, to be brought "WITHIN 6 calendar months after the act committed," the day of doing the act by the Justice was excluded. *Vf*, FROM.

The computation of time in Criminal Matters is governed by the same rule as in Civil Matters (*Radcliffe* v. *Bartholomew*, cited CALENDAR MONTH).

"Time of the Essence of the Contract"; *V.* ESSENCE.

Claim "consequent on Loss of Time"; *V.* LOSS.

Reasonable Time; *V.* REASONABLE.

V. AT ALL TIMES: AT ANY TIME: AT THE PRESENT TIME: AT THE TIME OF: CERTAIN TIME: CLEAR: CONVENIENT TIME: FORTNIGHT: HOUR: LIMITATION: MEMORY: MONTH: ONE TIME: PERIOD: SITTING: STIPULATED: TERM: WEEK.

Vh, Woolrych on Legal Time: 12 Encyc. 143–166.

TIME BARGAIN. — A "Time BARGAIN" is not, necessarily, a GAMING CONTRACT. "If I buy a crop of apples which grow next year on a particular tree, that is a 'Time Bargain,' but it is not invalid" (per Bramwell, L. J., *Thacker* v. *Hardy*, 48 L. J. Q. B. 297; 4 Q. B. D. 685). But the usual meaning of "Time Bargain," as used on the Stock Exchange, is that it is a contract to pay "Differences," *i.e.* to receive or pay the difference between the price of the subject-matter at one time and its price at another time, — and then it is a Gaming Contract (*Grizewood* v. *Blane*, 21 L. J. C. P. 46; 11 C. B. 538: *Rourke* v. *Short*, 5 E. & B. 904; 25 L. J. Q. B. 196: *Thacker* v. *Hardy*, sup). *Vh*, *Hibblewhite* v. *M'Morine*, 8 L. J. Ex. 271; 5 M. & W. 462: *Coles* v. *Bristowe*, 38 L. J. Ch. 81: *Maxsted* v. *Paine*, 38 L. J. Ex. 41: Stutfield on Betting, Time Bargains, and Gaming, 94.

TIME BEING. — The phrase "For the time being" may, according to its context, mean the time present, or denote a single period of time;

but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time (*Ellison* v. *Thomas*, 31 L. J. Ch. 867; 32 L. J. Ch. 32; 1 D. G. J. & S. 18; 2 Dr. & Sm. 111: *Coles* v. *Pack*, 39 L. J. C. P. 63; L. R. 5 C. P. 65).

A testamentary gift in remainder to testator's "*Next of Kin* for the time being," means the next of kin living at his death (*Moss* v. *Dunlop*, Johns. 490).

Where rights are to be enforced by, or penalties are to be paid to, *Officers* (whether parochial or otherwise) "for the time being," that connotes Officers who are such when the action is commenced, not those who were such when the right arose or the penalty was incurred (*Addey* v. *Woolley*, 8 Taunt. 691: *Doe* d. *Higgs* v. *Terry*, 4 A. & E. 274; 5 L. J. M. C. 27: *Graves* v. *Colby*, 9 A. & E. 356; 8 L. J. Q. B. 57).

"*Owner* for the time being" of Shares in a Co; held, not to include a holder who had sold his Shares after a Call made, but before it was payable (*Aylesbury Ry* v. *Thompson*, 2 Ry. Ca. 668: *Sv, London & Brighton Ry* v. *Fairclough*, 10 L. J. C. P. 133; 2 M. & G. 674; 3 Sc. N. S. 68).

As to the effect of making a PROMISSORY NOTE payable to the Secretary "for the time being" of a named Socy or Co; *V. Storm* v. *Stirling*, cited SECRETARY.

A direction to pay Calls on Shares which, at or after his death, might be or become due in respect of Shares "for the time being" constituting part of testator's Residuary Personal Estate; held, to apply to Calls on Shares held by the testator at his death, but not to Shares afterwards acquired by the Trustees (*Bevan* v. *Waterhouse*, 46 L. J. Ch. 331; 3 Ch. D. 752).

"Amount for the time being *secured*," s. 15 (2), Bg Socy Act, 1874; *V. Re Neath Bg Socy*, cited AMOUNT.

Persons who are "for the time being" *Trustees* under s. 2 (8), Settled Land Act, 1882, are those expressly appointed for the purposes of the Act, or else have, at the time of the proposed sale thereunder, a present and immediate power to sell or consent to a sale (*Wheelwright* v. *Walker*, 52 L. J. Ch. 274; 23 Ch. D. 752). *Vf*, ss. 16, 17, S. L. Act, 1890.

"It has been said that if a power to vary the rights of parties be communicated to the '*Trustees* for the time being,' it cannot be exercised by a single trustee" (Lewin, 718, citing *Lancashire* v. *Lancashire*, 2 Phill. 664).

A Power of Sale to the "Trustees for the time being," is (by virtue of s. 30, Conv & L. P. Act, 1881), exerciseable by the exors of the last surviving trustee (*Re Pixton and Tong*, 46 W. R. 187).

"For the time being," s. 5, Trade Marks Registration Act, 1875; *V. Wood* v. *Lambert*, 29 S. J. 455.

TIME CERTAIN.—*V.* CERTAIN TIME.

TIME IMMEMORIAL.—V. TIME OUT OF MIND.

TIME OF PAYMENT.—*V.* STIPULATED.

TIME OR SITTING.—S. 2, Anne, c. 14; *V.* SITTING.

TIME OUT OF MIND.—"Some have said that 'Time out of mind' should bee said from time of limitation in a writ of right; that is to say, from the time of King Richard the First after the Conquest" (Litt. s. 170), *i.e.* A.D. 1189. *V.* LONG.

The synonym of this phrase is "Time Immemorial": "the expression Time Immemorial,' or 'Time whereof the MEMORY of man runneth not to the contrary,' is now, by the law of England, in many cases considered to include and denote the whole period of time from the reign of King Richard the First" (Prescription Act, 1832, 2 & 3 W. 4, c. 71, preamble). *Vh*, Gale, 7 ed., 167: Goddard, 5 ed., 190.

V. PRESCRIPTION.

TIME PIECE.—"Time Pieces," s. 1, Carriers Act, 1830, includes a Chronometer (*Le Couteur* v. *Lond. & S. W. Ry*, cited PERSONAL LUGGAGE).

TIME POLICY.—"A Time Policy is one in which the RISK is limited by time alone" (Arn. ch. 16, *whv*). *Cp*, VOYAGE.

TIME TABLES.—*V. Leslie* v. *Young*, cited BOOK, p. 204.

TIME TO TIME.—*V.* FROM TIME TO TIME.

TIMES.—*V.* AT ALL TIMES: AT ALL TIMES OF TIDE: TIME.

TINKER.—*V.* PEDLAR.

TIPPLING ACT.—Sale of Spirits Act, 1750, 24 G. 2, c. 40; amended by 25 & 26 V. c. 38. *V.* ITEM: ONE TIME: RECOVER: SPIRITUOUS LIQUOR.

TIPSTAFF.—*V. G.* v. *L.*, 1891, 3 Ch. 128, *n*; 60 L. J. Ch. 706, *n*; 64 L. T. 732, *n*.

TITHE.—*V.* TITHES.

TITHE FREE.—If property is sold "Tithe Free," that is a material statement, and the purchaser is not bound to complete if it be untrue (*Ker* v. *Clobury*, MS. Sug. V. & P. 321, correcting *Stanhope's Case*, cited *Drewe* v. *Hanson*, 6 Ves. 678).

TITHE OWNER.—Stat. Def., Tithe Act, 1836, 6 & 7 W. 4, c. 71, s. 12; Extraordinary Tithe Redemption Act, 1886, 49 & 50 V. c. 54, s. 14; Tithe Act, 1891, 54 & 55 V. c. 8, s. 9.

TITHE PAYER. — Stat. Def., Extraordinary Tithe Redemption Act, 1886, s. 14.

TITHE RENTCHARGE. — Stat. Def., Tithe Act, 1891, 54 & 55 V. c. 8, s. 9 (2); 62 & 63 V. c. 17, s. 2. — *Ir.* Tithe Rentcharge (Ir) Act, 1838, 1 & 2 V. c. 109; 50 & 51 V. c. 33, s. 34; 54 & 55 V. c. 66, s. 95. *V.* TITHES. *Cp*, RENT CHARGE.

"Expenses, Rentcharge, or other sums, to be recovered as Tithe Rentcharge," s. 10 (4), 54 & 55 V. c. 8, *Vf*, s. 2, includes Redemption Charges and Expenses (*R.* v. *Paterson*, 1895, 1 Q. B. 31; 64 L. J. Q. B. 20; 43 W. R. 127).

"Owner of Tithe Rentcharge"; *V.* 62 & 63 V. c. 17, s. 2. — *Ir.* 32 & 33 V. c. 42, s. 32.

TITHES. — "Tithes is an Ecclesiastical Inheritance collateral to the estate of the land, and, of their proper nature, due only to an Ecclesiastical Person by the Ecclesiastical Law" (*Priddle's Case*, 11 Rep. 13 *b*); and were "the tenth part of all Fruits, *Predial*, *Personal*, and *Mixt*, which are due to God, and consequently to his Churches Ministers for their Maintenance" (Cowel). *Vf*, Jacob: 2 Bl. Com. 23–32: 3 Cru. Dig. Title 22: 12 Encyc. 167–180: COMMUTATION.

"*Prædial* Tithes, were such as arise merely and immediately from the ground; as Grain of all sorts, Hay, Wood, Fruit, Herbs:

"*Mixt* Tithes, were those which arise, not immediately from the ground but, from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as Colts, Calves, Lambs, Chicken, Milk, Cheese, Eggs:

"*Personal* Tithes, were such profits as do arise by the honest labour and industry of man, employing himself in some personal work, artifice, or negotiation; being the tenth part of the clear gain after charges deducted" (Phil. Ecc. Law, 1148).

As to what were "Great," as distinguished from "Small," Tithes, *V. Daws* v. *Benn*, 1 B. & C. 751: TILLAGE.

Compensation for, and Commutation of, Tithes are provided for by the Tithe Act, 1836, 6 & 7 W. 4, c. 71, quà which Act, "'Tithes,' shall mean and include, all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments" (s. 12).

Quà Church Building Act, 1851, 14 & 15 V. c. 97, "'Tithes,' shall mean and include, all commuted or uncommuted tithes, rent-charges in lieu of tithe, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments" (s. 29).

Quà District Church Tithes Act, 1865, 28 & 29 V. c. 42, "'Tithes,' shall include, commutation rent-charges, and all moduses, compositions, prescriptive and other payments, or redemption money, in lieu of tithes" (s. 2).

Other Stat. Def. — 4 & 5 V. c. 39, s. 29; 19 & 20 V. c. 104, s. 33.

"The Tithe Acts, 1836 to 1891"; *V.* Sch 2, Short Titles Act, 1896.

Note. A Landlord cannot now contract himself out of his liability to pay Tithe Rent Charge (s. 1 (1), Tithe Act, 1891, 54 V. c. 8).

Extraordinary Tithe, is that charge which, under the Tithe Commutation Acts, might be imposed on hop grounds, orchards, fruit plantations, and market gardens; it is now called "EXTRAORDINARY CHARGE" (Extraordinary Tithe Redemption Act, 1866, 49 & 50 V. c. 54, preamble).

Extra-parochial Tithe; *V.* 1 Bl. Com. 283, 284.

"Tithes" in Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27, is confined to Tithes as between adverse claimants to Tithes (*Grant* v. *Ellis*, 11 L. J. Ex. 228; 9 M. & W. 113: *Ely* v. *Cash*, 15 L. J. Ex. 341; 15 M. & W. 617: *Ely* v. *Bliss*, 2 D. G. M. & G. 459: *Bunbury* v. *Fuller*, 23 L. J. Ex. 29; 9 Ex. 128). *Vf*, *Payne* v. *Esdaile*, 58 L. J. Ch. 299; 13 App. Ca. 613; 37 W. R. 273; 59 L. T. 568.

Tithes in A., will pass under a devise of "LAND" in A., if there be no land there belonging to testator (*Ashton* v. *Ashton*, 3 P. Wms. 386; Ca. t. Talb. 152); so they may, or may not, be included in "my REAL ESTATES" (*Evans* v. *Evans*, 17 Sim. 86; 14 Jur. 383).

V. COMPOSITION: OUTGOING, p. 1378: TITHE RENTCHARGE.

TITHING.—*V.* HUNDRED.

A Tithing was, "in its first appointment, the number or company of ten men with their families, held together in a society, all being bound for the peaceable behaviour of each other" (Jacob).

TITLE.—"'Title' properly (as some say) is, when a man hath a lawfull cause of entry into lands whereof another is seised, for the which hee can have no action, as title of condition, title of mortmaine, &c. But legally this word (Title) includeth a Right also, as you shall perceive in many places in Littleton: and Title is the more generall word; for every Right is a Title, but every Title is not such a Right for which an action lieth; and therefore *Titulus est justa causa possidendi quod nostrum est*, and signifieth the meanes whereby a man commeth to land, as his title is by Fine or by Feoffment, &c" (Co. Litt. 345 b: *Vh*, Elph. 205).

"The word 'Title' has different meanings. In one sense, it may import whether a party has a right to a thing which is admitted to exist; or it may mean, whether the thing claimed does in fact exist" (per Coleridge, J., *Adey* v. *Trinity House*, 22 L. J. Q. B. 4; nom. *R.* v. *Everett*, 1 E. & B. 273).

When a certain number of years' Title to REALTY has to be shown, *e.g.* a Forty Years' Title, "that means, a Title deduced for 40 years and for so much longer as it is necessary to go back in order to arrive at a point at which the title can properly commence. The title cannot commence *in nubibus* at the exact point of time which is represented by 365 days

multiplied by 40. It must commence at or before the 40 years with something which is in itself, or which it is agreed shall be, a proper ROOT of Title" (per North, J., *Re Cox and Neve*, 1891, 2 Ch. 118).

As to what is an Objection to "Title" within Conditions of Sale of Realty; *V. Forbes* v. *Peacock*, 13 L. J. Ch. 46; 12 Sim. 528, disapproving *Bentham* v. *Wiltshire*, 4 Mad. 44, and *Page* v. *Adam*, 4 Bea. 269: *Price* v. *Macaulay*, 2 D. G. M. & G. 339; 19 L. T. O. S. 238: *Ashburner* v. *Sewell*, 1891, 3 Ch. 405; 60 L. J. Ch. 784; 65 L. T. 524; 40 W. R. 169, *whlcv*, on the distinction between an Objection to Title and an ERROR. *Vf*, Dart, 179.

As to Conditions prohibiting Objections, *V.* INVESTIGATING: *Spratt* v. *Jeffery*, inf.

Bad Title; *V.* BAD. *Cp*, GOOD TITLE.

Title Deeds; *V.* INFORMATION, towards end.

V. ABSTRACT: BEST TITLE: DEDUCE: DEMISE: POSSESSORY: PRETENCED.

Quà Registration of Assurances (Ir) Act, 1850, 13 & 14 V. c. 72, "'Title,' shall extend to a Power or Right to convey or otherwise affect lands" (s. 64).

A direction that goods bequeathed are "to be enjoyed with and go with the Title" of real or leasehold property, will not create an executed or executory trust, or cut down the legatee's interest in the goods to a life estate (*Re Johnson*, 53 L. J. Ch. 645; 26 Ch. D. 538, in *whc* were cited the previous cases on the construction of a gift of Chattels to go with a Title). *V.* HEIRLOOM.

"Title *accepted*," "Will not enquire into" Title; *V. Spratt* v. *Jeffery*, 10 B. & C. 249. *Va*, INVESTIGATING.

Title "*accrued*"; *V.* ACCRUE.

Title "*to be approved*"; *V.* SUBJECT TO.

"Title" does not come "in QUESTION," within ss. 56, 60, County Courts Act, 1888, where the claim arises in respect of the possession of a HEREDITAMENT the right to which possession is not seriously disputed, *e.g.* an ordinary action of Trespass (*Hawkins* v. *Rutter*, 1892, 1 Q. B. 668; 61 L. J. Q. B. 146; 40 W. R. 238): *secus*, when so disputed (*Howorth* v. *Sutcliffe*, 1895, 2 Q. B. 358; 44 W. R. 33; 64 L. J. Q. B. 729). The Title to the land is not "in question" in an action for Rent Charge issuing out of such land (*Bassano* v. *Bradley*, 1896, 1 Q. B. 645; 65 L. J. Q. B. 479; 44 W. R. 576).

Covenants for Title:—As to the qualification of a Vendor's Covenant implied by s. 7 (1, A), Conv & L. P. Act, 1881; *V. David* v. *Sabin*, 1893, 1 Ch. 523; 62 L. J. Ch. 347; 68 L. T. 237; 41 W. R. 398. As to other Covenants for Title, *V.* FURTHER ASSURANCE: INCUMBRANCE: QUIET ENJOYMENT. As to the construction of these Covenants, *V.* Elph. ch. 30: PURCHASE FOR VALUE.

Slander of Title; *V.* SLANDER: TRADE LIBEL: Odgers, ch. 5.

"Title to Toll"; *V. Hunt* v. *G. N. Ry*, cited TOLL.

"Formerly it was not so, but now the Title of an ACT OF PARLIAMENT forms part, and a very important part, of the Act" (per Lindley, M. R., *Fielden* v. *Morley*, cited PURSUANCE: *Vf, A-G.* v. *Margate Pier Co*, cited PUBLIC DUTY). *V.* SHORT TITLE.

"Title, ADDITION, or DESCRIPTION"; Stat. Def., quà Dentists Act, 1878; *V.* Medical Act, 1886, 49 & 50 V. c. 48, s. 26.

"There can be, in general, no Copyright in the Title or Name of a BOOK" (per James, L. J., and Jessel, M. R., *Dicks* v. *Yates*, 50 L. J. Ch. 816; 18 Ch. D. 93: *Vf, Hollinrake* v. *Truswell* and *Maxwell* v. *Hogg*, cited COPYRIGHT); though the Title or Name may be a TRADE-MARK (*Dicks* v. *Yates*, 50 L. J. Ch. 809; 18 Ch. D. 76: on *whv Mack* v. *Petter*, 41 L. J. Ch. 781; L. R. 14 Eq. 431: *Kelly* v. *Byles*, 49 L. J. Ch. 181; 13 Ch. D. 682).

Title of Honour; *V.* DIGNITY: *Cowley* v. *Cowley*, 1900, P. 118, 305; 1901, A. C. 450; 69 L. J. P. D. & A. 59, 121; 70 Ib. 83: *Re Rivett-Carnac*, cited INCORPOREAL HEREDITAMENT.

TO. — Where a verb of obligation is put in the infinitive mood, — *e.g.* the tenant "to paint" once every fifth year, — an agreement, or covenant, would obviously be created.

"To," or its equivalent "Unto," or "From," a time or place, generally but not necessarily, excludes the time or place mentioned (*Halsey's Case*, Latch, 183: *R.* v. *Gamlingay*, 3 T. R. 513; *svthlc, R.* v. *Knight*, 7 B. & C. 413). *Vf*, FROM: *Cp*, UNTIL.

"To" will often mean "TOWARDS." The plaintiff effected a Marine Policy, subject to rules one of which was, that ships were not to sail from any port on the east coast of Great Britain *to* any port in the Belts between the 20th Dec and 15th Feb. The plaintiff's vessel sailed on the 8th Feb for a port in the Belts, and was lost; held, that the rule in question was a Warranty and not an Exception; and that the word "*to*" in the rule meant "*towards*," and not "arriving at" (*Colledge* v. *Harty*, 6 Ex. 205; 20 L. J. Ex. 146).

Injury "to" a thing; *V. Burger* v. *Indemnity, &c Assrce*, cited IN RESPECT OF.

TO AND AMONGST. — *V.* AMONG.

TO ARRIVE. — *V.* ARRIVE.

TO BE. — This phrase is one of futurity, and may (1) create a covenant, (2) impose a qualification of, or condition precedent to, a covenant, or (3) imply a stipulation, or (4) go to define the condition of a gift, or of a state of things.

1 and 2. When a clause in a Deed prescribing something to be done or permitted, is introduced by "To be," or a participle, the effect, speak-

ing generally, is to create either a Covenant on the part of the person by whom the thing is to be done or permitted, or to impose a Condition Precedent on, or a Qualification of, some covenant in the deed. The context determines which of these meanings is to prevail. Thus, where rent is "*to be paid*" (*Bower* v. *Hodges*, 22 L. J. C. P. 194; 13 C. B. 765), or if the ordinary words at the commencement of the reddendum of a Lease, — "Yielding and Paying," — are used (Elph. 419, 420, 464–466: Touch. 162: *Sear* v. *House Property Co*, 50 L. J. Ch. 77; 16 Ch. D. 387), a covenant to pay is created. But where a tenant covenants to repair, he "to be allowed," or the lessor "allowing," necessary timber, such latter clause prescribes a condition precedent, or qualification, of the covenant to repair (*Thomas* v. *Cadwallader*, Willes, 496: *Vf*, Elph. 420, 421, 464–466: Woodf. 169, 170, 178).

3. The ad val. Stamp Duty on a CONVEYANCE on Sale, subject to a mortgage, was chargeable, not only on the purchase money, but also on the mtge debt if it was "*to be* afterwards paid by the purchaser" (55 G. 3, c. 184, Sch); that meant, cases where it was *stipulated* that the Purchaser should pay it (*Chandos* v. *Inl. Rev.*, 6 Ex. 464; 20 L. J. Ex. 269). To remedy that ruling *V.* s. 10, 16 & 17 V. c. 59; s. 73, Stamp Act, 1870; s. 57, Stamp Act, 1891, on *whv*, *Mortimore* v. *Inl. Rev.* and *Swayne* v. *Inl. Rev.*, cited SUBJECT to, p. 1957.

4. A Condition of a gift is prescribed by "To be" in such a phrase as TO BE BORN.

V. NOT TO BE: GIVEN: SUPPLIED.

TO BE APPROVED. — Title "to be approved by my solicitor"; *V. Clack* v. *Wood*, 9 Q. B. D. 276, also cited SUBJECT TO.

TO BE BORN. — The ordinary primary legal meaning of "to be born," or "to be begotten," includes past as well as future children (*Doe* d. *James* v. *Hallett*, 1 M. & S. 124: *Cp*, TO BE PASSED), and the introduction of the word "HEREAFTER" does not alter that rule of construction (per Chatterton, V. C., *Harrison* v. *Harrison*, Ir. Rep. 10 Eq. 296). That construction, however, may, by a context, give way to the ordinary meaning of the English language whereby those phrases express futurity (per Fry, L. J., *Locke* v. *Dunlop*, 57 L. J. Ch. 1015; 39 Ch. D. 387; 59 L. T. 683). That case was an instance in which the latter construction was adopted.

"Gifts to, or trusts for, children '*to be* born,' or '*to be* begotten,' include those already born or begotten; and *e contra*" (Elph. 328; *Va*, Ib. 236).

In class gifts to children "to be born," or "to be begotten," "the established rule is, that if the gift be immediate, so that it would, but for the words in question, have been confined to children (if any) existing at the testator's death, they will have the effect of extending it to *all* the children who shall ever come into existence; since in order to give to the

words in question *some* operation, the gift is necessarily made to comprehend the whole" (2 Jarm. 178).

"This rule of construction, however, does not apply to general pecuniary legacies, where the effect of letting in children born after the death of the testator would be to postpone the distribution of the general estate (out of which the legacies are payable), until the death of the parent of the legatees" (Ib. 179).

"It seems to be established, too, that the expression children '*to be* born,' or '*to be* begotten,' when occurring in a gift under which *some* class of children born after the death of the testator would, independently of this expression of futurity, be entitled, so that the words may be satisfied without departing from the ordinary construction, that construction is unaffected by them" (Ib. 180).

"It has been decided, too, that the words 'which shall be begotten,' or 'to be begotten,' annexed to the description of children or issue, do not *confine* the devise to future children; but that the description will, notwithstanding these words, include the children or issue in existence before the making of the Will" (Ib. 181): "and it seems that even the words '*hereafter* to be born' will not exclude previously-born issue" (Ib. 182).

In *Gilbert* v. *Boorman* (11 Ves. 238), Grant, M. R., held that a gift of Residue to A. "and all the other children *hereafter* to be born" of B., on attaining 21, excluded all children born after one of them had attained 21.

Vh, Chitty Eq. Ind. 7771–7774.

V. Born: Hath: When.

TO BE CANCELLED. — Charter party "to be cancelled" in certain events; *V. Adamson* v. *Newcastle Steamship Insrce*, 48 L. J. Q. B. 670; 4 Q. B. D. 462.

V. Cancel.

TO BE CONSUMED. — *V.* On the Premises.

TO BE DECIDED. — *V.* General Line of Buildings: Decide.

TO BE DISPOSED OF. — *V.* Dispose of

TO BE DIVIDED. — *V.* Divide.

TO BE ENTAILED. — *V. Jervoise* v. *Northumberland*, 1 Jac. & W. 559: To be Settled: Settle: Course.

TO BE EXECUTED. — A *fi. fa.* delivered to a sheriff for execution, but which before seizure is stayed until further orders, and on which subsequently the sheriff is ordered to proceed, is not delivered "to be executed," within s. 16, Statute of Frauds, 29 Car. 2, c. 3, until the latter order (*Hunt* v. *Hooper*, 13 L. J. Ex. 183; 12 M. & W. 664).

V. Executed.

TO BE INHABITED.—*V.* INHABITED.

TO BE LEFT TILL CALLED FOR.—*V. Chapman* v. *G. W. Ry*, 5 Q. B. D. 278; 49 L. J. Q. B. 420; 42 L. T. 252; 28 W. R. 566; 44 J. P. 363.

TO BE PAID.—This phrase, in an Agreement inter partes, creates a covenant to pay (*Bower* v. *Hodges*, 22 L. J. C. P. 194; 13 C. B. 765).

In a Will it is generally synonymous with PAYABLE; *Vf*, 1 Jarm. 837. In *Martineau* v. *Rogers* (25 L. J. Ch. 398; 8 D. G. M. & G. 328), "to be paid" was construed "VESTED."

A direction that a legacy to a married woman is "to be paid" to her, nullifies a RESTRAINT ON ALIENATION (*Re Fearon*, 45 W. R. 232, applying *Re Bown*, 53 L. J. Ch. 881; 27 Ch. D. 411; 50 L. T. 796; 33 W. R. 58), so, where the direction is "to raise and pay"; *secus*, where the legacy is "to be held upon trust" for the married woman (*Re Grey*, 56 L. J. Ch. 511; 34 Ch. D. 712; 56 L. T. 350; 35 W. R. 560). *Vf*, Godefroi, 587, 588.

V. PAID.

TO BE PASSED.—"Any Act *to be* passed in the present SESSION of Parliament," *semble*, means the same as "any Act *passed* in the present Session"; for "the Session is a thing of continuity; therefore, when the legislature speak of any Act *to be* passed in that Session, they mean, any Act that shall be passed from the commencement to the conclusion of the Session, embracing both the past and future portions of it" (per Ellenborough, C. J., *Nares* v. *Rowles*, 14 East, 518). *Cp*, PASSING: TO BE BORN.

TO BE PERFORMED.—*V.* WITHIN THE JURISDICTION.

TO BE RECOVERED.—"When a statute gives a 'penalty to be recovered before Justices of the Peace,' but prescribes no method of recovering it, the proper method is by Indictment" (Dwar. 673, citing Salk. 606).

V. RECOVER.

TO BE SETTLED.—In a direction to "settle or entail" an estate, the Court "would be justified in construing the words 'settled or entailed' as words intended to denote and signify that series of limitations and estates which the Settlor has referred to and designated by the term 'Settlement' or 'Entail'" (per Ld Westbury, *Sackville-West* v. *Holmesdale*, 39 L. J. Ch. 514; L. R. 4 H. L. 566). *V.* TO BE ENTAILED.

"To be settled"; held to create an EXECUTORY trust (*Ballance* v. *Lamphier*, 42 Ch. D. 62; 58 L. J. Ch. 534; 37 W. R. 600; 61 L. T. 158). *Vf*, SETTLED.

TO BE SHIPPED.—*V.* SHIPPED.

TO BE TRANSFERRED.—*V.* TRANSFER.

TO BEARER.—*V.* BEARER.

TO HAVE AND TO HOLD.—*V.* HAVE AND TO HOLD.

TO OR FROM.—*V.* INTO.

TO ORDER.—If a warehouseman gives a Warrant of goods to be held "To Order" of A., and, without getting the Warrant, delivers the goods at A.'s request to some one other than the holder of the Warrant, the warehouseman will be responsible for the goods to the innocent holder for value of the Warrant (*London & County Bank* v. *Fulford*, 2 Times Rep. 703).

V. ORDER: NEGOTIABLE.

TO THE EFFECT.—*V.* IN THE FORM: TENOR.

TO THE EXTENT.—A guarantee for goods "to the extent of" a specified sum, means, "NOT EXCEEDING" that sum, and does not fix the sum as the minimum of the supply of goods (*Dimmock* v. *Sturla*, 14 M. & W. 758; 15 L. J. Ex. 65).

TO WIT.—*V.* MEMORANDUM: NAMELY.

The County, &c, named in the margin of an Indictment, *e.g.* "Gloucestershire, To Wit," "shall be taken to be the Venue for all facts stated in the body of such Indictment," except when local description is required (s. 23, Criminal Procedure Act, 1851, 14 & 15 V. c. 100).

TOBACCO.—Quà the Tobacco Acts, 1840 and 1842, "Tobacco," includes, "tobacco stalks, tobacco flour, returns of tobacco, and segars, and tobacco of every description" (s. 14, 5 & 6 V. c. 93).

Quà, and by, s. 5, Finance Act, 1896, "Tobacco," "includes, cigars, cigarillos, cigarettes, and snuff."

"Tobacco Works"; *V.* NON-TEXTILE FACTORIES.

"Fit for Sale"; *V.* FIT FOR.

TOFT.—"'Toft' is a place wherein a house once stood, but it is now all fallen, or puld downe" (Termes de la Ley): *Vf*, *Hill* v. *Grange*, Plowd. 170: *Skidmore* v. *Boucheir*, 2 Show. 93: Cowel.

"Toft is the place where a house has been, and now there is none, and the site of the house can be seen, and by this name it will pass in a grant: 21 Ed. 4, 52, Pl. 15; Touch. 95. Spelman says that the house must have been in the country" (Elph. 622).

TOGETHER WITH.—This phrase does not mean "and also," but "at the same time as"; therefore, a Bill of Sale and its affidavit must be

registered simultaneously (*Grindell* v. *Brendon*, 28 L. J. C. P. 333; 6 C. B. N. S. 698). *V.* THEREWITH.

Testator's name "together with" devisee's own Surname; *V.* Name and Arms Clause, sub NAME.

Devise of rent of A., to C. B. for life and, after his death, the same rent "together with" testator's other rents to X. Y.; held, on review of the Will, that "together with" did not incorporate the time when the gift of the other rents was to become operative, and that X. Y. took them on the death of the testator (*Doe* d. *Annandale* v. *Brazier*, 5 B. & Ald. 64).

V. WITH.

TOLERATED.—Place of Religious Worship, "tolerated by law on Sundays"; *V.* USUAL PLACE OF RELIGIOUS WORSHIP.

TOLERATION ACT.—1 W. & M. c. 18, confirmed by 10 Anne, c. 2; *Vh*, PUBLIC ACT OF PARLIAMENT.

TOLL.—"Toll," or *Tolnetum* (or THEOLONIO), is a sum of money which is taken in respect of some benefit (per Bramwell and Willes, arg., citing Com. Dig. *Toll*, in *Adey* v. *Trinity House*, 22 L. J. Q. B. 3),—the benefit being, the temporary use of land,—*e.g.* FAIR OR MARKET TOLLS, TOLL THOROUGH, TOLL TRAVERSE, ANCHORAGE TOLL, and Harbour Tolls (*Mayor of Exeter* v. *Warren*, 5 Q. B. 773: *The London Wharves*, 1 Bl. W. 581). Therefore, Harbour Rates (under a Private Act) are "Tolls" (*Adey* v. *Trinity House*, 22 L. J. Q. B. 3; nom. *R.* v. *Everett*, 1 E. & B. 273); but payments to a Railway Company for the use of locomotive power, as distinguished from the use of their railway, are not (*Hunt* v. *G. N. Ry*, 20 L. J. Q. B. 349; 2 L. M. & P. 268).

Quà Ry C. C. Act, 1845, "Toll," unless there is something in the subject or context repugnant, includes, "any rate or charge, or other payment, payable under the special Act, for any passenger, animal, carriage, goods, merchandize, articles, matters, or things, conveyed on the railway" (s. 3); so of "Toll" quà Ry C. C. (Scot) Act, 1845 (s. 3).

Semble, the proper sense of the word "Toll," as applied to a Ry, is a payment in respect of the use of the railway itself,—the person paying the toll being himself the carrier of the goods or persons along the railway (*Wallis* v. *Lond. & S. W. Ry*, 39 L. J. Ex. 57; L. R. 5 Ex. 62: *Brown* v. *G. W. Ry*, 9 Q. B. D. 744; 51 L. J. Q. B. 529: *North Central Wagon Co* v. *Manchester, S. & L. Ry*, 55 L. J. Ch. 780; 56 Ib. 609; 58 Ib. 219; 32 Ch. D. 477; 35 Ib. 191; 13 App. Ca. 554), and those cases show that that is the meaning of the word as used in ss. 95–97, Ry C. C. Act, 1845. A Railway Co's carrier charge is therefore not a Toll: *V.* lastly cited cases and *Gorton* v. *Bristol & Ex. Ry*, 1 B. & S. 112; 30 L. J. Q. B. 273, and *Pryce* v. *Mon. Ry*, 49 L. J. Ex. 130; 4 App. Ca. 197, for distinction between "Charges" and "Tolls." "Tolls" in s. 90, *semble*,

applies to traffic generally, and is not limited to Tolls strictly so called (*Evershed* v. *Lond. & N. W. Ry*, 46 L. J. Q. B. 289; 47 Ib. 284; 48 Ib. 22; 3 Q. B. D. 134; 3 App. Ca. 1029); but (per Bramwell, L. J., in *thlc*), the "word does not include a charge for cartage or collection; it only includes charges for receiving upon transit along, and delivery from, the Railway, of the goods entrusted to the Company" (47 L. J. Q. B. 285). "Tolls" in s. 86, and in the exactly corresponding s. 79, Ry C. C. (Scot) Act, 1845; *V. Highland Ry* v. *Jackson*, 3 Sess. Ca. 4th Ser. 850: *Aberdeen Commercial Co* v. *G. N. Scotland Ry*, 3 Ry & Can. Traffic Ca. 229. "Tolls" in s. 87, Ry C. C. Act; *V. Simpson* v. *Denison*, 10 Hare, 60: *G. N. Ry* v. *South Yorkshire Ry*, 9 Ex. 644; 23 L. J. Ex. 186; 23 L. T. O. S. 147.

"Tolls," s. 11, Regn of Railways Act, 1873, 36 & 37 V. c. 48, is not to be restricted to Tolls payable according to a mileage scale or specified to be maximum tolls, but includes tolls levied for the use of a railway or canal (*Warwick & Birmingham Canal Nav.* v. *Birmingham Canal Nav.*, 3 Ry & Can Traffic Ca. 113).

Tolls, quà Fairs and Markets; *V. Caswell* v. *Cook*, 11 C. B. N. S. 637; 31 L. J. M. C. 185: *vthc*, *Londonderry* v. *M'Elhinney*, Ir. Rep. 9 C. L. 61.

"Tolls," s. 4, Land Tax Act, 1797, 38 G. 3, c. 5; *V. Charing Cross Bridge Co* v. *Mitchell*, 24 L. J. Q. B. 249; 4 E. & B. 549.

"Tolls" quà Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51, includes "PONTAGES; and also any sum payable in respect of any exemption from, or relinquishment of, tolls" (s. 3).

Turnpike Tolls; Stat. Def., 7 & 8 V. c. 91, s. 114. *V.* TURNPIKE ROAD.

STALLAGE may pass under the word "Toll" (*Bennington* v. *Taylor*, 2 Lutw. E. ed. 1718, 642: *Hickman's Case*, 2 Rol. Ab. 123: *Hill* v. *Priour*, 2 Show. 34: *Lockwood* v. *Wood*, 6 Q. B. 31; 10 L. J. Q. B. 100; 13 Ib. 365).

As to construction of an Exemption from Toll; *V. Hill* v. *Priour*, sup.

Vh, Termes de la Ley, *Tol* or *Tolne*: Cowel: Jacob: 12 Encyc. 185–187.

V. CUSTOM: RATE: RENTS AND TOLLS: WITH ALL LIBERTIES.

TOLL GATES. — Turnpike Toll Gates; Stat. Def., 7 & 8 V. c. 91, s. 114.

TOLL HOUSE. — *V.* PUBLIC HOUSE, at end.

TOLL THOROUGH. — Is a toll for passing along a public highway, whether the highway be a road, a river, a ferry, a bridge, or the sea: and it cannot be claimed by prescription, but must be supported (if at all) by a good consideration performed in respect of the precise locality where the toll is claimed, *e.g.* the reparation of *the* highway on which the toll

is claimed (Gunning on Tolls, 2–25: *Smith* v. *Shepherd*, Cro. Eliz. 710: *Hill* v. *Smith*, 4 Taunt. 520: *V.* ANCHORAGE TOLL). *Vh*, *Brecon Markets Co* v. *Neath & Brecon Ry*, 41 L. J. C. P. 257; 42 lb. 63; L. R. 7 C. P. 555; 8 lb. 157. *Cp*, TOLL TRAVERSE.

TOLL TRAVERSE. — Is a toll payable for passing over the soil of another, or over soil which, though now a public highway, was once private, and which (as a matter of precise proof, or as a legal presumption) was dedicated subject to the toll. It can be claimed by prescription, and, like a Market Toll, may vary in amount according to the varying value of money (Gunning on Tolls, 26–42: *Pelham* v. *Pickersgill*, 1 T. R. 660: *Lawrence* v. *Hitch*, 37 L. J. Q. B. 209; L. R. 3 Q. B. 521; 9 B. & S. 467). *Vh*, *Brecon Markets Co* v. *Neath & Brecon Ry*, cited TOLL THOROUGH; and on the difference between Toll Thorough and Toll Traverse, *V. R.* v. *Salisbury*, 8 A. & E. 716.

Cp, MODUS.

TO-MORROW. — *V. Duncan* v. *Topham*, 8 C. B. 225; 18 L. J. C. P. 310.

TON. — "A Ton shall consist of 20" CWTS. (s. 14, 41 & 42 V. c. 49). A contract for the sale of goods by "the Ton, long weight," is good, as "the Ton, long weight," though it consists of 240,000 lbs. avoirdupois and is more than 20 cwt. statutory measure, is yet a Multiple of the standard pound, within s. 9, Weights and Measures Act, 1824, 5 G. 4, c. 74 (*Giles* v. *Jones*, 24 L. J. Ex. 261; 11 Ex. 393). *V.* MULTIPLE.

"Tons Burden"; *V.* BURDEN.

TONNAGE. — Tonnage was "a Custome or Impost paid to the King for merchandise carried out, or brought in ships, or such like vessels, according to a certain Rate upon every Tun" (Cowel).

V. GROSS: REGISTER.

"Tonnage, Timber, Stores, or other Goods," s. 85 (1), Mer Shipping Act, 1894; *V.* GOODS, p. 822.

TOO. — No. 20 of the River Tyne Bye-Laws, 1884, without laying down a hard-and-fast rule, means, that the Incoming Vessel is not to come in "Too *Near*," *i.e.* that she must give room enough, and "she must not run up so close as only to leave just room" (per Esher, M. R., *The John O'Scott*, 1897, P. 64; 66 L. J. P. D. & A. 47; 76 L. T. 222; 8 Asp. 235, interpreting *The Harvest*, 11 P. D. 90).

TOOKE. — *V.* HORNE-TOOKE'S ACT.

TOOL. — *V.* MACHINE: MATERIALS.

TOOT AND HAUL. — *V.* NET, p. 1265.

TOP. — *V.* Lop.

TOPMOST STOREY. — *V.* Storey.

TORRA. — "Torra," or "Tor," a mount or hill (Jacob).

TORRENS' ACT. — Artizans and Labourers Dwellings Act, 1868, 31 & 32 V. c. 130, which, with the cognate subsequent Acts, is repealed and replaced by Housing of the Working Classes Act, 1890, 53 & 54 V. c. 70.

TORT. — "A 'Tort' has been defined as a Wrong independent of Contract. It may also be defined as the infringement, without lawful excuse, of a right vested in some determinate person, either personally or as a member of the community, and available against the world at large, or against some person or body exercising public functions as such, whereby damage is caused to such determinate person, either intentionally or as a natural consequence of the infringement" (Add. T. 1); or, more briefly, a Tort, is an act or omission giving rise, in virtue of the Common Law Jurisdiction of the Court, to a civil remedy which is not an action of Contract (Pollock on Torts, 6 ed., 5).

"Action *founded on Tort,*" s. 5, Co. Co. Act, 1867, repld s. 116, Co. Co. Act, 1888; — an action of Detinue, or Trover, is within this phrase (*Bryant* v. *Herbert*, 47 L. J. C. P. 670; 3 C. P. D. 389; 26 W. R. 898: *Cohen* v. *Foster*, 61 L. J. Q. B. 643; 66 L. T. 616); so is an action by a Bailor against a Bailee for not safely keeping the thing bailed (*Turner* v. *Stallibrass*, 1898, 1 Q. B. 56; 67 L. J. Q. B. 52; 46 W. R. 81; 77 L. T. 482); so is an action against a Carrier for delivering goods to an insolvent consignee after notice of a stoppage *in transitu* (*Pontifex* v. *Mid. Ry*, 47 L. J. Q. B. 28; 3 Q. B. D. 23), or for personal injuries to his passenger occasioned by negligence (*Taylor* v. *Manchester, S. & L. Ry*, and *Kelly* v. *Metrop Ry*, cited Contract, p. 392: *Vf, Meux* v. *G. E. Ry*, cited Luggage). *Cp*, "Action founded on Contract," sub Contract: *Va*, Founded on.

"Action *of Tort,*" s. 10, Co. Co. Act, 1867; Trover is within this phrase (*Clapham* v. *Oliver*, 30 L. T. 365).

Proceedings under s. 23, 41 & 42 V. c. 77, for expenses to Highway caused by Extraordinary Traffic, are founded on Tort, and cease on the death of the causator (*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).

Executor *de son tort*; *V.* Executor.

Cp, Misfeasance.

TORTURE. — *V.* Cruelty to Animals, sub Cruelty, pp. 444, 445.

TOTAL INCOME. — *V.* Income.

TOTAL LOSS. — Quà a Marine Insrce, "the 'Total Loss' of the thing insured is, the absolute destruction of it by the Wreck of the Ship" (per Mansfield, C. J., *Cocking* v. *Fraser*, cited SPECIE, *whvf*).

"Since the days of *Davy* v. *Milford* (15 East, 559, on *whcv*, *Janson* v. *Ralli*, 25 L. J. Q. B. 300; 6 E. & B. 422), it seems that the expression, 'Total Loss,' is an ambiguous one; it may mean a total loss of the whole subject-matter of insurance, or a total loss of part" (per Byles, J., *Wilkinson* v. *Hyde*, 3 C. B. N. S. 46; 27 L. J. C. P. 120).

A Total Loss is either (1) Actual, or (2) Constructive, — *Actual*, when the subject-matter of insurance is either wholly destroyed, or so damaged that it would be IMPRACTICABLE to repair the injury (Maude & P. 525: *Moss* v. *Smith*, 9 C. B. 103); *Constructive*, when the subject-matter, although still in existence, is either actually lost *to the owners*, or beneficially lost to them and notice of abandonment has been given to the underwriters (Maude & P. 528). Quà a Policy, there is a Constructive Total Loss when the ship goes to the bottom of the sea, though the underwriters may, by mechanical skill and appliances, bring her up again (*The Blairmore*, 1898, A. C. 593; 67 L. J. P. C. 96; 79 L. T. 217).

The Total Loss of a ship by ABANDONMENT cannot be converted into Partial Loss by recapture or restoration *after* action brought (*Ruys* v. *Royal Exchange Assrce*, 1897, 2 Q. B. 135; 66 L. J. Q. B. 534; 77 L. T. 23).

Quà Bottomry Bond; *V.* Loss.

Vh, *Cunningham* v. *Maritime Insrce*, 1899, 2 I. R. 257: *Cossman* v. *West*, 57 L. J. P. C. 17; 13 App. Ca. 160; 58 L. T. 122; 6 Asp. 233: *Allen* v. *Sugrue*, 8 B. & C. 561; *Adams* v. *Mackenzie*, 13 C. B. N. S. 442; 32 L. J. C. P. 92: 2 Arn. Part 3, ch. 6: 8 Encyc. 183–191.

Value of Ship how ascertained quà a Constructive Total Loss; *V. Henderson* v. *Shankland*, 1896, 1 Q. B. 525; 65 L. J. Q. B. 340; 74 L. T. 238; 44 W. R. 401, approving the dictum in Arnold, s. 1024, that "New for Old" allowance is not applicable where no repairs are done.

V. CASTAWAY: LOSS: PARTIAL LOSS: SPECIE.

Cp, "Wholly disabled," sub WHOLLY.

TOTIES QUOTIES. — "As often as" (Cowel). *V.* AS OFTEN AS: FROM TIME TO TIME: QUAMDIU.

TOUCH. — As to the meaning of a Covenant "touching the Land"; *V.* per Charles, J., *Fleetwood* v. *Hull*, 58 L. J. Q. B. 341; 23 Q. B. D. 35; 60 L. T. 790; 37 W. R. 714, approved by Lindley, L. J., *White* v. *Southend Hotel Co*, 1897, 1 Ch. 767; 66 L. J. Ch. 387: *Vf*, RUN WITH THE LAND.

An Arbitration Clause that all disputes, &c, "touching These Presents, or any clause matter or thing herein contained, or the construction thereof"; held, to include, not only the construction of the document

itself, but also the question whether the acts complained of were or were not within the matters referred to arbitration (*Willesford* v. *Watson*, 42 L. J. Ch. 447; 8 Ch. 478; *svthc*, *Piercy* v. *Young*, 14 Ch. D. 200: *V.* both cases cited in the jdgmt in *De Ricci* v. *De Ricci*, 1891, P. 378; 61 L. J. P. D. & A. 17).

"Touching the Right"; *V.* RIGHT.

Cp, AFFECT: AFFECTING.

TOUCH-AND-GO. — *V.* STRANDING.

TOURNE. — *V.* TURNE.

TOUT. — In a libel action (June 13, 1893) Day, J., said that "the true meaning of the word 'Tout' is simply, a person who obtains business by solicitation; and not, necessarily, a SWINDLER, though no doubt he might combine the occupations" (37 S. J. 567). In *Asch* v. *Financial News* (Times, June 13, 1893; Odgers, 119), a jury found the word not libellous.

TOW. — *V.* LIBERTY TO TOW.

A tug towing a vessel UNDER-WAY, though having her anchor on the ground yet not held thereby, must carry Towing Lights as prescribed by Art. 3, Regns for Preventing Collisions at Sea, 1897 (*The Romance*, cited AT ANCHOR).

TOWAGE. — "'Towage, *Towagium*,' Is the towing or drawing a Ship or Barge along the water by men or beasts on land, or by another ship or boat fastned to her" (Cowel). *V.* TOWING-PATH.

"Without attempting any definition which may be universally applied, a Towage Service may be described as, the employment of one VESSEL to expedite the voyage of another when nothing more is required than the accelerating her progress" (per Dr. Lushington, *The Princess Alice*, 3 Rob. W. 138: *Vf*, *The Charlotte*, Ib. 71: *The Strathnaver*, 1 App. Ca. 58); and are not the subject of a Maritime LIEN (*Westrup* v. *Great Yarmouth Co*, 59 L. J. Ch. 111; 43 Ch. D. 241).

In another sense, Towage, is a Shore-duty, "for the liberty of Vessels up to the PORT" (Hale, De Portibus Maris, ch. 6); "also that money, or other recompence, which is given by bargemen to the owner of the ground next a River where they tow a Barge, or other Vessel" (Cowel).

Vf, Jacob: 12 Encyc. 197–199.

TOWARDS. — A bequest of an Annuity to A. "towards the support of her children until they attain 21"; held, merely descriptive of the motive of the gift, and that the annuity continued after the children attained 21 (*Farr* v. *Hennis*, W. N. (80) 194). *V.* SUPPORT.

In pleading a WAY to a place, the word anciently used was "UNTO"

the place, but "towards" has been introduced in modern times (per Littledale, J., *Simpson* v. *Lewthwaite*, 3 B. & Ad. 230, 231): the reason for using the latter, and less rigid, word being shown by Kenyon, C. J., in *Wright* v. *Rattray*, 1 East, 381.

From A. "*towards and unto*" B., in an Indictment for Non-repair of a Highway; *V. R.* v. *Downshire*, 5 L. J. K. B. 50; 4 A. & E. 232; 5 N. & M. 662. *V.* To.

TOWER. — "District of Tower," in Sch B, Metrop Man. Act, 1855; *V. R.* v. *Great Tower Hill Trustees*, 14 L. T. 792.

TOWING-PATH. — *V. Grand Junction Canal Co* v. *Petty*, cited PUBLIC ROAD: *Lea Conservancy* v. *Button*, 51 L. J. Ch. 17; 6 App. Ca. 685; *Winch* v. *Thames Conservators*, 43 L. J. C. P. 167; L. R. 9 C. P. 378.

TOWN. — "By the name of a towne, *villa*, a mannor may passe" (Co. Litt. 5 a).

"Towne (ville)." "*Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis.* If a towne be decayed so as no houses remaine, yet it is a towne in law. And so if a borough be decayed, yet shall it send burgesses to the parliament, as Old Salisbury and others doe." — but the glory of Old Sarum was extinguished by the Rep People Act, 1832 — "It cannot be a towne in law, unlesse it hath, or in time past hath had, a church and celebration of divine service, sacraments, and burials" (Co. Litt. 115 b: *Vf*, 1 Bl. Com. 114). In *Elliott* v. *S. Devon Ry* (17 L. J. Ex. 262) Parke, B., said that the legal meaning of the word "Town" was "a place with a constable, or a church." *V.* BOROUGH: TOWNSHIP: VILL: VILLAGE.

But generally in modern legislation, — *e.g.* ss. 93, 128, Lands C. C. Act, 1845; s. 11, Ry C. C. Act, 1845; Towns Improvement Clauses Act, 1847, 10 & 11 V. c. 34, — "Town" is not restricted by its legal meaning, but is expounded popularly and means, the space which, for the time being, is covered by, or occupied as accessory to, houses collected together in a mass, and in sufficient number to be ordinarily designated as a Town; and includes unbuilt-on lands that may lie within the ambit of such collected mass of houses (*Elliott* v. *S. Devon Ry*, 17 L. J. Ex. 262; 2 Ex. 725: *R.* v. *Cottle*, 20 L. J. M. C. 162; 16 Q. B. 412: *Lond. & S. W. Ry* v. *Blackmore*, 39 L. J. Ch. 713; 23 L. T. 504; 19 W. R. 305; L. R. 4 H. L. 610: *Collier* v. *Worth*, 1 Ex. D. 464; 40 J. P. 808: *Deards* v. *Goldsmith*, 40 L. T. 328); but not lands outside such ambit, though within a borough (*Carington* v. *Wycombe Ry*, 3 Ch. 377; 37 L. J. Ch. 213; 18 L. T. 96; 16 W. R. 494: *Coventry* v. *L., B. & S. Ry*, L. R. 5 Eq. 104; 37 L. J. Ch. 90; 16 W. R. 267: *Falkner* v. *Somerset & Dorset Ry*, L. R. 16 Eq. 458; 42 L. J. Ch. 851). *Vf*, Dart,

860, 861: Lloyd on Compensation, 6 ed., 37: Woolf. & Middleton, Ib. 208, 249, 274: Brown & Allan, Ib. 282: Cripps, Ib., 4 ed., 40, 264.

Observe further, that in modern Acts, "Town" will frequently be an expanding word, and not tied to the limits of the locality indicated at the time of its use. Thus, a prohibition in the Rochdale Market Act, 1822, against selling marketable commodities within the "Town" of Rochdale elsewhere than in the Market, means, the growing town of Rochdale, and not merely that town as it was in 1822 (*Killmister* v. *Fitton*, 53 L. T. 959).

An Auctioneer may (without other than his Auctioneer's License) sell by SAMPLE exciseable commodities if their owner is licensed for their sale "in the SAME Town or Place," s. 14, 27 & 28 V. c. 56; that means, "same Town" in its popular designation, and although (save for the Thames) there are houses all the way from the City of London to Sydenham, yet the City and Sydenham are not "in the same Town," within that section (*Casey* v. *Rose*, 82 L. T. 616).

"Town," as defined by the Licensing Acts; *V.* 35 & 36 V. c. 94, s. 74; 37 & 38 V. c. 49, s. 32. — *Ir.* 37 & 38 V. c. 69, s. 37.

"Town" in a Turnpike Act; *V. R.* v. *Cottle*, 20 L. J. M. C. 162; 16 Q. B. 412.

Whether a place, in Ireland, is a "Town" so as to constitute one of the requisites for making a HOLDING in its neighbourhood a "TOWN PARK," s. 58, Land Law (Ir) Act, 1881, 44 & 45 V. c. 49, depends on whether it can be fairly described in ordinary language as a Town, and whether there are living in the place people who want land for their own accommodation and who are willing to pay for it more than its ordinary value (*Re Archer and Caledon*, 1894, 2 I. R. 473, on *whcv*, *M'Cann* v. *Downshire*, Ib. 611).

For Ireland, "Town" has received many statutory definitions, *e.g.* 9 & 10 V. c. 87, s. 2; 13 & 14 V. c. 68, s. 24, c. 69, s. 117; 15 & 16 V c. 63, s. 45; 17 & 18 V. c. 103, s. 1, on *whv*, *R.* v. *Loc Gov Bd*, 2 L. R. Ir. 316; 18 & 19 V. c. 40, s. 3; 20 & 21 V. c. 47, s. 2; 31 & 32 V. c. 49, s. 25; 32 & 33 V. c. 28, s. 4; 34 & 35 V. c. 109, s. 3; 46 & 47 V. c. 33, s. 8; 59 & 60 V. c. 54, s. 34; 61 & 62 V. c. 37, s. 109.

Quà Lands Valuation (Scotland) Act, 1854, 17 & 18 V. c. 91, "'Town,' shall extend to and include, all BURGHS, as well royal and parliamentary burghs as burghs of barony or regality, and all other burghs whatsoever, and generally all places situate within a county forming an area of assessment distinct from such county" (s. 42).

In Fiji, a Town is constituted by the Governor's Proclamation; *Vh*, *Smart* v. *Suva*, 1893, A. C. 301; 62 L. J. P. C. 88; 68 L. T. 774.

"Town," in an Agreement in RESTRAINT OF TRADE, is to be construed in a popular sense, and the introduction of that word in such a phrase as "within the limits of the Town of A." is very little, if at all,

different from "within the limits of A." (per Kekewich, J., *Houghton* v. *Staines*, Times, Nov. 19, 1894).

"Town" in an Indictment; *V. R.* v. *Fisher*, 8 C. & P. 612.

"Town Corporate"; *V.* "Borough or Place," sub BOROUGH, p. 209: CORPORATE.

"Town Police Clauses Acts, 1847 to 1889"; *V.* Sch 2, Short Titles Act, 1896.

"Post Town"; *V.* POST.

TOWN CLERK. — As to his appointment, &c, *V.* s. 17, Mun Corp Act, 1882; s. 78, Town Councils (Scot) Act, 1900; s. 93, Mun Corp (Ir) Act, 1840, 3 & 4 V. c. 108.

Stat. Def. — 6 & 7 V. c. 18, ss. 56, 101. — *Scot.* 16 & 17 V. c. 93, s. 2; 18 & 19 V. c. 88, s. 36; 35 & 36 V. c. 33, Sch; 57 & 58 V. c. 58, s. 54. — *Ir.* 13 & 14 V. c. 69, s. 117; 19 & 20 V. c. 98, s. 2; 31 & 32 V. c. 112, s. 30; 35 & 36 V. c. 33, Sch, c. 60, s. 28.

TOWN COMMISSIONERS. — *V.* COMMISSIONERS, p. 344.

TOWN COUNCIL. — Stat. Def., 20 & 21 V. c. 81, s. 29. — *Scot.* 16 & 17 V. c. 93, s. 2; 19 & 20 V. c. 58, s. 48; 23 & 24 V. c. 105, s. 4. — *Ir.* 9 & 10 V. c. 110, s. 88; 12 & 13 V. c. 97, s. 133; 15 & 16 V. c. 63, s. 45; 19 & 20 V. c. 98, s. 2.

TOWN FUND. — Stat. Def., *Ir.* 9 & 10 V. c. 87, s. 2; 18 & 19 V. c. 40, s. 3.

TOWN PARK. — "Any demesne land, or any HOLDING ordinarily termed 'Town-Parks' adjoining or near to any City or TOWN," s. 15 (1), Landlord and Tenant (Ir) Act, 1870, 33 & 34 V. c. 46; s. 58 (2), Land Law (Ir) Act, 1881, 44 & 45 V. c. 49: "It is difficult to imagine any Town-Park which does not, in course of management, receive the use similar to what a FARM receives. The growth of oats and feeding of cattle are ordinary uses of a Town-Park and Farm" (per Walker, C., *Daly* v. *Wright*, 32 L. R. Ir. 10).

TOWN RATE. — Stat. Def., *Ir.* 9 & 10 V. c. 87, s. 2; 18 & 19 V. c. 40, s. 3; 29 & 30 V. c. 90, s. 57.

TOWNSHIP. — *V.* Elph. 624–626: HAMLET.

"Township," s. 1, Beerhouse Act, 1840, 3 & 4 V. c. 61; *V. Preston* v. *Buckley*, 39 L. J. M. C. 105; L. R. 5 Q. B. 391.

"PARISH or Township," quà Parliamentary Voters Registration Act, 1843, 6 V. c. 18, extends to and means, "every parish, township, village, hamlet, district, or place, maintaining its own Poor" (s. 101).

TRACK. — *V.* RAILWAY TRACK.

TRADE: TRADESMAN. — Formerly "Trade" was used in the sense of an "Art or Mystery," *e.g.* that of a Brewer (V. ART), or a Tailor (*Norris* v. *Staps*, Hob. 211: *Vf*, INFERIOR TRADESMAN), but now "Trade" "has the technical meaning of buying and selling" (per Willes, J., *Harris* v. *Amery*, 35 L. J. C. P. 92; L. R. 1 C. P. 148: *Va*, 2 Bl. Com. 476: s. 19, 41 & 42 V. c. 49: per Halsbury, C., *San Paulo Ry* v. *Carter*, 1896, A. C. 38; 65 L. J. Q. B. 163: per Ld Davey, *Grainger* v. *Gough*, 1896, A. C. 325; 65 L. J. Q. B. 418: *Cp*, COMMERCE). Thus, a covenant in a Lease not to carry on any "Offensive Trade," does not prohibit a Private Lunatic Asylum, "Trade," in such a connection, being only applicable to a business of buying and selling (*Doe* d. *Wetherell* v. *Bird*, cited OFFENSIVE, p. 1320).

But "Trade" "may have a larger meaning so as to include Manufactures" (*Commrs of Taxation* v. *Kirk*, cited DERIVE, at end). So, the business of a Telegraph Co, is a "Trade" quâ House Duty (*Bank of India* v. *Wilson*, cited DWELLING-HOUSE, p. 591; diss. Cleasby, B.). *Vf*, APPRENTICE.

It is not essential to a "Trade" that the persons carrying it on should make, or desire to make, a profit (per Coleridge, C. J., *Re Law Reporting Council*, 58 L. J. Q. B. 95; 22 Q. B. D. 279, *whva*, inf: *sv*, per Halsbury, C., and Ld Davey, sup).

"The term 'Tradesman' (s. 1, Sunday Observance Act, 1677) cannot be extended by a reasonable construction to a FARMER" (per Cockburn, C. J., *R.* v. *Silvester*, 33 L. J. M. C. 80; nom. *R.* v. *Cleworth*, 4 B. & S. 927: *Cleworth* v. *Leigh*, 12 W. R. 375), nor to a Hairdresser or Barber (*Palmer* v. *Snow*, 1900, 1 Q. B. 725; 69 L. J. Q. B. 356; 82 L. T. 199; 48 W. R. 351; 64 J. P. 342). *Vf*, OTHER, p. 1360.

A Co "established for any Trade or *Business*," s. 11 (5), Customs and Inl. Rev. Act, 1885, 48 & 49 V. c. 51, may be one not anticipating profit (*Re Law Reporting Council*, sup); *secus* of the same phrase in s. 13 (2), 41 V. c. 15, because there it is added "by which the occupier seeks a LIVELIHOOD or Profit" (*London Library* v. *Carter*, 6 Times Rep. 161; 34 S. J. 231: *British Institute of Preventive Medicine* v. *Styles*, 11 Times Rep. 432: *Vh*, *Scotland Free Church* v. *Bain*, cited HALL). *Vf*, SOLELY.

"Trade or Business" carried on for which license required, s. 3, 30 & 31 V. c. 90; *V.* per Collins, J., *Killick* v. *Graham*, 1896, 2 Q. B. 196, 65 L. J. M. C. 180; 75 L. T. 29; 44 W. R. 669; 60 J. P. 534.

An Agreement, in RESTRAINT OF TRADE, not to carry on "any Trade or Business," means, trade or business of a kind and manner of operation similar to that of the contractee (*Moenich* v. *Fenestre*, 67 L. T. 602; 61 L. J. Ch. 737). *Vf*, PREVIOUSLY.

V. BUSINESS: CALLING: CARRY ON: IN HIS TRADE OR BUSINESS: PUBLIC TRADE OR BUSINESS.

"Trade or *Commerce*"; *V.* CIVIL RIGHTS.

"Trade or DEALING for Gain or Profit," forbidden to a "SPIRITUAL Person," s. 3, 57 G. 3, c. 99, repld s. 29, Pluralities Act, 1838, 1 & 2 V. c. 106, includes the business of a Banker (*Hall* v. *Franklin*, 3 M. & W. 259; 7 L. J. Ex. 110). *Note.* The curious practical decision in *the* was remedied by s. 1, 1 V. c. 10; *Va*, s. 1, 4 V. c. 14.

"Trade, *Manufacture, Adventure, or Concern*," No. 1, 1st set of Rules, Sch D to s. 100, Income Tax Act, 1842, 5 & 6 V. c. 35; *V. Ryhope Co* v. *Foyer*, 7 Q. B. D. 485; 45 L. T. 404: *Vf*, PURPOSES.

"Profession, Trade, Employment, or Vocation," Sch D to s. 2, Income Tax Act, 1853, is used in the larger sense of BUSINESS (per Esher, M. R., *Grainger* v. *Gough*, 1895, 1 Q. B. 71; 64 L. J. Q. B. 193; revd in H. L. without affecting this dictum, 1896, A. C. 325; 65 L. J. Q. B. 410).

As to what is carrying on a trade in breach of a restrictive covenant, *V.* CARRY ON, pp. 265, 266: BUTCHER: CLIENT: COFFEE-HOUSE: INNKEEPER: LADIES' OUTFITTER.

"Trade" carried on by a Married Woman: *V.* SEPARATELY: CARRY ON, p. 266.

The exemption from License Duty for Vehicles used "IN THE COURSE of Trade or *Husbandry*," given by s. 19 (6), 32 & 33 V. c. 14, does not extend to vehicles belonging to a Circus Proprietor and used by him for carrying his performers and making displays (*Speak* v. *Powell*, 43 L. J. M. C. 19; L. R. 9 Ex. 25; 29 L. T. 434). *Cp*, CARRIAGE: VEHICLE.

Every Weighing Instrument is "*used for* Trade," within s. 1 (1), 52 & 53 V. c. 21, which is employed in relation to a contract for sale of goods, *e.g.* a Weighing Machine at Smelting Works (*Crick* v. *Theobald*, 64 L. J. M. C. 216; 72 L. T. 807; 59 J. P. 502; 11 Times Rep. 445).

"*Trade in or sell* any article composed wholly or in part of GOLD or SILVER," s. 1, 30 & 31 V. c. 90; *V.* per Collins, J., *Killick* v. *Graham*, sup.

V. HABITUAL: INFERIOR TRADESMAN: LAWFUL TRADE: OFFENSIVE: PUBLIC TRADE OR BUSINESS: TRADER: TRADING: USAGE OF TRADE: USE.

TRADE COMBINATION. — *V.* COMBINATION.

TRADE DEBTS. — "My Trade Debts"; *V.* STOCK-IN-TRADE, towards end.

V. Tailby v. *Official Receiver*, cited ALL, p. 69: *Hadley* v. *Hadley*, cited PAYMENT, p. 1435.

TRADE DESCRIPTION. — Quà Merchandise Marks Act, 1887, "'Trade Description,' means, any description, statement, or other indication, direct or indirect,

(*a*) as to the number, quantity, measure, gauge, or weight, of any goods, or

(*b*) as to the place or country in which any goods were made or produced, or

(*c*) as to the mode of manufacturing or producing any goods, or

(*d*) as to the material of which any goods are composed, or

(*e*) as to any goods being the subject of an existing patent, privilege, or copyright;

and the use of any figure, word, or mark, which, according to the Custom of the Trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a Trade Description within the meaning of this Act" (subs. 1, s. 3). *Cp*, FALSE TRADE DESCRIPTION: INTENT TO DEFRAUD: TRADE-MARK.

As "applied" within the meaning of s. 5 (1 *d*) of the Act, it is not limited to a Trade Description used in an actual physical connexion with goods; therefore, falsely to invoice a "BARREL" of Beer which is not a Barrel, is an offence within this latter section (*Budd* v. *Lucas*, 1891, 1 Q. B. 408; 60 L. J. M. C. 95; 64 L. T. 292; 39 W. R. 350; 55 J. P. 550); so, to falsely say of a Ham that it is Scotch (*Coppen* v. *Moore*, 1898, 2 Q. B. 306; 67 L. J. Q. B. 689; 78 L. T. 520; 46 W. R. 620; 62 J. P. 453). *Sv*, *Langley* v. *Bombay Tea Co*, 1900, 2 Q. B. 460; 69 L. J. Q. B. 752; 83 L. T. 175; 49 W. R. 27.

Vf, *Cameron* v. *Wiggins*, W. N. (1900) 253.

TRADE ESTABLISHMENT. — *V.* per Hannen, J., *Kent* v. *Astley*, cited FACTORY. *Cp*, TRADING ESTABLISHMENT.

TRADE FIXTURES. — *V.* FIXTURES.

TRADE INTEREST. — The "Trade Interest" which, under s. 36 (3), Tower Bridge Southern Approach Act, 1895, 58 & 59 V. c. CXXX, is to be excluded from the "Initial Valuation" of property within the Betterment area, "refers to GOODWILL, Expectation of Profit, and any other similar matters, and to estimates based on takings and payments" (*Re London Co. Co. and City of London Brewery Co*, 1898, 1 Q. B. 393; 67 L. J. Q. B. 385; 77 L. T. 463; 46 W. R. 172; 61 J. P. 808).

TRADE LIBEL. — *V. Wren* v. *Weild*, 38 L. J. Q. B. 327; L. R. 4 Q. B. 730: *Halsey* v. *Brotherhood*, 49 L. J. Ch. 786; 51 Ib. 233; 15 Ch. D. 514; 19 Ch. D. 386: THREAT: Odgers, ch. 5.

TRADE MACHINERY. — Stat. Def., Bills of Sale Act, 1878, s. 5; Bills of Sale (Ir) Act, 1879, s. 5: *Vth*, Reed, 96: FIXED MOTIVE POWERS.

V. MACHINERY: PLANT.

TRADE MARK. — "The essence of a Trade Mark is that it is some distinctive thing which points out that the goods are the goods of A. B." (per Kay, J., *Richards* v. *Butcher*, 1891, 2 Ch. 536: *Vf, Re Hopkinson*, 1892, 2 Ch. 116; 61 L. J. Ch. 387; 66 L. T. 487). *Cp*, TRADE DESCRIPTION.

As to when a Word (other than a "Fancy" or "Invented" word, *V.* FANCY WORD) may be a Trade Mark, or part of a Trade Mark; *V. Raggett* v. *Findlater*, 43 L. J. Ch. 64; L. R. 17 Eq. 29; on *whcv*, *Reinhardt* v. *Spalding*, 49 L. J. Ch. 57; 28 W. R. 300: *Re Clement*, 1900, 1 Ch. 114; 69 L. J. Ch. 52; 81 L. T. 400.

Quà Merchandise Marks Act, 1887, "'Trade Mark,' *means*, a Trade Mark registered in the Register of Trade Marks kept under the Patents, Designs, and Trade Marks Act, 1883; and *includes*, any Trade Mark which, either with or without registration, is protected by law in any BRITISH POSSESSION or FOREIGN State to which the provisions of s. 103, Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable" (subs. 1, s. 3).

Quà Patents, &c, Act, 1883; *V.* s. 64, amended by s. 10, 51 & 52 V. c. 50, on *whv*, CALCULATED TO DECEIVE: DISTINCTIVE: ESSENTIAL: FANCY WORD: INDIVIDUAL: NAME: PUBLIC USE: REGISTERED: SPECIAL, p. 1914: WORD. *Cp*, TRADE NAME.

Quà Hop (Prevention of Frauds) Act, 1866, 29 & 30 V. c. 37, "'Trade Mark' or 'Symbol,' shall include, any arms, or coat of arms, of any County, City, Borough, Town, or District, or any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, or other work of any other description, lawfully used by any person to denote that the hops in any bag or pocket were grown or produced by such person in any particular parish, county, or place, or to denote the said hops to be of a particular quality or description" (s. 1).

Vh, Kerly on Trade Marks: Sebastian, Ib.: 12 Encyc. 222–234.

TRADE NAME. — A Trade Name may be, and often is, a TRADE MARK, but it has a wider application than that. In its wider sense, it means, the name under which a person (or company) carries on, and has habitually carried on, his business, and by which he is known in the trade or business to which his business belongs, and which accordingly distinguishes the nature, quality, and fame, of his goods and dealings. "It should never be forgotten that the sole right to restrain anybody from using any name he likes in the course of any business he chooses to carry on, is a right *in the nature of* a Trade Mark, *i.e.* a man has a right to say, — 'you must not use a name, whether fictitious or real, — you must not use a description, whether true or not, — which is intended to represent, or calculated to represent, to the world that your business is my business, and so by a fraudulent mis-statement deprive me of the profits of the business which would otherwise come to me.' . . . An individual

plaintiff can only proceed on the ground that, having established a business reputation under a particular name, he has a right to restrain any one else from injuring his business by using that name" (per James, L. J., *Levy* v. *Walker*, 10 Ch. D. 447, 448; 48 L. J. Ch. 278; 27 W. R. 370; 39 L. T. 654).

Vh, *Burgess* v. *Burgess*, 22 L. J. Ch. 675; 3 D. G. M. & G. 896; 21 L. T. O. S. 53: *Turton* v. *Turton*, 58 L. J. Ch. 677; 42 Ch. D. 128; 61 L. T. 571; 38 W. R. 22: *Jamieson* v. *Jamieson*, 42 S. J. 197: *Pinet* v. *Pinet*, 1898, 1 Ch. 179; 67 L. J. Ch. 41; 77 L. T. 613; 46 W. R. 506: *Montgomery* v. *Thompson*, 1891, A. C. 217; 60 L. J. Ch. 757; 64 L. T. 748: *Birmingham Vinegar Co.* v. *Powell*, 1897, A. C. 710; 66 L. J. Ch. 763; 76 L. T. 792: *Saxlehner* v. *Appollinaris Co*, 1897, 1 Ch. 893; 66 L. J. Ch. 533; 76 L. T. 617: *Parsons* v. *Gillespie*, 1898, A. C. 239; 67 L. J. P. C. 21.

As to restraining the Registration of a Co taking a name similar to that of an existing Co, *V. Hendriks* v. *Montagu*, 50 L. J. Ch. 456; 17 Ch. D. 638: *Tussaud* v. *Tussaud*, 59 L. J. Ch. 631; 44 Ch. D. 678.

TRADE PURPOSES.—"For the purposes of trade"; *V.* PURPOSES.

TRADE REFUSE.—*V.* REFUSE.

TRADE REGULATION.—*V.* REGULATE.

TRADE UNION.—Quâ Trade Union Acts, 1871 and 1876, "'Trade Union,' means, any combination, whether temporary or permanent, for regulating the relations between Workmen and Masters, or between Workmen and Workmen, or between Masters and Masters, or for imposing restrictive conditions on the conduct of any TRADE or BUSINESS, whether such combination would or would not, if the Principal Act (*i.e.* the Act of 1871) had not been passed, have been deemed to have been an Unlawful Combination by reason of some one or more of its purposes being in RESTRAINT OF TRADE" (s. 16, 39 & 40 V. c. 22).

A FRIENDLY SOCIETY which is also a Trade Union, is a valid Friendly Socy quâ such of its objects as are Friendly Socy objects, though not so as regards other objects which are in Restraint of Trade (*Swaine* v. *Wilson*, 59 L. J. Q. B. 76; 24 Q. B. D. 252; 62 L. T. 309; 38 W. R. 261; 54 J. P. 484: *Sv*, *Old* v. *Robson*, 59 L. J. M. C. 41).

As to ordinary Trade Unions and also as to Trade Assns of Employers, *V. Rigby* v. *Connol*, 14 Ch. D. 482; 49 L. J. Ch. 328; 28 W. R. 650: *Chamberlain Co* v. *Smith*, 1900, 2 Ch. 605; 69 L. J. Ch. 783; 49 W. R. 91; 83 L. T. 238: *Taff Vale Ry* v. *Amalgamated Socy of Ry Servants*, 70 L. J. K. B. 905; 1901, A. C. 426; 85 L. T. 147; 50 W. R. 44; 65 J. P. 596.

V. BESET: BOYCOTT: INTIMIDATE: THREAT.

"Provident Benefits" of a Trade Union; *V.* PROVIDENT.

Vh, Wright on Conspiracy: 12 Encyc. 234–241: 44 S. J. 729.

TRADER. — "Traders," quà Bankry Laws, were broadly stated as "such as live by buying and selling" (s. 1, 1 Jac. 1, c. 15). That broad definition was amplified and made more precise by subsequent legislation; and for an enumeration of persons who formerly were liable to be adjudicated Bankrupt as "Traders," *V.* Sch 1, Bankry Act, 1869; and for the cases thereon, *V.* Robson, 3 ed., 100–102. *Vf*, quà Ireland, 20 & 21 V. c. 60, s. 90; 35 & 36 V. c. 58, s. 4.

"Trader," s. 5, Bovill's Act, 28 & 29 V. c. 86, included a trading Joint Stock Co (*Re House Improvement & Supply Assn*, Times, Jan 29, 1890).

"Being a Trader"; *V.* BEING.

Quà Ry and Canal Traffic Act, 1888, "'Trader,' includes, any person sending, receiving, or desiring to send, MERCHANDIZE by railway or canal" (s. 55).

V. TRADE: TRADERS: TRADING PERSON: ORDINARY CALLING.

TRADERS. — In *Tennant* v. *Swansea Harbour Trustees* (3 Times Rep. 129), "Traders" of a person, were held to mean all persons having dealings with him, *i.e.* his CUSTOMERS.

TRADESMAN. — *V.* TRADE.

TRADING. — "Trading," s. 379 (3), Mer Shipping Act, 1854, repld s. 625 (3), Mer Shipping Act, 1894, means, "for the time being Trading," or "when Trading"; and does not mean that a Ship must be constantly trading to Brest, &c, in order to obtain the exemption from compulsory pilotage which the section provides (*Courtney* v. *Cole*, 19 Q. B. D. 447: 56 L. J. M. C. 141; 57 L. T. 409; 36 W. R. 8; 52 J. P. 20; 6 Asp. 169: *Vf*, *The Wesley*, Lush. 268: *The Sutherland*, 56 L. J. P. D. & A. 95; 12 P. D. 154; 57 L. T. 631; 36 W. R. 13: *The Rutland*, 1896, P. 281; 1897, A. C. 333; 65 L. J. P. D. & A. 91; 66 Ib. 105; 76 L. T. 662, in *whlc* Lopes, L. J., said, "I take a 'SHIP Trading,' or a 'Trading Ship,' to be a Ship carrying cargo as contradistinguished from a ship not carrying cargo, *e.g.* a yacht or a man-of-war": *The Columbus*, 80 L. T. 203: *Sv*, *The Glanystwyth*, cited COASTING TRADE). *Vh*, EUROPE.

"Trading Inwards," "Trading Outwards"; *V. Mersey Docks* v. *Henderson*, 58 L. J. Q. B. 152; 13 App. Ca. 595: *Cross* v. *Pagliano*, L. R. 6 Ex. 9: *Mersey Docks* v. *Twigge*, cited BEYOND SEAS. In *The Hanna* (cited PASSENGER), "Dr. Lushington appears to have held that 'trading *to*,' meant 'trading *between*,' and applied to outward, as well as inward, voyages" (per Jeune, P., *The Columbus*, sup).

"Trading or DEALING," 39 & 40 G. 3, c. 104; *V.* LIVELIHOOD. *Va*, "Trade or Dealing," sub TRADE.

TRADING AND OTHER PUBLIC COMPANIES. — This phrase, in s. 5, Apportionment Act, 1870, includes any Public Company, but not a Private Partnership (*Re Griffith, Carr* v. *Griffith*, 12 Ch. D. 655).

V. PUBLIC COMPANY.

TRADING CAPITAL. — *V.* CAPITAL.

TRADING ESTABLISHMENT. — In an agreement in RESTRAINT OF TRADE, "Trading Establishment" means, any business contrary to the intention of the agreement and which would be likely to interfere with the trade acquired under the agreement (*Avery* v. *Langford*, 23 L. J. Ch. 837; Kay, 663).

Cp, TRADE ESTABLISHMENT.

TRADING PERSON. — 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, is a "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, following *A-G.* v. *Tongue*, 12 Price, 51: *A-G.* v. *Woolhouse*, Ib. 65; 1 Y. & J. 463: *Dean* v. *King*, 4 B. & Ald. 517). *Vf, R.* v. *Turner*, 4 B. & Ald. 510: HAWKER.

TRAFFIC. — Quà Ry and Canal Traffic Act, 1854, "Traffic," includes, "not only Passengers and their Luggage, and Goods Animals and other things conveyed by any Railway Co or Canal Co or Railway and Canal Co, but also Carriages, Waggons, Trucks, Boats, and Vehicles of every description adapted for running or passing on the railway or canal of any such Co" (s. 1). As "Traffic" is used in s. 2; *V. East & West India Dock Co* v. *Shaw*, 39 Ch. D. 524; 57 L. J. Ch. 1038; 60 L. T. 142; 6 Ry & Can Traffic Ca. 94. *V.* FACILITIES: MERCHANDIZE TRAFFIC.

Quà Regn of Railways Act, 1873, and by s. 3, "Traffic" is defined in nearly the same terms as in s. 1, Ry and Canal Traffic Act, 1854.

Quà National Defence Act, 1888, 51 & 52 V. c. 31, "'Traffic,' includes Persons, Animals, Goods, and things of every description, which are ordinarily carried, or are required by virtue of this Act to be received and forwarded, on a railway" (subs. 8, s. 4).

In an Agreement by one Ry Co to work a Line so "as fairly and EFFICIENTLY to develop the Traffic" of another Ry, "Traffic" was held to apply to THROUGH TRAFFIC as well as LOCAL TRAFFIC (*East London Ry* v. *L. B. & S. Ry*, 2 Ry & Can Traffic Ca. 413).

V. ARISING: DEVELOP: STATION.

Receipts from all "Traffic conveyed on the Railway"; "I agree that all things incidental to the Traffic are part of the gross receipts, and I think the receipts of the Cloak Room, and of warehousing, are part of the receipts for carrying the Traffic on the line; but I cannot agree that the

receipts from Telegrams are part of those gross receipts" (per Blackburn, J., *R.* v. *Coleridge*, 45 L. J. Q. B. 654); and Telegram receipts were held not within the phrase, as used in an agreement between two Ry Companies.

Land to be used only for *Convenience* of Traffic; *V. Harris* v. *Lond. & S. W. Ry*, cited NECESSARY, p. 1252.

A Coal Merchant's Office on a Ry Co's wharf, used for the clerical work connected with the coal consigned to him by the Co, is "*used for the purposes of*, or in connection with, the Traffic" of such Co, within s. 86, London Bg Act, 1894 (*Elliott* v. *London Co. Co.*, 1899, 2 Q. B. 277; 68 L. J. Q. B. 837; 81 L. T. 155; 63 J. P. 645). *V.* PURPOSES.

"Like Traffic"; *V.* LOWEST RATE.

Traffic relates to "Peace, Order, and Good Government"; *V.* PEACE.

To "OPEN" a Factory or Workshop "for Traffic on SUNDAY" (contrary to the condition of the exception quà Jews in s. 51, Factory and Workshop Act, 1878, repld s. 48, Factory and Workshop Act, 1901), there must be something in the nature of Trade or Commerce; work behind closed doors is not such "Traffic," *secus*, if CUSTOMERS come in and go out as they usually do on a week day; therefore, to send articles to be worked upon, or to fetch them away, in pursuance of *prior* arrangements, is not within the phrase (*Goldstein* v. *Vaughan*, 1897, 1 Q. B. 549; 66 L. J. Q. B. 380; 76 L. T. 262; 45 W. R. 399; 61 J. P. 277).

"STREET for *Carriage* Traffic," s. 7, London Bg Act, 1894; *V. Wood* v. *London Co. Co.*, 64 L. J. M. C. 276; 73 L. T. 313; 44 W. R. 144; 59 J. P. 615.

Street "for *Foot* Traffic only," s. 8, Metrop Man. Act, 1882; *V. London Co. Co.* v. *Davis*, 64 L. J. M. C. 212; 43 W. R. 574; 59 J. P. 583.

V. EXTRAORDINARY TRAFFIC: LOCAL TRAFFIC: PUBLIC TRAFFIC: THROUGH TRAFFIC: TRAFFICKING.

TRAFFICKING.—Quà Public Houses Acts Amendment (Scot) Act, 1862, 25 & 26 V. c. 35, "Trafficking," means and includes, "bartering, selling, dealing in, trading in, exposing or offering for sale, by RETAIL" (s. 37).

V. HAWK: SHEBEEN: TRAFFIC.

TRAIN.—A series of trucks propelled by hydraulic power into a Goods Station, is a "Train upon a Railway" within s. 1 (5), Employers' Liability Act, 1880 (*Cox* v. *G. W. Ry*, 9 Q. B. D. 106). This phrase is very comprehensive. "I should think, speaking in a general way, that the legislature meant that a locomotive engine by itself, or anything that was drawn along a railway or was in course of being drawn along a railway by that locomotive engine, should be included in a 'Train.' I doubt very much whether it would depend upon the number of carriages or the

number of vehicles going upon wheels which the locomotive was taking along the railway. I should think the legislature intended a very wide scope to be given to the use of these words" (per Halsbury, C., *McCord* v. *Cammell*, 1896, A. C. 64; 65 L. J. Q. B. 205). *V.* RAILWAY: CHARGE OR CONTROL: CONTROL.

V. CHEAP TRAIN: ORDINARY TRAIN: PASSENGER TRAIN: "Special Train," sub SPECIAL.

TRAINER. — A Trainer of Horses, is one who trains horses for other persons for profit; one who only trains his own horses does not commit a breach of an Injunction restraining him from "carrying on the business of a Trainer of Horses upon the Down" (*Lancashire* v. *Hunt*, 11 Times Rep. 275).

TRAINING. — Yeomanry and Volunteers are being "trained or exercised" with the Regular Forces, s. 176 (7, 8), Army Act, 1881, as soon as they fall in and form up as a regiment under arms and under command in order to be so trained or exercised, and they remain "subject to Military Law as Soldiers" as long as the regiment remains under arms and under command, *i.e.* until the regiment or particular company has reached its homeward destination and has been finally dismissed (*Marks* v. *Frogley*, cited SOLDIER).

V. STABLE.

TRAITOR. — *V.* TREASON: FREE PARDON.

TRAMCAR. — *V.* COACH.

TRAMMEL. — *V.* MESH.

TRAMROAD. — *V.* TRAMWAY.

TRAMWAY. — Quà Tramways (Scot) Act, 1861, 24 & 25 V. c. 69, "'Tramways,' shall mean and include, any tramroad or tramway, whether temporary or permanent, formed of iron, stone, or other material, and laid down level with the surface of any turnpike or statute labour road under the provisions of this Act" (s. 2).

Quà Conveyance of Mails Act, 1893, 56 & 57 V. c. 38, "'Tramway,' means, a Tramway authorized by an Act to be constructed wholly along public roads or streets without any deviation therefrom"; "'Tramroad,' means, any tramroad or tramway which is not a 'tramway' as hereinbefore defined, and includes, a tramway or LIGHT RAILWAY constructed under the Tramways (Ireland) Acts, 1860 to 1891, or the Railways (Ireland) Act, 1890" (s. 5).

Vf, Tramways Act, 1870, 33 & 34 V. c. 78; Military Tramways Act, 1887, 50 & 51 V. c. 65; 62 & 63 V. c. 19, Sch, s. 1. — *Ir.* 46 & 47 V. c. 43, s. 25; 55 & 56 V. c. 27, s. 4; "The Tramways (Ireland) Acts,

1860 to 1895," *V.* Sch 2, Short Titles Act, 1896. *Cp,* STREET RAILWAY.

V. North Metropolitan Tramways Co v. *London Co. Co.*, cited UNDERTAKING: CART ROAD.

A power to a Municipal Authority to work "Tramways" does not include ordinary Omnibuses (*A-G.* v. *London Co. Co.*, W. N. (1900) 100; affd in H. L. 71 L. J. Ch. 268; 1902, A. C. 165; 86 L. T. 161; 50 W. R. 497; 66 J. P. 340).

The "VALUE of the Tramway" as restricted by s. 43, Tramways Act, 1870, means, such sum as it would cost to construct and establish it, minus its depreciation; and no account is to be taken of the present profits or rental value of the Undertaking (*London Street Tramways Co* v. *London Co. Co.*, 1894, A. C. 489; 63 L. J. Q. B. 769; 71 L. T. 301: *Edinburgh Street Tramways Co* v. *Edinburgh*, 1894, A. C. 456; 63 L. J. Q. B. 769. *Vf, Toronto Street Ry* v. *Toronto*, 1893, A. C. 511; 63 L. J. P. C. 10: *Stockton* v. *Kirkleatham*, cited PRICE.

