

on in its ordinary course, the point at issue being the legality or regularity of the distraint, and the landlord being the defendant.

It has been pointed out that a distraint is only possible upon the demised premises, with an exception in cases of fraudulent and clandestine removals, so long as the tenancy is subsisting, within thirty days of removal. If a landlord fails to obtain satisfaction, or neglects to distrain within the limits set by the law, he must take the same course as any other creditor, and sue in the High Court or a county court for whatever sum is owing to him, and he is not then limited to six years' arrears of rent as he is in the case of distraint.

DISTRIBUTION, STATUTES OF.

These are certain statutes of the reigns of Charles II, William III, and Victoria, by which the distribution of the personal property of a person dying intestate is regulated.

After the payment of the debts, and the funeral and testamentary expenses of the deceased, the administrator (who is generally a near relative of the intestate) must divide the estate as follows, subject to this exception, that where the deceased has left a widow, and no children, and the net value of the real and personal estate does not exceed £500, the widow is entitled absolutely to the whole; and, under the same conditions, where the value of the estate exceeds £500, the widow has a first charge upon £500, without any prejudice to her interest and share in the residue of the deceased husband's estate after the payment of the £500.

<i>Survivors of Intestate.</i>	<i>Manner of Distribution.</i>
1. Wife and children.	One-third to wife, rest to children, equally, or to their lineal descendants.
2. Wife only.	Half to wife, rest to next of kin in equal degrees to intestate, or to their legal representatives.
3. Husband, with or without children.	Whole to husband.
4. Children and neither husband nor wife.	Equally amongst them.
5. Child and grandchild.	Half to child, half to grandchild, by representation.

6. Father, and any other relatives, but neither husband, nor wife, nor children.	Whole to father.
7. Mother, brothers, sisters.	Equally amongst them.
8. Wife, mother, brothers, sisters, and nieces.	Half to wife, half equally amongst the remainder.
9. Wife, mother, nephews, and nieces.	Half to wife, one-fourth to mother, one-fourth equally amongst the remainder.
10. Wife, brothers, sisters, and mother.	Half to wife, half equally amongst the remainder.
11. Mother only.	Whole to her.
12. Wife and mother.	One-half each.

This list supplies the whole of those claims which will have to be considered in the majority of cases where there is an intestacy. The claims of more distant relatives require further consideration and adjustment. There is no distinction made between children of the whole or of the half blood, and posthumous children take the same interest that they would have taken if born in the lifetime of their father. If advancements have been made to children during the lifetime of the parent, the amounts must be brought into account before the children advanced are entitled to a distributive share in the intestate's estate, unless the sums advanced are of a trifling character.

DISTRINGAS. This is a Latin word, signifying "that you distrain." It was the name of a writ which was issued formerly out of the High Court, to prevent a transfer of stocks or shares, or the payment of dividends upon the same. In place of the writ a notice is now served which fulfils the same object.

The notice which now acts as a distringas is for the purpose of preventing certain persons from dealing with funds in which other persons claim to have an interest. Application is made, in the first instance, to the High Court upon affidavit, and when certain formalities have been completed the notice is served upon the company or body sought to be affected by it. No dealing of any kind can then take place unless an eight days' notice is given to the parties who have claimed to be interested in the funds,

that some transfer, etc., is contemplated. Within these eight days steps must be taken, if it is thought necessary, to obtain further protection, otherwise the effect of the *distringas* ceases.

DITTO. (Fr. *Dito, idem*, Ger. *ditto*, Sp. *Idem*, It. *Ditto*.)

The meaning of this word, which is often contracted into "do.," is "the same thing repeated," "the same thing as before," "a something in a like manner." It is derived from the Latin, *dictum*, the past participle of *dico*, I say.

DIVIDEND. (Fr. *Dividende*, Ger. *Dividende*, *Gewinnanteil*, Sp. *Dividendo*, It. *Dividendo*.)