Vh, 12 Encyc. 242–252.

TRANSACT BUSINESS. — Going into two shops, and possibly buying tobacco in the one and certainly buying bacon for his own consumption in the other, is not "transacting business" by a member of a Benefit Society, within a Rule forfeiting Sick-pay (*Wallis* v. *Lomas*, Times, Feb 10, 1890).

"In any way deal or transact business"; *V. Mills* v. *Dunham*, cited CUSTOMER.

V. BUSINESS.

TRANSACTION. — "Contract, Dealing, or Transaction"; *V.* CONTRACT.

"Transaction," in the Canada Civil Code; *V. King* v. *Pinsoneault*, L. R. 6 P. C. 245; 44 L. J. P. C. 42.

"Transaction," R. 8, Sch 1, Solrs Rem Ord, means, "Sale," so that on each sale under £100 the Solr is entitled to the Scale Fee of £3, though on several sales the same Title applies to each (*Re Thomas*, 1900, 1 Ch. 454; 69 L. J. Ch. 219; 82 L. T. 105; 48 W. R. 299).

"Same Transaction"; *V.* SAME.

TRANSCRIPT. — *V.* TENOR.

TRANSFER. — The operative verb "Transfer," "is one of the widest terms that can be used" (per James, L. J., *Gathercole* v. *Smith*, 50 L. J. Ch. 672; 17 Ch. D. 1: *Vf*, per Erle, J., *R.* v. *General Cemetery Co*, 6 E. & B. 419. *V.* TRANSFERABLE). *Cp,* SUBROGATION.

"Transfer," may, contextually, cut down a testamentary gift to personalty; *V. Saumarez* v. *Saumarez*, 4 My. & C. 331: *Stokes* v. *Salomons*, 9 Hare, 83; 20 L. J. Ch. 343.

A devise of Copyholds to trustees "*to be transferred*" by them to A. on the happening of an event, gives them only an estate determinable on the event happening, and thereon the legal estate goes to A. (*Doe* d. *Player* v. *Nicholls*, 1 B. & C. 336).

Quà Lunacy Act, 1890, "'Transfer,' includes, assignment, payment, and other disposition; and the execution and performance of every assurance and act to complete a transfer" (s. 341). *Vf*, 34 & 35 V. c. 22, s. 2.

"Transfer," *e.g.* of a debt, "does not necessarily mean Absolute Transfer" (per Cotton, L. J., *Re Combined Weighing Co*, 43 Ch. D. 104; 59 L. J. Ch. 27).

An Agreement accompanying a deposit of a registered BILL OF SALE, by way of equitable sub-mortgage, is a "Transfer or Assignment" of the Bill of S. within s. 10, Bills of S. Act, 1878, and need not be registered (*Re Parker, Ex p. Turquand*, 54 L. J. Q. B. 242; 14 Q. B. D. 636); but a transfer of a Co's charge on Chattels requires registration, though the Charge itself be exempt (*Jarvis* v. *Jarvis*, 63 L. J. Ch. 10; 69 L. T. 412).

A document accompanying an actual PLEDGE of goods is not a "Transfer" requiring registration as a Bill of Sale (*Re Hall, Ex p. Close*, 54 L. J. Q. B. 43; 14 Q. B. D. 386; 51 L. T. 795; 33 W. R. 228: *Vf, Ex p. Hubbard, Re Hardwick*, 17 Q. B. D. 695; 55 L. J. Q. B. 490: *Charlesworth* v. *Mills*, 1892, A. C. 231; 61 L. J. Q. B. 830; 66 L. T. 690; 41 W. R. 129). *Cp*, LICENSE.

A gift of money is a "Transfer of Property" within s. 47 (3), Bankry Act, 1883 (*Re Player, Ex p. Harvey, No. 1*, 54 L. J. Q. B. 553: *Vf*, SETTLEMENT). So a Conveyance of Shares in consideration of natural love and affection, is a "Transfer" within ss. 14, 15, 16, Comp C. C. Act, 1845; and is not a "TRANSMISSION" within ss. 18, 19 (*Copeland* v. *N. E. Ry*, 6 E. & B. 277: *vthc*, *Nanney* v. *Morgan*, 35 Ch. D. 603, 604; 37 Ib. 357; 56 L. J. Ch. 807; 57 Ib. 315).

Bankruptcy on a creditor's petition is not an Assignment or Transfer within a clause of FORFEITURE contemplating a voluntary act by the beneficiary (*Doe* d. *Goodbehere* v. *Bevan*, 3 M. & S. 353: *Lear* v. *Leggett*, 2 Sim. 479), even though it proceed on a declaration of insolvency (*Graham* v. *Lee*, 23 Bea. 388): but where there is a *cessio bonorum* in bankruptcy, insolvency, or liquidation, based on the *beneficiary's* petition, then there is such a Transfer (*Shee* v. *Hale*, 13 Ves. 409: *Re Amherst*, 41 L. J. Ch. 222; L. R. 13 Eq. 464: *Vthlc* distd in *Ex p. Dawes*, cited WOULD).

Land Transfer Acts, 1875 and 1897; 38 & 39 V. c. 87, 60 & 61 V. c. 65.

"'Transfer of a *License*,' means, a Transfer made in Special Sessions in exercise of the power granted to Justices by s. 4, 9 G. 4, c. 61" (s. 74, Licensing Act, 1872). *Vf*, RENEWAL. *Note.* The requirement of Notice on a "Transfer of a License," s. 40 (2), Licensing Act, 1872,

does not apply to an application under s. 14, 9 G. 4, c. 61 (*R.* v. *Hughes*, 1893, 2 Q. B. 530; 62 L. J. M. C. 150; 42 W. R. 94).

"Transfer of a *Mortgage*," quà Stamp Duty; *V. Wale* v. *Inl. Rev.*, 48 L J. Ex. 574; 4 Ex. D. 270; 41 L. T. 165: *Humphreys* v. *Inl. Rev.*, 81 L. T. 199.

"Transfer" of the *Patronage Right* in a Benefice; *V.* Benefices Act, 1898, 61 & 62 V. c. 48, s. 1.

Transfer of *Shares*; *V.* SHARE.

Where a SHIP is transferred by separate Bills of Sale from the several owners of shares therein, each Bill of Sale is a "Transfer" on which is payable the Registration Fee prescribed by s. 3, 61 & 62 V. c. 44 (*Harrowing S. S. Co* v. *Toohey*, 1900, 2 Q. B. 28; 69 L. J. Q. B. 447; 82 L. T. 677).

"Transfer" of *Stock*, quà Trustee Acts, "includes the performance and execution of every deed, power of attorney, act, and thing, on the part of the transferor to effect and complete the title in the transferee" (s. 50, Trustee Act, 1893).

V. ASSIGN: CONVEYANCE: DECREE: DISPOSE OF: LEGALLY: NEGOTIATE: TRANSMISSION: UNDERLEASE.

TRANSFERABLE. — An interest which by statute or otherwise is made "not transferable" cannot be parted with either by act of parties or by operation of law (*Gathercole* v. *Smith*, 50 L. J. Ch. 671; 17 Ch. D. 1; 29 W. R. 434). In that case, Lush, L.J., said, "The word 'transferable' is of the widest possible import, and includes *every* means by which the property may be passed from one person to another."

TRANSFEREE. — A Transferee is the person to whom any property or right is transferred: *V.* TRANSFER.

The Transferee of a Bill or Note, is the person to whom it is negotiated and who becomes its HOLDER: *V.* NEGOTIATE.

"Transferee," s. 31 (4), Bills of Ex. Act, 1882; *V. Good* v. *Walker*, 61 L. J. Q. B. 736.

TRANSFEROR. — A Transferor is the person who transfers any property or right: *V.* TRANSFER.

The Transferor of a Bill or Note, is the HOLDER of it who negotiates it: *V.* NEGOTIATE.

"(1) Where the Holder of a Bill, payable to Bearer, negotiates it by Delivery without indorsing it, he is called 'a Transferor by DELIVERY.'

"(2) A Transferor by Delivery is not liable on the instrument.

"(3) A Transferor by Delivery who negotiates a Bill, thereby warrants to his immediate Transferee, being a Holder for Value, that the Bill is what it purports to be, that he has a right to trans-

fer it, and that at the time of transfer he is not aware of any fact which renders it valueless "

(s. 58, Bills of Ex. Act, 1882) : and so of a Note (s. 89, Ib.).

TRANSFERRED. — *V.* LEGALLY : TRANSFER.

Legacies " to be transferred "; *V. Lambert* v. *Lambert*, 11 Ves. 607.

TRANSHIPMENT. — Due Diligence in Transhipment is not accomplished if the transhipment be delayed, *e.g.* in order to save cost of lighters or money which might have to be paid for freight ; for the goods ought not to be delayed for such a reason (per Erle, C. J., *Carali* v. *Xenos*, 2 F. & F. 740).

" PARTIAL Loss from Transhipment," in a Marine Policy; *V.* per Matthew, J., *Pink* v. *Fleming*, cited CONSEQUENT.

" Risk of Transhipment "; *V. Australian Agricultural Co* v. *Saunders*, cited INSURED ELSEWHERE.

TRANSIT. — *V.* DELAY IN TRANSIT.

Stoppage in Transitu; *V.* STOPPAGE.

TRANSLATION. — " 'Translation,' in common sense, signifies the version out of one language into another; but in a more confined, denotes the setting from one place to another; as to remove a Bishop from one Diocess to another is called 'translating' " (Cowel).

As distinguished from an Imitation or Adaptation, a " Translation " of a Book or Play, within the International Copyright Acts, should be a full and faithful (not, necessarily, a literal) representation of the whole Book or Play, so " that the English people should have the opportunity of knowing the foreign work as accurately as it is possible to know it by the medium of a version in English " (*Wood* v. *Chart*, L. R. 10 Eq. 193; 39 L. J. Ch. 641; 22 L. T. 432; 18 W. R. 822: *Vf, Lauri* v. *Renad*, 1892, 3 Ch. 402; 61 L. J. Ch. 580; 67 L. T. 275; 40 W. R. 679).

TRANSMISSIBLE. — A Bequest of Residue to the persons who " shall become entitled to a vested Transmissible INTEREST," means an Interest " capable of transmission *after death* " (per Stirling, J., *Re Jodrell*, W. N. (89) 230; 34 S. J. 129; a def unaffected by the reversal of the jdgmt, 1891, A. C. 304; 61 L. J. Ch. 70). *Vf, Nannock* v. *Horton*, 7 Ves. 402.

TRANSMISSION. — " Transmission " of the property in a ship, other than by TRANSFER, s. 58, Mer Shipping Act, 1854, repld s. 27, Mer Shipping Act, 1894, means, " transmission by operation of law, unconnected with any direct act of the party to whom the property is transmitted "; and therefore " a sale by Licitation is not such a Transmission " (*Chasteauneuf* v. *Capeyron*, 51 L. J. P. C. 41; 7 App. Ca. 127). So, " Transmission " of Company Shares is effected by devolution of law, as distinguished from a " Transfer," which is accomplished by the act of

parties; and therefore where Table A Comp Act, 1862, applies *simpliciter*, a trustee in bankruptcy is not subject to Art. 10 of that Table (*Re Bentham Mills Co*, 48 L. J. Ch. 671; 11 Ch. D. 900; 41 L. T. 10; 28 W. R. 26).

"Transmission of the Goods," in an Exception in a Bill of Lading; *V. Hayn* v. *Culliford*, 3 C. P. D. 417, 418; 47 L. J. C. P. 759; affd 4 C. P. D. 182; 48 L. J. C. P. 372; 40 L. T. 536; 27 W. R. 541.

A Foreign Executorship creates no "Transmission of Interest or Liability" within R. 4, Ord. 50, Judicature Rules, 1875, repld, R. 4, Ord. 17, R. S. C.; representation must be obtained in England (per North, J., *Morrice* v. *Smart*, 26 S. J. 752, repudiating the inaccurately reported decision in *Jameson* v. *Marshall*, 46 L. T. 480). A Bankry Receiving Order against a party to an action, does not cause such "a Change or Transmission of Interest or Liability," so as to require the addition of the Official Receiver as a party (*Re Berry*, 1896, 1 Ch. 939; 65 L. J. Ch. 245; 74 L. T. 306; 44 W. R. 346).

Transmission of Shares; *V.* TRANSFER.

TRANSMIT. — "To Transmit," — *e.g.* an Appeal Case under s. 2, 20 & 21 V. c. 43, — means, to lodge it, *i.e.* accomplish its proper and actual reception; merely sending it off does not suffice (*Aspinall* v. *Sutton*, 1894, 2 Q. B. 349; 63 L. J. M. C. 205; 58 J. P. 622: *Vf*, FIRST: SHALL, pp. 1854, 1855). But to "transmit" a RETURN of Personal Expenses under s. 33 (1, 5), Corrupt and Illegal Practices Prevention Act, 1883, means to REMIT, *i.e.* to send it off (*Mackinnon* v. *Clark*, 1898, 2 Q. B. 251; 67 L. J. Q. B. 763; 79 L. T. 83; 47 W. R. 19). *V.* DAYS.

When a person speaks into a Telephone, "he sends what he says through the wire, *i.e.* transmits it" (*A-G.* v. *Edison Telephone Co*, 50 L. J. Q. B. 153; 6 Q. B. D. 244), in *whc* it was held that a Telephone is an "apparatus for transmitting MESSAGES or other Communications" within s. 3, Telegraph Act, 1869, 32 & 33 V. c. 73.

TRANSPORTATION. — For the meaning and effect of the punishment of Transportation and its regulations; *V.* Transportation Acts, 1824 and 1825, 5 G. 4, c. 84, 6 G. 4, c. 69; s 15, 16 & 17 V. c. 99: *Bullock* v. *Dodds*, 2 B. & Ald. 258: Jacob: 12 Encyc. 253.

Penal Servitude is substituted; *V.* PENAL.

TRAVEL. — "'Travelling,' in a large sense, means, a going from one place to another" (per Ellenborough, C. J., *White* v. *Beazley*, 1 B. & Ald. 171); therefore, a coach and horses hired to take a party from Portsea to the theatre at Portsmouth (a distance of 2 miles upon a public road) was held a "travelling" within s. 8, 48 G. 3, c. 98; and so, of a chaise and horses hired to take a party out to dinner and fetch back (*S. C.*: *Vf*, *Ramsden* v. *Gibbs*, 1 B. & C. 319). *V.* TRAVELLER.

"Travelling Post"; *V.* POST.

TRAVELLER. — There are, at least, four classes of "Travellers."

1. A person cannot be a "BONÂ FIDE Traveller," within the Licensing Acts, "unless the place where he lodged during the preceding night is, at least, *three miles* distant from the place where he demands to be supplied with liquor, such distance to be calculated by the NEAREST Public Thoroughfare" (37 & 38 V. c. 49, s. 10; *Vth, Coulbert* v. *Troke*, 45 L. J. M. C. 7; 1 Q. B. D. 1: *Cowap* v. *Atherton*, 1893, 1 Q. B. 49; 68 L. T. 88; 41 W. R. 158; 57 J. P. 8. *Cp*, DISTANCE). For the decisions on this phrase prior to the statutory definition just quoted, *V. Taylor* v. *Humphreys*, 30 L. J. M. C. 242; 10 C. B. N. S. 429; 28 J. P. 793: *Taylor* v. *Humphries*, 34 L. J. M. C. 1; 17 C. B. N. S. 539, followed in *Davis* v. *Scrase*, 38 L. J. M. C. 79; L. R. 4 C. P. 172: *Fisher* v. *Howard*, 34 L. J. M. C. 42: *Peache* v. *Colman*, 35 L. J. M. C. 118; L. R. 1 C. P. 324: *Peplow* v. *Richardson*, L. R. 4 C. P. 168; 33 J. P. 407. Whether business or pleasure be the object of the traveller, was (*Taylor* v. *Humphries*, sup: *Atkinson* v. *Sellers*, 28 L. J. M. C. 12; 5 C. B. N. S. 442; 23 J. P. 71), and still is, wholly immaterial, nor is it material that he has, or has not, a *bonâ fide* thirst (per Cave, J., *Oldham* v. *Sheffsby*, 60 L. J. M. C. 81; 55 J. P. 214); but if his main object in travelling is to get a drink during prohibited hours, then he is not a "*bonâ fide*" traveller (*Penn* v. *Alexander*, cited BONÂ FIDE: *Sv*, *Williams* v. *McDonald*, inf: TRAVEL). *Vh*, *Copley* v. *Burton*, 39 L. J. M. C. 141; L. R. 5 C. P. 489: *Morgan* v. *Hedger*, L. R. 5 C. P. 485; 40 L. J. M. C. 13: *Roberts* v. *Humphreys*, L. R. 8 Q. B. 483; 42 L. J. M. C. 147.

2. Persons at a railway station "arriving at, or departing from, such station by railroad," are for the purposes of the Licensing Acts on the same level as *bonâ fide* travellers (37 & 38 V. c. 49, s. 10). Their motive, though it be that of getting drink, is immaterial (*Williams* v. *McDonald*, 1899, 2 Q. B. 308; 68 L. J. Q. B. 678; 63 J. P. 501: *Sv*, *Penn* v. *Alexander*, sup).

3. Commercial Traveller, *i.e.* "a man who travels about the country, soliciting orders which are sent to the employer" (per Grantham, J., *Killick* v. *Graham*, 1896, 2 Q. B. 196; 65 L. J. M. C. 180; 75 L. T. 29; 44 W. R. 669; 60 J. P. 534). One who spends most of his time in attending race meetings as a backer of horses, but who also solicits orders for hops, receiving a commission therefor, is a Commercial Traveller (*Matthews* v. *Buchannan*, 5 Times Rep. 373). A Commercial Traveller is also indicated in the exemption from certain Excise Penalties given by the proviso to s. 17, 30 & 31 V. c. 90 to "a *bonâ fide* Traveller taking orders for goods which his employer is duly licensed to deal in or sell." A stationary agency is not within that exemption (*Stallard* v. *Marks*, cited RETAILER); but one who is an employed Traveller, and who really travels, is none the less entitled to the exemption because he takes orders during a temporary pause on his journeys (Bowen, arg. *Ib.*), or because

he, independently of his employer, occupies an office at which he occasionally takes orders (*Stuchbery* v. *Spencer*, 55 L. J. M. C. 141). On the other hand, an agent who acts for a person at a distance, but who only solicits orders in the town where he resides, is not a "*bonâ fide* traveller" within the exemption (*Killick* v. *Graham*, sup): *Vf*, SOLICIT. *Note*: the employer of a commercial traveller is not bound to keep him travelling (*Lagerwall* v. *Wilkinson*, 80 L. T. 55).

4. A traveller, or such like person, entitled at common law to be received as a GUEST in an INN, does not include a person resident in the same country town as that in which the Inn is situate and "merely walking about the town for his own recreation and amusement" (*R.* v. *Rymer*, 46 L. J. M. C. 108; 2 Q. B. D. 136, citing *R.* v. *Luellin*, 12 Mod. 445). The length of time that a man may remain at an Inn does not affect his character as a traveller; unless he be received for a definite term under a special contract (Add. C. 684), or has stayed long enough to show that his travelling days are done (*Lamond* v. *Richard*, 1897, 1 Q. B. 541; 66 L. J. Q. B. 315; 76 L. T. 141; 45 W. R. 289; 61 J. P. 260). So, "it is not at all necessary that he should be travelling a long journey" (*Orchard* v. *Bush*, cited GUEST).

"Such Liquor to *bonâ fide* Travellers"; *V.* SUCH.

TRAVERSE. — To traverse; "'Travers' sometimes signifieth to deny, sometimes to overthrow or undoe a thing done" (Termes de la Ley, *Travers*, *whv*, for illustrations: *Va*, Cowel: Jacob).

V. TOLL TRAVERSE.

TRAWL. — Trawl, or Trawl Net; *V. Colbeck* v. *Ashfield*, 67 L. J. Q. B. 333; 46 W. R. 302; 62 J. P. 214.

TREASON. — "'Treason' is in two manners, that is to say, Graund Treason, and Petit Treason" (Termes de la Ley). Grand Treason; *V.* HIGH TREASON. "'Petit Treason,' is when a Servant kills his Master, a Wife her Husband; or when a Secular or Religious man kills his Prelate or Superior to whom he owes faith and obedience; and in how many other cases Petit Treason may be committed, see Crompton's Justice of the Peace" (Cowel). *Note*, Petit Treason is now "deemed to be Murder only, and no greater offence" (s. 2, 9 G. 4, c. 31).

"I have looked over a great number of statutes in order to ascertain the sense in which the word 'Treason' is used and understood, and I find that the word, standing by itself, has invariably been used to signify High Treason" (per Blackburne, C. J., *O'Brien* v. *The Queen*, 1 Irish Jurist O. S. 176).

The Statute of Treasons, 25 Edw 3, st. 5, c. 2.

Treason Felony; *V.* Treason Felony Act, 1848, 11 & 12 V. c. 12, espy s. 3: on *whv*, *Mulcahy* v. *The Queen*, L. R. 3 H. L. 306.

TREASURE TROVE. — " 'Treasure trove' is when any money, gold, silver, plate, or bullion, is found in any place, and no man knoweth to whom the property is, then the property thereof belongeth to the King, and that is called 'Treasure trove,' that is to say, Treasure found. But if any Mine of metall be found in any ground, that alway pertaineth to the Lord of the soile, except it be a mine of gold or silver, which shall be alway to the King, in whose ground soever they be found " (Termes de la Ley). *Vf*, 1 Bl. Com. 295: Jacob: 12 Encyc. 264: MINE, *Note*, at end.

As to the offence of concealing Treasure Trove; *V.* Steph. Cr. 274: Arch. Cr. 966.

The jurisdiction of the coroner is limited to enquiring who was, or was suspected to be, the finder of the Treasure (*A-G.* v. *Moore*, 1893, 1 Ch. 676; 62 L. J. Ch. 607; 68 L. T. 574; 41 W. R. 294).

TREASURER. — " Any Treasurer, Collector, Officer, or other Person, appointed " by a Local Authority to sue, includes a BANKER; and, if no special mode of appointment be prescribed, his employment is equivalent to appointment (*Frost* v. *Bolland*, 5 B. & C. 611). *Cp*, *Williams* v. *Golding*, cited OTHER, p. 1365.

" Treasurer " has received statutory definition in and for the following Acts; —

Burghs Gas Supply (Scot) Act, 1876, 39 & 40 V. c. 49; *V.* s. 3:
Burgh Harbours (Scot) Act, 1853, 16 & 17 V. c. 93; *V.* s. 2:
Burgh Police (Scot) Act, 1892, 55 & 56 V. c. 55; *V.* s. 4:
County Courts Act, 1888, 51 & 52 V. c. 43; *V.* s. 186:
Grand Jury (Ir) Act, 1853, 16 & 17 V. c. 136; *V.* s. 21:
Grand Jury (Ir) Act, 1856, 19 & 20 V. c. 63; *V.* s. 19:
Police Act, 1890, 53 & 54 V. c. 45; *V.* s. 34:
Police (Scot) Act, 1890, 53 & 54 V. c. 67; *V.* s. 30:
Prison Act, 1865, 28 & 29 V. c. 126; *V.* s. 4:
Refreshment Houses (Ir) Act, 1860, 23 & 24 V. c. 107; *V.* s. 47:
Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51; *V.* s. 3:
Towns Improvement (Ir) Act, 1854, 17 & 18 V. c. 103; *V.* s. 1:
Valuation (Ir) Act, 1852, 15 & 16 V. c. 63; *V.* s. 45:
Weights and Measures Act, 1878, 41 & 42 V. c. 49; *V.* s. 85.

" Treasurer of the County "; *Ir.* 19 & 20 V. c. 68, s. 2; 38 & 39 V. c. 63, s. 34; 40 & 41 V. c. 49, s. 3: *V.* COUNTY.

The Treasurer of a Friendly Socy is not, as such, its " CLERK or Servant " within s. 68, 24 & 25 V. c. 96 (*R.* v. *Tyree*, 38 L. J. M. C. 58; L. R. 1 C. C. R. 177; 19 L. T. 657; 17 W. R. 334). The office should not be filled by an Incorporated Co; if in fact such a Co has been the treasurer, the winding-up of the Co is not an " Insolvency " so as to entitle the Socy to the preference given by s. 15 (7), 38 & 39 V. c. 60 (*Re West of England & S. Wales District Bank*, 48 L. J. Ch. 577; 11 Ch. D. 768). *Vf*, *Barrett* v. *Markham*, cited WITHHOLD.

TREASURY.—*V.* s. 12 (2), Interp Act, 1889.

" 'The Treasury *Chest Fund*' includes, all balances in Treasury chests or in the hands of persons acting as paymasters for the said Fund" (s. 6, Treasury Chest Fund Act, 1877, 40 & 41 V. c. 45).

V. REGULATION.

The "Treasury *Solicitor*" is "a Corporation Sole by the name of 'The Solicitor for the affairs of Her Majesty's Treasury,' and by that name shall have perpetual succession; with a capacity to acquire and hold, in that name, lands, government securities, shares in any public company, securities for money, and real and personal property of every description, to sue and be sued, to execute deeds using an official seal, to make leases, to enter into engagements binding on himself and his successors in office, and to do all other acts necessary or expedient to be done in the execution of the duties of his office" (s. 1, Treasury Solicitor Act, 1876, 39 & 40 V. c. 18).

"Treasury *Warrant*," quà Post Office Act, 1870, 33 & 34 V. c. 79, "means, a Warrant under the hands of the Treasury" (s. 2).

TREAT.—A Notice to Treat, s. 18, Lands C. C. Act, 1845, is an Inchoate Contract for the sale and purchase of the land included in it, which becomes consummate when the price is fixed by agreement, arbitration, or the verdict of a jury (per Cottenham, C., *Adams* v. *London & Blackwall Ry*, 19 L. J. Ch. 559, 560; 2 Mac. & G. 132: *Harding* v. *Metrop Ry*, 7 Ch. 158; 41 L. J. Ch. 372); when given, the owner can compel its consummation (*Ib.*: *Fotherby* v. *Metrop Ry*, L. R. 2 C. P. 188; 36 L. J. C. P. 88).

Vh, Lloyd on Compensation, ch. 3: Woolf & Middleton, Ib. 35–44, 705: Browne & Allan, Ib. 33–49, 809: Cripps, Ib. ch. 6: Jepson on Lands Clauses Act, 2 ed., 93–107: COMPULSORY POWERS: PUT IN FORCE.

TREAT AND VIEW.—An advertisement inviting applications for purchase to be made to A. "to treat and view," gives A. "authority to negotiate and to make and receive proposals, but not to conclude a sale" (per Bovill, C. J., *Godwin* v. *Brind*, 39 L. J. C. P. 122; L. R. 5 C. P. 299 *n*). *Cp*, INTRODUCE: PROCURE, at end.

V. VIEW.

TREATING.—For the definition of Treating at Parliamentary Elections, *V.* s. 1, Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51; a def adopted for Municipal Elections by s. 2, 47 & 48 V. c. 70; and (for Scotland) by s. 2, 53 & 54 V. c. 55. This def replaced that in s. 4, Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102. *Vh*, Leigh & Le Marchant, 4 ed., 25–29: Mattinson & Macaskie, 2 ed., 39–53: 2 Rogers, ch. 10.

Vf, Arch. Cr. 1187: Rosc. Cr. 297.

TREATY. — Quà International Copyright Act, 1886, 49 & 50 V. c. 33, "'Treaty,' includes, any Convention or Arrangement" (s. 11); quà Slave Trade Acts it "includes, any Convention, Agreement, Engagement, or Arrangement" (s. 2, 36 & 37 V. c. 59; s. 2, 36 & 37 V. c. 88).

"Existing Slave Trade Treaty"; *V.* EXISTING.

TREBLE. — Treble *Costs* are abolished; where given by a Public Act, the party entitled to them is entitled to "Full and Reasonable Indemnity" Costs (s. 2, 5 & 6 V. c. 97; on *whv* INDEMNITY); if given by a Local or Personal Act, he is entitled to Party and Party Costs "and no more" (s. 1).

Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "Treble *Letter*," means, "a LETTER consisting of more than two sheets or pieces of paper whatever the number, under the weight of an ounce"; "Treble *Postage*," means, "three times the amount of Single Postage"; "Treble *the Duty of Postage*," means, "three times the amount of the postage to which the letter to be charged would otherwise have been liable according to the rates of postage chargeable on letters" (s. 47).

Cp, DOUBLE.

TREES. — "Where the Grant is of all a man's 'Trees,' there shall pass no more of the soil but so much as shall serve for the nutriment of the Trees, and the owner of the soil shall have the grass growing thereupon also" (Touch. 95). *V.* WOOD.

"The word 'Trees,' generally speaking, means, wood applicable to buildings, and does not include orchard trees" (per Littledale, J., *Bullen* v. *Denning*, 5 B. & C. 851); and an exception in a Lease of "Trees," "means, trees useful for their wood" (per Mansfield, C. J., *Wyndham* v. *Way*, 4 Taunt. 318), and will not, as a rule, extend to *fruit* trees, unless specially named; and neither an exception, nor a grant, of "Timber Trees and other Trees" will pass fruit trees (*Bullen* v. *Denning*, sup, *whv* for the old cases hereon), even though the phrase goes on to say "but not the annual fruit thereof," for "fruit," there, refers to the mast of timber trees (*Ib.*: *Va*, Dart, 150). *V.* FRUIT: TIMBER.

Vh, Craig on Trees and Woods, *passim*.

Overhanging trees; *V.* LOP. *Vf*, NUISANCE, p. 1300.

TRELLIS. — A trellis-work screen held a "building" (*Wood* v. *Cooper*, cited BUILDING, p. 226).

TRENCH. — "Drains, Trenches, or Watercourses"; *V.* WATERCOURSE.

TRESPASS. — "'Trespass,' signifies any transgression of the law under Treason, Felony, or Misprision of either" (Cowel: *Vf*, Jacob).

"A Trespass, is an injury committed with violence; and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate

kind, and committed on the person, or tangible and corporeal property, of the plaintiff. Of actual violence, an Assault and Battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's land" (Stephen on Pleading, ch. 1). *Vh, Scott* v. *Shepherd*, 1 Sm. L. C. 480: Rosc. N. P. 910–931: Add. T. 360, 497: 12 Encyc. 279–283.

Trespass on the case; *V.* CASE.

Action of Trespass *de bonis asportatis*; *V.* TROVER.

V. WILFULLY TRESPASS.

TRIAL: TRIED. — A "Trial" is the conclusion, by a competent Tribunal, of questions in issue in legal proceedings, whether civil or criminal. Therefore, the hearing of the reference of an action "and all matters in difference" is not a Trial within s. 1, 17 & 18 V. c. 34 (*Hall* v. *Brand*, 53 L. J. Q. B. 19; 12 Q. B. D. 39: *Sv, Munday* v. *Norton*, and *Patten* v. *West of England Iron Co*, cited ARBITRATION). But an indictment for non-repair of a highway is "tried" within s. 95, Highway Act, 1835, if the defendants plead guilty (*R.* v. *Haslemere*, 32 L. J. M. C. 30; 3 B. & S. 313). It has been held that an assessment of damages by a jury on a jdgmt by default is not a Trial within R. 1, Ord. 65, R. S. C. (*Gath* v. *Howarth*, 28 S. J. 427; W. N. (84) 99); but in citing that case under the Rule, the Annual Practice says that the decision is not acted on. Such an assessment is a Trial within s. 1, Jud. Act, 1890 (*Radam's Microbe Killer* v. *Leather*, 1892, 1 Q. B. 85; 61 L. J. Q. B. 38; 65 L. T. 604; 40 W. R. 83).

The hearing of a Summons under s. 10, Comp (Winding-up) Act, 1890, is not "the Hearing or Trial of an ACTION upon notice," so as to entitle a Solr to the fee for Instructions for Brief, under Item 81, Appx. N, R. S. C. (*Re Anglo-Austrian Printing Union*, 1894, 2 Ch. 622; 63 L. J. Ch. 632; 71 L. T. 331; 42 W. R. 648); but it is a MATTER, within R. 27 (48), Ord. 65, R. S. C. (*Ib.*). Such a Summons if not a "Trial of an Action" is, *semble*, a "Trial of an ISSUE OF FACT," within Item 81 (*Re Consolidated Exploration Co*, 1899, 2 Ch. 599; 68 L. J. Ch. 752), in *whc* the fee was allowed on a question upon a Guarantee which was directed to be tried without even a summons being taken out.

V. COMMITTED FOR TRIAL: PREFERRED: SALE ON TRIAL: VERDICT.

TRIBUNAL. — Referring to the rule, as to the immunity for words written or spoken by a witness in a Court, laid down by the Exchequer Chamber in *Dawkins* v. *Rokeby* (42 L. J. Q. B. 69; L. R. 8 Q. B. 255; affd 45 L. J. Q. B. 8; L. R. 7 H. L. 744), Fry, L. J., said, "I accept that, with this qualification that I do not like the word 'Tribunal.' The word is ambiguous, because it has not, like 'Court,' any ascertainable meaning in English law" (*Royal Aquarium* v. *Parkinson*, cited COURT, p. 424).

TRIBUTARY. — A "Tributary" to a RIVER quà Salmon Fishery Act, 1873, 36 & 37 V. c. 71, is, another stream which flows into it in an

unimpounded course; and does not include a stream which would have been a tributary but for the fact that its waters are lawfully impounded and used by a Water Company, and only the surplus unused waters of which find their way into the old course of the stream (*Harbottle* v. *Terry*, 52 L. J. M. C. 31; 10 Q. B. D. 131).

In that case, Stephen, J., in giving judgment said, — "Is a pond fed by a stream, and running into a larger stream or river, to be called a 'tributary' of the larger stream? Ordinarily, one would say, no. Ordinarily, by 'tributary,' one means a stream running into another stream. It is not a very exact word, but it has a not very indefinite popular meaning. It is rather by instances that its meaning can be arrived at. I gave as an instance a stream dammed up into a series of pools, and running on through them from one to the other continuously, as being in my opinion a 'tributary.' And again, such a piece of water as Loch Neagh in Ireland, and another lake near Waterville in County Kerry. But take the Serpentine, — it would be a strong thing to call it a 'tributary' of the Thames, and still more so to call the Round Pond one; yet some of their water finds its way into the Thames."

But a river flowing into a river which latter flows into another river, is a "tributary" of this last river (*Hall* v. *Reid*, 52 L. J. M. C. 32, *n*: 10 Q. B. D. 134, *n*), and so an unnamed stream which flows into a brook which flows into a river which flows into another river, is a "tributary" of this last river (*Evans* v. *Owen*, 1895, 1 Q. B. 237; 64 L. J. M. C. 59; 72 L. T. 54; 43 W. R. 237).

Where the Secretary of State's Certificate defined the Severn Fishery District as "so much of the River Severn and of the Rivers Vyrynw and Teme, and of all *other* Tributaries of the River Severn as are situate in the counties specified," it was held that "other Tributaries" meant direct Tributaries, as the Vyrynw and Teme are (*Merricks* v. *Cadwallader*, 51 L. J. M. C. 20). But this decision has been superseded by a Certificate of Sept 20, 1882, which drops the phrase "other tributaries" and speaks of the Severn and its "Tributaries"; thereby an unnamed stream which flows into a brook which flows into a river which flows into the Severn, is a "tributary" of the Severn (*Evans* v. *Owen*, sup). The Vyrynw Reservoir which supplies Liverpool with water, is not a tributary of the Severn (*George* v. *Carpenter*, 1893, 1 Q. B. 505; 68 L. T. 714; 41 W. R. 366; 57 J. P. 311).

TRICYCLE. — *V.* LOCOMOTIVE.

TRIFLING. — Offence "of so trifling a nature" that punishment is inexpedient, s. 16, Sum Jur Act, 1879; *V. Phillips* v. *Evans*, 1896, 1 Q. B. 305; 65 L. J. M. C. 101; 74 L. T. 314; 44 W. R. 429; 60 J. P. 120.

Cp, TRIVIAL: VENIAL.

TRINITY HOUSE. — Quà Mer Shipping Act, 1894, " 'The Trinity House,' shall mean, the Master, Wardens, and Assistants, of the Guild Fraternity or Brotherhood of the Most Glorious and Undivided Trinity and of St. Clement, in the parish of Deptford Strond, in the County of Kent, commonly called 'The Corporation of the Trinity House of Deptford Strond'" (s. 742). *Va*, s. 3, Thames Conservancy Act, 1894.

V. CINQUE PORTS.

TRINITY HOUSE OUTPORT DISTRICTS. — Quà Merchant Shipping Acts, "The Trinity House Outport Districts," comprises "any Pilotage District for the appointment of pilots within which no Particular Provision is made by any Act of Parliament, or Charter" (s. 370 (3), Mer Shipping Act, 1854, repld, s. 618 (1, iii), Mer Shipping Act, 1894); Ipswich is within that definition (*Hadgraft* v. *Hewitt*, L. R. 10 Q. B. 350; 44 L. J. M. C. 140). *V.* PARTICULAR PROVISION.

Vh, The Winestead and *The Glanystwyth*, cited COASTING TRADE.

TRINKETS. — "Trinkets" are small articles for personal adornment, or wear, or even use when its object is essentially ornamental. Ivory bracelets, ornamental shirt pins, gilt rings, brooches, tortoise-shell and pearl portmonnaies, and scent-bottles, are "Trinkets" within s. 1, Carriers Act, 1830, but a plain German-silver fusee box is not (*Bernstein* v. *Baxendale*, 28 L. J. C. P. 265; 6 C. B. N. S. 259). So, ivory fans are included in a bequest of "Trinkets" (*A-G.* v. *Harley*, 7 L. J. O. S. Ch. 31; 5 Russ. 173).

V. PERSONAL ORNAMENTS.

TRIPTYCH. — *V. St. John, Pendlebury*, 1895, P. 178.

TRIVIAL. — Whether a sub-letting is "trivial" within s. 4, Land Law (Ir) Act, 1887, 50 & 51 V. c. 33, is a question of degree in each case, into the determination of which the relative proportions existing between the size and rent of the sub-letting and the size and rent of the HOLDING enter largely as elements, though not as absolute tests (*Re Ward and Corballis*, 1894, 2 I. R. 637), so, of the character of the sub-letting, *e.g.* a sub-let of 3 roods and 11 perches of a let of 151 acres, the portion sub-let having on it a tar factory and sub-let at a rent of £20, is not "Trivial" (*Martin* v. *Purcell*, 28 L. R. Ir. 470).

Cp, TRIFLING.

TRONAGE. — "The King's duty for the weighing of wooll at the King's beam, in all Ports wherein woolls were exported" (Hale, De Portibus Maris, ch. 6).

Cp, PESAGE.

TROUBLE. — The "trouble" of an executorship does not cease by the mere institution of an Administration Action; nor, accordingly, an

Annuity given to an executor for his trouble in superintending testator's affairs (*Baker* v. *Martin*, 8 Sim. 25).

A sum or annuity bequeathed to an exor "for his Trouble," is a LEGACY liable to duty (*Thorley* v. *Massam*, cited GIFT).

TROUT. — Quà Fisheries (Ir) Acts, "Trout," extends to and includes, "pollen or fresh water herring, and all fish of the trout kind, and the spawn and fry thereof" (s. 1, 13 & 14 V. c. 88).

V. FRESH WATER FISH: SALMON.

TROVE. — *V.* TREASURE TROVE.

TROVER. — The Action of Trover (now frequently called an Action for Conversion of Goods), is one of that genus of actions that were formerly called Actions on the CASE. It lies where the deft has converted or appropriated the plt's goods to his (the deft's) use, or has otherwise wrongfully deprived the plt of their use and possession.

As to what is such a Conversion; *V. Hollins* v. *Fowler*, 44 L. J. Q. B. 169; L. R. 7 H. L. 757: *Consolidated Co* v. *Curtis*, 1892, 1 Q. B. 495; 61 L. J. Q. B. 325; 40 W. R. 426; 56 J. P. 565.

Vh, *Cooper* v. *Chitty*, 1 Bl. W. 65: *Gordon* v. *Harper*, 7 T. R. 9: Termes de la Ley: Jacob: 3 Bl. Com. 152, 153: Rosc. N. P. 934–981: Add. T. 498–507: 3 Encyc. 360–362. *Cp*, DETINUE.

As used in s. 3, Limitation Act, 1623, 21 Jac. 1, c. 16, the claim for "Trover" begins to run from the Conversion, not from its discovery (*Granger* v. *George*, 5 B. & C. 149). *Vf*, CAUSE OF ACTION.

Interest, beyond Damages, may be given in "all actions of Trover, or Trespass *de bonis asportatis*," s. 29, 3 & 4 W. 4, c. 42; *Vth*, *Phillips* v. *Homfray*, 1892, 1 Ch. 465; 61 L. J. Ch. 210; 66 L. T. 657. *Cp*, DEMAND.

TRUCK ACT. — Truck Act, 1831, 1 & 2 W. 4, c. 37; amended by 50 & 51 V. c. 46, 59 & 60 V. c. 44.

V. AGREEMENT: ARTIFICER: BUTTY COLLIER: CONTRACT TO SUPPLY: MATERIALS: MEDICINE: PAYMENT, pp. 1437, 1438.

TRUCK-MASTER. — To write of a man that he is a "Truck-Master," is a Libel (*Homer* v. *Taunton*, 29 L. J. Ex. 318; 5 H. & N. 661); in giving the jdgmt, Pollock, C. B., said the word was not then to be found in any English Dictionary.

TRUE. — When a contract, — *e.g.* a Life Policy, — proceeds on the basis that statements made by the party to be benefited thereunder are "true," it will be avoided if any material statement is untrue in fact, even though it be made in good faith and be not untrue to the knowledge of the party making it (*Macdonald* v. *Law Union Insrce*, 43 L. J. Q. B. 131; L. R. 9 Q. B. 328). *V.* CORRECT: UNTRUE.

TRUE AND ANCIENT RENT. — *V. Mountjoy's Case*, 5 Rep. 3 b; cited Sug. Pow. 730.

TRUE BILL. — "'*Billa Vera*,' is a Term of Art" indorsed by the GRAND JURY on an INDICTMENT; and signifies, "that the presentor hath furnished his presentment with probable evidence and worthy of farther consideration: And thereupon the party presented is said to stand indicted of the crime, and so bound to make answer unto it, either by confessing or traversing the indictment" (Cowel, *Billa Vera*). *Vf*, 4 Bl. Com. 305, 306.

The antithesis is "*Ignoramus*," "a word properly used by the Grand Inquest . . . and written upon the Bill when they mislike the evidence as defective, or too weak, to make good the presentment; the effect of which word so written is, that all farther enquiry upon that party for that fault is thereby stopped, and he delivered without further answer" (Cowel). The phrase now generally used is "Not a True Bill."

TRUE COPY. — A "True Copy" does not mean an absolutely exact copy; but it means that the copy shall be so true that nobody can by any possibility misunderstand it (per Bacon, C. J., *Re Hewer*, 51 L. J. Ch. 905; 21 Ch. D. 871). In that case a Bill of Sale was held well registered though there was a clerical error in the registered copy of it (*Va*, *Sharp* v. *McHenry*, 38 Ch. D. 428; 57 L. J. Ch. 961; 57 L. T. 606; 3 Times Rep. 847: *Tuck* v. *Southern Counties Deposit Bank*, 37 W. R. 769; 58 L. J. Ch. 699; 42 Ch. D. 471); so, though the date be omitted in the copy if the omission be supplied by the affidavit (*Thomas* v. *Roberts*, 67 L. J. Q. B. 478; 1898, 1 Q. B. 657; 78 L. T. 712). But a served copy of an Order of Court is not a true one, for the purpose of attachment for disobedience, if the title of the cause or matter be omitted (*Re Holt*, 11 Ch. D. 168).

As to "True Copy" of a Trader-debtor Summons under Bankry Act, 1849; *V. Re Tindall*, 24 L. J. Bank. 18; 6 D. G. M. & G. 741.

V. COPY. *Cp*, TRANSLATION.

TRUE FAITH. — As to the old Abjuration Oath "upon the True Faith of a Christian"; *V. Miller* v. *Salomons*, 21 L. J. Ex. 161; 22 Ib. 169; 7 Ex. 475; 8 Ib. 778.

TRUE INVENTOR. — *V.* FIRST INVENTOR.

TRUE OWNER. — This expression "has a technical meaning in Bankruptcy, and means a person who has acquired (by mortgage, purchase, or otherwise) the Beneficial Interest in personal chattels as distinguished from the vendor, mortgagor, or grantor, who is allowed to retain possession of them, and is by means of such possession the Reputed or Apparent owner" (Robson, 860, *n* (*y*). *Vh*, Ib. 519 *et seq*: Baldwin,

327 *et seq*: Wms. Bank. 215 *et seq*: CONSENT: POSSESSION ORDER OR DISPOSITION.

As to whether the phrase "True Owner" in the Reputed Ownership Clause includes a Bare Trustee; *V.* Lewin, 250: *Re Mills*, 1895, 2 Ch. 564; 64 L. J. Ch. 708; 73 L. T. 229; 44 W. R. 21.

An *un*registered *absolute* Bill of Sale of Chattels, will prevent its giver from being the "True Owner" of the chattels, s. 5, Bills of Sale Act, 1882; and a subsequent registered Bill of Sale of the same chattels will thereby be defeated (*Tuck* v. *Southern Counties Deposit Bank*, 37 W. R. 769; 58 L. J. Ch. 699; 42 Ch. D. 471). But in an unreported case, decided before the lastly cited case, Pollock, B., held, that the grantor of a Bill of Sale, *given by way of mortgage*, remained the "True Owner" of the goods comprised therein, so long as he remained in possession of such goods; and that, therefore, a second Bill of S. registered before a prior one, took precedence of that prior one under s. 10, Bills of S. Act, 1878 (*Price* v. *Russell*, April 12, 1889).

A grantor of a Bill of S. by way of mortgage, remains the True Owner of the goods quà the Equity of Redemption (*Thomas* v. *Searles*, 1891, 2 Q. B. 408; 60 L. J. Q. B. 722; 65 L. T. 39; 39 W. R. 692); on the other hand, the True Owner includes the legal owner of the chattels, whether he be also the beneficial owner or only a trustee (*Ex p. Williams, Re Sarl*, 1892, 2 Q. B. 591; 67 L. T. 597).

A Partner in, or other joint owner of, goods is the "True Owner" of *his share* in the goods within s. 5, Bills of Sale Act, 1882 (*Re Tamplin, Ex p. Barnett*, 59 L. J. Q. B. 194; 62 L. T. 264; 38 W. R. 351).

TRUE RETURN. — *V.* RETURN.

TRULY. — "Well and truly administer"; *V.* ADMINISTER.
"Truly engraved with the Name of the Proprietor"; *V.* NAME.
Apprentice to "duly and truly serve"; *V.* SERVE.

TRULY SET FORTH. — The Bills of Sale Act, 1878, s. 8, requires the CONSIDERATION of a Bill of Sale to be "set forth" therein, and s. 8, Bills of S. Act, 1882, requires the consideration to be "*truly* set forth." The adverb here does not add to the sense (per Smith, J., *Staniforth* v. *Capon*, 2 Times Rep. 493).

Under either Act, the requirement is, that the consideration (but not the sum secured, *Ex p. Challinor, Re Rogers*, 16 Ch. D. 260; 51 L. J. Ch. 476; 29 W. R. 205), shall truly and fairly, according to the ordinary dealings of honest men, appear on the face of the document (*Roberts* v. *Roberts*, 53 L. J. Q. B. 313; 50 L. T. 351; 13 Q. B. D. 794; 32 W. R. 605: *Vf*, per Rigby, L. J., *Darlow* v. *Bland*, 1897, 1 Q. B. 125; 66 L. J. Q. B. 157; 75 L. T. 537; 45 W. R. 177).

Thus, moneys really paid at the request of the grantor to satisfy a debt, due from the grantor, may be stated to have been paid to him (*Ex p.*

National Mercantile Bank, Re Haynes, 49 L. J. Bank. 62; 15 Ch. D. 42; 28 W. R. 848: *Ex p. Challinor*, sup: *Hamlyn* v. *Betteley*, 5 C. P. D. 327; 49 L. J. C. P. 465: *Ex p. Bolland, Re Roper*, 21 Ch. D. 543; 52 L. J. Ch. 113: *Va, Carrard* v. *Meek*, 50 L. J. Q. B. 187: *Staniforth* v. *Capon*, sup); but, to bring a case within the doctrine of those decisions, the debt so paid must be absolute, prior to the execution of the Bill of S.; therefore, a deduction in respect of a mere inchoate liability as, *e.g.* for mortgagee's expenses in relation to the security (*Ex p. Firth, Re Cowburn*, 19 Ch. D. 419; 51 L. J. Ch. 473: *Hamilton* v. *Chaine*, 7 Q. B. D. 319; 50 L. J. Q. B. 456: *Ex p. Charing Cross Bank, Re Parker*, 16 Ch. D. 35; 50 L. J. Ch. 157: *Richardson* v. *Harris*, 22 Q. B. D. 268; 37 W. R. 426. *Sv, Re Cann, Ex p. Hunt*, 13 Q. B. D. 36), or for commission on the loan (*Hamilton* v. *Chaine*, sup), or for prospective interest (*Ex p. Charing Cross Bank, Re Parker*, sup), or for an agreement to make a future payment (*Ex p. Rolph, Re Spindler*, 19 Ch. D. 98; 51 L. J. Ch. 88; 30 W. R. 52), or a liability on an immature Acceptance held by the grantee of the Bill of S. (*Richardson* v. *Harris*, sup: *semble*, otherwise if applied in payment of the grantee's immature liability to a third party, *Re Wiltshire*, cited Now, p. 1296), cannot be regarded as money paid to the grantor, and if such statement be the only reference to such a deduction the consideration will not be either "truly set forth" or "set forth." But, on the other hand, if the debt be absolute before the execution of the Bill of S., then, though it be due to the grantee himself, it will be properly stated as money paid to the grantor, for an allowance to him in account is equivalent to PAYMENT (*Credit Co* v. *Pott*, 6 Q. B. D. 295; 50 L. J. Q. B. 106; 29 W. R. 326: *Ex p. Johnson, Re Chapman*, 26 Ch. D. 338; 53 L. J. Ch. 762; 50 L. T. 214: *Ex p. Nelson*, 55 L. T. 819; 35 W. R. 264); *à fortiori* if the whole of the new advance be actually made, although made on the understanding (duly carried out) that the old debt to the grantee shall be paid within a very short time (*Thomas* v. *Searles*, cited TRUE OWNER).

A Bill of S., given in substitution for a prior defective one, and which contained no reference to that prior document, but stated the pecuniary consideration as "*now paid*," was held to truly set forth the consideration (*Ex p. Allam, Re Munday*, 14 Q. B. D. 43: *Va, Re Davies*, 77 L. T. 567: *Sv, Ex p. Berwick*, 29 W. R. 292). As to "now paid," and "now due," *Vf*, Now, p. 1296.

V. PAID: PAYMENT.

Where a Bill of S. was prepared by the grantor's solicitor, and the consideration was a truly stated antecedent debt which the grantor was unable to pay and "in order to induce the grantee not to institute proceedings" the grantor had agreed to make the Bill of S.; held, that the consideration was truly set forth, although the grantee had not threatened proceedings (*Ex p. Winter*, 25 S. J. 333).

The consideration must be truly set forth in the Bill of S. itself; and

an incorrect or imperfect statement of it there, cannot be rectified by reference to a receipt endorsed on it (*Ex p. Charing Cross Bank, Re Parker*, sup).

Note: Though s. 8, Bills of S. Act, 1878, uses the phrase "set forth" the Consideration, s. 10 (3) requires a Defeasance to be "*truly* set forth."

TRUST.—"Trust," ss. 7, 8, Statute of Frauds, includes a *Use* (*Bushell* v. *Burland*, Holt, 733); but a mere agency to buy property, is not a "Trust" or "Confidence," within those sections (*Cave* v. *Mackenzie*, 46 L. J. Ch. 564).

V. MANIFESTED.

Where Realty is devised "Upon Trust," or "In Trust," and there are no active duties to perform, "the term 'Trust' would be read, not in its modern sense but, in the old sense in which it was understood before and in the Statute of Uses, 27 H. 8, c. 10, which admitted of no difference between 'Uses' and 'Trusts'." (per Chitty, J., *Re Brooke*, cited LEGAL ESTATE). *V.* USE.

The word "Trust" is not necessary to create a Trust, nor will its use necessarily create one (1 Jarm. 569: Lewin, 161); but its use is frequently most useful in showing that a trust is intended (per Chitty, L. J., *Hill* v. *Hill*, 66 L. J. Q. B. 335).

"As the doctrines of Trusts are equally applicable to Real and Personal Estate, and the principles that govern the one will be found, *mutatis mutandis*, to govern the other, we cannot better describe the nature of a Trust, generally, than by adopting Lord Coke's definition of a 'Use,' the term by which, before the Statute of Uses, a Trust of lands was designated. A Trust, in the words applied to the Use, may be said to be —'a confidence reposed in some other, which is not issuing out of the land, but as a thing collaterall, annexed in privitie to the estate of the land, and to the person touching the land' (Co. Litt. 272 b)": Lewin, 11.

Quà Trustee Act, 1893, "'Trust,' does not include the duties incident to an estate conveyed by way of MORTGAGE; but, with this exception, the expressions 'Trust,' and 'TRUSTEE,' include IMPLIED and CONSTRUCTIVE Trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of PERSONAL REPRESENTATIVE of a deceased person" (s. 50). That def (taken in great part from s. 2, Trustee Act, 1850) includes a Mtgor (owner of the fee simple) who has given a Declaration to his Equitable Mtgee that he will hold all his estate in trust for the mtgee; and if it be added that the mtgee may remove the mtgor from the trust and appoint new trustees, the mtgee in doing so may, by s. 12 (1), Trustee Act, 1893, divest the legal estate the mtgor had at the time of the mtge out of the mtgor and vest it in his (the mtgee's) nominee as against a subsequent legal mtgee (*London and County Bank* v. *Goddard*, 1897, 1 Ch. 642; 66 L. J. Ch.

261; 76 L. T. 277; 45 W. R. 310); "*any* Trust" in that latter section is not to be limited to substantial trusts (*Ib.*).

Quà Judicial Trustees Act, 1896, 59 & 60 V. c. 35, "the Administration of the property of a deceased person (whether a testator or intestate) shall be a Trust, and the exor or admor a Trustee" (subs. 2, s. 1). "Therefore, clearly s. 3 (which gives the Court power to relieve for BREACH OF TRUST) applies to the case of an exor who has been guilty of a DEVASTAVIT" (per Romer, J., *Re Kay*, 1897, 2 Ch. 518; 66 L. J. Ch. 759; 46 W. R. 74): *Vf*, REASONABLY.

Quà Lunacy Act, 1890, "'Trust,' and 'Trustee,' include, Implied and Constructive Trusts, and cases where the trustee has some beneficial interest, and also the duties incident to the office of Personal Representative of a deceased person; but not the duties incident to an estate conveyed by way of Mortgage" (s. 341).

Quà "Trusts (Scotland) Acts, 1861 to 1891" (*V.* Sch 2, Short Titles Act, 1896), "'Trust,' shall mean and include, any Trust constituted by any Deed or other Writing, or by Private or Local Act of Parliament, or by Resolution of any Corporation or Public or Ecclesiastical Body, and the appointment of any tutor, curator, or judicial factor, by deed decree or otherwise: 'Trustee,' shall include, tutor, curator, and judicial factor" (s. 2, 47 & 48 V. c. 63; s. 2, 54 & 55 V. c. 44; s. 2, 61 & 62 V. c. 42).

There is no inherent relationship of Trust or Agency between Co-Owners (*Kennedy* v. *De Trafford*, 66 L. J. Ch. 413; 1897, A. C. 180; 76 L. T. 427; 45 W. R. 671).

As to a DIRECTOR of a Co; *V.* TRUSTEE.

"Subject to any Trusts existing," s. 109, British North America Act, 1867, though not connoting strict trusts yet does import some contractual or legal duty to make the payments there referred to (*A-G. Canada* v. *A-G. Ontario*, 1897, A. C. 199; 66 L. J. P. C. 17).

"Declaration of Trust"; *V.* DECLARATION.

"Like Trusts"; *V.* LIKE.

For a view of the Rise and Progress of Trusts, *V.* Lewin, 1-12; for a Classification, *V.* Lewin, ch. 2, s. 1, and per Bowen, L. J., *Soar* v. *Ashwell*, 1893, 2 Q. B. 395: on Trusts generally, *V.* 1 Cru. Dig., Title 12: Lewin: Godefroi: 2 White & Tudor, 693–802: Watson Eq. 959–1022: 15 L. Q. Rev. 294.

V. BREACH OF TRUST: CHARITABLE PURPOSE: COMMISSION: CONSTRUCTIVE: DISTINCT: EXECUTED: EXPRESS: IN TRUST: INTRUSTED: NOTICE: PARTICULAR TRUST: PRECATORY TRUST: RESULTING TRUST: SECRET TRUST: SIMPLE TRUST: UPON TRUST.

TRUST ESTATE. — A substitutional gift of "my Trust Estate," held to include the corpus of past accumulations (*Re Travis*, 1900, 2 Ch. 541; 69 L. J. Ch. 663; 83 L. T. 241).

TRUST FUNDS. — "Trust Funds," in its ordinary acceptation and as used in s. 3, Trust Investment Act, 1889, repld s. 1, Trustee Act, 1893, is not confined in its meaning to cash awaiting investment but, "signifies funds belonging to the Trust, including money invested on security or otherwise as well as uninvested cash" (per Ld Watson, *Hume* v. *Lopes*, 1892, A. C. 112; 61 L. J. Ch. 423; 66 L. T. 425; 40 W. R. 593); therefore, the power to VARY extends to all investments whether made under the Act or not (*S. C.*).

V. FUNDS.

TRUSTEE. — A Trustee, is one who holds the "Ownership or Possession of, or dominion over, the subject of the Trust, but is bound to allow the beneficial enjoyment or usufruct of that subject to be reaped by another who is called the *Cestui que Trust*, or BENEFICIARY" (Godefroi, 2). *Vf*, TRUST.

As to who may be a Trustee; *V.* Lewin, ch. 3, s. 2: *Re Stamford*, 1896, 1 Ch. 288; 65 L. J. Ch. 134; 73 L. T. 559; 44 W. R. 249.

As to the Estate taken by Trustees in view of the phrases that may be employed in the instrument creating the Trust; *V.* LEGAL ESTATE.

As to when a devise is implied in the word "Trustee"; *V.* Lewin, 229.

Quà Trustee Act, 1888, 51 & 52 V. c. 59, "'Trustee,' shall be deemed to include an exor or admor, and a trustee whose trust arises by Construction or Implication of law as well as an EXPRESS trustee; but not the Official Trustee of charitable funds" (s. 1). A DIRECTOR of a Co is within that def and, as such, entitled to the protective limitation given by s. 8 (*Re Lands Allotment Co*, 1894, 1 Ch. 616; 63 L. J. Ch. 291; 70 L. T. 286; 42 W. R. 404), for "though Directors are not trustees from the mere fact of being Directors, yet they have always been considered and treated as trustees of money which comes to their hands or which is actually under their control" (per Lindley, L. J., *Ib.*); but s. 8 is not available to a Trustee in Bankry (*Re Cornish*, 1896, 1 Q. B. 99; 65 L. J. Q. B. 106; 73 L. T. 602; 44 W. R. 161). *Vf, Gardner* v. *Cowles*, 3 Ch. D. 304: *Re Findlay*, 32 Ch. D. 221, 641; 55 L. J. Ch. 395.

The Trust Investment Act, 1889, 52 & 53 V. c. 32, by its s. 9, provided a def the same as that in the Act of 1888, down to and including the words "express trustee"; the Trustees of a Charity were held within that def, but not the Trustees of a Building Socy, the latter being rather agents for carrying on the business of the Socy (*Manchester Infirmary* v. *A-G.*, 59 L. J. Ch. 370; 43 Ch. D. 420, 431: *Re National Permanent Bg Socy*, 59 L. J. Ch. 403; 43 Ch. D. 431; 62 L. T. 596; 38 W. R. 475).

The Trustee Act, 1893, provides an amended def (*V.* TRUST). It repealed the Act of 1888, except ss. 1 and 8, and repealed Trust Investment Act, 1889, except ss. 1 and 7.

A Mortgagee having surplus sale moneys in hand, is a "Trustee" of

them within the Trustee Acts (*Robertson* v. *Norris*, 1 Giff. 421; 30 L. T. O. S. 253: *Roberts* v. *Ball*, 24 L. J. Ch. 471: *Re Hardley*, 10 Ch. D. 664; 48 L. J. Ch. 335; 40 L. T. 409; 27 W. R. 587: *Re Walhampton*, 26 Ch. D. 391; 53 L. J. Ch. 1000; 51 L. T. 280; 32 W. R. 874).

A Vendor who has covenanted to surrender Copyholds is a "Trustee" within the Trustee Acts (*Re Cuming*, 5 Ch. 72; 18 W. R. 157: *Re Powis*, 29 S. J. 373).

Quà Bankry Act, 1883, "'Trustee,' means, the trustee in bankruptcy of a debtor's estate" (s. 168); therefore, the powers given to a "Trustee" by s. 27 are not applicable to the Trustee of an Arrangement under s. 18 (*Re Grant*, 55 L. J. Q. B. 369; 3 Morr. 118; 17 Q. B. D. 238; 34 W. R. 539). "Trustee" as used in s. 162 (2); *V. Re Chudley*, 14 Q. B. D. 405: *Re Cornish*, sup. "Trustee in Bankruptcy," quà Friendly Soc Act, 1896, includes, "a Judicial Factor in Scotland, and an Assignee in Ireland" (subs. 2, s. 35).

Quà Larceny Act, 1861, "Trustee," *means*, "a trustee on some EXPRESS Trust created by some Deed, Will, or Instrument in Writing"; and *includes* "the HEIR or PERSONAL REPRESENTATIVE of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an exor and admor, and an official manager, assignee, liquidator, or other like officer, acting under any present or future Act relating to Joint Stock Companies, Bankruptcy, or Insolvency" (s. 1); that includes a Secretary to a Savings Bank (*R.* v. *Fletcher*, 31 L. J. M. C. 206; L. & C. 180).

"Trustee" has also received statutory definition in and for the following Acts; —

Allotments Extension Act, 1882, 45 & 46 V. c. 80; *V.* s. 1:

Charitable Trustees Incorporation Act, 1872, 35 & 36 V. c. 24; *V.* s. 14:

Charitable Trusts Act, 1853, 16 & 17 V. c. 137; *V.* s. 66:

Companies Act, 1886, 49 & 50 V. c. 23; *V.* s. 3 (3):

Finance Act, 1894, 57 & 58 V. c. 30; *V.* s. 23:

Grammar Schools Act, 1840, 3 & 4 V. c. 77; *V.* s. 25:

Loc Gov Act, 1894, 56 & 57 V. c. 73; *V.* s. 75:

Lunacy Act, 1890; *V.* TRUST:

Mun Corp Act, 1882, 45 & 46 V. c. 50; *V.* s. 7:

Mun Corp (Ir) Act, 1840, 3 & 4 V. c. 108; *V.* s. 215:

Roads and Bridges (Scot) Act, 1878, 41 & 42 V. c. 51; *V.* s. 3:

Sale of Advowsons Act, 1856, 19 & 20 V. c. 50; *V.* s. 1:

Savings Banks Act, 1880, 43 & 44 V. c. 36; *V.* s. 5: it is doubtful whether its President is a "Trustee and Manager" of a SAVINGS Bank, *V. Re Cardiff Savings Bank*, 1892, 2 Ch. 100; 61 L. J. Ch. 357; 66 L. T. 317; 40 W. R. 538:

Succession Duty Act, 1853, 16 & 17 V. c. 51; *V.* s. 1:

Tramways (Scot) Act, 1861, 24 & 25 V. c. 69; *V.* s. 2:

Trusts (Scot) Acts; *V.* TRUST.

"The Trustee Appointment Acts, 1850 to 1890"; "The Trustee Savings Banks Acts, 1863 to 1893"; *V.* Sch 2, Short Titles Act, 1896.

"Trustees" for executing an Act for *Paving, &c*, s. 2, 20 & 21 V. c. 50; *V. Swinford* v. *Keble*, 35 L. J. Q. B. 185; L. R. 1 Q. B. 549; 7 B. & S. 573.

"Commissioners, Trustees," &c; *V.* COMMISSIONERS.

A Conveyance "As Trustee," implies a covenant against having made INCUMBRANCES (s. 7 (F), Conv & L. P. Act, 1881).

A Trustee De Son Tort, is one who acquires the possession of or dominion over trust property, or to whom such property comes and who chooses to take upon himself the business of a trustee in relation to such property; he cannot, for his own benefit, say that he had no right to act as a trustee (*Rackham* v. *Siddall*, 16 Sim. 297; 1 Mac. & G. 607), and his liability is the same as a trustee regularly appointed (*Ib.*: *Pearce* v. *Pearce*, 25 L. J. Ch. 893; 22 Bea. 248: *Hennessey* v. *Bray*, 33 Bea. 96, 102).

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

"Trustees or Governing Body," quà Roman Catholic buildings registered for Marriages, includes "the Bishop or Vicar General of the diocese" (s. 1 (3), 61 & 62 V. c. 58).

Trustees of Inheritance; *V.* INHERITANCE.

"Trustees of the SETTLEMENT," quà SETTLED Land Acts; Stat. Def., S. L. Act, 1882, s. 2 (8), enlarged by S. L. Act, 1890, s. 16; adopted quà and by s. 6, Land Transfer Act, 1897, and by 54 & 55 V. c. 66, s. 95: *Vh, Wheelwright* v. *Walker*, 52 L. J. Ch. 274; 23 Ch. D. 752: *Re Garnett-Orme to Hargreaves*, 53 L. J. Ch. 196; 25 Ch. D. 595: *Constable* v. *Constable*, 55 L. J. Ch. 491; 32 Ch. D. 233; 54 L. T. 608; 34 W. R. 470.

Trustees for the Time Being; *V.* TIME BEING.

V. ACTING TRUSTEE: BARE TRUSTEE: CONTINUING TRUSTEE: CREDITOR: DECLINING TRUSTEE: EXISTING: GRATUITOUS: JUDICIAL TRUSTEE: LAST: NEW TRUSTEE: OFFICIAL: OTHER TRUSTEE: SOLE TRUSTEE: SURVIVING TRUSTEE: TRUST: UPON TRUST.

TRUSTING.—*V.* PRECATORY TRUST.

TRUTH.—"Plead Guilty or admit the Truth of the Information or Complaint," s. 19, Sum Jur Act, 1879; *V. R.* v. *Essex Jus.*, 1892, 1 Q. B. 490; 61 L. J. M. C. 120; 66 L. T. 676; 40 W. R. 446; 56 J. P. 375.

TUMBRELL.—"Is an Engine of Punishment which ought to be in every Liberty that hath View of Frankpledge for the correction of SCOLDS and unquiet Women" (Cowel).

TUMULTUOUSLY. — *V.* RIOTOUSLY.

TUNNEL. — Stat. Def., 17 & 18 V. c. 15, s. 2.

V. Hill v. *Mid. Ry*, cited HEREDITAMENT, p. 870: *Bevan* v. *London Portland Cement Co*, 67 L. T. 615.

TURBARY. — "Common of Turbary is a right to dig turves (*i.e.* peat, not green turf) in another man's land, or in the lord's waste, for fuel to burn in the house; and therefore it is appendant or appurtenant to a house only, and not to land; 5 Assis. 9: *Tyrringham's Case*, 4 Rep. 36 b; Tudor's L. C. R. P.: *O'Hare* v. *Fahy*, 10 Ir. Com. Law Rep. 318. It cannot be dug for sale; *Valentine* v. *Penny*, Noy, 145: *Hayward* v. *Cannington*, 1 Sid. 354; 1 Lev. 231; 2 Keble, 290, 311. And it does not give a right to take green turf for making grass plots, or repairing the hedges or fences of a garden: *Wilson* v. *Willes*, 7 East, 121: Wms. on Rights of Common, 187" (Elph. 627).

As to what words in an Inclosure Award will vest the legal estate in the soil for the purposes of turbary, *V. Simcoe* v. *Pethick*, cited SET OUT, and cases therein cited.

"'Turbaria,' is also taken sometimes for the ground where turves are digged" (Cowel).

V. MOSSES: SUFFICIENT PASTURE.

TURF MOSS. — "I am of opinion that by a grant of 'BOGS and Turf-Mosses' simply, the soil and freehold in both would pass" (per Brady, C. B., *Boyle* v. *Olpherts*, 4 Ir. Eq. Rep. 249); "I believe it cannot be disputed that 'Bog' simply means the soil, and not a mere right of turbary" (per Pennefather, B., *Ib.*). So, a demise of a "Bog," as such, gives the lessee the right to cut and sell turf, when there is no other mode of enjoying the Bog (*Coppinger* v. *Gubbings*, 3 J. & La T. 397).

An Irish Bog, even one of 400 acres, within the ambit of the boundaries of the parcels in a Lease, will pass with those parcels, though the stated admeasurements would exclude it (*Jack* v. *McIntyre*, 12 Cl. & F. 151; stated Sug. Prop. 536).

TURN. — A "Turn" of Patronage to a Church; *V. Keen* v. *Denny*, 1894, 3 Ch. 169; 64 L. J. Ch. 55; 71 L. T. 566; 43 W. R. 39, and authorities there cited.

V. TURNE.

"In Turn," in a Charter-Party, means (unless explained by the evidence) in the order of readiness (*Robertson* v. *Jackson*, 15 L. J. C. P. 28; 2 C. B. 412: *Lawson* v. *Burness*, 1 H. & C. 396: *King* v. *Hinde*, 12 L. R. Ir. 113).

"*In Turn to Deliver*"; As to what evidence of usage will enable the Court to construe these words in a Charter-Party in a particular way, *V. Robertson* v. *Jackson*, sup. *Vh*, 1 Maude & P. 295.

"*In Regular Turns of Loading*"; As to what evidence is admissible to explain this phrase, *Cp, Leidemann* v. *Schultz* (23 L. J. C. P. 17; 14 C. B. 38) with *Hudson* v. *Clementson* (25 L. J. C. P. 234; 18 C. B. 213): *Vh, Lawson* v. *Burness* and *King* v. *Hinde*, sup: 1 Maude & P. 295: Carver, s. 620: 6 Encyc. 506.

"*Loading in Turn*"; *V. Taylor* v. *Clay*, 16 L. J. Q. B. 44; 9 Q. B. 713.

Vf. Abbott, 295–297.

TURN LOOSE.—*V.* LOOSE.

TURN OUT.—In a clause in an Apprenticeship Indenture, a "Turn-Out" of the master's workmen includes a LOCK-OUT by him as well as a STRIKE; and if the Indenture enables the master to stop the apprentice's wages during a "Turn-Out," the stipulation is so unfair against the apprentice that the indenture cannot be enforced against him (*Corn* v. *Matthews*, 1893, 1 Q. B. 310; 62 L. J. M. C. 61; 68 L. T. 480; 41 W. R. 262; 57 J. P. 407: *Meakin* v. *Morris*, 53 L. J. M. C. 72; 12 Q. B. D. 352); *secus*, of a like provision if the stand-still is through "ACCIDENT beyond the master's control" (*Green* v. *Thompson*, 1899, 2 Q. B. 1; 68 L. J. Q. B. 719; 80 L. T. 691; 48 W. R. 31; 63 J. P. 486). *Vh*, 44 S. J. 38: Austin on Apprentices, 98.

Agreement not to "turn out" Tenant as long as he duly pays his rent; *V. Browne* v. *Warner*, cited MOLEST, towards end.

TURN ROUND.—*V. The John Holloway*, and *The River Derwent*, cited CROSSING.

TURNE.—The privilege of the Turne is the power to hold a Court within the precinct of the same authority as the Sheriff's Turne; and whosoever hath the Leet hath this privilege (Termes de la Ley, *Turne del Viscont*).

TURNER'S ACT.—For facilitating Chancery Procedure, 13 & 14 V. c. 35; repealed by 46 & 47 V. c. 49.

TURNPIKE ROAD.—"A 'Turnpike-road' means a road having toll-gates or bars on it, which were originally called 'turns' and were first constructed about the middle of the 18th century. Certain individuals, with the view to the repair of particular roads, subscribed among themselves for that purpose, and erected gates upon the roads, taking tolls from those who passed through them. These were violently opposed at first, and petitions were presented to Parliament against them; and Acts were in consequence passed for their regulation. This was the origin of turnpike roads. The distinctive mark of a turnpike road is the right of turning back any one who refuses to pay toll" (per Abinger, C. B., *Northam Bridge Co* v. *London & Southampton Ry*, 6 M. & W.

438; 9 L. J. Ex. 166; 4 Jur. 892; 1 Ry Ca. 672: *Va, R.* v. *East & West India Docks & Birmingham Ry*, 22 L. J. Q. B. 380; 2 E. & B. 466: per Lawrence, J., *R.* v. *Staffordshire Canal Nav.*, 8 T. R. 350).

Dedication of a road to the public, reserving Tolls which are gathered by means of Toll-bars, does not make the road a Turnpike Road, unless the scheme have legislative sanction (*Austerberry* v. *Oldham*, 29 Ch. D. 750; 55 L. J. Ch. 633; 53 L. T. 543; 33 W. R. 807; 49 J. P. 532: *Mid. Ry* v. *Watton*, 55 L. J. M. C. 99; 17 Q. B. D. 30; 54 L. T. 482; 34 W. R. 524; 50 J. P. 405).

Stat. Def. — 7 & 8 V. c. 91, s. 114; Ry C. C. Act, 1845, s. 3. — *Scot.* 41 & 42 V. c. 51, s. 3.

"A Turnpike Road is a HIGHWAY" (per Blackburn, J., *Sunk Island Turnpike Road Trustees* v. *Patrington*, 1 B. & S. 756, cited by Bramwell, L. J., *R.* v. *French*, 48 L. J. M. C. 176; 4 Q. B. D. 509).

As to the distinction between a Turnpike Road and a HIGHWAY; *V.* per Ld Blackburn, *West Riding Jus.* v. *The Queen*, 53 L. J. M. C. 47; 8 App. Ca. 790.

As to exemption from Tolls; *V.* CLERGYMAN: USUAL PLACE OF RELIGIOUS WORSHIP.

"Turnpike Road or PUBLIC HIGHWAY," s. 46, Ry C. C. Act, 1845, does not include a Public Footpath (*R.* v. *Bexley Heath Ry*, 1896, 2 Q. B. 74; 65 L. J. Q. B. 469; 74 L. T. 540; 44 W. R. 501; 60 J. P. 454).

"Turnpike or Public Carriage Road," s. 47, Ry C. C. Act, 1845, ss. 5, 6, Ry C. C. Act, 1863, is of general application, and is not limited to such similar roads as are specifically mentioned in the Special Act of the particular railway (*R.* v. *Longe*, 66 L. J. Q. B. 278).

The obligation on a Ry Co not to go over a Level Crossing of a Turnpike Road faster than 4 miles an hour, s. 48, Ry C. C. Act, 1845, will be enforced by Injunction; a faster rate will not be excused on the ground of being less inconvenient to the public (*A-G.* v. *Lond. & N. W. Ry*, 1900, 1 Q. B. 78; 69 L. J. Q. B. 26; 63 J. P. 772).

A Disturnpiked Road becomes a MAIN ROAD (s. 13, 41 & 42 V. c. 77). *V.* CEASE.

TURNPIKE TRUST. — Stat. Def., 7 & 8 V. c. 91, s. 114.

Vh, Sunk Island Turnpike Road Trustees v. *Patrington*, 1 B. & S. 747; 31 L. J. M. C. 18.

TUTOR. — "Tutor" is not a correct description of a Schoolmaster quâ Bills of Sale Acts (*Lee* v. *Turner*, 20 Q. B. D. 773; 59 L. T. 320).

TWAITE. — "*Twaite* signifieth a wood grubbed up, and turned to arable" (Co. Litt. 4 b).

TWELVE-MONTH. — "'A Twelve-month' includes all the year according to the Kalendar; but 'Twelve months' shall be reckoned ac-

cording to twenty-eight days to each month" (*Catesby's Case*, 6 Rep. 62 a: *Va*, 2 Bl. Com. 141: Dwar. 674, 675). *V.* MONTH: YEAR.

A Hiring Agreement "for twelve months *certain*, after which time either party shall be at liberty to determine the agreement by giving the other a three months' notice," means, that at the end of the twelve months either party may (without notice) determine the agreement, and that the stipulation as to notice applies only if the engagement be prolonged beyond the twelve months (*Langton* v. *Carleton*, L. R. 9 Ex. 57; 43 L. J. Ex. 54).

TWO JUSTICES. — *V.* JUSTICE.

TYPE-WRITING. — *V.* PRINT.

TYTHING. — *V.* TITHING.

UBERRIMA FIDES—ULTRA VIRES

UBERRIMA FIDES.—When required quà Contracts; *V.* per Romer, L. J., *Seaton* v. *Heath,* cited INSURANCE.

UBICUNQUE.—*V.* QUAMDIU.

ULTIMATE TRUST.—An Ultimate Trust is, probably, that trust of a series of trusts which is the last prescribed, *e.g.* as distinguished from a RESULTING TRUST.

ULTRA VIRES.—A thing is done by a Public Authority, a Company, or a Fiduciary Person, *ultra vires,* when it is not within the scope of the powers entrusted to such Authority, Company, or Person. The difficulty of applying that definition arises when the circumstances are complex, *e.g.* if the Directors of a Ry Co should purchase for the Co a quantity of "green spectacles as a speculation," that would be clearly *ultra vires* (per Campbell, C. J., *Norwich* v. *Norfolk Ry,* 4 E. & B. 443); but if such a Board were to build a theatre or chapel, it would, *semble,* be *ultra* or *intra* their powers according to circumstances; "it might be a speculation separate from the railway, and prohibited; or, if works (for the railway) were wanted in a waste place and the Co found it to be for their interest to build a Town and supply it with all requisites of inhabitancy, and (in order to secure a permanent supply of workmen of skill and responsibility) added a chapel and a theatre, with religious and secular instruction, it might be for the purpose of the railway, and valid, and, though distantly connected, the outlay might be found eventually to increase the profit from the traffic" (per Erle, J., Ib. 415).

So, gratuities to Officers and Servants of an ordinary trading Co, when made as mere gratuities, are *ultra vires, e.g.* if made when the business of the Co is no longer carried on; *secus,* if reasonably in the nature of stimulants to exertion for the benefit of the Co (*Hutton* v. *West Cork Ry,* 52 L. J. Ch. 689; 23 Ch. D. 654; 31 W. R. 827).

For cases on Bye Laws; *V.* PEACE.

Vh, Brice on Ultra Vires: 12 Encyc. 360–366.

Observe, that "the words '*Ultra Vires*' and 'Illegality' represent totally different and distinct ideas. It is true that a Contract may have both these defects; but it may also have one without the other, *e.g.* a Bank has no authority to engage, and usually does not engage, in benevolent enterprises. A subscription made by authority of the Board

of Directors and under the corporate seal, for the building of a church or college or an alms-house, would be clearly *ultra vires*, but it would not be illegal. If every corporation should expressly assent to such an application of the funds, it would still be *ultra vires* but no wrong would be committed and no public interest violated" (*Bissell* v. *Michigan Southern Ry*, New York Rep. 258, cited Brice, 2 ed., 51).

Cp, ILLEGAL.

UMPIRE. — The true meaning of "Umpire" is a person to decide between two arbitrators; but it may be used as synonymous with "Arbitrator," *e.g.* where the submission is to an "Arbitrator or Umpire" (*Re Eyre and Leicester*, 1892, 1 Q. B. 136; 61 L. J. Q. B. 438; 65 L. T. 733; 40 W. R. 203).

Vh, *Gould* v. *Sharpington Syndicate*, cited CALL UPON.

The Scotch equivalent is "Oversman"; *V.* s. 109 (3), 38 & 39 V. c. 17.

UNABLE. — *V.* UNWILLING.

"Unable to act"; *V.* INABILITY.

A Co "unable to pay its debts," s. 79 (4), Comp Act, 1862, connotes that the inability "must be inability to pay debts absolutely due, *i.e.* debts on which a creditor can go to the Co and instantly demand to be paid" (per James, V. C., *Re European Life Assrce*, 39 L. J. Ch. 326; L. R. 9 Eq. 127). *Vh*, s. 80, Comp Act, 1862; and quà Life Assrce Companies, s. 21, 33 & 34 V. c. 61. *Cp*, INSOLVENT.

UNABLE OR UNWILLING. — As to this phrase in Conditions of Sale; *V.* UNWILLING.

UNADULTERATED. — *V.* ADULTERATION: AS UNADULTERATED.

UNADVANCED. — "Unadvanced Member" of a Building Society; *V. Re Middlesborough Bg Socy*, 58 L. J. Ch. 771; 53 L. T. 203; 5 Times Rep. 516. *V.* WITHDRAWAL.

UNANIMOUS. — "Unanimous" determination of Creditors and Contributories, R. 63 (2), Companies Winding-up Rules, 1890, refers to the unanimity of all the creditors and contributories at the meetings, and not to unanimity in the result of the two meetings (*Re Johannesberg Land and Gold Trust*, cited MAY, p. 1177).

UNAPPRECIABLE. — *V.* INAPPRECIABLE.

UNAVOIDABLE. — Unavoidable *Accident*; *V.* INEVITABLE.

"It has been decided that a Condition of Sale for payment of interest, if by reason of any 'Unavoidable *Obstacle*,' the contract could not be completed by a day named, did not apply to a delay occasioned by the state of the title; and therefore interest was not payable under the Condition" (Sug. V. & P. 635, citing *Birch* v. *Podmore*, unreported). So, of

the phrase "Unforeseen or Unavoidable Obstacles" (*Monk* v. *Huskisson*, 4 Russ. 121 *n*; *Svth*, Sug. V. & P. 635). *Vf*, Dart, 719.

"Unavoidable *Hindrance*," is very unusual in a Charter-Party Exception (per Esher, M. R., *Crawford* v. *Wilson*, 12 Times Rep. 171; 1 Com. Ca. 277, *whcv* for an example of such a Hindrance: *Va*, *Gardiner* v. *Macfarlane*, cited CONTROL).

UNBAPTIZED. — A child baptized with water in the name of the Trinity by a Wesleyan minister, not authorized to administer the Rite of Baptism, is not "unbaptized" within the Burial Service, as incorporated into the Uniformity Act, 13 & 14 Car. 2, c. 4 (*Escott* v. *Mastin*, B. & F. 4; 2 Curt. 692).

Note. As to the Rite of Baptism, *V.* Phil. Ecc. Law, Part 3, ch. 2.

UNBORN. — "Unborn," in s. 30, Trustee Act, 1850, repld s. 31, Trustee Act, 1893, means, "non-existent in the character to entitle a person to the property in question" (per Jessel, M. R., *Basnett* v. *Moxon*, 44 L. J. Ch. 559; L. R. 20 Eq. 185). Among other illustrations the learned judge said, "In a sense, the future heir-at-law of a living person, although he may be a living man, is not a living heir. As heir, he comes into existence at a future period." *Vh*, Dan. Ch. Pr. 1781.

V. BORN: LIVING: TO BE BORN.

UNBUILT. — "Open and unbuilt upon"; *V.* OPEN, p. 1341.

UNCALLED CAPITAL. — Uncalled Capital is not "PROPERTY," *V.* p. 1584; *Vf*, UNDERTAKING.

UNCERTAIN. — "Uncertain INTEREST" in Land, s. 3, Statute of Frauds, relates "only to Interests which are uncertain as to the time of their duration" (per Lee, C. J., and Denison, J., *Wood* v. *Lake*, Sayer, 3).

Uncertain Rent; *V.* CERTAIN RENT.

V. VAGUE.

UNCLEANNESS. — *V.* IMMORAL.

UNCONDITIONAL. — "Unconditional Order in Writing," to constitute a BILL OF EXCHANGE; *V. Bavins* v. *London & S. W. Bank*, 1900, 1 Q. B. 270; 69 L. J. Q. B. 164; 81 L. T. 655; 48 W. R. 211; 5 Com. Ca. 1.

Where there was a testamentary direction to A. to pay debts and legacies and other matters, "and to enable him to do all this, I *bequeath unconditionally* unto him all my estates and landed property"; held, that "unconditionally," did not mean without any condition annexed as to the payment of legacies but, meant an absolute ownership of the fee simple for the purpose of doing that which he is ordered to do (*Thomson* v. *Eastwood*, 2 App. Ca. 215, 229).

UNCONSCIONABLE BARGAIN. — *V.* EXPECTANT HEIR: UNDERVALUE: USURY.

UNCONTROLLED. — *V.* DISCRETION. *Cp*, CONTROL.

UNDER. — *Semble*, a power to carry pipes, &c, ACROSS a Public Road is different from a power to carry them "under" the road (*S. E. Ry* v. *European, &c, Telegraph Co*, 9 Ex. 363; 23 L. J. Ex. 113). *Cp*, UNDERGROUND.

"Acting under"; *V.* ACTING.

Where a Special Act incorporates a Public Act, things done pursuant to the latter are DONE "under" the former (*Lond. & N. W. Ry* v. *Runcorn*, cited SEWER).

"ENTITLED under," *e.g.* a Will; *V. Collingwood* v. *Stanhope*, L. R. 4 H. L. 43; 38 L. J. Ch. 421; 17 W. R. 537: *Re Crawshay*, cited SETTLE.

Co "*incorporated* under" an Act; *V.* BY.

Money *paid* "under an Execution . . . to avoid Sale," s. 11 (2), Bankry Act, 1890 (superseding *Re Pearson*, 3 Morr. 187), must be (1) the exon Debtor's own money, (2) paid under direct stress of the execution, and (3) to avoid an actual sale, and not a mere re-seizure (*Bower* v. *Hett*, 1895, 2 Q. B. 337; 64 L. J. Q. B. 772; 43 W. R. 557).

Guarantee of payment "under the said Policy," does not include a payment under an arrangement "in lieu of" the Policy (*Mortgage Insrce* v. *Pound*, 64 L. J. Q. B. 394; 65 Ib. 129).

"*Passing* under"; *V.* PASSING.

BURIAL Ground *sold* "under the authority of any Act," s. 5, 47 & 48 V. c. 72; *V. A-G.* v. *London Parochial Charities*, cited SET APART.

"Sales under the Lands C. C. Act"; *V.* SALE.

Property "vested under" an Act; *V.* VESTED.

A WORKMAN "*works* under a contract with an EMPLOYER," s. 10, 38 & 39 V. c. 90, even though he "has not contracted directly with an employer but has been engaged by an agent of the employer to work for the employer, viz. by a butty-man or a ganger, or to meet the case of an apprentice, or other similar cases" (per Smith, L. J., *Marrow* v. *Flimby, &c, Co*, 1898, 2 Q. B. 588; 67 L. J. Q. B. 976; 79 L. T. 397): "There is one obvious instance of such working under a contract, viz., that of a volunteer, who, without communication with the employer, gives his services either to supplement or replace the workman actually employed" (per Rigby, L. J., *Ib.*).

Property the subject of a Power of Appointment, passes "under or BY VIRTUE" of the Power, and not of the instrument exercising it (*A-G.* v. *Chapman*, 1891, 2 Q. B. 526; 60 L. J. Q. B. 602: 40 W. R. 79, citing *Charlton* v. *A-G.*, *Braybrooke* v. *A-G.*, *A-G.* v. *Floyer*, and *A-G.* v. *Smythe*, cited PREDECESSOR: per Wright, J., on def of SETTLEMENT,

A-G. v. *Dodington*, 66 L. J. Q. B. 441; on app. Ib. 684; 1897, 2 Q. B. 373).

"Under or by virtue"; *V.* PURSUANCE.

V. IN RESPECT OF.

"Under Arrest"; *V.* ARREST.

"Under Command"; *V.* COMMAND.

"Under Control"; *V.* CONTROL.

Place of Profit "under the Co"; *V. Astley* v. *New Tivoli*, cited PLACE, p. 1490.

"Salvage under this Act"; *V.* SALVAGE.

"Under the Same Circumstances"; *V.* SAME, p. 1789.

V. CLAIMING UNDER: THROUGH: UNLESS: WITHIN OR UNDER.

UNDER BOOK PILOT.—*V.* PILOT.

UNDER DECK.—*V. Royal Exchange Co* v. *Dixon*, 12 App. Ca. 11; 56 L. J. Q. B. 266; 56 L. T. 206; 35 W. R. 461.

UNDER GARDENER.—*V.* GARDENER.

UNDER HAND.—Agreement "under hand only" (quà Stamp, on *whv* EVIDENCE OF A CONTRACT) means, otherwise than by DEED; therefore, an unsigned document embodying the binding terms of a contract, requires an Agreement Stamp (*Walker* v. *Rostron*, 11 L. J. Ex. 173; 9 M. & W. 411: *Chadwick* v. *Clarke*, 14 L. J. C. P. 233; 1 C. B. 700). In *thlc* Cresswell, J., said, "an unsigned agreement may be binding provided it does not require a signature by the Statute of Frauds." *V.* SIGNED.

"Under his hand"; *V.* HIS HAND.

UNDER PAIN.—"Under Pain of forfeiting Body and Goods"; *V.* FELONY.

UNDER PROTEST.—*Appearance* to a Writ "Under Protest" is one denying the obligation to appear at all, *e.g.* when the Jurisdiction of the Court is objected to (*The Vivar*, 2 P. D. 29; 35 L. T. 782; 25 W. R. 453: *Mayer* v. *Claretie*, 7 Times Rep. 40: *Firth* v. *Palmer*, 62 L. J. Q. B. 403; 1893, 1 Q. B. 768; 69 L. T. 383; 41 W. R. 493), or a Partner "may enter an appearance Under Protest, denying that he is a partner" (R. 7, Ord. 48 A, R. S. C.). As to a Conditional appearance, *V.* Ann. Pr. notes to R. 30, Ord. 12, R. S. C.

Payment Under Protest: "It is said that the money was received by the petitioner and the receipt given Under Protest. These words are often used on these occasions, but they have no distinct technical meaning, unless accompanied with a statement of circumstances, showing that they were used by way of notice or protest, reserving to the party by

reason of such circumstances, a right to a taxation, notwithstanding such payment. The words have no distinct meaning by themselves, and amount to nothing unless explained by the proceedings and circumstances" (per Langdale, M. R., *Re Massey*, 8 Bea. 462: *Va, Re Dearden*, 23 L. J. Ex. 14; 9 Ex. 210; 17 Jur. 993; 22 L. T. O. S. 90; 2 W. R. 18). *Vf, Re Cheesman*, and *Re Williams*, cited SPECIAL under "Special Circumstances" justifying the taxation of a Solr's Costs after payment.

"A TENDER may be effectually made 'Under Protest'; which imports, not to impose a CONDITION on acceptance of the money but, merely to prevent the fact of payment operating as an admission of the claim" (Leake, 746, citing *Scott* v. *Uxbridge Ry*, L. R. 1 C. P. 596; 35 L. J. C. P. 293; *Sweny* v. *Smith*, L. R. 7 Eq. 324; 38 L. J. Ch. 446: *Greenwood* v. *Sutcliffe*, 1892, 1 Ch. 1; 61 L. J. Ch. 59; 65 L. T. 797; 40 W. R. 214).

UNDERGROUND. — A statutory power to lay, *e.g.* pipes or wires, "underground" in streets, involves authority to open the streets for that purpose (*Montreal* v. *Standard Light Co*, 1897, A. C. 527; 66 L. J. P. C. 113; 77 L. T. 115). *Cp*, UNDER.

"Underground BAKEHOUSE"; Stat Def., 1 Edw. 7, c. 22, s. 101 (3). *Vh, Schwerzerhof* v. *Wilkins*, cited USED.

"Underground *Room*," quà and by s. 96, P. H. London Act, 1891, "includes, any room of a house the surface of the floor of which room is more than 3 feet below the surface of the footway of the adjoining street or of the ground adjoining or nearest to the room." *Cp*, "Ground Storey," sub STOREY.

Underground TRESPASS; *V. Bulli Coal Mining Co* v. *Osborne*, 1899, A. C. 351; 68 L. J. P. C. 49.

Underground *Water*; *V.* SUBTERRANEAN WATER: INJURIOUSLY AFFECTED, p. 975: *Acton* v. *Blundell*, cited INJURY.

UNDERLEASE. — "An assurance for a period less than the whole term, is an Underlease, and not an assignment (*Cottee* v. *Richardson*, cited TERM); though an assurance purporting to be an Underlease, but which comprises the whole term, may be an Assignment (*Langford* v. *Selmes*, 3 K. & J. 220: *Beardman* v. *Wilson*, 38 L. J. C. P. 91; L. R. 4 C. P. 57)": per Cur. *Bryant* v. *Hancock*, cited ASSIGNS, p. 131.

"Underlease," quà Conv & L. P. Act, 1881; *V.* LEASE, p. 1071.

"Underlease," "Underlease in Perpetuity"; Stat Def., Renewable Leasehold Conversion Act for Ireland, 12 & 13 V. c. 105, s. 38.

Though a Covenant against Assigning is not broken by an Underlease (*V.* ASSIGN); yet a covenant against underletting will, generally, restrain an assignment (*Greenaway* v. *Adams*, 12 Ves. 395: *Svthc, Re Doyle and O'Hara*, cited SET).

A covenant not to "underlease" is broken by a letting from year to year (*Timms* v. *Baker*, 49 L. T. 106).

"Letting *Lodgings* has been held not to be a breach of a covenant not 'to grant any Underlease for any term whatsoever, or let, assign, transfer, set over, or otherwise part with,' without the license of the lessor; for 'the covenant,' said Lord Ellenborough, 'can only extend to such under-letting as a license might be expected to be applied for; and whoever heard of a license from a landlord to take in a lodger?' (*Doe* d. *Pitt* v. *Laming*, 4 Camp. 77). But the same learned judge ruled otherwise where the covenant was not to let the premises, *or any part* thereof (*Roe* v. *Sales*, 1 M. & S. 297), and the ruling itself has been questioned in a later case (per Parke & Alderson, BB., *Greenslade* v. *Tupscott*, 1 Cr. M. & R. 59; 3 L. J. Ex. 328; 4 Tyr. 566), where land was suffered to be occupied by more persons than one. On principle it would seem that if the covenant be not to sublet the premises *or any part*, the letting Lodgings would be a breach; otherwise not" (Woodf. 699, 700).

Vf. Redman, 284, 285: Fawcett, 384, 385.

Merely letting a purchaser into possession of leaseholds he paying no rent and incurring no tenant's obligations to the vendor, is not an Assignment of the term, nor is it an Under-letting of the premises, within a clause of Forfeiture (*Horsey* v. *Steiger*, cited LIQUIDATION); but such an act would be a forfeiture if the covenant were extended to not "parting with the possession" of the premises (*Ib.*), on which latter phrase *vf*, ASSIGN.

V. DERIVATIVE LEASE: LEASE: LEASEHOLD REVERSION: UNREASONABLY.

UNDER-LESSEE. — *V.* UNDERLEASE: LEASE.

UNDERMAN. — Undermanning makes a Ship "UNSAFE" within s. 459, Mer Shipping Act, 1894 (60 & 61 V. c. 59).

UNDERPIN. — *V. Stevens* v. *Metrop District Ry*, 54 L. J. Ch. 737; 29 Ch. D. 60, espy jdgmt of Baggallay, L. J.

UNDER-SHERIFF. — "Sheriff, or Under-Sheriff," s. 46, Juries Act, 1825, 6 G. 4, c. 50, does not include a person acting as Under-Sheriff, there being another person holding the formal appointment (*Williams* v. *Thomas*, 19 L. J. Ex. 50; 4 Ex. 479).

UNDERSTOOD. — *Semble*, "it is understood" connotes the same as "it is agreed" (*Higginson* v. *Weld*, 14 Gray, 170); but in *Hill* v. *Fox* (4 H. & N. 364) the Court said, "It is difficult to say what an 'Understanding' is." It has been said that "understandings are always misunderstood."

UNDERTAKE. — The meaning of R. 6, Solrs Rem Ord, giving a Solicitor power to elect his mode of remuneration "before undertaking

any business," is, "that after a Solicitor has accepted the employment and done *any* work in it for his client for which he could charge him if the Scale did not apply, he has *undertaken* the business, and it is too late for him to elect under R. 6" (per Kay, J., *Re Allen*, 56 L. J. Ch. 8; affd Ib. 487; 34 Ch. D. 433; 56 L. T. 6; 35 W. R. 218: *Re Metcalfe*, 57 L. J. Ch. 82; 36 W. R. 137: *Va*, *Hester* v. *Hester*, 56 L. J. Ch. 247; 34 Ch. D. 607; 55 L. T. 862; 35 W. R. 233: *Re Love*, 40 Ch. D. 637; 58 L. J. Ch. 272: *Re Stewart*, 41 Ch. D. 494; 60 L. T. 737; 37 W. R. 484). *V.* BUSINESS.

"Undertake, execute, hold, or enjoy," a Contract, s. 1, House of Commons (Disqualification) Act, 1782, 22 G. 3, c. 45, means, quà "undertake," to enter into; quà "execute," to take on oneself the execution of another's contract; quà "hold," to take a transfer of another's contract; and quà "enjoy," a *cestui que trust* who is to enjoy the benefit of the contract: but the phrase does not, under any or either of its words, include a contract which has been executed and under which nothing remains to be done except paying the contractor (*Royse* v. *Birley*, cited PUBLIC SERVICE, espy jdgmt of Brett, J.).

UNDERTAKER. — *V.* PROMOTER.

Quà the Clauses Acts, "Undertakers," or "Promoters of the Undertaking," means, the parties, by the Special Act, empowered to execute or construct the works contemplated by, or carry into effect the purposes of, the Special Act: *V.* Lands C. C. Act, 1845, s. 2; Lands C. C. (Scot) Act, 1845, s. 2; Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14, s. 2; Gas Works Clauses Act, 1847, 10 & 11 V. c. 15, s. 2; W. W. C. Act, 1847, 10 & 11 V. c. 17, s. 2; Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, s. 2. *Cp*, UNDERTAKING.

Va, Burgh Harbours (Scot) Act, 1853, 16 & 17 V. c. 93, s. 6; Electric Lighting Act, 1882, 45 & 46 V. c. 56, s. 2; Telegraph Act, 1878, 41 & 42 V. c. 76, s. 2.

Quà Workmen's Comp Act, 1897, "'Undertakers,' in the case of a RAILWAY, means, the Ry Co; in the case of a FACTORY, QUARRY, or Laundry, means, the Occupier thereof, within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a MINE, means the Owner thereof, within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be; and in the case of an ENGINEERING WORK, means, the person undertaking the construction, alteration, or repair; and in the case of a BUILDING, means, the persons undertaking the construction, repair, or demolition" (subs. 2, s. 7): quà "Factory," *V.* s. 38, Interp Act, 1889, which applies hereto the provisions of the Factory and Workshop Act, 1901, on *whv* FACTORY: DOCK. A person who merely supplies the labour for a Building is not such an "Undertaker" (*Percival* v. *Garner*, 1900, 2 Q. B. 406; 69 L. J. Q. B. 824; 64 J. P. 500; 16 Times Rep.

396); *Secus*, of a Sub-Contractor (*Cooper* v. *Wright*, 1902, A. C. 302; 71 L. J. K. B. 642, over-ruling *Cass* v. *Butler*, 1900, 1 Q. B. 777; 69 L. J. Q. B. 362, and *Cooper* v. *Davenport*, 16 Times Rep. 266), or a person who independently contracts to construct, repair, or demolish, a substantial part of a Building (*Mason* v. *Dean*, 1900, 1 Q. B. 770; 69 L. J. Q. B. 358; 82 L. T. 139; 48 W. R. 353; 64 J. P. 244). The owners of a SHIP which is being discharged on to a Quay of a Dock, are "Undertakers" (*Merrill* v. *Wilson*, cited DOCK). *Vf*, *Carrington* v. *Bannister*, 83 L. T. 457: *Knight* v. *Cubitt*, 71 L. J. K. B. 65; 1902, 1 K. B. 31; 85 L. T. 526; 50 W. R. 113: *Bartell* v. *Gray*, 71 L. J. K. B. 115; 1902, 1 K. B. 225; 85 L. T. 658; 50 W. R. 310; 66 J. P. 308: ANCILLARY.

UNDERTAKING.—Quà the Clauses Acts of a general character, "Undertaking" means, the Undertaking or Works, of whatever nature, which shall, by the Special Act, be authorized to be executed: *V.* Comp C. C. Act, 1845, s. 2; Comp C. C. (Scot) Act, 1845, s. 2; Lands C. C. Act, 1845, s. 2; Lands C. C. (Scot) Act, 1845, s. 2: quà Commrs Clauses Act, 1847, 10 & 11 V. c. 16, the def is "Undertaking or Works, of whatever nature, which shall, by the Special Act, be authorized to be executed *or carried on*" (s. 2).

Quà Lands C. C. Act, 1845, "Undertaking," means, an undertaking of a Public nature; and does not include such an undertaking as the Westminster Palace Hotel (*Wale* v. *Westminster Palace Hotel Co*, 8 C. B. N. S. 276), or Sion College (*Re Sion College, Ex p. London Corp*, 31 S. J. 378; 55 L. T. 589). *V.* PUBLIC UNDERTAKING.

"Undertaking" has also received statutory definition in and for the following Acts;—

Electric Lighting Act, 1882, 45 & 46 V. c. 56; *V.* s. 2:

Gas Works Clauses Act, 1847, 10 & 11 V. c. 15; *V.* s. 2:

Markets and Fairs Clauses Act, 1847, 10 & 11 V. c. 14; *V.* s. 2:

Railway Clauses Acts, 1845, 8 & 9 V. cc. 20, 33; *V.* s. 2:

Telegraph Acts, 31 & 32 V. c. 110, s. 3; 32 & 33 V. c. 73, s. 3; 41 & 42 V. c. 76, s. 2:

W. W. C. Act, 1847, 10 & 11 V. c. 17; *V.* s. 2.

"Undertaking," quà London Street Tramways Act, 1870, 33 & 34 V. c. clxxi; *V. North Metropolitan Tramways Co* v. *London Co. Co.*, 72 L. T. 586; 43 W. R. 552; 11 Times Rep. 419; 59 J. P. 697; affd 60 J. P. 23.

"Undertaking," in a Charge contained in a Mortgage Debenture given by a Co, would generally be held to cover all its present and future acquired Property (*Re Panama Co*, 5 Ch. 318; 39 L. J. Ch. 482: *Re Florence Land Co*, 48 L. J. Ch. 145; 10 Ch. D. 530: *Re Mersey Wood Co*, 1 Times Rep. 566: *Sv*, *Re New Clydach Iron Co*, L. R. 6 Eq. 514. *Vh*, Buckl. 185, 186: 1 Palmer Co. Prec. 772); but not its

Uncalled Capital (*King* v. *Marshall*, 34 L. J. Ch. 163; 33 Bea. 565; 12 W. R. 971: *Re Marine Mansions Co*, L. R. 4 Eq. 601; 37 L. J. Ch. 113: *Vf*, *Re West Lancashire Ry*, 63 L. T. 56). Yet, even as regards uncalled capital, when a Co has power to sell its "Undertaking" there is nothing to prevent the directors from calling up the outstanding capital and selling the proceeds (*New Zealand Gold Co* v. *Peacock*, 1894, 1 Q. B. 622; 63 L. J. Q. B. 227; 70 L. T. 110). And though it be incorrect to speak of a solvent Co's property as ASSETS, yet if that word be used in a Co's Mtge Debenture or Charge it would include uncalled capital (s. 38, Comp Act, 1862: *Morris' Case*, 7 Ch. 200, 204; 8 Ib. 800: *Webb* v. *Whiffin*, L. R. 5 H. L. 711, 724, 735: *Re Pyle Works*, 59 L. J. Ch. 489; 44 Ch. D. 534: *Ib. No. 2*, 1891, 1 Ch. 173; 60 L. J. Ch. 114: *Page* v. *International Agency*, 62 L. J. Ch. 610; 68 L. T. 435). *Note*: an effective Charge on Uncalled Capital cannot be made if the Call is prevented from being made by a Resolution under s. 5, Comp Act, 1879 (*Re Mayfair Property Co*, 1898, 2 Ch. 28; 67 L. J. Ch. 337; 46 W. R. 199). *V.* FLOATING SECURITY.

"Undertaking," quà a Railway Debenture; *V. Doe* d. *Myatt* v. *St. Helen's Ry*, 11 L. J. Q. B. 6; 2 Q. B. 364: *Gardner* v. *L. C. & D. Ry*, 36 L. J. Ch. 323; 2 Ch. 201: on *whcv* 1 Jarm. 224, 225, and, espy as to the meaning and application of the leading case of *Gardner* v. *L. C. & D. Ry*, *V. Redfield* v. *Wickham*, 13 App. Ca. 474: *Re David*, 43 Ch. D. 27; 59 L. J. Ch. 87: *Re Yerbury*, 62 L. T. 55: *Re Parker*, 39 W. R. 346; 1891, 1 Ch. 682; 60 L. J. Ch. 195: *Re Portsmouth Tramways Co*, 1892, 2 Ch. 366; 61 L. J. Ch. 462: *Re Crossley*, 1897, 1 Ch. 934; 66 L. J. Ch. 560; 76 L. T. 419; 45 W. R. 615. *Va*, *Legg* v. *Mathieson*, 29 L. J. Ch. 385; 2 Giff. 71: *Furness* v. *Caterham Ry*, 27 Bea. 361; 7 W. R. 660: *Re Southern Ry*, 17 L. R. Ir. 127: *Re Bagnalstown & Wexford Ry*, Ir. Rep. 1 Eq. 275: *Blaker* v. *Herts & Essex W. W. Co*, 41 Ch. D. 399; 58 L. J. Ch. 497, on *whlcv*, *Re Barton-upon-Humber Water Co*, 42 Ch. D. 585.

V. UNDERTAKER.

"Undertaking *any Business*"; a Solicitor "undertakes" business, and is deprived of his option under R. 6, Solrs Rem Ord as soon as he does anything, or advises, in relation to it: *V.* UNDERTAKE.

An I. O. U. may be (*R.* v. *Chambers*, 41 L. J. M. C. 15; L. R. 1 C. C. R. 341; 25 L. T. 507), and a Guarantee by way of suretyship (*R.* v. *Reed*, 2 Moody, 62: *R.* v. *Stone*, 2 C. & K. 364) or against negligence and dishonesty (*R.* v. *Joyce*, 34 L. J. M. C. 168; L. & C. 576) is, an "Undertaking *for the payment of money*" within s. 23, Forgery Act, 1861, 24 & 25 V. c. 98.

UNDERVALUE. — The sale of a Reversion cannot "be opened or set aside merely on the ground of Undervalue" (s. 1, 31 V. c. 4); there must be "Fraud or Unfair Dealing" (Ib.). But "it is obvious that the

words 'merely on the ground of Undervalue' do not include the case of an undervalue so gross as to amount of itself to evidence of fraud; and in *Aylesford* v. *Morris* (42 L. J. Ch. 548; 8 Ch. 490) Ld Selborne said that this Act 'leaves Undervalue still a material element in cases in which it is not the sole equitable ground for relief'" (per Kay, J., *Fry* v. *Lane*, cited FRAUD).

Undervalue in a sale by a mortgagee must be so gross as to amount to evidence of fraud to justify setting aside the sale (*Davey* v. *Durrant*, 26 L. J. Ch. 830; 1 D. G. & J. 535: *Warner* v. *Jacob*, 51 L. J. Ch. 642; 20 Ch. D. 220).

UNDER WAY. — Quà Regulations for Preventing Collisions at Sea, 1879; "A vessel making way through the water is under way. A sailing vessel hove-to is under way (*The Rosalie*, 5 P. D. 245; 50 L. J. P. D. & A. 3: *The City of London*, Swabey, 248). A vessel driven from her anchors in a gale of wind, even if wholly unmanageable, is under way (*The George Arkle*, Lush. 382: *Sv*, *The Buckhurst*, cited INEVITABLE); and a vessel dropping with the tide, although she may have an anchor overboard, is under way so long as she is not held by her anchor (*The Esk*, L. R. 2 A. & E. 350; 38 L. J. Adm. 33)": 1 Maude & P. 589. "The true criterion as to the application of the Regulation must be, whether the vessel be actually holden by, and under the control of, her anchor or not. The moment she ceases to be so, she is in the category of a vessel 'Under way' and must carry the appointed coloured lights" (per Sir R. Phillimore, *The Esk*, L. R. 2 A. & E. 353; 38 L. J. Adm. 34). *Vf*, *The Romance*, cited AT ANCHOR: TOW.

Quà Regns for Preventing Collisions at Sea, 1897, a Vessel is "Under way" "when she is not at anchor, or made fast to the shore, or aground"; *V.* the Preliminary Rules thereto.

A sailing barge having her mast lowered, her anchor on the ground and dredging down Thames, is not a Sailing vessel "Under way," within Art. 6, Rules for the Navigation of the River Thames, 1880 (*The Indian Chief*, 58 L. J. P. D. & A. 25; 14 P. D. 24; 60 L. T. 240), nor is she "At Anchor" within Art. 7 (*Ib.*).

V. COMMAND: SAIL: STATIONARY.

UNDERWOOD. — Generally speaking the term "Underwood" is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits (per Bayley, J., *R.* v. *Ferrybridge*, 1 B. & C. 384; *Vf*, *Note*, 379–383, Ib.). *V.* SALEABLE UNDERWOOD.

"Underwood is in the nature of a crop. It may be cut by the tenant at the periodical times which usage or the custom of the country has established, but not before or after those times (*Humphreys* v. *Har-*

rison, 1 Jac. & W. 581: *Brydges* v. *Stephens*, 6 Mad. 279)": Redman, 244.

"Cut as Underwood"; *V. Dashwood* v. *Magniac*, cited TIMBER.

V. COPPICE: TREES: WOOD.

UNDERWRITE. — *V.* POLICY.

To "Underwrite" shares, does not mean to "place" them (*V.* TO PLACE), but means, "agreeing to take so many shares as are specified in the underwriting contract, if the public do not subscribe for them" (per Lindley, L. J., *Re Licensed Victuallers' Assn*, 58 L. J. Ch. 470; 42 Ch. D. 1; 37 W. R. 674; 5 Times Rep. 369), or, in other words, "to take an Allotment of such part of the shares as should not be applied for by the public" (per Stirling, J., *Re London-Paris Financial Corp*, 13 Times Rep. 331), or, "to 'underwrite' shares, involves an obligation to take *at par* so many as others do not take" (per Lindley, L. J., *Ib.*, 13 Times Rep. 570, 571).

Note. A Co may (upon offering shares to the public) pay commission for underwriting its shares if so authorized by its Articles and disclosed in the Prospectus, and the amount or rate of commission authorized is not exceeded (s. 8, Comp Act, 1900). *Vh, Metropolitan Coal Consumers Assn* v. *Scrimgeour*, 1895, 2 Q. B. 604; 65 L. J. Q. B. 22, and cases there distd: *Hilder* v. *Dexter*, 71 L. J. Ch. 781; 1902, A. C. 474; 87 L. T. 311; 7 Com. Ca. 258.

V. DISCOUNT: ON ALLOTMENT: SUBSCRIBE.

UNDERWRITER. — *V.* UNDERWRITE: POLICY.

UNDESIRABLE. — *V.* DESIRABLE.

UNDISPOSED OF. — "Sum remaining undisposed of"; *V. M'Cabe* v. *Galsworthy*, W. N. (74) 161.

V. LEFT.

UNDISTRIBUTED. — ASSETS of a Co appropriated to the maintenance and development of the Co's property and the gradual paying off its Debentures under a Scheme sanctioned under the Joint Stock Companies Arrangement Act, 1870, are not "Undistributed Assets" within s. 15 (3), Comp Winding-up Act, 1890 (*Re Land Mortgage Bank of Florida*, 1898, 1 Ch. 444; 67 L. J. Ch. 183; 78 L. T. 156; 46 W. R. 333).

Cp, "Surplus Assets," sub SURPLUS.

UNDIVIDED. — "Undivided Share," s. 2 (10, i), Settled Land Act, 1882; *V.* LAND, p. 1055.

UNDUE INFLUENCE. — Influence to be "undue," so as to vitiate a gift, is of two classes according as the gift is

1. *Inter Vivos*:
2. *Testamentary.*

1. In gifts *inter vivos* a presumption against the gift arises in cases where subsists either of the following relationships; — Parent and Child: Doctor and Patient: Confessor and Penitent: Trustee and Cestui Que Trust: or Guardian and Ward. Gifts *inter vivos* brought about by the influence of the superior in any such case will be void, unless the donee proves that the donor was placed "in such a position as would enable him to form an entirely free and unfettered judgment independent altogether of any sort of control" (*Archer* v. *Hudson*, 7 Bea. 560; 13 L. J. Ch. 380: *Rhodes* v. *Bate*, 35 L. J. Ch. 267; 1 Ch. 252: *Parfitt* v. *Lawless*, 41 L. J. P. & M. 70; L. R. 2 P. & D. 462). *Vh*, the leading case, *Huguenin* v. *Baseley*, 14 Ves. 273; 1 White & Tudor, 247: *Vf*, *Allcard* v. *Skinner*, 56 L. J. Ch. 1052; 36 Ch. D. 145; 57 L. T. 61, the obs of Bowen, L. J., in *whlc* were applied in *Powell* v. *Powell*, 1900, 1 Ch. 243; 69 L. J. Ch. 164; 82 L. T. 84: *Morley* v. *Loughnan*, 1893, 1 Ch. 736; 62 L. J. Ch. 515; 68 L. T. 619.

But the presumption does not arise where the relationship is Husband and Wife (*Grigby* v. *Cox*, 1 Ves. sen. 517: *Nedby* v. *Nedby*, 21 L. J. Ch. 446; 5 D. G. & S. 377: *Barron* v. *Willis*, 1899, 2 Ch. 578; 68 L. J. Ch. 604, *whc* was revd on another point, 1900, 2 Ch. 121; 69 L. J. Ch. 532; 82 L. T. 729; 48 W. R. 579), though gifts by Wife to Husband may, sometimes, be regarded with jealousy (*Nedby* v. *Nedby*, sup). *Cp*, IMPORTUNITY: DON.

"Gifts *inter vivos* by a Client to a Solicitor are always void" (per Kindersley, V. C., *Tomson* v. *Judge*, 24 L. J. Ch. 787; 3 Drew. 306, *whcv* for review of the previous authorities commencing with the leading case of *Welles* v. *Middleton*, 1 Cox Ch. 112); and nothing but a prior severance of the confidential relation will save such gifts (*Morgan* v. *Minett*, 6 Ch. D. 638): the rule is the same if the gift be to the Wife of the Solr (*Goddard* v. *Carlisle*, 9 Price, 169: *Liles* v. *Terry*, 1895, 2 Q. B. 679; 65 L. J. Q. B. 34; 73 L. T. 428; 44 W. R. 116). *Vf*, *Barron* v. *Willis*, sup. *Note*: the rule as to *purchases* by a Solicitor from his Client is not so strict; *V. Tomson* v. *Judge*, sup.

Vf, Watson Eq. ch. 5: May on Fraudulent Dispositions, Part 5, ch. 5: Dart, 23, 35 *et seq.*: 1 White & Tudor, 247–288: 12 Encyc. 369–371.

2. But the law regarding testamentary gifts is very different. "The natural influence of the parent or guardian over the child, the husband over the wife, or the attorney over the client, may lawfully be exerted to obtain a Will or Legacy, so long as the testator thoroughly understands what he is doing and is a free agent. There is nothing illegal in the parent or husband pressing his claims on a child or wife, and obtaining a recognition of those claims in a legacy, provided that that persuasion stop short of coercion, and that the volition of the testator, though biassed and impressed by the relation in which he stands to the legatee, is not overborne and subjected to the domination of another. 'The influence which will set aside a Will,' says Mr. Justice Williams (Wms. Exs. 40), 'must

amount to Force and Coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; further there must be proof that the act was obtained by this coercion, by importunity which could not be resisted, that it was done merely for the sake of peace, so that the motive was tantamount to FORCE and Fear'" (per Penzance, J. O., *Parfitt* v. *Lawless*, sup).

"In order to have something to guide us in our enquiries on this very difficult subject, I am prepared to say that Influence in order to be *undue*, within the meaning of any rule of law which would make it sufficient to vitiate a Will, must be an Influence exercised either by Coercion or by Fraud. In the interpretation, indeed, of these words some latitude must be allowed. In order to come to the conclusion that a Will has been obtained by Coercion, it is not necessary to establish that actual violence has been used or even threatened. The conduct of a person in vigorous health towards one feeble in body, even though not unsound in mind, may be such as to excite terror and make him execute as his Will an instrument which, if he had been free from such influence, he would have not executed. Imaginary terrors may have been created sufficient to deprive him of free agency. A Will thus made may, possibly, be described as obtained by Coercion. So, as to Fraud. If a wife, by falsehood, raises prejudices in the mind of her husband against those who would be the natural objects of his bounty, and by contrivance keeps him from intercourse with his relatives, to the end that these impressions which she knows he had thus formed to their disadvantage may never be removed, — such contrivance may, perhaps, be equivalent to positive fraud and may render invalid any Will executed under false impressions thus kept alive. It is, however, extremely difficult to state in the abstract what acts will constitute Undue Influence in questions of this nature. It is sufficient to say that, allowing a fair latitude of construction, they must range themselves under one or other of these heads, Coercion or FRAUD" (per Cranworth, C., *Boyse* v. *Rossborough*, 6 H. L. Ca. 48, 49).

So, in directing the jury in *Wingrove* v. *Wingrove* (55 L. J. P. D. & A. 8; 11 P. D. 82; 34 W. R. 260; 50 J. P. 56) Hannen, P., said, —

"All men are familiar with the word 'Influence.' They speak of one person having 'unbounded influence' over another, and they speak of good influences and evil influences; but there may be what is commonly called 'unbounded influence,' or there may be good influence or evil influence, and yet such influence may not be 'undue' in the legal sense of the word. There may be the immoral influence of a person of one sex over a person of the other sex which would result in the person subject to such influence yielding to it in a manner which would be very deplorable as regards testamentary disposition; or there may be the case of a person who in the

relationship of companion to another of the same sex indulges the inclination of his or her friend for evil courses, and by that means obtains a pernicious influence over him in respect of the disposition of property; and yet it may be that in neither of those cases is there anything which the law would regard as 'undue' influence. To render influence legally 'undue' there must be Coercion. A testator or testatrix may have been induced to make a Will of which every disinterested person would disapprove, and yet that Will may be in law a perfectly valid one. To establish Undue Influence, it must be shown that the testator or testatrix has been coerced to do an act which he or she did not desire to do. Of course this coercion may be of different kinds. To take an extreme case, there may be coercion with actual violence; or it may exist without anything of that sort. From advanced age, or from some other cause, a person may be so weakened that, upon a thing being pressed upon him, he becomes so fatigued in brain as to consent to do it, though it is an act with which his brain does not go. Influence which brings about the execution of a Will by a person in such a condition will be 'Undue Influence,' because it will amount to coercion; but the fact of a person making a Will being influenced in so doing by mistaken, or even immoral, considerations on his own part or on that of the person influencing him, would not be enough to invalidate a Will. The state of things which is sufficient to establish undue influence must show that the Will was not the expression of the will of the testator, but something which he has been made to represent as his will; and therefore, if it is shown that the testator's own wishes are expressed in his Will, the fact that the Will is not such as would meet with approbation, or the fact that right-minded persons must condemn the conduct of the person influencing the testator to execute it, will not be enough to establish undue influence.

"There is another general proposition which I think it desirable to bring under your notice — namely, that in cases of Undue Influence it is not enough to show that the person charged with having exercised such influence had power over the mind of the testator, but it is necessary to prove that such power was exercised in the particular case, and that the testator was thereby induced to make the Will."

For the def. of "Undue Influence," at Parliamentary Elections, *V.* Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 V. c. 51, s. 2; adopted for Municipal Elections by s. 2, 47 & 48 V. c. 70; *Va*, s. 77, 45 & 46 V. c. 50; s. 2, 53 & 54 V. c. 55. *Vh*, Leigh & Le Marchant, 4 ed., 29–37: Mattinson & Macaskie, 2 ed., 53–61: 2 Rogers, ch. 11: SPIRITUAL.

UNDUE MEANS. — "An Award is procured by 'Undue Means,' s. 2, 9 & 10 W. 3, c. 15, if it is arrived at by a departure from natural justice in ascertaining the facts, as Wilson, J., suggests in *Morgan* v. *Mather*, 2 Ves. 18" (per Denman, C. J., *Re Plews and Middleton*, 6 Q. B.

852; 14 L. J. Q. B. 139), *e.g.*, as held in *thle*, if the arbitrators carry on examinations separately, instead of jointly.

UNDUE PREFERENCE. — "Undue Preference," s. 8 (3 *i*), Bankruptcy Act, 1890 (replacing s. 28 (3 *f*), Bankry Act, 1883), includes, every FRAUDULENT PREFERENCE, and "a good deal more" (per Lindley, L. J., *Re Skegg*, 59 L. J: Q. B. 546; 25 Q. B. D. 505): if a bankrupt "interferes in any way in order to give an advantage to one creditor over the others, he is guilty of giving an Undue Preference," within the section (per Esher, M. R., *Ib.*: *Vf*, *Re Bryant*, 1895, 1 Q. B. 420; 64 L. J. Q. B. 417; 72 L. T. 133). *V.* A: MOTIVE: VIEW.

"Undue or Unreasonable Preference or Advantage," "Undue or Unreasonable Prejudice or Disadvantage," s. 2, Railway and Canal Traffic Act, 1854; — These words "must, it appears to me, be a Preference or Prejudice with reference to competing parties — an inequality, an unfairness with reference to others, or a prejudice to other works — and cannot apply to the suggestion that, because there are excessive charges, a prejudice arises" (per Huddleston, B., *R.* v. *Ry Commrs*, 58 L. J. Q. B. 239, 240); by s. 55, Ry and Canal Traffic Act, 1888, "'Undue Preference,' includes, an Undue Preference or an Undue or Unreasonable Prejudice or Disadvantage, in any respect, in favour of or against any person or particular class of persons, or any particular description of traffic."

Vh. Ransome v. *Eastern Counties Ry*, 26 L. J. C. P. 91; 29 Ib. 329; 1 C. B. N. S. 437; 8 Ib. 709; 1 Ry & Can Traffic Ca. 63, 109, 155: *Oxlade* v. *N. E. Ry*, 26 L. J. C. P. 129; 1 C. B. N. S. 454; 28 L. T. O. S. 340: *Re Caterham Ry*, 1 C. B. N. S. 410; 26 L. J. C. P. 161: *Baxendale* v. *N. Devon Ry*, 30 L. T. O. S. 134: *Harris* v. *Cockermouth Ry*, 27 L. J. C. P. 162; 3 C. B. N. S. 693; 30 L. T. O. S. 273: *Garton* v. *G. W. Ry*, 28 L. J. C. P. 158: *Garton* v. *Bristol & Exeter Ry*, 28 L. J. Ex. 169; 30 L. J. Q. B. 273: *Nicholson* v. *G. W. Ry*, 28 L. J. C. P. 89; 5 C. B. N. S. 366; 7 W. R. 49: *Baxendale* v. *G. W. Ry*, 28 L. J. C. P. 81; 5 C. B. N. S. 336; 7 W. R. 64: *Hungerford Market Co* v. *City Steam Boat*, 30 L. J. Q. B. 25; 3 E. & E. 365: *Denaby Main Co* v. *Manchester, S. & L. Ry*, 11 App. Ca. 97: *R.* v. *Ry Commrs*, 22 Q. B. D. 642: *West* v. *Lond. & N. W. Ry*, 1 Ry & Can Traffic Ca. 166: *Pickford* v. *Caledonian Ry*, Ib. 252: *Palmer* v. *L. B. & S. Ry*, Ib. 271: *Parkinson* v. *G. W. Ry*, Ib. 280: *Napier* v. *Glasgow & S. W. Ry*, Ib. 292: *Diphwys Slate Co* v. *Festiniog Ry*, 2 Ib. 73: *Beeston Brewery Co* v. *Mid. Ry*, 5 Ib. 53: *Skinningrove Co* v. *N. E. Ry*, Ib. 244: *Distington Iron Co* v. *Lond. & N. W. Ry*, 6 Ib. 108: *Liverpool Corn Trade Assn* v. *Lond. & N. W. Ry*, cited PUBLIC: *Ford* v. *Lond. & S. W. Ry*, 60 L. J. Q. B. 130: *North Lonsdale Co* v. *Furness Ry*, 60 L. J. Q. B. 419: *Phipps* v. *Lond. & N. W. Ry*, 1892, 2 Q. B. 229; 61 L. J. Q. B. 379; 66 L. T. 721; 8 Ry & Can Traffic Ca. 83: *Liverpool Corn Traders Assn* v. *G. W. Ry*, 8 Ry & Can Traffic Ca. 114: *Mansion House Assn* v.

Lond. & S. W. Ry, 1895, 1 Q. B. 927; 64 L. J. Q. B. 529; 72 L. T. 507.

Vf, Browne & Theobald on Railways, 407: 1 Hodges, Ib., 7 ed., 487: FACILITIES.

UNEMANCIPATED. — A statement, in Grounds of Appeal, that a Pauper is "unemancipated" negatives every mode of Emancipation (*R.* v. *Rothwell*, cited EMANCIPATION).

UNEXHAUSTED IMPROVEMENT. — As between Landlord and Tenant; *V.* IMPROVEMENT, p. 922.

UNEXPIRED. — Lessee or Assignee of "the unexpired Residue, whatever it may be, of any Term originally created for a period of not less than 60 years (whether determinable on a Life or Lives or not)," s. 5, Rep People Act, 1867, 30 & 31 V. c. 102; *V. Trotter* v. *Watson*, 38 L. J. C. P. 100; L. R. 4 C. P. 434.

"Residue unexpired of not less than 200 years of a Term," s. 65 (1), Conv & L. P. Act, 1881; *Vth*, s. 11, Conv Act, 1882.

V. EXPIRATION.

UNFAIR. — *V.* FAIR AND REASONABLE: UNREASONABLY.

Unfair Competition; *V. Mogul Co* v. *McGregor* and *Ajello* v. *Worsley*, cited MALICE.

Fraud or Unfair Dealing; *V.* FRAUD: *Brenchley* v. *Higgins*, 82 L. T. 143; 83 Ib. 751; 70 L. J. Ch. 788.

UNFINISHED. — *V.* MATERIALS.

UNFIT. — Bankruptcy renders a Trustee "unfit" (Lewin, 779, citing *Re Roche*, 1 Con. & L. 306; 2 Dr. & War. 287). But if the power of appointing new Trustees "be worded 'in case the Trustee shall become *incapable* to act,' without the addition of the words 'or unfit,' a Bankrupt Trustee is not within the description; for by 'incapable' is meant *personal incapacity*, and not pecuniary embarrassment" (Lewin, 779, citing *Re Watts*, 9 Hare, 106; 20 L. J. Ch. 337: *Turner* v. *Maule*, 15 Jur. 761: *Re East*, 8 Ch. 735; 42 L. J. Ch. 480). Bankruptcy is none the less "unfitness" because occasioned by misfortune (*Re Adams*, 12 Ch. D. 634; 48 L. J. Ch. 613: *Va*, *Re Barker*, 1 Ch. D. 43; 45 L. J. Ch. 52: *Re Hopkins*, 19 Ch. D. 61); but on obtaining his Discharge and ceasing to be impecunious, a Bankrupt Trustee is no longer "unfit" (*Re Bridgman*, 29 L. J. Ch. 844; 1 Dr. & Sm. 164).

Temporary Absence abroad is not "unfitness" (*Re Moravian Socy*, 26 Bea. 101; 4 Jur. N. S. 703); *secus*, of a settled residence abroad (*Mesnard* v. *Welford*, 22 L. J. Ch. 1053; nom. *Mennard* v. *Welford*, 1 Sm. & G. 426: in *thc* the word was "incapable").

V. INABILITY: INCAPABLE: PAID OFFICER.

To impute that an Overseer is "unfit to be trusted with money" is Libel (*Cheese* v. *Scales*, 12 L. J. Ex. 13; 10 M. & W. 488).

UNFITNESS. — *V.* Due Cause: Unfit.

UNFORESEEN. — An "unforeseen *Calamity*," in an exception excusing the employment of a Music Hall Artist, does not arise by a sale of the hall by its mortgagees (*Phillips* v. *Hull Alhambra Co*, 17 Times Rep. 40; 70 L. J. Q. B. 26; 1901, 1 Q. B. 59; 83 L. T. 431).

"Unforeseen *Cause*"; *V. Hills* v. *Sughrue*, 15 M. & W. 253.

"Unforeseen *Circumstances*," in an Exception in a Charter-Party; *V. Donaldson* v. *Little*, 10 Sess. Ca. 4th Ser. 413. *Semble*, slackness of trade is not within the phrase (*Dickenson* v. *Fanshaw*, 7 Times Rep. 576; affd 8 Ib. 271).

"Unforeseen *Obstacle*"; *V.* Unavoidable.

V. Inevitable.

UNHEALTHY. — *V.* Incommodious: Injurious to health.

UNIFORMITY. — The Acts of Uniformity, 2 & 3 Edw. 6, c. 1; 1 Eliz. c. 2; 13 & 14 Car. 2, c. 4; 35 & 36 V. c. 35, s. 1.

UNIMPROVED. — "Unimproved state"; *V.* Plantation.

UNINCORPORATE. — "Body Unincorporate," quà Part 2, Customs and Inl. Rev. Act, 1885; *V.* s. 12.

V. Corporate: Incorporated.

UNINSURED. — "Warranted uninsured," in a Marine Policy, is infringed by an Honour Policy, though such latter policy is void under Marine Insurance Act, 1745, 19 G. 2, c. 37 (per Kennedy, J., *Roddick* v. *Indemnity Insrce*, 1895, 1 Q. B. 836; 64 L. J. Q. B. 423); but this point was not necessary to the actual decision, and, though that decision was affirmed in the Court of Appeal on other grounds, the ruling of Kennedy, J., on this point was questioned (1895, 2 Q. B. 380; 64 L. J. Q. B. 733; 72 L. T. 860).

Vf, as to this kind of Warranty, *General Insrce of Trieste* v. *Cory*, 1897, 1 Q. B. 335; 66 L. J. Q. B. 313; 2 Com. Ca. 58.

UNINTERRUPTEDLY. — *V.* Fairly.

UNION. — Quà Union of Benefices Act, 1860, 23 & 24 V. c. 142, "Union of Benefices," except there be a repugnant context, means, "such an union of two or more contiguous Benefices with one another; or such an union of a Benefice or Benefices with a Spiritual Sinecure Rectory or Spiritual Sinecure Rectories, Vicarage or Vicarages," contiguous to such Benefice or Benefices, and situate in the Metropolis (ss. 2, 1); and "United Parish," means, "the Parishes which, in consequence of

an union of Benefices, shall have become united for ecclesiastical purposes under this Act" (s. 2). *Vh*, Phil. Ecc. Law, Part 2, ch. 14: 12 Encyc. 375.

"Contributory Union"; *V.* 38 & 39 V. c. 96, s. 2.

"Union," quà Poor Law purposes, s. 1, 24 & 25 V. c. 55; s. 109, 4 & 5 W. 4, c. 76; *V. Machynlleth* v. *Pool*, L. R. 4 Q. B. 592: *R.* v. *Bristol*, 18 L. J. M. C. 132; 13 Q. B. 405; affd 19 L. J. M. C. 116: *R.* v. *Priest Hutton*, 17 Q. B. 59; 20 L. J. M. C. 226.

Stat. Def. — 34 & 35 V. c. 108, s. 3; 36 & 37 V. c. 86, s. 27; 37 & 38 V. c. 88, s. 48; 38 & 39 V. c. 55, s. 4; 53 & 54 V. c. 5, s. 341; 59 & 60 V. c. 50, s. 19. — *Ir.* 52 & 53 V. c. 56, s. 9.

"Union," quà Valuation (Metropolis) Act, 1869, "means, any union of parishes, and any parish for which there is a separate Assessment Committee" (s. 4).

"Poor Law Union"; *V.* s. 16 (2, 4), Interp Act, 1889.

V. TRADE UNION.

UNION FUNDS. — Stat. Def., 41 & 42 V. c. 74, s. 76; 57 & 58 V. c. 57, s. 71 (8).

UNIT. — "Unit of Entry," quà Customs Tariff Amendment Act, 1860, 23 & 24 V. c. 22, means, "the number of packages or animals or quantity of goods made chargeable with the rate of 1*d.*, in manner hereinafter provided" (s. 17).

UNITED KINGDOM. — The primary meaning of the "United Kingdom" is GREAT BRITAIN and Ireland; including, as part of England, the Isle of Wight (Callis, 43, 44): but the phrase does not include the CHANNEL ISLANDS, or the Isle of Man.

The phrase, as now used, originated with the Union with Ireland Act, 1800, 39 & 40 G. 3, c. 67, which united "the two *kingdoms* of Great Britain and Ireland" "into one kingdom, by the name of 'The United Kingdom of Great Britain and Ireland,'" — words, as the Act throughout shows, embracing no more than what is ordinarily known as Great Britain and Ireland, as distinct from the Channel Islands and Man. In accord with this are the interpretation clauses in which "United Kingdom" is defined; *e.g.*, 1 V. c. 36, s. 47; 3 & 4 V. c. 96, s. 71; 13 & 14 V. c. 93, s. 2; 14 & 15 V. c. 102, s. 2; 17 & 18 V. c. 104, s. 2; 20 & 21 V. c. 60, s. 4; 24 & 25 V. c. 134, s. 229; 30 & 31 V. c. 82, s. 5; 32 & 33 V. c. 104, s. 6; 38 & 39 V. c. 22, s. 12: *Sv*, 12 & 13 V. c. 33, s. 3; 15 & 16 V. c. 44, s. 3; 18 & 19 V. c. 119, s. 3; 33 & 34 V. c. 90, s. 30; 41 & 42 V. c. 73, s. 7.

So, apart from Interp Clauses, the use of "United Kingdom" in statutes shows that only Great Britain and Ireland, and not the Channel Islands or Man, are included therein; *V.* BEYOND SEAS: BRITISH

ISLANDS: BRITISH NEWSPAPER: HOME-TRADE SHIP: STATION: Mer Shipping Act, 1894, s. 4 (1 *a*, 1 *b*).

But its popular meaning may be wider. "I have no hesitation in saying that Jersey is, in popular language, a part of the United Kingdom" (per Mathew, J., *Stoneham* v. *Ocean Railway & Gen. Insrce*, 19 Q. B. D. 239; 57 L. T. 236; 35 W. R. 716). That was a case on a Policy which gave an insurance against "any bodily injury caused by any external accident happening within the United Kingdom, *or on the Continent of Europe*, or whilst proceeding from one European port to another in a decked vessel"; the insured was drowned off Jersey, and it was held that the insurer was liable on the policy. But Cave, J., in giving his jdgmt said, "Some light is thrown on this question by one of the Conditions indorsed on the Policy; 'this Policy shall be void if the assured shall travel beyond the limits of Europe, or shall embark in any vessel with the intention of going beyond such limits.' That provision means that the policy shall be in force *in Europe*, and Jersey is in Europe." *Semble*, therefore, that the dictum that Jersey is comprised in "United Kingdom" was either not necessary to the decision, or otherwise that it was so controlled by the context. If this be not the explanation then it seems difficult to reconcile the dictum with the decision of all the judges present in Easter Term, 1832, whereby it was held that "United Kingdom," in s. 76, 7 & 8 G. 4, c. 29 (where the phrase stands unaffected by the context), did not include Jersey (*R.* v. *Prowes*, 1 Moody, 349: *vthc*, *R.* v. *Madge*, 9 C. & P. 29).

Va, "Part of the United Kingdom," sub PART, p. 1412.

Note. From the Union with Scotland Act, 1706, 6 Anne, c. 11, to Union with Ireland Act, 1800, 39 & 40 G. 3, c. 67, "United Kingdom," meant Great Britain (s. 1, 6 Anne, c. 11).

Cp, ENGLAND: INLAND. *V.* LOCALLY SITUATE: WITHIN.

UNITED PARISH. — *V.* UNION.

UNITED WORKHOUSE. — *V.* WORKHOUSE.

UNITY. — Unity of Persons, *e.g.* Husband and Wife, on *whv Earle* v. *Kingscote*, cited NEED NOT.

"Unity of Possession," is where a man has two estates or rights in land and holds them both in his own hands (Cowel: Jacob). *Vh*, *Pyer* v. *Carter*, cited NECESSARY, p. 1252: *Barnes* v. *Loach*, 48 L. J. Q. B. 756; 4 Q. B. D. 494: *Watts* v. *Kelson*, *Kay* v. *Oxley*, and *Bayley* v. *G. W. Ry*, cited RIGHT, p. 1758: *Thomson* v. *Waterlow*, *Langley* v. *Hammond*, *Barkshire* v. *Grubb*, and *Brown* v. *Alabaster*, cited WAYS.

UNIVERSAL APPLICATION. — British Laws of "universal application"; *V. Jex* v. *McKinney*, 58 L. J. P. C. 67.

UNIVERSAL HEIR. — "What we call 'Executor and Residuary Legatee,' is, in the Civil Law, 'Universal Heir.' . . . The proper term, in the Civil Law, as to goods, is *hæres testamentarius*, and 'EXECUTOR' is a barbarous term unknown to that law; therefore, a person named as 'Universal Heir' in a Will, in my opinion, would have a right to" probate (per Hardwicke, C., *Androvin* v. *Poilblanc*, 3 Atk. 299).

UNIVERSITY. — "University," in a Cambridge Rating Act, held to mean, the University for the time being, so as to include Colleges incorporated into the University after the Act (*Downing College* v. *Purchas*, 3 B. & Ad. 162).

Quà Universities of Oxford and Cambridge Acts, "The University," means, the University of Oxford, or that of Cambridge, as the case shall require (40 & 41 V. c. 48, s. 2; 43 & 44 V. c. 11, s. 2).

"The Universities and College Estates Acts, 1858 to 1880"; *V.* Sch 2, Short Titles Act, 1896.

V. COLLEGE: EMOLUMENT: PROFESSOR.

UNJUST. — Scales and Weights are not "*Light* or Unjust," s. 3, 22 & 23 V. c. 56, repld ss. 25 and 48, 41 & 42 V. c. 49, if an inaccuracy in them is against the seller (*Booth* v. *Shadgett*, 42 L. J. M. C. 98; nom. *Brooke* v. *Shadgate*, L. R. 8 Q. B. 352). If Scales or a Weighing Machine become, *e.g.* by wear, affected so as to require adjustment and to effect such adjustment something is added, they or it may not be "unjust" (*Lond. & N. W. Ry* v. *Richards*, 2 B. & S. 326: *G. W. Ry* v. *Bailie*, cited CORRECT; *secus*, if imperfect, and only to be rectified by a temporary adjustment (*Carr* v. *Stringer*, 9 B. & S. 238; 37 L. J. M. C. 120; L. R. 3 Q. B. 433).

A Weighing Machine is "*False* or Unjust" within s. 25, 41 & 42 V. c. 49, if paper is, however honestly, placed under its scoop causing the machine to indicate a weight of the commodity sold greater by the weight of the paper than its own weight (*Lane* v. *Rendall*, 1899, 2 Q. B. 673; 69 L. J. Q. B. 8; 81 L. T. 445; 48 W. R. 153; 63 J. P. 757).

Vh, R. v. *Baxendale*, 44 J. P. 763: *Horder* v. *Roberts*, Ib. 256. *Cp*, *G. W. Ry* v. *Bailie*, sup.

UNJUSTIFIABLE EXTRAVAGANCE. — As to what is "Unjustifiable Extravagance in living" (s. 28 (3 *d*), Bankry Act, 1883); *V. Ex p. Thornber, Re Barlow*, W. N. (86) 207.

UNKNOWN. — *V.* CONTENTS UNKNOWN: QUANTITY AND QUALITY UNKNOWN: CLEAN BILL OF LADING.

UNLAWFUL. — A thing may be unlawful in two senses, (1) as unenforceable by law, (2) as punishable by law; *e.g.* an agreement for sexual immorality would furnish no right of action between the parties,

but is not punishable (per Bramwell, B., *Cowan* v. *Milbourn*, 36 L. J. Ex. 126; L. R. 2 Ex. 236). *Cp*, ILLEGAL: ULTRA VIRES: UNLAWFUL GAMING.

UNLAWFUL ASSEMBLY. — "Three or more may commit an unlawfull assembly, a riot, or a rout" (Co. Litt. 257 a). *Cp*, REBELLION.

"An Unlawful Assembly is an assembly of three or more persons, (*a*) with intent to commit a crime by open force; or (*b*) with intent to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it" (Steph. Cr. 48, 49). *Vf*, Arch. Cr. 1043: Rosc. Cr. 798: 1 Encyc. 343. *V.* Steph. Cr. 56, as to Unlawful Drilling.

V. RIOT: ROUT.

UNLAWFUL COPIES. — "Unlawful Repetitions, Copies, and Imitations," s. 11, Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68, is a "phrase not well considered, but it means Copies, &c, wrongfully made, *i.e.* without the necessary consent" (per Esher, M. R., *Tuck* v. *Priester*, 56 L. J. Q. B. 561; 19 Q. B. D. 629; 36 W. R. 93: *Vh*, *Pollard* v. *Photographic Co*, 40 Ch. D. 345).

V. COPY.

UNLAWFUL GAMING. — "At common law no Game was in itself unlawful" (per Hawkins, J., *Jenks* v. *Turpin*, 53 L. J. M. C. 167). But as Common Gaming Houses were prohibited by the common law, all gaming (even at lawful games) in a common Gaming House is "Unlawful Gaming" within s. 4, 17 & 18 V. c. 38 (*Jenks* v. *Turpin*, 53 L. J. M. C. 161; 13 Q. B. D. 505). *V.* ILLEGAL: UNLAWFUL.

No "game of mere skill" is now unlawful *per se* (8 & 9 V. c. 109, s. 1). "The Unlawful Games now are, — Ace of Hearts, Pharaoh, Basset, Hazard, Passage, Roulet, every game of Dice (except Backgammon), and every game of Cards which is not a game of mere skill; and, I incline to add, any other mere game of chance" of which Baccarat is certainly one (per Hawkins, J., *Jenks* v. *Turpin*, 53 L. J. M. C. 170: *Va*, same jdgmt for an elaborate history of the laws relating to Unlawful Gaming; *vthc*, *Fairtlough* v. *Whitmore*, cited BACCARAT).

It is for the Court, not the jury, to determine what is "Unlawful Gaming," *e.g.* whether a particular game of Cards is or is not such Gaming (*R.* v. *Davies*, cited USE).

V. GAMING.

UNLAWFUL PURPOSE. — An "UNLAWFUL Purpose" within s. 4, Vagrancy Act, 1824, 5 G. 4, c. 83, means, the intention to commit (as distinguished from having been actually guilty of, *R.* v. *Simpson*, 15 J. P. 246, 790) an offence punishable criminally, and as distin-

guished from what is only immoral, *e.g.* fornication (*Hayes* v. *Stevenson*, 3 L. T. 296; 25 J. P. 39; 9 W. R. 53); but it is immaterial whether that intention is intended to be carried out in the place where the offender is found (*Re Joy*, 22 L. T. O. S. 80). *Vh*, *Kirkin* v. *Jenkins*, 32 L. J. M. C. 140. *Cp*, UNLAWFULLY.

UNLAWFULLY.—"Unlawfully" is used exceptionally in a wide general sense as regards Conspiracy; but its ordinary import is, an act which is "forbidden by some definite law"; and does not embrace that which is merely immoral (per Stephen, J., *R.* v. *Clarence*, 58 L. J. M. C. 18; 22 Q. B. D. 23; *Va*, jdgmt of Wills, J.). But an act which would give a right to a Judicial Separation would be done "unlawfully" (Ib.). *Vf*, MALICE, towards end. *Cp*, UNLAWFUL PURPOSE: UNLAWFUL.

The criminal offence of "Unlawfully and Wilfully" killing a House Dove or Pigeon, s. 23, 24 & 25 V. c. 96, is not committed if it be killed in the honest idea of protecting crops, although to do so may be actionable (*Taylor* v. *Newman*, 32 L. J. M. C. 186; 11 W. R. 752; 4 B. & S. 89: *Vf*, *R.* v. *Stimpson*, 32 L. J. M. C. 208; 4 B. & S. 301). But in the very next section of the same Act, relating to taking fish, "unlawfully and wilfully" means, "unlawfully and *intentionally*"; for that section creates an offence in the nature of poaching (*Hudson* v. *McRae*, 33 L. J. M. C. 65; 12 W. R. 80). *V.* WILFUL AND MALICIOUS: WILFULLY.

The criminal offence of "Unlawfully and Maliciously" killing maiming or wounding any Dog, Bird, Beast, or other Animal, s. 41, 24 & 25 V. c. 97, is not committed by placing poisoned flesh in an enclosed garden to kill a dog habitually straying there (*Daniel* v. *Janes*, 2 C. P. D. 351), nor by shooting fowls which are DAMAGE FEASANT (*Smith* v. *Williams*, 37 S. J. 11; 59 J. P. 840).

The criminal offence of "unlawfully and maliciously" damaging property, s. 51, 24 & 25 V. c. 97, is not committed unless the act be wilful (*R.* v. *Pembliton*, 43 L. J. M. C. 91; L. R. 2 C. C. R. 122); but wilfulness is implied if the act is reckless and the damage its natural consequence (*R.* v. *Welch*, 45 L. J. M. C. 17; 1 Q. B. D. 23; 24 W. R. 280; 40 J. P. 183), or the damage be excessive even if the act be done under a BONÂ FIDE claim of right (*R.* v. *Clemens*, 1898, 1 Q. B. 556; 67 L. J. Q. B. 482; 78 L. T. 204; 46 W. R. 416).

"Unlawfully and maliciously wound or inflict any grievous bodily harm," s. 20, 24 & 25 V. c. 100; *V.* WOUND: INFLICT: GRIEVOUS BODILY HARM.

UNLESS.—"Unless," in a clause in a Marine Policy "free from Average unless General," has the same meaning as "EXCEPT" (*Wilson* v. *Smith*, 3 Burr. 1556).

V. per Esher, M. R., *The Carl XV.*, 61 L. J. P. D. & A. 113; 1892, P. 330.

"Unless" is, probably, of like value as "Except" in creating a Condition Precedent (*V. Re Dickinson, Ex p. Rosenthal*, 51 L. J. Ch. 736).

A Lessee's covenant not to do a thing "unless" he makes a stipulated payment, gives him permission to do the thing on making the payment (per Pollock, C. B., *Legh* v. *Lillie*, 6 H. & N. 169; 30 L. J. Ex. 27); so, if the word were "UNDER" a stipulated payment, or "except" the payment be made (*S. C.*).

But "unless the Loc Gov Bd otherwise direct," s. 175, P. H. Act, 1875, does not enable the Board to order that land compulsorily acquired under s. 176 be used for a purpose inconsistent with that for which it was acquired; the phrase simply qualifies the exigency of s. 175 in compelling an immediate sale of land not required for the purpose for which it was acquired (*A-G.* v. *Hanwell*, 1900, 2 Ch. 377; 69 L. J. Ch. 626; 82 L. T. 778; 48 W. R. 690).

"Unless he shall have PAID all such Rates," he shall not be put on the Burgess List, s. 9, 5 & 6 W. 4, c. 76, meant, that the payment must have been the person's own act (*R.* v. *Bridgnorth*, 8 L. J. M. C. 86; 10 A. & E. 66; 2 P. & D. 317).

"Unless" the Bishop shall be of a contrary OPINION; *V.* per Esher, M. R., *R.* v. *London, Bp.*, 24 Q. B. D. 213; 59 L. J. Q. B. 172.

UNLICENSED. — "Unlicensed Premises," quà Licensing Act, 1872, "means, premises in respect of which a license, as defined by this Act, has not been granted or is not in force" (s. 74: *Va*, s. 77). *V.* LICENSED PREMISES.

UNLIMITED. — "Unlimited Civil Jurisdiction"; *V.* JURISDICTION.

An Unlimited Company, is a Co "having no limit placed on the liability of its members" (s. 10, Comp Act, 1862).

V. LIMITED.

UNLIQUIDATED DAMAGES. — *V.* LIQUIDATED DAMAGES: CREDITOR.

UNLOAD. — *V.* LOAD.

UNMARRIED. — The primary meaning of "unmarried" is, "never having been married," or "without ever having been married" (*Clarke* v. *Colls*, 9 H. L. Ca. 601: *Dalrymple* v. *Hall*, 50 L. J. Ch. 302; 16 Ch. D. 715: *Re Sergeant*, 54 L. J. Ch. 159; 26 Ch. D. 575); but it is a word of flexible meaning, and "slight circumstances, no doubt, will be sufficient to give the word its other meaning" of, "not having a husband, or wife, at the time in question" (per Pearson, J., *Re Sergeant*, sup), so as to exclude only the marital right. In *Re Lesingham* (53 L. J. Ch. 333; 24 Ch. D. 703) this secondary meaning was attached to the word as used thus, "upon trust to pay unto J. H., spinster, if she be

then *sole and unmarried.*" So, of the phrase "sole and intestate" (*Hardwick* v. *Thurston*, 4 Russ. 380).

The secondary sense was also attached to "Unmarried" in the following cases —

Clarke v. *Colls*, sup:

Pratt v. *Mathew*, 25 L. J. Ch. 409, 686; 22 Bea. 328; 8 D. G. M. & G. 522; 27 L. T. O. S. 74, 267:

Re Gratton, 5 W. R. 795; 3 Jur. N. S. 684:

Blagrove v. *Coore*, 27 Bea. 138:

Mitchell v. *Colls*, 29 L. J. Ch. 403; Johns. 674:

Day v. *Barnard*, 30 L. J. Ch. 220; 1 Dr. & Sm. 351; 3 L. T. 537; 9 W. R. 136:

Re Sanders, L. R. 1 Eq. 675, followed in *Re King*, 62 L. T. 789; W. N. (90) 105:

Re Chant, 1900, 2 Ch. 345; 69 L. J. Ch. 601; 48 W. R. 646; 83 L. T. 341:

Maberly v. *Strode*, 3 Ves. 452, in *whc* Arden, M. R., dealing with "Unmarried" as used in the Poor Law Settlement Act of 3 & 4 W. & M. c. 11, s. 7, said "the legislature meant by 'unmarried,' 'not having a wife at the time'; but that is not the usual construction of that word in a Will."

But the primary meaning was adhered to in —

Blundell v. *De Falbe*, 57 L. J. Ch. 576; 58 L. T. 621:

Heywood v. *Heywood*, 30 L. J. Ch. 155; 29 Bea. 9:

Dalrymple v. *Hall*, sup:

Re Sergeant, sup:

Norris v. *Barber*, W. N. (73) 180:

Re Thistlethwayte, 24 L. J. Ch. 712; 3 W. R. 629:

Bell v. *Phyn*, 7 Ves. 458.

Vf, as to both meanings, 1 Jarm. 521–523: Watson Eq. 657, 658: Elph. 333–336.

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).

When a legacy is given to a daughter, who at the date of the Will has never been married, and the gift is conditional upon the legatee being "unmarried" at a given time, the word "unmarried" may properly be construed "a spinster," and not "a widow" (Wms. Exs. 952, citing *Re Saunders*, 3 K. & J. 156).

A gift to an "unmarried" person does not mean that he is to remain unmarried (*Jubber* v. *Jubber*, 9 Sim. 503: *Hall* v. *Robertson*, 23 L. J. Ch. 241; 4 D. G. M. & G. 781: *Vf*, Wms. Exs. 1141). In *Hall* v. *Robertson*, it was held that a testamentary gift to A. for life, and, at his death, "to his son and UNMARRIED DAUGHTERS as he may by Will direct," meant, quà daughters, those who were unmarried at the date of the gift.

"So long as she *continues* unmarried" is not equivalent to "during widowhood," and a divorced woman, if remaining unmarried, continues entitled (*Knox* v. *Wells*, W. N. (83) 58). A gift to E. (a married woman, but who at the date of his Will and of his death was living with the testator as his wife), "during such time as she should remain unmarried," was held by North, J., to be valid, the words meaning, during such time as she should remain in the same state as she was whilst living with the testator (*Re Burlinson*, 107 Law Times, 82).

V. WITHOUT HAVING BEEN MARRIED: FEME: SPINSTER.

UNMARRIED DAUGHTERS. — In a gift to a testator's "five Unmarried Daughters," the words "unmarried daughters" are the material words; he only had three daughters in all two of whom were unmarried; those two took to the exclusion of the third who was married (*Re Dutton*, W. N. (93) 65).

UNMERCHANTABLE. — *V.* MERCHANTABLE.

UNNECESSARY. — *V.* NECESSARY.

UNNECESSARY INCONVENIENCE. — A right to pull down a house in such manner and time as not to cause "Unnecessary Inconvenience," s. 85 (3), 18 & 19 V. c. 122, repld s. 90 (3), London Bg Act, 1894, involves no obligation to protect the privacy of rooms exposed by the pulling down (*Thompson* v. *Hill*, 39 L. J. C. P. 264; L. R. 5 C. P. 564).

V. DEMOLISH: TAKE DOWN.

UNNECESSARY INTERFERENCE. — Proviso, in a Mining Lease, that the working of the coal should "not be prevented or unnecessarily interfered with"; *V. Munday* v. *Rutland*, 23 Ch. D. 81.

UNNECESSARY PROCEEDING. — *V.* IMPROPER.

UNOCCUPIED. — *V. Southend-on-Sea* v. *White*, cited OCCUPATION, p. 1311.

UNOPENED. — "Unopened Mine"; *V.* "Open Mine," sub OPEN, p. 1340.

UNPAID. — A covenant to pay interest at a certain rate so long as the principal secured or any part of it remains "unpaid," does not exclusively mean payment in cash; "unpaid," in that connection, means, due under the covenant; and when a judgment has been obtained for the principal, the covenant merges in the judgment and the principal is no longer "unpaid" under the covenant (*Ex p. Fewings, Re Sneyd*, 53 L. J. Ch. 545; 25 Ch. D. 338; 50 L. T. 109; 32 W. R. 352).

V. PAYMENT.

UNPAID SELLER.—Quà Sale of Goods Act, 1893, an "Unpaid SELLER" of Goods is, "when the whole of the price has not been paid or tendered," or "when a bill of exchange, or other negotiable instrument, has been received as conditional payment, and the condition on which it was received has not been fulfilled, by reason of the dishonour of the instrument or otherwise" (subs. 1, s. 38).

Vendor's Lien; *V.* LIEN, at end.

UNQUALIFIED.—*V.* INFAMOUS CONDUCT: MEDICAL, *vf, Davies* v. *Makuna*, 54 L. J. Ch. 1148; 29 Ch. D. 596: PRACTISE: QUALIFIED: SOLICITOR: WILFULLY AND FALSELY.

UNREASONABLE.—Where a statute gives Justices power to determine whether proposed works by a Local Authority are "unreasonable," they have power to determine that the works ought not to be done at all, as well as to control the mode of doing works which they do not condemn (*Sheffield* v. *Alexander*, 63 L. J. M. C. 206; nom. *Sheffield* v. *Anderson*, 64 Ib. 44: *Vf, Mansfield* v. *Butterworth*, cited INSUFFICIENT). *Cp*, APPORTION.

V. FAIR AND REASONABLE: REASONABLE: UNREASONABLY.

UNREASONABLE DELAY.—"Unreasonable Delay," s. 31, Matrimonial Causes Act, 1857, 20 & 21 V. c. 85; *V. Beauclerk* v. *Beauclerk*, 1891, P. 189; 60 L. J. P. D. & A. 20; 1895, P. 220; 64 L. J. P. D. & A. 102; 43 W. R. 655; 64 L. T. 35: *Brougham* v. *Brougham*, 1895, P. 288; 64 L. J. P. D. & A. 125.

UNREASONABLE PREFERENCE.—*V.* UNDUE PREFERENCE.

UNREASONABLY.—When a Covenant by a lessee against Assigning or Underletting without consent is qualified by the Condition that such consent shall not be "unreasonably," or "arbitrarily," or "vexatiously," WITHHELD, a breach of such a Condition gives no right of action to the lessee; his remedy is to assign or underlet without consent (*Sear* v. *House Property Co*, 16 Ch. D. 387: 50 L. J. Ch. 77; 29 W. R. 192; 43 L. T. 531: *Treloar* v. *Bigge*, L. R. 9 Ex. 151; 43 L. J. Ex. 95; 22 W. R. 843: *Hyde* v. *Warden*, 47 L. J. Ex. 127). In *Treloar* v. *Bigge* (where the phrase was "arbitrarily"), the majority of the Court intimated that a refusal grounded on an expectation that the property would shortly be compulsorily taken by a public body, was not arbitrary. So, a license to assign was not withheld "arbitrarily," nor "*without good and sufficient reason*," where the proposed assignee was the Salvation Army "General" Booth, even though he swore that the premises were to be used for offices only (*Bridewell Hospital* v. *Fawkner*, 8 Times Rep. 637): *Vf, Lepla* v. *Rogers*, 1893, 1 Q. B. 31; 68 L. T. 584.

A refusal to give a license to assign a PUBLIC HOUSE to a Brewery

Co because the lessor desires it to be kept as a "Free House," is not so unreasonable as that the title (affected by such a refusal) will be forced on a purchaser (*Re Marshall and Salt*, 1900, 2 Ch. 202; 69 L. J. Ch. 542; 83 L. T. 147; 48 W. R. 508).

It is unreasonable to withhold consent "in order to enable the lessor to regain possession of the premises before the termination of the lease," even though he wants the premises for his own use and is willing to give as much for the lessee's interest as the proposed assignee (*Bates* v. *Donaldson*, 1896, 2 Q. B. 241; 65 L. J. Q. B. 578; 74 L. T. 751; 44 W. R. 659, *whc* settles the question raised, but not decided, in *Lehmann* v. *McArthur*, 3 Ch. 496; 37 L. J. Ch. 625).

It has been suggested that a refusal unless a pecuniary consideration were paid for the consent, would be unwarranted (Woodf. 698, n. *v*), a suggestion which (except quà expense) is now law, unless the contrary be expressed (s. 3, Conv & L. P. Act, 1892).

But CONSENT cannot be withheld at all until it is asked for; and (where there is an appropriate Forfeiture Clause) a forfeiture will be worked by an Assignment or Underlease without the lessor's consent being asked, even though such omission was *per incuriam* and though a refusal would have been "unreasonable," "arbitrary," or "vexatious" (*Barrow* v. *Isaacs*, 1891, 1 Q. B. 417; 60 L. J. Q. B. 179; 64 L. T. 686; 39 W. R. 338: *Eastern Telegraph Co* v. *Dent*, 80 L. T. 459; 1899, 1 Q. B. 835; 68 L. J. Q. B. 564).

V. ASSIGN: RESPONSIBLE: UNDERLEASE.

UNREDEEMED. — "'Unredeemed quota of the LAND TAX,' means, the part of the Land Tax charged against a Land Tax Parish under the Land Tax Acts, which for the time being remains payable" (s. 35, 59 & 60 V. c. 28).

V. REDEEM.

UNREGISTERED COMPANY. — "Unregistered Co," s. 199, Comp Act, 1862; *V. Re Torquay Bath Co*, 32 Bea. 581: *Bowes* v. *Hope Insrce*, 11 H. L. Ca. 389: *Re London India-rubber Co*, 35 L. J. Ch. 592; 1 Ch. 329: *Re Bank of London*, 40 L. J. Ch. 562; 6 Ch. 421: Buckl. 465: JOINT STOCK COMPANY.

V. R. v. *Tankard*, 1894, 1 Q. B. 548; 63 L. J. M. C. 61.

UNREGISTERED LAND. — Quà Local Registration of Title (Ir) Act, 1891, 54 & 55 V. c. 66, "'Unregistered Land,' means, land of which an owner has not been registered under this Act" (s. 95).

UNREPRESENTED CAPITAL. — *V.* CAPITAL.

UNSAFE. — Unsafe Port; *V.* SAFE PORT.

An "Unsafe SHIP," quà Mer Shipping Acts, is one which "is by reason of the defective condition of her hull, equipments, or machinery,

or by reason of undermanning, or by reason of overloading or improper loading, unfit to proceed to SEA without SERIOUS danger to human life, having regard to the nature of the service for which she is intended" (s. 459 (1), Mer Shipping Act, 1894, as extended by 60 & 61 V. c. 59).

UNSATISFIED. — "Unsatisfied Judgment," s. 98, 9 & 10 V. c. 95; *V. Abley* v. *Dale*, 20 L. J. C. P. 233; 11 C. B. 378: *Cookman* v. *Rose*, 3 Jur. N. S. 866.

UNSEAWORTHY. — *V.* SEAWORTHY.

UNSETTLED ESTATE. — "It cannot be denied that in common parlance the phrase 'Unsettled Estate' means, an estate not put into settlement; and drawing a distinction between its popular meaning and its legal signification, if taken in the former, it would be confined to an estate not put into settlement, while in the latter it is equally open to either interpretation, because it may be either so much of the interest in the settled lands which was not bound by the settlement that was intended to be passed, or the lands which had never been put into settlement. The words in their legal signification will include both." "In all cases the Courts adopt one general rule, whether the words are 'Unsettled,' 'Out of Settlement,' 'Not put into settlement,' or 'Not settled in jointure'; they say, we will give to the devisee whatever interest the testator had the power to dispose of in the lands bound by the settlement or jointure, giving to the words their full legal signification" (per Sugden, C., *Incorporated Society* v. *Richards*, 4 Ir. Eq. Rep. 192, 194).

V. NOT SETTLED.

UNSHIPPING. — Merely hiring in England a vessel to carry smuggled goods to Ireland where they were unshipped; held, "not assisting or being otherwise concerned in the unshipping" of the goods, within s. 45, 6 G. 4, c. 108 (*A-G.* v. *Kenifeck*, 2 M. & W. 715; 6 L. J. Ex. 214). *Vf*, CONCERNED IN.

V. TO SHIP.

UNSOUND MIND. — "'Unsound Mind,' or Insanæ Memoriæ, which all persons must understand to be a Depravity of Reason, or want of it" (per Hardwicke, C., *Barnsley's Case*, 2 Eq. Ca. Ab. 580; 3 Atk. 184). Mere eccentricity is not such an unsoundness of mind as will amount to testamentary incapacity (*Pilkington* v. *Gray*, 1899, A. C. 401; 68 L. J. P. C. 63). "There is an important difference between 'Unsoundness of Mind' and 'Dullness of Intellect.' . . . Unsoundness of mind may arise from perversion of the mental powers, and may exhibit itself by means of delusions or strong antipathies, which is called 'Mania'; or it may arise from what may be termed a defect of mind, as where the mind was originally incapable of directing itself to anything requiring

judgment, which is 'Idiotcy'; or where a mind, originally strong, has become weakened by illness or age though producing no such insanity as to amount to Mania." Idiotcy, "in general, is very easily proved. It is manifested in a variety of ways, — by impropriety or indecency of conduct, dirtiness in the habits, or by vacancy of aspect, though this last test can only be appreciated by those who have seen the party. Another test is by means of numbers, *i.e.* by showing that the party cannot understand the commonest rules of arithmetic" (per Wood, V. C., *Harrod* v. *Harrod*, 2 W. R. 612; 23 L. T. O. S. 243). *V.* IDIOT.

Quà Trustee Acts "the expression 'Person of Unsound Mind' shall mean, any person, not an Infant, who, not having been found to be a Lunatic, shall be incapable from Infirmity of mind to manage his own affairs" (s. 2, 13 & 14 V. c. 60); that includes an apoplectic person whose mind is thereby weakened (*Re Critchley*, 83 Law Times, 167), or one incapacitated by old age, or by infirmity of mind, *e.g.* from paralysis (*Re Martin*, 34 Ch. D. 618; 56 L. J. Ch. 695, over-ruling *Re Phelps*, 31 Ch. D. 351; 55 L. J. Ch. 465), but the paralysis must be such as to produce mental infirmity (*Re Barber*, 57 L. J. Ch. 756; 39 Ch. D. 187; 58 L. T. 756; 37 W. R. 182). *V.* LUNATIC: *Cp*, INABILITY: UNFIT.

The power which by R. 196, Divorce Court Rules, is given to the Registrar of assigning a guardian ad litem to a person of "Unsound Mind," should only be exercised in the case of a Lunatic so found by Inquisition (*Fry* v. *Fry*, 34 S. J. 250).

"Person of Weak Mind," quà Lunacy Regulation (Ir) Act, 1871, 34 & 35 V. c. 22, means, "any person, from any Temporary Cause or SICKNESS affecting his mental capacity, incapable of managing himself or his affairs" (s. 2).

UNSOUNDNESS. — *V.* SOUND.

UNSTAMPED. — *V.* STAMPED.

UNTIL. — This word may be read either as inclusive or exclusive (*R.* v. *Stevens*, inf: *Cp*, FROM); it is generally inclusive.

In a memorandum enlarging the time within which an Award may be made, "until" will generally include the whole of the day named (Russ. on Arb., 8 ed., 102, citing *Kerr* v. *Jeston*, 1 Dowl. N. S. 538: *Knox* v. *Simmonds*, 3 Bro. C. C. 358. *Vf*, *Pugh* v. *Leeds*, 2 Cowp. 714). So, "it seems that, as a general rule, the word 'Till' is inclusive of the day to which it is prefixed; so that where a defendant was given 'till' a certain day to plead, judgment signed on such day for want of a plea was bad, as the defendant might have delivered a plea during such day (*Dakins* v. *Wagner*, 3 Dowl. 535: *Va*, *Kerr* v. *Jeston*, sup). And the rule is the same in the case of the word 'Until' (*Isaacs* v. *Royal Insrce*, L. R. 5 Ex. 296; 39 L. J. Ex. 189; 22 L. T. 681; 18 W. R. 982)," Dan. Ch. Pr. 38. So, where a Bankrupt was protected from process "until the

29th July," that protection extended during the whole of that day (*Backhouse*, or *Bellhouse* v. *Mellor*, 28 L. J. Ex. 141; 4 H. & N. 116; 5 Jur. N. S. 175).

But a plaintiff having obtained a judgment, but with a stay of execution "until" a stated day, was held (in Ireland) entitled to issue his execution on that day if the money was not then paid (*Rogers* v. *Davis*, 8 Ir. L. R. 399), in *the* Burton, J., said, "I think 'until' does not mean 'after.'" So, temp. Car. 2, it was held that a release of all trespasses or of all demands "until" a stated date, did not include the day of that date (*Nichols* v. *Ramsel*, 2 Mod. 280). *Vf*, *Wicker* v. *Norris*, Ca. t. Hard. 116.

In an *Indictment*, "until" is either inclusive or exclusive of the day to which it is applied according to the context and subject-matter (*R.* v. *Stevens*, 5 East, 244).

In a *Lease* "until Michaelmas," that Feast Day is included (3 Leon. 211).

In *Wills*, "the word 'until' is, in general, coupled with a condition or contingency indicating that some change is intended in the disposition of the property, which, up to that time, is given in a particular way. This, however, will not always be the effect of it. Thus, where there was a gift to A. for life, remainder to her children, *until* they should attain 25, then for such children so attaining 25, with a gift over; it was held that A.'s children took vested interests at birth, and that the gift over was void for remoteness (*Hardcastle* v. *Hardcastle*, 1 H. & M. 405: *V. Bland* v. *Williams*, 3 My. & K. 411; 3 L. J. Ch. 218). Under a devise to A., not to be of age to receive *until* he attain a particular age, A. takes a vested interest subject to being divested on his dying under that age (*Snow* v. *Poulden*, 1 Keen, 186)": Watson Eq. 1218–9.

As to the value of "until" in a limitation working a Forfeiture on ALIENATION; *V.* per Chitty, J., *Dean* v. *Dean*, 1891, 3 Ch. 155; 60 L. J. Ch. 554; 65 L. T. 65; 39 W. R. 568, *svthc* 36 S. J. 181: *Vh*, *Brandon* v. *Robinson*, 18 Ves. 429; 1 Rose, 197; 2 Jarm. 24. In that connection, "until," like "shall become," has, generally, a past as well as a future application, *e.g.* gift to A. for life, then to B. "until," &c; B., during A.'s life, commits the act; thereby forfeiture is worked before B.'s estate begins (*Sharp* v. *Cosserat*, 20 Bea. 470; 3 W. R. 473). *V.* QUOUSQUE: To.

UNTIL FURTHER ORDER. — Where an Interim Injunction is granted over a certain day "or, Until further Order," the Injunction is not continued after the day named "until further Order," but may be stayed by Order, before the day named (*Bolton* v. *London School Board*, 47 L. J. Ch. 461; 7 Ch. D. 766). Injunction "until Defence or Further Order," *semble*, remains in force until discharged by Order, though Defence be delivered (*Ooddeen* v. *Oakley*, 2 D. G. F. & J. 158).

An Order, in an Administration Action, to pay an Annuity "until further Order" is, notwithstanding the latter phrase, *res judicata*, quà appeal (*Peareth* v. *Marriott*, 52 L. J. Ch. 221; 22 Ch. D. 182).

An authority to make periodical payments "until further order" is an ABSOLUTE ASSIGNMENT.

UNTO.—*V.* TO: TOWARDS.

"Unto and among"; *V.* AMONG.

To deliver a Notice "unto" a person; *V.* SERVED.

UNTRUE.—*V.* CORRECT: TRUE.

A misleading statement in a Prospectus, is "untrue" within s. 3 (1 *a*), Directors Liability Act, 1890, even though it may be true in the sense in which it is used by those who issue the Prospectus (*Greenwood* v. *Leather Shod Wheel Co*, 1900, 1 Ch. 421; 69 L. J. Ch. 131; 81 L. T. 595).

UNUSUAL.—A thing which is unusual is not, necessarily, extraordinary (*V. Hill* v. *Thomas*, cited EXTRAORDINARY TRAFFIC).

V. USUAL.

UNWILLING.—Referring to the earlier cases on the ordinary clause in *Conditions of Sale* enabling a Vendor to rescind the contract if he should be "unable or unwilling" to answer purchaser's requirements, Turner, L. J., said in *Duddell* v. *Simpson* (2 Ch. 102; 36 L. J. Ch. 72), "These cases have settled, and I think very wisely settled, that the word 'unwilling,' in a Condition of Sale of this description, is not to be considered as giving an arbitrary power to the vendor to annul the contract." But though that passage was cited to Bacon, V. C., in *Dames to Wood* (53 L. J. Ch. 920; 27 Ch. D. 177), he said, "The word 'unwilling' is as potent as the word 'unable.' Nobody is entitled to ask why he is unwilling; if he refuses to comply with the requisition that is enough" (*Dames to Wood*, affd 54 L. J. Ch. 771; 29 Ch. D. 626; 53 L. T. 177: *Vf*, jdgmts of Esher, M. R., and Lindley, L. J., *Terry to White*, 32 Ch. D. 14; 55 L. J. Ch. 345). The result seems to be that, though "unwilling" means "reasonably unwilling" and does not justify a vendor in capriciously translating it into "I will not," yet in rescinding the contract he is not bound to give his reason for his unwillingness to complete it, and the onus of proving his caprice or *mala fides* is on the purchaser (*Re Glenton and Saunders*, 53 L. T. 434: *Re Starr-Bowkett Socy*, 58 L. J. Ch. 459, 651; 42 Ch. D. 375; 60 L. T. 811: *Woolcott* v. *Peggie*, 15 App. Ca. 42; 59 L. J. P. C. 44). *Vf*, WHATSOEVER. *Cp*, INSIST.

Vh, Add. C. 471: Sug. V. & P. 39.

Cp, WILLINGLY.

UNWORKABLE.—*V.* WORKABLE: WORTH THE EXPENSE.

UNWORTHY. — To say, even of a Peer, that "he is an Unworthy Man, and acts against law and reason," is not actionable; for "in respect of God Almighty we are all unworthy, and the subsequent clause explains what Unworthiness the defendant intended, for he infers him to be unworthy because he acts against law and reason," which latter words are not actionable (per Scroggs, J., *Townsend* v. *Hughes*, 2 Mod. 159).

UPHOLD. — A covenant to "repair, *uphold, sustain, and maintain*," premises, *semble*, is not enlarged by these italicized words, but is simply one to "REPAIR" (*Lister* v. *Lane*, 1893, 2 Q. B. 212; 62 L. J. Q. B. 583; 69 L. T. 176; 41 W. R. 626).

UPON. — "'Upon'; This word, in most cases, is used elliptically for 'Upon Condition of': as, 'upon payment of costs'; 'upon conviction of an offender'" (Dwar. 692); or an appeal "upon" giving a prescribed notice (*R.* v. *Lancashire Jus.*, 27 L. J. M. C. 161; 8 E. & B. 571).

It also means, "by reason of"; *V.* BENEFICIALLY ENTITLED: ACCIDENT, at end.