The term "dividend" is applied either to the money which is divided amongst the creditors of a bankrupt out of his estate, or to the annual interest payable upon the National Debt and other public funds, and upon the shares in joint-stock companies.

In declaring a dividend upon the capital of a joint-stock company, the directors ought carefully to bear the following points in mind:—

(1) Dividends cannot be paid out of any fund except profits.

(2) Payment out of capital is *ultra vires*, as such a payment amounts to a reduction of the capital, and no reduction is allowed except with the permission of the court. Recently, however, the law has permitted the payment of interest out of capital, where the business undertaken has been such as to make it certain that the concern cannot be rendered profitable for a considerable period. This mode of payment, which cannot exceed four per cent., is well hedged in, and reference should be made to section 91 of the Companies (Consolidation) Act, 1908, for full particulars.

(3) No authority given by the memorandum or articles of association, or by a general meeting of the shareholders, can over-ride the law on this subject as set out in the Companies Acts.

(4) Directors who are parties to an irregular payment of a dividend are jointly and severally liable to refund the amount of the same.

(5) If the directors are parties to the payment of a fictitious dividend in order to raise the price of the company's shares, they may be criminally indicted for conspiracy.

The dividend paid out of a bankrupt's estate depends upon the assets realised by the trustee. If it appears likely that the whole cannot be collected

expeditiously, the trustee should declare and pay dividends from time to time, reserving the final dividend until he has collected the whole of the money which is obtainable.

The dividends payable upon the National Debt and public funds are fixed, and do not vary from year to year like the other two kinds of dividends. Payment is made by a dividend warrant, which is an order or authority, generally issued upon a banker. The warrant must be stamped as a bill of exchange. But stamp duty is not payable upon coupons or warrants for interest which are attached to the security at the time of issue, nor to those warrants for the payment of interest or dividends out of Government funds.

DIVIDEND WARRANT. (Fr. *Coupon de dividende*, Ger. *Dividendenschein*, Sp. *Cédula de dividendo*, It. *Certificato di dividendo, cedola, tagliando*.)

This is an order or authority issued to the holders of stocks and shares, authorising the banker to pay the dividend specified therein.

DOCK. (Fr. *Dock*, Ger. *Dock*, Sp. *Dique, Dársena*, It. *Dock, darsena, magazzino generale*.)

A dock is an enclosed space or artificial basin in the bank of a river or side of a harbour, contrived for the reception of ships. The word is probably derived from *dekken*, to dig or enclose.

DOCK AND TOWN DUES. (Fr. *Droits de dock et de ville*, Ger. *Dock- und Stadtgebühren*, Sp. *Gastós de dique y puertas*, It. *Diritti di dock e di citta*.)

These are peculiar to the port of Liverpool. They are chargeable on most goods exported from, or imported into, that city, the town dues being levied, as it seems, for the use of the port, whether a vessel carrying goods goes into the dock or not.

DOCK DUES. (Fr. *Droits de dock*, Ger. *Dockgebühren*, Sp. *Derechos de dique*, It. *Diritti di dock*.)

Dock dues are the tolls charged on vessels and their cargoes when entering or leaving docks. These dues are charged to cover the interest on the capital and the cost of keeping the docks in order.

DOCK WARRANTS. (Fr. *Warrants de dock*, Ger. *Quaischeine*, Sp. *Warrants de dique*, It. *Ricevute di dock, vaglia di dock*.)

These are the documents which give the title to goods stored or warehoused in docks or other places of deposit. Warrants are granted in favour of any

person whom the proprietor of the goods indicates. They are negotiable instruments, and the indorsement and delivery of a warrant transfers the property in the goods named to the indorsee. On the presentation of the dock warrant, the warehouse keeper is bound to deliver up the goods; but it is the usual practice for the holder of the warrant to leave it at the warehouse, and to take possession of the goods at such times and in such quantities as he requires them by means of delivery orders. Dock warrants are often deposited with bankers as a security for advances. They require a threepenny stamp.