"The words 'on,' or 'upon,' it has been decided, may either mean, *before* the act done to which it relates, or *simultaneously with* the act done, or *after* the act done, according as reason and good sense require, with reference to the context and the subject-matter of the enactment" (per Denman, C. J., *R.* v. *Arkwright*, 18 L. J. Q. B. 28; 12 Q. B. 970, citing *R.* v. *Humphery*, 7 L. J. Q. B. 202; 2 P. & D. 691; 10 A. & E. 335, *whlc*, for same def, was cited by Bovill, C. J., *Paynter* v. *James*, L. R. 2 C. P. 354). *Va*, *R.* v. *Stockton*, cited IN AND FOR: per Coleridge, J., *Scott* v. *Parker*, 1 Q. B. 813: Add. C. 52.

In *R.* v. *Humphery*, sup, "upon *admission*" to public corporate office a person to make a declaration (9 G. 4, c. 17, s. 2), meant that the person could not be called on to declare until *after* admission. So, under s. 10, Lord Mayor's Court Act (20 & 21 V. c. clvii), an appeal motion may be made "if upon *the trial*," the judge give leave; this means, at, or within a reasonable time *after*, the trial; and (in construing that Act) the majority of the Court held that 2 days (whilst Brett, J., thought that 4 days) would be such a reasonable time (*Folkard* v. *Metrop Ry*, 42 L. J. C. P. 163; L. R. 8 C. P. 470). So, the power given (18 & 19 V. c. 43, s. 1) to make a Settlement "upon" *the marriage* of an Infant, means, "in the event of," or "on the occasion of," his or her marriage; and a *post*-nuptial Settlement is thereby authorized (*Re Sampson and Wall*, 53 L. J. Ch. 457; 25 Ch. D. 482: *Re Phillips*, 56 L. J. Ch. 337; 34 Ch. D. 467: *Buckmaster* v. *Buckmaster*, 56 L. J. Ch. 379; 35 Ch. D. 21: *Sv*, *Re Borrowes*, inf); but, *semble*, not if it be long after the marriage (*Re Leigh*, 58 L. J. Ch. 306; 40 Ch. D. 290: *V.* CONTEMPLATION).

"Upon or previously to the marriage"; *V. Re Borrowes*, cited PREVIOUSLY.

But a power to stop up paths "On *notice* being given" in the prescribed manner (Church Building Act, 1819, 59 G. 3, c. 134, s. 39), means, that the notice must be given *before* making the Order (*R.* v. *Arkwright*, sup).

"Payment *on* DELIVERY," means, that both acts are to be done simultaneously (*Paynter* v. *James*, L. R. 2 C. P. 348).

The sanction to continue Directors' powers, in a Voluntary Liquidation of a Co, "upon" the appointment of Liquidators (s. 133 (5), Comp Act, 1862), need not be given once and for all immediately on such appointment, but may be given during the Winding-up (*Re Fairbairn Co*, 63 L. J. Ch. 8; 42 W. R. 155).

A power enabling the Court to make an Order vesting the LEGAL ESTATE in lands "upon" making an Order appointing a New Trustee, may be exercised prospectively (*Plomley* v. *Richardson*, 1894, A. C. 632; 64 L. J. P. C. 18; 71 L. T. 377: *Vf*, *Re Shortridge*, 64 L. J. Ch. 191).

"Upon the Death of any person"; *V.* BENEFICIALLY ENTITLED.

Property which passes "on" Death; *V.* PASSING.

Vehicle passing "upon" a HIGHWAY; *V.* PASSING.

Projection "over or upon" a Pavement; *V.* PROJECTION.

"Upon any Representation or Assurance," s. 6, 9 G. 4, c. 14; *V.* *Haslock* v. *Fergusson*, 7 A. & E. 94: *Pearson* v. *Seligman*, 48 L. T. 842.

V. BUILT UPON: ON: ON OR BEFORE: ON OR UPON: THEREUPON.

UPON CONDITION.—*V.* CONDITION.

UPON CONVICTION.—*V.* CONVICTION.

UPON THE MERITS.—*V.* MERITS.

UPON TRIAL.—*V.* SALE ON TRIAL.

UPON TRUST.—No beneficial interest is taken if property be given or granted "Upon trust," though no trust be declared (Lewin, 160, and cases there cited). But "although the introduction of the words 'Upon trust' may be strong evidence of the intention not to confer on the devisee a beneficial interest (*Hill* v. *London*, 1 Atk. 620: *Woollett* v. *Harris*, 5 Mad. 452), yet that construction may be negatived by the context, or the general scope of the instrument (*Dawson* v. *Clarke*, 15 Ves. 409; 18 Ib. 247, 257: *Coningham* v. *Mellish*, Pr. Ch. 31: *Cook* v. *Hutchinson*, 1 Keen, 42: *Hughes* v. *Evans*, 13 Sim. 496); and in like manner the devisee may be designated as 'Trustee,' but the expression may be explained away, as for instance, if the term be used with reference to one only of two funds, the devisee may still establish his title to the beneficial interest in the other (*Batteley* v. *Windle*, 2 Bro. C. C. 31: *Pratt* v. *Sladden*, 14 Ves. 193: *Va*, *Gibbs* v. *Rumsey*, 2 V. & B. 294).

On the other hand, there may be a total absence of the word 'Trust' or 'Trustee' throughout the whole Will, and yet the Court may collect an intention that the devisee or legatee should be a Trustee (*Saltmarsh* v. *Barrett*, 29 Bea. 474; 3 D. G. F. & J. 279; 30 L. J. Ch. 853)": Lewin, 161, 162. *Vf*, *Croome* v. *Croome*, 59 L. T. 582, affd 61 L. T. 814, distd in *Re West*, 1900, 1 Ch. 84; 69 L. J. Ch. 71.

V. IN TRUST: TRUST: TRUSTEE.

UPON VIEW.—*V.* VIEW.

UPPER BOOK PILOT.—*V.* PILOT.

UPPER PASSENGER DECK.—*V.* DECK.

UPSET PRICE.—A synonym for Reserved Price; *V.* WITHOUT RESERVE, at end.

URBAN.—"Urban Authority"; Stat. Def., 50 & 51 V. c. 32, s. 1; 51 & 52 V. c. 41, s. 100; 53 & 54 V. c. 59, s. 11; 54 & 55 V. c. 22, s. 14; 55 & 56 V. c. 57, s. 5.

"Urban Sanitary Authority"; *V.* SANITARY.

"Urban District," "Urban Sanitary District"; *V.* DISTRICT.

URGENT.—"Sudden and Urgent Necessity"; *V.* SUDDEN.

URINAL.—The power to Local Authorities,—*e.g.* s. 88, Metrop Man. Act, 1855; s. 39, P. H. Act, 1875,—to erect "Urinals, Water-closets," &c, does not authorize such erections in such a way as to create a NUISANCE (*Vernon* v. *St. James, Westminster*, 50 L. J. Ch. 81; 16 Ch. D. 449; 44 L. T. 229; 29 W. R. 222: *Vf*, DAMAGE, p. 456).

V. Tunbridge Wells v. *Baird*, cited IN, p. 925, with which *cp*, *Graham* v. *Newcastle-upon-Tyne*, cited OPEN, p. 1341.

USAGE.—"Usage," is that which is known as a recurring modern practice in a locality or business; and does not require a PRESCRIPTION, as a CUSTOM does (*Finch's Case*, 6 Rep. 65). *Cp*, *A-G.* v. *Yarmouth*, cited PRACTICE, p. 1527.

USAGE OF TRADE.—"The words 'Usage of Trade,' are to be understood as referring to a Particular Usage to be established by evidence; and perfectly distinct from that general custom of merchants, which is the universal established law of the land, to be collected from decisions, legal principles and analogies (not from evidence *in pais*), and the knowledge of which resides in the breasts of the judges" (1 Sm. L. C. 581, 582, and cases there cited). *Cp*, CUSTOM.

V. TRADE.

USAGES.—*V.* LIBERTY.

USE.—"If a man walks with a Gun with intent to kill game, he 'uses' the gun for that purpose without firing, within the statute which

makes using a gun, with that intent, penal" (Maxwell, 338, citing 5 Anne, c. 14, s. 4; 1 & 2 W. 4, c. 32, s. 23: *R.* v. *King*, 1 Sess. Ca. 88: *Va*, *United States* v. *Morris*, 14 Peters, 464). So, a Net may be "used in taking" Salmon, 24 & 25 V. c. 109, though no salmon be then actually caught (*Rutter* v. *Harris*, 45 L. J. M. C. 103; nom. *Ruther* v. *Harris*, 1 Ex. D. 97). A person "uses" an Engine for killing Game on a Sunday, 1 & 2 W. 4, c. 32, s. 3, who places it on the land prior to, but with the intention for it to remain there during, a Sunday (*Allen* v. *Thompson*, 39 L. J. M. C. 102; L. R. 5 Q. B. 336: *V.* per Lawrence, J., *Jones* v. *Davies*, 67 L. J. Q. B. 296; 1898, 1 Q. B. 405).

A Steam Roller crossing one county in order to do work in another is, whilst passing over highways in its journey, being "used," within s. 32, 41 & 42 V. c. 77 (*London Co. Co.* v. *Wood*, 1897, 2 Q. B. 482; 66 L. J. Q. B. 712; 77 L. T. 312; 46 W. R. 143; 61 J. P. 567).

An ordinary traveller along a railway in a carriage belonging to the Company, does not "use" the Railway within s. 95, Ry. C. C. Act, 1845, or within enactments of a similar kind (*Brown* v. *G. W. Ry*, 51 L. J. Q. B. 156, 529; 9 Q. B. D. 744, and cases therein cited).

"*Open, keep, or use,*" a House, Office, Room, or other PLACE, for Betting (*V.* BET), ss. 1 and 3, 16 & 17 V. c. 119; *V. R.* v. *Cook*, 13 Q. B. D. 377; 51 L. T. 21; 32 W. R. 796; 48 J. P. 694: *Davis* v. *Stephenson*, 59 L. J. M. C. 73; 24 Q. B. D. 529; 38 W. R. 492; 62 L. T. 436; 54 J. P. 565; 6 Times Rep. 242: *Whitehurst* v. *Fincher*, 62 L. T. 433; 54 J. P. 565: *Macwilliam* v. *Dawson*, 56 J. P. 182: *Hornsby* v. *Raggett*, 1892, 1 Q. B. 20; 61 L. J. M. C. 24; 66 L. T. 21; 40 W. R. 111; 56 J. P. 135: *Bond* v. *Plumb*, 1894, 1 Q. B. 169: *R.* v. *Worton*, 1895, 1 Q. B. 227; 64 L. J. M. C. 74; 72 L. T. 29. As to the ambiguous meaning of "use" in this connection, *V.* per Halsbury, C., *Powell* v. *Kempton Park Co*, cited PLACE, p. 1486. *Vh*, KEEP: RESORT. *Cp*, PUBLIC SINGING.

The Gaming House Act, 1854, 17 & 18 V. c. 38, "was intended to suppress COMMON GAMING HOUSES" (per Russell, C. J., *R.* v. *Davies*, 66 L. J. Q. B. 514); therefore, gambling on an isolated occasion in a private house, is not to "open, keep, or use," the house for UNLAWFUL GAMING within s. 4 (*S. C.*, 1897, 2 Q. B. 199; 66 L. J. Q. B. 513; 76 L. T. 786); *V.* KEEP.

An agreement which, in a passive form, stipulates that the contractor is "*not to use*" premises for other than a specified trade, has not an active operation compelling him to CARRY ON that trade (*Doe* d. *Bute* v. *Guest*, 15 M. & W. 160).

Covenant not to "erect or use" Competing Works; *V.* ERECT.

"Use or EXERCISE" an ART, TRADE, &c, within a City Custom, means, to carry it on "as a Master or Principal" (per Tenterden, C. J., *Clark* v. *Denton*, 1 B. & Ad. 101).

"Use, exercise, and vend," an INVENTION; *V.* VEND: *Walton* v.

Lavater, 8 C. B. N. S. 162; 29 L. J. C. P. 275. "The first meaning assigned to 'use' in Johnson's Dictionary is, 'to employ to any purpose'; it is, therefore, a word of wide signification. It seems to me that the terms 'use' and 'make use of,' are intended to have a wider application than 'exercise,' and 'put in practice'; and, without saying that no limit is to be placed on the two former expressions in the Patent, I think, on the best consideration that I can give, that they are not confined to the use of a patented article for the purpose for which it is patented" (per Stirling, J., *British Motor Syndicate* v. *Taylor*, 1900, 1 Ch. 583); that learned judge, accordingly, held that to buy in England an infringing article and then transport it to Paris for sale, was "using," or "making use of," the invention in England, and was an INFRINGEMENT of the patent (1900, 1 Ch. 577; 69 L. J. Ch. 377; 82 L. T. 106; 48 W. R. 345; affd 1901, 1 Ch. 122; 70 L. J. Ch. 21, *whc* dealt with the doubts of Ld Herschell, *Badische Anilin und Soda Fabrik* v. *Basle Works*, 1898, A. C. 208; 67 L. J. Ch. 144). Observe further, "If a person uses an Invention to present his goods for sale and intending the thing exhibited to represent what he is going to sell, and if part of that thing is an article which is an infringement and is serving a useful purpose during that time by being exhibited as part of the machine, I think it is a User of the Invention" (per Alverstone, C. J., *Dunlop Co* v. *British & Colonial Motor Co*, 18 Pat. Ca. 315). *V.* NON-USER.

Prior Use of an Invention; *V.* ANTICIPATION: PUBLIC USE.

To "use" a Trade Description; *V. Budd* v. *Lucas*, cited TRADE DESCRIPTION.

"I strongly incline to think that everyone 'uses' a DRAIN the sewage from whose house communicates with it" (per Cockburn, C. J., *R.* v. *Bodkin*, 3 E. & E. 276).

Power of Contractee to "use" *Materials*, &c, of a defaulting Contractor; *V. Hawthorn* v. *Newcastle Ry*, cited IN OR UPON.

"Take or use" a STREAM; *V.* TAKE.

"Take or use the Title" of a Profession; *V.* VETERINARY.

V. OCCUPATION: USE AND OCCUPATION: USED: USING.

Bequest for a person's "Use and Disposal"; *V.* DISPOSAL.

Bequest of Business with "the use of the Book Debts or Capital"; held, an absolute gift (*Terry* v. *Terry*, 33 Bea. 232; 12 W. R. 66; 9 L. T. 469).

A Structure which, without a license, can be "erected by a BUILDER for use" during operations (proviso to s. 13, Metrop Man. Act, 1882), must be one for the Builder's own use, — one for the temporary carrying on the business of his employer, is not within the proviso (*London Co. Co.* v. *Candler*, 60 L. J. M. C. 114; 55 J. P. 679).

"The use of the ground as *Building Ground*" which, by s. 5 (6), Land Law (Ir) Act, 1881, will justify a landlord's application for an Order for resumption of a HOLDING, means, actual user, as distinguished from

possible user; the landlord must show that his settled purpose is to use the land as building ground as soon as the Order is made; in other words, "he must satisfy the Court that he requires the land for *use* as building ground, and not merely that he desires to have it in his own hands available for building ground if he receives a sufficiently tempting offer to deal with it as such" (*Re Archbold and Charters*, 1900, 2 I. R. 262).

"In Common Use"; *V.* COMMON TO THE TRADE.

An Inclosure Act which authorized the setting apart quarries "for the repair of roads, and for the use of the INHABITANTS" of A., was construed as giving the Inhabitants a right to stone for repairs of roads, but not for private purposes (*Rylatt* v. *Marfleet*, 14 L. Ex. 305; 14 M. & W. 233).

An Indorsement of a Bill or Note "to A. or his Order, for MY use," puts persons dealing with it on enquiry to see whether A. is using the document for the Indorser's use, or his own (*Sigourney* v. *Lloyd*, 8 B. & C. 622). *Vf*, RESTRICTIVE ENDORSEMENT.

"Use for the Purpose of"; *V.* PURPOSE: PURPOSES.

"In relation to the Use or Hire of any Ship"; *V.* SHIP.

Trustee converting property "to his use"; *V.* CONVERT.

"Goods Materials or Provisions for the use of any *Workhouse*, Poor Relief Act, 1815, 55 G. 3, c. 137, s. 6, means, for use *in* the Workhouse, and does not comprise repairs to the fabric (*Barber* v. *Waite*, 3 L. J. M. C. 101; 1 A. & E. 514; 3 N. & M. 611).

On "Use" as employed in 1 Ric. 3, and on Uses prior to the Statute of Uses, 27 H. 8, c. 10, *V.* Sanders on Uses, ch. 1: on Uses since that Statute, *V.* Ib. ch. 2. *Vf*, *Chudleigh's Case*, 1 Rep. 121 *et seq*: 1 Cru. Dig. Title 11: Wms. R. P. Part 1, ch. 8: Goodeve, ch. 10: Challis, 350–356: 12 Encyc. 386–395: DECLARATION: TRUST. As to the rise of Uses, and the contrast and resemblance between Uses and Trusts, *V.* *Burgess* v. *Wheate*, 1 Eden, 177; 1 Bl. W. 123, and espy jdgmt of Mansfield, C. J.

Cestui que Use; *V.* CESTUI.

V. CHARITABLE USE: OWN SOLE USE: REASONABLE USE: RESULTING USE: SEPARATE USE: SOLE: SUPERSTITIOUS: USED: USING: USUAL.

USE AND BENEFIT.—*V.* OWN USE AND BENEFIT.

USE AND DISPOSAL.—*V.* DISPOSAL.

USE AND OCCUPATION.—A. devised to his wife the Income of freeholds at B. and leaseholds at P., and bequeathed to her his furniture and effects in his house at E., and desired that she should "have the Free Use and Occupation of the said house"; held, that she was absolutely entitled to the properties at B. and P., but took only a life interest

in the house at E. (*Coward* v. *Larkman*, 60 L. T. 1). *V.* OCCUPATION: RESIDE.

USE OR ENJOYMENT. — *V.* IMMEDIATE USE OR ENJOYMENT.

USE OR ORNAMENT. — Articles of "Household Use or Ornament"; *V.* HOUSEHOLD, p. 899.

USE OR PERMIT. — Where a Local Board do no act themselves to create a NUISANCE, and are endeavouring to put in force their powers to effect a perfect system of drainage, it is no ground of action to an individual that the Board do not take proceedings under their Acts to prevent persons from unlawfully draining into their sewers, in consequence of which draining an additional and serious nuisance is caused to that individual; and they cannot be said "to use or permit to be used" the sewers so as to cause a Nuisance, by abstaining from taking such proceedings (*A-G.* v. *Dorking*, 51 L. J. Ch. 585; 20 Ch. D. 595).

V. PERMIT.

USED. — A thing "used" for a particular purpose is not synonymous with its "being used," or "in use," for that purpose; for, *semble*, such latter phrases connote, necessarily, an ACTUAL user, which "used" does not. Therefore, a place underground may have been "used" as a BAKEHOUSE at the commencement of the Factory Act, 1895, and so exempt from s. 27 (3) of that Act, if that had previously been its purpose and actual use, though not then actually so used because untenanted, but the landlord of which was seeking to let it to a baker which he afterwards did (*Schwerzerhof* v. *Wilkins*, 1898, 1 Q. B. 640; 67 L. J. Q. B. 476; 78 L. T. 229; 62 J. P. 247).

Fixtures, &c, "used in" any land, &c, s. 6 (2), Bills of Sale Act, 1882, means, things retained on the premises for use; therefore, a Cab Proprietor's horses are not "Plant" "used *in*" his Mews, for their sole use is in the Streets where the cabs are hired and the profits of the business are earned. They may be harnessed or unharnessed on the premises, but they are not used, for the purposes of the business, there (per Esher, M. R., *London & Eastern Counties Loan Co* v. *Creasy*, cited PLANT). *Vf*, BROUGHT UPON.

"Used or enjoyed"; *V.* APPURTENANCES: HELD: WAYS.

"Used or exercised"; *V.* ART: EXERCISE: USE, p. 2148.

"Provided and used"; *V.* PROVIDED.

"Used as an ordinary Agricultural Farm"; *V.* AGRICULTURAL.

"Place used" for Betting, or for Dancing; *V.* PLACE, p. 1486: PUBLIC DANCING.

Boiler "used exclusively for Domestic Purposes"; *V.* DOMESTIC.

Building "used for the Education of the Poor"; *V. Hadfield* v. *Liverpool*, cited EDUCATION.

Ship or Vessel "used in NAVIGATION"; *V.* VESSEL: *R.* v. *Southport*, cited SHIP, p. 1866.

"Used for the Purposes of"; *V.* PURPOSE: PURPOSES: TRAFFIC: *Commrs of Taxation* v. *St. Mark's*, 1902, A. C. 416: *Tylecote* v. *Morton*, 85 L. T. 692.

"Land used only as a Railway"; *V.* RAILWAY, p. 1646.

"Used for Trade"; *V.* TRADE.

"Used as a Trade-Mark"; *V. Richards* v. *Butcher*, cited TRADE-MARK.

USELESS. — "Useless, and be no longer required for the purposes of such Road," s. 57, 4 G. 4, c. 95; *V. R.* v. *Greenlaw*, 4 Q. B. D. 447; 48 L. J. Q. B. 409.

V. REQUIRED.

USER. — *V.* PRESCRIPTION: USE.

Area of User; *V.* AREA.

New and unusual User; *V.* NUISANCE.

Prior User; *V.* ANTICIPATION: PUBLIC USE.

V. NON-USER.

USES. — Statute of Uses, 27 H. 8, c. 10.

USING. — Where a Contract for Works, *e.g.* for building a Ship or a House, contains a clause enabling the contractee on default by contractor to complete the works, "using" therein such *Materials* of the latter "as shall be applicable for the purpose"; the property in Materials does not, under the word "using," pass to the contractee until he has actually used, or at least has actually begun to use, them in such completion; merely appropriating them for the purpose of so using them will not suffice (*Baker* v. *Gray*, 25 L. J. C. P. 161; 17 C. B. 462: *Cp*, *Re Winter*, cited PROPERTY).

Using a Patent; *V.* USE.

"Using" Premises "for the purposes of" Betting, s. 3, Betting Act, 1853; *V. Belton* v. *Busby*, 1899, 2 Q. B. 380; 68 L. J. Q. B. 859; 81 L. T. 196; 47 W. R. 636; 63 J. P. 709.

Using a *Railway*; "the word 'using' at the end of s. 90, Ry. C. C. Act, 1845, 8 & 9 V. c. 20, signifies using in any sense; and is not confined to using by sending engines and other carriages along the line. The section applies to all Tolls without distinction, and, unless 'using' includes using by sending goods, a distinction not warranted by the Act will be drawn between Tolls for Passengers Engines and Carriages on the one hand, and Tolls for Goods sent in the ordinary way on the other" (per Lindley, L. J., delivering the jdgmt, *Manchester, S. & L. Ry* v. *Denaby Main Co*, 54 L. J. Q. B. 110; 14 Q. B. D. 209; 52 L. T. 598; 49 J. P. 181; partly revd in H. L., 11 App. Ca. 47; 55 L. J. Q. B.

181; 54 L. T. 1: *Va, Evershed's Case*, 48 L. J. Q. B. 22; 3 App. Ca. 1029).

To constitute "an Arrangement for using" *Steam Vessels* so as to get a THROUGH TRAFFIC Rate under s. 11, Regn of Railways Act, 1873, the agreement between the Ry Co and the Owner of the vessels must be definite, and contain an obligation on the part of such owner to PLY between the specified ports (*Caledonian Ry* v. *Greenock & Wemyss Bay Ry*, 4 Ry & Can Traffic Ca., 70: *Vf, Ayr S. S. Co* v. *Glasgow & S. W. Ry*, Ib. 81).

"Using the *Trade of Merchandize*," in the old Bankry Acts, meant, that such "using" continued so long as the person did not pay his Trade Debts (*Ex p. Bamford*, 15 Ves. 449: per Jessel, M. R., *Ex p. McGeorge*, 51 L. J. Ch. 909; 20 Ch. D. 697). *Cp*, CARRY ON, pp. 266, 267.

V. USE.

USQUE AD. — *V.* QUAMDIU.

USUAL. — To determine whether a Clause, Condition, or Thing, is "Usual" the first enquiry is, — Is the subject-matter before, or within, recent memory?

I. Where the subject-matter is something enacted or created *before* recent memory, almost any kind of traditive experience may be given in proof. A conspicuous example was furnished when the Ornaments Rubric of the Church came in question, and the Courts, in order to ascertain what is now lawful, had to determine what ornaments were "*in use*" by authority of Parliament in the 2nd year of Edward VI. There, the literature of the age of the Reformation and the time immediately subsequent, was received in proof (*Hebbert*, or *Elphinstone* v. *Purchas*, L. R. 3 A. & E. 66; 39 L. J. Ecc. 28; L. R. 3 P. C. 245; 40 L. J. Ecc. 33).

II. Where the subject-matter is something enacted or created *within* recent memory the principles by which what is "usual" is to be determined, are not so easy of statement. What is "usual" is a fact; not a conclusion of law (*Hampshire* v. *Wickens*, 7 Ch. D. 555; 47 L. J. Ch. 243; 26 W. R. 491). But just as the question of fact of what is reasonable notice to quit as between masters and domestic servants has in process of time crystallized into a set formula of a month's notice or a month's wages, so the courts take judicial notice of some clauses as being "usual" and reject others. In those cases, however, where no such judicial conclusion has been arrived at, the question of what is a "usual" clause, condition, or thing, is a fact to be established by proof, having regard to (*a*) the subject-matter, (*b*) its locality, (*c*) its time of arising, and (*d*), sometimes, its circumstances.

a. The *Subject-Matter* must be considered where it is of a special nature, *e.g.* leases of property used for particular trades; "as in the case of

leases of public-houses where the brewers have their own forms of leases, and the usual covenants there would mean the covenants *always inserted in the leases of the particular brewer*" (per Jessel, M. R., *Hampshire* v. *Wickens*, 47 L. J. Ch. 245: Should not the words italicized read, "usually inserted in the leases of brewers in the neighbourhood"? In *Hodgkinson* v. *Crowe*, 44 L. J. Ch. 681, James, L. J., said, "You cannot by the usage between some landlords and some tenants for 10, 20, or even 50, years make a change in the law"). So, also referring to a lease of a public-house, Tenterden, C. J., in *Bennett* v. *Wormack* (6 L. J. O. S. K. B. 175; 7 B. & C. 627; 1 M. & R. 644), said, "That which is usual in leases of one description of property may not be so in leases of another."

b. As to *Locality.* In *Wilbraham* v. *Livesey* (18 Bea. 210) Romilly, M. R., said that in a lease of a house in Grosvenor Square, London, there might be inserted different covenants from those in a lease in a trading locality. So, in *Hodgkinson* v. *Crowe* (L. R. 19 Eq. 591; 10 Ch. 622; 44 L. J. Ch. 238, 680; 23 W. R. 406) Bacon, V. C., admitted evidence of what clauses were usual in mining leases in the district where the property was situate. So also did Fry, J., in *Strelley* v. *Pearson* (15 Ch. D. 113; 49 L. J. Ch. 406; 28 W. R. 752; 43 L. T. 155). *Va*, *Boardman* v. *Mostyn*, 6 Ves. 467, 471: *Haywood* v. *Silber*, 30 Ch. D. 404; 34 W. R. 114.

c. As to *Time.* "Usual covenants may vary (in their meaning) in different generations. . . . What is well known in one time may in another cease to be usual" (per Jessel, M. R., *Hampshire* v. *Wickens*, 47 L. J. Ch. 245; 7 Ch. D. 555).

d. As to *Circumstances.* "I do *not* think that the word 'usual' is in many cases to be read with reference to the surrounding circumstances; but I agree that the Court has a right to know, and is bound to know, all the material facts which were known to the parties at the time when the agreement, deed, document, will, or whatsoever it may be was entered into or made" (per Kay, J., *Hart* v. *Hart*, 50 L. J. Ch. 704, 705. In the report of this passage in the 18 Ch. D. 692, it runs, "I *do* think," and this would seem the correct reading). But in that case evidence of negotiations preliminary to an agreement for "usual" clauses was rejected. In *Eadie* v. *Addison* (52 L. J. Ch. 80) the circumstances that an intending lessee was a brewer who lived a long distance from the public-house which was the subject of a demise agreement, and that it was not at all likely that the brewer was going to carry on the business at the public-house himself, was strongly relied on by the Court in rejecting a clause against underletting, the agreement there having stipulated for "proper clauses."

In cases not already judicially determined, the proof of what would be "Usual" clauses, having regard to the special subject, its locality, or circumstances, would as a rule be furnished by the testimony of such living witnesses, whoever they might be, that might happen to have

the information (*Hodgkinson* v. *Crowe*, sup). But where the question is of a general character the proof of what are "Usual" Clauses may be furnished by,—

1. Considering the provisions of Acts of Parliament, *in pari materia* (*Hodgkinson* v. *Crowe*, 44 L. J. Ch. 682; 10 Ch. 622):

2. The evidence of conveyancing counsel (*Hart* v. *Hart*, 50 L. J. Ch. 697; 18 Ch. D. 670), and, possibly, of solicitors as being "the most likely to possess extensive and accurate knowledge on this subject" (27 S. J. 130):

3. Books of conveyancers' forms or text books (*Doe* d. *Jersey* v. *Smith*, 7 Price, 281, 282: *Hampshire* v. *Wickens*, sup: *Hodgkinson* v. *Crowe*, sup: *Hart* v. *Hart*, sup). As regards this latter class of evidence it has been thus questioned, "Books of precedents are not conclusive evidence of the general practice. . . . They provide a precedent in the form in which it may be presented by the party who has to prepare the draft. . . . It is impossible to cross-examine a precedent book" (27 S. J. 130). To which it may be added, "'usual covenants' does not mean, universally inserted" (Dwar. 692). *Vf*, inf.

The question as to what are "usual" clauses arises most frequently as regards **Leases.**

The following passage from *Davidson's Precedents*, 3 ed., "Leases," Vol. 5, Part 1, p. 53, was quoted with approval by Jessel, M. R., in *Hampshire* v. *Wickens*, sup:—"The result of the authorities appears to be that in a case where the agreement is silent as to the particular covenants to be inserted in the lease, and provides merely for the lease containing usual covenants, or, which is the same thing, is an open agreement without any reference to the covenants; *and there are no special circumstances* justifying the introduction of other covenants, the following are the only clauses which either party can insist upon, viz.:—Covenants *by the Lessee*;—

"1. To pay rent:

"2. To pay taxes, except such as are expressly payable by the landlord:

"3. To keep and deliver up the premises in repair. And,

"4. To allow the lessor to enter and view the state of repair. A clause for re-entry in default of payment of rent.

"The usual qualified covenant *by the Lessor* for quiet enjoyment."

Va, *Hodgkinson* v. *Crowe* (sup); and the rule quà Forfeiture Clause, is not altered by s. 14, Conv & L. P. Act, 1881, although thereunder the Court may relieve against forfeiture for other causes than non-payment of rent (*Re Anderton and Milner*, 59 L. J. Ch. 765; 45 Ch. D. 476; 63 L. T. 332; 39 W. R. 44).

In considering what other clauses may be insisted on as "usual" in Leases the jdgmt in the leading case of *Church* v. *Brown* (15 Ves. 258) should be kept in view. Lord Eldon there (p. 268) expressed himself as follows:—"The safest rule for property is, that a person shall be taken

to grant the interest in an estate which he proposes to convey, or the lease he proposes to make, and that *nothing which flows out of that interest as an incident, is to be done away by loose expressions*, to be construed by facts more loose; that it is upon the party who has foreborne to insert a covenant for his own benefit to show his title to it; and that it is safer to require the lessor to protect himself by express stipulation, than for Courts of Equity to hold that contracting parties shall insert, not restraints expressed by the contract or implied by law, but such, more or less in number, as individual conveyancers shall from day to day prescribe, as proper to be imposed upon the lessee" (*V.* this passage cited *Hodgkinson* v. *Crowe*, 44 L. J. Ch. 682).

It would seem that the principles of *Church* v. *Brown* would prevent a lessor of land from insisting on a reservation of Timber, Minerals, or Game (*Sv*, GROUND GAME) unless such a reservation were expressly provided by the contract; and in view of those principles it is perhaps permissible to question the practical value of the suggestions of Bacon, V. C., towards the conclusion of his jdgmt in *Hodgkinson* v. *Crowe*, as to what clauses are customary in *Mining Leases* (L. R. 19 Eq. 591; 44 L. J. Ch. 238; 23 W. R. 406). The reservation in a Mining Lease of liberty to the lessor and his agents and workmen to enter and examine the workings can be insisted on as usual (*Blakesley* v. *Whieldon*, 1 Hare, 176; 11 L. J. Ch. 164); and in a Mining Lease, granted under a Power, a power enabling the lessee to build conveniently placed cottages for workmen is "NECESSARY or usual" (*Morris* v. *Rhydydefed Co*, 28 L. J. Ex. 119; 3 H. & N. 885).

A clause in a Colliery Lease in Derbyshire (or, *semble*, anywhere else) to entitle the lessee *to determine the lease* when the mine cannot be worked to a profit, is not usual (*Strelley* v. *Pearson*, 15 Ch. D. 113; 49 L. J. Ch. 406; 28 W. R. 752; 43 L. T. 155).

A proviso *suspending Rent* in case of Fire is not "usual" (*Doe* d. *Ellis* v. *Sandham*, 1 T. R. 705). Rent is not even suspended where the landlord has received compensation for injury by fire under a policy effected by him with an Insurance Co (*Leeds* v. *Cheetham*, 1 Sim. 146: *Lofft* v. *Dennis*, 1 E. & E. 474; 28 L. J. Q. B. 168).

The extract from Davidson above given (*Va*, Woodf. 128) shows that it is usual for a tenant to covenant to pay *Taxes* "except such as are expressly payable by the landlord"; *e.g.* as included in such exception, landlord's Property Tax (5 & 6 V. c. 35, ss. 73, 103), the proportionate part of Land Tax (38 G. 3, c. 5, s. 17; *Vth*, Woodf. 601), Sewers Rate (Woodf. 604), one half the Cattle Plague Rate (32 & 33 V. c. 70, s. 89), special Paving Rates under Metrop Man. Acts (*Allum* v. *Dickinson*, 52 L. J. Q. B. 190; 9 Q. B. D. 632), and Tithe Rent Charge (6 & 7 W. 4. c. 71, s. 80: *Parish* v. *Sleeman*, 29 L. J. Ch. 96; 1 D. G. F. & J. 326; 6 Jur. N. S. 385). Apt words in the agreement may throw all the foregoing landlord's taxes on the tenant, except the landlord's

Property Tax and Tithe Rent Charge. *V.* IMPOSED: NET: OUTGOING: TAXES.

As regards the covenant to *Repair*, the lessee is not (under an agreement for "usual" clauses) entitled to have introduced into the covenant the words, "damage by fire or tempest excepted" (*Sharp* v. *Milligan*, *No. 2*, 23 Bea. 419 : *Kendall* v. *Hill*, 6 Jur. N. S. 968: Woodf. 128), not even though it be proved that it is the practice in the locality for the landlord to insure (*Thorpe* v. *Milligan*, 5 W. R. 336); nor, *semble*, to have inserted the words, "reasonable wear and tear excepted" (27 S. J. 177).

Default in payment of rent (qy also Bankry of lessee, *Church* v. *Brown*, 15 Ves. 268: *Haines* v. *Burnett*, 27 Bea. 500; but certainly not the words "if any execution should issue against him," *Hyde* v. *Warden*, 47 L. J. Ex. 128; 3 Ex. D. 72) is the only "Usual" ground of FORFEITURE (*Hodgkinson* v. *Crowe*, 10 Ch. 622; 44 L. J. Ch. 680; 23 W. R. 885; s. 18 (7), Conv & L. P. Act, 1881); except where the use, or non-use, of the premises for particular purposes is of the essence of the bargain between the parties, *e.g.* a proviso in a lease of a public-house for re-entry in the event of the premises being used for carrying on another business than that of a licensed victualler, which is a "usual" proviso (*Bennett* v. *Wormack*, 6 L. J. O. S. K. B. 175; 7 B. & C. 627: 1 M. & R. 644: *Vh*, Seton, 2277). *Vf*, inf.

A covenant *against assigning*, or underletting, is not "Usual," not even if the stipulation be offered that the landlord's assent shall not be UNREASONABLY withheld (*Henderson* v. *Hay*, 3 Bro. C. C. 632: *Church* v. *Brown*, 15 Ves. 258: *Hodgkinson* v. *Crowe*, sup; *whle* over-rules *Haines* v. *Burnett*, 27 Bea. 500; 29 L. J. Ch. 289, *V.* per Jessel, M. R., *Hampshire* v. *Wickens*, 47 L. J. Ch. 245; 7 Ch. D. 555: *Va*, *Re Lander and Bagley*, 1892, 3 Ch. 41; 61 L. J. Ch. 707; 67 L. T. 521: *Bishop* v. *Taylor*, 60 L. J. Q. B. 556; 39 W. R. 542; 64 L. T. 529: *Wilcox* v. *Redhead*, 49 L. J. Ch. 539: *Buckland* v. *Papillon*, 2 Ch. 67); nor is it a "usual" clause which requires a lessee of a public-house to give notice to the lessor or his solicitor of an assignment of the lease (*Brookes* v. *Drysdale*, 3 C. P. D. 52; 26 W. R. 331).

Although the law is thus clear against the usuality of clauses restricting assignment, yet when a clause restricting assignment is in fact inserted in a lease and Forfeiture is prescribed to follow on its breach, that is not a forfeiture against which relief is provided by the Conv & L. P. Act, 1881 (s. 14, subs. 6; on *whv*, *Barrow* v. *Isaacs*, cited UNREASONABLY). No FINE is to be exacted on a License to Assign, unless expressly provided for in the lease (s. 3, Conv & L. P. Act, 1892).

Exceptionally, a lease may so distinctly indicate the requirement of a personal occupation by the lessee or other person as to imply a Condition against underletting (*Kehoe* v. *Lansdowne*, 62 L. J. P. C. 101).

A question has been raised (27 S. J. 177) as to whether a covenant

obliging the *Lessee to Insure* could be insisted on as "Usual." The opinion there expressed is that it could: Mr. Davidson says that "probably" it could not (Prec., 3 ed., "Leases," Vol. 5, pt. 1, p. 53); and to that effect is *Wilcox* v. *Redhead*, sup.

Probably the most difficult question on what "Usual" clauses might be insisted on in leases, would arise as to *Restrictions* prohibiting the absolutely unfettered use and enjoyment of the premises during the term at the free will of the lessee. It is common learning to say that, generally speaking, no such restrictions could be insisted on (*Church* v. *Brown* and *Hodgkinson* v. *Crowe*, sup). But where, as previously suggested, the use, or non-use, of the premises for particular purposes is of the essence of the bargain between the parties, there it would be proper and "usual" to provide for such use, or against such non-use. Such a doctrine would seem to be well within the meaning of "special circumstances" referred to in the extract given above from Davidson and the commentary of the M. R. thereon in *Hampshire* v. *Wickens*. No doubt the application of the doctrine just enunciated would, in many cases, be difficult. But in *Bennett* v. *Wormack* (sup) it was held that a lessor of a PUBLIC HOUSE is entitled, as a "usual" clause, to have a proviso forfeiting the lease in case of the premises being used for a business other than that of a licensed victualler; and *à fortiori* he would be entitled to a *covenant* against such a use; and if so, why should he not be entitled to a similar covenant with an accompanying proviso for re-entry for the purpose of ensuring that the business of a licensed victualler shall be carried on uninterruptedly during the whole of the term and the necessary certificates and licenses duly taken out by the lessee? This would be only the completion of the rule of which the other part was established by *Bennett* v. *Wormack*. Without this further provision a lessee might destroy or imperil that part of the property — its character of monopoly as licensed premises — which is the subject-matter of the lease, and the upholding of which may fairly be regarded as of the essence of the bargain between the parties. But it is not a "usual" covenant, even in a Public House lease, which requires the lessee to reside on the premises and personally conduct the business (*Re Lander and Bagley*, sup).

But besides public-houses, may not there be other property the peculiar characteristics of which would as much be entitled to protection? Thus in *Hyde* v. *Warden* (47 L. J. 121; 3 Ex. D. 72: *Vth*, *Reeve* v. *Berridge*, 20 Q. B. D. 523) a covenant not to mow meadow land more than once a year was held not unreasonable or unusual: *Vf*, as to Farming Leases, *Bell* v. *Barchard*, 16 Bea. 8.

Observe, however, that in *Midgley* v. *Smith* (W. N. (93) 120) Romer, J., held that covenants by a lessee (1) prohibiting other erections than those standing at the date of the lease, (2) prohibiting user of the house as an asylum, dispensary, or other similar institution, or otherwise than as a private house, (3) for registering assignments with the lessor and paying

a fee, and (4) for rebuilding in case of fire to the satisfaction of the lessor's architect, were unusual and unreasonable covenants in the lease of a detached residence with a garden, situate at Putney.

Conditions in RESTRAINT OF TRADE are, generally speaking, not "usual" (*Propert* v. *Parker*, 3 My. & K. 280: *Van* v. *Corpe*, Ib. 269; 6 L. J. Ch. 208: *Wilcox* v. *Redhead*, 49 L. J. Ch. 539: *Wilbraham* v. *Livesey*, 18 Bea. 206); but, as was suggested in the last-named case, supposing a house be situate in the most fashionable part of London, with circumstances under which to carry on trade in it would be seriously to diminish its value; would not that be *pro tanto* destroying the thing leased, against which the lessor would be entitled to a covenant and clause of forfeiture as a fair and "usual" term of the contract? So, too, of premises where a business of very long standing has been carried on, and the continuance of which business on the premises demised would be fairly collected as of the essence of the bargain. So, too, perhaps, where premises are specially and exclusively adapted for a special kind of occupation, that kind of occupation ought to be preserved by proper "usual" clauses. So, again, where the continuance of workings goes to the preservation of the thing demised,—*e.g.* pumping water from a mine,—that would seem of the essence of the bargain which the lessor should be able to insist on providing for (*V. Strelley* v. *Pearson*, 15 Ch. D. 113; 49 L. J. Ch. 406; 28 W. R. 752; 43 L. T. 155).

It may be added that an agreement for a Lease, which stipulates that the lessee is "*not to use*" the premises for other than a specified trade, and providing for all usual covenants, does not warrant the insertion in the Lease of an affirmative covenant by the lessee that he will *carry on* such trade during the term (*Doe* d. *Bute* v. *Guest*, 15 M. & W. 160).

Vf, as to usual covenants in Leases, Dart, 191, 192: Woodf. 127–131, 704: Redman, 147–151: Fawcett, 150: COMMON: in *Mining* Leases, MacS. 196, 197.

On an **Assignment of a Lease**, Usual Covenants by the Assignor are given in s. 7 (*V.* subs. 1, B and D), Conv & L. P. Act, 1881; and by the Assignee, that he will thenceforth pay the rent and fulfil the lessee's covenants thenceforth to be performed or observed, and keep the Assignor and his representatives indemnified and harmless therefrom.

Leases under Powers.—Where the Power requires that "the Usual and Reasonable covenants" shall be inserted, the lease must contain such covenants as were contained in leases of the same property at the time of the creation of the Power; otherwise the Power will not be well executed (*Doe* d. *Egremont* v. *Stephens*, 13 L. J. Q. B. 350; 6 Q. B. 208); but, there the court "inclined to think" that such words in a Power as "usually so leased," would not prevent the joining in one lease of tenements that had generally been let separately, provided all the tenements were comprised within the Power. *Vf*, *Doe* d. *Egremont* v. *Williams*, 17 L. J. Q. B. 154; 11 Q. B. 688: Woodf. 218, 219.

As to "Usual" clauses in **Underleases**; *V. Williamson* v. *Williamson*, 43 L. J. Ch. 738; 9 Ch. 729: *Haywood* v. *Silber*, 30 Ch. D. 404; 34 W. R. 114.

As regards **Deeds** in general; what is "Usual" has (when the point is uncovered by authority) to be determined "according to the practice and customs of conveyancers in such cases" (per Kay, J., *Hart* v. *Hart*, 50 L. J. Ch. 702; 18 Ch. D. 670; 30 W. R. 8: *Doe* d. *Jersey* v. *Smith*, cited ante, p. 2155). In *Hart* v. *Hart*, it was held that the *dum casta* clause, in a *Deed of Separation* between husband and wife securing an allowance to the latter, is not "usual" (*Va*, as to practice in Matrimonial Causes, *Gandy* v. *Gandy*, 51 L. J. P. D. & A. 41; 7 P. D. 168, on *whcv*, *Bishop* v. *Bishop*, 1897, P. 138; 66 L. J. P. D. & A. 69; 76 L. T. 409: *Vf*, *Harrison* v. *Harrison*, 56 L. J. P. D. & A. 76; 12 P. D. 130; 57 L. T. 119; 35 W. R. 703: *Lander* v. *Lander*, 1891, P. 161; 60 L. J. P. D. & A. 65; 64 L. T. 120; 39 W. R. 416: *Wood* v. *Wood*, 1891, P. 272; 60 L. J. P. D. & A. 66; 64 L. T. 586: *Kettlewell* v. *Kettlewell*, 1898, P. 138; 67 L. J. P. D. & A. 16; 77 L. T. 631: *Smith* v. *Smith*, 1898, P. 28; 67 L. J. P. D. & A. 54; 78 L. T. 28. *Sv*, *Edwards* v. *Edwards*, 1894, P. 33; 63 L. J. P. D. & A. 62; 70 L. T. 39); but a clause that a trustee shall be found for the wife "who will enter into such covenants as in such a deed a trustee usually enters into on behalf of the wife with the husband" (*Hart* v. *Hart*, sup) is "usual." *V.* DUM.

A clause providing for a three months' notice prior to sale is "usual" in a **Mortgage** (*Craddock* v. *Rogers*, 53 L. J. Ch. 968): *Va*, s. 20, Conv & L. P. Act, 1881.

As to Usual Clauses in **Partnership Articles**; *V.* Lindley, P. 412 *et seq*. The cases there digested, though full of valuable suggestion as to what ought to be inserted in Partnership Articles, hardly lay down rules for determining what clauses would be judicially inserted under an agreement stipulating for "usual" clauses. Still they throw much light even on that difficult question.

The following are Usual *Powers* in **Settlements** pursuant to Articles: — Leasing for 21 years: Sale and Exchange: Maintenance and Advancement (but not HOTCHPOT): Varying Securities: Appointment of New Trustees: Partition where Property joint: Leasing Mines: Building Leases where the land is fit for building, unless mere occupation Leases for (say) 21 years have been expressly prescribed and then, on the principle *expressio unius exclusio alterius*, building leases would be excluded (Lewin, 137, 138 and cases there cited). Powers to Jointure or other powers to confer personal privileges would *not*, generally speaking, be "usual" (Ib. 137). *Va*, Settled Land Act, 1882, ss. 3, 4, 6 *et seq*; Conv & L. P. Act, 1881, ss. 42, 66: *Vth*, Lewin, 139, 140. *Vf*, Macqueen on Husband and Wife, 3 ed., 240.

In a Re-Settlement of Entailed Estates, *semble*, a Name and Arms Clause (*V.* NAME) is not "usual" (*Craven* v. *Yorke*, 101 Law Times, 327).

In an OPEN Contract to sell a Lease, and even where the liability of the lessee to deliver up in good repair is excluded in the case of "Fire," it is not "usual" to further restrict such liability by adding the words "or other Casualty" (*Crosse* v. *Morgan*, 60 L. T. 703; 37 W. R. 543).

"Usual and Proper" Books of Account; *V.* BUSINESS TRANSACTIONS.

V. PROPER: USUALLY.

USUAL ACCOUNT. — Usual Account by, and as against, a Mortgagee in Possession; *V. Mayer* v. *Murray*, 47 L. J. Ch. 605; 8 Ch. D. 424: Fisher, ss. 1764, 1765.

USUAL AGENCY TERMS. — "Usual Agency Terms," as between a Country Solicitor and his London Agent, means, that "the London Agent is entitled to be paid by the Country Solicitor all his disbursements out of pocket. But there are a number of other charges which are known as 'Profit Charges,' and the question has been raised whether the London Agent is entitled to half the profit made by the Country Solicitor, or only to half the 'Profit Charges.' We have consulted Mr. Ryland, the Taxing Master, and he has told us that the London Agent is only entitled to half the 'Profit Charges,' *i.e.* the charges which do not involve any expenditure by him, and that the London Agent has nothing to do with the profit made by the Country Solicitor" (per Cotton, L. J., *Ward* v. *Lawson*, 38 W. R. 300; 43 Ch. D. 353; 59 L. J. Ch. 323: *V.* 34 S. J. 190, 191). *Vf*, CLIENT.

USUAL AND CUSTOMARY MANNER. — "Where by the terms of a Charter-Party the ship is to *Deliver* the Cargo 'in the Usual and Customary Manner,' the obligation which attaches is only that the merchant and shipowner shall each use REASONABLE despatch in performing his part, and there is no implied contract that the discharge shall *at all events* be performed in the time usually occupied at the particular port. Therefore, where, owing to a threatened bombardment, the authorities at the port of discharge refused for several days to allow the discharge of cargo to proceed, so that during those days neither party to the contract could perform his part of the contract, it was held that the loss from delay must fall on the shipowner" (1 Maude & P. 409, citing *Ford* v. *Cotesworth*, L. R. 4 Q. B. 127; 5 Ib. 544; 38 L. J. Q. B. 52; 39 Ib. 188; 9 B. & S. 559; 10 Ib. 991: *Cunningham* v. *Dunn*, 3 C. P. D. 443; 48 L. J. C. P. 62): *Vf*, *Postlethwaite* v. *Freeland*, 5 App. Ca. 599; 49 L. J. Ex. 630: *Good* v. *Isaacs*, 1892, 2 Q. B. 555; 61 L. J. Q. B. 649; 67 L. T. 450; 40 W. R. 629: *The Jaederen*, 1892, P. 351; 61 L. J. P. D. & A. 89: Carver, s. 614.

"*Load* in the usual and customary manner," seems to apply only to the mode of loading when the vessel has arrived at the loading berth, and to have no reference to a detention outside the loading place (1 Maude & P. 408, citing *Tapscott* v. *Balfour*, L. R. 8 C. P. 46; 42 L. J. C. P. 16:

per Pollock, C. B., *Lawson* v. *Burness*, 1 H. & C. 400: per Brett, L. J., *Nelson* v. *Dahl*, 12 Ch. D. 588: *Va*, *Kay* v. *Field*, 8 Q. B. D. 598; 10 Ib. 241; 52 L. J. Q. B. 17: *The Alne Holme*, 1893, P. 173; 62 L. J. P. D. & A. 51; 68 L. T. 862).

V. CUSTOMARY: DEMURRAGE: *Sv*, USUAL DESPATCH.

USUAL AND MOST APPROVED WAY. — A compliance with a covenant to work *Mines* "in the usual and most approved way" will not exonerate from responsibility on other grounds for letting down the Surface (*Davis* v. *Treharne*, 6 App. Ca. 460; 50 L. J. Q. B. 665; 29 W. R. 869).

USUAL APPROACH. — *V.* USUAL STREETS.

USUAL BUSINESS. — As to what is the "Usual Business of an Hotel and Tavern"; *V. Simpson* v. *Westminster Palace Hotel Co*, 29 L. J. Ch. 561; 2 D. G. F. & J. 141.

USUAL CERTIFICATE. — "Usual Certificate," in a Patent Action; *V. Bovill* v. *Hadley*, 17 C. B. N. S. 435.

USUAL COLLIERY GUARANTEE. — This phrase, in a Charter-Party and as determining the time for the commencement of loading, means, the Guarantee in use at the place where the contract is to be performed (*Shamrock S. S. Co* v. *Storey*, 81 L. T. 413; 5 Com. Ca. 21); such a COLLIERY GUARANTEE being an engagement by a colliery proprietor as to the time in which and the conditions under which he will load a ship with coal.

USUAL COVENANTS: CLAUSES. — *V.* USUAL.

USUAL DATE. — In a Merchant's undertaking to give Acceptances at the "Usual Date," it was held that 6 months acceptances were not unusual, the jury not having found the contrary (*Laing* v. *Barclay*, 1 B. & C. 398; 1 L. J. O. S. K. B. 135).

USUAL DESPATCH. — "Where Charterers contracted to load a cargo of coals on board 'with Usual Despatch,' it was held that they were bound to load the vessel with the usual despatch of persons who have a cargo ready for loading at the port; and that they were liable for a delay caused by a severe frost which rendered unnavigable the canal along which coals were to be brought" (1 Maude & P. 317, citing *Kearon* v. *Pearson*, 7 H. & N. 386; 31 L. J. Ex. 1: *Va*, *Adams* v. *Royal Mail Steam Packet Co*, 5 C. B. N. S. 492; 28 L. J. C. P. 33; 7 W. R. 9). *Sv*, USUAL AND CUSTOMARY MANNER: CUSTOMARY.

"To be loaded with the Usual Despatch *of the Port*"; *V. Ashcroft* v. *Crow Co*, 43 L. J. Q. B. 194; L. R. 9 Q. B. 540.

Vh, *Postlethwaite* v. *Freeland*, 5 App. Ca. 599; 49 L. J. Ex. 630: *Elliott* v. *Lord*, 52 L. J. P. C. 23; 48 L. T. 542; 5 Asp. 63.

USUAL HOURS. — "Usual Hours of Morning and Afternoon Service"; *V.* AFTERNOON.

USUAL LLOYD'S CONDITIONS. — *V. Ide* v. *Chalmers*, 5 Com. Ca. 212.

USUAL MEDICAL ATTENDANT. — In effecting a Life Policy, "Usual Medical Attendant" implies more than one attendance and means, the Medical Man best acquainted by experience with the constitution of the proposed life; therefore, if the person has been attended by a medical man for several years in serious disorders and afterwards takes another who has only seen him once or twice, the giving the name of the latter as his "Usual Medical Attendant," without mentioning the circumstances under which he was attended by the other, is a wrong answer and will vitiate the policy (*Huckman* v. *Fernie*, 7 L. J. Ex. 163; 3 M. & W. 505; 2 Jur. 444). *Vf, Morrison* v. *Muspratt*, 4 Bing. 60.

V. MEDICAL: FAMILY PHYSICIAN.

USUAL PLACE OF ABODE. — A clause of Forfeiture in case of the devisee not making the mansion-house "his Usual and Common Place of Abode and Residence," is not void for uncertainty (*Wynne* v. *Fletcher*, 24 Bea. 430). *V.* RESIDE.

"Last or most Usual Place of Abode," s. 1, Sum Jur Act, 1848, 11 & 12 V. c. 43; *V. R.* v. *Smith*, L. R. 10 Q. B. 604: LAST.

"Place of Abode"; *V.* PLACE, p. 1489.

USUAL PLACE OF RELIGIOUS WORSHIP. — By s. 32, Turnpike Roads Act, 1822, 3 G. 4, c. 126, persons "going to or returning from his, her, or their, Usual Place of Religious Worship, tolerated by law on Sundays," were exempted from Turnpike Toll; a Primitive Methodist Minister had assigned to him the Sunday and other services of a district comprising the parish of F.; the days on which, and the places at which, he was to attend were fixed at regular quarterly meetings of the Methodists and printed on a "Plan"; according to this Plan the Minister had to preach at F. on three Sundays each quarter, and elsewhere on other Sundays; held, that in going to F., on the Sundays indicated in the Plan, to conduct the Services there, the Minister was going to his "Usual Place of Religious Worship," within the exemption (*Smith* v. *Barnett*, L. R. 6 Q. B. 34; 40 L. J. M. C. 15; 23 L. T. 746: *Vf, Lewis* v. *Hammond*, cited PAROCHIAL CHURCH). The fact of the carriage being driven by another person than the Minister would not, *semble*, subject the carriage to toll (28 J. P. 735: *Layard* v. *Ovey*, 37 L. J. M. C. 148; L. R. 3 Q. B. 415; 18 L. T. 632; 32 J. P. 293).

V. PUBLIC RELIGIOUS WORSHIP.

USUAL POWERS. — *V.* USUAL.

USUAL PROFESSIONAL CHARGES. — *V.* PROFESSIONAL CHARGES.

USUAL RENT. — "Usual RENT," generally means, usual with reference to the subject-matter of the demise (*Doe* d. *Newnham* v. *Creed*, cited MOST RENT).

V. ANCIENT RENT.

USUAL STREETS. — "Usual Streets or Ways of Approach," in a covenant in RESTRAINT OF TRADE; *V. Atkyns* v. *Kinnier*, cited DISTANCE, at end.

USUALLY. — A Power to Lease such lands as "theretofore usually *demised*," or "so as such or more rent shall be reserved as the same lands are *now let at*," will not as a rule apply to lands not previously leased (Watson Eq. 868). "The words 'Usually or Accustomably Demised' may have two senses; the one signifying the frequent or repeated act of leasing; the other, the common continuance of land in lease, though it has not been more than once demised, as in the case of lands leased for 500 years long since. And this is the more common acceptation of the words 'usually demised'; though, in a literal sense, land once let is not land usually demised. Land twice demised is clearly included in that term" (Platt, 411, 412, citing *Tustian* v. *Roper*, Jo. T. 27; Vaugh. 28); "though lands let by virtue of a contract from year to year for 3 years, cannot be said to be usually demised, because it is but one lease, though renewable every year" (1 Platt, 411, 412, citing 2 Rol. Ab. 262, pl. 14: *Vf*, Sug. Pow. 730–732).

"Upon the construction of the words 'Usually *demised*,' it has been determined that they embrace every species of demise — at will, from year to year, or for years, or lives, and whether granted by parol or by deed, by copy of court-roll, covenant to stand seised, or any other instrument: but whatever the instrument, it must operate as a lease in the sense of the term 'demise' in the given power" (Sug. Pow. 730, and cases there cited).

Rights "usually *enjoyed*"; *V.* PASTURAGE: "Usually held and enjoyed"; *V.* HELD.

"Usually *rated*," s. 27, Highway Act, 1835, 5 & 6 W. 4, c. 50, means such premises as have been usually actually rated in the parish for which the Rate is made (*R.* v. *Rose*, 13 L. J. M. C. 155; 6 Q. B. 153), in *whe* "rated" was kept to its literal meaning as distinguished from "rateable." *Vf*, *R.* v. *Randall*, 4 E. & B. 564.

"Usually *sold*," s. 4, Bread Act, 1836, 6 & 7 W. 4, c. 37, refers to the usage at the date of the statute (*Aerated Bread Co* v. *Grigg*, cited FRENCH BREAD).

USUFRUCTUARY. — "One that hath the use and reaps the profit of anything" (Cowel).

USURPATION. — "Usurpation hath two significations in the common law: one, when an estranger that no right hath presenteth to a church, and his clerke is admitted and instituted, hee is said to bee an usurper, and the wrongfull act that he hath done is called an usurpation.

"Secondly, when any subject doth use, without lawfull warrant, royal franchises, he is said to usurpe upon the king those franchises" (Co. Litt. 277 b).

Vh, Phil. Ecc. Law, 345–350. *Cp*, INTRUSION.

USURPED POWER. — "'Usurped Power,' may have a great variety of meanings according to the subject-matter" (per Wilmot, C. J., *Drinkwater* v. *London Assrce*, 2 Wils. 363; Park, 961–965): in an Exception to a Fire Policy of "Invasion by Foreign Enemies, or any Military or Usurped Power," it means, "an invasion of the kingdom by foreign enemies to give laws and usurp the government thereof, or an internal armed force in REBELLION assuming the power of government and making laws and punishing for not obeying those laws" (per Bathurst, J., *Ib.*); it was accordingly there held (Gould, J., diss.) that a tumultuous and destructive rising by a mob to reduce the price of provisions, was not a "Usurped Power" within the Exception.

For some American cases hereon, *V.* Bunyon on Fire Insurance, 4 ed., 51, 52.

Cp, CIVIL COMMOTION.

USURY. — "'Usury,' is a gaine of anything above the principall, or that which was lent, exacted only in consideration of the loane whether it bee Corne, Meat, Apparell, Wares, or such like, as Money" (Termes de la Ley, *whv* for remarks on 13 Eliz. c. 8).

The statutes against Usury were repealed by 17 & 18 V. c. 90, which gives a list of them. *Vh*, Bellot & Willis, on Unconscionable Bargains with Money Lenders.

V. ASSURANCE. *Vh*, 12 Encyc. 395–397.

UTENSIL. — "'Utensil,' anything necessary for our use and occupation: Household Stuffe" (Cowel).

"By a devise of all Utensils, it is agreed that plate and jewels do not pass" (Touch. 447, citing *Dame Latimer's Case*, 1 Dyer, 59 b, pl. 15: *Va*, Wms. Exs. 1051). *Vf*, *Fitzgerald* v. *Field*, cited IN OR ABOUT.

Trade Fixtures (removable if belonging to the tenant, *Elwes* v. *Maw*, cited FIXTURES) demised with a Paper Mill and used in the manufacture of paper, were held not "Utensils" within s. 27, 34 G. 3, c. 20, whereby "the paper . . . and all the Materials and Utensils for the making thereof," in the custody of a paper maker, became liable to the (abolished) Paper Duty (*A-G.* v. *Gibbs*, 3 Y. & J. 333).

UTILITARIAN PURPOSES. — A bequest to be applied to "Utilitarian Purposes," is void for uncertainty (*Re Woodgate*, 2 Times Rep. 674).

UTILITY. — "'Utility,' in Patent Law, does not mean either abstract utility, or comparative or competitive utility, or commercial utility. It was described by Grove, J., in *Young* v. *Rosenthal* (1 Pat. Ca. 29, 34), as meaning, an Invention 'better than the preceding knowledge of the trade as to a particular fabric.' I adopt this definition if 'better' be understood as meaning, better in some respects and not, necessarily, better in every respect; so that, *e.g.*, an article which is good though not so good as that previously known but which can be produced more cheaply by another process, is better in that it is better in point of Cost although not so good in point of Quality" (per Buckley, J., *Welsbach Co* v. *New Incandescent Co*, 1900, 1 Ch. 843; 69 L. J. Ch. 344; 82 L. T. 293; 48 W. R. 362; 17 Pat. Ca. 237).

V. GENERAL UTILITY.

UTLAND. — Tenemental land (Elph. 627, citing Spelm. *Inland*: Cowel).

UTMOST. — "Utmost *Efforts*" to obtain payment from Principal Debtor before resort to Surety; *V. Holl* v. *Hadley*, 4 L. J. K. B. 126; 4 N. & M. 515; 2 A. & E. 758.

"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 endeavours to continue the house open as a Public-House"; *V. Linder* v. *Pryor*, 8 C. & P. 518, stated Woodf. 713.

"Best endeavours to extend the custom and business" of a Public-House; *V. Moore* v. *Robinson*, 48 L. J. Q. B. 156, 158.

"Best endeavours" to complete works by a stated time; *V. Vickers* v. *Overend*, 7 H. & N. 92; 30 L. J. Ex. 388.

"Utmost endeavours" to obtain Renewal of a Lease; *V. Simpson* v. *Clayton*, 8 L. J. C. P. 59; 4 Bing. N. C. 758; 6 Sc. 469; 1 Arnold, 299.

UTTER. — To "utter" a False Document is to part with it, or tender it, or use it in some way, to get money or other benefit by means of it; and it is immaterial who is to have the money or get the benefit (*R.* v. *Shukard*, Russ. & Ry. 200: *R.* v. *Radford*, 1 Den. 59: *R.* v. *Ion*, 21 L. J. M. C. 166; 2 Den. 475). *Vf*, Arch. Cr. 679.

As to uttering Counterfeit, Base, or Foreign, Coin; *V.* 24 & 25 V. c. 99, ss. 9–16, 20–23, 30. The phrase in these sections is "tender, utter, or put off"; but though that seems to show that to "tender" was not to "utter," yet it was always determined that an allegation of "uttering and putting off" was satisfied by evidence of the tender of the coin

(*R.* v. *Welsh*, T. & M. 409; 2 Den. 78). In *R.* v. *Page* (8 C. & P. 122) Abinger, C. B., held that to give away counterfeit coin was not a criminal uttering; but that ruling was questioned in *R.* v. *Anon.* (1 Cox C. C. 250), in *whlc* the actual decision was that it was a criminal uttering for a man to give counterfeit coin to a woman as her payment for letting him have connexion with her. *Vf*, as to *R.* v. *Page*, *R.* v. *Ion*, 2 Den. 484. *V.* COUNTERFEIT COIN.

Vf, Arch. Cr. 924.

UTTERLY VOID.—*V.* VOID.

VACANCY—VACATE

VACANCY.—*V.* CASUAL: DEFAULT, at end.

Quà Church Patronage (Scot) Act, 1874, 37 & 38 V. c. 82, "'Vacancy' and 'Vacant' shall include and refer to the occasion of the appointment of an Assistant and Successor, as well as the occasion of an ordinary vacancy" (s. 9).

VACANT.—*Bona Vacantia*, are GOODS which belong to the first occupier or finder, being those "in which no one else can claim a property" (1 Bl. Com. 298). *V.* BONA.

The site of old buildings recently pulled down (the rights attaching to which buildings are properly reserved), is not "Vacant *Ground*" as read into s. 75, Metrop Man. Act, 1862 (*Auckland* v. *Westminster Bd of Works*, 41 L. J. Ch. 723; 7 Ch. 597: *Vh*, *Barlow* v. *St. Mary Abbotts*, 53 L. J. Ch. 899; 55 Ib. 680; 27 Ch. D. 362; 11 App. Ca. 257; 55 L. T. 221; 34 W. R. 521; 50 J. P. 691: *Gilbart* v. *Wandsworth Bd of Works*, 60 L. T. 149); *secus*, of a Forecourt or Back Garden not part of the actual site of the old buildings which have been pulled down when an intention is shown not to rebuild on their site (*London Co. Co.* v. *Pryor*, 1896, 1 Q. B. 465; 74 L. T. 234; 65 L. J. M. C. 89; 60 J. P. 292).

V. EMPTY: OCCUPATION.

As to what is "Vacant *Possession*" within R. 9, Ord. 9, R. S. C.; *V.* Ann. Pr.: Woodf. 848: Redman, 557: Fawcett, 524.

"Vacant Possession" to be given on COMPLETION, in a V. & P. Contract, means ACTUAL, or Physical, Possession, as distinguished from merely letting the purchaser into the receipt of the rents and profits: *V.* POSSESSION, p. 1514.

VACARIA.—"A void place, or waste ground" (Jacob).

Cp, VACCARIA.

VACATE.—A Building Socy's STATUTORY Receipt will "vacate the Mortgage, or Further Charge, or Debt," s. 43, 37 & 38 V. c. 42, *i.e.* it discharges the security so entirely that (in the absence of fraud, *V. Lloyd's Bank* v. *Bullock*, 1896, 2 Ch. 192; 65 L. J. Ch. 680) the Socy cannot re-open the account, even though a good deal too little has been paid by its borrowing member (*Harvey* v. *Municipal Bg Socy*, 53 L. J. Ch. 1126; 26 Ch. D. 273; 32 W. R. 557; 51 L. T. 408: *London, &c, Bg*

Socy v. *Angell*, 65 L. J. Q. B. 194: *Sv, Farmer* v. *Smith*, 28 L. J. Ex. 226; 4 H. & N. 196: *Sparrow* v. *Farmer*, 28 L. J. Ch. 537; 26 Bea. 511).

VACATING DIRECTORS. — *V.* DIRECTOR.

Where the Articles of a Co provide that a Director vacates his office if he be ABSENT for a stated period, that does not include an involuntary absence, *e.g.* one caused by illness; the more reasonable construction is that the absence must be voluntary or deliberate (per Wright, J., *Re London & Northern Bank*, W. N. (1900) 114).

VACATION. — The statute 28 H. 8, c. 11, s. 3, which gives the profits of every BENEFICE, "during Vacation" to the next Incumbent, meets only "the case of a Living actually vacant, vacated either by death, by resignation, or by deprivation," and does not apply to a Living "voidable and perhaps actually void, yet not in fact vacant, the Rector still continuing in possession" (*Halton* v. *Cove*, 1 B. & Ad. 538).

"Time of Vacation," quà the Courts, held to mean, such time as the Court is not sitting (*Walsh* v. *Grier*, Ir. Rep. 4 Eq. 303: *Blake* v. *Blake*, 8 Ib. 505). *Vh*, Ord. 63, R. S. C.

Quà Cambridge University Act, 1856, 19 & 20 V. c. 88, "'Vacation' shall be taken to include that part of Easter Term which falls after the division of term" (s. 50).

VACCARIA. — "By *vaccaria* in law is signified a dairy-house, derived of *vacca*, the cow. In Latin, it is *lactarium*, or *lactitium*; and *vaccarius* is mentioned in Domesday" (Co. Litt. 5 b). Also "a house to keep cows in" (Cowel).

Cp, VACARIA.

VACCINATION. — *V.* REASONABLE EXCUSE.

VAGABOND. — "'Vagabonds' are idle and unprofitable men" (Termes de la Ley).

"The idea of leading a wandering and vagabond life, is not now at all an ingredient in the description of a ROGUE AND VAGABOND," within the Vagrancy Act, 1824, 5 G. 4, c. 83 (per Cleasby, B., *Monck* v. *Hilton*, 46 L. J. M. C. 168). It seems to have lost that meaning as long ago as the time of Richard 2 (*V.* FAITOUR); so Cowel says "'Vagabond' is one that wandreth about, having no certain dwelling; Rogues, Vagabonds, and sturdy Beggars are all one"; they are all classed together in the definition clause, s. 5, 14 Eliz. c. 5.

VAGUE. — An Assignment or Contract is not "Vague" merely because it is indefinite, or uncertain, or very wide in its terms; "Vague," in this connection, means that which is incapable of being ascertained when the instrument comes to be enforced.

Language has been used with regard to Assignments of, and Contracts relating to, future property "which tends to confuse the idea of Vagueness in the contract itself, with that sort of necessary uncertainty which, at the time when the contract is made, is more or less involved in the idea of futurity. 'Vagueness' is a misleading term. A contract may be too vague *in itself* to be understood; and on that ground it is enforceable neither at law nor in equity. But in the case of a contract to assign future property when the money has been paid, if, when *at the time of the contract coming to be enforced*, the property has fallen into the possession of the assignor, and is of such a character and is sufficiently ascertained to admit of the contract being enforced in equity, there is no necessary Vagueness" (per Bowen, L. J., *Re Clarke, Coombe* v. *Carter*, 56 L. J. Ch. 984; 36 Ch. D. 348: *Vf, Tailby* v. *Official Receiver*, 58 L. J. Q. B. 75; 13 App. Ca. 523, espy jdgmt of Ld Herschell: *Re Kelcey*, cited ALL, p. 69).

V. UNCERTAIN.

VALID. — *V.* VOID.

If a statute makes a document "valid and BINDING," it is valid and binding in all its parts and no objection can be taken to it on the ground of remoteness or uncertainty (*Manchester Ship Canal Co* v. *Manchester Racecourse Co*, 1900, 2 Ch. 352). *Cp*, OBLIGATORY.

VALID CONTRACT. — As to what is a Valid Contract for the Sale of Realty so as to effect a CONVERSION; *V.* per Jessel, M. R., *Lysaght* v. *Edwards*, 45 L. J. Ch. 559; 2 Ch. D. 507.

VALIDITY. — *V.* REGULARITY.

V. & P. Summons on a matter "not being a question affecting the Existence or Validity of the Contract," s. 9, V. & P. Act, 1874; *V. Re Jackson and Woodburn*, 57 L. J. Ch. 243; 37 Ch. D. 44; 57 L. T. 753; 36 W. R. 396: *Re Wallis and Barnard*, 68 L. J. Ch. 753; 1899, 2 Ch. 515; 81 L. T. 382; 48 W. R. 57: *Re Hughes and Ashley*, cited WAYS.

VALUABLE. — A "Valuable CONSIDERATION" may be money or money's worth; and in this connection, "Valuable" means real, as distinguished from a consideration that is merely illusory or nominal; but it does not mean equivalent. A Debt not yet payable may be a Valuable Consideration (*Davies* v. *Bolton*, 1894, 3 Ch. 678; 63 L. J. Ch. 743; 71 L. T. 336; 43 W. R. 171). Marriage generally is a Valuable Consideration for a Settlement; but not necessarily so if contracted with the settlor's concubine, nor, indeed, in any case where there is evidence of an intent, of which the wife is cognisant, to make the celebration of marriage part of a scheme to protect property against creditors (*Colombine* v. *Penhall*, 1 Sm. & G. 228: *Bulmer* v. *Hunter*, 38 L. J. Ch. 543; L. R. 8 Eq. 46: *Re Pennington*, 5 Morr. 216).

As to what is a "Valuable Consideration," within s. 47 (1), Bankry Act, 1883; *V. Re Tetley*, 66 L. J. Q. B. 111; 75 L. T. 166; 3 Manson, 226, 321: *Vh*, VOID.

As to what is a "Valuable Consideration," within 13 Eliz. c. 5, 27 Eliz. c. 4; *V.* GOOD: *Bayspoole* v. *Collins*, 6 Ch. 228; 40 L. J. Ch. 289; 25 L. T. 282; 19 W. R. 363: May on Fraudulent Conveyances, Part 4, ch. 1.

"Good or Valuable Consideration given"; *V.* CONTRACT, p. 391: GOOD.

Marriage is not a "Valuable Consideration in *money or money's worth*" within s. 17, Sucn Dy Act, 1853 (*Floyer* v. *Bankes*, 3 D. G. J. & S. 306; 33 L. J. Ch. 1). *Vf*, MONEY'S WORTH: PECUNIARY CONSIDERATION.

A Conveyance for a "Valuable Consideration actually PAID," s. 2, Charitable Uses Act, 1735, 9 G. 2, c. 36, connotes that "the consideration must be paid by the person for whose benefit the conveyance is made" (*Doe* d. *Preece* v. *Howells*, 2 B. & Ad. 744).

Quà *Bills of Exchange Act*, 1882,

"(1) Valuable Consideration for a Bill, may be constituted by —

"(*a*) Any consideration sufficient to support a simple contract;

"(*b*) An antecedent debt or liability. Such a debt or liability is deemed Valuable Consideration whether the Bill is payable on demand, or at a future time.

"(2) Where value has at any time been given for a Bill, the holder is deemed to be a holder for value as regards the Acceptor and all parties to the Bill who became parties prior to such time.

"(3) Where the holder of a Bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien" (s. 27); so, of a Promissory Note (s. 89, Ib.).

V. BONÂ FIDE: GOOD: FURTHER: FULL CONSIDERATION: FRAUDULENT ASSURANCE.

"Valuable" *Property*, effect of the phrase in Particulars of Sale; *V. Waddell* v. *Woolfe*, 43 L. J. Q. B. 138; L. R. 9 Q. B. 515.

Rights or Interests "subsisting and valuable"; *V.* RIGHTS.

"Valuable SECURITY," quà Larceny Act, 1861, 24 & 25 V. c. 96, includes, "any Order, Exchequer Acquittance, or other Security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any Public Stock or Fund (whether of the United Kingdom or of Great Britain or of Ireland or of any Foreign State), or in any Fund of any Body Corporate, Company, or Society (whether within the United Kingdom or in any Foreign State or Country), or to any Deposit in any Bank; and shall also include, any Debenture, Deed, Bond, Bill, Note, Warrant, Order, or other Security whatsoever, for money or for payment of money (whether of the United Kingdom, or of Great Britain or of Ireland, or of any Foreign State), and any Document

of Title to Lands or Goods as hereinbefore defined" (s. 1). As so defined, a "Valuable Security" "is one on which money is payable irrespective of any contingency" (per Cockburn, C. J., *R.* v. *Tatlock*, 46 L. J. M. C. 11; 2 Q. B. D. 163), and accordingly he, and Kelly, C. B., there held that a Policy of Insurance was not a "Valuable Security" within s. 75; but the converse was held by Amphlett & Bramwell, BB. (46 L. J. M. C. 12, 14; 2 Q. B. D. 166, 169). A Certificate for Shares in a Foreign Railway is such a "Valuable Security" (*R.* v. *Smith*, Dears. 561); but an Unstamped Cheque, the payment of which for want of the stamp would render the banker liable to a penalty, is not a "Valuable Security" (*R.* v. *Yates*, 1 Moody, 170). *Vh*, *R.* v. *Danger*, 5 W. R. 738; 29 L. T. O. S. 268; 7 Cox C. C. 303. As to describing this "Valuable Security" in an Indictment, *V. R.* v. *Loiwrie*, 36 L. J. M. C. 24; L. R. 1 C. C. R. 61.

A Judgment recovered by a pauper, is a "Valuable Security" within s. 16, Poor Law Amendment Act, 1849, 12 & 13 V. c. 103 (*West Ham* v. *Ovens*, 42 L. J. M. C. 29; L. R. 8 Ex. 37).

The definition of "Valuable Security" in the Post Office (Offences) Act, 1837 (s. 47, 1 V. c. 36), is nearly the same as that given in the Larceny Act, sup.

It has been stated that a Railway Ticket is a "Valuable Security" (Maxwell, 344, citing *R.* v. *Boulton*, 1 Den. 508; 19 L. J. M. C. 67: *R.* v. *Beecham*, 5 Cox C. C. 181).

V. SECURITY: SECURITY FOR MONEY.

"Valuable THING" deposited on a Gaming Contract; *V.* DEPOSIT.

"Other Valuable THINGS," in a Bequest, construed *ejusdem generis* (*Cavendish* v. *Cavendish*, 1 Cox Ch. 77); so of "Things" (*Stuart* v. *Bute*, 1 Dow, 73).

VALUATION.—"An ARBITRATION is a proceeding conducted according to judicial rules, and the arbitrator hears the parties and their evidence. A Valuation is a proceeding in which a person specially skilled in the subject-matter decides solely by the use of his eyes and his knowledge" (per Esher, M. R., *Re Dawdy and Hartcup*, 54 L. J. Q. B. 575; 15 Q. B. D. 426).

"Valuation"; Stat. Def., Prisons (Scot) Act, 1877, 40 & 41 V. c. 53, s. 71.

"Valuation, imperfect or erroneous"; *V.* IMPERFECT.

V. APPRAISEMENT: FAIR VALUATION: PRICE: TRAMWAY.

The valuation of a Life Interest brought into HOTCHPOT, should be an actuarial valuation of it at the time when it first took effect (*Re Heathcote*, W. N. (91) 10).

"Valuation *List*"; *V.* 25 & 26 V. c. 103, s. 14; 27 & 28 V. c. 39; Valuation (Metropolis) Act, 1869, 32 & 33 V. c. 67, s. 6 *et seq*; 59 & 60 V. c. 16, s. 9.

Quà Rating Act, 1874, 37 & 38 V. c. 54, " 'Valuation List,' means, as regards any parish or place for which there is no valuation list, the Poor Rate " (s. 15).

" Valuation *Roll* "; *V.* Lands Valuation (Scot) Act, 1854, 17 & 18 V. c. 91, s. 1 *et seq*; 20 & 21 V. c. 58; 23 & 24 V. c. 79, s. 2; 24 & 25 V. c. 83, s. 2; 25 & 26 V. c. 97, s. 2.

VALUE.—*V.* ANNUAL VALUE: CLEAR: FULL VALUE: FREE LAND: GROSS: INVOICE VALUE: MARKET VALUE: MONEY VALUE: NET: PRICE: PRINCIPAL VALUE: PURCHASE FOR VALUE: SHIPPING VALUE: SIMILAR: WORTH.

The " ACTUAL Value " of a Railway, taxable under s. 326, Quebec Towns Corporation General Clauses Act, 1876, 44 V. c. 60 (incorporated by s. 98, Quebec Act, 44 V. c. 62), is only that of the land occupied by the road (*St. John* v. *Central Vermont Ry*, 59 L. J. P. C. 15; 14 App. Ca. 590).

In covenants to settle *After-acquired Property*, " Where the property to be settled is to be of a named Minimum Value, and the interest accruing is reversionary, the sum named means, the value of the property itself when it falls into possession, not the value of the reversion at the time of settlement " (Elph. 526, citing *Re Mackenzie*, 2 Ch. 345; 36 L. J. Ch. 320: *Cornmell* v. *Keith*, 3 Ch. D. 767; 45 L. J. Ch. 689: *Re Clinton*, L. R. 13 Eq. 295; 41 L. J. Ch. 191: and *Re Welstead*, 47 L. T. 331). *Vf*, ONE TIME.

Quà *Bills of Exchange Act*, 1882, " 'Value,' means VALUABLE Consideration " (s. 2), on *whv*, *Nash* v. *De Freville*, 1900, 2 Q. B. 72; 69 L. J. Q. B. 484; 48 W. R. 434; 82 L. T. 642. " Value *received*," in a Bill of Ex.; *V. Grant* v. *Da Costa*, 3 M. & S. 351: *Highmore* v. *Primrose*, 5 M. & S. 65: *Priddy* v. *Henbrey*, 1 B. & C. 674: in a Promissory Note, " Value received," means, received from the Payee (*Clayton* v. *Gosling*, 5 B. & C. 360).

The " Value " of a parcel of *Gold* is not sufficiently declared within s. 503, Mer Shipping Act, 1854, repld s. 502, Mer Shipping Act, 1894, by declaring it as so much " Gold Dust " (*Williams* v. *African S. S. Co*, 1 H. & N. 300).

" Value " of *Qualifying Property*, quà an Objection to or Claim for a Parliamentary Vote, means, " amount of rental " (s. 17, 28 & 29 V. c. 36).

The " Value " of a SECURITY, in a Proof of Debt (R. 10, Sch 1, Bankry Act, 1883; R. 8, Sch 1, Comp Winding-up Act, 1890), means, " a Positive Value; a sum upon payment of which the Trustee can redeem the security " (per Collins, L. J., *Re Piers*, cited INADVERTENCE).

" Value " of a SHIP, s. 504, Mer Shipping Act, 1854, meant, what she would have fetched if sold immediately before the collision, without deducting costs of sale (*Leycester* v. *Logan*, 4 K. & J. 725; 6 W. R.

849: *Vh, Grainger* v. *Martin*, 2 B. & S. 456). *Note*: this limitation of a shipowner's liability is now regulated by the Ship's Tonnage (s. 503, Mer Shipping Act, 1894).

V. VALUE OF THE SHIP AND FREIGHT.

"Value of *Straw* sold off to be returned in Manure"; *V. Lowndes* v. *Fountaine*, 11 Ex. 487; 25 L. J. Ex. 49; 4 W. R. 152; 26 L. T. O. S. 151.

The "Value" of a SUCCESSION for the purpose of charging duty thereon under s. 10, Succ Dy Act, 1853, is to be made by capitalizing its "ANNUAL VALUE" (s. 21, Ib.). This annual value "must be determined, once for all, when the succession falls, and cannot be left for future ascertainment" (per Ld Chelmsford, *A-G.* v. *Sefton*, 34 L. J. Ex. 106), and it means the present actual annual value regardless of a (possible or probable, remote or near) prospective increase or decrease (*A-G.* v. *Sefton*, 34 L. J. Ex. 98; 11 H. L. Ca. 257; 2 H. & C. 362). But where property, *e.g.* unoccupied land, is not in its existing state yielding or capable of yielding any annual income, but yet is saleable, such property would (probably) be chargeable with Succession Duty; and its annual value would (probably) be a value equal to interest at £3 per cent, on the sum that might be realized if the property were, at once, sold (per Westbury, C. and Ld Chelmsford, *S. C.*; but Ld Wensleydale thought it unnecessary for that case to give any opinion on the point).

Jurisdiction to the County Court where "Value of the *Tenements*" did not "exceed £20 *by the year*," s. 11, 30 & 31 V. c. 142, meant, the actual marketable value, of which the lettable rent is a fair criterion (*Elstone* v. *Rose*, L. R. 4 Q. B. 4; 38 L. J. Q. B. 6; 9 B. & S. 509: *Va*, *Stolworthy* v. *Powell* and *Bassano* v. *Bradley*, cited ANNUAL VALUE, pp. 88, 89). *Cp*, QUESTION.

Value of Tramway, &c; V. TRAMWAY.

"Assignee for Value"; *V.* ASSIGNEE.

Majority "In Value" of Creditors; *V.* IN VALUE.

VALUE OF THE SHIP AND FREIGHT.—"Whatever is on board a ship for the object of the voyage and adventure on which she is engaged, belonging to the owners, constitutes a part of the ship and her appurtenances, within the meaning of 53 G. 3, c. 159, s. 1, whether the object be warfare, the conveyance of passengers or goods, or the fishery" (per Abbott, C. J., *Gale* v. *Laurie*, 5 B. & C. 164: *Vf*, *Wilson* v. *Dickson*, 2 B. & Ald. 2: *Cannan* v. *Meaburn*, 1 Bing. 465: *Smith* v. *Kirby*, 1 Q. B. D. 131: Maude & P. 79, n. *h*).

V. FREIGHT: VALUE.

VALUE RECEIVED.—*V.* VALUE.

VALUE UNKNOWN.—*V.* CONTENTS UNKNOWN.

VALUED. — *V.* HEREAFTER VALUED AND DECLARED.

Valued Policy; *V.* POLICY.

"Valued Rent"; Stat. Def., 31 & 32 V. c. 96, s. 1.

"Valued Rent Heritor," "Real Rent Heritor"; Stat. Def., 63 & 64 V. c. 20, s. 4.

VALUER. — *V.* SURVEYOR: *Vf, Re Somerset*, cited BREACH OF TRUST.

Quà Copyhold Act, 1894, 57 & 58 V. c. 46, "'Valuer,' includes an UMPIRE" (s. 94).

As to Negligence by a Valuer; *V. Scholes* v. *Brook*, 63 L. T. 837; 64 Ib. 674.

VAPOUR. — For the conventional chemical distinction between "Vapour" and "Gas," *V. Stanley* v. *Western Insrce*, 37 L. J. Ex. 74.

VARECTUM. — *V.* WARECTUM.

VARIANCE. — "'Variance' signifies an alteration or change of condition after a thing done. It is also used for an alteration of something formerly laid in a Plea" (Cowel). *Cp*, ALTERATION: DEPARTURE.

"No objection shall be taken or allowed to any Information, Complaint, or Summons, . . . for any variance between such Information, Complaint, or Summons, and the Evidence" in support of it, s. 1, Sum Jur Act, 1848, 11 & 12 V. c. 43; "The word 'Variance' points at some difference between the allegation in the Summons or Information, and the Evidence adduced in support of it" (per Crompton, J., *Martin* v. *Pridgeon*, 28 L. J. M. C. 179; 1 E. & E. 778); accordingly, it was there held that when the evidence shows a different offence than that alleged in the Summons, the justices cannot convict; such a difference is not a "Variance" (*Va, Soden* v. *Cray*, 7 L. T. 324; nom. *Loadman* v. *Cragg*, 26 J. P. 743). A "Variance" would be, *e.g.* a misdescription, not misleading, of an employer (*Whittle* v. *Frankland*, 26 J. P. 372), or of an ownership (*Ralph* v. *Hurrell*, 44 L. J. M. C. 145), or of a date (*Exeter* v. *Heaman*, 37 L. T. 535). *Vf, Rodgers* v. *Richards*, cited SUBSTANCE.

"At Variance," s. 25 (9), Jud. Act, 1873; *V. The Bernina*, 55 L. J. P. D. & A. 21; 11 P. D. 33; 34 W. R. 595.

VARIATION. — Variation of "Property settled," s. 5, Matrimonial Causes Act, 1859, 22 & 23 V. c. 61; *V.* PROPERTY, p. 1585.

V. VARY.

VARIED. — *V.* EXPRESSLY VARIED.

VARY. — The power to "vary" Investments given by the concluding words of s. 3, Trust Investment Act, 1889, repld s. 1, Trustee Act, 1893,

extends to all investments whether made under the Act or not (*Hume* v. *Lopes*, cited TRUST FUNDS).

" Rate of Interest varying with Profits "; *V.* RATE.

VASSAL. — In feudal times, the grantor of lands " was called the proprietor, or *lord*; being he who retained the dominion or ultimate property of the feud or fee: and the grantee, who had only the use and possession according to the terms of the grant, was stiled the feudatory or *vasal*, which was only another name for the TENANT or holder of the lands " (2 Bl. Com. 53). *V.* VILLEIN.

Stat. Def., *Scot.* 31 & 32 V. c. 101, s. 3. *Cp*, SUPERIOR.

VEGETABLE PRODUCTION. — *V. R.* v. *Hodges*, Moo. & M. 341: PRODUCT.

VEHICLE. — Generally, " Vehicle " is synonymous with CARRIAGE; it includes a Bicycle (*Ellis* v. *Nott-Bower*, 13 Times Rep. 35). *Vf*, COACH.

In the exception from License Duty given by s. 19 (6), Revenue Act, 1869, 32 & 33 V. c. 14, for a trade " Waggon, Cart, or other Vehicle," the word " Vehicle " means such a cart as that which a tradesman uses for sending his goods from place to place (*Speak* v. *Powell*, cited TRADE). *V.* CARRIAGE.

Quà Weights and Measures Acts, 1878 and 1889, " 'Vehicle,' means, any carriage, cart, waggon, truck, barrow, or other means of carrying coal by land, in whatever manner the same may be drawn or propelled; but does not include a railway truck or waggon " (s. 35, 52 & 53 V. c. 21). *V.* CART.

VEIN or SEAM. — " 'Vein' is defined in Webster's Dictionary as 'A Seam or Layer of any substance, more or less wide, intersecting a rock or stratum, and not corresponding with the stratification; often limited in the language of miners to such a layer or course of metal or ore'; and in Richardson's Dictionary as 'Lineal Tubes which convey the blood in animals; Lineal Streaks in mineral or vegetable bodies.' The Encyclopædia Britannica thus describes 'Veins'; 'These are Fissures or Cracks in the rocks . . . which are filled . . . with materials of quite a different nature from the rocks in which the fissures occur.' 'Seam' is defined in Webster's Dictionary as 'a thin Layer or Stratum; a narrow vein between two thicker ones, as a Seam of Coal.' 'Vein' and 'Seam' appear, accordingly, to be convertible expressions " (MacS. 1, 2). And a little further on the learned author in contrasting " Mine " and " Vein or Seam " says, " 'Mine' appears, in its primary sense, to imply openness; and 'Vein or Seam' appears, in its primary sense, to exclude that notion." *Vf*, Ib. 11.

V. MINE: IRON: PITS AND VEINS.

VENARY. — "Beasts of Chase, or Venary" (2 Bl. Com. 415); *V.* BEASTS.

VEND. — "I think the proper meaning to be attached to the word 'Vend,' is, the habit of selling" (per Coleridge, J., *Minter* v. *Williams*, 5 L. J. K. B. 60, 62; 4 A. & E. 251, on *whcv*, per Alverstone, C. J., and Williams, L. J., *British Motor Syndicate* v. *Taylor*, cited USE, p. 2149).

"In order that a sale may be an Infringement of a Patent, some material part of the transaction of sale must be done in England" (per Stirling, J., *British Motor Syndicate* v. *Taylor*, sup, citing *Badische Anilin und Soda Fabrik* v. *Basle Works*, cited USE, p. 2149).

V. SALE: SELL.

VENDOR. — In a contract of sale for "the Vendor," the Vendor is not sufficiently described; *V.* PROPRIETOR.

Prima facie, "Lessor or Lessee" is not included in "Vendor or Purchaser"; but as that latter phrase is used at the commencement of s. 9, V. & P. Act, 1874, it includes Lessor or Lessee, because of the relation of the section to s. 2, Ib., the first rule of which applies to Leases (*Re Stephenson and Cox*, 36 S. J. 287: *Vh, Re Anderton and Milner*, 45 Ch. D. 476; 59 L. J. Ch. 765; 63 L. T. 332; 39 W. R. 44: *Jones* v. *Watts*, cited SALE).

Vendor's Lien; *V.* LIEN, at end: UNPAID SELLER. Quà Factors (Scot) Act, 1890, 53 & 54 V. c. 40, "'Vendor's Lien,' shall mean and include, any right of retention competent to the original owner or vendor" (s. 1).

VENEREAL. — *V.* CONTAGIOUS.

VENIAL. — "*De peche est briefe division, car est' mortal ou venial solonque ceo que appiert es paines.* And that crime is called mortall or corporall: mortall because it deserveth death; and such crimes are called veniall as may be redeemed or satisfied by some other punishment than by death" (Co. Litt. 287 b).

V. CRIME. *Cp*, TRIFLING.

VENISON. — *V.* VENARY.

VENTILATING. — "Ventilating District"; *V.* DISTRICT.

VENTILATION. — "Ventilation," in clause 13, Privy Council Order, 1885, made under s. 34 (ii), 41 & 42 V. c. 74, includes Air-space; therefore, a Local Authority Regulation defining the air-space for each cow in a cowshed is valid (*Baker* v. *Williams*, 1898, 1 Q. B. 23; 66 L. J. Q. B. 880; 77 L. T. 495; 46 W. R. 64; 62 J. P. 21).

Ventilation of Factories and Workshops; *V.* s. 7, Factory and Workshop Act, 1901.

V. ADEQUATE.

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

VENUE. — " 'Venew' or 'Visne,' is a terme used in the statute of 35 H. 8, c. 6, and often in our bookes, and signifies a place next to that where any thing that comes to be tryed is supposed to be done. And therefore for the better discovery of the truth of the matter in fact upon every tryall, some of the Jury must be of the same Hundred, or sometimes of the same parish in which the thing is supposed to be done, who by intendment may have the best knowledge of the matter. See Coke, 6 Book, 14 a, *Arundel's Case*" (Termes de la Ley: *Note*: the last sentence is curious as throwing light on the original function of the Jury; but the Venue is now often changed to the locality in which the matter has arisen, not because the Jury may have "the best knowledge" of it, but because each locality should bear its own burdens and because the locality of the subject-matter is the place where the witnesses frequently reside).

Vh, R. 1, Ord. 36, R. S. C. and notes thereon Ann. Pr.

As to Venue in Criminal Matters, *V.* Arch. Cr. 33: Rosc. Cr. 217: 12 Encyc. 450, 451.

VERBAL. — *V.* PAROL.

VERDEROR. — " 'Verderor, *Vindarius*,' is a judicial Officer of the Kings Forest . . . sworn to maintain and keep the Assises of the Forest, and to view receive and enrol the Attachments and Presentments of all manner of Trespasses of Vert and Venison in the Forest, *Manwood*" (Cowel: *Vf*, Termes de la Ley: 3 Bl. Com. 71).

VERDICT. — " '*Verdict of 12 men.*' *Veredictum quasi dictum veritatis*, as *judicium est quasi juris dictum. Et sicut ad questionem juris, non respondent juratores sed judices: sic ad questionem facti non respondent judices sed juratores.* For jurors are to try the fact, and the judges ought to judge according to the law that riseth upon the fact, for *ex facto jus oritur*" (Co. Litt. 226 a, b). *V.* JURY.

A Verdict is (1) General, or (2) Special; *General*, when, in Criminal cases, the jury say "Guilty" or "Not Guilty," or when, in Civil cases, they find generally for the Plaintiff or for the Defendant; *Special*, when the jury find specific facts (as distinguished from the evidence proving such facts), the Court entering the judgment according to law on the facts as so found. *Vh*, Cowel: Jacob: 3 Bl. Com. 377, 378; 4 Ib. 360, 361: 12 Encyc. 452–454.

As to whether "Verdict," in s. 12, 13 & 14 V. c. 61, is limited to a verdict upon an issue joined; *V. Reed* v. *Shrubsole*, 18 L. J. C. P. 225: *Prew* v. *Squire*, cited DEFAULT, p. 489.

Where an Agreement for Arbitration of matters involving several items of claim, says that the Award shall be for a sum certain for the claimant

or that it shall be for the respondent, and that it shall be entered as a Verdict, and that the Costs shall "follow the Verdict"; if the award be for the claimant he is entitled to the whole costs although the sum awarded to him be but little more than one fourth of his claim; and the arbitrator cannot be questioned as to which items of claim he allowed and which he disallowed (*O'Rourke* v. *Commissioner for Railways*, 59 L. J. P. C. 72; 15 App. Ca. 371). *V.* EVENT.

V. PERVERSE.

VERGER. — "'Vergers, *Virgatores*,' Are such as carry white wands before the Justices of either Bench, *Fleta*, lib. 2, c. 38. Otherwise called *Portatores Virgæ*" (Cowel).

VERMIN. — Rabbits are Vermin in Australia (Vermin Destruction (Victoria) Act, 1890, on *whv*, *King* v. *Cheyne*, cited SPECIAL, p. 1909); *secus*, as "Vermin" is used in s. 7 (4), Gun License Act, 1870, 33 & 34 V. c. 57 (*Lord Advocate* v. *Young*, W. N. (99) 190; 25 Rettie, 778; disapproving *Gosling* v. *Brown*, 5 Rettie, 755). *V.* GAME, p. 795.

VERT. — "Whatsoever beareth green leaf, but specially of great and thick coverts" (4 Inst. 317, *whv* for the different kinds of Vert: *Va*, Termes de la Ley: Cowel: Elph. 627).

VERTICAL. — "Vertical Deviation"; *V.* LATERAL.

VERTU. — A bequest of "Objects of Vertu and Taste" (or "Vertu *or* Taste") will not, *proprio vigore*, comprise PICTURES; especially when those words follow an enumeration such as gold and silver plate, china, &c, and where, in the same Will, there is another gift of "Furniture," a word under which Pictures are aptly included (*Re Londesborough*, 50 L. J. Ch. 9; 43 L. T. 408).

VESEY-FITZGERALD'S ACT. — *V.* FITZGERALD.

VESSEL. — "Vessel" does not include everything that floats; *e.g.* it does not include a Raft or a WHERRY (*Gapp* v. *Bond*, 19 Q. B. D. 200; 56 L. J. Q. B. 438; 57 L. T. 437; 35 W. R. 683; 3 Times Rep. 621); but, in a Marine Insrce against Collision, the word may include an Anchor to which a Vessel is fast, for the anchor is a portion of the vessel to which it belongs (*Re Maryetts and Ocean Accident Guarantee Corp*, 1901, 2 K. B. 792; 70 L. J. K. B. 762).

An open Boat 18 feet long; held, within an Act making it penal to set on fire a "Ship or Vessel" (*R.* v. *Bowyer*, 4 C. & P. 559).

Quà Swansea Harbour Acts, 1854, 1874, "Vessel" "bound from or to any port or place in the United Kingdom," includes a Barge (*Tennant* v. *Swansea Harbour Trustees*, 3 Times Rep. 128).

A Dumb Barge is a "Vessel" within the exception in s. 4, Bills of Sale Act, 1878, and its assignment does not require registration as a Bill of S. (*Gapp* v. *Bond*, sup).

"Lighter, Vessel, Barge, or other Craft"; *V. Blandford* v. *Morrison*, cited CRAFT.

Quà Mer Shipping Act, 1894, "'Vessel,' includes, any SHIP, or BOAT, or any other description of Vessel, USED in NAVIGATION" (s. 742); *Vf*, s. 532, as to Part 9 of the Act.

Quà Harbours, Docks, and Piers, Clauses Act, 1847, 10 & 11 V. c. 27, "Vessel," includes, "Ship, Boat, Lighter, and Craft of every kind, and whether navigated by steam or otherwise" (s. 3). That def, uncontrolled, includes a Barge propelled by oars only; *secus*, when it is qualified as it is in ss. 100, 101, London & St. Katherine's Docks Company Act, 1864, 27 & 28 V. c. clxxviii (*Hedges* v. *London Docks Co*, 55 L. J. M. C. 46; 16 Q. B. D. 597; 54 L. T. 427; 34 W. R. 503; 50 J. P. 580; 2 Times Rep. 167).

Quà Fisheries (Ir) Acts, "Vessel," means and includes, "any Ship, Boat, Cot, Coble, or Curragh" (s. 1, 13 & 14 V. c. 88).

Quà Post Office (Offences) Act, 1837, 1 V. c. 36, "Vessel," includes, "any Ship or other Vessel not a Post Office Packet" (s. 47). *V.* PACKET.

Quà Submarine Telegraph Act, 1885, 48 & 49 V. c. 49, "'Vessel,' means, every description of vessel used in NAVIGATION, in whatever way it is propelled; and any reference to a Vessel shall include a reference to a boat belonging to such vessel" (s. 12).

"Vessel" has also received statutory definition in and for the following Acts; —

Dockyard Ports Regulation Act, 1865, 28 & 29 V. c. 125; *V.* s. 2:
Isle of Man Harbours Act, 1883, 46 & 47 V. c. 9; *V.* s. 8:
Kidnapping Act, 1872, 35 & 36 V. c. 19; *V.* s. 2:
North Sea Fisheries Act, 1893, 56 & 57 V. c. 17; *V.* s. 9:
P. H. London Act, 1891; *V.* s. 141:
Sea Fisheries Regulation Act, 1888, 51 & 52 V. c. 54; *V.* s. 14:
Slave Trade Acts, 36 & 37 V. c. 59, c. 88; *V.* s. 2:
Thames Conservancy Act, 1894; *V.* s. 3.

"Vessel of a FOREIGN State," quà Slave Trade Acts, "means, a Vessel which is justly entitled to claim the protection of the flag of a foreign state, or which would be so entitled if she did not lose such protection by being engaged in the Slave Trade" (s. 2, 36 & 37 V. c. 88).

"Vessel or Property to which the Cause relates," s. 21 (1), Co. Co. Admiralty Jurisdiction Act, 1868, 31 & 32 V. c. 71, means, the *plaintiff's* vessel or property (*The County of Durham*, 1891, P. 1; 60 L. J. P. D. & A. 5; 39 W. R. 303; 64 L. T. 146); and so, in some cases, of "the Owner of the Vessel or Property to which the cause relates" in subs. 2 of the same section (*Pugsley* v. *Ropkins*, 1892, 2 Q. B. 184; 61 L. J. Q. B.

645; 40 W. R. 596). But in a COLLISION case, the latter phrase means the defendant (*The City of Agra*, 1898, P. 198; 67 L. J. P. D. & A. 81; 79 L. T. 307: *V.* AGENT).

V. CHARGE OR CONDUCT: FISHERMAN: SAILING VESSEL: SHIP: SHIPS AND VESSELS: STEAM VESSEL: STEAMSHIP.

VEST. — "To 'vest,' generally means, to give the property in" (per Brett, L. J., *Coverdale* v. *Charlton*, 48 L. J. Q. B. 132). "It may be useful to refer to the history of the word 'vest,' as it is a word which has acquired a definite meaning, carrying with it definite legal consequences. The word 'vest' is found in the Lands C. C. Act, 1845, where it is said, in s. 81, that conveyances 'shall be effectual to *vest* the lands thereby conveyed in the promoters of the Company'; and there is a proviso to the same effect in s. 100. So the Trustee Act, 1850, 13 & 14 V. c. 60, s. 3 provides that the Chancellor may in certain cases make an Order that 'such lands be *vested* in' certain persons. Then again in the Bankry Act, 1869, it is enacted, by s. 17, that 'on the appointment of a trustee, the property shall forthwith pass to, and *vest* in, the trustee appointed.' So that it is clear that there is an established meaning in which the word 'vest' is employed. I now turn to the P. H. Act, 1875, ss. 12, 13: both contain the word 'vest,' and by the operation of those sections, the sewers become vested in the local board. Then, by s. 149, the streets 'vest in' the same authority; and that means, I think, that the street must, as a matter of property, pass to the local board, — that is, the SURFACE of the street passes and some property in the soil is vested in the local board for the purposes for which the soil of the street is required by those who have to manage the street" (per Cotton, L. J., Ib. 134): that is, the land forming the street does not vest down to the centre of the earth (per Bramwell, L. J., Ib. 130) nor *usque ad cœlum*; but so much *Depth* passes to the local board as is required for the ordinary purposes of the street, including what may be required for water-pipes, gas mains, and the sewer systems (per Brett, L. J., Ib. 133: *S. C.* 4 Q. B. D. 104; 40 L. T. 88; 43 J. P. 268: *Va, Hinde* v. *Chorlton*, 36 L. J. C. P. 79; L. R. 2 C. P. 104: *Rolls* v. *St. George, Southwark*, 14 Ch. D. 785), and so much *Height* over the street as is required for the preservation of its ordinary user (*Wandsworth* v. *United Telephone Co*, 53 L. J. Q. B. 449; 13 Q. B. D. 904; 51 L. T. 148; 32 W. R. 776: *Fareham* v. *Smith*, 7 Times Rep. 443; W. N. (91) 76: AREA): *Vf, Finchley Electric Co* v. *Finchley*, 1902, 1 Ch. 866; 1903, 1 Ch. 437; 71 L. J. Ch. 450; 72 Ib. 297.

A power to a Local Authority to ERECT conveniences IN a "Street or Public Place," does not sanction the construction of such conveniences below its surface (*Tunbridge Wells* v. *Baird*, cited PUBLIC PLACE; *whcv* for disapproval by Ld Herschell of some of the dicta in *Coverdale* v. *Charlton*, sup).

Vf, *St. Mary, Battersea* v. *County of London Electric Lighting Co*, 1899, 1 Ch. 474; 68 L. J. Ch. 238; 80 L. T. 31; 63 J. P. 84: *Gibraltar Commrs* v. *Orfila*, cited CONTROL: *Salt Union* v. *Harvey*, cited STREET, p. 1948.

Streets, Sewers, &c, which "vest" in a Local Authority quà duties to be performed, cease to be so vested when the duties are transferred to another body (*Eastbourne* v. *Bradford*, 1896, 2 Q. B. 205; 65 L. J. Q. B. 571; 74 L. T. 762; 45 W. R. 31; 60 J. P. 501).

"Property of and in lands," &c, "vested in the Commrs of Sewers within or under whose view, cognizance, or management, such lands," &c, shall be, s. 47, Sewers Act, 1833, 3 & 4 W. 4, c. 22; *V. Stracey* v. *Nelson*, 13 L. J. Ex. 97; 12 M. & W. 535: *Crossman* v. *Bristol & S. W. Ry*, 1 H. & M. 531; 11 W. R. 981.

The herbage on Roadside Wastes does not "vest" in a County Council by s. 11 (6) Loc Gov Act, 1888 (*Curtis* v. *Kesteven Co. Co.*, cited ROADSIDE WASTE).

Property of an Industrial Society "shall vest" in the Society on registration, s. 6, 25 & 26 V. c. 87; *V. Queenshead*, or *Queensbury Industrial Socy* v. *Pickles*, 35 L. J. Ex. 1; 3 H. & C. 857; L. R. 1 Ex. 1.

In the language of Conveyancers, "the word 'to Vest' has several senses which it is important to distinguish:—

"I. Originally the word had reference only to REAL ESTATE. As applied to estates in land, 'to Vest' signifies the acquisition of a portion of the actual ownership or feudal possession of the land; the acquisition, not of an estate *in possession*, but of an actual estate. The fee simple being supposed to be carved out into parts or divisions by the creation of particular estates, a grant to any person of one of these portions of the fee vested him with, or vested in him, an estate in the land. Thus 'Vested' is nearly equivalent to 'Possessed.'

"In this, its original sense, 'Vested' has no reference to the absence of *conditional*-ness or contingency. If an estate tail be limited to A., with remainder to B., the estate of B. is a 'vested' remainder, not because the failure of issue of A. is considered an event certain at some time or other to happen, but because such a remainder vests in B. an actual portion of the fee, though the time of its falling into possession is wholly contingent and uncertain. B. is *invested* with a portion of the ownership of the land.

"All remainders, not vested, are in fact contingent, not as being necessarily limited on an uncertain event, but because their taking effect depends on the contingency of their happening to vest during the continuance of the particular estate which supports them, and which may determine at any moment. Thus 'Vested' comes to mean the opposite of 'Contingent' or conditional. But the word itself refers, as has been said, not to contingency but to possession.

"II. The only definition that can be given of the word 'VESTED' in

English law, as applied to future interests other than remainders, is, that it means 'not subject to a Condition Precedent': what amounts to a Condition Precedent the cases only can determine. As applied to remainders in land, the word retains its original sense denoting the actual possession of an *estate* in the land" (Hawk. 221–223: *Vf*, Ib. ch. 18). As to when Devises or Bequests are vested or contingent, *V. Re Coppard*, 35 Ch. D. 350; 56 L. J. Ch. 606; 56 L. T. 359; 35 W. R. 473: 1 Jarm. ch. 25: Wms. Exs. 1086 *et seq*: Hawk. ch. 18. As to Vesting of Gifts to Classes, Elph. ch. 25; As to the Vesting of Portions, Elph. ch. 26.

V. VESTURE.

Property which shall "COME TO or Vest in" A., *e.g.* as used in a covenant to settle After-acquired property, does not, under the word "vest," connote that the vesting must be indefeasible; property which has become vested in A., though liable to be, but not actually, divested by the exercise of a Power of Appointment, is included in the covenant (*Re Ware*, 59 L. J. Ch. 717; 45 Ch. D. 269). "Vest," in such a connection, is used "in its strict legal sense, which means, vest in Interest and not in Possession" (per Stirling, J., *Ib.*). *Vf*, *Re Jackson*, 49 L. J. Ch. 82; 13 Ch. D. 189; 41 L. T. 494: 28 W. R. 209.

Vh, Chitty Eq. Ind. 7427–7431.

V. DIVEST.

VESTED.—*V.* VEST.

In testamentary gifts referring to death contingently, "the proper legal meaning of the word 'vested' is, vested in point of Interest (*Richardson* v. *Power*, 19 C. B. N. S. 780; 35 L. J. C. P. 44; 13 W. R. 1104: *Vf*, *Hale* v. *Hale*, 3 Ch. D. 646); but its natural and etymological meaning is said to be, vested in Possession (*Young* v. *Robertson*, 4 Macq. H. L. 314; 8 Jur. N. S. 825; nom. *Richardson* v. *Robertson*, 6 L. T. 77): and there are many cases of gifts over on the death of the legatee before his legacy has become 'vested,' where, upon the context, the word has been held to bear the latter sense" (2 Jarm. 809, *whv et seq* for cases in illustration. *Vf*, *Simpson* v. *Peach*, 42 L. J. Ch. 816; L. R. 16 Eq. 208; 28 L. T. 731; 21 W. R. 728: *Re Coppard*, cited VEST). *Cp*, PRESUMPTIVE.

A Vested REMAINDER, is a Remainder vested in Interest, as distinguished from one that is CONTINGENT.

As to when "Vested," in a bequest, may be read as "payable" or "indefeasible"; *V. Armytage* v. *Wilkinson*, 3 App. Ca. 355; 47 L. J. P. C. 31: *Re Edmonson*, L. R. 5 Eq. 389: *Poole* v. *Bott*, 1 W. R. 276: *Taylor* v. *Frobisher*, 5 D. G. & S. 191; 21 L. J. Ch. 605: *Darley* v. *Perceval*, 1900, 1 I. R. 135: *Creeth* v. *Wilson*, 9 L. R. Ir. 216: RECEIVABLE: RECEIVED: 1 Jarm. 849, 850, 859: Watson Eq. 1190.

"BUILDING, Structure, or Work, vested in and in the OCCUPATION of

Her Majesty," s. 202, London Bg Act, 1894; *V. Drury* v. *Rickard*, 63 J. P. 374.

A landlord's right to GROUND GAME "is vested" by lease, &c, pursuant to the saving clause (s. 5) Ground Game Act, 1880, 43 & 44 V. c. 47, even though it be only reserved by an Agreement for a Lease executed before, but not coming into operation till after, the Act (*Allhusen* v. *Brooking*, 53 L. J. Ch. 520; 26 Ch. D. 559).

Forfeiture of INCOME if suffered to become "vested" in another; *V. Sutton* v. *Goodrich*, cited SUFFER.

Forfeiture of a LEASE "if the lessee do or suffer any act or thing whereby the premises should become vested" in another, for the whole or part of the term, is incurred by a sub-letting from YEAR TO YEAR, although the covenant in the lease be only against assignment (*Dymock* v. *Showell's Brewery Co*, 79 L. T. 329).

Lunatic's *Personal Estate* "vested in" a person appointed for the management thereof, s. 134, Lunacy Act, 1890; there, "vested" is used in its wide sense of connoting the right to obtain and deal with the property, and not in its strict legal sense of becoming its actual legal owner (*Re Brown*, 1895, 2 Ch. 666; 64 L. J. Ch. 808; 73 L. T. 375; 44 W. R. 17): *Vf, Re Knight*, 1898, 1 Ch. 257; 67 L. J. Ch. 136; 77 L. T. 773; 46 W. R. 289.

Property "vested under this Act," s. 310, P. H. Act, 1875, in Improvement Commrs or a Local Board, includes property acquired under the powers given by the Act (*Hyde* v. *Bank of England*, 51 L. J. Ch. 747; 21 Ch. D. 176).

Property "transferred to or vested in" a Purchaser; *V.* DECREE.

Superfluous Land "vested"; *V. G. W. Ry* v. May, cited SUPERFLUOUS LAND.

Inhabitants and Ratepayers having a right, under a Founder's Deed, to a free education for their children, but having no children whose status is injured by a Scheme, have not a "Vested *Interest*" within s. 39, Endowed Schools Act, 1869, 32 & 33 V. c. 56 (*Re Shaftoe*, 47 L. J. P. C. 98; 3 App. Ca. 872).

"Vested Interest," s. 7, City of London Parochial Charities Act, 1883, 46 & 47 V. c. 36; *V. Re St. Alphage, London Wall*, 59 L. T. 614: *Re St. Edmund*, 60 L. T. 622.

VESTING. — Vesting *Declaration*, on the appointment of a New Trustee; *V.* s. 12, Trustee Act, 1893, on *whv, London and County Bank* v. *Goddard*, cited TRUST.

"Vesting *Order*"; *V.* Trustee Act, 1893, ss. 26–41: Dan. Ch. Pr. 1777–1794: Seton, 1228–1261.

VESTMENTS. — *V. Clifton* v. *Ridsdale*, *Ridsdale* v. *Clifton*, *Elphinstone* v. *Purchas*, and *Hebbert* v. *Purchas*, cited ORNAMENT:

Enraght v. *Penzance*, 7 App. Ca. 240; 51 L. J. Q. B. 506. *Cp*, VESTURE.

VESTRY.—"The primary meaning of the term 'Vestry' is, the place in which the Minister puts on his Vestments"; its secondary meaning is, the room in which the parishioners are entitled to meet for parish purposes (per Erle, J., *Jackson* v. *Courtenay*, 8 E. & B. 19). *Vf*, Jacob: Phil. Ecc. Law, Part 6, ch. 5: 12 Encyc. 466–468: CHURCH.

"Vestry" has received statutory definition in and for the following Acts;—

Baths and Washhouses Acts, 9 & 10 V. c. 74, 10 & 11 V. c. 61; *V.* s. 2:

Burial Act, 1852, 15 & 16 V. c. 85; *V.* s. 52:

Elementary Education Act, 1870, 33 & 34 V. c. 75; *V.* s. 3:

Loc Gov Act, 1894, 56 & 57 V. c. 73; *V.* ss. 7 (3), 75:

Metrop Man. Act, 1855; *V.* s. 67:

Metropolitan Open Spaces Act, 1881, 44 & 45 V. c. 34; *V.* s. 1:

Parish Constables Act, 1872, 35 & 36 V. c. 92; *V.* s. 14:

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.

"The Vestries *Acts*, 1818 to 1853"; *V.* Sch 2, Short Titles Act, 1896.

Vestry *Books*, in Ireland; *V.* Preamble to Parochial Records Act, 1876, 39 & 40 V. c. 58.

"Vestry *Clerk*"; *V.* 32 & 33 V. c. 67, s. 4.

"In Vestry assembled"; *V.* PARISHIONER: hence the persons entitled to meet in vestry are sometimes called "the Vestry."

VESTURE.—*V.* HERBAGE.

"'Vesture' signifies a garment; but in the law, metaphorically turned to betoken a Possession, or an admittance to a Possession or Seisin; so it is taken in *Westm.* 2, cap. 25. And in this signification 'tis borrowed of the *Feudists*, with whom *Investitura* signifies a delivery of Possession by a Speare or Staff, and *Vestura* Possession it self" (Cowel).

V. VEST, p. 2182.

VETERINARY.—To call oneself a "Veterinary *Chemist*," in a book or otherwise, in the sense of preparing veterinary medicines for sale, is not to "*take or use* the title of Veterinary Surgeon or Veterinary Practitioner" within s. 17 (1), 44 & 45 V. c. 62 (*Royal Coll. Vet. Surgeons* v. *Groves*, 9 Times Rep. 483): *Sv*, QUALIFIED. *V.* TAKE: USE.

"Veterinary *Inspector*," quà Diseases of Animals Act, 1894, 57 & 58 V. c. 57, "means, an Inspector being a Member of the Royal College of Veterinary Surgeons, or any Veterinary Practitioner qualified as approved by the Board of Agriculture" (s. 59).

"Veterinary *Surgeon*," or "Qualified Veterinary Surgeon," quà P. H.

Scotland Act, 1897, means, "a Member of the Royal College of Veterinary Surgeons" (s. 3).

"'The Royal College of Veterinary Surgeons,' means, the Royal College of Veterinary Surgeons incorporated and regulated by a Charter and two Supplemental Charters granted by Her Majesty in the years 1844, 1876, and 1879, respectively" (s. 2, 44 & 45 V. c. 62).

"'Veterinary Surgery,' means, the art and science of Veterinary Surgery and MEDICINE" (s. 2, 44 & 45 V. c. 62).

VEXATIOUS.—*V.* FRIVOLOUS: IMPROPER: SCANDALOUS.

Vexatious *Actions*; *V.* Vexatious Actions Act, 1896, 59 & 60 V. c. 51.

The action a "Vexatious *Defence*" to which was a Bankry offence under s. 159, Bankry Act, 1861, was one for a Debt or Liquidated Damages as distinguished from a Tort (*Ex p. Crabtree*, 12 W. R. 768; 33 L. J. Bank. 33; 10 L. T. 361).

Vexatious *Indictments* Act, 1859, 22 & 23 V. c. 17; *Vth*, 12 Encyc. 472, 473: Rosc. Cr. 166: Arch. Cr. 6–10.

Vexatious Removal of Indictments into the K. B.; *V. R.* v. *Manchester*, 7 E. & B. 460.

VEXATIOUSLY.—*V.* UNREASONABLY.

VI, CLAM, PRECARIO.—An EASEMENT to be acquired by PRESCRIPTION must be "*nec vi, nec clam, nec precario*"; *Vh*, per Ld Selborne, *Macpherson* v. *Scottish Recreation Socy*, 13 App. Ca. 749: Gale, Part 2, ch. 3, s. 3.

VI ET ARMIS.—*V.* FORCE.

VICAR.—"The PRIEST of every parish is called RECTOR, unless the Prædial Tythes be impropriated and then he is called Vicar, *quasi vice fungens rectoris*" (Cowel). The status of a modern Vicar was originated by 4 H. 4, c. 12. *Vf*, Phil. Ecc. Law, 217.

V. CLERGYMAN: MINISTER: PARSON.

Note. As to the Vicar's rights in church and churchyard, *V.* jdgmt of Blackburn, J., *Greenslade* v. *Derby*, cited PERPETUAL CURATE.

"The words 'Rectorial' and 'Vicarial' TITHES have no definite signification" (*Note*, to 1 Bl. Com. 387).

VICAR CHORAL.—A Vicar Choral, is a minor officer of a Cathedral whose duty is (as a "Singing-man") to assist in the Services (Phil. Ecc. Law, 143), and is, generally, a Corporation Sole, and, as such, his personal representative is liable for DILAPIDATIONS of the house held by him *virtute officii* (*Gleaves* v. *Parfitt*, 7 C. B. N. S. 838; 29 L. J. C. P. 216).

VICAR-GENERAL.—*V. Thorpe* v. *Mansell*, 1 Hagg. Con. 4 *n.*

VICARAGE. — *V.* RECTORY: Jacob.

VICE. — The inherent "Vice" of a *Thing*, — damage from which is not included in the implied insurance by a Common Carrier or in a Contract for Sea Carriage, — means, that "which is, necessarily, incidental to the property, rather than occasioned by an adventitious cause such as loss by worms (*Rohl* v. *Parr*, 1 Esp. 444), or rats (*Hunter* v. *Potts*, 4 Camp. 203), or the self-ignition of damaged hemp (*Boyd* v. *Dubois*, 3 Ib. 133)": Smith's Mercantile Law, 8 ed., 354, cited and adopted by Willes, J., *G. W. Ry* v. *Blower*, 41 L. J. C. P. 271; L. R. 7 C. P. 663.

"Vice" in an *Animal*, means, "that sort of vice which by its internal developement tends to the destruction or the injury of the animal or thing to be carried and which is likely to lead to such a result" (per Willes, J., *G. W. Ry* v. *Blower*, L. R. 7 C. P. 662), *e.g.* restiveness (*S. C.*), or fright, temper, or struggling to keep its legs (per Bramwell, B., *Kendall* v. *Lond. & S. W. Ry*, L. R. 7 Ex. 373; 41 L. J. Ex. 184: *Vf*, per Mellish, L. J., *Nugent* v. *Smith*, 45 L. J. C. P. 708; 1 C. P. D. 439).

V. SOUND: WARRANTED SOUND.

VICE-ADMIRALTY COURT. — *V.* COURT, p. 425.

VICINAGE. — "Common pur Cause de Vicinage"; *V.* COMMON, p. 346: *Cape* v. *Scott*, 43 L. J. Q. B. 65; L. R. 9 Q. B. 269: *Commrs of Sewers* v. *Glasse*, L. R. 19 Eq. 134; 44 L. J. Ch. 129.

VICTUALLER. — *V.* PUBLICAN.

VICTUALLING-HOUSE. — A Victualling-house is a house where persons are provided with victuals, but without lodging (1 Burn's Jus. Peace, 30 ed., 64). It would be, probably, safe to add that a place could scarcely be called a "Victualling-house" unless licensed under Alehouse Act, 1828, 9 G. 4, c. 61. That technical sense would seem to be impressed on the word by its use in the statute just mentioned in collocation with Inns and Alehouses. Blackstone (3 Com. 164) speaks of an "Innkeeper or other Victualler"; but a Victualling-house is differentiated from an Inn, because a Victualling-house does not provide lodging; but it would seem the exact equivalent of "Alehouse."

V. ALEHOUSE: INN: PUBLIC HOUSE.

VICTUALS. — "Victuals" comprises everything that is food for man, and everything which, when mixed with something else, constitutes such food (*R.* v. *Hodgkinson*, 10 B. & C. 74).

VIDELICET. — *V. Dakin's Case*, 2 Wms. Saund. 678: NAMELY: THAT IS TO SAY.

VIEW.—"'View' is the primary part of 'Survey'; and Survey is much, but not altogether, directed by View. It is true that View is of great use in the Common Law, and it is to be done and performed in person. . . . In a word, there is a diversity between a View and a Survey, for by the View one is to take notice only by the eye; but to Survey is not only to take notice of a thing by the eye, but also by using other ceremonies and circumstances, as the hand to measure and the foot to pace the distances" (Callis, 105, 106).

In "View" of a Constable, s. 63, Metropolitan Police Act, 1839, 2 & 3 V. c. 47, *semble*, connotes that the Constable actually saw and had view of the offence; the phrase is not equivalent to "found committing" in s. 66 (*Simmons* v. *Millingen*, cited FOUND).

"View of FRANKPLEDGE" was the office of the Sheriff in his County Court, or the Bayliff in his Hundred, to see that every man was in some PLEDGE (Cowel: Termes de la Ley): *Vh*, 4 Bl. Com. 273.

Vf, Termes de la Ley, *View*: Cowel: Jacob: 12 Encyc. 476: R. 4 and 5, Ord. 50, R. S. C.

"Upon such View," whereby Justices may order Diversion, &c, of a HIGHWAY, s. 85, 5 & 6 W. 4, c. 50, means, that the Justices making the Order are themselves to have actual and joint inspection of the Highway (*R.* v. *Downshire*, 5 L. J. M. C. 72; 4 A. & E. 698; 6 N. & M. 92: *R.* v. *Jones*, 10 L. J. M. C. 5; 12 A. & E. 636: *R.* v. *Cambridgeshire Jus.*, 5 L. J. M. C. 6; 4 A. & E. 111; 5 N. & M. 440: *R.* v. *Wallace*, 4 Q. B. D. 641; 40 L. T. 518). A compliance with these conditions would be sufficiently stated, by the Order reciting that "having Upon View found" (*R.* v. *Cambridgeshire*, sup); *secus*, if it said "having particularly viewed," &c, "and being satisfied," &c (*R.* v. *Downshire*, sup), or "having viewed," &c, "and it appearing unto us," &c (*R.* v. *Jones*, sup).

"With *a* View" to giving a Creditor a PREFERENCE, means with *the* view (*V.* A). In deciding that that kind of "View" must be one for the benefit of a creditor, as distinguished from the bankrupt's own benefit, *e.g.* to avoid the consequences of his own breach of trust, Williams, J., said,—"It is very easy to confuse 'MOTIVE' and 'View.' In fact, it is so easy to confuse 'Motive' and 'View' that there are numberless words in the English language which have a double or equivocal meaning, and are sometimes used to express Motive and sometimes to express View. Let me illustrate by an example what I consider to be the difference between the meaning of these two words, and the meaning of 'View' in this section. I do not assent to the suggestion that 'View' means, the primary result aimed at. If 'View' meant the primary result aimed at, every case would fall within s. 48, Bankry Act, 1883, in which it was proved that in fact a creditor was preferred and that the preference of that creditor was the necessary result of the act done by the bankrupt. It seems to me plain that this is not the meaning of the statute. The

word 'View,' as used in this section, is used to express the object aimed at by the bankrupt in bringing about the primary result. Now, although Motive is not the thing that we are to look for but View, it is plain (as was pointed out by Ld Esher, *Ex p. Taylor*, cited A) that ascertaining the Motive will very often assist you in determining what is the View. Suppose a case where the question was, whether a man set fire to his house with the intention to injure his landlord or with the intention to defraud an insurance company. In such case, in my judgment, the setting fire to his house would be the primary object of that which he did, but that would leave open the question, whether he aimed at or effected that object with a view to injure his landlord or with a view to defraud the insurance company. Now, in order to ascertain that, you would be much assisted by ascertaining what his desire was, *i.e.* what the Motive was that induced him to set fire to his house. You would have to take into consideration all the circumstances of the case. If you found that he was over-insured, that would be a strong piece of evidence to show that his View in setting fire to his house was to defraud the insurance company. If, on the other hand, you found that he was not over-insured but that he was angry with his landlord for having given him a notice to quit, that would be a strong piece of evidence to show that his View was not to defraud the insurance company but to injure his landlord. And in the same way, in bankruptcy, you have the payment of the creditor, which is equivalent to the analogous case I have taken of setting fire to the house. With what View did the debtor make the payment to the creditor? Did he make it from a sense of duty, from a sense of favour or kindness towards the creditor? So here, the mere fact that there had been a breach of trust and that therefore it was possible that he should make the payment from a sense of duty is by no means conclusive. There might be other facts, such as his connection in blood with the cestui que trust, which might suggest that the dominant View was, not to repair the wrong done but, to favour one of his relatives" (*New's Trustee* v. *Hunting*, 66 L. J. Q. B. 559, 560; 1897, 1 Q. B. 616, 617). That exposition seemed too subtle for Esher, M. R., who (whilst agreeing with other members of the Court of Appeal in upholding the actual decision of Williams, J.) said, "In my opinion, what the debtor did he did 'With the *Object*,' or 'With the *View*,' or 'For the *Purpose*' (I care not about the particular phrase), not of preferring the particular creditors, but for his own purposes" (*S. C.* 66 L. J. Q. B. 562; 1897, 2 Q. B. 27; 76 L. T. 744; 45 W. R. 579; affd in H. L. nom. *Sharp* v. *Jackson*, 68 L. J. Q. B. 866; 1899, A. C. 419; 80 L. T. 841; 6 Manson, 264: *Cp*, *Re Dodds*, 60 L. J. Q. B. 599; 64 L. T. 476: *Re Blackburn*, 68 L. J. Ch. 764; 1899, 2 Ch. 725; 81 L. T. 520; 48 W. R. 186). *Cp*, INTENT: PURPOSE.

So (*Ex p. Hill*, *Re Bird*, 23 Ch. D. 704), Bowen, L. J., said that, in nine cases out of ten, "With the View" and "With the Motive" are

synonymous: *Vf*, per the same learned judge, *Ex p. Griffith, Re Wilcoxon*, 52 L. J. Ch. 717; 23 Ch. D. 69.

Note: for an example of circumstances showing the View of a debtor when, being in insolvent circumstances, he pays a creditor, *V.* ORDINARY COURSE.

V. PRESENCE: TREAT AND VIEW.

VILL. — "Vill" was synonymous with TOWN (Co. Litt. 115 b: 1 Bl. Com. 114), and, if of the same name as the Parish, is coterminous with it until the contrary is proved (*Gibson* v. *Clark*, 1 Jac. & W. 159: *Wray* v. *Vesper*, Cro. Jac. 263); but there may be two or more Vills in one Parish, and, if one be of the same name as the Parish, a conveyance of lands in a place of that name includes only those in the Vill (*Stork* v. *Fox*, Cro. Jac. 120). *Va*, HAM: HAMLET: TOWNSHIP.

As to distinction between "Vill" and "Parish," as a description of a locality; *V.* Elph. 168, *n.*

V. VILLAGE: Elph. 624–626.

VILLA. — *V.* DENE: TOWN.

VILLAGE. — In Coke's time "Village" and "TOWN" seem, in law, to have been synonymous (Co. Litt. 115 b; *Va*, Index to Co. Litt. tit. "Village"). So in the *Touchstone* (p. 92), "This word (Village or Town) is of large extent. And by the grant of it, a manor, land, meadow and pasture, and divers such like things may pass." *V.* VILL.

"Village" was discussed in *Waterpark* v. *Fennell*, 7 H. L. Ca. 650; 5 Ir. Com. Law Rep. 120: *Va*, *Anon.*, 12 Mod. 546: *R.* v. *Showler*, 3 Burr. 1391: *R.* v. *Horton*, 1 T. R. 374.

In the United States, "Village" has been defined as, Any small assemblage of houses for dwellings or business, or both, in the country, whether they are situated upon regularly laid out streets and alleys or not (*Illinois Central Ry* v. *Williams*, 27 Ill. 49).

VILLANI. — "*Villani* in Domesday (often named) are not taken there for bondmen, but had their name *de villis*, because they had fermes, and there did worke of husbandry for the lord: and they were ever named before *bordarii*, *&c*, and such as are bondmen are called there *servi*" (Co. Litt. 5 b: *Va*, Ib. 116 a: *Vf*, Jacob, *Servi*, *Villain*). *V.* BORDARII: VILLEIN.

To call a man a "Villain" is not actionable, *per se* (per Pollock, C. B., *Barnett* v. *Allen*, 27 L. J. Ex. 412; 3 H. & N. 376; 31 L. T. O. S. 217); *Secus*, if you write that of him (*Bell* v. *Stone*, 1 B. & P. 331). *Cp*, CHEAT.

VILLEIN. — A Villein was "a man of servile or base degree," bound to obey his Lord's behest, "and whom his lord might put out of his

lands and tenements, goods and chattels, at his will" (Cowel), and whom the lord might "robbe, beat, and chastise, at his will, save onely that he might not maime him" (Termes de la Ley, *Villeinage*). *Vf*, HEREDITAMENT, at end: VASSAL: VILLANI: WAINAGE.

Villenage was a servile TENURE, whereby the tenant (though not, necessarily, a Villein) "was bound to do all such services as the Lord commanded, or were fit for a Villein to do" (Cowel). *Vf*, Litt. Book 2, ch. 11: Co. Litt. 116 a–141 b: 2 Bl. Com. 92, 93: per *Hargrave*, arg. *Sommersett's Case*, 20 State Trials, 35 *et seq.*

V. NEIFE.

Villein Regardant; *V.* GROSS, p. 839: Cowel, *Regardant.*

VILLIERS' ACTS. — Public Works (Manufacturing Districts) Act, 1863, 26 & 27 V. c. 70:

Union Chargeability Act, 1865, 28 & 29 V. c. 79.

VINTNER. — "Vintner" means, one who sells wine, and a covenant prohibiting the trade of a "Vintner" includes a person selling Wine not to be drunk on the premises (*Wells* v. *Attenborough*, 24 L. T. 312: 19 W. R. 465); and, by statute, the prohibition, in a Lease, of the business "of a Vintner," will include the sale of Wines to be consumed on the premises under the Refreshment Houses Act, 1860 (23 V. c. 27, s. 44).

VIOL. — *V.* BELONGING, p. 178.

VIOLATE. — A Bequest to found an Institution will, generally, be valid if it be added "so as not to violate the Mortmain Acts" (*Biscoe* v. *Jackson*, 35 Ch. D. 460; 56 L. J. Ch. 540; 35 W. R. 554; 56 L. T. 753; 3 Times Rep. 577). *V.* FOUND, p. 759.

VIOLENT. — *V.* EXTERNAL.

An Insrce against "Theft following upon Actual, Forcible, and Violent, *Entry* upon the premises"; held, not to include a thieving where the thief only had to turn the shop door-handle and walk in (*George* v. *Goldsmiths' Insrce*, 1899, 1 Q. B. 595; 68 L. J. Q. B. 365; 80 L. T. 248; 47 W. R. 474). In that case Wills, J., said, in the Divisional Court (67 L. J. Q. B. 808), "If the word had been merely 'forcible' then any unauthorized entry in the course of which any degree of force however slight was used would have been enough. That expression would have included turning the door-handle, pushing back a window-catch, or opening a locked door with a skeleton key. What difference does the addition of 'violent' make? Does it mean any more than 'forcible'? Upon the whole, I think not. Etymologically, the meaning of both words is the same." But that reasoning did not commend itself to the Court of Appeal.

VIRGATA TERRÆ. — *V.* YARDLAND.

VIRTUE. — *V.* By Virtue.

VIS MAJOR. — *V.* Act of God: Irresistible.

VISIBLE. — "Visible," when applied to Lights quà Regns for Preventing Collisions at Sea, 1897, means, "visible on a dark night with a clear atmosphere" (Preamble to Art. 1).

"Visible to the purchaser"; *V. Crane* v. *Lawrence*, cited Expose.

"Visible *Means*" as used in s. 10, Co. Co. Act, 1867, repld s. 66, Co. Co. Act, 1888, is not (as was laid down by Whiteside, C. J., *Counsel* v. *Garvie*, Ir. Rep. 5 C. L. 74, 77) to be narrowed so as to be synonymous with "*tangible* means"; but, at the same time, effect is to be given to the word "visible," and therefore "the words refer to means of paying which are visible to the bodily or mental eye of an attentive observer — means of payment which *the person who makes the affidavit* can fairly ascertain" (per Fry, L. J., *Lea* v. *Parker*, 54 L. J. Q. B. 41; 13 Q. B. D. 835; 38 W. R. 101).

Possession of moveable chattels, the full value of which would merely suffice to cover the probable amount of defendant's costs, does not constitute "Visible Means," within s. 6, 33 & 34 V. c. 109 (*Watson* v. *M'Cann*, 6 L. R. Ir. 21), nor does the receipt of a salary of £120 per annum (*Torkington* v. *Connor*, Ir. Rep. 8 C. L. 340).

"Visible Means" causing Injury; *V.* External.

Visible *Waters*; *V.* Defined Channel.

VISIT. — *V.* Associate.

VISITING. — "Visiting *Committee*"; Stat Def., Lunacy Act, 1890, 53 & 54 V. c. 5, s. 341.

VISITOR. — Of a Grammar School; Stat. Def., 3 & 4 V. c. 77, s. 25.

VIVARY. — Vivary, vivarium, is a word of large extent, signifying a place in land or water where living things are kept, *e.g.* parks, warrens, pischaries or fishings (2 Inst. 100), or a stew (Ib. 162). By the grant of a "Vivarye," "not onely the priviledge, but the land itselfe passes" (Co. Litt. 5 b).

VIVER. — "Viver or Vivier: — a Fishpond; 2 Inst. 199" (Elph. 628).

VIZ. — *V.* Namely: Videlicit.

VOCATION. — Turf "Book-making" is a "Vocation" within the Income Tax Act, 1842 (a legal one, per Hawkins, J.), and as such its profits are assessable (*Partridge* v. *Mallandaine*, 56 L. J. Q. B. 251; 18 Q. B. D. 276; 56 L. T. 203; 35 W. R. 276). In that case Denman, J., said that even an illegal Vocation would be taxable on its income; as "if a man were to make a systematic business of receiving stolen goods,

and to do nothing else, and were thereby to make a profit of (say) £2,000 a year, the Income Tax Commrs would be quite right in assessing him, if it were, in fact, his Vocation." *V.* BOOKMAKER: CALLING: PUBLIC OFFICE.

VOICE. — "Multiply Voices"; *V. Phillpotts* v. *Phillpotts*, cited VOID, p. 2197: SPLIT.

VOID. — When a Deed or other transaction is "Void" on default of doing or suffering something by one of the parties thereto, this means, Voidable at the election of the party not in default (*Hughes* v. *Palmer*, 34 L. J. C. P. 279; 19 C. B. N. S. 393: *Molton* v. *Camroux*, 18 L. J. Ex. 68, 356; 2 Ex. 487; 4 Ex. 17). "In a long series of decisions the Courts have construed Clauses of Forfeiture in Leases, declaring in terms however clear and strong that they shall be *void* on breach of conditions by the lessees, to mean that they are voidable only at the option of the lessors. The same rule of construction has been applied to other contracts where a party bound by a condition has sought to take advantage of his own breach of it to annul the contract: *Doe* d. *Bryan* v. *Bancks*, 4 B. & Ald. 401: *Roberts* v. *Davey*, 4 B. & Ad. 664: notes to *Dumpor's Case*, 1 Smith's L. C. 54" (per Sir M. E. Smith delivering the jdgmt *Davenport* v. *The Queen*, 47 L. J. P. C. 16; 3 App. Ca. 128). *Vf*, *Dakin* v. *Cope*, 2 Russ. 174, 175: *Malins* v. *Freeman*, 4 Bing. N. C. 395: *Re Tickle*, 3 Morr. 126: Woodf. 210: Redman, 420: Fawcett, 462. *Note.* In *Bowser* v. *Colby* (1 Hare, 130, 131), Wigram, V. C., for the purpose of holding the lease voidable, seems to have relied on the fact that in the clause of forfeiture the right of re-entry preceded the declaration that the lease should be void; but, *semble*, the case he cited (*Arnsby* v. *Woodward*, 6 B. & C. 519), shows that the construction may be the same though the declaration of voidness precedes the right of re-entry.

And so of Statutes: "In general, it would seem, that where the enactment has relation only to the benefit of particular persons, the word 'void' would be understood as 'voidable' only, at the election of the persons for whose protection the enactment was made and who are capable of protecting themselves (*V. Davis* v. *Bryan*, 6 B. & C. 651, cited by Cotton, L. J., *Re London Celluloid Co*, 39 Ch. D. 203); but that when it relates to persons not capable of protecting themselves, or when it has some object of public policy in view which requires the strict construction, the word receives its natural full force and effect" (Maxwell, 256, 257, citing Bayley, J., *R.* v. *Hipswell*, 8 B. & C. 471: *Va*, *Betham* v. *Gregg*, 10 Bing. 352; 3 L. J. C. P. 121; 4 Moore & S. 230: *Storie* v. *Winchester*, 17 C. B. 653: *Hyde* v. *Watts*, cited FORTHWITH. *V.* cases in illustration, Maxwell, 250–257). Thus, the provision that no Apprenticeship provided for by PUBLIC PAROCHIAL FUNDS, should be "*valid and effectual*" unless approved under "the hands and seals" of two

Justices, s. 11, 56 G. 3, c. 139, rendered absolutely void an Indenture approved by two Justices under their hands only (*R.* v. *Stoke Damerel*, 7 B. & C. 563). *Cp*, ILLEGAL.

"I think it will be found that the cases in which the less strict meaning is allowable may be divided into three classes, —

"1. Where as a matter of construction according to ordinary rules that is the sense of the language used:

"2. Where the strict meaning would defeat the Act itself: and

"3. Where that strict meaning would be inconsistent with some other statute, or some legal principle, which there is no apparent intention to disturb.

"It is for those who support the less strict meaning in any particular case, to prove that it falls within one of these classes; or, as was said by Ld Cairns in *Magdalen Hospital* v. *Knotts* (inf), 'the onus lies upon those who would cut down or qualify the effect of these words to show some ground, either from the nature of the case or from authority, for doing so'" (per Kekewich, J., *Churcher* v. *Martin*, 42 Ch. D. 317; 58 L. J. Ch. 588; 61 L. T. 113; 37 W. R. 682).

"If it be doubtful whether a statute declaring an act, instrument, or contract, void, make it voidable only, another clause in the same statute imposing a penalty on such act, instrument, or contract, is a clear test that it is *ipso facto* void" (Dwar. 640). "The penalty makes it illegal" (Maxwell, 256, citing *Gye* v. *Felton*, 4 Taunt. 876). "*Nota*, every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a Void Contract, though the statute itself doth not mention that it shall be so but only inflicts a penalty on the offender; because a Penalty implies a Prohibition though there are no prohibitory words in the statute" (per Holt, C. J., *Bartlett* v. *Vinor*, Carth. 252), *e.g.* prohibition against Watermen taking Apprentices before being householders, s. 5, 10 G. 2, c. 31 (*R.* v. *Gravesend*, 1 L. J. M. C. 20; 3 B. & Ad. 240).

When an Act says that anything shall be void "*to all intents and purposes*," the phrase italicized seems little more than an expletive. If a thing is "void," it is empty, — without force. Can a cistern be more than empty, or a body be more than still? The older authorities seem conformed to this reasoning; and seem to have established that there was no appreciable difference between declaring a thing "void" and declaring it "void to all intents and purposes." Thus, it has been stated, "where Acts of Parliament make a thing void, it shall be void to all intents and have a very violent relation" (Dwar. 653). So that "void" would seem to mean as much without, as with, the added phrase "to all intents and purposes"; whilst the addition of that phrase has not prevented the judicature, as circumstances have justified, from construing the thing as absolutely void in some, and as only voidable in others, of its aspects. Thus by s. 3, 13 Eliz. c. 10, Leases by Spiritual Persons

not made in conformity with that statute "shall be utterly void and of none effect, to all intents constructions and purposes"; yet it has been frequently held that Leases not in such conformity are good during the life of the lessor, and are only voidable by the successor, and even he may confirm them (Woodf. 22). But if the lessor have no beneficial interest, *e.g.* a Hospital, a lease in contravention of this section is altogether void (*Magdalen Hospital* v. *Knotts*, 48 L. J. Ch. 579; 4 App. Ca. 324; 27 W. R. 602; 40 L. T. 466); so, of a lease in contravention of s. 29, 18 & 19 V. c. 124 (*Bangor, Bp.* v. *Parry*, 1891; 2 Q. B. 277; 60 L. J. Q. B. 646; 65 L. T. 379; 39 W. R. 541).

The words "*utterly* void" in 13 Eliz. c. 20, s. 1, and the words "utterly void to all intents and purposes" in the Ship Registry Act (26 G. 3, c. 60, s. 17), did not prevent the Courts from giving partial effect to instruments not in conformity with those statutes (*Mouys* v. *Leake*, 8 T. R. 411: *Kerrison* v. *Cole*, 8 East, 234: Dwar. 639. *Vf*, cases as to Warrants of Attorney and Judge's Orders, Maxwell, 390). So, a Bill for a Gaming Debt though "utterly void, frustrate, and of none effect to all intents and purposes whatsoever," s. 1, 9 Anne, c. 14, was good in the hands of an Indorsee for Value (*Edwards* v. *Dick*, 4 B. & Ald. 212); nor did those words invalidate a Judgment for a Gaming Debt obtained by an innocent plaintiff suing on a Negotiable Security, the deft having full opportunity to defend the action and to set up the illegality of the security as an answer (*Lane* v. *Chapman*, 11 A. & E. 966; 9 L. J. Q. B. 239). So, a purchaser at an Auction who ought to have paid the (abolished) Auction Duty and did not, could not repudiate his contract, although, failing such payment, his bidding was "null and void to all intents and purposes," s. 8, 17 G. 3, c. 50 (*Malins* v. *Freeman*, 7 L. J. C. P. 212; 4 Bing. N. C. 395: *Vf*, *Willson* v. *Carey*, 12 L. J. Ex. 17; 10 M. & W. 641).

In s. 2, 27 Eliz. c. 4, vacating, in favour of purchasers, Fraudulent Conveyances, the phrase is that they shall be "utterly void, frustrate, and of none effect"; *Vth*, *Gooch's Case*, 5 Rep. 60 b.

The decisions on the 5 Eliz. c. 4, whilst they show how little the Courts refused to consider the word "void" as intensified by superadded phrases, show also that on the same words, in the same statute, an informal Indenture of Apprenticeship would be held void for some purposes, and only voidable for others. The language of the statute (s. 41) is that all Indentures of Apprenticeship, not in conformity thereto, shall be "clearly void in law, to all intents and purposes whatsoever." Yet to enable an Infant Apprentice to gain a parochial settlement, it was held that an apprenticeship indenture not in conformity, was merely voidable between the parties (*R.* v. *St. Nicholas*, 1 Bott, 530; Burr. S. Ca. 91; 2 Stra. 1066, on *whcv*, *R.* v. *Gravesend*, sup: *R.* v. *St. Gregory*, 4 L. J. M. C. 9; 2 A. & E. 99: *Gray* v. *Cookson*, 16 East, 13); but when a Master, citing *R.* v. *St. Nicholas* and other such like cases, sought to

recover damages for harbouring an apprentice, who had been bound by an indenture not in conformity with the statute, it was held he could not recover (*Gye* v. *Felton*, 4 Taunt. 876).

So, in an almost undeviating course, run the older authorities, which seem to justify the statement that the phrase "to all intents and purposes," in connection with the word "void," is little more than an expletive. But in *Phillpotts* v. *Phillpotts* (20 L. J. C. P. 11; 10 C. B. 85) Maule, J., comments on the absence of the phrase in the provision then under consideration; and in *Re Toomer, Ex p. Blaiberg* (52 L. J. Ch. 461; 23 Ch. D. 254) Jessel, M. R., in some measure, leant on its absence in s. 8, Bills of Sale Act, 1878, for the purpose of holding that a Bill of Sale which would have been void against an execution creditor, was not so, under the circumstances, as against a trustee in Bankry; whilst in *Davies* v. *Rees* (55 L. J. Q. B. 364; 17 Q. B. D. 408; 54 L. T. 813; 34 W. R. 573) Esher, M. R., seems to have read the phrase into s. 9, Bills of Sale Act, 1882, for the purpose of giving the word "void" its most absolute effect. *Note*: s. 8, Bills of S. Act, 1878, only makes an unregistered Bill of S. void as against the persons therein mentioned (*Davies* v. *Goodman*, 5 C. P. D. 128; 49 L. J. C. P. 344: *Cookson* v. *Swire*, 54 L. J. Q. B. 249); under s. 8 of the Act of 1882, it is void even as between grantor and grantee (*Davies* v. *Rees*, sup: per Lindley, L. J., *Re Townsend*, 55 L. J. Q. B. 143; 16 Q. B. D. 532; 53 L. T. 897; 34 W. R. 329), but only, as provided by the concluding words of the section, "in respect of the Personal Chattels comprised therein" (*Heseltine* v. *Simmons*, 1892, 2 Q. B. 547; 62 L. J. Q. B. 5; 67 L. T. 611; 41 W. R. 67; 57 J. P. 53). If "void" for not being IN ACCORDANCE WITH THE FORM prescribed (s. 9), a Bill of S. is void even as regards its covenants (*Davies* v. *Rees, Re Townsend*, and *Heseltine* v. *Simmons*, sup), and also quà personal chattels duly described and granted (*Thomas* v. *Kelly*, 58 L. J. Q. B. 66; 13 App. Ca. 506); but even this stringency does not make a Bill of S. void quà property not subject to the Bills of Sale Acts (*Re Burdett*, 20 Q. B. D. 310; 57 L. J. Q. B. 263: *Re Isaacson*, 1895, 1 Q. B. 333; 64 L. J. Q. B. 191; 43 W. R. 278).

The principle of *Davies* v. *Rees* is applicable to "void" as used in s. 5, Deeds of Arrangement Act, 1887, 50 & 51 V. c. 57 (*Hedges* v. *Preston*, 80 L. T. 847).

A Conveyance or other Assurance for a CHARITABLE PURPOSE, not made with the statutory requirements, is "void" in the strict sense of that word as employed in s. 3, 9 G. 2, c. 36, repld s. 4, 51 & 52 V. c. 42 (*Doe* d. *Wellard* v. *Hawthorn*, 2 B. & Ald. 96: *Doe* d. *Burdett* v. *Wrighte*, Ib. 710: *Doe* d. *Preece* v. *Howells*, 2 B. & Ad. 744: *Bunting* v. *Sargent*, 49 L. J. Ch. 109; 13 Ch. D. 330); it is "void" "not merely as regards the trust but also as regards the legal estate given" (per Bayley, J., 2 B. & Ald. 721: *Churcher* v. *Martin*, sup, p. 2194).

A Deed though declared by statute to be void, may, generally, be bad

in part and good in part; *e.g.* a personal covenant to pay is good though contained in a Charge on a Benefice which, under 13 Eliz. c. 20, was "utterly void" (*Mouys* v. *Leake*, 8 T. R. 411; approved by Ellenborough, C. J., *Kerrison* v. *Cole*, 8 East, 234). So, of a similar covenant in a Bill of Sale transferring a Ship, which, under 26 G. 3, c. 60, s. 17, was "utterly null and void to all intents and purposes" for not truly reciting certificate of registry (*Anon.*, Dwar. 638, 639: *Va*, Maxwell, 492, 493). But though *Kerrison* v. *Cole* (sup) and several of the cases cited in Maxwell (sup) were cited in *Davies* v. *Rees* (sup), yet it was there held that a Bill of Sale, void under s. 9, Bills of S. Act, 1882, because not in the prescribed form, was void altogether even as regards its personal covenant to pay (*Va*, *Re Townsend*, sup: *Bangor*, *Bp.* v. *Parry*, sup, p. 2195); but, as already stated, a Bill of Sale void under the Act is good as regards property not within the Act (*Re Burdett* and *Re Isaacson*, sup: *Va*, *Re Yates*, 57 L. J. Ch. 697; 38 Ch. D. 112). It seems a little difficult to reconcile *Davies* v. *Rees* with the Anonymous case in Dwarris (sup), or with *Phillpotts* v. *Phillpotts* (sup, p. 2196), in which a Conveyance "to multiply voices" and therefore "void and of none effect," under 7 & 8 W. 3, c. 25, s. 7, was nevertheless effective to pass the property as between the parties.

Though an agreement to divest an Occupier of his right to kill GROUND GAME is "void" by s. 3, 43 & 44 V. c. 47, yet a reservation of "the Exclusive Right of Sporting" is void only so far as it relates to Ground Game (*Stanton* v. *Brown*, 1900, 1 Q. B. 671; 69 L. J. Q. B. 301; 48 W. R. 333; 64 J. P. 326).

Though an INFANT'S Contract for money lent, or for goods (other than NECESSARIES), or on account stated, is "absolutely void" by s. 1, 37 & 38 V. c. 62, yet that does not enable him to recover back money paid by him in respect of ordinary goods which he has consumed or used (*Valentini* v. *Canali*, 59 L. J. Q. B. 74; 24 Q. B. D. 166).

A LEASE for 3 years which (by the joint operation of the Statute of Frauds and s. 3, 8 & 9 V. c. 106) is "void *at law* unless made by Deed," is valid as an Agreement for a Lease (*Parker* v. *Taswell*, 27 L. J. Ch. 812; 2 D. G. & J. 559); and, without any deed being made, the document will constitute the agreement between the parties as regards the occupancy, so that, on its termination, the tenant goes out without notice (*Tress* v. *Savage*, 23 L. J. Q. B. 339; 4 E. & B. 36), and each party is responsible on his own agreements contained in the document, and his liability thereunder may be enforced against him even after the so-called "term" of the document has expired (*Martin* v. *Smith*, and other cases, cited TERM). *Note*: As to the effect of s. 25, Jud. Act, 1873, on s. 3, 8 & 9 V. c. 106, *v.* *Walsh* v. *Lonsdale*, 52 L. J. Ch. 2; 21 Ch. D. 9; 46 L. T. 858; 31 W. R. 109, on *whcv*, *Coatsworth* v. *Johnson*, 55 L. J. Q. B. 220; 54 L. T. 520: *Manchester Brewery Co* v. *Coombs*, cited ASSIGNS, p. 132: Redman, 86, 87: Fawcett, 118, 119.

A thing "void" as against a specified person or class may be good as against everybody else (*Young* v. *Billiter*, 8 H. L. Ca. 682; 30 L. J. Q. B. 153). *Cp*, ILLEGAL.

A *Conveyance* "void" under 13 Eliz. c. 5, as against Creditors, is good as against the Grantor himself and his representatives (*Hawes* v. *Leader*, Cro. Jac. 270: *Packman's Case*, 6 Rep. 18 b). *Note*: for the principles for holding a conveyance void under this statute; *V. Spirett* v. *Willows*, 34 L. J. Ch. 365; 3 D. G. J. & S. 293: *Freeman* v. *Pope*, 39 L. J. Ch. 689; 5 Ch. 538: *Ex p. Mercer*, 55 L. J. Q. B. 558; 17 Q. B. D. 290: *Re Lane-Fox*, 1900, 2 Q. B. 508; 69 L. J. Q. B. 722; 83 L. T. 176; 48 W. R. 650.

A *Judge's Order* which, for want of being filed, is "void" under s. 27, Debtor's Act, 1869, is only void as against the Creditors of the person against whom it is made, and not as against the parties to the Order (*Gowan* v. *Wright*, 56 L. J. Q. B. 131; 18 Q. B. D. 201); but the ruling in that case is not applicable to a statutory requirement of filing or registration of documents affecting whole classes of people under general laws relating to property, *e.g.* a document regulating Community of Goods between Spouses under ss. 2 and 7, Law of Natal, No. 22 of 1863 (*Taylor* v. *Sturrock*, 1900, A. C. 225; 69 L. J. P. C. 29; 82 L. T. 97).

A *Voluntary Settlement* "void" under s. 47 (1), Bankry Act, 1883, is only so as against the Donee and those voluntarily claiming under him; but is not void as against a Purchaser for Value in Good Faith (*Ex p. Brown, Re Vansittart*, 1893, 2 Q. B. 377; 62 L. J. Q. B. 279: *Re Brall, Ex p. Norton*, 1893, 2 Q. B. 381; 62 L. J. Q. B. 457; 41 W. R. 623: *Sv, Re Briggs and Spicer*, 1891, 2 Ch. 127; 60 L. J. Ch. 514). Notwithstanding the conflict of those decisions, a title under a Voluntary Settlement, though not 10 years old, will be forced on a purchaser if bankruptcy has not supervened (*Re Carter and Kenderdine*, 1897, 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484). *Vf*, CLAIMING UNDER. If a Settlement is void under the section, that does not give the trustee in the donor's bankry priority over incumbrancers subsequent to the settlement (*Sanguinetti* v. *Stuckey's Bank*, 1895, 1 Ch. 176; 64 L. J. Ch. 181; 71 L. T. 872; 43 W. R. 154). *Vf, Re Farnham*, 1895, 2 Ch. 799; 64 L. J. Ch. 717; 73 L. T. 231. *V.* SETTLEMENT: VALUABLE: VOLUNTARY PAYMENT: VOLUNTARY SETTLEMENT.

"Make void"; *V.* AFFECT.

VOID SPACE OF GROUND. — As to whether a Railway is a "Void Space of Ground" within a Rating Act, *V. Arnell* v. *Lond. & N. W. Ry*, 12 C. B. 697.

VOIDABLE. — "Voidable" is the concluding word of s. 1, Infants Relief Act, 1874, 37 & 38 V. c. 62; and in a case in which it somewhat came in question Kekewich, J., said that, "Voidable" means, that a thing

is valid until repudiated; not that it is invalid until confirmed (*Duncan* v. *Dixon*, 59 L. J. Ch. 437; 44 Ch. D. 211; 6 Times Rep. 222).

V. VOID.

VOIDANCE. — *V.* AVOIDANCE: LAPSE.

VOLUME. — "Volume" in def of BOOK, Copyright Act, 1842, 5 & 6 V. c. 45; *V. Cambridge University* v. *Bryer*, 16 East, 317: *British Museum* v. *Payne*, 2 Y. & J. 166; 4 Bing. 540; 1 Moore & P. 415.

VOLUNTARILY. — If a person, without duress of person or goods, does a thing, *e.g.* appears before a foreign tribunal, he does that thing "voluntarily" (*Voinet* v. *Barrett*, 55 L. J. Q. B. 39), even though he protest against being called on to do it (*Boissiere* v. *Brockner*, 6 Times Rep. 85). In *thlc* Cave, J., said he was unable to supply the reasons for the decisions in *Davies* v. *Price* (34 L. J. Q. B. 8) and *Ringwood* v. *Lowndes* (33 L. J. C. P. 337), and declined to extend the application of those decisions.

"Voluntarily," s. 38 (2 *b*), Customs and Inl. Rev. Act, 1881, 44 & 45 V. c. 12, "is not used in the sense of 'Without Consideration,' but in its ordinary sense of 'Freely,' 'Without Compulsion,' and 'Not under any Obligation'" (*A-G.* v. *Ellis*, 1895, 2 Q. B. 466; 64 L. J. Q. B. 813; 73 L. T. 350; 44 W. R. 13; 59 J. P. 774).

V. VOLUNTARY CONTRIBUTIONS: VOLUNTARY DISPOSITION: VOLUNTARY PAYMENT.

VOLUNTARY. — *V.* CONSENT.

VOLUNTARY ALLOWANCE. — *V.* INCOME.

VOLUNTARY ANNUITY. — *V.* PECUNIARY CONSIDERATION.

VOLUNTARY ASSOCIATION. — *Vh*, *Smith* v. *Kerr*, cited CHARITY, p. 296, and authorities therein cited: *Brown* v. *Dale*, 9 Ch. D. 78.

VOLUNTARY CONFESSION. — *V.* CONFESSION.

VOLUNTARY CONTRIBUTIONS. — "Voluntary Contributions" and "Voluntary Subscriptions" are synonyms (Tudor Char. Trusts, 526).

"Voluntary Contributions" may mean,

(1) That the contributions are not compulsory; or

(2) That they are without consideration

(per Kay, L. J., *Art Union* v. *Savoy*, 1894, 2 Q. B. 619; 63 L. J. M. C. 260: per Halsbury, C., *Savoy* v. *Art Union*, 1896, A. C. 305; 65 L. J. M. C. 164).

"Voluntary Contributions," s. 1, Scientific Societies Act, 1843, 6 & 7

V. c. 36, should be "a gift made from disinterested motives for the benefit of others" (per Campbell, C. J., *Russell Institution* v. *St. Giles and St. George, Bloomsbury*, 23 L. J. M. C. 65; 3 E. & B. 416), and a Socy, to be exempt from Rates under that section, must receive such contributions as gratuitous offerings, without returning to the contributors any direct advantage; therefore, the Art Union of London is *not* such a Socy (*Savoy* v. *Art Union*, 1896, A. C. 296; 65 L. J. M. C. 161; 45 W. R. 34; 74 L. T. 497; 60 J. P. 660; 12 Times Rep. 377). *V.* SCIENCE.

"Voluntary Contributions," s. 62, Charitable Trusts Act, 1853, 16 & 17 V. c. 137, is not confined to annual subscriptions (per Romilly, M. R., *Corp for Relief of Widows and Children of the Clergy* v. *Sutton*, 27 Bea. 651; 29 L. J. Ch. 393); the phrase is "used in a popular sense, and denotes recurring gifts, repeated annually or otherwise with more or less regularity. Donations or Bequests (which would be included, as well as Subscriptions, in the general term 'Contributions') are dealt with in the following sentence" (*Re Clergy Orphan Corp*, 1894, 3 Ch. 151; 64 L. J. Ch. 73; 71 L. T. 450; 43 W. R. 150). *Vh, Re Wilson*, 19 Bea. 594: Tudor Char. Trusts, 525-528.

Institution, &c, "wholly maintained by Voluntary Contributions," s. 62, 16 & 17 V. c. 137, is one "which has no invested ENDOWMENT yielding an income for its support, but is dependent upon the gifts of the benevolent, whether recurrent or occasional and whether *inter vivos* or by Will" (*Re Clergy Orphan Corp*, 1894, 3 Ch. 150).

Exemption from Tax, on "Property acquired by or with funds *voluntarily contributed*," 48 & 49 V. c. 51, s. 11 (6), does not extend, *e.g.*, to the New University Club (*Re New University Club*, 18 Ch. D. 720; 56 L. J. Q. B. 462; 56 L. T. 909; 35 W. R. 774, following *Socy of Writers to the Signet* v. *Inl. Rev.*, 14 Sess. Ca. 4th Series, 34).

VOLUNTARY CONVEYANCE. — *V.* FRAUDULENT ASSURANCE: GOOD: VALUABLE: VOLUNTEER.

VOLUNTARY COURTESY. — "A meer Voluntary Courtesie will not have a CONSIDERATION to uphold an ASSUMPSIT. But if that Courtesie were moved by a Suit or Request of the Party that gives the Assumpsit, it will bind, for the Promise, though it follows, yet it is not naked, but couples it self with the Suit before, and the Merits of the Party procured by that Suit" (*Lampleigh* v. *Brathwait*, Hob. 106; 1 Sm. L. C. 153).

VOLUNTARY DISPOSITION. — "Voluntary Disposition," s. 38 (2 *a*), Customs and Inl. Rev. Act, 1881, 44 & 45 V. c. 12; *V. A-G.* v. *Jacobs-Smith*, 1895, 2 Q. B. 341; 64 L. J. Q. B. 605; 72 L. T. 714; 43 W. R. 657; 59 J. P. 468; 11 Times Rep. 411.

V. DISPOSITION: VOLUNTARILY: VOLUNTARY SETTLEMENT: VOLUNTEER.

VOLUNTARY GIFT.—*V.* GIFT: SETTLEMENT, pp. 1843, 1844: *Re Glubb*, 1900, 1 Ch. 354; 69 L. J. Ch. 278.

VOLUNTARY LIQUIDATION.—*V.* LIQUIDATION.

VOLUNTARY PAYMENT.—"A Voluntary Payment, is a PAYMENT simply by the act and will of the party making it; if there is anything to interfere with or control this will, then it is not a voluntary payment. It is said that a payment is voluntary when made as a matter of favour; but it may, nevertheless, not be a voluntary payment. Suppose a person who has done another many favours comes to him and asks in return a favour for a third party and the person asked says, 'It is against my will, yet, as *you* request the favour, I will grant it'; would that be a voluntary act? It would in one sense, because he has the power to refuse it; but still there is an influence, for he grants the favour upon the solicitation of a person who has a right to ask it" (per Alderson, B., *Strachan* v. *Barton*, 11 Ex. 650; 25 L. J. Ex. 182). That def was upon what would be a VOID voluntary payment in Bankry, on *whf*, *Ex p. Hill*, *Re Bird*, 23 Ch. D. 695; 52 L. J. Ch. 903: VIEW: Wms. Bank. 237. *Cp*, VOLUNTARILY.

VOLUNTARY SCHOOL.—Quà Voluntary Schools Act, 1897, 60 & 61 V. c. 5, "'Voluntary School,' means, a Public Elementary Day School, not provided by a School Board" (s. 4); quà Education (Scot) Act, 1897, 60 & 61 V. c. 62, "'Voluntary School,' means, a State-aided Day School, not provided by a School Board" (s. 2).

VOLUNTARY SETTLEMENT.—"Past or future Voluntary Settlement," s. 38 (2 *c*), Customs and Inl. Rev. Act, 1881, 44 & 45 V. c. 12, explained by s. 11, 52 & 53 V. c. 7; *V. A-G.* v. *Chapman*, 1891, 2 Q. B. 526; 60 L. J. Q. B. 602; 40 W. R. 79; 65 L. T. 119: *A-G.* v. *Gosling*, 1892, 1 Q. B. 545; 61 L. J. Q. B. 429; 66 L. T. 284: *A-G.* v. *Wendt*, 65 L. J. Q. B. 54; 43 W. R. 701; 73 L. T. 255. As to the incidence of the Duty hereby imposed, *V. Re Croft*, 1892, 1 Ch. 652; 61 L. J. Ch. 190; 66 L. T. 157; 40 W. R. 425.

V. SETTLEMENT: VOID: VOLUNTARILY: VOLUNTARY DISPOSITION.

VOLUNTARY SUBSCRIPTIONS.—*V.* VOLUNTARY CONTRIBUTIONS.

VOLUNTARY SOCIETY.—*V.* VOLUNTARY ASSOCIATION.

VOLUNTARY TRANSFER.—As to what was a "Voluntary Transfer or Delivery" of property within s. 32, 7 G. 4, c. 57; *V. Wainwright* v. *Clement*, 4 M. & W. 385; 8 L. J. Ex. 25. *V.* FRAUDULENT ASSURANCE.

"Voluntarily" transfer; *V. A-G.* v. *Ellis*, cited VOLUNTARILY.

VOLUNTARY TRUSTS. — *V.* 2 White & Tudor, 835–895: Lewin, ch. 6: Godefroi, ch. 6, 7.

VOLUNTARY WASTE. — In *Garth* v. *Cotton* (3 Atk. 751; 1 Ves. sen. 524, 546; 1 Dick. 183), it was considered that the phrase "Without Impeachment of Waste" was rendered nugatory by adding "except Voluntary Waste." However, in *Vincent* v. *Spicer* (25 L. J. Ch. 589; 22 Bea. 280), the words were "Without Impeachment of *or for any manner of* Waste, except Spoil or Destruction, or Voluntary or PERMISSIVE WASTE, or suffering buildings to go out of repair," and under those words Romilly, M. R., held that a tenant for life might cut all timber (except ornamental timber), which an owner in fee, who regarded his own interest and the permanent advantage of the estate, would probably cut.

V. WASTE: WILFUL WASTE.

VOLUNTARY WINDING-UP. — *V.* WINDING-UP.

VOLUNTEER. — Every one who, under any disposition, takes a benefit for which neither himself nor any one on his behalf gives any CONSIDERATION, is a Volunteer, *e.g.* the consideration of Marriage, quà a Marriage Settlement, extends only to the husband and wife and the issue of their marriage (*A-G.* v. *Jacobs-Smith*, cited VOLUNTARY DISPOSITION; explaining *Newstead* v. *Searles*, 1 Atk. 265: *Vf*, *De Mestre* v. *West*, 1891, A. C. 264; 60 L. J. P. C. 66: Vaisey, 77–82, 113).

So, every one in whose favour an Appointment is made under a General Power, and to whom or in whose favour the appointor is under no obligation to appoint, is a "Volunteer." "The interest given by a Settlement to, *e.g.*, the children in default of appointment, is one thing; the interest which they take by virtue of the appointment, is another and a very different interest; and though it is true that they are not Volunteers with respect to the former, yet that interest is destroyed by the execution of the Power and the interest which they take under the Appointment they owe to the voluntary act and bounty of the appointor; and in respect of this latter interest they are mere Volunteers, just as much as any strangers would be in whose favour the donee of the Power might have thought fit to exercise it" (per Kindersley, V. C., *Vaughan* v. *Vanderstegen*, 2 Drew. 178; 2 W. R. 295). *Vh*, *Re Roper*, 39 Ch. D. 482: *Re De Burgh Lawson*, 41 Ch. D. 568; 58 L. J. Ch. 561; 37 W. R. 797: *Re Parkin*, 1892, 3 Ch. 521.

"Volunteer," s. 11, 52 & 53 V. c. 7; *V. A-G.* v. *Jacobs-Smith*, sup: VOLUNTARY SETTLEMENT.

V. DONATIO MORTIS CAUSÂ, *Note*: GOOD: PURCHASE: VIEW: VOID.

Quà Volunteer Act, 1863, 26 & 27 V. c. 65. "'Volunteer,' means, a Non-commissioned Officer or Private belonging to a Volunteer Corps,

exclusive of the permanent staff thereof" (s. 49); "Volunteer," in s. 45, does not include a Yeomanry Officer (*Humphrey* v. *Bethel*, cited RIDE).

Quà Naval Artillery Volunteer Act, 1873, 36 & 37 V. c. 77, "'Volunteer,' means, a Petty Officer or Gunner belonging to a Naval Artillery Volunteer Corps, exclusive of the permanent staff thereof" (s. 43).

Quà Army Act, 1881, "'Volunteers, and Volunteer FORCES' includes, the Honorable Artillery Company of London" (subs. 14, s. 190).

Quà Electoral Disabilities (Military Service) Removal Act, 1900, 63 & 64 V. c. 8, "'a Volunteer,' shall include, any person who is enlisted for temporary service only, in connection with any war, as a member of the Regular Forces" (subs. 4, s. 1).

VOTE. — "There are two well-known methods of voting, (1) by Show of Hands, and (2) by a Poll; and the essence of the former method is that the hands are held up and counted by decision of the eye" (per Chitty, J., *Ernest* v. *Loma Co*, 65 L. J. Ch. 851; 1896, 2 Ch. 572). Therefore, though the voting at a Co's Meeting is to be "either Personally or by Proxy," *e.g.* Art. 48, Table A, Comp Act, 1862, yet proxies ought not to be counted on the Show of Hands (*S. C.*, 1897, 1 Ch. 1; 66 L. J. Ch. 17; 45 W. R. 45, over-ruling *Re Bidwell*, 1893, 1 Ch. 603; 62 L. J. Ch. 549: *Vf*, *Re Horbury Bridge Co*, 48 L. J. Ch. 341; 11 Ch. D. 109: *Re Caloric Co*, 52 L. T. 846). *Vf*, CONCLUSIVE EVIDENCE.

Quà Parliamentary and Municipal Elections, a person applying for a Ballot Paper "shall be deemed 'to Tender his Vote,' or 'to assume to vote'"; and an application for a Ballot Paper, "or expressions relative thereto, shall be equivalent to 'voting'" (ss. 15, 20, Ballot Act, 1872, 35 & 36 V. c. 33).

V. ENTITLED TO VOTE: *Morris* v. *Beves*, cited NUMBER.

"Vote"; Stat. Def., Bankry (Scot) Act, 1856, 19 & 20 V. c. 79, s. 4.

"Vote of the Conference"; Stat. Def., Primitive Wesleyan Methodist Society of Ireland Act, 1871, 34 & 35 V. c. 40, s. 1.

VOTER. — *V.* COUNTY, p. 421: ELECTOR: LOCAL GOVERNMENT ELECTORS: OCCUPATION VOTER: OWNERSHIP: PARLIAMENTARY: PAROCHIAL ELECTOR.

Quà Mun Corp Act, 1882, 45 & 46 V. c. 50, "'Voter,' means, a BURGESS or a person who votes or claims to vote at a Municipal Election" (s. 77).

Other Stat. Def. — 17 & 18 V. c. 102, s. 38; 35 & 36 V. c. 60, s. 2; 55 & 56 V. c. 53, s. 27; 57 & 58 V. c. 38, s. 12.

VOTING. — *V.* POLLING: VOTE.

VOUCH TO WARRANTY. — *V.* Co. Litt. 101 b, 102 a.

VOYAGE. — A Voyage, is a transit at sea from one terminus to another (*Glaholm* v. *Hays*, 10 L. J. C. P. 98; 2 Sc. N. R. 471; 2 M. & G.

257: *Valente* v. *Gibbs*, 28 L. J. C. P. 229; 6 C. B. N. S. 270). "The Word 'Voyage,' standing alone, has an extensive meaning; it means, a passing by water from one place or port to another place or port" (per Byles, J., *Barker* v. *McAndrew*, 34 L. J. C. P. 194; 18 C. B. N. S. 759). *Sv*, per Coleridge, C. J., *R.* v. *Southport*, cited SHIP.

V. LIBERTY TO CALL. *Cp*, PASSAGE.

As to when a Voyage commences and is completed; *V. Dahl* v. *Nelson*, 12 Ch. D. 568; 6 App. Ca. 38; 50 L. J. Ch. 411: DURING, pp. 587, 588: NAVIGATION: *Re Pyman and Dreyfus*, 24 Q. B. D. 152; 59 L. J. Q. B. 13: 1 Maude & P. 469 *et seq*: Carver, Part 2, ch. 10.

Vh, NEAR THERETO AS SHE MAY SAFELY GET: NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS.

Quà Mer Shipping Act, 1894, Part 4 (relating to Fishing Boats), "Voyage," means, "a Fishing Trip commencing with a departure from a Port for the purpose of fishing, and ending with the first return to a Port thereafter upon the conclusion of the trip; but a return due to Distress only, shall not be deemed to be a return if it is followed by a resumption of the trip" (s. 370).

V. COLONIAL, at end: FIRST VOYAGE.

"Outward and Homeward Voyages"; *V.* 1 Maude & P. 373.

A Voyage POLICY is one which covers the RISK of a particular voyage; *Vh*, *Gambles* v. *Ocean Marine Insrce*, 1 Ex. D. 8, 141; 45 L. J. Q. B. 366. *Cp*, TIME POLICY.

"A Voyage *Royall*, is not onely, when the king himselfe goeth to warre, as Littleton here (s. 95) saith, but also when his lieutenant or deputy of his lieutenant goeth. . . . There is also another kind of Voyage Royall, viz. when one goeth with the king's daughter beyond sea to be maried &c" (Co. Litt. 69 b). There is therefore "a Voyage Royall of Warre, and a Voyage Royall of Peace and Amity" (Ib.). *V.* ESCUAGE.