DOCKETS. (Fr. *Bordereaux*, Ger. *Inhaltsangabe*, Sp. *Rótulos extractos*, It. *Listine, cedole*.)

Dockets are slips or tickets. The word is generally applied to summaries of the principal contents of letters and other documents.

DOCUMENT. (Fr. *Document*, Ger. *Dokument*, *Urkunde*, Sp. *Documento*, It. *Documento*.)

A document is any specific paper or writing.

DOCUMENT BILLS. (Fr. *Billets documentés*, Ger. *Wechsel mit Dokumenten*, Sp. *Documentación*, It. *Cambiali documentate*.)

This term is used to indicate a set of bills of exchange having the bill of lading, invoice, and policy of insurance attached to them, the latter documents being available in the event of the bills of exchange not being duly honoured at maturity.

DOCUMENT CREDIT. (Fr. *Titre de crédit*, Ger. *Kreditdokument*, Sp. *Documento de crédito*, It. *Titolo di credito*.)

This is the name given to a letter of credit when the latter is issued, on condition that certain named securities shall be deposited as a collateral security for the money advanced.

DOIT. (Fr. *Centime*, Ger. *Deut*, Sp. *Céntimo*, It. *Centesimo*, *quattrino d'Olanda*.)

A doit is a small piece of Dutch copper money, also called "duit," in value about the eighth part of a stiver, or half a farthing.

DOLLAR. (Fr. *Dollar*, Ger. *Dollar*, Sp. *Peso, duro, dollar*, It. *Dollaro*.)

This is the name of a coin in circulation in the United States and elsewhere. The value of the American dollar, in the scale of coins adopted, is equal to 100 cents, 10 dimes, or one-tenth of an eagle. In exchange its value is about 4s. 1½d.

sterling. The Prussian dollar, or thaler, is worth 3s. sterling; in other parts of Germany the value of the dollar varies.

DOMICIL. (Fr. *Domicile*, Ger. *Domizil*, Sp. *Domicilio*, It. *Domicilio*.)

This term does not admit of precise definition, but it may be said to indicate generally the place where a person has his true, fixed, and permanent home, and to which, whenever he is absent, he has the intention of returning at some time or other. It is frequently extremely difficult to decide, where a person changes his place of residence, what is his particular domicile at any particular time; yet it is most important to know it, since it is the law of the domicile which decides the capacity to contract in all the most important private affairs of life. In the ordinary mercantile contracts, perhaps, it is the law of the country where the contract is made which governs the capacity to contract; but the point is not quite free from doubt.

No person can be without a domicile. If he changes his residence from place to place, and has no fixed determination of fixing his permanent abode in any particular country, the law of England presumes that he has reverted to the domicile of his origin. It is the combination of the two things, residence and intention to remain, that are the most important factors in deciding where a person has his domicile, and without these two it is assumed that there is an intention to return to the original abode.

There are three kinds of domicile—origin, choice, and by operation of law. The domicile of origin is that which a person receives at his birth. In the case of a legitimate child, born during the lifetime of its father, the domicile is that of the father at the moment of birth. An illegitimate or posthumous child take the domicile of the mother, whilst a foundling is domiciled in the country where it is born or found. The domicile of choice is that which a person *sui juris* fixes upon for himself, and is acquired by the combination of residence and the intention of permanent or indefinite residence in the new place of abode. The domicile of origin is retained until a domicile of choice is in fact acquired, and the domicile of choice is retained until it is abandoned either by the acquisition of a new domicile of choice, or by the resumption of the domicile of origin. The domicile by operation of law is that which the law presumes, either from the dependent

condition of the person, or from the circumstances of the case, when it is not clear what the exact intentions of the party were as to his future residence. Thus, the domicile of a wife is always the same as that of her husband and the domicile of a minor is that of his parent or guardian. The domicile of a corporation is the place which is considered by law to be the centre of its affairs. In the case of a trading corporation this is its principal place of business, or where its administration is chiefly carried on, and in the case of any other corporation it is the place where its functions are discharged.

Domicil must be kept quite clear from nationality. A foreigner may settle in England with the full intention of remaining here, and yet although domiciled may not become naturalised. He retains his nationality, which is different from his domicile. Nationality is of political importance in many cases, and each country has its own peculiar laws by which its subjects are bound, whatever their domicile, and which it may enforce against them either by international privileges accorded, or on their chance return to their native land. Domicil has to do with commercial and domestic matters simply, and regulates the ordinary transactions of every-day life. The importance of the determination of domicile will be seen more fully in the *Conflict of Laws*.

DOMICILED BILL. (Fr. *Billet domicilié*, Ger. *domizilierter Wechsel*, Sp. *Letra domiciliada*, It. *Cambiale domiciliata*.)

A domiciled bill is one that is not made payable at the residence or place of business of the acceptor, but one wherein the place of payment is inserted at the time of his acceptance.

DONATIO MORTIS CAUSA. This is a Latin phrase, signifying a gift made in contemplation of death. Such a gift is evidenced either by the manual delivery on the part of the donor, or by some other person in his presence and at his request to the donee, or to an agent of the donee, either of the property itself which is the subject of the gift, or of the means of obtaining the same. There is always the implied condition that the gift is only to take place absolutely in the event of the death of the donor from his existing malady before any revocation has been made. Many disputes have arisen as to what may form the subjects of a valid gift of this description. The gift of a bond, a

mortgage deed, and a promissory note or cheque payable to the donor or his order, even though not indorsed, have been held to be good *donationes*, but receipts for annuities, railway scrip, and the donor's own cheque cannot be transferred to the donee in this manner.

A *donatio mortis causâ* differs from a legacy in that it takes effect, *sub modo*, from the time of delivery, and requires no assent on the part of the executor. It differs from a gift *inter vivos* in that it is revocable during the lifetime of the donor, is liable to the payment of the debts of the donor on a deficiency of assets, and is subject to estate and legacy duty.

DORMANT BALANCE. (Fr. *Solde inactif*, Ger. *unbenutzter Saldo*, Sp. *Saldo parado*, It. *Saldo morto*.)

This is the name applied to moneys lying to the credit of a customer at a bank and not operated upon for a considerable period.

DORMANT PARTNER. (See *Sleeping Partner*.)

DOUBLE ENTRY. (Fr. *En partie double*, Ger. *doppelte Buchführung*, Sp. *Partida doble*, It. *Partita doppia*.)

This is the system of book-keeping, in which two entries are made of every transaction, in order that the one entry may check the other.

DOUBLOON. (Fr. *Doublon*, Ger. *Dublone*, Sp. *Doblón*, It. *Doblone*.)

A doubloon is the name of a Spanish and Portuguese gold coin of the value of two pistoles. During the eighteenth century the value of the doubloon varied considerably at different times. Prior to 1772, it had been worth as much as £3 1s. 10d. In that year the pieces were called in, but the coin was subsequently re-issued at the value of £3 4s. 8d. The *doblon de Isabella*, issued in 1848, was worth £1 0s. 8d.

DOUCEUR. (Fr. *Gratification*, Ger. *Trinkgeld*, *Bonus*, Sp. *Gratificación*, It. *Gratificazione*.)

There are various names applied to the reward given by one person to another for the use of the latter's influence in favour of the former in any particular matter. This is one of them.

DRACHMA. (Fr. *Drachme*, Ger. *Drachme*, Sp. *Dracma*, It. *Dramma*.)

This Greek silver coin has the circulating value of about 9½d.

DRAFT. The principal senses in which this word is used are the following—

(1) (Fr. *Mandat*, Ger. *Anweisung*, *Wechsel*, Sp. *Orden*, It. *Tratta o cambiale tratta, effetto*.)

(1) An order by which money is drawn from a bank, and also the money thus drawn.