"*Same* Voyage"; *V. Gether* v. *Capper*, 15 C. B. 696; 24 L. J. C. P. 69; 25 Ib. 260.

"Seaworthiness . . . for the Voyage"; *V.* SEAWORTHY.

VOYAGER. —*V.* PASSENGER.

WADSET—WAGES

WADSET.—Is the Scotch equivalent for an English MORTGAGE (Jacob).

WAFER.—Wafer Bread is not "Bread" quà the Rubric to the office for Holy Communion (*Hebbert* v. *Purchas*, cited ORNAMENT: *Ridsdale* v. *Clifton*, cited IT SHALL SUFFICE).

WAGE.—"'Wage,' is the giving security for the performing of any thing; as to wage Law, and to wage Deliverance" (Termes de la Ley). *V.* PLEDGE.

To wage Battle, or Wager of Battel; *V.* Jacob, *Battel*: 3 Bl. Com. 337–341: for the form of it, 3 Bl. Com. App. iv: abolished by 59 G. 3, c. 46, the last Wager of Battel being by Abraham Thornton, Nov. 1817, on his second trial for the murder of Mary Ashford. *Cp*, Trial by Battle, sub BATTLE.

To wage Deliverance; *V.* Termes de la Ley, *Gager de deliverance.*

To wage Law; *V.* Termes de la Ley, *Law*: Jacob, *Wager of Law*: Co. Litt. 294 b: 3 Bl. Com. 341–343. Abolished by s. 13, Civil Procedure Act, 1833, 3 & 4 W. 4, c. 42.

WAGER.—What is a Wager? *V.* this question discussed 40 J. P. 227.

V. BET: GAMING CONTRACT: SUBSCRIPTION OR CONTRIBUTION.

WAGERING CONTRACT.—*V.* GAMING CONTRACT: TIME BARGAIN.

WAGERING POLICY.—Is otherwise called an HONOUR, or P. P. I., Policy.

WAGES.—"Though this word might be said to include payment for any services, yet, in general, the word 'Salary' is used for payment of services of a higher class, and 'Wages' is confined to the earnings of labourers and artizans" (per Grove, J., *Gordon* v. *Jennings*, 51 L. J. Q. B. 417. *Vh*, per Parke, B., *Riley* v. *Warden*, 18 L. J. Ex. 120; 2 Ex. 59: per Bramwell, B., *Sleeman* v. *Barrett*, 33 L. J. Ex. 153; 2 H. & C. 934, and in *Ingram* v. *Barnes*, 26 L. J. Q. B. 322; 7 E. & B.

132). In *thlc*, Bramwell, B., said, "Whatever definition one gives to the term 'Wages,' a portion of what the Plaintiff here gets is 'profits,' made and makeable by the employment of other people under him. If a portion is that, the whole is not Wages"; *Vf*, per Cockburn, C. J., *S. C.* It would therefore seem that "Wages," are the *personal* earnings of labourers and artizans.

V. INCOME: PAYMENT: PERSONAL LABOUR: SALARY: TRUCK ACT.

Quà Hosiery Manufacture (Wages) Act, 1874, 37 & 38 V. c. 48, "any money or other thing had, or contracted to be paid delivered or given, as a recompense, reward, or remuneration, for any LABOUR done or to be done (whether within a certain time or to a certain amount, or for a time or for an amount uncertain) shall be deemed and taken to be the Wages of such Labour" (s. 7).

Quà Stannaries Act, 1887, 50 & 51 V. c. 43, "'Wages' includes, all EARNINGS by miners arising from any description of Piece or other WORK, or as tributers or otherwise" (s. 2).

Quà Mer Shipping Act, 1894, "'Wages,' includes EMOLUMENTS" (s. 742).

Claim for "Wages," s. 3 (2), County Court Admiralty Jur. Act, 1868, includes a claim for damages for Wrongful Dismissal (*The Blessing*, 3 P. D. 35). *V.* "Maritime Lien," sub LIEN: SEAMAN.

"Wages forfeited for DESERTION," s. 232, Mer Shipping Act, 1894, are the wages due after all proper deductions have been made (*The Parkdale*, cited SLOPS).

Forfeiture of all "Wages *due*"; *V. Walsh* v. *Walley*, 43 L. J. Q. B. 102; L. R. 9 Q. B. 367.

The month's wages payable on dismissing a Domestic Servant without notice, are the money wages; board wages are not included (*Gordon* v. *Potter*, 1 F. & F. 644).

In the United States, "the plaintiffs contracted to grade a Railway for the defendants, part of the terms of the remuneration being that the plts should receive pay for the actual Wages of men and teams employed on the work, and, in addition, 10 per cent of such amount. Such payment of Wages, &c, to be made direct to persons employed. The plts sub-let part of the work to sub-contractors. Payment was made direct by the railway to such sub-contractors as well as to the labourers of the plts. The plts claimed for 10 per cent over what the sub-contractors received; held, that 'Wages' were to be interpreted as 'Compensation paid to a hired person for his services.' This compensation to the labourer might be a specified sum for a given time of service, or a fixed sum for a specified work, *i.e.* payment made by the job. The word 'Wages' does not imply that the compensation is to be determined solely upon the basis of time spent in service; it may be determined by the work done. It means, compensation estimated in either way: *Ford* v. *St. Louis & N. W. Ry*, 54 Iowa, 273" (1 Hudson, 146).

WAGGON. —*V.* CART: STAGE WAGGON.

Quà Locomotives Act, 1898, 61 & 62 V. c. 29, "'Waggon,' includes, any truck, cart, carriage, or other VEHICLE" (subs. 1, s. 17).

WAGGON ROAD. —*V.* CART ROAD.

WAIF. —"'Waife' is when a theefe hath feloniously stollen goods, and being neerly followed with HUE AND CRY, or else overcharged with the burden or trouble of the goods, for his ease sake and more speedy travailing, without Hue and Cry, flyeth away, and leaveth the goods or any part of them behinde him, &c, then the Kings officer, or the Reeve or Baylife to the Lord of the Mannor (within whose jurisdiction or circuit they were left) that by prescription, or grant from the King, hath the franchise of Waife, may seise the goods so waived to their Lords use, who may keepe them as his owne proper goods, except that the owner come with FRESH SUIT after the felon, and sue an appeale, or give in evidence against him at his arraignment upon the indictment, and he bee attainted thereof, &c. In which cases the first owner shall have restitution of his goods so stollen and waived" (Termes de la Ley).

"'Waifs,' *bona waviata*, are goods stolen, and waived or thrown away by the thief in his flight, for fear of being apprehended" (1 Bl. Com. 296).

Vf, FUGITIVE GOODS: Cowel: Jacob: 12 Encyc. 498.

Cp, WAIVE.

WAINABLE. — Terra Wainabilis; *V* TERRA.

WAINAGE. — AMERCIAMENT of a VILLEIN "salvo wainagio suo" (Magna Carta, c. 14), *i.e.* his "team and instruments of husbandry" (4 Bl. Com. 379). "'Wainagium,' is the contenement or countenance of the villein, wherewith he was to doe villein service, as to carry the dung of the lord out of the scite of the mannor unto the lords land and casting it upon the same, and the like; and it was great reason to save his Wainage, for otherwise the miserable creature was to carry it on his back" (2 Inst. 28).

WAIT FOR CONVOY. —*V.* CONVOY.

WAITING YOUR REPLY. — *Semble*, these words at the end of a letter containing a distinct contractual offer, do not make the offer a mere proposal which the writer is at liberty to retract on receiving a reply; therefore, if the receiver of the letter accepts the offer (though only verbally) the writer of it will be bound (*Watts* v. *Ainsworth*, 31 L. J. Ex. 448; 1 H. & C. 83).

WAIVE. — A "Waive" was a woman that was outlawed; "and shee is called 'Waive,' as left out or forsaken of the law, and not an outlaw

as a man is: for women are not sworne in Leetes to the King, nor to the Law, as men are, who therefore are within the Law, whereas women are not, and for that cause they cannot be said outlawed, in so much as they never were within it" (Termes de la Ley: *Vf*, Cowel).

Cp, WAIF.

WAIVED GOODS. — *V.* FUGITIVE GOODS: WAIF.

WAIVER. — A Waiver is "the passing by of a thing, or a declining or refusal to accept it" (Jacob), *i.e.* an ABANDONMENT. *Cp*, RENUNCIATION: "Surrender by Act or Operation of Law," sub SURRENDER: STANDING BY.

Waiver is EXPRESS, or IMPLIED; Express, when the person entitled to anything expressly and in terms gives it up, in which case it nearly resembles a RELEASE (*V. Stackhouse* v. *Barnston*, 10 Ves. 466); Implied, when the person entitled to anything does or acquiesces (*V.* ACQUIESCENCE) in something else which is inconsistent with that to which he is so entitled, — "Delay, of itself, does not constitute waiver, but it may be such as to amount to evidence of waiver" (per Bowen, L. J., *Selwyn* v. *Garfit*, 57 L. J. Ch. 615; 38 Ch. D. 284).

Quà BILLS OF EXCHANGE, and Pro. Notes, Waiver is called RENUNCIATION (s. 62, Bills of Ex. Act, 1882, on *whv* Chalmers, 211); *V.* s. 16 (2), Ib.: Waiver of Notice of Dishonour; *V.* s. 50 (2), Ib., on *whv* Chalmers, 164–170: Waiver of Presentment; *V.* s. 46 (2), Ib., on *whv* Chalmers, 151: Waiver of Protest; *V.* s. 51 (9), Ib., on *whv* Chalmers, 175, 176.

Quà *Companies*, the Waiver Clause in a Prospectus was that in which the rights (of applicants for shares) under s. 38, Comp Act, 1867, were waived; *Vh*, *Greenwood* v. *Leather Shod Wheel Co*, 1900, 1 Ch. 421; 69 L. J. Ch. 131: Hamilton, 440, 441: but that section is replaced and amplified by s. 10, Comp Act, 1900, by subs. 5 of which a Clause waiving its provisions is void: *Va*, s. 4 (5).

Quà CONTRACTS; *V.* Add. C. 129, 154, 895, 1090: Leake, 687, 690, 692, 727; quà a CONDITION Precedent in a Contract, *V.* Add. C. 129: Leake, 580, 753.

Quà *Covenants* and *Conditions*; *V. Gibson* v. *Doey*, or *Doeg*, 27 L. J. Ex. 37; 2 H. & N. 615: *Re Summerson*, 69 L. J. Ch. 57, *n*: *Hepworth* v. *Pickles*, 1900, 1 Ch. 108; 69 L. J. Ch. 55; 81 L. T. 818; 48 W. R. 184.

Quà *Crown Escheats*; *V.* s. 6, Intestates' Estates Act, 1884, 47 & 48 V. c. 71.

Quà *Landlord and Tenant*, a FORFEITURE is waived, *e.g.*, by acceptance of rent becoming due *after* knowledge of the facts giving rise to the forfeiture (*Goodright* d. *Walter* v. *Davids*, Cowp. 803: *Arnsby* v. *Woodward*, 6 B. & C. 519: *Whitchcot* v. *Fox*, Cro. Jac. 398), *Va*, WHENEVER; a NOTICE TO QUIT, given by a Landlord, is waived, *e.g.*, by acceptance of rent, or (if given by a Tenant) by payment of rent, for a period

after the expiry of the notice (*Keith* v. *National Telephone Co.*, 1894, 2 Ch. 147; 63 L. J. Ch. 373); *Vf*, Redman, 454: Fawcett, 447: Woodf. 341 *et seq.*

Quà MORTGAGES, Liens, and Sureties; *V.* Fisher, Part 7, ch. 4: Waiver of Mtgor's rights prior to the exercise by Mtgee of Power of Sale; *V. Selwyn* v. *Garfit*, 57 L. J. Ch. 609; 38 Ch. D. 273; 59 L. T. 233; 36 W. R. 513: *Re Thompson and Holt*, 59 L. J. Ch. 651; 44 Ch. D. 492; 62 L. T. 651; 38 W. R. 524.

Quà TENDER; *V. Douglas* v. *Patrick*, 3 T. R. 683: Rosc. N. P. 703, 704.

Quà TORT, waiver of by claiming proceeds as a debt; *V. Brewer* v. *Sparrow*, 7 B. & C. 310: *Lythgoe* v. *Vernon*, 29 L. J. Ex. 164; 5 H. & N. 180: *Burn* v. *Morris*, 3 L. J. Ex. 193; 2 Cr. & M. 579: *Smith* v. *Baker*, 42 L. J. C. P. 155; L. R. 8 C. P. 350: *Valpy* v. *Sanders*, 17 L. J. C. P. 249; 5 C. B. 886: all which cases were referred to in *Rice* v. *Reed*, 1900, 1 Q. B. 54; 69 L. J. Q. B. 33; 81 L. T. 410: Leake, 75.

Quà TRUSTS, waiver of BREACH OF TRUST by long delay so that a claim founded thereon becomes a STALE Demand; *V. Re Cross*, 51 L. J. Ch. 645; 20 Ch. D. 109: *Vf*, Lewin, 1137: Waiver of *Trust for Sale* by the ELECTION of the beneficiaries to take the subject of the gift *in specie*; *V.* Lewin, 1166 *et seq.*

V. 12 Encyc. 499–506: Chand on Consent, ch. 12.

WALK. — A Conviction of a woman that she was guilty of "Walking with a Member" of Cambridge University, is bad; because the phrase does not connote that she was walking with him for an immoral purpose, nor that she was "suspected of evil" within the words of the Charter of the University (*Ex p. Daisy Hopkins*, 61 L. J. Q. B. 240; 56 J. P. 262; 66 L. T. 53). *Cp*, NIGHT-WALKER: STREET WALKER.

"Public Walks and Pleasure Grounds"; *V.* PLEASURE.

WALL. — The ordinary sense of the "Walls" of a BUILDING contemplates foundations and a roof (per Cave, J., *Slaughter* v. *Sunderland*, 60 L. J. M. C. 93).

Probably, a mere Wall is seldom, if ever, included in the word "Building"; *V.* BUILDING, p. 227.

A Wall "is, at any rate, something which will stand by itself" (per Russell, C. J., *Budley* v. *Cuckfield*, 64 L. J. Q. B. 571; 72 L. T. 775; 43 W. R. 663; 59 J. P. 582); in *whc* it was held that an outer part of a new building constructed of thin sheets of galvanized iron next to which was a layer of felt with a match-board lining on the inner side, was not a "Wall" of "Hard and INCOMBUSTIBLE Materials" within a Bye Law relating to New Buildings. *Va*, a similar provision in R. 1, "Preliminary," Sch 1, Metrop Bg Act, 1855, and in R. 1 and 3, "Preliminary,"

Sch 1, London Bg Act, 1894; but there the phrase is "hard and incombustible Substances."

House "with the Walls belonging thereto"; *V. Fox* v. *Clarke*, L. R. 9 Q. B. 565: 43 L. J. Q. B. 178.

V. BANK: CROSS: DEAD WALL: EXTERNAL WALL: FRONT MAIN WALL: INCLOSING WALLS: PARTY-WALL: RETAIN, at end: SEA WALL.

WALTHAM. — *V.* BLACK ACT.

WANDER. — Animals "wandering"; *V.* LOOSE: LYING ABOUT: STRAY.

WANT. — "Does not want"; *V.* LEFT.

"For want of" objects of preceding limitation; *V.* DIE WITHOUT ISSUE.

"In the want of," *e.g.* a Certificate, does not connote that the thing cannot be obtained, or that the person spoken of is bound to obtain it if possible (per Bayley, J., *Suart* v. *Powell*, 1 B. & Ad. 273).

WANTING A PILOT. — "Wanting a Pilot," s. 72, 6 G. 4, c. 125, repld s. 606 (1 *h*), Mer Shipping Act, 1894, is not to be confined to such vessels as are bound to take a pilot, but applies to any vessel the master or owner of which thinks fit to require one (*Lucey* v. *Ingram*, 6 M. & W. 302; 9 L. J. Ex. 196).

WANTON. — "'Wantonly,' means, not having a reasonable cause. 'Wantonness,' consists in the doing that which will annoy another, and which the party doing it knows will produce no results to himself" (per Willes, J., *Clarke* v. *Hoggins*, 11 C. B. N. S. 551, 552).

V. UNREASONABLE.

WAPENTAKE. — "Is all one with that which wee call HUNDRED" (Termes de la Ley: Cowel: 1 Bl. Com. 115). *Vh*, 12 Encyc. 515. *Cp*, RAPE, at end.

WAR. — "What constitutes a state of War is well described in Hall's International Law, 4 ed., 63, — 'When differences between States reach a point at which both parties resort to force, or one of them does acts of violence which the other chooses to look upon as a breach of the peace, the relation of War is set up, in which the combatants may use regulated violence against each other until one of the two has been brought to accept such terms as his Enemy is willing to grant'" (per Mathew, J., *Driefontein Mines* v. *Janson*, 1900, 2 Q. B. 343; 69 L. J. Q. B. 775; 83 L. T. 79; 48 W. R. 619); there is no authority for the supposed doctrine that a subsequent state of War will relate back to a prior SEIZURE so that the latter may be said to have been made whilst there was a state of War (*S. C.*).

"Foreign State at War with any Friendly State," s. 8 (3), Foreign

Enlistment Act, 1870, 33 & 34 V. c. 90; *V. United States* v. *Pelly*, cited PREVENT.

An alternative stipulation in a Charter-Party if "War" has commenced, does not mean War in any part of the world, but means, War between countries which would render the originally intended voyage unlawful (*Avery* v. *Bowden*, 5 E. & B. 714; 6 Ib. 953; 25 L. J. Q. B. 49; 26 Ib. 3; 5 W. R. 45).

Note. As to the effect of War on a Contract; *V. Ashmore* v. *Cox*, cited IMPOSSIBLE: Abbott, 754–760.

Vh, generally, 12 Encyc. 515–525.

V. CIVIL WAR: CONTRABAND: LEVY WAR: SHIP, p. 1868.

WARD. — As to Wardship in the old TENURES; *V.* 2 Bl. Com. 67, 87, 97: Termes de la Ley, *Gard*, *Gardeine*: Cowel, *Gard*, *Gardeyne*.

As to the modern relationship of GUARDIAN and Ward; *V.* Eversley on Domestic Relations, Part 3: Simpson on Infants, Part 3: 1 White & Tudor, 473–534: 1 Bl. Com. ch. 17: TESTAMENTARY GUARDIAN.

"'Ward *of Court*,' properly, means, a person under the care of a Guardian appointed by the Court; but the term has been extended to INFANTS who are brought under the authority of the Court by an application to it on their behalf, though no guardian is appointed by the Court: *Brown* v. *Collins*, 25 Ch. D. 60; 53 L. J. Ch. 370" (Simpson on Infants, 2 ed., 240, *whv* as to how Infants are made Wards of Court: *Va*, Eversley, Part 4, ch. 5).

V. NURTURE.

"Casual Ward"; *V.* CASUAL.

Ward HOLDING, in Scotland, abolished and conversion of tenure into Blench or Feu Holding by 20 G. 2, c. 50, ss. 1, 2, 4, 9.

Municipal Wards; *V.* Mun Corp Act, 1882, s. 30; Loc Gov (Ir) Act, 1898, s. 104 (1 *k*); Town Councils (Scot) Act, 1900, 63 & 64 V. c. 49, ss. 17–22, s. 111: P. H. Act, 1875, s. 271.

V. WATCH.

WARE. — Quà Gold and Silver Wares Act, 1844, 7 & 8 V. c. 22, "Ware," means and includes, "any plate, vessel, article, or manufacture, of any metal whatsoever" (s. 14). *V.* DEALER.

V. GOODS, WARES, AND MERCHANDIZE.

WARECTUM. — "*Warectum*, or *wareccum*, or *varectum*, doth signifie fallow" (Co. Litt. 5 b). *Vf*, Cowel.

WAREHOUSE. — "A 'Warehouse,' in common parlance, certainly means a place where a man stowes or keeps his goods which are not immediately wanted for sale" (per Rolfe, B., *R.* v. *Hill*, 2 Moo. & R. 459); and it was there held that a Cellar used for such a stowage was a "Warehouse" within s. 15, 7 & 8 G. 4, c. 29, repld s. 56, Larceny Act, 1861. In 1751, on 10 & 11 W. 3, c. 23, it was held that "Warehouses," meant,

"not mere repositories for goods but, such places where merchants and other traders keep their goods for sale in the nature of shops, and whither customers go to view them" (*R.* v. *Howard*, Foster, 73: *Vf*, *R.* v. *Godfrey*, Leach, 288).

Quà Customs Consolidation Act, 1876, 39 & 40 V. c. 36, "'Warehouse,' shall mean, any place in which goods entered to be warehoused may be lodged, kept, and secured" (s. 284: *Vf*, s. 357, 16 & 17 V. c. 107).

"Warehouse," quà Factory and Workshop Act, 1901; *V.* per Day, J., *Rogers* v. *Manchester Packing Co*, cited BLEACHING: FACTORY.

Quà Part 7, Mer Shipping Act, 1894, "'Warehouse,' includes, all warehouses, buildings, and premises, in which goods when landed from SHIPS may be lawfully placed" (s. 492). *Cp*, WHARF.

Quà Spirits Act, 1880, 43 & 44 V. c. 24, "'Warehouse,' means, any warehouse approved or provided for the deposit of SPIRITS" (s. 3).

"Warehouse" or "other Building," s. 27, Rep People Act, 1832; *V.* *Watson* v. *Cotton*, 17 L. J. C. P. 68; 5 C. B. 51.

In *R.* v. *Edmundson* (28 L. J. M. C. 213; 2 E. & E. 77) a Warehouse was included in "other Place" in the phrase "dwelling-house, outhouse, yard, garden, or other place."

"*Queen's* Warehouse," quà Customs Consolidation Act, 1876, 39 & 40 V. c. 36, means, "any place provided by the Crown, or approved by the Commissioners of Customs, for the deposit of goods for security thereof and of the duties due thereon" (s. 284).

"BUILDING of the *Warehouse Class*," quà London Bg Act, 1894, "means, a warehouse, factory, manufactory, brewery or distillery, and any other building exceeding in CUBICAL extent 150,000 cubic feet, which is neither a PUBLIC BUILDING nor a DOMESTIC BUILDING" (subs 28, s. 5).

Warehouse Receipts; *V.* *Tennant* v. *Union Bank of Canada*, cited BANKING.

Warehouse to Warehouse Clause; *V.* RISK.

V. EX QUAY OR WAREHOUSE.

WAREHOUSEMAN.—"This is a term well understood in London, and means a person who buys and sells linens, muslins, silks, and woollen goods, by wholesale; and does not, it should seem, include in it every person who owns or keeps a Warehouse" (Arch. Bank., 11 ed., 37: this comment was on "Warehousemen" as contained in the late Bankry definition of "Trader"). *Vf*, *Clark* v. *Denton*, 1 B. & Ad. 102, 103.

Quà Explosives Act, 1875, 38 & 39 V. c. 17, "'Warehouseman,' includes, all persons owning or managing any Warehouse, Store, Wharf, or other premises, in which goods are deposited" (s. 108).

Quà Mer Shipping Act, 1894, "'Warehouseman,' means, the occupier of a 'WAREHOUSE' as" therein defined (s. 492).

WARES. — *V.* GOODS, WARES, AND MERCHANDIZE: WARE.

WARETTUM. — A synonym for Wreccum Maris, WRECK (Hale, De Jure Maris, ch. 7); but in ch. 6, Ib., Hale speaks of "*Littus Maris*, sometimes called *marettum*, sometimes *warettum*." *Vf*, MARETTUM: SHORE.

WARLIKE. — Warlike Operations; *V.* CONSEQUENCES.

WARP. — "'Warp,' is a denomination of some kind of thread prepared to be woven and used in manufacture; it is, in itself, something 'prepared for manufacturing goods'" (*R.* v. *Ashton*, 2 B. & Ad. 756).

WARRANT. — "Warrant" has two frequent meanings, —

1. A Document (ordinarily issued by a Magistrate) for the apprehension of an accused person, in order to compel him to appear and answer the charge brought against him (4 Bl. Com. ch. 21), or for the commitment or detention or discharge of an accused person, or to compel the attendance of a witness, &c (11 & 12 V. c. 42; 31 & 32 V. c. 107), or to search for property with respect to which an offence against the Larceny Act is suspected to have been committed (s. 103, 24 & 25 V. c. 96). *Vh*, Stone, tit. *Warrants*.

"Warrant for the Arrest" of a person failing to attend for Public Examination; *V.* R. 76, Comp Winding-up Rules, 1890; R. 13, Comp Winding-up Rules, 1892.

Quà Extradition Act, 1870, 33 & 34 V. c. 52, "'Warrant,' in the case of any FOREIGN State, includes, any JUDICIAL DOCUMENT authorizing the arrest of a person accused, or convicted, of crime" (s. 26).

2. A document authorizing something to be done, or for the delivery of goods, or for the payment of money.

Warrant of Authority; *V.* Bowstead on Agency, 377 *et seq.*

"Warrant," quà Dividends and Stock Act, 1869, 32 & 33 V. c. 104, includes, "draft, order, cheque, or any other document, used as a medium for payment of dividends" (s. 6): *Vf*, 33 & 34 V. c. 71, s. 3; 36 & 37 V. c. 44, s. 5.

"Warrant for the Delivery of Goods," s. 23, 24 & 25 V. c. 98, includes a Pawnbroker's Ticket (*R.* v. *Morrison*, 28 L. J. M. C. 210; Bell C. C. 158); *Vf*, AUTHORITY OR REQUEST: Arch. Cr. 468, 700.

"Warrant for Goods"; *V.* Stamp Act, 1891, s. 111.

"Treasury Warrant"; *V.* TREASURY.

V. CHEQUE.

"Warrant for the ARREST of Property," in Admiralty actions *in rem*, R. 16, Ord. 5, R. S. C.; on *whv* Ann. Pr.: Wms. & Bruce, Part 2, ch. 1.

A Warrant *of Attorney*, is a mode of giving a creditor security by his debtor authorizing a Solicitor to confess judgment against the debtor for an amount agreed on; *Vh*, Warrants of Attorney Acts, 1822 and 1843,

3 G. 4, c. 39; 6 & 7 V. c. 66; 32 & 33 V. c. 62, ss. 24–28: *Cook* v. *Fowler*, 43 L. J. Ch. 855; L. R. 7 H. L. 27. *Cp*, POWER OF ATTORNEY.

"*Share* Warrant"; *V.* SHARE, at end.

WARRANTED FREE FROM AVERAGE. — "Warranted free," means that the insurers are not to be liable for the things to which the warranty applies (*Cory* v. *Burr*, 8 App. Ca. 393; 52 L. J. Q. B. 657). *V.* AVERAGE: STRANDING, at end: WARRANTY.

WARRANTED HIGHEST RATE. — As to this phrase in a Lloyd's Policy; *V. Walker* v. *Uzielli*, 1 Com. Ca. 452, *whcv* for "Warranted Same Premiums and Conditions."

WARRANTED IN PORT. — This phrase usually means, in the Port from which the Voyage is to commence (*Colby* v. *Hunter*, Moo. & M. 81; 3 C. & P. 7).

V. IN PORT.

WARRANTED SOUND. — Horse sold "warranted sound, for one month," means, that the warranty is to continue in force for one month only, and that complaint of unsoundness must therefore be made within one month of the sale (*Chapman* v. *Gwyther*, 35 L. J. Q. B. 142; L. R. 1 Q. B. 463; 7 B. & S. 417: *Vf*, *Bywater* v. *Richardson*, 3 L. J. K. B. 164; 1 A. & E. 508; 3 N. & M. 748).

V. SOUND: VICE.

WARRANTED UNINSURED. — *V.* UNINSURED.

WARRANTY. — "A Warranty is an express, or implied, statement of something which the party undertakes shall be part of a contract, and though part of the contract yet collateral to the express object of it. But in many of the cases, the circumstance of a party selling a particular thing by its proper description has been called a *Warranty* and the breach of such a contract a breach of warranty; but it would be better to distinguish such cases as a *Non-compliance* with a contract which a party has engaged to fulfil; as if a man offers to buy *peas* of another and he sends him *beans*, he does not perform his contract; but that is not a Warranty; there is no *warranty* that he should sell peas; the *contract* is to sell peas and if he sends him anything else in their stead it is non-performance of it" (per Abinger, C. B., *Chanter* v. *Hopkins*, 4 M. & W. 404; 8 L. J. Ex. 16; quoted by Martin, B., *Azemar* v. *Casella*, 36 L. J. C. P. 264).

"It was rightly held by Holt, C. J. (*Crosse* v. *Gardner*, Carth. 90; 3 Mod. 261: *Medina* v. *Stoughton*, Salk. 210; Raym. Ld, 593), and has been uniformly adopted ever since, that an affirmation *at the time of sale* is a Warranty, provided it appear on evidence to have been so intended"

(per Buller, J., *Pasley* v. *Freeman*, 3 T. R. 51). *Vf*, *De Lassalle* v. *Guildford*, 1901, 2 K. B. 215; 70 L. J. K. B. 533.

Vh, 7 L. Q. Rev. 342.

Quà Sale of Goods, "'Warranty,' as regards England and Ireland, means, an agreement with reference to goods which are the subject of a Contract of Sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated: — As regards Scotland, a breach of Warranty, shall be deemed to be, a failure to perform a material part of the contract" (s. 62 (1), Sale of Goods Act, 1893). *Note*: speaking generally, a Sale of Goods implies a Warranty of Title but not of Quality (2 Bl. Com. 451), except, quà Title, where the circumstances negative the implication, or where, quà Quality, the implication arises when there is a stipulated quality or when the goods are supplied for a specified purpose (Rosc. N. P. 483 *et seq*: Add. C. 547).

In Charter-Parties and Marine Insurances, "Warranted" or "Warranty" is, and for many years has been, synonymous with "CONDITION" (per Williams, J., *Behn* v. *Burness*, 32 L. J. Q. B. 205; 3 B. & S. 753: *Vf*, *Barnard* v. *Faber*, 1893, 1 Q. B. 340; 62 L. J. Q. B. 159; 68 L T. 179; 41 W. R. 193; 9 Times Rep. 160), strictly binding on the party making it (Park, ch. 18). But a REPRESENTATION, *i.e.* a statement not appearing on the face of the instrument itself, "need only be performed in substance," and an error in a Representation does not vitiate the Policy if made without fraud and not false in a material point, or if the Representation be substantially, though not literally, fulfilled (Park, 663, citing *Pawson* v. *Watson*, Cowp. 787: *Vf*, *Behn* v. *Burness*, sup: *Quin* v. *National Assrce*, Jones & Carey, 316). *Vh*, 8 Encyc. 164 *et seq*, 153 *et seq*.

V. FALSE WARRANTY: WRITTEN WARRANTY.

In regard to real property, "a warrantie is a covenant reall annexed to lands or tenements, whereby a man and his heires are bound to warrant the same" (Co. Litt. 365 a: *Vf*, Cowel: Jacob: Elph. 411).

WARREN. — "'Warren' is a place priviledged by prescription or grant of the King for the preservation of Hares, Conies, Partridges, and Phesants, or any of them" (Termes de la Ley).

A Warren, or Free Warren, is a Franchise to have and keep game within a manor, or other known place (Wms. on Rights of Common, 238, *whv* for Crown Grant of a Free Warren. *Vf*, Elph. 629).

Although Coke says (Co. Litt. 5 b) that by a grant of a Warren not only the privilege but the land itself passes, yet it has been recently held by the H. L. that the grant of a "Warren," *e.g.* "Warren of Conies," does not, *primâ facie*, pass the soil, though it may do so by a context (*Beauchamp* v. *Winn*, L. R. 6 H. L. 223). *Robinson* v. *Dhuleep Singh* (11 Ch. D. 798; 48 L. J. Ch. 758) is an instance in which, con-

textually, the word was held (by Fry, J.) to pass the soil. *Vf, Note* to next par.

"A Warren is not parcel, nor any Member, of a MANOR; but it may be appertaining, but that is by Prescription" (*Bowlston* v. *Hardy*, Cro. Eliz. 547); therefore, a grant of a Manor with all its appertaining Franchises and appurts (*Morris* v. *Dimes*, 3 L. J. K. B. 170; 3 N. & M. 674), or even of a Manor "and all Warrens, &c, thereto appertaining, or accepted and reputed as part" thereof (*Bowlston* v. *Hardy*, sup), will not pass a Warren in GROSS. *Note*: in *Morris* v. *Dimes*, Channell arg. said, "A Warren is a realty in land, but is not part or parcel of the land (35 H. 6, fol. 56). Free Warren may be in one, the land in another; and if a party, having both, alien the land, the warren does not pass (8 H. 5, p. 4); and the conveyance of land *cum pertinentibus* will not pass warren." *Vf, Pannell* v. *Mill*, cited ROYALTIES.

Beasts of Warren; *V.* BEASTS.

Fowl of Warren; *V.* FOWL.

Cp, CHASE: PARK: TENEMENT.

WASH-HOUSE. — *V.* BATH.

WASTE. — Waste is an act, or omission, by the tenant in possession, occasioning the destruction of, or injury to, "houses, gardens, woods. trees, or in lands, meadowes, &c, or in exile of men, to the disherison of him in the reversion or remainder. There be two kinds of Waste, viz., Voluntary or Actuall, and Permissive" (Co. Litt. 53 a: DO OR MAKE. *Vu*, Termes de la Ley, *Wast*: 2 Bl. Com. 281: Add. T. 413: Woodf. 646).

VOLUNTARY WASTE, is "the committing of any spoil or destruction in houses, lands, &c, by tenants, to the damage of the heir or of him in reversion or remainder" (Bacon Abr. tit. "Waste"): "the law will not allow that to be Waste which is not anyways prejudicial to the inheritance" (per Richardson, C.J., *Barret* v. *Barret*, Hetley, 35). For example, if a Tenant for Life cuts Timber that, generally speaking, is Waste; yet if there are periodical cuttings of Timber which are in accordance with the modern practice on the estate and in the neighbourhood, and in the ordinary course of good forestry for the preservation of the woods and to secure a due succession of timber, such cuttings are not Waste, and the Tenant for Life is entitled to them as part of the annual profits (*Dashwood* v. *Magniac* and *Honywood* v. *Honywood*, cited TIMBER); such a property becomes more or less a TIMBER ESTATE, but that is a conclusion which will require fairly clear proof (*Pardoe* v. *Pardoe*, 82 L. T. 547).

"The best definition of 'Waste' that I have been able to find is in *Darcy* v. *Askwith* (Hob. 234) which is in these words,—'It is generally true that the Lessee hath no power to *change the nature* of the thing

demised; he cannot turn meadow into arable, nor stub a wood to make it pasture, nor dry up an antient pool or piscary, nor suffer ground to be surrounded, nor decay the pale of park (for then it ceaseth to be a Park); nor he may not destroy or drive away the stock or breed of any thing, because it disherits and takes away the perpetuity of succession, as villains, fish, deer, young spring of woods, the like; but he may better a thing in the same kind, as by digging a meadow to make a drain or sewer to carry away water.' The test, as there laid down, seems to be, Whether the act which the Lessor says is an act of Waste by the Lessee is an act which alters the nature of the thing demised" (per Buckley, J., *West Ham* v. *East London W. W. Co*, 1900, 1 Ch. 624; 69 L. J. Ch. 262; 82 L. T. 85; 48 W. R. 284, *whcv* for an example).

Voluntary Waste is divisible into (*a*) Meliorating Waste, and (*b*) Equitable Waste.

Meliorating Voluntary Waste, is that which betters, and which, *semble*, is not punishable or restrainable unless substantial damage is proved, or some express prohibitive stipulation is broken (*Doherty* v. *Allman*, 3 App. Ca. 709; 39 L. T. 129; 26 W. R. 513: *Jones* v. *Chappell*, L. R. 20 Eq. 539; 44 L. J. Ch. 658: *Meux* v. *Cobley*, 1892, 2 Ch. 253; 61 L. J. Ch. 449; 66 L. T. 86: *Re McIntosh and Pontypridd Improvements Co*, 61 L. J. Q. B. 164). *Smyth* v. *Carter* (18 Bea. 78) is of but little value hereon (per Ld O'Hagan, *Doherty* v. *Allman*, sup).

Equitable Voluntary Waste, "is that which a prudent man would not do in the management of his own property" (per Campbell, C., *Turner* v. *Wright*, 2 D. G. F. & J. 243), and is the creation of Equity, and arises in cases of destructive or WANTON Waste which, at Law, would have been excused by the words "Without impeachment of Waste": — "'*Without impeachment of waste* (sauns impeachment de wast),' *Absque impetitione vasti* (that is) without any challenge or impeachment of waste, and by force hereof the lessee may cut down the trees and convert them to his own use" (Co. Litt. 220 a). But now, the words "Without impeachment of waste" will not confer even "any *legal* right to commit Equitable Waste" (s. 25 (3), Jud. Act, 1873). So that now, both at law and equity, "the term 'Without impeachment of Waste,' contained in a Deed or Will creating a life estate in land, does not enable the life tenant to deal with the property as if he were the absolute owner thereof in fee simple. He may cut down timber and growing trees fit for timber (*Smythe* v. *Smythe*, 2 Swanst. 251: *Gordon* v. *Woodford*, 29 L. J. Ch. 222), and convert them to his own use (*Pyne* v. *Dor*, 1 T. R. 56), and open new mines and work them for his benefit: but he cannot dig and carry off brick-earth, and destroy a field to the prejudice of the inheritance (*London* v. *Web*, 1 P. Wms. 528); and he will be restrained from committing wanton and malicious waste, such as damaging and destroying buildings, pulling down ancient boundary walls and fences (*Aston* v. *Aston*, 1 Ves. sen. 265: *Vane* v. *Barnard*, 2 Vern. 739; 1 T. R.

55: Co. Litt. 220 a: *Leeds* v. *Amherst*, 14 Sim. 357; 15 L. J. Ch. 351; 16 Ib. 5), and cutting down thriving wood unfit for timber, and the felling of which would be destructive to the property (*Chamberlayne* v. *Dummer*, 1 Bro. C. C. 166; 3 Ib. 549); also from cutting down trees which were either planted, or left standing, for the shelter or ornament of a mansion-house (*Newdigate* v. *Newdigate*, cited ORNAMENTAL TIMBER: *Micklethwait* v. *Micklethwait*, 26 L. J. Ch. 721: *Wellesley* v. *Wellesley*, 6 Sim. 497: *Burges* v. *Lamb*, 16 Ves. 174: *V. Bubb* v. *Yelverton*, L. R. 10 Eq. 465; 40 L. J. Ch. 38), but he may cut down such ornamental timber as the Court would sanction for the preservation of the rest, and would be entitled to the proceeds (*Baker* v. *Sebright*, 13 Ch. D. 179; 49 L. J. Ch. 165). But he is not responsible, although he allows a mansion-house and buildings to go to wreck and ruin for want of timely repairs to the roof and windows (*Powys* v. *Blagrave*, 4 D. G. M. & G. 448; 24 L. J. Ch. 142; Kay, 495: *Landsowne* v. *Landsowne*, 1 Jac. & W. 522, overruling *Parteriche* v. *Powlett*, 2 Atk. 383); nor if he pulls down a ruinous structure, and uses up the materials in rebuilding it (*Morris* v. *Morris*, 3 D. G. & J. 323; 28 L. J. Ch. 329)": Add. T. 417. *Vf*, 2 White & Tudor, 970 *et seq*: Seton, 542–555.

"The words 'Without impeachment of Waste,' *as applied to Trustees of a term for special purposes*, have, however, a very different sense from the same words annexed to a tenancy for life. The Court will not permit Trustees so holding, to execute their trust by cutting down timber (*Downshire* v. *Sandys*, 6 Ves. 115)": Add. T. 418: *Va*, *Campbell* v. *Allgood*, 17 Bea. 623. *V.* WITHOUT IMPEACHMENT OF WASTE.

As to the powers and rights of a Tenant for Life when he is Unimpeachable for Waste; *Vf*, *Re Medows*, 1898, 1 Ch. 300; 67 L. J. Ch. 145; 78 L. T. 13; 46 W. R. 297: *Cowley* v. *Wellesley*, L. R. 1 Eq. 656; 35 Bea. 635.

Vf, as to Waste, Co. Litt. 52 b–54 b, and tit. "Waste" in Index: Watson Eq. 1247–1255: Woodf. 646–661: Rosc. N. P. 343–348: Yool on Waste: Bewes on Waste: 12 Encyc. 533–544: *Dunn* v. *Bryan*, Ir. Rep. 7 Eq. 143: *Brooke* v. *Mernagh*, 23 L. R. Ir. 86: *Brooke* v. *Kavanagh*, Ib. 97. As to when Life Estates limited in pursuance of an Executory Trust are, or are not, to be made Impeachable for Waste, *V.* Elph. 546.

PERMISSIVE WASTE, is damage resulting from the omission to do something which ought to be done, *e.g.* by Non-Repair (Co. Litt. 53); but "it is not Waste at Common Law, either Wilful or Permissive, to leave the land uncultivated" (per Parke, B., *Hutton* v. *Warren*, 1 M. & W. 472), or (as the same learned judge said in *S. C.* as reported Tyr. & G. 653) "Permissive Waste or ploughing sward are quite different from desisting to cultivate, which does not amount to Waste at Common Law": the dictum to the contrary (5 L. J. Ex. 235), *semble*, is inaccurately reported.

Note: In the absence of an express duty or obligation, no action for

Permissive Waste lies by a Remainder-man against the estate of a deceased Tenant for Life (*Re Cartwright, Avis* v. *Newman*, 58 L. J. Ch. 590; 41 Ch. D. 532; 37 W. R. 612; 60 L. T. 891: *Re Parry and Hopkin*, 1900, 1 Ch. 160; 69 L. J. Ch. 190; 81 L. T. 807; 48 W. R. 345). *Cp*, KEEPING SAME IN REPAIR.

The King shall keep lands of Lunatics "without Waste or Destruction," 17 Edw. 2, c. 10, is to be construed in the ordinary, and not in the technical, sense (*Oxenden* v. *Compton*, 2 Ves. 71).

Ecclesiastical Waste and Dilapidations; *V.* Phil. Ecc. Law, Part 5, ch. 5: DILAPIDATION.

V. DO OR MAKE: WILFUL WASTE.

"Waste," quà Fisheries (Ir) Acts, includes and extends to "any and to all uncultivated or unprofitable lands" (s. 1, 13 & 14 V. c. 88; *Vf*, s. 113, 5 & 6 V. c. 106).

"Waste land of a MANOR," quà Commons Act, 1876, 39 & 40 V. c. 56, "means and includes, any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of common which may be exercised at all times of the year for cattle LEVANT AND COUCHANT, or to any rights of common which may be exercised at all times of the year and are not limited by number or STINTS" (s. 37). *V.* COMMON LAND: WASTE GROUND.

"Waste of the Forest"; *V. Commrs of Sewers* v. *Glasse*, cited VICINAGE.

"Waste land of Epping Forest"; *V.* 34 & 35 V. c. 93, s. 17.

V. ROADSIDE WASTE.

WASTE GROUND.—"'Wast Ground,' is so called because it lies as *wast*, with little or no profit to the Lord of the Mannor, and to distinguish it from the Demesnes in the Lords hands" (Cowel). *V.* WASTE, towards end: DEMESNE: COMMON LAND.

Grant by the Crown, as Lord of the Manor of Englefield, of "all those Coal Mines found, or to be found, within the Commons, *Waste Grounds* or Marshes within the said lordship of E.," with a proviso that the grant should be construed strictly as against the Crown, and most strictly and beneficially for the grantees; held, to pass Coal lying under the foreshore of the estuary of the Dee, between high and low water marks, and forming part of the Manor (*A-G.* v. *Hanmer*, 27 L. J. Ch. 837).

WASTE SILK.—*V. Gardiner* v. *Gray*, 4 Camp. 144.

WASTE WATER.—In the Rochdale Canal Acts (and, probably, in Canal legislation generally), "Waste Water" means, "water not legitimately needed for the statutory purposes of the Canal," and which would, in the ordinary course, pass out of the Canal; and does not mean, such water as the Canal should not have used in any manner (*Manchester Ship Canal Co* v. *Rochdale Canal Co*, 81 L. T. 472; affd 85 Ib. 585).

WASTING. — Wasting Assets or Securities, are those which in their nature are terminating, *e.g.* terminating annuities and leaseholds: *Vh*, *Howe* v. *Dartmouth*, cited PRODUCE: Lewin, 322: Godefroi, 311–318.

WATCH. — "Watch or beset"; *V.* BESET.

In the phrase "Watch and Ward," Watch "is properly applicable to the night only"; Ward "is chiefly applied to the daytime" (1 Bl. Com. 356).

Quà, and by, s. 7, Merchandize Marks Act, 1887, 50 & 51 V. c. 28, "'Watch' means, all that portion of a watch which is not the watch case."

WATER. — "Open Water"; *V.* OPEN, p. 1341: FIRST OPEN WATER.

"Place for Water," includes a Well (*Hipkins* v. *Birmingham Gas Co*, 5 H. & N. 74; 8 W. R. 182).

Reservation in a Lease of "the free running of *Water and Soil* coming from any other buildings and lands *contiguous* to the premises hereby demised, in and through the sewers and watercourses made, or to be made, within through or under the said premises," extends to Water and Soil coming from contiguous premises, whether arising, in the first instance, on or from such premises, or not; but it does not extend beyond Water, in its natural condition, and such matters as are the product of the ordinary use of land for habitation, and therefore does not give a right of passage for the refuse of tan-pits (*Chadwick* v. *Marsden*, 36 L. J. Ex. 177; L. R. 2 Ex. 285).

V. RIVER: SUFFICIENT WATER: SUPPLY: WATERCOURSE: WATERS: WELL SUPPLIED.

WATER CLOSET. — *V.* SUFFICIENT PRIVY: URINAL.

WATER COMPANY. — Quà P. H. Act, 1875, "'Water Company,' means, any person or body of persons, corporate or unincorporate, supplying or who may hereafter supply water for his or their OWN PROFIT" (s. 4), so, quà P. H. Ireland Act, 1878 (s. 2); probably, that def is of general acceptation. *Vf*, 40 & 41 V. c. 31, s. 10; 62 & 63 V. c. 19, Sch, s. 18 (6).

A Municipal Corporation owning WATERWORKS and supplying water and charging for same, is a "Water Co" within s. 52, P. H. Act, 1875 (*Wolverhampton* v. *Bilston*, 1891, 1 Ch. 315; 39 W. R. 394).

A Co for supplying motive power by hydraulic pressure, is not a Water Co (*London Co. Co.* v. *London Hydraulic Power Co*, 42 S. J. 362; 62 J. P. 229; 14 Times Rep. 301).

Quà Metropolis Management Acts, "Water Company," means and includes, the "Metropolitan Water Companies" enumerated in s. 3, 34 & 35 V. c. 113 (*Vf*, s. 5, 60 & 61 V. c. 56), "and also any other

Company Board or Commission, Association Person or Partnership, corporate or unincorporate, for the time being supplying the METROPOLIS, or any part thereof, with water for DOMESTIC use" (s. 112, 25 & 26 V. c. 102).

WATER CONSUMER.—*V.* CONSUMER.

WATERCOURSE.—"Without saying that a 'Watercourse' may never mean the channel in which water flows, it certainly may mean the stream or flow of the water itself; and whether it means the one or the other in any instrument, will very materially depend on the context" (per Coleridge, J., delivering the jdgmt, *Doe* d. *Egremont* v. *Williams*, 17 L. J. Q. B. 158; 11 Q. B. 700).

"'Watercourse' may mean, and perhaps the more natural meaning of it is, a channel in which water flows; and the grant of a right to make a Watercourse, may include the right to fill it with water, and use the water flowing in it when made" (per Ld Davey, delivering the jdgmt, *Remfry* v. *Natal*, 1896, A. C. 558; 65 L. J. P. C. 72; 75 L. T. 58).

Va, *Taylor* v. *St. Helen's*, 46 L. J. Ch. 857; 6 Ch. D. 264: and as to the acquisition of a Right to a Watercourse, *V. Wood* v. *Waud*, 3 Ex. 748; 18 L. J. Ex. 305: *Rameshur Pershad Narain Singh* v. *Koonj Behari Pattuk*, 4 App. Ca. 121.

"A Watercourse means, water flowing between banks more or less defined. To constitute a Watercourse in which rights may exist or may be acquired by user or otherwise, the flow of water must possess that unity of character by which the flow on one person's land can be identified with that on his neighbour's land. Water which squanders itself over an indefinite surface is not a Watercourse, nor a proper subject-matter for the acquisition of a right by user (*Briscoe* v. *Drought*, 11 Ir. Com. Law Rep. 250: *Rawstron* v. *Taylor*, 11 Ex. 369; 25 L. J. Ex. 33: *Broadbent* v. *Ramsbottom*, 11 Ex. 602, 615; 25 L. J. Ex. 115). But the moment the water of a spring runs into a definite channel, it constitutes a Watercourse (*Dudden* v. *Clutton Union*, 1 H. & N. 627; 26 L. J. Ex. 146). All accessions to such stream, from whatever source, form part of it (*Wood* v. *Waud*, sup). Where the question at the trial is whether there is a Watercourse or not, the judge ought, before he leaves that question to the jury, to instruct them as to what constitutes a 'Watercourse' in law (*Briscoe* v. *Drought*, sup: *Va*, *Elliott* v. *South Devon Ry*, 2 Ex. 725; 17 L. J. Ex. 262: *R.* v. *Cottle*, 16 Q. B. 412; 20 L. J. M. C. 162: *Cashill* v. *Wright*, 6 E. & B. 891)": Woodf. 750.

A claim by an owner of a Copper Mine to sink pits on his own land, to fill such pits with iron, and to cover the same with water pumped from the mine (in order to precipitate the copper in the water), and afterwards to let off the water into a watercourse in another's land, is a claim to a "Watercourse" within s. 2, Prescription Act, 1832, 2 & 3 W. 4, c. 71

(*Wright* v. *Williams*, 1 M. & W. 77; 5 L. J. Ex. 107: *Carlyon* v. *Lovering*, 1 H. & N. 797).

Semble, a TIDAL RIVER may be included in "Watercourse" (*Somersetshire Drainage Commrs* v. *Bridgwater*, 81 L. T. 729).

Vh, Angell on Watercourses.

Quà Land Drainage Acts, "Watercourse," includes, "all rivers, streams, drains, sewers, and passages, through which water flows" (s. 3, 24 & 25 V. c. 133; s. 3, 26 & 27 V. c. 26).

"*Drains, Trenches, or Watercourses*," s. 97, 14 G. 3, c. 96, applies only to artificial streams made for improving the navigation of the rivers Aire and Calder, mentioned in the Act, and not to natural streams (*Smith* v. *Barnham*, 1 Ex. D. 419).

V. DRAIN: SPRING: STREAM: WATERS.

WATER EDGE. — In the grant of a Canadian Water Lot, "the expression 'along the Water's Edge' may either signify, the line which separates the land from the water; or, a water space, of greater or less width, constituting the margin of the river"; it is a phrase "capable of being explained by possession" (*Booth* v. *Ratté*, 59 L. J. P. C. 41).

WATER FITTINGS. — *V.* FITTINGS.

WATERING PLACE. — As to whether "Watering Places," in an Enclosure Act, includes Wells; *V. Race* v. *Ward*, 7 E. & B. 386, 387.

WATER LIMITS. — Quà Metropolis Water Acts; Stat. Def., 34 & 35 V. c. 113, s. 3.

WATERMAN. — Quà the Watermen and Lightermen of the River Thames, "Waterman," means, "any person navigating, rowing, or working, for HIRE, 'a Passenger Boat'" (s. 3, 22 & 23 V. c. cxxxiii), such a "Boat," meaning, "any Sailing Boat, River Steam Boat, Row Boat, Wherry, or other like Craft, used for carrying PASSENGERS within the limits of this Act, unless there is something in the context inconsistent with such a meaning" (s. 2, Ib.). *V.* WHERRY.

Watermen's and Lightermen's Acts, are 22 & 23 V. c. cxxxiii; 56 & 57 V. c. lxxxi: *Va*, Thames Conservancy Act, 1894, Part 6.

"The Watermen's Company," means, The Master, Wardens, and Commonalty, of Watermen and Lightermen of the River Thames, incorporated by 7 & 8 G. 4, c. lxxv (s. 3, Thames Conservancy Act, 1894).

Quà London Hackney Carriages Act, 1843, 6 & 7 V. c. 86, "Waterman," includes, "every person supplying water to the drivers of hackney carriages at the standings or places where hackney carriages usually stand or ply for hire, and every person assisting the drivers at such standings in managing or taking care of the horses or carriages, and

every attendant upon any metropolitan stage carriage at places where such carriages usually stop or ply for passengers" (s. 2).

WATER-MARK. — *V.* HIGH WATER: BRAND.

WATER RATE. — Quà Waterworks Clauses Act, 1847, 10 & 11 V. c. 17, "Water Rate," includes, "any rent, reward, or payment, to be made to the Undertakers for a supply of water" (s. 3).

A Lessor's covenant "to pay all Rates, Taxes, Assessments, Water Rate, and other Outgoings (except the gas and electric light), now or hereafter to be IMPOSED or ASSESSED upon the said premises, or on the lessor or lessee in respect thereof," includes, quà "Water Rate," the ordinary rate, and not a special water rate for Trade Purposes, *e.g.* a supply of water for a Restaurant (*Floyd* v. *Lyons*, 1897, 1 Ch. 633; 66 L. J. Ch. 350; 76 L. T. 251: 45 W. R. 435). *V.* DOMESTIC.

WATERS. — "If a man grant *aquam suam*, the soile shall not passe, but the pischary within the water passeth therewith" (Co. Litt. 4 b). *Cp*, POOL.

As to the effect of general words in a Conveyance granting "Waters, Watercourses"; *V. Wardle* v. *Brocklehurst*, 29 L. J. Q. B. 145: *Sanderson* v. *Berwick-upon-Tweed*, 53 L. J. Q. B. 559; 13 Q. B. D. 547.

"Waters," in Sch to 52 G. 3, c. 150, as affected by the repeal in s. 20, 3 & 4 W. 4, c. 97; *V. A-G.* v. *Lamplough*, 47 L. J. Ex. 555; 3 Ex. D. 214.

"All other Waters wherein Salmons be taken," 2 Westm. c. 47; the Thames is not included herein (2 Inst. 478).

"Indian Waters"; *V.* INDIAN.

"Inland Waters"; *V.* INLAND.

Subterranean Waters; *V.* DEFINED CHANNEL: *Acton* v. *Blundell* and *Chasemore* v. *Richards*, cited INJURY.

V. NAVIGABLE: TERRITORIAL WATERS: TIDAL WATER: WATER.

Vh, Coulson and Forbes on Waters.

WATER SUPPLY. — *V.* SOURCE: SUPPLY.

WATERWAY. — *Vh*, 12 Encyc. 561–571.

WATERWORKS. — Quà P. H. Act, 1875, "'Waterworks,' includes, streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery lands buildings and things, for supplying or used for supplying water; also the stock-in-trade of any WATER COMPANY" (s. 4), so quà P. H. Ireland Act, 1878 (s. 2). S. 52, P. H. Act, 1875, which restricts the power of a Local Authority to construct Waterworks, also speaks of the "limits of supply" and the power to "supply" water; therefore, "Waterworks," in the Act including s. 52, means, works for the supply of water to persons

who require it; and does not include works for obtaining water for the use only of a Local Authority, *e.g.* for flushing sewers (*West Surrey Water Co* v. *Chertsey*, 1894, 3 Ch. 513; 63 L. J. Ch. 806; 71 L. T. 368; 43 W. R. 6): *Vf*, SUPPLY. In s. 52, "Waterworks" means, *New* Waterworks; the section does not apply to additions, or improvements in, existing works (*Cleveland W. W. Co* v. *Redcar*, 1895, 1 Ch. 168; 64 L. J. Ch. 64), unless the extension be into a new district (*Huddersfield* v. *Ravensthorpe*, 1897, 2 Ch. 121; 66 L. J. Ch. 581; 76 L. T. 817; 45 W. R. 642; 61 J. P. 596).

Other Stat. Def. — Waterworks Clauses Act, 1847, s. 3.

"Works for the supply of water"; Stat. Def., 40 & 41 V. c. 31, s. 10. *V.* SUPPLY.

WAVESON. — "Such goods as, after shipwreck, do appear swimming upon the water" (Jacob). *V.* FLOTSAM.

WAY. — "There be three kinde of wayes, whereof you shall reade in our ancient bookes. First a foot way which is called *iter*, *quod est jus eundi vel ambulandi hominis*; and this was the first way.

"The second is a foot way and horse way, which is called *actus ab agendo*; and this vulgarly is called packe and prime way, because it is both a foot way, which was the first or prime way, and a packe or drift way also.

"The third is *via* or *aditus*, which contains the other two, and also a cart way, &c, for this is *jus eundi, vehendi, et vehiculum et jumentum ducendi*: and this is twofold, viz., *regia via*, the king's highway for all men, *et communis strata*, belonging to a city or towne, or betweene neighbours and neighbours. This is called in our bookes *chimin*, being a French word for a way, whereof cometh *chiminage*, *chiminagium*, or *chimmagium*, which signifieth a toll due by custome for having a way through a Forest; and in ancient records it is some time also called *pedagium*" (Co. Litt. 56 a: *whv* criticized 2 Encyc. 248). *Vf*, Termes de la Ley, *Chimin*: 3 Cru. Dig. Title 24.

Besides the Ways enumerated by Coke there may be a DRIFTWAY or way for driving cattle, which is not necessarily included in a carriage or horse way (*Ballard* v. *Dyson*, 1 Taunt. 279: *Vth*, per Pearson, J., *Serff* v. *Acton*, 31 Ch. D. 683).

V. BRIDLE-PATH: CAUSEWAY: FOOTPATH: HIGHWAY: PUBLIC HIGHWAY: PUBLIC WAY.

Any right of way may exist for certain purposes only (*Cowling* v. *Higginson*, 7 L. J. Ex. 265; 4 M. & W. 245: *Brunton* v. *Hall*, cited LEAD AWAY: *Wimbledon Common Conservators* v. *Dixon*, 45 L. J. Ch. 353; 1 Ch. D. 362: *Bradburn* v. *Morris*, 3 Ch. D. 812); and, without any express words of restriction, "*primâ facie*, the grant of a right of way, is the grant of a right of way having regard to the nature of the road over which it is granted and the purpose for which it is intended to

be used" (per Jessel, M. R., *Cannon* v. *Villars*, 8 Ch. D. 421; 47 L. J. Ch. 599).

"A right of way may be created by a covenant by the owner of the servient tenement that the owner of the dominant tenement shall enjoy it" (Elph. 630, citing *Holmes* v. *Seller*, 3 Lev. 305).

When in a deed relating to *Mines* there is a grant of "a *Free and Convenient* Way" (*Senhouse* v. *Christian*, 1 T. R. 560), or of a "*Sufficient* Wayleave" (*Dand* v. *Kingscote*, 9 L. J. Ex. 279; 6 M. & W. 174), or, probably, of a "*Necessary* Wayleave," or the like (*S. C.*), or to "*Convey Coals*" (*Bishop* v. *North*, 12 L. J. Ex. 362; 11 M. & W. 418), the grantee, *primâ facie*, may for his better accommodation make Waggon-Roads or Tram-Roads on the site over which such a right of way extends. He may even make a Rail-Road if, in the deed, there be a clause requiring him to compensate for damage, and if such a road would not be a nuisance or a source of danger (*Bishop* v. *North*, sup). *Vf*, MacS. 357–361.

Under the words "Sufficient Way-leave," a party is not confined to such description of way as was in use at the time of the grant (*Dand* v. *Kingscote*, sup).

Quâ London Bg Act, 1894, "Way," "includes, any public road way or footpath not being a STREET, and any private road way or footpath which it is proposed to convert into a highway or to form lay out or adapt as a Street" (subs. 2, s. 5). *V.* ROADWAY.

A Way of NECESSITY, "derives its origin from a Grant," and not otherwise (1 Wms. Saund. 571). If "one sells land, and afterwards the Vendee, by reason thereof, claims a way over part of the Vendor's land, there being no other convenient way adjoining," in such case the vendee has a Way of Necessity over the vendor's land, "for otherwise he could not have any profit of his land"; and "*è converso*, if a man hath four closes lying together, and sells three of them, reserving the middle close and hath not any way thereto but through one of those which he sold, although he reserved not any Way, yet he shall have it as reserved unto him by the Law" (*Clark* v. *Cogge*, Cro. Jac. 170). But a Way of Necessity does not arise "whenever a man has not another way," *e.g.* he cannot go extra viam because the road he is entitled to use is impassable (*Bullard* v. *Harrison*, 4 M. & S. 387). *Vf*, *Pinnington* v. *Gallend*, 22 L. J. Ex. 348; 9 Ex. 1: per Cairns, L. J., *Gayford* v. *Moffatt*, 4 Ch. 135: *Titchmarsh* v. *Royston Water Co*, 44 S. J. 101: Gale 151 *et seq*: Rosc. N. P. 812.

Permanent Way; *V.* PERMANENT.

V. ABANDONMENT: BY WAY OF: GATEWAY: NON-USER: WAYS.

WAYFARER. — As regards his right to accommodation at an INN, and the Innkeeper's rights against him, "Wayfarer" seems synonymous with "TRAVELLER": *Vh*, jdgmt of Wills, J., *Orchard* v. *Bush*, cited GUEST.

WAYLEAVE. — *V.* WAY: *Whitwham* v. *Westminster Brymbo Co*, 1896, 2 Ch. 538; 65 L. J. Ch. 741: *N. E. Ry* v. *Hastings*, 1900, A. C. 260; 69 L. J. Ch. 516.

WAYS. — "The words 'with all Ways thereunto *appertaining*,' strictly and properly speaking, never carry a right of way over another tenement of the grantor; and for this simple reason, — when a man who is owner of two fields walks over one to get to the other, that walking is attributable to the ownership of the land over which he is walking, and not, necessarily, to the ownership of the land to which he is walking" (per Fry, J., *Bolton* v. *Bolton*, 11 Ch. D. 970; 48 L. J. Ch. 469, citing *Harding* v. *Wilson*, 2 B. & C. 96; 3 D. & R. 287: *Barlow* v. *Rhodes*, 2 L. J. Ex. 91; 1 Cr. & M. 439). And, accordingly, where there is a contract to sell premises "with the APPURTENANCES," the vendor is entitled to have in the conveyance a limitation of the GENERAL WORDS of s. 6, Conv & L. P. Act, 1881, so as to grant no more than he has bargained to sell (*Bolton* v. *Bolton*, sup: *Re Peck and London School Bd*, 1893, 2 Ch. 315; 62 L. J. Ch. 598; 68 L. T. 847; 41 W. R. 388); and, generally, he will be entitled to have excluded therefrom the words "reputed" and "enjoyed" (*Re Peck and London School Bd*). *Vf*, *Re Hughes and Ashley*, 1900, 2 Ch. 595; 69 L. J. Ch. 741; 83 L. T. 390; 49 W. R. 67.

But a grant, by the owner of two closes of land, of one of them, "together with all Ways *now used therewith*," will pass to the grantee a right of way over a clearly defined path, constructed over the other close, and then actually used as the mode of access to the close granted, even though the path did not exist prior to the unity of possession (*Barkshire* v. *Grubb*, 18 Ch. D. 616; 50 L. J. Ch. 731; 29 W. R. 929: *Vf*, *Thomson* v. *Waterlow*, L. R. 6 Eq. 36; 37 L. J. Ch. 495: *Langley* v. *Hammond*, L. R. 3 Ex. 161; 37 L. J. Ex. 118: *Kay* v. *Oxley*, L. R. 10 Q. B. 360: *Bayley* v. *G. W. Ry*, 26 Ch. D. 434: *Brown* v. *Alabaster*, 37 Ch. D. 490; 57 L. J. Ch. 255; 36 W. R. 155). *V.* THEREWITH.

Ways "now or *heretofore* held or enjoyed"; *V. Roe* v. *Siddons*, 22 Q. B. D. 224.

Quâ Employers' Liability Act, 1880, 43 & 44 V. c. 42, s. 1 (1), "Ways," means, "all kinds of material things which may be used in, or in connection with, the business of the employer" (per Field, J., *McGiffen* v. *Palmer's Shipbuilding Co*, 52 L. J. Q. B. 29; 10 Q. B. D. 5). Planks placed for walking over a hole in ground where machinery is being erected, is such a "Way" (*Bromley* v. *Cavendish Spinning Co*, 2 Times Rep. 881). But it is not necessary that there should be a defined passage; any vacant space on the premises where the employer's business is being done which is ordinarily traversed by workmen when engaged on that business, is such a "Way" (*Willetts* v. *Watt*, 1892, 2 Q. B. 92; 61 L. J. Q. B. 540; 66 L. T. 818; 40 W. R. 497). *Vf*, *Wood* v. *Dorrall*,

2 Times Rep. 550: *McShane* v. *Baxter*, 7 Times Rep. 58: *Conway* v. *Clemence*, cited PLANT: WORKS. *Va*, DEFECT.

"Ways" in a Mining Lease; *V. Beaufort* v. *Bates*, 31 L. J. Ch. 481; 3 D. G. F. & J. 381; 10 W. R. 200; 6 L. T. 82.

"Ways" in a Turnpike Act includes Railways (*Rowe* v. *Shilson*, 4 B. & Ad. 726).

Stat. Def. — 24 & 25 V. c. 41, s. 1.

WEAK. — Weak Mind; *V.* UNSOUND MIND.

WEAKNESS. — Accident caused by weakness; *V.* CAUSED BY.

WEAPON. — Offensive Weapon; *V.* OFFENSIVE.

WEAR. — *V.* WEIR.

WEAR AND TEAR. — "These words ('reasonable Wear and Tear') no doubt, include destruction to some extent, — destruction of surfaces by ordinary friction, — but we do not think they include total destruction by a catastrophe which was never contemplated by either party"; even though such catastrophe may have resulted from the reasonable use of the premises demised (per Lindley, J., delivering the jdgmt, *Manchester Bonding Warehouse Co* v. *Carr*, 49 L. J. C. P. 809; 5 C. P. D. 507).

"If those words, 'fair Wear and Tear and Damage by Tempest excepted,' were not there, any dilapidations found at any time, or at the end of the term, by reason of the wear and tear, — *e.g.* the wearing out of the walls and floors of a public-house from the constant traffic and so forth, — the lessee would be liable to replace, and if, unfortunately, by a storm his chimney-pot was blown down, or he had his roof broken, he would be bound to put it straight, and restore the place to good and substantial repair" (per Kekewich, J., *Davies* v. *Davies*, 57 L. J. Ch. 1095; 38 Ch. D. 499; 58 L. T. 514; 36 W. R. 399). *V.* WITHOUT IMPEACHMENT OF WASTE.

The deduction, quà Income Tax under Sch D, for "Wear and Tear" (s. 12, 41 V. c. 15), may be and, *semble*, should be, not an average annual Wear and Tear of the 3 years on which the profits are estimated but, the Wear and Tear during the year immediately preceding the year of assessment (*Cunard S. S. Co* v. *Coulson*, 68 L. J. Q. B. 554; 1899, 1 Q. B. 865; 80 L. T. 326).

The case of *Bigge* v. *Bigge* (9 Jur. 192) illustrates the distinction between "Wear" and "Tear." In that case a testator had, by handling, *worn* his Will in two, — a very different thing from his having *torn* it in two, — so there was no revocation by "tearing" within s. 20, Wills Act, 1837. *V.* TEAR.

WEARING APPAREL. — Bequest of "all my Goods and Wearing Apparel of what nature and kind soever, except my gold watch"; held, that not only the testatrix's clothes but also her Personal Ornaments passed (*Crichton* v. *Symes*, 3 Atk. 61).

WEATHER PERMITTING. — *V.* Permitting.

WEATHER WORKING DAY. — "Weather Working Day," means, a day when work is not prevented by the weather; to load so much "per Weather Working Day," in a Charter-Party, means, that the charterer is to be charged half a day when substantially half a day's work can be done, and a whole day when substantially a full day's work (though not amounting to 12 hours) can be done; less than half a day is not to be considered (per Russell, C. J., *Branckelow S. S. Co* v. *Lamport*, 1897, 1 Q. B. 570; 66 L. J. Q. B. 382; 2 Com. Ca. 89).

V. Working Days.

WEEK. — Though a "Week" usually means any consecutive 7 days, it will sometimes be interpreted to mean the ordinary notion of a week reckoning from Sunday to Sunday (*Bazalgette* v. *Lowe*, 24 L. J. Ch. 368, 416).

And, probably, a "week" usually means 7 Clear days: — thus, where a statute provided that Notice of Appeal should be given "within one Week" *before* such appeal was to be heard, and Notice was given on the 22nd for the 29th, it was held that the Notice was insufficient (*R.* v. *Sweeney*, 2 Ir. L. R. 278). *Cp*, Fortnight.

Quà Factory and Workshop Act, 1901, "'Week,' means, the period between midnight on Saturday night and midnight on the succeeding Saturday night" (s. 156).

A theatrical engagement to employ at so much "*per week*," may be shown, by usage, to mean, "per week during every week that the theatre is open" (*Grant* v. *Maddox*, 16 L. J. Ex. 227).

WEEK-DAY. — *V.* Holiday.

WEEKLY. — As used in a Building Contract, parol evidence is admissible to show that, by the usage of the Building Trade, "Weekly *Accounts*" of Extras, means accounts of the Day-Work only, and does not extend to work capable of being measured (*Myers* v. *Sarl*, 3 E. & E. 306; 30 L. J. Q. B. 9).

V. Average Weekly Earnings.

"Weekly *Close Season*"; *V.* Annual Close Season.

An Order in execution of a statutory power enabling the order of "Weekly *Payments*," may direct that the first payment be made before the expiration of a week from the making of the Order (*R.* v. *Weston*, Raym. Ld, 1197).

A Weekly *Tenancy* needs a notice to determine it (*Bowen* v. *Anderson*, 1894, 1 Q. B. 164). *Vh*, REASONABLE, p. 1665.

WEIGHING. — "Weighing Instrument," quà Weights and Measures Acts, "includes, scales with the weights belonging thereto, scale-beams, balances, spring-balances, steel-yards, weighing machines, and other instruments for weighing" (s. 35, 52 & 53 V. c. 21); and "Weighing Machine" includes a Weighing Instrument (Ib.).

V. WEIGHT: *Cp*, MEASURING.

WEIGHT. — *V.* ACTUAL WEIGHT: BY WEIGHT: COIN: CORRECT: DEAD WEIGHT: ENGLISH: STANDARD. *Cp*, MEASURE.

Neither Scales nor Weighing Machines are Weights or Measures (*Thomas* v. *Stephenson*, 2 E. & B. 108; 22 L. J. Q. B. 258). *V.* WEIGHING: *Cp*, MEASURE.

Goods shipped from abroad to England to be paid for according to "Weight," connotes the Net English Weight (*Geraldes* v. *Donison*, Holt, N. P. 346).

"Weight of the Mineral gotten," s. 17, 35 & 36 V. c. 76; *V. Brace* v. *Abercarn Co*, cited MINERAL GOTTEN.

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

"Net Weight delivered"; *V.* DELIVERED.

"Weights and Measures Acts, 1878 to 1893"; *V.* Sch 2, Short Titles Act, 1896.

WEIGHT AND MEASUREMENT. — A Cargo of so many tons "of Weight and Measurement"; *V. Pust* v. *Dowie*, 34 L. J. Q. B. 127; 5 B. & S. 33.

WEIGHT UNKNOWN. — Where a Master of a Ship signs for goods "Weights unknown," the instrument is open to explanation (*Geraldes* v. *Donison*, Holt N. P. 347). *V.* CLEAN BILL OF LADING: CONTENTS UNKNOWN.

"Not responsible for Weight" (*Bradley* v. *Dunipace*, 31 L. J. Ex. 210; 32 Ib. 22; 7 H. & N. 200; 1 H. & C. 521, on *whcv*, *Parsons* v. *New Zealand Co*, cited CONCLUSIVE EVIDENCE), or "Weight unknown" (*The Emilien Marie*, 44 L. J. P. D. & A. 9; 32 L. T. 435), gives the Shipowner, not an absolute but, a qualified exoneration as regards the weight.

WEIR. — "'Weare,' or 'Were,' a stank or great Dam in a River, accommodated for the taking of Fish, or to convey the Stream to a Mill" (Cowel). *Vf*, 12 Encyc. 579: *Williams* v. *Wilcox*, 7 L. J. Q. B. 229; 8 A. & E. 314: *Hanbury* v. *Jenkins*, 1901, 2 Ch. 401; 70 L. J. Ch. 730.

V. GURGES: KIDEL: *Cp*, WERE.

An unlegalized erection of a Weir may be restrained (*Barker* v. *Faulkner*, W. N. (98) 69).

WELCHER. — "Welcher," without special damage, is not Slander (*Blackman* v. *Bryant*, 27 L. T. 491), unless the jury are satisfied that the word is used in the sense of, "one who takes money from those who make bets with him intending to keep such money for himself and never to part with it again" (*Williams* v. *Magyer*, Times, March 1, 1883: Odgers, 68).

WELFARE. — The Welfare of a Child, — to be considered quà Custody, — "is not to be measured by money only, nor by physical comfort only. 'Welfare' must be taken in its widest sense. The moral and religious welfare of the child must be considered, as well as its physical well-being. Nor can the ties of affection be disregarded" (per Lindley, L. J., *Re McGrath*, 1893, 1 Ch. 143; 62 L. J. Ch. 208; 67 L. T. 636; 41 W. R. 97, cited and adopted in *Re Gyngall*, 62 L. J. Q. B. 564).

WELL. — *V.* Public Well: Spring: Water: Watering Place. Warranty of a Ship being "well"; *V.* Safety.

WELL AND TRULY. — "Well and truly administer"; *V.* Administer.

"Well and truly" execute a Building Contract, and liability of Surety thereon; *V. Kingston* v. *Harding*, 1892, 2 Q. B. 494; 62 L. J. Q. B. 55; 67 L. T. 539; 41 W. R. 19.

WELL ASSURED. — *V.* Precatory Trust.

WELL KNOWN. — *V.* Precatory Trust.

"'As the Court well knew'; that is to say, 'had judicial knowledge'" (per Willes, J., *London* v. *Cox*, 36 L. J. Ex. 240; L. R. 2 H. L. 277).

WELL SECURED. — An Annuity described in Particulars of Sale as "well secured," *e.g.* on the once existing Waterloo Bridge Tolls, is not thereby represented as being on a good money-value security, but merely that its legal obligation has been effectually perfected (*Coverley* v. *Burrell*, 2 Starkie, 295). *V.* Secured: Security.

WELL SUPPLIED. — When property is sold under a representation that it is "well supplied with Water," that means, that the property is "supplied with water by a spring rising in it, or by a running stream passing through or into it, and so supplied as a matter of right, belonging or incident to the property, without rent or payment of any kind for the water or its use" (per Knight-Bruce, L. J., *Leyland* v. *Illingworth*, 29 L. J. Ch. 614).

Lord WENSLEYDALE'S ACT. — Marriage Confirmation Act, 1860, 23 & 24 V. c. 24: *Va*, Parke's Act.

WERE. — "*Were* is an old Saxon word, sometime written *wera*, and signifieth the price of the life of a man, *estimatio capitis*, that is, so much as one paid for the killing of a man" (Co. Litt. 287 b). "*Wera* or *were*, sometimes signifieth AMERCIAMENT" (Ib. 127 a).

Cp, WEIR.

Lord WESTBURY'S ACTS. — Domicile Act, 1861, 24 & 25 V. c. 121:

Bankry Act, 1861, 24 & 25 V. c. 134:

Land Registry Act, 1862, 25 & 26 V. c. 53:

Fine Arts Copyright Act, 1862, 25 & 26 V. c. 68:

Companies Act, 1862, 25 & 26 V. c. 89:

Clerks of the Peace Removal Act, 1864, 27 & 28 V. c. 65:

Improvement of Land Act, 1864, 27 & 28 V. c. 114:

Liquidation Act, 1868, 31 & 32 V. c. 68.

WESTERN BARGE. — A Thames "Western Barge"; *V. Tibble* v. *Beadon*, 24 L. J. M. C. 104: *Doick* v. *Phelps*, 30 L. J. M. C. 2; 3 E. & E. 244.

WESTMINSTER. — The Statutes of Westminster are the Acts passed at the three parliaments of Edward I. held at Westminster, *i.e.* Westm. 1, A. D. 1275, consisting of 51 chapters; Westm. 2, A. D. 1285, consisting of 50 chapters; and Westm. 3, A. D. 1290, consisting of 3 chapters. Of these, c. 1, Westm. 2 (generally now cited as 13 Edw. I., c. 1) is the famous statute *De Donis*, or, more fully, *De Donis Conditionalibus* (those being its commencing words), which is the origin of our law of Estates TAIL, — "Tenant in Fee Tail is by force of the statute of Westm. 2, c. 1, for, before the said statute, all inheritances were Fee Simple" (Litt. s. 13: *Vf, Jordan* v. *Roach*, 32 Miss. 603: 2 Bl. Com. 109 *et seq*: Wms. R. P. Part 1, ch. 2: Goodeve ch. 3). *V.* 12 Encyc. 580–582.

Cp, QUIA EMPTORES.

WET. — Wet Dock; *V.* LAND COVERED WITH WATER.

Wet Oil; *V. Warde* v. *Stuart*, 1 C. B. N. S. 88.

Full and Complete CARGO of Wet Woodpulp; *V. Isis S. S. Co.* v. *Bahr*, 1899, 2 Q. B. 364; 68 L. J. Q. B. 930; affd in H. L. 1900, A. C. 340; 69 L. J. Q. B. 660; 5 Com. Ca. 277; 82 L. T. 571.

WHARF. — "'Wharfe' is a word used in the statute of 1 Eliz. c. 11, and other statutes, and it is a broad place neare to a creek or hithe of water, upon which goods and wares are laid, which are to bee shipt and transported from place to place" (Termes de la Ley). To the same effect are the United States decisions (*Doane* v. *Broad Street Ass.*, 6 Mass. 334: *Geiger* v. *Filor*, 8 Florida, 332).

So, "Wharf," in the def of "FACTORY," in Workmen's Comp Act,

1897, is used in its popular sense of, "a place contiguous to water, used for the purpose of loading and unloading goods, and over which goods pass in loading and unloading. It is essential to a Wharf that goods should be in transit over it. The primary idea is that, it is a place used, not for storing goods but, in the process of their transit to or from water" (per Collins, L. J., *Haddock* v. *Humphrey*, 1900, 1 Q. B. 609; 69 L. J. Q. B. 327; 82 L. T. 72; 48 W. R. 292; 64 J. P. 86). *Vthc* for an example of a yard nearly adjoining but not part of a "Wharf": *Haddock* v. *Humphrey*, distd in *Kenny* v. *Harrison*, 1902, 2 K. B. 168; 71 L. J. K. B. 783. *Vf*, *Ellis* v. *Cory*, 71 L. J. K. B. 72.

Quà Explosives Act, 1875, 38 & 39 V. c. 17, "'Wharf,' includes, any quay, landing place, siding, or other PLACE, at which goods are landed, loaded, or unloaded" (s. 108).

Quà Part 7, Mer Shipping Act, 1894, "'Wharf,' includes, all wharves, quays, docks, and premises, in or upon which any goods, when landed from SHIPS, may be lawfully placed" (s. 492, replacing s. 66, 25 & 26 V. c. 63), and "WHARFINGER," means, the Occupier of such a Wharf (Ib.). *Cp*, WAREHOUSE.

"Wharf" quà a Rating Act; *V. R.* v. *Regent's Canal Co*, 6 B. & C. 720.

Quà Thames Conservancy Act, 1894, "'Wharf,' includes, any wall and building adjoining the Thames" (s. 3).

V. DOCK: FACTORY: PUBLIC WHARF: QUAY.

WHARFAGE. — "Wharfage, or Keyage, a duty for the pitching or lodging of goods upon a wharf" (Hale, De Portibus Maris, ch. 6).

WHARFINGER. — "Is he that owns or keeps a Wharfe, or hath the oversight or management of it" (Cowel). *Vh*, *Chattock* v. *Bellamy*, 64 L. J. Q. B. 250: *Tredegar Iron Co* v. *S. S. Calliope*, 1891, A. C. 11; nom. *The Calliope*, 60 L. J. P. D. & A. 28.

Quà Mer Shipping Act, 1894, *V.* WHARF.

Quà Thames Conservancy Act, 1894, "'Wharfingers,' used in reference to Elections of Conservators, means, occupiers of legal quays and sufferance wharfs on the Thames appointed by the Commissioners of Customs" (s. 3). *V.* SUFFERANCE.

WHAT IS LEFT. — Bequest of "What is left, my books and furniture and all other things, I wish to be equally divided amongst the three children"; held, to carry the RESIDUE (*Re Cadge*, 37 L. J. P. & M. 15; L. R. 1 P. & D. 543); so, of the phrase, "my furniture, plate, books, and live stock, or *what else* I may be possessed of at my decease" (*Fleming* v. *Burrows*, 1 Russ. 276).

"Whatever MONEY is left"; held, to pass Government Funds (*Boardman* v. *Stanley*, Ir. Rep. 7 Eq. 342).

V. LEFT: REMAIN: RESIDUE.

WHATEVER. —"Any cause whatever"; *V.* ANY, pp. 93, 94.
"All Expenses whatever"; *V.* EXPENSES.
"Any Purpose whatever"; *V.* AVAILABLE.
"Whatever remains"; *V.* REMAIN: WHAT IS LEFT.
V. WHATSOEVER.

WHATSOEVER. —"Whatsoever," as a rule, excludes any limitation or qualification, and implies that the genus to which it relates is to be understood in its utmost generality (per Fry, L. J., *Duck* v. *Bates*, 53 L. J. Q. B. 344; 13 Q. B. D. 851; 50 L. T. 778; 32 W. R. 813; 48 J. P. 501). The same learned judge (in construing a Reservation in a Conveyance in Fee of "all MINES of Coal, Culm, Iron, and all other Mines and Minerals whatsoever, except Stone Quarries") said, "Those words are intended to mean that which they express; and where you find the word 'whatsoever' following upon certain substantives, it is often intended to repel, and in this case does effectually repel, the implication of the so-called doctrine of *Ejusdem Generis*, which I think has often been urged for the sake of giving, not the true effect to the contracts of parties but, a narrower effect than they were intended to have" (*Jersey* v. *Neath*, 22 Q. B. D. 565, 566; 58 L. J. Q. B. 578). *Vf*, per Hardwicke, C., *Tilley* v. *Simpson*, 2 T. R. 659 *n*: per Williams, J., *Perry* v. *Davis*, 3 C. B. N. S. 777.

"The insertion of the word 'whatsoever' has been held, in several of the cases to which we have been referred, to make a great difference in the interpretation of an Exempting Clause, and to enlarge its operation" (per Cockburn, C. J., *R.* v. *Kent Jus.*, 2 E. & E. 920, 921; 29 L. J. M. C. 193; 8 W. R. 496).

"I devise all my goods and chattels, moneys, debts, *and whatsoever else I have in the world not before disposed of*" to A.; held, to pass an estate in fee (*Hopewell* v. *Ackland*, 1 Salk. 239; 1 Com. 164). So, where the words were "Whatever I may die possessed of" (*Davenport* v. *Coltman*, 9 M. & W. 481; 11 L. J. Ex. 114: *Evans* v. *Jones*, 46 L. J. Ex. 280). *Vh*, 1 Jarm. 738, 739.

But sometimes even such a wide phrase as "whatsoever and wheresoever" will receive a restricted meaning; *V. Johnson* v. *Telford*, 1 Russ. & My. 244: *Maxwell* v. *Maxwell*, 2 D. G. M. & G. 705; 22 L. J. Ch. 43.

So, if a Condition of Sale enables a vendor to rescind if any Objection be made "in respect of Title or of any other matter or thing whatsoever, which the vendor shall be UNWILLING" to satisfy, that does not apply where the vendor, having only the last remaining month of a term, purports to sell the fee simple (*Bowman* v. *Hyland*, 47 L. J. Ch. 581; 8 Ch. D. 588; distd *Re Deighton and Harris*, cited RELATING).

V. WHATEVER: WHERESOEVER.

WHEEL. —*V.* FLANGE-WHEEL.

WHEELED CARRIAGE.—*V. Radnorshire* v. *Evans*, 32 L. J. M. C. 100; 3 B. & S. 400: HACKNEY CARRIAGE.

WHEN.—"When," usually creates a CONDITION Precedent (*Jolly* v. *Hancock*, 22 L. J. Ex. 38; 7 Ex. 820).

Where there is a testamentary gift to A., "IF," or "When," or "Provided," or "In Case," or "So soon as" (phrases which are synonymous, *Shrimpton* v. *Shrimpton*, 31 Bea. 425: *Va, Goss* v. *Nelson*, 1 Burr. 227: *Hanson* v. *Graham*, 6 Ves. 243), a certain event happens, —*e.g.* attaining a stated age, —such a gift, standing unaffected by the context, confers only a contingent interest, and requires the happening of the event to give it validity. But with the aid of a context such words may, without difficulty, not defer the vesting of the subject-matter of the gift, but merely refer to the futurity of its possession (1 Jarm. 805, 809, 816, 842, 854, 860: *Boraston's Case*, 3 Rep. 19 a: *Hanson* v. *Graham*, 6 Ves. 239: *Phipps* v. *Ackers*, 3 Cl. & F. 703; nom. *Phipps* v. *Williams*, 5 Sim. 44: *Andrew* v. *Andrew*, cited FROM AND AFTER: *Scotney* v. *Lomer*, 54 L. J. Ch. 558; 55 Ib. 443; 29 Ch. D. 535; 31 Ib. 380: *Re Wrey, Stuart* v. *Wrey*, 54 L. J. Ch. 1098; 30 Ch. D. 507). It has also been said that "'When' cannot be considered as so strongly indicating contingency as 'Provided' and 'If'" (Watson Eq. 1217, and cases there cited).

Where the gift is to a class "*who*," or "*as*," shall ATTAIN a certain age, the rule (nearly universally applied) is to regard the attainment of the age as part of the description of the beneficiary, and to construe the gift as contingent, "upon the ground that no one could claim who could not predicate of himself that he was of the age required" (per Wigram, V. C., *Bull* v. *Pritchard*, 16 L. J. Ch. 185; 5 Hare, 567: *Festing* v. *Allen*, 13 L. J. Ex. 74; 12 M. & W. 279; 5 Hare, 573: *Vf*, 1 Jarm. 817, 818, 854, 860). But even this construction may yield to a context, *e.g.* "born or TO BE BORN in due time" after the decease of the life tenant (*Muskett* v. *Eaton*, 45 L. J. Ch. 22; 1 Ch. D. 435: *Lambert* v. *Parker*, Cooper, G., 143: 1 Jarm. 819, 860, 855–860).