(2) (Fr. *Esquisse*, Ger. *Skizze*, Sp. *Diseño*, It. *Schizzo*, *bozzetto*.)

Anything sketched roughly, or in outline.

(3) (Fr. *Brouillon*, Ger. *Entwurf*, Sp. *Borrador*, It. *Sfogliazzo*, *copione*.)

The first copy of a document.

(4) (Fr. *Tirant*, Ger. *Tiefgang*, Sp. *Calado*, It. *Quanto pesca una nave*.)

The depth to which a ship sinks in the water.

(5) (Fr. *Traite*, Ger. *Tratte*, Sp. *Libranza*, It. *Tratta*.)

A bill of exchange.

(6) (Fr. *Surusage*, Ger. *Gutgewicht*, Sp. *Merma*, It. *Tara*.)

An allowance made by a wholesale merchant or manufacturer to a retailer for dust, waste by evaporation, and the turn of the scale.

DRAIN OF BULLION. (Fr. *Épuisement du numéraire*, Ger. *Goldabfluss*, Sp. *Retiro de especies*, It. *Esaurimento di numerario*.)

This phrase is used in the money market for the flowing away of the reserve of gold and silver, either in specie or in bullion, to such an extent as if not checked, would soon leave insufficient in the country to meet the requirements of trade.

DRAWBACK. (Fr. *Drawback*, *prime de réexportation*, Ger. *Zollvergütung*, *Ausfuhrprämie*, Sp. *Drawback*, *prima de exportación*, It. *Drawback*, *rimborso del dazio*.)

Drawback is a term used to signify the sum paid back by the Government upon certain classes of goods exported, on which duty has been already paid. The object of this repayment is to enable the exporter to compete in foreign markets on an equal footing with merchants of other nations. If the amount repaid exceeds the sum paid as duty it partakes of the nature of a bounty. Goods upon which drawbacks are to be claimed require to be examined and certified by a revenue officer, on whose certificate a debenture is granted, entitling the owner to receive the drawback, which is allowed only on goods on which the duty has been paid within three years, and can only be demanded within two years of shipment. No other person than the real owner of the article shipped can receive the drawback. No drawback is given on damaged or decayed goods.

DRAWEE. (Fr. *Tiré*, Ger. *Acceptant*,

Bezogener, *Trassat*, Sp. *Acceptador*, *librado*, It. *Trattario*.)

This is the person upon whom a bill of exchange is drawn. He incurs no liability upon the instrument until he has signed it. He then becomes the acceptor.

The drawee must be named or indicated with reasonable certainty. There may be two or more drawees, but if there are several they must not be alternative or successive.

If the drawee is a fictitious or non-existent person, or one having no capacity to contract, a holder in due course may treat the instrument either as a bill of exchange or as a promissory note. (See *Acceptance*, *Acceptor*.)

DRAWER. (Fr. *Tireur*, Ger. *Aussteller*, *Trassant*, Sp. *Girador*, *librador*, It. *Traente*.)

This is the person who draws a bill of exchange upon a second person.

The drawer must be a person who has the capacity to incur liability on a bill. If, for instance, a bill is drawn by an infant or a corporation, though there is no liability attaching to either of them, payment may be enforced against any other party thereto.

The drawer of a bill engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour have been duly taken.

DRAWN BONDS. (Fr. *Bons à tirer périmés*, Ger. *gezogene Wertpapiere*, Sp. *Bonos sorteados*, It. *Obbligazioni estratte e rimborsate*.)

These are bonds which have been drawn at one of the periodical drawings for payment on a certain date, and after which time all interest upon them will cease.

DRUG IN THE MARKET. (Fr. *Ce qui ne se vend pas, dur à la vente, vieille marchandise invendable*, Ger. *unverkäufliche Waren*, Sp. *Cosa invendible*, It. *Scarto*, *robaccia*.)

Goods of any description are said to be a drug in the market when the supply is so great as to cause them to be quite unsaleable. The term is also applied to any unsaleable commodity that lies on hand.