Where a legacy is payable out of a specified fund "when *got in*," or "when *recovered*," or "when *received*," the right to Interest on it is not suspended or postponed (*Entwistle* v. *Markland*, 6 Ves. 528 *n*: *Sitwell* v. *Bernard*, 6 Ves. 520: *Wood* v. *Penoyre*, 13 Ves. 336, 337).

CAPITAL MONEY "when received," s. 21, S. L. Act, 1882, includes, money to arise at a future date (*Re Norfolk*, cited IMPROVEMENT).

V. AS AND WHEN: ON: SO SOON AS.

WHENEVER.—Where a clause in a Lease provides for FORFEITURE "if and whenever" rent is in arrear, that means, as often as the rent shall remain in arrear at any moment of time, and the forfeiture is not waived by a distress which does not yield sufficient to satisfy the rent due

(*Shepherd* v. *Berger*, 1891, 1 Q. B. 597; 60 L. J. Q. B. 395; 64 L. T. 435; 39 W. R. 330). *V.* IF.

As to the comprehensiveness of "whenever," *e.g.* s. 31 (6), Sum Jur Act, 1879; *V.* per Ld Herschell, *Boulter* v. *Kent Jus.*, cited COURT OF SUMMARY JURISDICTION.

WHEREAS. — Notwithstanding the doctrine in Co. Litt. 352 b, that a Recital doth not conclude "because it is no direct affirmation," yet if there be a direct affirmation it is none the less positive, and is as effective to work an ESTOPPEL, though introduced by a "Whereas" (*Bowman* v. *Taylor* and *Smith* v. *Scott*, cited INVENTED).

WHERESOEVER. — "Wheresoever" points to locality, and therefore, quà a testamentary gift, it is "peculiarly applicable to REAL ESTATE" (per Turner, V. C., *Stokes* v. *Salomons*, 9 Hare, 79; 20 L. J. Ch. 343).

V. WHATSOEVER: WHOSOEVER.

WHEREUPON. — *V.* THEREUPON.

WHERRY. — "A 'Wherry' and a 'Lighter' are in common parlance, boats plying for hire and carrying passengers or goods" (per Erle, J., *Reed* v. *Ingham*, 23 L. J. M. C. 156; 3 E. & B. 889); a Steam-tug is not a "Wherry, Lighter, or other CRAFT," within s. 37, Watermen's and Lightermen's Act, 1827, 7 & 8 G. 4, c. lxxv (*S. C.*), nor is a Coal Brig a "Lighter, VESSEL, Barge, or other Craft," within s. 4, 1 & 2 V. c. ci (*Blanford* v. *Morrison*, 15 Q. B. 724; 19 L. J. Q. B. 533).

WHETHER. — "Whether," following a general bequest, is a term of enumeration, and does not enlarge or affect the generality (per Fry, J., *Re Greaves*, 23 Ch. D. 313; 52 L. J. Ch. 753: *Vf*, *Re Pickup*, 1 J. & H. 389; 30 L. J. Ch. 278; 9 W. R. 251; 4 L. T. 85).

WHICH. — *Vh*, *Miles* v. *Harrison*, 43 L. J. Ch. 585; 9 Ch. 316.

Read "as," in *Whateley* v. *Spooner*, 3 K. & J. 542.

WHILST. — A grant by Lease of the use of a thing "whilst" the same remains on the premises, reserves to the lessor the right to remove the thing (*Rhodes* v. *Bullard*, 7 East, 116).

Acts said to have been done "whilst" a Lunatic was in a person's care, *semble*, does not amount to an averment that he ever was in such care (*R.* v. *Pelham*, 8 Q. B. 965).

V. DURING: REMAIN.

WHISKY. — "Whisky," sold simply as such, must not be reduced more than 25 degrees under proof (Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 V. c. 30, s. 6). *Sv*, GIN.

WHITEBOY ACTS. — The Irish Act, 15 & 16 G. 3, c. 21; and Tumultuous Risings (Ir) Act, 1831, 1 & 2 W. 4, c. 44.

WHITESIDE'S ACT. — Landed Estates Court (Ir) Act, 1858, 21 & 22 V. c. 72.

WHO. — *V.* ATTAIN: HAVE: LIVING: WHEN.

WHOLE. — "The authorities on the point are in conflict, but the view I take is this, — (1) Where a Legacy is given vesting at a future time, and the *whole* of the Intermediate Interest is given to the legatee in any event, then the entire gift, principal and interest, is absolutely devoted to the legatee's use, and vests *in præsenti*: (2) If, on the other hand, the *whole* of the intermediate interest is *not* so given, but only some discretionary portion thereof, it cannot be said that the entire gift, principal and interest, is absolutely devoted to the legatee's use, and in such a case the gift does not vest *in præsenti*" (per North, J., *Re Wintle*, 65 L. J. Ch. 867; 1896, 2 Ch. 719). The gift of the intermediate interest may be either direct or in the form of maintenance, provided it be of the whole interest in any event (*Watson* v. *Hayes*, 9 L. J. Ch. 49; 5 My. & C. 125); but a direction to apply the "whole" of the intermediate interest "or such part as the trustees may think fit" towards, *e.g.*, BENEFIT or MAINTENANCE, gives discretion, and is not a direction to apply the whole intermediate income in any event, and does not effectuate a vesting in the beneficiary (*Leake* v. *Robinson*, 2 Mer. 363: *Re Grimshaw*, 48 L. J. Ch. 399; 11 Ch. D. 406: *Dewar* v. *Brooke*, 49 L. J. Ch. 374; 14 Ch. D. 529: *Re Wintle*, sup, dissenting from *Fox* v. *Fox*, L. R. 19 Eq. 286: *Re Sanderson*, 26 L. J. Ch. 804; 3 K. & J. 497: *Re Stanger*, 60 L. J. Ch. 326; 64 L. T. 693; 39 W. R. 455: 1 Jarm. 844). *Cp*, RENTS AND PROFITS, 2nd par.

"The whole *Act*," quà 33 & 34 V. c. 99, "when used in the said Schedule with reference to any Act which has been already in part repealed, means, the whole Act so far as it has not been repealed" (s. 3).

"A Kinsman of the Whole BLOOD, is he that is derived, not only from the same ancestor but, from the same couple of ancestors" (2 Bl. Com. 226). *Cp*, HALF-BLOOD.

Whole Cause of Action; *V.* CAUSE OF ACTION.

"Whole Circumstances"; *V.* CIRCUMSTANCES.

"Whole Currency"; *V.* CURRENCY.

A testamentary declaration that "the Whole INCOME" derived from specified property shall be paid to A. for life, is an Express Stipulation, within s. 7, Apportionment Act, 1870, that no apportionment shall take place (*Re Meredith*, cited EXPRESSLY STIPULATED).

"Whole *Reach* or *Burthen* of the VESSEL"; *V. Weir* v. *Union S. S. Co*, cited CLEAR, p. 323.

In an agreement for personal service, a negative obligation will not be

enforced by Injunction unless there be an express stipulation; not even where the employé contracts to give his "Whole *Time*" to his employer's service (*Whitwood Co* v. *Hardman*, 1891, 2 Ch. 416; 60 L. J. Ch. 428; 64 L. T. 716; 39 W. R. 433; over-ruling *Montague* v. *Flockton*, 42 L. J. Ch. 677; L. R. 16 Eq. 189), or that he will "act EXCLUSIVELY" for his employer (*Mutual Reserve Assn* v. *New York Insrce*, 75 L. T. 528).

Tenement occupied "one Whole YEAR, at the least," s. 2, Poor Relief (Settlement) Act, 1825, 6 G. 4, c. 57; *V. R.* v. *Ormesby*, 4 B. & Ad. 214: *R.* v. *Herstmonceaux*, 7 B. & C. 551: *Hastings* v. *St. James, Clerkenwell*, 6 B. & S. 914; 35 L. J. M. C. 65; L. R. 1 Q. B. 38.

V. WHOLLY.

WHOLESALE.—"As a general rule 'Wholesale' merchants deal only with persons who buy to sell again; whilst 'Retail' merchants deal with consumers" (per Bacon, V. C., *Treacher* v. *Treacher*, W. N. (74) 4).

The sale of 4½ gallons or more of Beer, is a sale "by Wholesale" within s. 72 (9), 35 & 36 V. c. 94 (*R.* v. *Jenkins*, 65 L. T. 857; 61 L. J. M. C. 57; 40 W. R. 318; 55 J. P. 824). *V.* RETAIL.

"Wholesale Beer Dealer's License"; Stat. Def., 37 & 38 V. c. 69, s. 37.

WHOLESOME.—*V.* PURE.

WHOLLY.—"Wholly or in part matters of mere Account"; *V.* ACCOUNT.

"Wholly Agricultural," "Wholly Pastoral"; *V.* AGRICULTURAL: PASTURE.

"Services rendered wholly or in part within *British Waters*"; *V. The Pacific*, cited PART, p. 1412.

"Wholly or in part *dependent*"; *V.* DEPENDANT.

"Wholly *disabled*": A solicitor sprained his ankle, which confined him to his private room, and prevented his going downstairs; some part of his business was stopped, but clerks carried on other parts, and he could write letters, consult law books, and give advice and directions; held, that he was "wholly disabled" "from following his usual business, occupation, or pursuits," within an accident policy (*Hooper* v. *Accidental Insrce*, 29 L. J. Ex. 340, 484; 5 H. & N. 546, 557). *Cp*, TOTAL LOSS.

Policy "wholly" or "partially *kept up*" for the benefit of a donee, s. 11 (1), 52 V. c. 7, does not include a policy gratuitously assigned, the premiums on which, since the assignment, have been paid by the Assignee (*Lord Advocate* v. *Fleming*, 1897, A. C. 145; 66 L. J. P. C. 41; 76 L. T. 125; 45 W. R. 674; 61 J. P. 692).

"Wholly *maintained* by voluntary contributions"; *V.* SCIENCE: VOLUNTARY CONTRIBUTIONS.

Money expended "wholly, exclusively, and necessarily, in the *performance of the duties* of his office or employment," s. 51, Income Tax Act, 1853; *V. Bowers* v. *Harding*, cited PUBLIC OFFICE.

"Wholly for the *purposes of trade*"; *V.* PURPOSES: SOLELY.

V. WHOLE.

WHOMSOEVER. — A covenant for QUIET ENJOYMENT without interruption "by any person or persons whomsoever," extends even to the unlawful acts of all persons therein named or comprised, but not to the unlawful acts of third persons having no title (Woodf. 723, 727: Touch. 166, 170, 171).

"Any other persons whomsoever," are words extremely wide; they mean everybody, and require a very strong context to restrict them (*R.* v. *Doubleday*, 3 E. & E. 501).

V. WHOSOEVER.

WHORE. — A Whore is a woman who practises unlawful commerce with men, particularly one that does so for hire (*Sheehey* v. *Cokley*, 43 Iowa, 185). *Vh*, Ezekiel, ch. xvi.

By CUSTOM, and independently of 54 & 55 V. c. 51, it is actionable to say in the City of London that a woman is a "whore" there, "because a whore is there to suffer the corporal punishment of carting and whipping" (*Hart* v. *Holmes*, Cunningham, 168: *Vf*, *Robertson* v. *Powell*, Selwyn N. P. 1259).

A woman may be called a "whore" by words of implication, *e.g.* to say she had a Bastard, or by calling her husband a Cuckold (*Hart* v. *Holmes*, sup).

V. BROTHEL: STREET WALKER.

WHOSOEVER. — "'Whosoever,' in its proper meaning, comprehends all persons all over the world, natives of whatever country" (*Macleod* v. *A-G., New South Wales*, 1891, A. C. 455; 60 L. J. P. C. 55; 65 L. T. 321). But even so wide a word may be restricted by the context; and where a Colonial Act provides that "whosoever being married, marries another person during the life of the former husband or wife, WHERESOEVER such second marriage takes place," commits Bigamy, that means, "whosoever, at the time of the offence, is amenable to the jurisdiction of the Colony wheresoever in the Colony the offence is committed" (*Ib.*).

V. WHOMSOEVER.

WHOSOEVER WILL GIVE INFORMATION. — A party who had been robbed of bank notes put forth a handbill, wherein it was stated that "Whosoever will give Information" whereby the same might be traced, should, on conviction of the parties, receive a reward; held, that

the only person entitled to the reward was he who first gave information by which the notes were recovered (*Lancaster* v. *Walsh*, 7 L. J. Ex. 209; 4 M. & W. 16: *Vf*, *Smith* v. *Moore*, 1 C. B. 438: *Lockhart* v. *Barnard*, 15 L. J. Ex. 1; 14 M. & W. 674).

WIC. — "A place upon the sea-shore, or upon a river" (Co. Litt. 4 b).

WICKED. — To say of a Bishop that he is a "Wicked Man" is actionable (per Scroggs, J., *Townsend* v. *Hughes*, 2 Mod. 160).

WICKEDNESS. — Wickedness of Life; *V.* IMMORAL.

WIDOW. — A Widow, is a woman who has Survived a man to whom she was lawfully married, and who was his WIFE at the time of his death.

A woman surviving a man with whom she has gone through the ceremony of marriage, but with regard to whom she had obtained a declaration of Nullity of Marriage, is not his "Widow" (*Re Boddington*, 52 L. J. Ch. 239; 53 Ib. 475; 22 Ch. D. 597; 25 Ib. 685). So, a wife divorced who survives her husband, is not his "Widow," within the Statute of Distribution; *secus*, if only judicially separated (*Rolfe* v. *Perry*, 32 L. J. Ch. 149). But a reputed wife, taking by a *designatio personæ*, may take as her reputed husband's "Widow," and then that word will connote her surviving him (*Re Lowe*, 61 L. J. Ch. 415; 40 W. R. 475). *V.* WIFE.

In a gift over on death of testator's "Widow," the use of this word shows that the event was contemplated to happen after testator's death (*Randfield* v. *Randfield*, 2 D. G. & J. 57; 4 Drew. 147: *Cp*, *Taylor* v. *Stainton*, 2 Jur. N. S. 634, 635).

"Widow," in a Policy or in the Rules of a FRIENDLY SOCIETY, is not confined to the person who was Wife at the time the policy was taken out or the membership commenced, any more than "Children" is so limited (*Re Atkinson*, 39 S. J. 655).

V. HUSBAND: NATURAL REPRESENTATIVES: WIFE.

"Wherever an estate is given to a Widow for life, 'provided she shall not marry,' unless there be a devise over immediately it is merely *in terrorem*" (per Ashhurst, J., *Doe* v. *Freeman*, 1 T. R. 392, 393).

A gift to the "Widows" of a place, is a good CHARITY (*Powell* v. *A-G.*, 3 Mer. 48: *A-G.* v. *Comber*, 2 Sim. & St. 93, on *whlcv*, *Browne* v. *King*, 17 L. R. Ir. 453, 454: *Russell* v. *Kellett*, 3 Sm. & G. 264; 26 L. T. O. S. 193; 2 Jur. N. S. 132: *Thompson* v. *Corby*, cited SPINSTER).

WIDOWED MOTHER. — A widow who has married again, cannot be a "Widowed Mother" within s. 35, Divided Parishes and Poor Law Amendment Act, 1876, 39 & 40 V. c. 61 (*Amersham* v. *London*, 20 Q. B. D. 103; 36 W. R. 141; 57 L. J. M. C. 6; 58 L. T. 83: *Llanelly*

v. *Neath*, 1893, 2 Q. B. 38; 62 L. J. M. C. 112; 69 L. T. 194; 57 J. P. 694: *Sv, Highworth* v. *Westbury-on-Severn*, 53 J. P. 580; 5 Times Rep. 716). *V.* CHILD, p. 307: WIFE.

WIDOWER.—*V.* MARRIED MAN.

WIDTH.—*V. Stringer* v. *Sykes*, 46 L. J. M. C. 141; 2 Ex. D. 240. "Average Available Width," "Maximum Width," s. 51, Ry. C. C. Act, 1845; *V. R.* v. *Rigby*, 14 Q. B. 687; 19 L. J. Q. B. 153.
V. NOT LESS.

WIFE.—"Wife," s. 35, 39 & 40 V. c. 61, includes a Widow (*Reigate* v. *Croydon* and *Medway* v. *Bedminster*, 14 App. Ca. 465; 59 L. J. M. C. 29; 61 L. T. 733; 38 W. R. 295; 53 J. P. 580; 5 Times Rep. 716). *V.* CHILD, p. 307: WIDOWED MOTHER: MARRIED MAN.

"Any Wife," s. 27, Matrimonial Causes Act, 1857, "must certainly include any wife being a natural-born English subject" (per Cresswell, J. O., delivering the jdgmt, *Deck* v. *Deck*, 29 L. J. P. M. & A. 129; 2 Sw. & Tr. 90: *Va, Bond* v. *Bond*, 29 L. J. P. M. & A. 143; 2 Sw. & Tr. 93). *Vf*, MARRIAGE.

"Any woman he may marry"; *V.* WOMAN.

A deserting and adulterous wife, is not a "Wife" within s. 4, Vagrancy Act, 1824, 5 G. 4, c. 83, even though the husband has committed adultery since she left him, for by her adultery he is no longer "legally bound to maintain" her within s. 3 (*R.* v. *Flintan*, 1 B. & Ad. 227). But connivance at a wife's adultery, will preclude a husband from escaping liability for her Necessaries (*Wilson* v. *Glossop*, 20 Q. B. D. 354; 57 L. J. Q. B. 161; 58 L. T. 707; 36 W. R. 296; 52 J. P. 246).

A divorced wife, is not a "Wife" within a general bequest or limitation (per Kay, J., *Re Morrieson*, *Hitchins* v. *Morrieson*, 58 L. J. Ch. 80; 40 Ch. D. 30; 59 L. T. 847, rejecting *Re Bullmore*, cited HUSBAND). So, a woman who has bigamously become a supposed wife, is not comprised in such a bequest or limitation (*Wilkinson* v. *Joughin*, 35 L. J. Ch. 684; L. R. 2 Eq. 319); *secus*, in the absence of proof of fraud on her part (*Re Petts*, 29 L. J. Ch. 168; 27 Bea. 576). *V.* WIDOW.

"A Wife (*uxor*) is a good name of PURCHASE, without a Christian name" (Co. Litt. 3 a).

A woman who is only a reputed wife, may take as "Wife" if, under the circumstances, that word is a clear designation of her (*Dolby* v. *Powell*, 30 Bea. 534: *Vh, Doe* d. *Gains* v. *Rouse*, 5 C. B. 422: *Re Howe*, 33 W. R. 48: *Re Horner*, 57 L. J. Ch. 217; 37 Ch. D. 695: *Re Harrison*, 1894, 1 Ch. 561; 63 L. J. Ch. 385: *Re Lowe*, 61 L. J. Ch. 415: *Re Plant*, 47 W. R. 183: *Anderson* v. *Berkley*, 1902, 1 Ch. 936; 71 L. J. Ch. 444: HUSBAND); but in a bequest to A. for life, remainder to his "Wife" (without more), that must almost always mean A.'s

lawful wife; for A. may marry after the testator's death, and then there would be a person exactly answering the description of A.'s wife (*Re Davenport*, 1 Sm. & G. 126; 1 W. R. 103; 20 L. T. O. S. 165). *Vf*, RELATIONS.

Even an intended wife may take under a bequest to the testator's "Wife" if that word, under the circumstances, is a clear designation of her (*Schloss* v. *Stiebel*, 6 Sim. 1).

As to construing *Testamentary Gifts* to a Wife, "the distinctions deducible from general principles, and the authorities, appear to be the following:—

1. That a devise or bequest to the wife of A., who has a wife at the date of the Will, relates to that person, notwithstanding any change of circumstances which may render the description inapplicable at a subsequent period, and is under *all* circumstances confined to her;

2. If A. have no wife at the date of the Will, the gift embraces the individual sustaining that character at the death of the testator; and

3. If there be no such person, either at the date of the Will or at the death of the testator, it applies to the woman who shall first answer the description of wife at any subsequent period" (1 Jarm. 324).

Vf, as to Rule 1, *Re Hancock*, 1896, 2 Ch. 173; 65 L. J. Ch. 690; 74 L. T. 658; 44 W. R. 545; *vthc*, *Foakes* v. *Jackson*, 69 L. J. Ch. 352. In *Re Drew* (1899, 1 Ch. 336; 68 L. J. Ch. 157; 79 L. T. 656; 47 W. R. 265), Stirling, J., found a context in the Will which enabled him to determine that "Wife" of the testator's son, meant, the lady who was such wife at the son's death, and not her who was the wife at the date of the Will but who had since died: *Vf*, *Longworth* v. *Bellamy*, 40 L. J. Ch. 513: *Sv*, *Boreham* v. *Bignall*, cited THEIR, *whc* was followed in *Firth* v. *Fielden*, 22 W. R. 622: *Re Burrows*, 10 L. T. 184.

The three rules just stated were adopted by Porter, M. R., in *Re Laffan and Downes* (1897, 1 I. R. 469), and he thence deduced the general proposition that, if after a tenancy for life there be a gift over to a person occupying a particular position, *e.g.* a Lady Superioress of a Nunnery, such person, in the absence of controlling words, is to be ascertained at the death of the testator, and not at the death of the tenant for life. *V.* DEATH: DIE.

V. BELOVED WIFE: RELATIONS: THEIR.

A wife is not included in a gift to a person's "FAMILY" (*Re Hutchinson and Tennant*, 8 Ch. D. 540), or "Relations," or "Next of Kin" (*Nicholls* v. *Savage*, cited 18 Ves. 53). *Sv*, NEAR RELATIONS.

A bequest to wife "for her own and the children's benefit," she not to diminish principal; *V. Hart* v. *Tribe*, 23 L. J. Ch. 462; 18 Bea. 215.

Bequest to Wife has no priority; *V.* IMMEDIATELY, at end.

V. JOINT TENANCY, at end.

A Stipendiary Magistrate has held that a deceased wife's sister (who has gone through the ceremony of marriage with the husband) and her

children, may be recognized as the "Wife" and "Children" of the man as a member of a FRIENDLY SOCIETY (*Corner* v. *Odd Fellows Socy*, 46 J. P. 809).

V. CHILDREN OF THE WIFE: COHABITATION: FEME: HUSBAND: NECESSARIES: WIDOW.

WIKE. — In Essex, a farm (Co. Litt. 5 a); "'Wyke,' a farm or little village" (Cowel).

WILD ANIMAL. — *V.* FERÆ NATURÆ: 2 Bl. Com. 390 *et seq.*

WILD BIRD. — The list of "Sea Birds" comprised in the Act for the preservation of Sea Birds, 32 & 33 V. c. 17, is given in s. 1 thereof. "Wild Bird," quà the Act for the protection of Wild Birds during the breeding season, 35 & 36 V. c. 78 (s. 1), includes the birds specified in the Sch thereof. "Wild Fowl," quà the Act for the preservation of Wild Fowl, 39 & 40 V. c. 29, is defined in its s. 1, all (except Wild Goose) being included in the said list of "Wild Birds." All these Acts were repealed by s. 7, Wild Birds Protection Act, 1880, 43 & 44 V. c. 35, which extends to "all Wild Birds" (s. 2), a list of those specially protected by s. 3 being set out in its Sch, which list does not include Wild Goose but otherwise comprises all the birds defined as "Sea Birds" or as "Wild Fowl" in the Acts mentioned, but omits several that were included in the def of "Wild Bird." By s. 2, 44 & 45 V. c. 51, the Lark is to be inserted in the Sch to 43 & 44 V. c. 35. *Vh*, 57 & 58 V. c. 24; 59 & 60 V. c. 56.

V. WILDFOWL.

WILDFOWL. — By "Wildfowl," "Pheasants and Partridges are not understood, for they are Fowl of WARREN (Manwood, cap. 4, s. 3, 4 ed., p. 363; F. N. B. 86; Rastal, 585). Wildfowl are known in the law, and described by the statute of 25 H. 8, c. 11, which doth take notice of Wildfowl. The title of the statute is 'against destroying of Wildfowl.' It recites that there hath been within this realm great quantities of Wildfowl, as, Ducks, Mallards, Wigeons, Teals, Wildgeese, and divers other kind of Wildfowl, which is reasonable to be understood of that sort that do get their prey in that manner. The statute of 3 & 4 Edw. 6, c. 7, which repeals that of 25 H. 8, takes notice of Wildfowl, and hath the general word 'Wildfowl,' without coming to particulars. Therefore, when the declaration is of 'Wildfowl,' it is not to be understood that sparrows, wrens, or robin-red-breasts, can be thereby included" (per Holt, C. J., *Keeble* v. *Hickeringill*, 11 East, 577). *V.* FOWL.

V. WILD BIRD.

WILFUL. — "Wilful is a word of familiar use in every branch of law, and although in some branches of law it may have a special mean-

ing, it generally, as used in Courts of Law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent" (per Bowen, L. J., *Re Young and Harston*, 31 Ch. D. 174; 53 L. T. 837; 34 W. R. 84; 50 J. P. 245: *Vf, Elliott* v. *Turner* 13 Sim. 485).

Whatever is intentional is wilful (per Day, J., *Gayford* v. *Chouler*, cited WILFUL AND MALICIOUS).

V. WILFUL MISCONDUCT: WILFUL NEGLECT: WILFULLY.

WILFUL ACT.—"Wilful Act, Default, or Neglect" of an Innkeeper, or his servant, which deprives him of the protection as against a claim by a GUEST, given by s. 1, 26 & 27 V. c. 41; *V. Medawar* v. *Grand Hotel Co*, 1891, 2 Q. B. 11; 60 L. J. Q. B. 209; 64 L. T. 851; 55 J. P. 614: WILFUL DEFAULT. *Cp*, EXPRESSLY FOR SAFE CUSTODY.

WILFUL AND MALICIOUS.—In the power which a judge had to give costs to a plaintiff recovering less than 40*s.* damages, if certificate given "that the trespass or grievance in respect of which the action was brought was *wilful and malicious*" (s. 2, 3 & 4 V. c. 24), the words italicized imported personal malice and ill-will to the plaintiff, as distinguished from that legal malice which is essential to sustain an action for libel (*Foster* v. *Pointer*, 10 L. J. Ex. 454; 8 M. & W. 395).

"Whoever shall *wilfully* OR *maliciously* commit any *Damage, Injury or Spoil* to, or upon, any Real or Personal Property whatsoever," s. 52, 24 & 25 V. c. 97; to constitute this offence there must be some actual damage to the property itself; merely gathering mushrooms growing in a wild state in a field, is not such damage to the field (*Gardner* v. *Mansbridge*, 19 Q. B. D. 217; 57 L. T. 265; 35 W. R. 809; 51 J. P. 612, in *whc* the Court observed that the words are disjunctive), but a small damage suffices, *e.g.* to the extent of 6*d.* by walking across a grass field (*Gayford* v. *Chouler*, 1898, 1 Q. B. 316; 67 L. J. Q. B. 404; 78 L. T. 42; 62 J. P. 165). Where a milk-carrier, having accidentally spilt some of the milk that he was taking on his round, added water to conceal the loss, it was held that there was no offence within this section, for there was an absence of *mens rea* to do damage to anybody, and least of all to the master who was prosecuting (*Hall* v. *Richardson*, 6 Times Rep. 71; 54 J. P. 345); but that case was over-ruled by *Roper* v. *Knott* (1898, 1 Q. B. 868; 67 L. J. Q. B. 574; 78 L. T. 594; 46 W. R. 636; 62 J. P. 375), where the milk-carrier fraudulently added water to the milk to increase the bulk and himself get the additional price. In *Roper* v. *Knott* the Court held that the motive in the mind of the milk-carrier was immaterial, because the words are "wilfully *or* maliciously," and, therefore, if the

act be "WILFUL" only, the offence is committed, for "a man does a thing wilfully, (1) if he does the act which causes damage to property with the intention of causing the damage, or (2) knowing that the consequences of the act he does will be to cause the damage," and "an offence is committed against the statute if there be wilful damage to the thing, although it does not cause loss to the owner of the thing" (per Russell, C. J., *Ib.*). A Claim of Right will not take a case of damage out of this section, if the claim be not a reasonable one, of which the Justices are to judge (*White* v. *Feast*, L. R. 7 Q. B. 353; 41 L. J. M. C. 81: *svthc*, *Denny* v. *Thwaites*, 2 EX. D. 21; 46 L. J. M. C. 141). *V.* REAL OR PERSONAL PROPERTY. *Cp*, UNLAWFULLY.

V. MALICE: MALICE AFORETHOUGHT.

WILFUL BLINDNESS. — Is the equivalent of Gross Negligence; *V.* GROSS, p. 839.

WILFUL DEFAULT. — "WILFUL ACT, Default, or Neglect, of the *Innkeeper*," &c, s. 1, 26 & 27 V. c. 41; in this phrase "Wilful" is only to be read with "Act," and not also with "Default or Neglect" (per Byles, J., *Squire* v. *Wheeler*, 16 L. T. 93). *Cp*, *Carpenter* v. *Mason*, cited WILFUL WASTE. As to what is such "Default" or "Neglect," *V.* per Murphy, J., *O'Connor* v. *Grand International Hotel Co*, 1898, 2 I. R. 96.

"Wilful Default of the person in charge" of a *Ship*, s. 299, Mer Shipping Act, 1854, repld s. 419 (3), Mer Shipping Act, 1894, means, "by the fault" of such person, whether intentional or negligent, and especially so in view of s. 29, 25 & 26 V. c. 63 (*Grill* v. *General Screw Collier Co*, 35 L. J. C. P. 321; 37 Ib. 205; L. R. 1 C. P. 600; 3 Ib. 476, espy jdgmt of Willes, J.). *Cp*, WILFUL NEGLECT.

Wilful Default by a *Trustee*, is the Wilfully not doing something which he ought to do, as distinguished from doing something which he ought not to do: *Cp*, BREACH OF TRUST. *Vh*, Lewin, 1109: Godefroi, 789: Seton, 1157–1166: Ann. Pr. notes on R. 2, Ord. 33, R. S. C.: *Re Stevens*, 1898, 1 Ch. 162; 67 L. J. Ch. 118; 77 L. T. 508; 46 W. R. 177.

"Wilful Default of the *Vendor*," in Conditions of Sale, means, the not doing what is reasonable under the circumstances, with the knowledge that the omission will probably cause delay (per Bowen, L. J., *Re Young and Harston*, cited WILFUL: *Re Hetling and Merton*, 1893, 3 Ch. 269; 62 L. J. Ch. 783; 69 L. T. 266; 42 W. R. 19: *Re Pelly and Jacob*, 80 L. T. 45: *Re London and Tubbs*, 1894, 2 Ch. 524; 63 L. J. Ch. 580; 70 L. T. 719, in *whlc* Lindley, L. J., said, "To make up one's mind not to verify a statement is 'wilful'; but simply not to think about verifying it is not 'wilful'"). Delay by a not unreasonable repudiation of the contract (*North* v. *Percival*, 1898, 2 Ch. 128; 67 L. J. Ch. 321; 46 W. R.

552; 78 L. T. 615), or by a difficulty in establishing the title (*Williams* v. *Glenton*, 1 Ch. 200; 35 L. J. Ch. 284), or, *semble*, even by a mistake by the vendor as to his rights if it be *bonâ fide* (*Bennett* v. *Stone*, 1902, 1 Ch. 226; 1903, 1 Ch. 509; 71 L. J. Ch. 60; 72 Ib. 240), is not occasioned by a "Wilful Default." *Vf*, *Re Wilson and Stephens*, 1894, 3 Ch. 546; 63 L. J. Ch. 863; 71 L. T. 388; 43 W. R. 23: *Smith* v. *Wallace*, 1895, 1 Ch. 385; 64 L. J. Ch. 240; 71 L. T. 814; 43 W. R. 539: *Re Strafford to Maples*, 1896, 1 Ch. 235; 65 L. J. Ch. 124; 73 L. T. 586; 44 W. R. 259: *Re Woods and Lewis*, cited DEFAULT: Sug. V. & P. 638. *Note*: "Any cause whatever," *V.* ANY, pp. 93, 94.

V. DEFAULT: NEGLIGENCE: WILFULLY. *Cp*, WILFUL MISCONDUCT.

WILFUL DELAY. — Delaying the delivery of a Declaration, in an action for Bribery, for eleven months; held, that there was "Wilful Delay" in proceeding with the action, within s. 14, Corrupt Practices Prevention Act, 1854, 17 & 18 V. c. 102, although delivered within the time then allowed by law, and although plaintiff alleged that he could not sooner acquire the evidence and information necessary to allege the specific charges in the Declaration (*Taylor* v. *Vergette*, 30 L. J. Ex. 400; 7 H. & N. 143; 9 W. R. 791). In that case, Martin, B., said "'Wilful Delay,' does not mean 'Perverse Delay,' but, delay which the plt cannot account for to the satisfaction of the Court" (7 H. & N. 147). *Vf*, *Guest* v. *Caldicott*, 30 W. R. 122; 45 L. T. 609. *Cp*, DUE DILIGENCE: PROSECUTE.

Vf, WILFUL DEFAULT, last par.

WILFUL INSULT. — To interrupt a County Court Judge whilst giving judgment by saying, "That is a most unjust remark," is a "Wilful Insult" to the Judge, within s. 162, Co. Co. Act, 1888, which replaced s. 113, 9 & 10 V. c. 95 (*R.* v. *Jordan*, 36 W. R. 589, 797; 57 L. J. Q. B. 483).

WILFUL MISCONDUCT. — Wrong conduct, wilful in the sense of being intended, but induced by mere honest forgetfulness or genuine mistake, does not amount to "Wilful Misconduct" (*V.* jdgmt of Grove, J., *Gordon* v. *G. W. Ry*, 51 L. J. Q. B. 58; 8 Q. B. D. 44). "What is meant by 'Wilful Misconduct' is, misconduct to which the will is a party: it is something opposed to accidental or negligent; the *mis* part of it, not the conduct, must be wilful" (per Bramwell, L. J., *Lewis* v. *G. W. Ry*, 47 L. J. Q. B. 135; 3 Q. B. D. 195): *Vf*, *Stevens* v. *G. W. Ry*, 52 L. T. 324; 49 J. P. 310; 1 Times Rep. 342: *Spittle* v. *G. W. Ry*, 2 Times Rep. 618: *Haynes* v. *G. W. Ry*, 41 L. T. 436.

Cp, "Wilful *Misbehaviour*," s. 78, Highway Act, 1835, 5 & 6 W. 4, c. 50: WILFUL DEFAULT: WILFUL NEGLECT.

V. MISCONDUCT: SERIOUS.

WILFUL NEGLECT.—To "WILFULLY neglect to do a thing" is, intentionally or purposely to omit to do it (per Mellor, J., *R.* v. *Downes*, inf: *V.* WILFUL); and therefore to pray, instead of sending for a doctor, is to "wilfully neglect" to provide medical aid within s. 37, Poor Law Amendment Act, 1868, 31 & 32 V. c. 122 (*R.* v. *Downes*, 45 L. J. M. C. 8; 1 Q. B. D. 25; 39 J. P. 760: *R.* v. *Senior*, 1899, 1 Q. B. 283; 68 L. J. Q. B. 175; 79 L. T. 562; 47 W. R. 367; 63 J. P. 8: *Vf*, *R.* v. *Morby*, 51 L. J. M. C. 85; 8 Q. B. D. 571).

Cp, NEGLECT: OBSTRUCT: WILFUL ACT: WILFUL DEFAULT.

As to what is "Wilful Neglect or Default of the Vendor," in Conditions of Sale; *V.* WILFUL DEFAULT, at end.

"Wilful Neglect or Misconduct" conducing to Adultery; *V.* CONDUCE. *Cp*, WILFUL MISCONDUCT.

"Wilful Neglect" by a Husband "to provide reasonable Maintenance" for wife or her infant children, s. 4, 58 & 59 V. c. 39, necessarily involves an enquiry as to the husband's means, or his capability of earning means (*Earnshaw* v. *Earnshaw*, 1896, P. 160; 65 L. J. P. D. & A. 89; 74 L. T. 560; 60 J. P. 377). *V.* DESERTION, p. 516: IDLE AND DISORDERLY PERSON: NEGLECT, at end: PERSISTENT.

So, the essence of the offence of "*wilfully refusing or neglecting*" to maintain one's family, s. 3, Vagrancy Act, 1824, 5 G. 4, c. 83, is the MENS REA; therefore, there is no such offence where a husband gives a wife a *bonâ fide* offer to return to his home (*Flannagan* v. *Bishopwearmouth*, 27 L. J. M. C. 46; 8 E. & B. 451), or where he refuses to maintain her because he really believes, and has grounds for believing, her to be unchaste (*Morris* v. *Edmonds*, 77 L. T. 56; 18 Cox C. C. 627). *V.* DESERTION, pp. 515, 516.

WILFUL OBSTRUCTION.—"Obstruction" does not involve a resistance by physical force; a householder who refuses to let the scavenger enter into his house to remove refuse,—the scavenger therein duly acting under the orders of the County Council,—"wilfully obstructs" him, within s. 116, P. H. London Act, 1891 (*Borrow* v. *Howland*, 74 L. T. 787; 60 J. P. 391). *Vf*, OBSTRUCT.

WILFUL REFUSAL.—In *Francis* v. *Steward* (5 Q. B. 998), Denman, C. J., said that, "Wilful" added nothing to "Refusal," for, he added, "all refusal is wilful." But it is submitted that a "Wilful Refusal" is, a refusal without adequate cause; therefore, a Trustee has not "wilfully refused" to convey trust lands within s. 2, Trustee Act, 1852, repld s. 26 (vi) Trustee Act, 1893, when his refusal to do so is based on a *bonâ fide* doubt as to the right of the requesting person (*Re Mills*, 40 Ch. D. 14; 37 W. R. 81).

A "Wilful Refusal" to receive money payable by the Promoters of an Undertaking on entering lands, s. 88, Lands C. C. Act, 1845, means,

"a refusal arising from an exercise of mere will or caprice, and not from the exercise of reason" (per Kindersley, V. C., *Re Ryde Commrs*, 26 L. J. Ch. 299, citing and applying *Ex p. Bradshaw*, 17 L. J. Ch. 454; 16 Sim. 174, and *Re Windsor, &c, Ry*, 12 Bea. 522).

V. REFUSAL: WILFUL NEGLECT.

WILFUL WASTE. — A tenant for life, sans waste, "further than Wilful Waste," is entitled to the interest of money produced by sale of decaying timber cut by order of the Court (*Wickham* v. *Wickham*, 19 Ves. 419).

V. WASTE: WITHOUT IMPEACHMENT OF WASTE.

In the phrase "purloin, embezzle, or Wilfully Waste or Misapply" property, s. 97, 4 & 5 W. 4, c. 76, "Wilfully" applies to "misapply" as well as to "waste" (*Carpenter* v. *Mason*, 10 L. J. M. C. 1; 12 A. & E. 629; 4 P. & D. 439). Therefore, this offence of "misapplying" is not properly stated without the addition of "wilfully"; for though, probably, "misapply" imports fault, *e.g.* negligence, yet it does not, of itself, import wilfulness (*Ib.*). *Cp, Squire* v. *Wheeler*, cited WILFUL DEFAULT.

WILFULLY. — It has been said that the legal meaning of "Wilfully" is, purposely, without reference to *bona fides* or collusion (arg. of counsel in *Hutchinson* v. *Manchester, Bury, & Rossendale Ry*, 15 L. J. Ex. 295; 15 M. & W. 314, citing *R.* v. *Price*, 11 A. & E. 727; 9 L. J. M. C. 49). "'Wilfully' means, deliberately and intentionally" (per Russell, C. J., *R.* v. *Senior*, cited WILFUL NEGLECT). So, "wilfully" disobeying a Jdgmt or Order, R. 31, Ord. 42, R. S. C., does not involve obstinacy of an obstructive kind; it means, an intentional disobedience (*A-G.* v. *Walthamstow*, 11 Times Rep. 533). *V.* UNLAWFULLY.

But "'Wilfully' is used in s. 79, 7 & 8 V. c. 84, in a sense denoting *evil intention*, and such is the common use of the word in the English language. Thus Milton: —

> "'Thou to me
> Art all things under heav'n, all places thou,
> Who for my *wilful* crime art banish'd hence.'

And Hooker says, 'So full of wilfulness and self-seeking is our nature'" (per Campbell, C. J., *R.* v. *Badger*, 25 L. J. M. C. 90; 6 E. & B. 137); and it was held in that case that a Surveyor was not guilty of the offence of "wilfully receiving" a higher fee than he was entitled to, when acting under an honest mistake. *Va, Smith* v. *Barnham*, 1 Ex. D. 419; 34 L. T. 774, where the words were "shall wilfully throw any soil into" certain rivers, on which Bramwell, B., said, "'wilfully' appears to me in this section to mean, 'wantonly' or 'causelessly'": *Sv*, per Kennedy, J., *High Wycombe* v. *Thames Conservators*, cited WILFULLY SUFFER.

Where a statutory OFFENCE is for something "wilfully" done or omitted, that word should always be employed in the Indictment: thus, if the offence be for "wilfully and maliciously" doing anything, the Indictment will be bad if it charges that the act was "*unlawfully* and maliciously" done, for a thing may be "unlawfully" done without wilfulness, and "maliciously" does not include "wilfully" where both words are made part of the offence (*R.* v. *Davis*, 1 Leach, 4 ed., 493). So, an Indictment under s. 34, 5 & 6 W. 4, c. 76, which charged that the deft "falsely and fraudulently" answered the prescribed questions on applying to vote, did not sufficiently state that he had "wilfully" made "false answer," which is the offence defined by the section (*R.* v. *Bent*, 1 Den. 157; 2 C. & K. 179). But on *R.* v. *Davis*, *V. Note*, 43 L. J. M. C. 94: *R.* v. *Pembliton*, cited MALICE. *Cp*, UNLAWFULLY.

"Wilfully" *break* a Street Lamp, s. 206, Metrop Man. Act, 1855; *V. Burgess* v. *Morris*, cited CARELESSLY.

Lessee's covenant not to "wilfully *do or suffer*" anything to hinder or prevent the RENEWAL of a License; *V. Bryant* v. *Hancock*, 1899, A. C. 442; 68 L. J. Q. B. 889.

V. WILFUL: WILFUL AND MALICIOUS: WILFULLY AND FALSELY: *Cp*, WILFULLY SUFFER: WILFULLY TRESPASS: KNOWINGLY: WILLINGLY.

WILFULLY AND FALSELY.—"Wilfully and falsely" means, Wilful Falsity, not mere incorrectness (*Ellis* v. *Kelly*, 30 L. J. M. C. 35; 6 H. & N. 222; 25 J. P. 279). That case was on s. 40, 21 & 22 V. c. 90, which imposes a penalty for "wilfully and falsely" pretending to a Medical Title; and Pollock, C. B., there said, "Now 'wilfully' cannot here mean merely 'intentionally,' as opposed to 'accidentally' (which is the meaning it sometimes has), for a man cannot accidentally call himself a Doctor of Medicine; and, therefore, the section must be read as pointing to Wilful Falsity." *Vh*, *Andrews* v. *Styrap*, 26 L. T. 704: *Carpenter* v. *Hamilton*, 41 J. P. 615; 37 L. T. 157: *Pedgrift* v. *Chevallier*, 29 L. J. M. C. 225; 8 W. R. 500; 36 L. T. O. S. 360: *Steele* v. *Hamilton*, 25 J. P. 643; 3 L. T. 322: *R.* v. *Lewis*, 60 J. P. 392; 12 Times Rep. 415, 433: PHYSICIAN.

V. WILFULLY.

WILFULLY DETAIN.—*V. Bowen* v. *Fox*, 10 B. & C. 41.

WILFULLY ENTER.—"Wilfully enter upon and take possession of" lands, s. 89, Lands C. C. Act, 1845, does not apply to a case where the entry is under a mistaken belief of a right to make it (*Steele* v. *Mid. Ry*, 21 L. T. 387).

WILFULLY HOLD OVER.—Tenant who "shall wilfully hold over" demised premises, Landlord and Tenant Act, 1730, 4 G. 2, c. 28,

s. 1; "The expression in the statute, 'wilfully hold over,' implies, not only a holding over after the term has expired but, a holding over in the absence of a *bonâ fide* belief on the part of the tenant that he is justified by the circumstances in so doing" (per Cockburn, C. J., *Swinfen* v. *Bacon*, 30 L. J. Ex. 368; 6 H. & N. 846). *Vf*, *Wright* v. *Smith*, 5 Esp. 203: *Hirst* v. *Horn*, 6 M. & W. 393: *Rands* v. *Clark*, 19 W. R. 48.

As to tenant's liability and landlord's rights when a tenant "holds over"; *V.* Redman, 7, ch. 9, s. 5: Fawcett, 514 *et seq*: Woodf. 780 *et seq*.

WILFULLY NEGLECT.—*V.* WILFUL NEGLECT.

WILFULLY OBSTRUCT.—*V.* OBSTRUCT: WILFUL OBSTRUCTION.

WILFULLY OR MALICIOUSLY.—*V.* WILFUL AND MALICIOUS.

WILFULLY PERMIT.—*V.* CAUSE OR PERMIT.

WILFULLY SUFFER.—To "wilfully suffer" deleterious matter to pass into the Thames, s. 92, Thames Conservancy Act, 1894, there must be more than a mere omission to do something to prevent the evil (*High Wycombe* v. *Thames Conservators*, 78 L. T. 463); *semble*, the omission must be deliberate and intentional (*R.* v. *Senior*, cited WILFULLY). *Cp*, "Cause or Suffer," sub SUFFER: CAUSE OR PERMIT.

"Wilfully do or suffer"; *V.* WILFULLY.

WILFULLY TRESPASS.—"Wilfully trespass upon any Railway, and shall refuse to quit upon request," s. 16, 3 & 4 V. c. 96; notwithstanding *Jones* v. *Taylor* (28 L. J. M. C. 204 *n*; 1 E. & E. 20), Blackburn, J., held that a continuing trespass was not, under these words, excused because the offender fancied he had a right to be where he was (*Foulger* v. *Steadman*, 42 L. J. M. C. 3; L. R. 8 Q. B. 65). *Cp*, WILFULLY: WILFULLY AND FALSELY: UNLAWFULLY.

WILFULLY WASTE.—*V.* WILFUL WASTE.

WILL.—*V.* TESTAMENT: CODICIL: LAST: MADE: SIGNED: WRITING: NOMINATE.

"The general principle I take to be clear. On the one hand, where a testator in a CODICIL uses the word 'Will' abstractedly from the context, it will refer to all antecedent testamentary dispositions which together make the Will of the testator; and consequently where the testator by a Codicil confirms in general terms his Will or his Last Will and Testament, the Will, together with all the Codicils, is taken to have been confirmed. 'The Will of a man,' said Ld Penzance in *Lemage* v. *Goodban* (cited TESTAMENT), 'is the aggregate of his testamentary intentions so far as they are manifested in writing duly executed according to the statute.' On the other hand, it is equally clear that the testator may, by apt words, express his intention to revoke any Codicil already made, and

to set up the original Will unaffected by any Codicil" (per Fry, J., *Green* v. *Tribe*, 9 Ch. D. 234; 47 L. J. Ch. 785), or may revoke his Will without affecting a Codicil thereto (*Farrer* v. *St. Catherine's College*, L. R. 16 Eq. 19; 42 L. J. Ch. 809). *Vf*, *Green* v. *Tribe* for a review of the previous authorities.

Quà Wills Act, 1837, " 'Will,' shall extend to a Testament and to a Codicil, and to an Appointment by Will or by Writing in the nature of a Will in exercise of a Power; and also to a disposition by Will and Testament or devise of the custody and tuition of any child by virtue of" 12 Car. 2, c. 24, or by virtue of the Irish Act, 14 & 15 Car. 2, c. 19, "and to any other testamentary disposition" (s. 1: *Va*, 15 & 16 V. c. 24, s. 3).

Quà Court of Probate Act, 1857, 20 & 21 V. c. 77, "Will," comprehends, " 'Testament,' and all other testamentary instruments of which Probate may now be granted" (s. 2: *Va*, s. 2, 20 & 21 V. c. 79).

Quà Finance Acts, " 'Will' includes, any testamentary instrument" (s. 22 (1 *b*), 57 & 58 V. c. 30).

Quà S. L. Acts, " 'Will' includes, Codicil, and other testamentary instrument, and a writing in the nature of a Will" (s. 2 (10, vii), 45 & 46 V. c. 38).

"Will" includes Codicil, quà Conv & L. P. Act, 1881 (s. 2, xii), Mortmain and Charitable Uses Act, 1888 (s. 10, ii), and Yorkshire Registries Act, 1884 (s. 3).

Other Stat. Def. — *Ir.* 13 & 14 V. c. 72, s. 64; 54 & 55 V. c. 66, s. 9.

"Will *Already made,*" Real Estates Charges Act, 1854, 17 & 18 V. c. 113; *V. Rolfe* v. *Perry*, 32 L. J. Ch. 471; 8 L. T. 441.

Power to a Corporation to *acquire* land "by Will"; *V.* PURCHASE.

A Power to Appoint personalty "by Will" (*Re Price*, 1900, 1 Ch. 442; 69 L. J. Ch. 225; 82 L. T. 79: 48 W. R. 373), or "by Will DULY executed" (*D'Huart* v. *Harkness*, 34 L. J. Ch. 311; 34 Bea. 324), "means, any testamentary instrument recognized by the law of England as a Will" (per Stirling, J., *Re Price*, sup), which includes any Will valid according to the law of the testator's DOMICIL at the time of his death (Dicey on the Conflict of Laws, 684, cited and adopted *Re Price*, in *whc Re Kirwan*, 52 L. J. Ch. 952; 25 Ch. D. 373, and *Hummel* v. *Hummel*, 1898, 1 Ch. 642; 67 L. J. Ch. 363, were discussed); ss. 9, 10, Wills Act, 1837, have no application to Wills of persons domiciled abroad, and therefore, in such cases, if the Power requires special solemnities for its execution those requirements must be followed (*Barretto* v. *Young*, 1900, 2 Ch. 339; 69 L. J. Ch. 605; 83 L. T. 154). The execution of a Power is not affected by the law of Domicil as to the donee's testamentary capacity (*Pouey* v. *Hordern*, 1900, 1 Ch. 492; 69 L. J. Ch. 231; 82 L. T. 51). *Vf*, WILL ONLY.

V. TENANT AT WILL.

WILL; WILL AND DECLARE; WILL AND DESIRE.—*V.* PRECATORY TRUST.

WILL ONLY.—If a "Power be to Appoint by 'Will only,' with remainder over in default of appointment, an immediate disposition cannot be made, and it can only take effect under a Will, and after death" (Watson Eq. 847, citing *Sockett* v. *Wray*, 4 Bro. C. C. 483: *Reid* v. *Shergold*, 10 Ves. 370: *Bradley* v. *Westcott*, 13 Ib. 445: *Anderson* v. *Dawson*, 15 Ib. 532). *V.* WILL, at end.

WILLING.—*V.* READY AND WILLING.

The School "willing to receive" a child, s. 11, Elementary Education Act, 1876, must be named by the complainant (*Thompson* v. *Rose*, 61 L. J. M. C. 26; 65 L. T. 851; 40 W. R. 155; 56 J. P. 438).

WILLINGLY.—"If a wife willingly (sponte) leave her husband and go away and continue with her avowtrer," she forfeits her dower (13 Edw. 1, St. 1, c. 34); here "Willingly" "is used in contradistinction to a wife being taken away by force by the adulterer" (per Willes, J., *Woodward* v. *Dowse*, 31 L. J. C. P. 72; 10 C. B. N. S. 722), in which case it was held that a wife driven from her home by her husband's cruelty and committing adultery, had "willingly" left her husband within the statute. *Vf*, 2 Inst. 434: Co. Litt. 32 a, b: ELOPE.

Cp, UNWILLING: WILFULLY: WITTINGLY.

WILMOT'S ACT.—Grammar Schools Act, 1840, 3 & 4 V. c. 77.

WILSON'S ACT.—Customs Consolidation Act, 1853, 16 & 17 V. c. 107.

WIMSEY.—A Wimsey is a windlass fixed in the ground, and worked *by a steam engine* for the purpose of drawing materials from the mine (MacS. 246, *n* 8, 9: *Cp*, GIN).

WIN.—"It has been doubted whether the money, &c, must be actually obtained, or whether winning a Game by a false pretence would be within the word 'win,' in s. 17, 8 & 9 V. c. 109, if the loser refused to pay the money" (Steph. Cr. 269, *n* 5, citing *R.* v. *Moss*, Dears. & B. 104).

"A covenant to 'Win' a *Mineral* means, *primâ facie*, to reach it, and put it in such a condition that it may be continuously worked in the ordinary way" (MacS. 219, citing *Lewis* v. *Fothergill*, 5 Ch. 106); following which definition the Court of Appeal said in *Rokeby* v. *Elliot* (49 L. J. Ch. 164; 13 Ch. D. 279; 28 W. R. 282; 41 L. T. 537), "A Coal Field is *won* when full, practicable, available, access is given to the coal-hewers so that they may enter on the practical work of getting the coal." *V.* WORKABLE: GET.

WIND AFT. — If the wind be at any less angle than 45 degrees with the line of a Vessel's Keel, it is "aft" within Art. 17 (*e*), Regns for Preventing Collisions at Sea, 1897 (*The Privateer*, 9 L. R.-Ir. 105).

WIND AND WATER TIGHT. — At p. 637, Woodf., it is stated that the obligation on the part of a tenant to keep his tenement "wind and water tight," "ought to be construed strictly in favour of the tenant. To put an example, it would seem that the broken glass of windows need not be replaced by new glass, but that an exclusion of wet by boards or other unsightly modes would be sufficient."

WIND AND WEATHER PERMITTING. — *V.* PERMITTING.

WINDFALL. — A Windfall is a TIMBER Tree blown down by the wind; the proceeds of Windfalls (as between Tenant for Life and Remainder-man) should be invested as Capital, the annual income generally going to the Tenant for Life, but who will, under some circumstances, be entitled to have his average annual income from the timber plantation made up, if necessary, out of capital, whilst any excess over such average income arising in consequence of the investment of the proceeds of the windfalls may be ordered to be invested as capital (*Re Harrison*, 54 L. J. Ch. 26, 617; 28 Ch. D. 220): *Vf*, *Bateman* v. *Hotchkin*, 32 L. J. Ch. 6; 31 Bea. 486: *Tooker* v. *Annesley*, 5 Sim. 235.

As between the Heir and the Executor a Windfall, if severed from the soil, is Personalty, if not, it is Realty; the question of severance being one fact quà each particular tree (*Re Ainslie*, 30 Ch. D. 485).

WINDING. — Winding of Cotton; *V. Haydon* v. *Taylor*, cited INCIDENT.

WINDING-UP. — The Winding-up of the affairs of a Co, registered under Comp Act, 1862, is of three kinds, —

1. *Compulsory*, or by the Court; *Vh*, ss. 79–128, Comp Act, 1862; Comp Winding-up Act, 1890: Buckl. 235–345: 2 Palmer Co. Prec. s. 1.

2. *Voluntary*; *Vh*, ss. 129–146, Comp Act, 1862: Buckl. 345–365: 2 Palmer Co. Prec. s. 2.

3. *Subject to Supervision* of the Court; *Vh*, ss. 147–152, Comp Act, 1862; Comp Winding-up Act, 1890: Buckl. 365–372: 2 Palmer Co. Prec. s. 3.

"Beneficial Winding-up"; *V.* BENEFICIAL, p. 182.

As to construction of Surplus Assets Clause, in a Winding-up; *V. Birch* v. *Cropper*, 59 L. J. Ch. 122; 14 App. Ca. 525: *Ex p. Maude*, 40 L. J. Ch. 21; 6 Ch. 51: *Re Anglo-Continental Co*, 1898, 1 Ch. 327; 67 L. J. Ch. 179; 78 L. T. 157; 46 W. R. 413: *Re New Transvaal Co*, cited SURPLUS.

"Winding-up," s. 32 (4), Building Societies Act, 1874, 37 & 38 V.

c. 42, means, winding-up under the Comp Acts, 1862, 1867 (*Re Sunderland Bg Socy*, 21 Q. B. D. 349; 37 W. R. 95) or the Comp Winding-up Act, 1890 (s. 8, 57 & 58 V. c. 47).

So, in a Bank Charter, though granted before the Comp Act, 1862, "Winding-up the affairs of the Corporation," includes, a Winding-up under the statutory powers for the time being in force, *i.e.* under the Comp Act, 1862, and the Acts amending the same (*Re Oriental Bank*, 54 L. J. Ch. 481).

V. LIQUIDATION: ORDERED: SUPERSEDE.

WINDOW.—A plate-glass shop-front, fixed with wooden wedges, without screws nails or glue, and removable without injury to the premises (whether or not an "Improvement"), is a "Window" "affixed or belonging" to the premises, within a covenant to deliver up the premises "with all Windows," "Improvements," &c (*Burt* v. *Haslett*, 18 C. B. 162, 893; 25 L. J. C. P. 201; 27 L. T. O. S. 300). *Vf*, IMPROVEMENT.

V. EXTERNAL PARTS: FIXED AND FASTENED.

WINE.—The admixture of a little water with wine, does not prevent its being "Wine," quà the Rubric to the Communion Office; and, if the mixing be done before the Service, the use of such "Wine" is not unlawful (*Read* v. *Lincoln, Bp.*, 1892, A. C. 644; 62 L. J. P. C. 1; 67 L. T. 128); but it is illegal to mix water with the wine during the celebration of the Eucharist (*Martin* v. *Mackonochie*, L. R. 2 A. & E. 116).

"Wine," s. 1, 11 & 12 V. c. 49, included BRITISH WINE (*Harris* v. *Jenns*, 9 C. B. N. S. 152; 30 L. J. M. C. 183).

Quà Customs, "'Wine,' includes, Lees of Wine" (s. 1, 49 & 50 V. c. 41; s. 3, 50 & 51 V. c. 5; s. 2, 62 & 63 V. c. 9).

Quà Inland Revenue, "'Wine,' includes, SWEETS" (s. 40, 43 & 44 V. c. 20).

V. FOREIGN: LOW WINES.

"Spirits of Wine"; *V.* SPIRITS.

WINE CELLARS.—A covenant in a Lease of Cellars under a Chapel, that they shall be used "as for Wine Cellars only, and not for interment or burial," is broken by the user of the Cellars for the storage and sale of Beer and Spirits (*Turner* v. *Marriott*, Dart, 873). *V.* ONLY.

WINE MERCHANT.—"Wine Merchant" who, by s. 73, Licensing Act, 1872, does not require a License under that Act; *V. Palmer* v. *Thatcher*, 3 Q. B. D. 346; 47 L. J. M. C. 54; 37 L. T. 784; 26 W. R. 314; 42 J. P. 213.

WINE SHOP.—*V. Randell* v. *Block*, cited OFFICE, p. 1325.

WINTER ASSIZES.—"Winter Assizes," means, any Court of Assize, or any Sessions of Oyer and Terminer or Gaol Delivery, held in

September, October, November, December, or January (39 & 40 V. c. 57, s. 6, as amended by 40 & 41 V. c. 46, s. 1).

WIRE. — *V.* TELEGRAPH: UNDERGROUND.

WISDOM. — "Good Wisdom and Discretion"; *V.* DISCRETION.

WISH AND DESIRE: WISH AND REQUEST. — *V.* PRECATORY TRUST.

WISTA. — Half a Hide: Great Wista, a Hide (Elph. 630, citing Seebohm, 51; Spelm. *Wista*, where it is said that Wista is sometimes used for VIRGATE).

WIT. — "To wit"; *V.* MEMORANDUM: NAMELY: TO WIT.
V. WITE.

WITCH. — *V.* CONJURATION.

"Thou art a Witch and a Sorcerer" was formerly Slander, "for if he witcheth men so as they die, it is Felony: and if he use Witchcraft in any other manner, he shall stand upon the Pillory" (per Gawdy, J., *John Rogers* v. *Gravat*, Cro. Eliz. 571).

"Thou shalt not suffer a Witch to live" (Exodus xxii. 18), which, according to *Rogers* v. *Gravat*, included a man as well as a woman, but the Revised Version substitutes "Sorceress" for "Witch."

WITCHCRAFT. — *V.* WITCH: 4 Bl. Com. 60 *et seq*: 12 Encyc. 701–703.

WITE. — "*Wite, wita*, is an old *Saxon* word, and signifieth an AMERCIAMENT; as, *fledwite*, an amerciament for fleeing or being a fugitive; and so is *flemiswite, blodwite* an amerciament for drawing of blood, *ferdwite* concerning warfare; and so *letherwite, childwite, wardwite*, and the like. Sometimes it signifieth forfeiture, sometimes freedom, or acquittall" (Co. Litt. 127 a). *Vf*, Termes de la Ley, *Bloodwit, Childwit, Ferdwit, Fledwite, Fletwit, Hangwit, Lotherwit, Warwit.*

WITH. — "'With,' taken to mean 'and as incident thereto'" (Dwar. 692, citing *Durham Ry* v. *Walker*, 2 Q. B. 966).

"With," in a devise of a House "with all the Household Goods therein," so conjoins the goods with the house that the devisee can have no larger interest in the goods than in the house (*Leeke* v. *Bennett*, 1 Atk. 470).

V. TOGETHER WITH.

WITH A VIEW. — *V.* A.

WITH ALL CONVENIENT SPEED. — *V.* CONVENIENT SPEED.

WITH ALL DESPATCH. — *V.* CUSTOMARY: DESPATCH.

WITH ALL FAULTS.—*V.* FAULTS.

WITH ALL ITS LIGHTS.—*V.* Dart, 136, and note *f*.

WITH ALL LIBERTIES.—An original grant of a FAIR, "With all Liberties," merely, does not include Tolls, for Toll is not incident to a Fair; but when Toll, by grant or prescription, is payable in respect of a Fair, and the Fair becomes forfeited to the Crown by whom it is re-granted "cum omnibus libertatibus ad hujusmodi feriam spectantibus," there Toll passes (*Heddy* v. *Wheelhouse*, Cro. Eliz. 591).

So a Grant of a MARKET, "with all Liberties *and Free Customs* to such a market belonging," does not give the right to prevent tradesmen from selling, on market days, marketable articles in shops within the limits of the franchise; though the grantees may acquire such a right by prescription, or, *semble*, it might have been granted by apt words in the charter (*Penryn* v. *Best*, 48 L. J. Ex. 103; 3 Ex. D. 292).

V. CUSTOM: TOLL.

WITH ALL MINES.—"Where a man has unopened Mines within his land, and demises for life or years such land 'With all Mines therein,' the lessee may, *primâ facie*, as between himself and his grantor, dig the unopened Mines and will not, by so doing, commit WASTE (*Saunders' Case*, 5 Rep. 12 a; Co. Litt. 54 b: *Darcy* v. *Askwith*, Hob. 234: *Clegg* v. *Rowland*, L. R. 2 Eq. 160; 35 L. J. Ch. 396; 14 W. R. 530; 14 L. T. 217); for otherwise the words 'With all Mines therein' would have no effect (Co. Litt. 54 b)": MacS. 53.

V. Boileau v. *Heath*, cited IRON.

WITH EFFECT.—*V.* EFFECT.

WITH FORCE AND ARMS.—*V.* FORCE.

WITH RESPECT TO.—*V.* IN RESPECT OF.

WITH SERVANTS.—*V.* SERVANTS

WITH THE APPURTS.—*V.* APPURTENANCES: WAYS.

WITHDRAW.—An Agreement by a Partner to "withdraw from the Firm" means, to withdraw at once; and it further means, (1) "that the withdrawing Partner shall make over to the continuing Partners all his interest in the partnership and in the partnership assets, whether there be real or personal estate, whether there be outstanding contracts, or anything of the kind"; (2) "that the continuing Partners shall indemnify the retiring Partners against all the liabilities of the Firm from that time forth. They take the assets, they take the benefit of the contracts, they take the chances of success for the future, and they must keep him indemnified" (per Kekewich, J., *Gray* v. *Smith*, 58 L. J. Ch. 805; affd

59 Ib. 145; 43 Ch. D. 208); but an agreement to "withdraw" (*without* more) does not imply that the continuing partner is entitled to *continue* to use the withdrawing partner's name (*S. C.*). *Cp*, ASSETS. *V.* GOOD-WILL.

V. WITHDRAWN.

WITHDRAWAL. — "Withdrawal" Member of a Building *Society*; *V. Re Norwich & Norfolk Bg Socy*, 45 L. J. Ch. 785: *Vth*, per *Selborne*, C., *Walton* v. *Edge*, 10 App. Ca. 39. *Va*, *Re Sunderland Bg Socy*, 59 L. J. Q. B. 217; 24 Q. B. D. 394. *V.* MEMBER: UNADVANCED.

WITHDRAWN. — EXECUTION "withdrawn, satisfied, or stopped," Sheriffs Fees Order, Aug 31, 1888; *V.* per Esher, M. R., *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.

WITHHELD. — If a License or Permission is "not to be withheld" if a prescribed condition is complied with, that means that "it shall be given" on such compliance (per Kay, L. J., *Perls* v. *Saalfeld*, 1892, 2 Ch. 149; 61 L. J. Ch. 414: *Sv*, *Treloar* v. *Bigge*, cited UNREASONABLY).

WITHHOLD. — A person having possession of the property of a FRIENDLY SOCIETY does, *primâ facie*, "withhold or misapply" it, s. 16 (9), Friendly Socy Act, 1875, repld s. 87 (3), F. S. Act, 1896, if he does not properly account for it (*R.* v. *Bennett*, 63 L. J. M. C. 181); but the presumption may be rebutted, for the withholding must in some way partake of fraud (per Willes, J., *Barrett* v. *Markham*, 41 L. J. M. C. 118; L. R. 7 C. P. 405; 27 L. T. 313: *Vf*, *Scott* v. *Wilson*, 9 Times Rep. 492).

WITHIN. — Where a statute gave power to assess, for expenses of road-repair, all premises "within" certain streets, it was held that a yard — Kent and Essex Yard, Whitechapel — set back from one of such streets, and having other houses between it and the street, but the only access to which was from the street by means of carriage gates and along a private covered way, was "within" the street (*Baddeley* v. *Gingell*, 17 L. J. Ex. 63; 1 Ex. 319). In that case Alderson, B., said, "You cannot say that any house is literally *within* the street, and we must therefore come to the consideration of what is intended by the expression 'within'"; the yard was held (*V.* espy jdgmt of Parke, B.) to be "within" the street, because its sole communication was by means of the street, and because it *fronted* and *abutted* on, and derived the benefit of the repairs to, the street.

V. FORMING: FRONTING: IN: NAVIGATING WITHIN.

Within the Curtilage; *V. Pilbrow* v. *St. Leonards*, cited CURTILAGE.

Within a stated DISTANCE; *V. R.* v. *Saffron Walden*, 15 L. J. M. C. 115; 9 Q. B. 76.

Within the Sea Flood; *V.* INFRA.

Salvage of Life "within the limits of the UNITED KINGDOM," s. 458, Mer Shipping Act, 1854, repld s. 544, Mer Shipping Act, 1894; *V. The Johannes*, 30 L. J. P. M. & A. 91; Lush. 182: *The Pacific*, cited PART, p. 1412.

Trade "exercised within the United Kingdom," s. 2, Sch D, Income Tax Act, 1853; *V.* per Ld Herschell, *Grainger* v. *Gough*, 1896, A. C. 335; 65 L. J. Q. B. 413: CARRY ON: EXERCISE.

"Within" a stated *Time*; *V.* IN: CALENDAR MONTH: MONTH: REASONABLE TIME: TIME: WEEK: YEAR.

Where something is to be done "within" a stated time "BEFORE" a stated date, that means that it is to be done at some time during the course of the stated time immediately preceding the stated date (*Thomas* v. *Lambert*, 4 L. J. K. B. 153; 3 A. & E. 61).

"Within" so many DAYS "AFTER" an event, means, days exclusive of the day of the event (*Williams* v. *Burgess*, 10 L. J. Q. B. 10; 12 A. & E. 635: *Robinson* v. *Waddington*, 18 L. J. Q. B. 250: *Radcliffe* v. *Bartholomew*, cited CALENDAR MONTH).

"Within 3 months before the Petition"; *V.* BEFORE.

Cp, AT LEAST: CLEAR: INTERVAL.

"Within" two named times; *V.* FROM.

"At or Within"; *V.* AT.

WITHIN HIS PARISH. — *V.* CLERGYMAN.

WITHIN OR UNDER. — It seems difficult to see how a grant of "Minerals" "*within* or under" land is fuller, and less liable to receive a restricted meaning, than if "under" alone were used; but this suggestion has been made (per Romilly, M. R., *Mid. Ry* v. *Checkley*, 36 L. J. Ch. 382; L. R. 4 Eq. 25; observed upon by Wickens, V. C., *Hext* v. *Gill*, 41 L. J. Ch. 295; 7 Ch. 705 *n*: *Vf*, MacS. 13).

For an example of construction of "UNDER" in such a connection; *V. Chamber Colliery Co* v. *Rochdale Canal Co*, 1895, A. C. 564; 64 L. J. Q. B. 645; 73 L. T. 258, on *whcv*, *New Moss Colliery Co* v. *Manchester, S. & L. Ry*, 1897, 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231.

WITHIN THE JURISDICTION. — "Carrying on Business within the Jurisdiction"; *V.* CARRY ON, p. 264.

Contract which "OUGHT to be performed within the Jurisdiction," R. 1 (*e*), Ord. 11, R. S. C.; *V. Hassall* v. *Lawrence*, 4 Times Rep. 23: *Robey* v. *Snaefell Co*, 57 L. J. Q. B. 134: *Wancke* v. *Wingren*, 58 Ib. 519: *Reynolds* v. *Coleman*, 56 L. J. Ch. 903: *Fry* v. *Raggio*, 40 W. R. 120: *Hoerter* v. *Hanover Caoutchouc Co*, 10 Times Rep. 103: Ann Pr.: MADE: TERMS.

"Within the Jurisdiction," Sch 1, Ord. 11, R. 1, Jud. Act, 1875, means, territorial jurisdiction (*Re Smith*, 1 P. D. 300; 45 L. J. P. D. & A. 92: *The Vivar*, 2 P. D. 29).

Crimes "committed within the Jurisdiction of either of the High Contracting Parties," s. 1, 6 & 7 V. c. 76, means, committed within the peculiar jurisdiction of one of those parties, as distinct from a common jurisdiction (*Re Tivnan*, cited PIRACY).

WITHIN THE REALM.—*V.* REALM.

WITHIN THE SYSTEM.—*V.* ARISING.

WITHIN THE UNITED KINGDOM.—*V.* UNITED KINGDOM: WITHIN.

WITHOUT AFFECTING.—Power to determine Works Contract "without thereby affecting in any other respects the liability of the Contractor"; *V. Re Yeadon W. W. Co and Binns*, 98 Law Times, 473.

WITHOUT BEING MARRIED.—*Semble*, is synonymous with "UNMARRIED."

V. WITHOUT HAVING BEEN MARRIED.

WITHOUT BENEFIT OF CLERGY.—Before BENEFIT OF CLERGY was abolished altogether it had for a long time been a frequent practice in statutes to prescribe that the felonies thereby respectively created or defined should be "without benefit of clergy," *i. e.* that the culprit should not be able to "pray his clergy." *Vh*, 4 Bl. Com. ch. 28.

WITHOUT BENEFIT OF SALVAGE.—A policy on profits is within Marine Insurance Act, 1745, 19 G. 2, c. 37, s. 1; and if made "Without Benefit of Salvage," although "free from Average," it is avoided (*De Mattos* v. *North*, L. R. 3 Ex. 185; 37 L. J. Ex. 116, following *Smith* v. *Reynolds*, 25 L. J. Ex. 337; 1 H. & N. 221: *V.* FULL INTEREST ADMITTED).

A Policy "Without Benefit of Salvage," omitting the words "to the Insurers," is within the prohibition of the Act (*Allkins* v. *Jupe*, 46 L. J. C. P. 824; 2 C. P. D. 375).

WITHOUT CHILDREN.—*V.* DIE WITHOUT CHILDREN.

WITHOUT DAY.—"To be dismissed Without Day, is to be finally discharged the Court" (Cowel, *Day*, citing Kitchen, fol. 193). "To bee discontinued and to be put Without Day, is all one" (Termes de la Ley, *Discontinuance*). But this seems too broadly stated, and, *semble*, to be dismissed Without Day, means, to be dismissed without any time being named to appear again. Thus, in *Goddard* v. *Smith* (6 Mod. 261), Holt, C. J., said, "the entering a *Nolle Prosequi* was only putting the defend-

ant *sine die*, and, so far from discharging him from the offence, that it did not discharge any further prosecution upon that very indictment, but that, notwithstanding, new process might be made out upon it."

WITHOUT DELAY. — *V.* PROSECUTE.

WITHOUT DISPUTE. — An agreement to accept a title "Without dispute," or "such as the vendor has," will preclude Objections (Dart, 169); *secus*, if the vendor has no title at all, for he must, at least, show a *bonâ fide* title (*Keyse* v. *Hayden*, 20 L. T. O. S. 244).

WITHOUT HAVING BEEN MARRIED. — This phrase, as frequently employed, excludes the husband, but not the descendants of the woman spoken of (*Wilson* v. *Atkinson*, 33 Bea. 536; 4 D. G. J. & S. 455; 33 L. J. Ch. 576: *Re Ball*, 48 L. J. Ch. 279; 11 Ch. D. 270: *Upton* v. *Brown*, 48 L. J. Ch. 756; 12 Ch. D. 872; 28 W. R. 38: *Re Arden*, 35 S. J. 70; W. N. (90) 204: *Stoddart* v. *Savile*, 1894, 1 Ch. 480; 63 L. J. Ch. 467; 70 L. T. 552; 42 W. R. 361: *Re Forbes*, W. N. (99) 6). But the contrary was held by Jessel, M. R., who said that the phrase is unambiguous and means, as if the woman had died a SPINSTER (*Emmins* v. *Bradford*, 49 L. J. Ch. 222; 13 Ch. D. 493; 28 W. R. 531: *Vf*, *Re Watson*, 55 L. T. 316). *Note*, the Court of Appeal has very recently approved *Emmins* v. *Bradford*, saying that the cases here previously cited went upon the context (*Re Brydone*, W. N. (1903) 81).

There seems no doubt that "Without *being* married," means, without having a husband at the time spoken of (*Re Norman*, 3 D. G. M. & G. 965; 22 L. J. Ch. 720).

Vh, *Hardman* v. *Maffett*, 13 L. R. Ir. 499: *Re Deane*, 1900, 1 I. R. 333, *whc* followed *Hardman* v. *Maffett*, and distd *Stoddart* v. *Savile*, sup.

For an elaborate and carefully reasoned treatment by Mr. Vaizey of the phrase, "As if she had died Intestate and Without Having Been Married"; *V.* 47 S. J. 64, 85, and 105.

Instead of "without having been married," it is suggested that the phrase should be "without leaving a husband her surviving."

Cp, UNMARRIED.

WITHOUT IMPEACHMENT OF WASTE. — Where a term, life interest, or other qualified ownership, is "Without Impeachment of Waste," such an owner is not liable for WASTE, and may do Waste (other than Equitable Waste) and convert it at his own pleasure (*Bowles' Case*, 11 Rep. 79).

Leases under s. 46, Settled Estates Act, 1877, must "be not made Without Impeachment of Waste": such a Lease requiring the lessee to deliver up the premises in good repair, "fair Wear and Tear and damage by tempest excepted," offends against that condition and is invalid; be-

cause a tenant for years, in the absence of stipulation, is liable even for Permissive Waste (*Yellowly* v. *Gower*, inf), from which such an exemption would exempt him (per Kekewich, J., *Davies* v. *Davies*, 57 L. J. Ch. 1093; 38 Ch. D. 499; 58 L. T. 514; 36 W. R. 399, adopting *Yellowly* v. *Gower*, 24 L. J. Ex. 289; 11 Ex. 274, notwithstanding that in *Woodhouse* v. *Walker*, 5 Q. B. D. 407; 49 L. J. Q. B. 611, the point decided in *Yellowly* v. *Gower* was treated as an open one; *Va*, *Barnes* v. *Dowling*, 44 L. T. 809. In Woodf. 651, *Yellowly* v. *Gower* is spoken of "as having been too long accepted to be now overruled").

Vh, *Downshire* v. *Sandys*, 6 Ves. 107: Termes de la Ley, *Impeachment of Wast*.

V. FULL AND ABSOLUTE: IMPEACHABLE: IMPEACHMENT: STRICT SETTLEMENT: WEAR AND TEAR.

WITHOUT INJUSTICE.—*V.* INJUSTICE.

WITHOUT INTENT TO DEFRAUD.—*V.* INTENT: INNOCENTLY ACTED: KNOWINGLY.

WITHOUT INTERRUPTION.—*V.* INTERRUPTION.

WITHOUT ISSUE.—*V.* DIE WITHOUT ISSUE: LEAVING.

WITHOUT LEAVING.—*V.* DIE WITHOUT ISSUE: LEAVING.

WITHOUT PREJUDICE.—A letter "Without Prejudice" cannot be treated "as an admission of right"; and though Kindersley, V. C., said, "the party writing it, can use it against the other on the question of costs" (*Williams* v. *Thomas*, 31 L. J. Ch. 676; 2 Dr. & Sm. 29; 7 L. T. 184: *Va*, *Jones* v. *Foxall*, 21 L. J. Ch. 725; 15 Bea. 388), yet it was afterwards held by the Court of Appeal (questioning *Williams* v. *Thomas*), that a letter written "Without Prejudice" cannot be looked at as furnishing GOOD CAUSE for depriving a successful litigant of costs (*Walker* v. *Wilsher*, 23 Q. B. D. 335; 58 L. J. Q. B. 501; 37 W. R. 723; 5 Times Rep. 649). This, in effect, seems to establish the principle that a letter "Without Prejudice" cannot be read without the consent of both parties (*Vh*, 34 S. J. 56). It cannot be used as an ACKNOWLEDGMENT of a Debt, within the Limitation Act, 1623, or such like enactment (*Cory* v. *Bretton*, 4 C. & P. 462: *Re River Steamer Co*, 6 Ch. 822).

But, even as regards the rights between the parties, a letter "Without Prejudice" is only inadmissible so long as it relates to a negotiation; when the negotiation is closed by an agreement, the privilege ceases (*Holdsworth* v. *Dimsdale*, 19 W. R. 798). *Vf*, *Hoghton* v. *Hoghton*, 15 Bea. 278: *Paddock* v. *Forrester*, 3 M. & G. 903.

The whole of a negotiation is covered if its commencement is "Without Prejudice" (*Ex p. Harris*, 44 L. J. Bank. 33; 10 Ch. 264: *Thomson* v. *Austen*, 2 D. & R. 361).

As to effect of "Without Prejudice" in a reply to a Requisition on Title; *V. Morley* v. *Cook*, 2 Hare, 106.

Threat of Legal Proceedings, s. 32, Patents, Designs, and Trade Marks, Act, 1883, "Without Prejudice"; *V. Kurtz* v. *Spence*, cited THREAT.

A Notice of Suspension of Payment (*V.* NOTICE, p. 1291), is admissible as an Act of Bankry, although given "Without Prejudice" (*Ex p. Holt, Re Daintrey*, 1893, 2 Q. B. 116; 62 L. J. Q. B. 511; 69 L. T. 257; 41 W. R. 590).

In a power in a Charter-Party to give Bills of Lading, "the meaning of 'Without Prejudice *to the Charter-Party*' has been settled by *Shand* v. *Sanderson* (28 L. J. Ex. 278) and *Gledstanes* v. *Allen* (12 C. B. 202), and is that, notwithstanding any engagements made by the Bills of Lading, the contract between the parties to the Charter is to stand unaltered" (per Esher, M. R., *Hansen* v. *Harrold*, 1894, 1 Q. B. 612; 63 L. J. Q. B. 744; 70 L. T. 475). *Vf, Reynolds* v. *Jex*, 7 B. & S. 86; 34 L. J. Q. B. 251: *The Canada*, 13 Times Rep. 238.

A CONSENT Order "Without Prejudice *to any Question* between the parties," leaves all legal claims and disputes *in statu quo* (*Peruvian Guano Co* v. *Dreyfus*, 1892, A. C. 166; 61 L. J. Ch. 749: 66 L. T. 536).

V. WITHOUT AFFECTING.

WITHOUT RECOURSE.—*V.* SANS RECOURS.

WITHOUT RESERVE.—When an auction is advertised as being made "Without Reserve," the vendor cannot bid; and if he bids, or employs any one to bid, the sale is void at the election of the purchaser (*Meadows* v. *Tanner*, 5 Mad. 34: *Thornett* v. *Haines*, 15 L. J. Ex. 230; 15 M. & W. 367: *Robinson* v. *Wall*, 16 L. J. Ch. 401: *Warlow* v. *Harrison*, 29 L. J. Q. B. 14; 1 E. & E. 295; 32 L. T. O. S. 222; 7 W. R. 133: s. 4, 30 & 31 V. c. 48); and when land is the subject of such an auction, it is unlawful for the vendor "to employ any person to bid" (s. 5, 30 & 31 V. c. 48). *Note*: As to the conflicting rules in Equity and at Law hereon prior to 30 & 31 V. c. 48; *V.* Dart, 126.

But in *Warlow* v. *Harrison* (sup) the majority of the Court (Martin and Watson, BB., and Byles, J.) went further, and held that an Auctioneer who puts up property for sale "Without Reserve," "pledges himself that the sale shall be without reserve, or (in other words) contracts that it shall be so; and that this contract is made with the highest *bonâ fide* bidder, and in case of a breach of it that he has a right of action against the Auctioneer." But, though this was a decision of the Ex. Cham., Blackburn, J., in delivering the jdgmt of the Q. B. in *Mainprice* v. *Westley* (34 L. J. Q. B. 229; 6 B. & S. 420), pointed out that the ultimate decision in *Warlow* v. *Harrison* turned rather on a matter of

pleading, and said, "We do not think, therefore, that we are precluded by it as a judgment of a Court of Error"; and accordingly in *Mainprice* v. *Westley* the Court, without saying whether or not the vendor would be liable *as for a breach of contract* if he authorized biddings in a "peremptory" sale, held, that the auctioneer at such sale would not be liable when acting without deceit and professedly only as an agent.

The authority of *Warlow* v. *Harrison*, on the question whether a "Peremptory" sale, or a sale "Without Reserve," gives positive contractual rights, was further impaired by *Harris* v. *Nickerson* (42 L. J. Q. B. 171; L. R. 8 Q. B. 286), in which it was held, that an advertisement of an intended auction gives no contractual rights to persons who are put to expense in travelling to attend the auction, and who are disappointed by reason of the sale being at the last moment withdrawn (Add. C. 12). In that case Quain, J., said, "*Warlow* v. *Harrison* has not been considered a satisfactory decision." If no contractual rights arise by reason of the withdrawal of an auction, it seems difficult to see how the case is altered, in favour of the highest *bonâ fide* bidder who must be unknown at the commencement of the sale, by the sale being advertised as "Peremptory," or "Without Reserve." A sale "without reserve" might, it seems clear, be withdrawn altogether. If it proceeds, why may it not be withdrawn at any time until an actual contract is made? And if it may be so withdrawn, how can contractual rights arise in favour of one of what may be a large company when all that can be said is that his bidding is prevented from being the highest, and he himself is prevented from being a contracting party, by the intervention of the intending vendor? *Sv*, Add. C. 445.

Sale to "Highest Bidder"; *V.* HIGHEST.

Semble, unless a sale is expressed to be "Without Reserve" it is implied that there will be a Reserve Price (*Mortimer* v. *Bell*, 13 W. R. 569; 34 L. J. Ch. 360; 12 L. T. 260).

By s. 58 (4), Sale of Goods Act, 1893, an AUCTION of Goods "may be notified to be subject to a Reserved or Upset Price"; but, *semble*, a Reserved Price unnotified is not prohibited or penalized, nor are the cases cited above on "Without Reserve" affected.

V. RESERVED BIDDING.

WITHOUT RISK. — Where a Lighter was let out, "Without Risk *of Craft*" and the goods on board were damaged by sea-water, the owner was held not liable for the loss (*Webster* v. *Bond*, Cab. & El. 339). In that case Mathew, J., said, "I think the words 'Without Risk of Craft,' mean, without risk or liability to the owner of the craft." *V.* RISK.

Investments to be made "Without Risk *to the Trustees*"; *V. Rochfort* v. *Seaton*, 1896, 1 I. R. 18.

WITHOUT SUFFICIENT CAUSE. — *V.* SUFFICIENT CAUSE.

WITNESS.—The Witness to an instrument requiring attestation, must not be a party thereto (*Seal* v. *Claridge*, 50 L. J. Q. B. 316; 7 Q. B. D. 516; 29 W. R. 508; 44 L. T. 501: *Re Parrot, Ex p. Cullen*, 60 L. J. Q. B. 567; 1891, 2 Q. B. 151; 64 L. T. 801; 39 W. R. 543).

"On the oath of One Witness"; *V.* ONE.

"To witness"; *V.* ATTEST.

V. COMPELLABLE: COMPETENT: CREDIBLE WITNESS.

WITTINGLY.—Where a statutory OFFENCE is for something done "wittingly, WILLINGLY, or KNOWINGLY," those words denote that the act must be "done with a conscious mind that the party is doing wrong" (per Tenterden, C. J., *Meirelles* v. *Banning*, 2 B. & Ad. 909).

WOMAN.—*V.* FEME: GIRL: MAN: LEGAL INCAPACITY: NEIFE: PROHIBITED: WAIVE.

Quà Coal Mines Regn Act, 1887, 50 & 51 V. c. 58, "'Woman,' means, a female of the age of 16 years or upwards" (s. 75); but quà Agricultural Gangs Act, 1867, 30 & 31 V. c. 130, "Woman," means, "a female of the age of 18 years or upwards" (s. 3), and so of Factory and Workshop Act, 1901 (subs. 1, s. 156). *Cp*, YOUNG PERSON.

A Power to A. of Jointuring "ANY woman he may marry," may be exercised in favour of a woman married to him during his divorced first wife's lifetime, although he had already appointed a jointure to such first wife (*Marlborough* v. *Marlborough*, 70 L. J. Ch. 244; 1901, 1 Ch. 165; 83 L. T. 578; 49 W. R. 275; 17 Times Rep. 137).

"Married Woman"; *V.* MARRY.

When woman presumed past childbearing; *V.* PRESUMPTION.

WOMEN'S WORKSHOP.—*V.* WORKSHOP.

WOOD: WOODS.—"Wood, *boscus*, contains timber or hautboys and underwood or subboscus. Both the trees and the soil on which they stand pass by the grant of a Wood or Boscus (Co. Litt. 4 b: *Vh*, *Doe* d. *Kinglake* v. *Beviss*, 18 L. J. C. P. 128; 7 C. B. 456: SEA GROUNDS). In like manner by an exception, in a Lease, of the Woods and Underwoods growing or being on the property demised, the soil itself on which they grow is excepted (*Ive's Case*, 5 Rep. 11 a: *Hide* v. *Whistler*, Pop. 146: *Whistler* v. *Paslowe*, Cro. Jac. 487). On the other hand, by an exception of 'Trees' (*Liford's Case*, 11 Rep. 46 b), 'SALEABLE UNDERWOODS' now growing on the premises (*Pincombe* v. *Thomas*, Cro. Jac. 524), the soil itself is not excepted. *V. Glover* v. *Andrew*, 1 And. 7" (Elph. 631). But in *Legh* v. *Heald* (1 B. & Ad. 622) it was pointed out that in *Whistler* v. *Paslowe* (sup) the lease was of a Manor, and (referring to the proposition for which *Liford's Case* is above cited) it was held in *Legh* v. *Heald* that, where the leading words of the clause were "Timber

and other *Trees*" which were followed by "Wood and UNDERWOODS," the soil was not included in the latter phrase.

Vf, TREES: SEASONABLE WOOD: Touch. 94, 95: *Stanley* v. *White*, 14 East, 332.

Lease of "Woods, Groves, Hedgerows, and Springs," by a Chapter, that had no right to fell Timber except for repairs, gave lessee no right to fell Timber (*Herring* v. *St. Paul's*, 3 Swanst. 492; 2 Wils. 1). *Vf*, TIMBER.

By a Lease of "Woods and Underwoods" upon premises demised, with the right to cut down and carry away the same, Hedgerows pass (4 Leon. 36).

Wood or Plantation; *V.* PLANTATION.

Vh, Craig on Trees and Woods.

"Commissioners of Woods and Forests"; *V.* s. 12 (12), Interp Act, 1889.

WOOD GOODS. — *V.* s. 451 (3), Mer Shipping Act, 1894.

WOODEN. — Wooden Pavement; *V.* PAVEMENT.

"Wooden Structure or Erection"; *V.* STRUCTURE.

WOODGELD. — "'Woodgeld' seemeth to bee the gathering or cutting of wood within the Forrest, or money payd for the same to the Forresters. And the immunity from this by the Kings grant is, by Cromp. f. 197, called Woodgeld" (Termes de la Ley).

WOOLLEN. — *V.* MATERIALS.

WORD. — "Word," s. 64 (*e*), Patents, Designs, and Trade Marks, Act, amended by s. 10, 51 & 52 V. c. 50, includes words in Foreign characters, *e.g.* Burmese (*Re Dewhurst*, 1896, 2 Ch. 137; 65 L. J. Ch. 618; 74 L. T. 388; 44 W. R. 672), or the NAME of an imaginary person, *e.g.* Trilby (*Re Holt*, 1896, 1 Ch. 711; 65 L. J. Ch. 410; 74 L. T. 225; 44 W. R. 369, diss. Kay, L. J.). *V.* DISTINCTIVE: FANCY WORD: INDIVIDUAL: SPECIAL: TRADE MARK.

WORDS. — "Action upon the CASE for Words," s. 3, Limitation Act, 1623, relates to ordinary SLANDER *per se*, and does not comprise an action for LIBEL or for Slander of Title (*Law* v. *Harwood*, Cro. Car. 141), nor for a slander sustainable only when there is Special Damage (*Saunders* v. *Edwards*, 1 Sid. 95; Raym. T. 61).

"By Words only"; *V.* ONLY.

V. GENERAL WORDS.

WORDS OF ART. — "Words of Art," are those words which have a definite and fixed legal meaning, and for which so-called equivalents are seldom admitted, and which are only with difficulty controlled by the

context, *e.g.* BURGLARY: FELONY: MURDER: RAPE: RAVISH: REAL ESTATE: REMAINDER: SEIZED: SEIZIN: SEPARATE COVENANT: TAKE AND CARRY AWAY: TRUE BILL.

WORK. — *V.* LABOUR: WAGES.

It is, probably, impossible to define what is "Work" by a CHILD, YOUNG PERSON, or WOMAN, within the Factory and Workshop Act, 1901, because a thing — *e.g.* oiling machinery — though ordinarily "Work" may, under some circumstances, not be so considered; the nearest approach to a practical definition is, *semble*, the doing something which the doer would have to do if working under orders, and it is none the less "Work" because done for self-amusement (*Prior* v. *Slaithwaite Co*, 1898, 1 Q. B. 881; 67 L. J. Q. B. 615; 78 L. T. 532; 46 W. R. 488; 62 J. P. 358).

"Work," quà Railway Rolling Stock Protection Act, 1872, 35 & 36 V. c. 50, "includes, any colliery, quarry, mine, manufactory, warehouse, wharf, pier, or jetty, in or on which is any Railway SIDING" (s. 2), *i.e.*, as used in s. 3, any Establishment or Place (used for the purpose of Trade or Manufacture) connected with a line of railway by sidings along which the Rolling Stock may be propelled (*Easton Estate Co* v. *Western Waggon Co*, 54 L. T. 735). In this connection, it will be observed that "Work" has a meaning similar to "WORKS."

"Work," quà Telegraph Acts, "includes, telegraphs and posts" (s. 3, 26 & 27 V. c. 112).

"Work of Charity"; *V.* CHARITY.

Literary Work; *V.* LITERARY: PERIODICAL.

"Work of Mercy"; *V.* MERCY.

Necessary Work; *V.* NECESSARY.

"Work of Necessity"; *V.* NECESSITY.

"Sanitary Work"; *V.* SANITARY.

"Work and Maintain" a Railway; *V.* MAINTAIN.

"'Manufacture' and 'Work'"; *V.* MANUFACTURE.

"Structure or Work"; *V.* STRUCTURE.

V. FROM HIS WORK: PUBLIC WORK: WORKS: WORLDLY LABOUR.

WORKABLE. — "An agreement to work a MINE as long as it is '*fairly* workable,' does not oblige the tenant to work it at a dead loss (*Jones* v. *Shears*, 7 C. & P. 346); nor does a covenant to 'get the demised clay to the *fullest practicable extent* consistent with the means of sale of bricks and tiles to be derived therefrom,' although a means of sale at an unremunerative rate might be found (per Denman, J., *Newton* v. *Nock*, 43 L. T. 197); but an agreement to work 'in the *most proper and effective manner*' is broken by a cessation from working, although the dead rent be paid (*Kinsman* v. *Jackson*, 42 L. T. 80, 558; 28 W. R. 337. The dictum of Malins, V. C., *Wheatley* v. *Westminster Brymbo Coal Co*, L. R. 9 Eq. 538; 39 L. J. Ch. 175; 22 L. T. 7, that it is enough if the

dead rent be paid, would seem not to be law; *V.* per Jessel, M. R., 42 L. T. 558). 'Coal Seams *workable as Coal Seams*,' means, workable at a profit, including the coal and fire clay, &c, to which the tenant is entitled (*Carr* v. *Benson*, 3 Ch. 524)": Woodf. 712.

As to construction of Covenants to work Mines; *Vf, R.* v. *Bedworth*, 8 East, 387: *Bute* v. *Thompson*, 14 L. J. Ex. 95; 13 M. & W. 487: *Clifford* v. *Watts*, L. R. 5 C. P. 577: *Jervis* v. *Tomkinson*, 26 L. J. Ex. 41; 1 H. & N. 195: *Foley* v. *Addenbrooke*, 14 L. J. Ex. 169; 13 M. & W. 174: *Quarrington* v. *Arthur*, 11 L. J. Ex. 418; 10 M. & W. 335: *Doe* d. *Bryan* v. *Bancks*, 4 B. & Ald. 401: *Cartwright* v. *Forman*, 7 B. & S. 243: Woodf. 411, 712, 713: MacS. 219, 229, 230: WIN: WORTH THE EXPENSE.

Cp, WROUGHT.

WORKED. — Vessels "*rowed or worked*" may be propelled by steam (per Littledale, J., *Tisdell* v. *Combe*, 7 A. & E. 796).

So, a barge, having no motive power of its own, but which is towed by a steamer, is being "*worked and navigated*" within s. 66, Watermen's and Lightermen's Amendment Act, 1859, 22 & 23 V. c. cxxxiii. (*Elmore* v. *Hunter*, 47 L. J. M. C. 8; 3 C. P. D. 116).

But attaching a steamboat to 31 barges, which had been collected about 100 yards from Victoria Dock, and so taking them altogether into the Dock, was held not a "navigating" of the steamboat "on the River" within a Bye Law under the Act just mentioned which prohibited any person "navigating any steamboat on the River" to tow more than six craft (*Rolles* v. *Newell*, 59 L. J. Q. B. 423; 25 Q. B. D. 335; 63 L. T. 384; 39 W. R. 96; 55 J. P. 70).

By the Rules under s. 4, 18 & 19 V. c. 108, an adequate ventilation was required to be "*constantly*" produced at all Collieries, and s. 11 imposed a penalty if any Colliery was "worked" contrary to Rules; held, that a Colliery in full operation on week-days was also being "worked" during the suspension of actual work between Saturday and Monday morning (*Knowles* v. *Dickinson*, 2 E. & E. 705; 29 L. J. M. C. 135).

V. CONNECTED WITH.

WORKER. — "Worker or Maker" of goods; *V.* MAKER.

WORKHOUSE. — "Workhouse," quâ Poor Law Amendment Act, 1834, 4 & 5 W. 4, c. 76, includes, "any house in which the Poor of any Parish or Union shall be lodged and maintained; or any house or building purchased erected hired or used, at the expense of the Poor Rate by any parish vestry guardian or overseer, for the reception, employment, classification, or relief, of any poor person therein at the expense of such parish" (s. 109); "*United* Workhouse," means and includes, "any Workhouse of a Union" (Ib.).

Other Stat. Def. — Lunacy Act, 1890, s. 341. — *Scot.* 52 & 53 V. c. 44, s. 17; 57 & 58 V. c. 41, s. 26.

WORKING. — *V.* ENGAGED IN WORKING: LIBERTY OF WORKING. Working for Hire; *V.* EMPLOYMENT.

WORKING CLASSES. — "Working Classes," s. 11, 48 & 49 V. c. 72, repld s. 74, 53 & 54 V. c. 70, includes, "all classes of persons who earn their LIVELIHOOD by WAGES or SALARIES" (s. 18, 53 & 54 V. c. 69).

V. INHABITED: LETTING. *Cp*, LABOURING CLASSES: WORKING MEN'S DWELLINGS.

WORKING DAYS. — "'Working Days' in a Charter-Party will vary in different ports. If by the custom of the port certain days in the year are HOLIDAYS, so that no work is done in that port on those days, then 'Working Days' do not include those holidays. 'Working Days,' in an English Charter-Party, if there is nothing to show a contrary intention, do not include Christmas-Day, and some other days which are well known to be holidays. Therefore 'Working Days' mean, days on which, at the port according to the custom of the port, work is done in loading and unloading ships, and the phrase does not include Sundays" (per Esher, M. R., *Nielsen* v. *Wait*, 16 Q. B. D. 71). *Vh, Straker* v. *Kidd*, 47 L. J. Q. B. 365; 3 Q. B. D. 223.

"Working Days," unqualified by some such phrase as "WEATHER PERMITTING" or "WEATHER WORKING DAY," are not made Non-Working Days by bad weather (*Tiis* v. *Byers*, cited DEMURRAGE: *Sc, Harper* v. *McCarthy*, cited DAY).

Charterers "to be allowed 350 tons per Working Day *of 24 hours* for loading and discharging," means, that the charterers are to have 24 working hours to load or discharge each 350 tons (*Rhymney S. S. Co* v. *Iberian Co*, 8 Asp. 438; 79 L. T. 240; affd in H. L. nom. *Forest S. S. Co* v. *Iberian Co*, 81 L. T. 563; 5 Com. Ca. 83); the phrase means, "that 24 hours in which work is usually done at the Port of Loading or Discharging, as the case may be, are to elapse before a Day can be reckoned against the charterers" (per Bigham, J. *Ib.*).

V. COLLIERY WORKING DAY: DAYS: DEMURRAGE: LAY DAYS: RUNNING DAYS: WEATHER WORKING DAY.

Quà, and by, s. 1, Notice of Accidents Act, 1894, 57 & 58 V. c. 28, "Working Day," means, "a day on which the person injured would, but for the injury, be employed in his ordinary work."

WORKING EXPENSES. — "Working Expenses of the Railway and other Proper Outgoings," s. 4, Ry. Comp. Act, 1867, 30 & 31 V. c. 127; *V. Re Eastern & Midlands Ry*, 45 Ch. D. 367; 63 L. T. 181, 604: *Proffitt* v. *Wye Valley Ry*, 64 L. T. 669: *Re Wrexham, &c, Ry*, 80 L. T. 648; 1900, 1 Ch. 261; 1900, 2 Ch. 436; 69 L. J. Ch. 291, 671. The expenses of promoting a Bill to substitute Electricity for Steam Power,

are not "Working Expenses," or "other Proper Outgoings," within the section (*Re Mersey Ry*, 64 L. J. Ch. 623; 72 L. T. 535).

Vf, quà "Working Expenses" in the section, *Re Manchester & Milford Ry*, 66 L. J. Ch. 141.

"Expenses of the MANAGEMENT and Working" of a Tramway, s. 4, 46 & 47 V. c. 43, includes, damages recovered against the Co for injuries arising from Negligence or Default in the conduct of its business (*R.* v. *Cork*, 24 L. R. Ir. 415: *Re Tralee & Dingle Ry*, 1894, 2 I. R. 115).

V. EXPENSES.

WORKING MEN'S CLUB. — *V.* FRIENDLY SOCIETY.

WORKING MEN'S DWELLINGS. — Quà Working Men's Dwellings Act, 1874 (repealed by 45 & 46 V. c. 50, by s. 111 of which its provisions are replaced), "Working Men's Dwellings," meant, "buildings suitable for the habitation of persons employed in MANUAL LABOUR and their families" (s. 3). *Cp*, WORKING CLASSES.

Vh, Housing of the Working Classes Acts, 1890, 1893, 1894, 1896, and 1900, 53 & 54 V. c. 70; 56 & 57 V. c. 33; 57 & 58 V. c. 55; 59 & 60 V. cc. 11 and 31; 63 & 64 V. c. 59; "Housing of the Working Classes Acts, 1890 to 1900," *V.* s. 8, 63 & 64 V. c. 59. *Vf*, Loc Gov Act, 1894, s. 6 (2); Loc Gov (Scot) Act, 1894, s. 24 (6); London Gov Act, 1899, s. 5 (2), Sch 2, Part 2.

WORKING MEN'S TRAINS. — *V.* WORKMEN'S TRAINS.

WORKING MINER. — *V.* PRACTICAL.

WORKING SHAFT. — A "Working Shaft," s. 23 (10), 35 & 36 V. c. 77, is one which is being used and in which men are working for the purposes of a MINE, whether such purposes are for getting ore or not (*Foster* v. *North Hendre Co*, 1891, 1 Q. B. 71; 60 L. J. M. C. 6; 63 L. T. 458; 55 J. P. 103).

WORKMAN. — Quà Employers and Workmen Act, 1875, 38 & 39 V. c. 90, a "Workman" "does not include a Domestic or MENIAL SERVANT; but, save as aforesaid, means, any person, who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in MANUAL LABOUR, whether under the age of 21 years or above that age, has entered into or works UNDER a contract with an EMPLOYER, whether the contract be EXPRESS or IMPLIED, oral or in writing, and be a contract of service or a contract personally to execute any WORK or LABOUR" (s. 10); but not including "Seamen or Apprentices to the sea service" (s. 13), — on which exception, *V. Hanrahan* v. *Limerick S. S. Co*, 18 L. R. Ir. 137: MARINER.

That would seem a good definition of "Workman" for general pur-

poses. With the addition of "a Railway Servant," it has been adopted as the definition of "Workman" quà Employers' Liability Act, 1880, 43 & 44 V. c. 42 (s. 8).

A Driver of a Wharfinger's Cart, whose duty is to load and unload goods, is such a "Workman" (*Yarmouth* v. *France*, cited PLANT), so, generally, of a Stevedore (per Brett, M. R., *Morgan* v. *London Gen. Omnibus Co*, inf); but neither an Omnibus Conductor nor a Driver of a Tramcar, is such a "Workman," for the duties of neither involve labour, and those of a Conductor, at least, could not be regarded as manual (*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: *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). *Vf*, LABOUR.

Nor is a Designer of Patterns (*Jackson* v. *Hill*, 13 Q. B. D. 618; 48 J. P. 489), nor a Grocer's Assistant (*Bound* v. *Lawrence*, 1892, 1 Q. B. 226; 61 L. J. M. C. 21; 65 L. T. 844; 40 W. R. 1; 56 J. P. 118), such a "Workman." Nor is a Potman at a Public House such a "Workman," if his position is that of a "Domestic or Menial Servant" (*Pearce* v. *Lansdowne*, 69 L. T. 316; 62 L. J. Q. B. 441; 57 J. P. 760). So, a Hairdresser is not a "Workman" within the Sunday Observance Act, 1677, 29 Car. 2, c. 7 (*Palmer* v. *Snow*, cited TRADE), nor is he within Employers and Workmen Act, 1875 (*R.* v. *Louth Jus.*, 1900, 2 I. R. 714).

But one who has to labour manually is not less a "Workman" because he has to employ other manual labour to assist him (*Grainger* v. *Aynsley*, 50 L. J. M. C. 48; 6 Q. B. D. 182; 29 W. R. 242; 45 J. P. 142); and in like manner one, a substantial part of whose time is taken up in manual labour, is a "Workman" within the Acts mentioned, although he is an Overlooker of others (*Leech* v. *Gartside*, 1 Times Rep. 391: *secus*, if he only occasionally labours, *Dennis* v. *Forbes*, 41 S. J. 144); and so a Miner working under a "butty" man is a "Workman" (*Brown* v. *Butterley Co*, 53 L. T. 964; 50 J. P. 230; 2 Times Rep. 159).

As to what is an EMPLOYMENT of a Workman quà the above-mentioned Acts; *V. Wild* v. *Waygood*, 1892, 1 Q. B. 783; 66 L. T. 309; 40 W. R. 501; 56 J. P. 389; 61 L. J. Q. B. 391: EMPLOYER.

Quà Workmen's Compensation Act, 1897, 60 & 61 V. c. 37, "'Workman,' includes, every person who is engaged in an EMPLOYMENT to which this Act applies, whether by way of MANUAL LABOUR or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or IMPLIED, is oral or in writing" (subs. 2, s. 7).

Quà Payment of Wages in Public-houses Prohibition Act, 1883, 46 & 47 V. c. 31, the def in s. 2 is nearly like that in the Employers and Workmen Act, 1875.

Semble, that Post Office Letter Sorters and Postmen are "Workmen" within s. 3 (1 *b*), Cheap Trains Act, 1883, 46 & 47 V. c. 34 (*Re Fawcett*

Assn and L. B. & S. Ry, 10 Ry & Can Traffic Ca. 299). *V.* WORKMEN'S TRAINS.

Other Stat. Def. — 8 & 9 V. c. 77, s. 9.

V. ARTIFICER: IN OR ABOUT: LABOURER: PERSONAL LABOUR: SERVANT: UNDER.

WORKMANLIKE. — *V.* PROPER AND WORKMANLIKE.

WORKMEN'S TRAINS. — Workmen's Trains as provided for by the Cheap Trains Act, 1883, 46 & 47 V. c. 34 (*V.* s. 3), are trains which Railway Companies have to provide at a low third class rate between the hours of 6 P. M. and 8 A. M., for the reasonable accommodation of working people; and a train is not less a "Workman's Train" because the Ry Co choose, for their own convenience, to run first and second class carriages with it (*Re Metropolitan Ry*, cited REASONABLE, p. 1665).

Vh, WORKING CLASSES: WORKING MEN'S DWELLINGS: WORKMAN.

WORK PLACE. — A Cab Proprietor's yard to which Cab Drivers go as hirers of cabs, is a "Workplace" within s. 38, P. H. London Act, 1891 (*Bennett* v. *Harding*, 1900, 2 Q. B. 397; 69 L. J. Q. B. 701; 83 L. T. 51; 48 W. R. 647; 64 J. P. 676).

Vf, IN ATTENDANCE.

WORKS. — Pit-pans and Levels, held to be "Works," within a License to get China-clay (*Martyn* v. *Williams*, 26 L. J. Ex. 117; 1 H. & N. 817); but Tram-plates fastened to sleepers, not let into but resting on the ground, are not "Works," within a Mining Lease (*Beaufort* v. *Bates*, 31 L. J. Ch. 481: 3 D. G. F. & J. 381; 10 W. R. 200; 6 L. T. 82: *Sv*, *Mansfield* v. *Blackburne*, 6 Bing. N. C. 426; 10 L. J. C. P. 178).

There are "Works" within s. 1 (1), Employers' Liability Act, 1880, 43 & 44 V. c. 42, wherever the EMPLOYER is doing work, though it be but temporary, *e.g.* pulling down a wall (*Brannigan* v. *Robinson*, 1892, 1 Q. B. 344; 61 L. J. Q. B. 202; 66 L. T. 647; 56 J. P. 328); but Works contracted for are not those of the contractee until he takes them over (*Howe* v. *Finch*, 17 Q. B. D. 187). *V.* DEFECT: WAYS.

"Works," in a Guarantee, construed as, Works already ordered (*Plastic Co* v. *Massey-Mainwaring*, 11 Times Rep. 205).

"Works and Buildings" in a Rating Act; *V. R.* v. *Mid. Ry*, 3 W. R. 415; 25 L. T. O. S. 114.

Stat. Def. — Electric Lighting Act, 1882, 45 & 46 V. c. 56, s. 32; General Pier and Harbour Act, 1861, 24 & 25 V. c. 45, s. 2; Lands C. C. Acts, 1845, 8 & 9 V. cc. 18 and 19, s. 2. *Vf*, NON-TEXTILE FACTORIES.

Accommodation Works; *V.* ACCOMMODATION.

"Board of Works"; *V.* BOARD.

"*Commissioners* of Works"; *V.* s. 12 (13), Interp Act, 1889.

The *Completion* of "Works" under s. 133, Lands C. C. Act, 1845, includes, — *e.g.* in the case of land speculatively taken by a Local Authority for street improvement, — the disposal, by sale or otherwise, of all the land so acquired; and, therefore, until the completion of the street and the disposal of all the land, the Local Authority is liable, under the section, to make good any deficiency of Land Tax and Poor Rate in respect of the lands taken (*Bristol Guardians* v. *Bristol Corp*, 18 Q. B. D. 549; 56 L. J. Q. B. 320; 56 L. T. 641; 35 W. R. 619; 51 J. P. 676; 3 Times Rep. 271); and such deficiency (whether payable by a Local Authority or a Co) is not to be calculated on the basis of the promoters making good any loss, for if the property were unoccupied there would be no deficiency to be made good; the section provides the basis of calculation, viz., "the Rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the Special Act" (*Putney* v. *Lond. & S. W. Ry*, 1891, 1 Q. B. 182, 440; 60 L. J. Q. B. 18, 438; 64 L. T. 280; 39 W. R. 291; 55 J. P. 422: *St. Leonard, Shoreditch* v. *London Co. Co.*, 1895, 2 Q. B. 104; 64 L. J. Q. B. 615; 72 L. T. 802; 43 W. R. 598).

"Completion of Works"; *V. Stock* v. *Meakin*, cited OUTGOING, p. 1379.

Works of *Maintenance*; *V.* MAINTAIN.

Works *Necessary*; *V.* NECESSARY, pp. 1254, 1255: SUPPLY.

"*Permanent* Works"; *V.* PERMANENT.

"*Proper* Works"; *V.* CONVENIENCE.

Works "for Sewage Purposes"; *V.* SEWAGE.

V. CONNECTED WITH: IMMEDIATELY CONNECTED: STREET WORKS: SUBSTANTIALLY: WATERWORKS: WORK.

WORKSHOP. — A room in which children were taught, and were engaged in, straw-plaiting, by and under the superintendence of a person who had no interest in the work done or the proceeds of it; held, a "Workshop" within s. 4, Workshop Regulation Act, 1867, 30 & 31 V. c. 146 (*Beadon* v. *Parrott*, 40 L. J. M. C. 200; L. R. 6 Q. B. 718).

Quà Factory and Workshop Act, 1901, "the expression 'Workshop,' means —

"(*a*) any premises or places named in Part 2, of the Sixth Sch to this Act, which are not a FACTORY; and

"(*b*) any premises room or place, not being a Factory, in which premises room or place, or within the close or CURTILAGE or precincts of which premises, any MANUAL LABOUR is exercised, by way of TRADE or for purposes of GAIN in or incidental to any of the following purposes, namely —

"(i) the making of any article or of part of any article; or

"(ii) the altering, repairing, ornamenting, or finishing, of any article; or

"(iii) the adapting for SALE of any article,

"and to or over which premises room or place the EMPLOYER of the persons working therein has the right of access or control:

"The expression 'Workshop,' includes a '*Tenement* Workshop,'" which means, "any WORKPLACE in which, with the permission of or under agreement with the owner or occupier, two or more persons CARRY ON any work which would constitute the workplace a Workshop if the persons working therein were in the employment of the owner or occupier" (s. 149, *whvf* hereon).

"*Men's* Workshops," are "Workshops conducted on the system of not employing any WOMAN, YOUNG PERSON, or CHILD, therein" (s. 157, Ib.).

"*Women's* Workshops," are Workshops "conducted on the system of not employing therein either Children or Young Persons" (s. 29 (1), Ib.).

Quà above defs, *V. Fullers* v. *Squire*, 1901, 2 K. B. 209; 70 L. J. K. B. 689; 85 L. T. 249; 49 W. R. 683; 65 J. P. 660.

A building planned and adapted for a Laundry is a "Workshop," within a Restrictive Covenant (*Meredith* v. *Wilson*, 69 L. T. 336).

"Dwelling-house, Workshop, or other Bg"; *V.* BUILDING, p. 228.

WORLD. — To say of a person that he holds himself out "to the world" in any capacity, "is a loose expression" (per Parke, B., *Dickeson* v. *Valpy*, 10 B. & C. 140). *V.* HOLD OUT.

Devise, in remainder, "to the Next Heir of the name of Leach, *as long as the World stands*," is a limitation; and not a devise to the next heir of the name of Leach as *persona designata* (*Re Catling*, 34 S. J. 364).

A Co whose business is to be carried on "in *any part* of the World" has no defined locality (*Marshall* v. *Orpen*, cited CARRY ON, p. 265).

WORLDLY ESTATE. — When a man speaks of his "Worldly Estate," that, probably, means all his property, so that the phrase is synonymous with SUBSTANCE (*Muddle* v. *Fry*, 6 Mad. 270: *Gall* v. *Esdaile*, 1 L. J. C. P. 95; 8 Bing. 323; 1 Moore & S. 466: *Doe* v. *Gwillim*, 2 L. J. K. B. 194; 5 B. & Ad. 122; 2 N. & M. 247: *Lloyd* v. *Jackson*, L. R. 1 Q. B. 571; 2 Ib. 269). *Cp*, WORLDLY GOODS: WORLDLY PROPERTY.

V. TEMPORAL.

WORLDLY GOODS: WORLDLY SUBSTANCE. — "The phrase 'Worldly Goods' is properly applicable only to personal estate" (1 Jarm. 747); but "'Worldly Substance' includes every property a man has" (per Mansfield, C. J., *Hogan* v. *Jackson*, 1 Cowp. 307). Even "Worldly *Goods*" may be controlled by a context to include realty (*Wright* v. *Shelton*, 18 Jur. 445, cited 1 Jarm. 747). *Cp*, WORLDLY ESTATE.

WORLDLY LABOUR. — "Worldly Labour, Business, or Work," Sunday Observance Act, 1677, 29 Car. 2, c. 7; "The expression 'any

Worldly Labour' cannot be confined to a man's ordinary calling; but applies to any business he may carry on, whether in his ordinary calling or not" (per Park, J., *Smith* v. *Sparrow*, 4 Bing. 89). *V.* ORDINARY CALLING. But the Act only relates to an ARTIFICER, LABOURER, or WORKMAN, or to a TRADESMAN.

WORLDLY PROPERTY. — "Worldly Property," in a testamentary gift, is synonymous with "WORLDLY ESTATE" (*Roberts* v. *Sampson*; 1 Irish Jurist, N. S. 364).

WORN OUT. — *V.* SICK.

WORSHIP. — The meaning of the word "Worship" in our Anglican Marriage Service — "with my body I thee worship" — is "honour." The Puritans always objected to the word; and in 1661 it was agreed that "honour" should be substituted, the alteration being made by Sancroft in Bishop Cosin's revised Prayer Book, instead of the change suggested by Cosin himself. But, either by accident or through a change of mind on the part of the Revision Committee, the old word was allowed to remain. The more exclusive use of this word in connection with Divine Service is of comparatively modern date. In the *Liber Festivalis*, printed by Caxton in 1483, an Easter homily calls every gentleman's house "a place of worship," and in the same century a prayer begins, "God that commandest to worship fadir and modir." This secular use of it is still continued in the title "your Worship," by which magistrates are addressed, and in the appellation "Worshipful Companies." The expression "with my body I thee worship," or "honour," is equivalent to a bestowal of the man's own self upon the woman, in the same manner in which she is delivered to him by the Church from the hands of her father (*Blunt's Annotated Book of Common Prayer*, 6 ed., 269: *Va*, for a collection of authorities on "Worship," *Mant's Book of Common Prayer*, 492, 493).

Place of Worship; *V.* PLACE, p. 1490: PUBLIC RELIGIOUS WORSHIP: USUAL PLACE OF RELIGIOUS WORSHIP.

V. DIVINE SERVICE: RELIGIOUS.

WORSHIP OF GOD. — *V.* GODLY LEARNING.

Lord WORSLEY'S ACT. — Inclosure Act, 1836, 6 & 7 W. 4, c. 115.

WORTH. — A testamentary gift of "all I am worth," includes the realty (*Huxstep* v. *Brooman*, 1 Bro. C. C. 437; *Vth*, 1 Jarm. 738, 739: *Va*, ALL).

An agreement for so many pounds "worth" of *Shares* in a Co, does not mean shares to that nominal amount but, means the number of shares which, at their MARKET VALUE, would be purchased by the sum named

(*McIlquham* v. *Taylor*, 1895, 1 Ch. 53; 64 L. J. Ch. 296; 71 L. T. 679). *Vf*, SHARE.

"Worth and VALUE," how arrived at; *V. R.* v. *Hull Dock Co*, 3 B. & C. 516.

V. EY.

WORTH THE EXPENSE. — "Where a Scotch Lease (of Mines) gave liberty to determine if the Minerals became 'not worth the expense of working,' and they became so through a fall in the market price, the lessees were held entitled to determine" (MacS. 244, *n* 4, citing *Shotts Co* v. *Deas*, 8 Sess. Ca. 4th Ser. 530).

V. WORKABLE.

WOULD. — In a clause of FORFEITURE of a life interest if the beneficiary shall assign or become bankrupt, "or do or suffer anything whereby the income, if payable to him absolutely, would become VESTED in any other person," "would" does not mean "might," but means "will"; therefore, neither the filing of a Bankry Petition, nor the execution of a Composition Deed by the beneficiary, will work a forfeiture: if the words were "*may* become vested," the case might be different (per Cave, J., *Ex p. Dawes, Re Moon*, 17 Q. B. D. 282). If such a clause provides for forfeiture if anything is *done or suffered* whereby the income "would become PAYABLE" to any other person, it will be operative on a Bankry Receiving Order being made against the beneficiary, though nothing further be done in such bankry (*Re Sartoris*, 1892, 1 Ch. 11; 61 L. J. Ch. 1; 65 L. T. 544; 40 W. R. 82: *vthc*, *Re Brewer*, 1896, 2 Ch. 503; 65 L. J. Ch. 821; 75 L. T. 177; 45 W. R. 8). *V.* ALIENATION: ASSIGN: SUFFER: TRANSFER.

A. had a Power of Appointment by writing over a Life Policy; in a memorandum he wrote, "the money from the Equitable Insurance Office I *would have* equally divided between my daughters"; held, a good execution of the Power (*Proby* v. *Landor*, 30 L. J. Ch. 593). In that case Romilly, M. R., said, "the word 'would' must be taken to mean 'wish.'"

WOUND. — "'To wound' means, to divide the surface of the body, whether it be an internal, — *e.g.* the inside of the mouth, — or an external surface" (Steph. Cr. 171, citing *R.* v. *Leonard Smith*, 8 C. & P. 173; 3 Russ. Cr. 679). Wounding may be done with the hand (*R.* v. *Bullock*, 37 L. J. M. C. 47; L. R. 1 C. C. R. 115). To break a bone, without breaking the skin, *semble*, is not to wound (*R.* v. *Wood*, 4 C. & P. 381). *Vf*, *R.* v. *Owens*, 1 Moody, 205: *R.* v. *Hughes*, 2 C. & P. 420: Arch. Cr. 805.

In the collocation "Stab, Cut, or Wound," 9 G. 4, c. 31, ss. 11, 12, a Wounding had to be accomplished by an instrument, because "wound" was there associated with "stab, cut," and as a stab or cut must be made

by an instrument, so it was held that "wound" meant an injury (other than a "stab" or "cut") made by an instrument (per Alderson, B., *R.* v. *Jennings*, 2 Lewin C. C. 130, explaining *R.* v. *Stevens*, 1 Moody, 409: *R.* v. *Harris*, 7 C. & P. 446).

Vh, *R.* v. *Waudby*, 1895, 2 Q. B. 482; 64 L. J. M. C. 251; 73 L. T. 352; 44 W. R. 64.

Cp, MAIM.

WRAPPER. — Quà Revenue Act, 1862, 25 & 26 V. c. 22, "'Wrapper,' shall mean, a paper wrapper, label, or inclosure, provided by the Commrs of Inland Revenue for containing, inclosing, or covering, a Pack of CARDS, and denoting the duty in respect thereof" (s. 28).

V. PAPER WRAPPER.

WRECK. — "'Wrecke,' or 'Varech' (as the Normans, from whom it came, call it) is where a Ship is perished on the Sea, and no man escapeth alive out of the same, and the Ship or part of the Ship so perished, or the goods of the Ship come to the Land of any Lord, the Lord shall have that as a Wrecke of the Sea. But if a man, or a dog, or a cat, escape alive, so that the party to whom the goods belong, come within a yeare and a day, and prove the goods to be his, he shall have them againe, by provision of the statute of Westm. 1, c. 4, made in King Ed. I. dayes, who therein followed the decree of H. I. before whose dayes, if a Ship had been cast on shore, torne with tempest, and were not repaired by such as escaped alive within a certaine time, that then this was taken for Wrecke" (Termes de la Ley).

Cp, Doctor and Student, Di. 2, ch. 51: Hale, De Jure Maris, ch. 6: 1 Bl. Com. 290 *et seq*: DERELICT: *Vh*, *Dunwich* v. *Sterry*, 1 B. & Ad. 831.

"De wreck de mere" (3 Edw. 1, c. 4), — "Wrecke or Shipwrecke, is an English word, in French *Naufrage*, in ancient French, *Varech*, in Latine, *Naufragium*, legally *Wreccum Maris*, Wrecke of the Sea in legall understanding, is applied to such goods as after shipwreck at sea are by the sea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admirall but to the common law. Although this statute speaketh onely of Wrecke, yet this statute extendeth to FLOTSAM, Jetsam, and Lagan" (2 Inst. 167, citing *Constable's Case*, 5 Rep. 106 a).

The Mer Shipping Act, 1894, s. 510, replacing s. 2, Mer Shipping Act, 1854, preserves the definition as laid down by *Constable's Case* thus, "'Wreck,' includes, Jetsam, Flotsam, Lagan, and Derelict, found in or on the SHORES of the Sea or any TIDAL WATER" (*Vf*, s. 21, 31 & 32 V. c. 45. *Vh*, *The Zeta*, 44 L. J. Adm. 22; L. R. 4 A. & E. 460). "Timber found floating at sea, without an apparent owner, having drifted from its moorings, is not 'Wreck' within the meaning of the Act" (1 Maude &

P. 643, *n* (*j*), citing *Palmer* v. *Rouse*, 3 H. & N. 505; 27 L. J. Ex. 437: *Va*, *Legge* v. *Boyd*, 14 L. J. C. P. 138; 1 C. B. 92: *Barry* v. *Arnaud*, 10 A. & E. 646; 9 L. J. Q. B. 226; 2 P. & D. 633).

Vf, *The Gas Float Whitton*, 1896, P. 42; 65 L. J. P. D. & A. 17; 73 L. T. 698; 44 W. R. 263; 12 Times Rep. 109; affd in H. L., 1897, A. C. 337; 66 L. J. P. D. & A. 99; 76 L. T. 663; 13 Times Rep. 422: 1 Maude & P. 643, 675, 677, 679.

As to whether CARGO can be included in "Wrecks of Vessels," *V.* *Vivian* v. *Mersey Docks*, 39 L. J. C. P. 3; L. R. 5 C. P. 19.

V. OWNER, towards end: SUNKEN WRECK.

WRIT. — A Writ is the PROCESS by which Civil Proceedings in the High Court are, generally, commenced; *V.* ACTION: WRIT OF SUMMONS. *Cp*, PLAINT: PLEADING: SUMMONS. There are many other kinds of Writ, *e.g.* Writ of Execution, Writ of Error, Writ for the Election of a Member of Parliament, &c, issued in the name of the reigning monarch, for the doing, or not doing, of some act or thing.

Quà Sheriffs Act, 1887, 50 & 51 V. c. 55, "'Writ,' includes any PROCESS" (s. 38).

Quà Titles to Land Consolidation (Scot) Act, 1868, 31 & 32 V. c. 101, "the word 'Charter' and the word 'Writ,' shall each extend to and include all Crown Writs, and all Charters, Precepts, and Writs, from Subject Superiors"; "'*Crown* Writ,' shall extend to and include all Charters, Precepts, and Writs, from Her Majesty and from the Prince" (s. 3). *Vf*, 31 & 32 V. c. 64, s. 2.

WRIT OF ERROR. — "Writs of Error upon any Judgment"; held to include Judgments on Writs of Error, as well as original judgments (*Nisbit* v. *Rishton*, 9 A. & E. 426; 9 L. J. Ex. 333; 2 P. & D. 706).

V. ERROR, at end: RECORD.

WRIT OF EXECUTION. — "The term 'Writ of Execution' includes, writs of *fieri facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto" (Dan. Ch. Pr. 654).

V. EXECUTION.

WRIT OF POSSESSION. — Quà Criminal Law and Procedure (Ir) Act, 1887, 50 & 51 V. c. 20, "'Writ of Possession,' includes, any Decree, Warrant, Order, or other document, issued from any Court directing possession to be given, or authorizing possession to be taken, of any house or land" (s. 19); a def which, *semble*, is of general acceptation.

Other Stat. Def. — 50 & 51 V. c. 33, s. 34.

WRIT OF SUMMONS. — Though an Originating Summons is an ACTION, yet it is not a "Writ of Summons" within R. 1, Ord. 11,

R. S. C., and no Order to serve it out of the jurisdiction can be granted (*Re Busfield*, 55 L. J. Ch. 467; 32 Ch. D. 123; 54 L. T. 220; 34 W. R. 372). From the jdgmt of Cotton, L. J., in that case, it may be stated that a like rule applies to Interpleaders, Petitions, and Applications to tax Solicitors' Costs, wherever an Order is sought against the person out of the jurisdiction. *Va*, that jdgmt for review and explanation of *Credits Gerundense* v. *Van Weede*, 53 L. J. Q. B. 142; 12 Q. B. D. 171: *Weldon* v. *Gounod*, 15 Q. B. D. 622: *Re Haney*, 44 L. J. Ch. 272; 10 Ch. 275: *Re Bonelli's Co*, 43 L. J. Ch. 720; L. R. 18 Eq. 655: *Re Naylor*, 28 L. T. 18: *Re Maugham*, 22 W. R. 748: *Re Mewburn*, W. N. (74) 156. *Vf*, *Re Cliff*, 1895, 2 Ch. 21; 64 L. J. Ch. 423; 72 L. T. 440; 43 W. R. 436: *Re Jellard*, 39 Ch. D. 424: *Re Anglo-African Steamship Co*, 32 Ch. D. 348: *Re Nathan Newman & Co*, 35 Ch. D. 1: *Re Liebig*, 59 L. T. 315.

V. PLAINTIFF.

WRITER.—*V.* SOLICITOR.

WRITING.—In Acts of Parliament, "expressions referring to Writing shall, unless the contrary intention appears, be construed as including references to Printing, Lithography, Photography, and other modes of representing or reproducing words in a visible form" (s. 20, Interp Act, 1889).

Va, Bills of Ex. Act, 1882, s. 2; Loc Gov Act, 1888, s. 99.

Prior to these statutory defs it had been held that a *lithographed* Memorial of a Middlesex Deed, was a good compliance with s. 5, 7 Anne, c. 20, which required Memorials to be "put into Writing, in vellum or parchment" (*R.* v. *Middlesex Registry*, 7 Q. B. 156). So, the printed name of a party to a contract may be a good signature by him; *V.* SIGNED, p. 1882.

The foregoing are departures from the literal and old meaning of a "Writing," for Coke, speaking of a Bargain and Sale, says, "It must be by Writing, and not by Print or Stamp" (2 Inst. 672).

A Pencil Writing has always been a sufficient compliance with a statutory or other requirement that the thing to be done shall be IN WRITING (*Geary* v. *Physic*, 7 D. & R. 653).

V. PRINT.

A WILL is a "Writing" within the meaning of a Power to Appoint "By Writing" (*Lisle* v. *Lisle*, 1 Bro. C. C. 533: *Orange* v. *Pickford*, 27 L. J. Ch. 808; 4 Drew. 363). "If a Power be created to be executed by a Deed, or Instrument in Writing, although the words seem to indicate instruments *inter vivos* only, yet it is settled that it may be well executed by Will" (per Westbury, C., *Taylor* v. *Meads*, 34 L. J. Ch. 206; 4 D. G. J. & S. 597: *Vh*, Sug. Pow. 214, where it is stated that the leading case on this doctrine is *Kibbet* v. *Lee*, Hob. 312; nom. *Hub-*

bard's Case, Litt. Rep. 218). But if such a Power goes on to prescribe special solemnities for its execution, *e.g.* that the Writing is to be "under SEAL," such requirements must be followed; and unless the Power is, *in terms*, a Power to appoint "by Will," a noncompliance with its requirements will not be cured by s. 10, Wills Act, 1837 (*Taylor* v. *Meads*, sup, which over-ruled *Buckell* v. *Blenkhorn*, 5 Hare, 131, and established the dicta of the L. JJ. in *Collard* v. *Sampson*, 22 L. J. Ch. 729; 4 D. G. M. & G. 224, and the decision of Wood, V. C., in *West* v. *Ray*, 23 L. J. Ch. 447; Kay, 385: *Vh*, 1 Jarm. 31, *n* (*u*): Watson Eq. 888). *V.* SIGNED, SEALED, AND DELIVERED. *Cp*, WILL.

In *Re Parker* (1894, 1 Ch. 707; 63 L. J. Ch. 316; 70 L. T. 165), Kekewich, J., held that the power to appoint New Trustees "By Writing" given by s. 31 (1), Conv & L. P. Act, 1881, repld s. 10 (1), Trustee Act, 1893, is not exerciseable by Will.

A Deed or other Writing (except a Will) speaks from its EXECUTION (*V.* FROM HENCEFORTH); a Will, from the death of testator (*V.* TESTAMENT, at end).

An Author's MS. is a "Writing" within the Carriers Act, 1830, 11 G. 4 & 1 W. 4, c. 68, s. 1 (per Stonor, Co. Co. Judge, *Lawson* v. *Lond. & S. W. Ry*, 73 Law Times, 147).

"Writing under his hand"; *V.* HIS HAND.

"Writing Obligatory"; *V. R.* v. *Morton*, cited DEED, p. 486.

V. IN WRITING: INSTRUMENT IN WRITING: MEMORANDUM: NOTE.

WRITINGS.—*V. Watson* v. *McLean*, E. B. & E. 75.

WRITTEN.—*V.* WRITING.

WRITTEN AGREEMENT.—*V.* IN WRITING: NOTE: SUBMISSION.

WRITTEN BY.—"Written by," appearing on the title page of a song set to music, refers only to the words of the song and do not mean "written and composed by" (*Barnard* v. *Pillow*, W. N. (68) 94).

WRITTEN CONSENT.—As to what is a sufficient "Written Consent" to an Assignment of a Lease; *V. West* v. *Dobb*, 39 L. J. Q. B. 190; L. R. 5 Q. B. 460). *Vh*, UNREASONABLY.

WRITTEN INSTRUMENT.—*V.* INSTRUMENT: INSTRUMENT IN WRITING: WRITING.

WRITTEN WARRANTY.—A written description of the quality of goods sold, is not a "Written Warranty" of them within s. 25, Sale of Food and Drugs Act, 1875, 38 & 39 V. c. 63 (*Rook* v. *Hopley*, 47 L. J. M. C. 118; 3 Ex. D. 209: *Jiorns* v. *Van Tromp*, 72 L. T. 499; 64 L. J. M. C. 171; 59 J. P. 246); nor is a written contract for the *future* supply of goods in their pure state such a Warranty, for the

Warranty under the statute must accompany each delivery of goods (*Harris* v. *May*, 53 L. J. M. C. 39; 12 Q. B. D. 97: *svthc*, *Elliot* v. *Pilcher*, 1901, 2 K. B. 817; 70 L. J. K. B. 795), or, if there be such a contract, then it must be shown that the particular delivery in question was connected therewith and covered thereby (*Robertson* v. *Harris*, 1900, 2 Q. B. 117; 69 L. J. Q. B. 526; 82 L. T. 536; 48 W. R. 571; 64 J. P. 565: *svthc*, *Elliot* v. *Pilcher*, sup). But the section does not require that the word "Warranty" should be used, and whatever amounts in law to a Warranty is sufficient if it is in writing, *e.g.* a sale contract of the "pure" article, or an accompanying invoice wherein the article is called "pure" (*Laidlaw* v. *Willson*, 1894, 1 Q. B. 74; 63 L. J. M. C. 35; 42 W. R. 78; 58 J. P. 58). So, if the vessel containing the article is labelled with a warranty of quality, that suffices (*Farmers Dairy Co* v. *Stevenson*, 60 L. J. M. C. 70: *Lindsay* v. *Rook*, 63 L. J. M. C. 231; 58 J. P. 735), but in such cases there must, in the first instance, be a written warranty between the parties (*Jiorns* v. *Van Tromp*, sup).

V. False Warranty: Food: Warranty. *Cp*, Represent.

WRONG.—*V.* Tort.

WRONGFUL.—"Wrongful"; *V.* per Bowen, L. J., *Mogul Co* v. *McGregor*, cited Malice: Improper: Injure.

"Wrongful Act or Default"; *V.* Default.

WRONGFULLY.—In a Pleading in Trespass, "Wrongfully" does not put the Title in issue (*Frankum* v. *Falmouth*, 2 A. & E. 452).

WRONGFULLY AFFECTED.—*V.* Injuriously Affected.

WRONGFULLY CLAIMING.—"Wrongfully claiming," s. 9, Real Property Limitation Act, 1833, 3 & 4 W. 4, c. 27; *V. Williams* v. *Pott*, 40 L. J. Ch. 775; L. R. 12 Eq. 149. "Under that section, a Lessee for Years paying rent to a person 'wrongfully claiming to be entitled,' is supposed to be in possession; and a title can only be acquired against the true owner by a wrongful receipt of rents. The same words are not elsewhere used; but I am of opinion that what was said by the learned judge (in *Shaw* v. *Keighron*, Ir. Rep. 3 Eq. 574) is equally true of any other case in which the statute is set up as a bar to the true owner by virtue only of the receipt of rent from tenants in possession. I think that such receipt of rent, in order to exclude the true owner, must always be by a person 'wrongfully claiming,'—and not receiving, or claiming a right to receive, on behalf of the true owner. When the true owner can and does ratify an agency undertaken on his behalf, though without his antecedent authority, the case is the same as if he had himself received the rents" (per Selborne, C., *Lyell* v. *Kennedy*, 59 L. J. Q. B. 278; 14 App. Ca. 460). *Vf*, "Cestui que Trust," sub Cestui: Representative.

WROUGHT. — A proviso in a Coal Mining Lease, ceasing rent on the Coal being worked out "so far as the same can be Fairly Wrought," "relates to the possibility of obtaining coal by fair working" (per Pollock, C. B.), and the question of working at a profit has no bearing (*Griffiths* v. *Rigby*, 25 L. J. Ex. 284; 1 H. & N. 237).

Cp, WORKABLE.

WYDRAUGHT. — "A water passage, gutter, or watering place" (Jacob).

WYKE. — *V.* WIKE.

YAIR—YARDLAND

YAIR. — In the old statutes against the use of Yairs and Cruffis in "fresh waters where the sea flows and ebbs," "Yairs" includes Stake-nets (per Eldon, C., *Dalgleish* v. *Athol*, 5 Dow, 291: *vthc*, *Horne* v. *Mackenzie*, cited RIVER).

YARD. — A large yard for bonding foreign timber, in which there were a deal shed and two buildings, with saw-pits; held, on the context, not to be a "Yard" within a clause, in a Railway Act, enabling an owner to insist on the whole being taken if any part of it was required (*Stone* v. *Commercial Ry*, 9 Sim. 621).

Cubic Yard, — "Where one party agrees to build an Embankment for a certain sum per Cubic Yard, at such places as he shall be directed by another, and the place selected by the other is such that there is a natural settling of the foundation while the embankment is building, and a consequent waste and shrinkage of the embankment, any system of measurement which does not allow for the embankment which supplies the place of the settling is not a correct one: *Clark* v. *United States*, 2 Wall. (U. S.), 543" (1 Hudson, 146).

Lineal Yard, — "A. contracted with B. to do certain pitching at the rate of 1*s.* 6*d.* per Lineal Yard. There was nothing on the face of the contract to show the breadth of the work to be done, but the evidence showed that the work was of a uniform breadth of 18 feet, but the plans were not produced; held, that there was no latent ambiguity in the contract, and that 'Lineal Yard' meant, one yard in length by 18 feet in breadth; and not Square Yard: *Ford* v. *Oamaru*, 1 N. Z. L. R. S. C. 97" (1 Hudson, 146).

The length of the "Imperial Standard Yard" is regulated by s. 10, 41 & 42 V. c. 49.

How Lineal Yard measured; *V.* DISTANCE.

V. SUPERFICIAL YARD: YARDS.

YARDLAND. — "*Una virgata terræ*, a yard-land, is in some countries 10, in some 20, in some 24, in some 30, &c" (Co. Litt. 5 a: the "&c" here means "acres," Touch. 93). "By the grant therefore of *virgatam terræ*, or a yard-land, will pass that quantity of land, meadow and pasture, that is called by this name. And so by the grant of half a yard, or a quarter of a yard land" (Touch. 93). *Vf*, Cowel: Jacob: Elph. 567, 631.

YARDS. — The parcels in a conveyance were described by reference to coloured parts of a plan. A yard, delineated but not coloured in the plan, was held to pass under the general word "Yards" (*Willis* v. *Watney*, 51 L. J. Ch. 181). *V.* GENERAL WORDS.

YARN. — Quà Textile Manufactures (Ir) Act, 1867, 30 & 31 V. c. 60. "Yarn," extends to and includes, "Flax, Hemp, Jute, Cotton, Silk, and Wool, which shall have been subjected to any manipulation or process to which such materials, respectively, are subjected by manufacturers, unless there be something in the subject or context inconsistent with such meaning" (s. 1).

YEAR. — "A Year is the time wherein the sun goes around his compass through the twelve signs, viz., 365 days and about 6 hours. But in Leap Year the statute, 24 G. 2, c. 25, enacts that the year shall consist of 366 days; so that in *R.* v. *Wormingall* (6 M. & S. 350), upon a question of yearly hiring, Ld Ellenborough said, 'In those years which consist of 366 days, a hiring and service for a year, must be for that same number of days, in like manner as when the year was 365 days, it must have continuance during that number" (Dwar. 693: *Vf*, Jacob). In Hiring and Service, quà 8 & 9 W. 3, c. 30, s. 4, a hiring on one day to the day next before its anniversary, was a "Year" of 365 days, for the fraction of a day at the beginning and also that at the end of the term counted as a day; a rule which was applied to a Pauper Settlement by occupation of a tenement "for one whole year, AT LEAST," under s. 1, 1 W. 4, c. 18 (*R.* v. *St. Mary, Warwick*, 1 E. & B. 816; 22 L. J. M. C. 109; 1 W. R. 307; 21 L. T. O. S. 74).

An "Agreement not to be performed within the space of one year from the making thereof," s. 4, Statute of Frauds, means, within 12 Calendar Months from that date (*Bracegirdle* v. *Heald*, 1 B. & Ald. 722: *Snelling* v. *Huntingfield*, 1 Cr. M. & R. 20). *Vf*, NOT TO BE: EXCEEDS.

Quà, and by, s. 104, Loc Gov Act, 1888, "Year," means Calendar Year.

Quà Valuation (Metropolis) Act, 1869, "'Year,' means, the twelve months commencing with the 6th of April and ending with the succeeding 5th of April" (s. 4).

Quà Agricultural Rates Act, 1896, "'Year' means, the LOCAL FINANCIAL YEAR, *i.e.* the twelve months beginning on the 1st day of April, or, where the spending Authority do not make up their accounts to that day, on the nearest day thereto to which they do make up their accounts, or on any other prescribed day" (s. 9).

Under the Companies Act, 1862, the Annual List of Members (s. 26), and the General Meetings (s. 49), which are to be sent, or held, "once at least in EVERY Year," the word "Year" means, the period of time from 1st January to 31st December, not a period of 12 calendar months

calculated from the registration of the Co (*Gibson* v. *Barton*, 44 L. J. M. C. 81; L. R. 10 Q. B. 329: *Edmonds* v. *Foster*, 33 L. T. 690).

Where a Co's Articles give the Directors a stated sum "by way of remuneration in EACH year," nothing can be claimed except for a complete year; *secus*, if the phrase were "at the RATE of" so much for each year (*Salton* v. *New Beeston Co*, 1899, 1 Ch. 775; 68 L. J. Ch. 370; 80 L. T. 521; 47 W. R. 462); and so, if the words are so much "PER ANNUM" there must be services for a complete year (*Re Central De Kaap Co*, 69 L. J. Ch. 18; W. N. (99) 216).

In a Corporation Charter, "Year" has been held to mean, a Mayoralty, though less than a year (*R.* v. *Swyer*, 10 B. & C. 486).

In a Theatrical Engagement, "Year" means "Season" (*Grant* v. *Maddox*, 16 L. J. Ex. 227; 15 M. & W. 737). In that case Alderson, B., said, "The contract is, that the plaintiff is to be paid for 3 years, at a salary of £5, £6, and £7, per week in those years; that means, according to the universal understanding amongst actors, that she is to be paid so much per week, during every week that the theatre is open."

A covenant in a Lease not to assign or underlet "for a longer period than a Year," is not broken by a sublease for a year commencing at a future date (*Croft* v. *Lumley*, 6 H. L. Ca. 672; 27 L. J. Q. B. 321); but, *semble*, a lease under a Power must take effect at once (*Ib.* 6 H. L. Ca. 737; 27 L. J. Q. B. 343).

V. TWELVEMONTH.

"By the year"; *V.* VALUE.

Condition of establishing title "Within one year"; *V. Re Hartley*, 34 Ch. D. 742; 56 L. J. Ch. 564; 56 L. T. 565; 35 W. R. 624.

"Space of one whole year," s. 58, Pluralities Act, 1838, 1 & 2 V. c. 106; *V. Bartlett* v. *Kirwood*, 23 L. J. Q. B. 9; 2 E. & B. 771: WHOLE.

"One Year's Stipend"; *V.* ONE, at end.

"*Current* Year"; *V.* CURRENT.

Dead Year, is the year from the death of a deceased for winding-up his estate, during which time his exor or admor cannot be sued for a legacy or a share (*Wood* v. *Penoyre*, 13 Ves. 333: *Benson* v. *Maude*, 6 Mad. 15).

"*Financial* Year"; *V.* FINANCIAL.

"*Savings Bank* Year"; *V.* SAVINGS.

"*School* Year"; *V.* SCHOOL.

Commencement of Year; *V.* MICHAELMAS.

V. HALF A YEAR: QUARTER OF A YEAR: SUCCEEDING: TENANT FOR YEARS: YEAR TO YEAR.

YEAR AND A DAY.—In computing a Year and a Day after an event, the day on which the event happens is counted as the first day (Co. Litt. 255 a: Steph. Cr. 155). *Vh*, Cowel: Jacob, *Year*.

YEAR CERTAIN. — A tenancy for Years, determinable on Lives, is not for "any term or number of years certain," within s. 1, 1 G. 4, c. 87 (*Doe* d. *Pemberton* v. *Roe*, cited TERM CERTAIN).

Letting for "One Year Certain, and so on from year to year"; *V.* YEAR TO YEAR.

YEAR, DAY, AND WASTE. — *V.* Cowel: Jacob, *Year*: Termes de la Ley, *An, jour, and wast.*

YEAR TO YEAR. — "Where parties agree for a tenancy '*from year to year,*' and possession is taken, such a tenancy is thereby created, and may be determined at the end of the first or any subsequent year of the tenancy by a regular notice to quit (*Doe* d. *Clarke* v. *Smaridge*, 7 Q. B. 957; 14 L. J. Q. B. 327: *Doe* d. *Plumer* v. *Mainby*, 10 Q. B. 473; 16 L. J. Q. B. 303). But where a tenancy is created '*for one year certain, and so on from year to year,*' it enures as a tenancy for two years at the least, and cannot be determined at the end of the first year (*Doe* d. *Chadborn* v. *Green*, 9 A. & E. 658; 8 L. J. Q. B. 100; 1 P. & D. 454: *Cannon Brewery* v. *Nash*, 77 L. T. 648: *R.* v. *Chawton*, 1 Q. B. 247; 10 L. J. M. C. 55: *Vf, Lutterel* v. *Weston*, Cro. Jac. 308); though it may be determined by notice to quit at the end of the second or any subsequent year of the tenancy. A demise '*for a year,*' or '*for one year certain,*' does not create a tenancy from year to year, nor require any notice to quit at the end of the year (*Cobb* v. *Stokes*, 8 East, 358, 361: *Wilson* v. *Abbott*, 3 B. & C. 88: *Johnstone* v. *Hudlestone*, 4 B. & C. 937)": Woodf. 231.

"Person having no greater interest than as Tenant for a Year, or from Year to Year," s. 121, Lands C. C. Act, 1845; *V. R.* v. *Kennedy*, 1893, 1 Q. B. 533; 62 L. J. M. C. 168; 68 L. T. 454; 41 W. R. 380; 57 J. P. 346.

"Less than a tenancy from year to year"; *V.* LESS.

A "Contract of Tenancy" quà Agricultural Holdings (England) Act, 1883 (*V.* s. 61), and Market Gardeners Compensation Act, 1895 (*V.* s. 1), "means, a letting of or agreement for the letting LAND for a term of years, or for lives, or for lives and years, or from Year to Year." Within that def a yearly letting is "from year to year" notwithstanding that it may be determined by a short notice on any day of the year (*King* v. *Eversfield*, 1897, 2 Q. B. 475; 66 L. J. Q. B. 809; 77 L. T. 195; 46 W. R. 51; 61 J. P. 740). *Note*: for other Stat. Def. of "Contract of Tenancy, *V.* 50 & 51 V. c. 26, s. 4. — *Ir.* 44 & 45 V. c. 49, s. 57.

YEARLING. — "If a breeder of horses should bequeath 'his Yearlings,' and survive into the next year, the Yearlings of the latter year, and not those of the former (now two-year-olds), would probably be held to pass": 1 Jarm. 331, *n* (*g*).

YEARLY.—" 'Yearly,' is only a word of calculation " (per Campbell, C. J., *Doe* d. *King* v. *Grafton*, 18 Q. B. 501).

Where the agreement is to pay so much a year, whether it be for rent or services, and nothing is said as to shorter payments, then nothing becomes due till the end of each year of the agreement; and, if the agreement be in writing, evidence cannot be given of an oral agreement to pay the payments quarterly or in some other mode (*Giraud* v. *Richmond*, 15 L. J. C. P. 180; 2 C. B. 835, and cases there cited by Byles arg.: *Sv*, as to the latter part of this proposition, *Ridgway* v. *Hungerford Market Co*, 3 A. & E. 171). *Cp*, QUARTERLY. *Vf*, *Salton* v. *New Beeston Co*, cited YEAR.

" If a man has a Power to make Leases, reserving the Ancient Yearly Rent '*annually*,' yet if it were reserved upon a day before the year was up (as if the year ended at Christmas and it was reserved at Michaelmas) it would be well, pursuant to the Power " (per Powell, J., *R.* v. *Weston*, Raym. Ld, 1198; adopted and applied in H. L., *Rutland* v. *Doe*, 12 M. & W. 397, 400; 10 Cl. & F. 468, 470, in *whlc* Ld Campbell doubted whether a reservation of rent at the beginning of each year would be good, because that would tend to a lesser rent being paid).

" The usual ' Yearly ' rent means, the yearly rent of so many half-yearly or quarterly payments in the year " (per Abbott, C. J., *Doe* d. *Shrewsbury* v. *Wilson*, 5 B. & Ald. 382). And the better opinion seems to be that in executing a Power of Leasing which requires the reservation of " Yearly " rents, the days of payment, how many and what, are immaterial so long as the rent is a yearly one (*Doe* d. *Douglas* v. *Lock*, 4 L. J. K. B. 117, 119; 2 A. & E. 705: but in *thc*, after an elaborate review of the somewhat conflicting authorities hereon, the Court refrained from deciding this point and disposed of the case on other grounds). *Vh*, Sug. Pow. 793–795.

In *Doe* d. *Shrewsbury* v. *Wilson* (sup), the words " made *payable yearly* " were considered the same as if the words had been " payable every year." " In common parlance the word 'yearly' in such Powers, means, not a payment of rent once a year but, that the same is to be paid *in or during* every year. In one sense a rent reserved half-yearly is payable yearly, because it is payable during the year " (Sug. Pow. 795).

V. ANNUALLY: HALF-YEARLY: PER ANNUM: QUARTERLY.

YEARLY INTEREST.—Interest upon a loan by a banker to a customer for a period less than a year, is not within " any yearly Interest of Money, or any Annuity, or other Annual Payment," within s. 40, 16 & 17 V. c. 34; therefore, the customer is not entitled to deduct Income Tax from such interest (*Goslings* v. *Blake*, 23 Q. B. D. 324; 58 L. J. Q. B. 446; 5 Times Rep. 605, distinguishing *Bebb* v. *Bunny*, 1 K. & J. 216 and *Dinning* v. *Henderson*, 3 D. G. & S. 702; 19 L. J. Ch. 273).

So, interest included in the periodical payments of a member of a Building Socy and not without difficulty distinguishable, is not "Yearly Interest of Money" within s. 102, Income Tax Act, 1842; but it is "Interest of Money" for which the Socy is assessable under par 3, Sch D, s. 2, 16 & 17 V. c. 34 (*Leeds Bg Socy* v. *Mallandaine*, 1897, 2 Q. B. 402; 66 L. J. Q. B. 467, 813; 77 L. T. 122; 61 J. P. 675), and that latter rule applies to Interest on a Bank Deposit (*Clerical Med. & Gen. Life Assrce* v. *Carter*, 58 L. J. Q. B. 224; 22 Q. B. D. 444; 37 W. R. 346).

YEARLY PRODUCE.—*V.* PRODUCE.

YEARLY RENT.—*V.* CLEAR.

YEARLY VALUE.—*V.* ANNUAL VALUE: CLEAR: FREE LAND: VALUE.

YEARS.—When successive, *V.* TERM.

YELVERTON'S ACT.—For extending to Ireland much of the statute law of England, 21 & 22 G. 3, c. 48, amended by s. 1, 7 & 8 G. 4, c. 68. *Vf*, POYNING'S ACTS.

YEOMAN.—"Camden placeth Yeomen next in order to Gentlemen" (Jacob). If that be so, and as it seems a GENTLEMAN is "one who has nothing to do," then Camden's def of Yeoman is a little vague. Still the word has for centuries been used as an ADDITION to a person's name (Termes de la Ley, *Additions*). Blackstone says, "a Yeoman is he that hath free land of 40*s.* by the year; who was antiently thereby qualified to serve on juries, vote for knights of the shire, and do any other act where the law requires one that is *probus et legalis homo*" (1 Bl. Com. 406, 407, citing 2 Inst. 668).

YEOMANRY.—"The Yeomanry Acts, 1802 to 1826"; *V.* Sch 2, Short Titles Act, 1896.

V. ACTUAL MILITARY SERVICE: SOLDIER: VOLUNTEER.

YEW TREES.—*V.* NUISANCE, p. 1300.

YIELD.—"Remove from, or yield up, the possession" of an Inn, s. 14, Alehouse Act, 1828, 9 G. 4, c. 61; *V. R.* v. *Wiltshire Jus.*, 57 J. P. 454.

YIELDING AND PAYING.—These words, with which the reddendum clause in a lease is usually commenced, create, by their own vigour, a Covenant by the lessee to pay the rent reserved (*Hellier* v. *Casbard*, 1 Sid. 266: *Porter* v. *Swetnam*, Style, 406: *Bower* v. *Hodges*, 22 L. J. C. P. 194; 13 C. B. 765, 774. *Vf*, Elph. 419, 420). But they do not create a CONDITION Precedent (*V.* PAYING).

YOKE.—Used for YARDLAND in Kent (Elph. 631).

YORK. — *V.* Bp of Ely's Act.

YORKSHIRE. — Yorkshire Registry; *V.* Actual Fraud: Conveyance, p. 403: Enlarge: Existing: Grant: Riding.

YOU. — "You," as a Description of a Lessee in an agreement to grant a lease, is good; it is as good as Proprietor, for a vendor, in a V. & P. contract (per Farwell, J., *Carr* v. *Lynch*, 1900, 1 Ch. 613; 69 L. J. Ch. 345; 82 L. T. 381; 48 W. R. 616).

"You," in a writ to several defendants, is construed distributively (*Engleheart* v. *Eyre*, 2 Dowl. 145).

YOUNG PERSON. — Quà Factory and Workshop Act, 1901, "'Young Person,' means, a person who has ceased to be a Child (pp. 302, 303), and is under the age of 18 years" (s. 156).

Quà Agriculture Gangs Act, 1867, 30 & 31 V. c. 130, "Young Person," means, "a person of the age of 13 years and under the age of 18 years" (s. 3).

Quà Shop Hours Acts, "'Young Person,' means, a person under the age of 18 years" (s. 9, 55 & 56 V. c. 62). *Note*, "the Shop Hours Acts, 1892 to 1895," are 55 & 56 V. c. 62; 56 & 57 V. c. 67; 58 & 59 V. c. 5 (s. 2, 58 & 59 V. c. 5). *Vh*, Shop, p. 1874.

Quà Sum Jur Act, 1879, 42 & 43 V. c. 49, "'Young Person,' means, a person who, in the opinion of the Court before whom he is brought, is of the age of 12 years and under the age of 16 years" (s. 49); *Vf*, 47 & 48 V. c. 19, s. 9.

V. Boy: Child: Girl: Infant: Woman: Youth.

YOUNG SALMON. — "Young of Salmon," quà Salmon and Freshwater Fisheries Acts, includes, "all young of the salmon species, whether known by the names of fry, samlet, smolt, smelt, skirling or skarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, broudling, or by any other name local or otherwise" (s. 4, 24 & 25 V. c. 109).

V. Fry: Salmon.

YOUNGER: YOUNGEST. — *Primâ facie* "Younger" or "Youngest" has reference to the order of birth (2 Jarm. 213: *Bootle* v. *Scarisbrick*, 1 H. L. Ca. 167).

An *only* child would take under a bequest to a person's "*youngest* child" (*Emery* v. *England*, 3 Ves. 232).

As to gifts to children "when the *youngest* attains 21"; *V.* 2 Jarm. 165–167.

"*Younger Branches*" of a family; *V. Doe* d. *Smith* v. *Fleming*, 2 Cr. M. & R. 638; 5 L. J. Ex. 74: 2 Jarm. 98.

"*Younger Children*," are those which were such at the death of the

intestate or heir in possession (per Hatherley, C., *Catton* v. *Mackenzie*, L. R. 2 H. L. Sc. & D. App. 203). *Vf*, *Mason* v. *Westoby*, 42 Ch. D. 590: *Re Prytherch*, Ib. 591.

"Where the estate is settled on the ELDEST son, and, subject to that, a Power is given of appointing portions to the younger children, a Younger Child who becomes the Eldest before receiving his portion, is not within the Power (*Chadwick* v. *Doleman*, 2 Vern. 528: *Teynham* v. *Webb*, 2 Ves. sen. 198: *Va*, *Lincoln* v. *Pelham*, *Bowles* v. *Bowles*, *Leake* v. *Leake*, 10 Ves. 166, 177, 477: *Savage* v. *Carroll*, 1 Ball & Beatty, 265: *Matthews* v. *Paul*, 3 Swanst. 328: *Peacock* v. *Pares*, 2 Keen, 689); but he must become an Eldest or Only Son in the sense of the Settlement, although not fully expressed, to exclude him from a portion; that is, he must take the estate provided by the Settlement for the Eldest or Only Son (*Spencer* v. *Spencer*, 8 Sim. 87: *V. Tennison* v. *Moore*, 13 Ir. Eq. Rep. 424), and this even where the Settlement expressly provides that the portion of a Younger Son becoming the Eldest Son in the lifetime of his father shall accrue to the survivors; therefore, if the father and his eldest son bar the estate tail and remainders, and dispose otherwise of the estate, the second son, although he may become, by his brother's death without issue in his father's lifetime, the eldest son entitled according to the Settlement, will still be entitled to his portion as a Younger Son (*Macoubrey* v. *Jones*, 2 K. & J. 684: *Vf*, *Re Fitzgerald*, inf). This is the exception; but as to the general rule, where a Power was given to appoint a sum amongst Younger Children, provided that the eldest son, or the *son* possessing the estate should have no share of it, and an appointment was made, *nominatim*, to Anthony, the second son, and the other *younger* children, and, after the appointment, Anthony became the eldest son by the death of his elder brother, and the estate descended upon him, Ld Thurlow held that Anthony could not take any part of the fund, although the appointment was not revoked (*Broadmead* v. *Wood*, 1 Bro. C. C. 77)": Sug. Pow. 678, 679. *Vf*, Ib. 620, 693: Elph. ch. 24: ELDEST.

On the other hand, the representatives of the Eldest Son ordinarily become entitled to a Younger Son's portion if he dies before the time fixed by the Settlement for the distribution of the portions fund; but they are not so entitled if, as remainder-man in tail, the Eldest Son has joined in a Disentailing Deed, and in raising money by mortgage of the estate out of which money he has received a substantial sum for himself, for then, in effect, he would be taking a Double Portion (*Collingwood* v. *Stanhope*, 38 L. J. Ch. 421; L. R. 4 H. L. 43; 17 W. R. 537: *Re Fitzgerald*, 1891, 3 Ch. 394; 60 L. J. Ch. 624; 65 L. T. 242; 40 W. R. 29).

V. ENTITLED IN POSSESSION.

As a general rule and where there is no special direction, the Class of Younger Children "cannot be ascertained till the period of distribution" (per Romilly, M. R., *Re Bailey*, 39 L. J. Ch. 388; L. R. 9 Eq. 491).

YOUR. — As to effect of contract for "your" wool, or other specified commodity; *V. Macdonald* v. *Longbottom*, 28 L. J. Q. B. 293; 29 Ib. 256; 1 E. & E. 977, 987.

YOUR CLIENT. — *V.* CLIENT.

YOUTH. — Quà one of the repealed Acts relating to Lace Factories, a "Youth" was defined "to mean, a male of 16 and under 18 years of age" (s. 4, 24 & 25 V. c. 117).

V. YOUNG PERSON.

APPENDIX.

INTERPRETATION ACT, 1889.

(52 & 53 VICT. c. 63.)

ARRANGEMENT OF SECTIONS.

Re-enactment of existing Rules.

New General Rules of Construction.

Supplemental.

INDEX TO DEFINITIONS.

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament. [30*th August* 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Re-enactment of existing Rules.

Rules as to gender and number.

1.—(1.) In this Act and in every Act passed *after* the year 1850, whether before or after the commencement of this Act, unless the contrary intention appears,—

(*a*) words importing the masculine gender shall include females; and

(*b*) words in the singular shall include the plural, and words in the plural shall include the singular.

(2.) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed *in or before* the year 1850.

Application of penal Acts to bodies corporate.

2.—(1.) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed *before or after the commencement of this Act*, the expression "person" shall, unless the contrary intention appears, include a body corporate. *Cp*, *s.* 19.

(2.) Where under any Act, whether passed *before or after the commencement of this Act*, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

Meanings of certain words in Acts since 1850.

3. In every Act passed *after* the year 1850, whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely,—

The expression "month" shall mean calendar month:

The expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure:

The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare.

Meaning of "county" in past Acts.

4. In every Act passed *after* the year 1850 *and before the commencement of this Act* the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town.

Meaning of "parish."

5. In every Act passed *after* the year 1866, whether before or after the commencement of this Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

Meaning of "county court."

6. In this Act, and in every Act and Order of Council passed or made *after* the year 1846, whether before or after the commencement of this Act, the expression "county court" shall, unless the contrary intention

51 & 52 Vict. c. 43.

appears, mean as respects England and Wales a court under the County Courts Act, 1888. *Cp*, *s.* 29.

Meaning of "sheriff clerk," &c., in Scotch Acts.

7. In every Act relating to Scotland, whether passed *before or after the commencement of this Act*, unless the contrary intention appears—

The expression "sheriff clerk" shall include steward clerk;

The expressions "shire," "sheriffdom," and "county" shall include any stewartry in Scotland.

Sections to be substantive enactments.

8. Every section of an Act shall have effect as a substantive enactment without introductory words.

Acts to be Public Acts.

9. Every Act passed *after* the year 1850, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.

Amendment or repeal of Acts in same session.

10. Any Act may be altered, amended, or repealed in the same session of Parliament.

Effect of repeal in Acts passed since 1850.

11.—(1.) Where an Act passed *after* the year 1850, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

(2.) Where an Act passed *after* the year 1850, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction.

Official definitions in past and future Acts.

12. In this Act, and in every other Act whether passed *before or after the commencement of this Act*, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

(2.) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty's Treasury.

(3.) The expression "Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State for the time being.

(4.) The expression "the Admiralty" shall mean the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom.

(5.) The expression "the Privy Council" shall, except when used with reference to Ireland only, mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

(6.) The expression "the Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education.

(7.) The expression "the Scotch Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland.

(8.) The expression "the Board of Trade" shall mean the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

(9.) The expression "Lord Lieutenant," when used with reference to Ireland, shall mean the Lord Lieutenant of Ireland or other Chief Governors or Governor of Ireland for the time being.

(10.) The expression "Chief Secretary," when used with reference to Ireland, shall mean the Chief Secretary to the Lord Lieutenant for the time being.

(11.) The expression "Postmaster General" shall mean Her Majesty's Postmaster General for the time being.

(12.) The expression "Commissioners of Woods" or "Commissioners of Woods and Forests" shall mean the Commissioners of Her Majesty's Woods, Forests, and Land Revenues for the time being.

(13.) The expression "Commissioners of Works" shall mean the Commissioners of Her Majesty's Works and Public Buildings for the time being.

(14.) The expression "Charity Commissioners" shall mean the Charity Commissioners for England and Wales for the time being.

(15.) The expression "Ecclesiastical Commissioners" shall mean the Ecclesiastical Commissioners for England for the time being.

(16.) The expression "Queen Anne's Bounty" shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.

(17.) The expression "National Debt Commissioners" shall mean the Commissioners for the time being for the Reduction of the National Debt.

(18.) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

(19.) The expression "the Bank of Ireland" shall mean, as circumstances require, the Governor and Company of the Bank of Ireland or the bank of the Governor and Company of the Bank of Ireland.

(20.) The expression "consular officer" shall include consul-general, consul, vice-consul, consular agent, and any person for the time authorized to discharge the duties of consul-general, consul, or vice-consul.

Judicial definitions in past and future Acts.

13. In this Act and in every other Act whether passed *before or after the commencement of this Act*, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely: —

(1.) The expression "Supreme Court," when used with reference to England or Ireland, shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

(2.) The expression "Court of Appeal," when used with reference to England or Ireland, shall mean Her Majesty's Court of Appeal in England or Ireland, as the case may be.

(3.) The expression "High Court," when used with reference to England or Ireland, shall mean Her Majesty's High Court of Justice in England or Ireland, as the case may be.

(4.) The expression "court of assize" shall, as respects England, Wales, and Ireland, mean a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and shall, as respects England and Wales, include the Central Criminal Court.

(5.) The expression "assizes," as respects England, Wales, and Ireland, shall mean the courts of assize usually held in every year, and shall include the sessions of the Central Criminal Court, but shall not include any court of assize held by virtue of any special commission, or, as respects Ireland, any court held by virtue of the powers conferred by section sixty-three of the Supreme Court of Judicature Act (Ireland), 1877. 40 & 41 Vict. c. 57.

(6.) The expression "the Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facili- "tate the performance of the duties of justices of the peace out of "sessions within England and Wales with respect to summary convictions "and orders."

(7.) The expression "the Summary Jurisdiction (England) Acts" and the expression "the Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary 11 & 12 Vict. c. 43.

42 & 43 Vict. c. 49.

Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them.

27 & 28 Vict. c. 53. 44 & 45 Vict. c. 33.

(8.) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them.

(9.) The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same.

14 & 15 Vict. c. 93.

(10.) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts.

(11.) The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorized to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law.

(12.) The expression "petty sessional court" shall, as respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the city of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorized by law to do alone any act authorized to be done by more than one justice of the peace.

(13.) The expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the city of London or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate is authorized by law to do alone any act authorized to be done by more than one justice of the peace.

(14.) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

Meaning of "rules of court."

14. In every Act passed *after the commencement of this Act*, unless the contrary intention appears, the expression "rules of court" when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorizing anything to be done by rules of court.

Meaning of borough.

15. In this Act and in every Act passed *after* the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely: —

(1.) The expression "municipal borough" shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities, or property of the council of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen, and burgesses of the borough acting by the council. 45 & 46 Vict. c. 50.

(2.) The expression "municipal borough" shall mean, as respects Ireland, any place for the time being subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of municipal corporations in Ireland."

(3.) The expression "parliamentary borough" shall mean any borough, burgh, place or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.

(4.) The expression "borough" when used in relation to local government shall mean a municipal borough as above defined, and when used in relation to parliamentary elections or the registration of parliamentary electors shall mean a parliamentary borough as above defined.

Meaning of guardians and union.

16. In this Act and in every Act passed *after* the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "board of guardians" shall, as respects England and Wales, mean a board of guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and shall include a board of guardians or other body of persons performing under any local Act the like functions to a board of guardians under the Poor Law Amendment Act, 1834. 4 & 5 Will. 4, c. 76.

(2.) The expression "poor law union" shall, as respects England and Wales, mean any parish or union of parishes for which there is a separate board of guardians.

(3.) The expression "board of guardians" shall, as respects Ireland, mean a board of guardians elected under the Act of the Session of the first and second years of the reign of Her present Majesty, chapter fifty-six, intituled "An Act for the more effectual relief of the destitute poor in Ireland," and the Acts amending the same, and shall include any body of persons appointed by the Local Government Board for Ireland to carry into execution the provisions of those Acts.

(4.) The expression "poor law union" shall, as respects Ireland, mean any townland or place or union, or townlands or places, for which there is a separate board of guardians.

Definitions relating to elections.

17. In every Act passed *after* the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "parliamentary election" shall mean the election of a member or members to serve in Parliament for a county or division of a county, or parliamentary borough or division of a parliamentary borough, or for a university or combination of universities.

(2.) The expression "parliamentary register of electors" shall mean a register of persons entitled to vote at any parliamentary election.

(3.) The expression "local government register of electors" shall mean as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough, the burgess roll.

Geographical and colonial definitions in future Acts.

18. In this Act, and in every Act passed *after* the commencement of this Act, the following expressions shall, unless the contrary intention

appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

(2.) The expression "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

(3.) The expression "colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

(4.) The expression "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.

(5.) The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.

(6.) The expression "Governor" shall, as respects Canada and India, mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, and as respects any other British possession, shall include the officer for the time being administering the government of that possession.

(7.) The expression "colonial legislature" and the expression "legislature," when used with reference to a British possession, shall respectively mean the authority, other than the Imperial Parliament or Her Majesty the Queen in Council, competent to make laws for a British possession.

Meaning of "person" in future Acts.

19. In this Act and in every Act passed *after* the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate. *Cp*, *s.* 2 (1).

Meaning of "writing" in past and future Acts.

20. In this Act and in every other Act whether passed *before or after* the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Meaning of "statutory declaration" in past and future Acts. 5 & 6 Will. 4, c. 62.

21. In this Act, and in every other Act whether passed *before or after* the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

Meaning of "financial year" in future Acts.

22. In this Act and in every Act passed *after* the commencement of this Act the expression "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 thirty-first day of March.

Definition of Lands Clauses Acts. 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18.

23. In any Act passed *after* the commencement of this Act, unless the contrary intention appears,—

The expression "Lands Clauses Acts" shall mean—

(*a*) as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands

Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same; and — 46 & 47 Vict. c. 15.

(*b*) as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and any Acts for the time being in force amending the same; and — 8 & 9 Vict. c. 19. 23 & 24 Vict. c. 106.

(*c*) as respects Ireland, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, and any Acts for the time being in force amending the same. — 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 97. 14 & 15 Vict. c. 70. 27 & 28 Vict. c. 71. 31 & 32 Vict. c. 70.

24. In any Act passed *before or after* the commencement of this Act the expression "Irish Valuation Acts" shall mean the Acts relating to the valuation of rateable property in Ireland. — Meaning of Irish Valuation Acts.

25. In this Act and in every other Act, whether passed *before or after* the commencement of this Act, the expression "ordnance map" shall, unless the contrary intention appears, mean a map made under the powers conferred by the Survey (Great Britain) Acts, 1841 to 1870, or by the Survey (Ireland) Acts, 1825 to 1870, and the Acts amending the same respectively. — Meaning of "ordnance map."

26. Where an Act passed *after* the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post. — Meaning of service by post.

27. In every Act passed *after* the commencement of this Act, the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuance of section twenty-two or of section twenty-five of the Indictable Offences Act, 1848, or is committed by a court, judge, coroner, or other authority having power to commit a person to any prison with a view to his trial, and shall include a person who is admitted to bail upon a recognizance to appear and take his trial before a judge and jury. — Meaning of "committed for trial." — 11 & 12 Vict. c. 42.

28. In this Act and in every Act passed *after* the commencement of this Act, unless the contrary intention appears — Meanings of "sheriff," "felony," and "misdemeanour" in future Scotch Acts.

The expression "sheriff" shall, as respects Scotland, include a sheriff substitute:

The expression "felony" shall, as respects Scotland, mean a high crime and offence:

The expression "misdemeanour" shall, as respects Scotland, mean an offence.

29. In every Act passed *after* the commencement of this Act, unless the contrary intention appears, the expression "county court" shall, as respects Ireland, mean a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877. *Cp*, *s.* 6. — Meaning of "county court" in future Irish Acts. 40 & 41 Vict. c. 56.

30. In this Act and in every other Act, whether passed *before or after* the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the sovereign for the time being, and this Act shall be binding on the Crown. — References to the Crown.

31. Where any Act, whether passed *before or after* the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, — Construction of statutory rules, &c.

rules, regulations, or byelaws, expressions used in the instrument, *if it is made after the commencement of this Act*, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of provisions as to exercise of powers and duties.

32. — (1.) Where an Act passed *after* the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2.) Where an Act passed *after* the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3.) Where an Act passed *after* the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws.

Provisions as to offences under two or more laws.

33. Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed *before or after* the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

Measurement of distances.

34. In the measurement of any distance for the purposes of any Act passed *after* the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Citation of Acts.

35. — (1.) In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

(2.) Where any act passed *after* the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission ; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer, or under the superintendence or authority of Her Majesty's Stationery Office.

(3.) In any Act passed *after* the commencement of this Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

"Commencement."

36. — (1.) In this Act, and in every Act passed either *before or after* the commencement of this Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2.) Where an Act passed *after* the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

37. Where an Act passed *after* the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation. Exercise of statutory powers between passing and commencement of Act.

38. — (1.) Where this Act or any Act passed *after* the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted. Effect of repeal in future Acts.

(2.) Where this Act or any Act passed *after* the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not —

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or,

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

Supplemental.

39. In this Act the expression "Act" shall include a local and personal Act and a private Act. Definition of "Act" in this Act.

40. The provisions of this Act respecting the construction of Acts passed *after* the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement. Saving for past Acts.

41. The Acts described in the Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule. Repeal.

42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety. Commencement of Act.

43. This Act may be cited as the Interpretation Act, 1889. Short title.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 & 8 Geo. 4 c. 28 . .	An Act for further improving the administration of justice in criminal cases in England.	Section fourteen.
9 Geo. 4 c. 54	An Act for improving the administration of justice in criminal cases in Ireland.	Section thirty-five.
7 Will. 4 & 1 Vict. c. 39	An Act to interpret the word "sheriff," "sheriff clerk," "shire," "sheriffdom," and "county," occurring in Acts of Parliament relating to Scotland.	The whole Act.
13 & 14 Vict. c. 21 . .	An Act for shortening the language used in Acts of Parliament.	The whole Act.
29 & 30 Vict. c. 113 . .	The Poor Law Amendment Act of 1866.	Section eighteen, from the beginning to "can be appointed, and."
42 & 43 Vict. c. 49 . .	The Summary Jurisdiction Act, 1879	In section twenty the sub-sections numbered (3) and (6). Section fifty.
47 & 48 Vict. c. 43 . .	The Summary Jurisdiction Act, 1884	Section seven.
51 & 52 Vict. c. 43 . .	The County Courts Act, 1888 . . .	Section one hundred and eighty-seven, from the beginning to "is meant, and."

NOTE.— The punctuation of this Act is as given in the Queen's Printer's copy.

Extent of Repeal

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