DRY DOCK. (Fr. *Bassin d'échouage*, Ger. *Trockendock*, Sp. *Dique seco*, It. *Bacino di carenaggio*.)

This is a dock from which water is

withdrawn, and in which vessels can be repaired.

DRY GOODS. (Fr. *Denrées sèches, étoffes*, Ger. *Ausschnittwaren*, Sp. *Mercancias*, It. *Derrate secche*.)

These include drapery as distinguished from grocery.

DRYSALTER. (Fr. *Saleur*, Ger. *Fleischwarenhändler, Farbwarenhändler*, Sp. *Escabechero*, It. *Negoziante di salumi e droghe*.)

This is a dealer in salted or dried meats, pickles, etc.; or in gums, dyes, and drugs.

DUES. (Fr. *Frais, magasinage*, Ger. *Gebühren*, Sp. *Gastos*, It. *Spese di magazzinaggio*.)

This term is applied to charges made for the temporary use of docks or warehouses.

DUNNAGE. (Fr. *Fardage*, Ger. *Schiffsgarnierung*, Sp. *Defensa*, It. *Pagliuolo, difesa, riparo*.)

Dunnage is the name given to pieces of wood, planks, matting, and every other kind of article, used for the purpose of stowing and protecting the cargo of a vessel, and also for the protection of the vessel itself.

DUODECIMALS. (Fr. *Duodécimales*, Ger. *Duodezimale*, Sp. *Duodecimales*, It. *Duodecimali*.)

The term "duodecimals" is used when computations are made by means of twelves. It is a kind of calculation used principally by builders.

DUODECIMO. (Fr. *In-douze*, Ger. *Duodezformat*, Sp. *Duodécimo*, It. *Duodecimo*.)

The usual contraction of this word is 12mo. It signifies a book formed of sheets folded so as to make twelve pages.

DUPLICATE. (Fr. *Duplicata*, Ger. *Duplikat, Kopie*, Sp. *Duplicado*, It. *Duplicato*.)

This is a copy, transcript, or counterpart.

DUTCH AUCTION. (Fr. *Adjudication au rabais*, Ger. *holländische Versteigerung*, Sp. *Almoneda*, It. *Asta, aggiudicazione al ribasso*.)

A Dutch auction is one in which an article is put up at a certain price which is gradually lowered until some person closes with the offer.

DUTIES. (Fr. *Droits*, Ger. *Zölle*, Sp. *Derechos*, It. *Diritti di dazio*.)

Taxes are often called duties when they are levied upon merchandise and manufactures. Those which are imposed upon goods coming into a country are called customs, those levied upon articles of home manufacture are called

excise. The amount of duties varies from time to time, owing to the exigencies of national expenditure. (See *Customs*.)

E. This letter occurs in the following abbreviations:—

E.E., Errors Excepted.

e.g., For Example (Lat. *exempli gratia*).

E. & O. E., Errors and Omissions Excepted.

Ex. d., or x/d, Ex-Dividend.

Ex. cp., or xcp., Ex-Coupon.

Ex-Int., Ex-Interest.

EARNEST, or EARNEST MONEY. (Fr. *Arrhes*, Ger. *Handgeld, Kaufschilling*, Sp. *Señal*, It. *Caparra*.)

A sum of money, generally nominal, given in token of a concluded bargain.

Earnest is one of the requirements of the Sale of Goods Act, 1893, as evidence of the sale of goods of the value of £10 or upwards.

EJECTMENT. (See *Landlord and Tenant*.)

ELEGIT. This is the name of a writ issued after judgment, ordering the sheriff to place the execution creditor in possession of the whole of the lands of the debtor, which are to be held until the judgment is satisfied. Formerly the sheriff was enabled to seize the goods of the debtor as well as his lands under this writ, but a writ of *elegit* no longer extends to goods. No judgment affects land so as to form a charge upon it until it has been actually taken in execution by the sheriff.

EMBARGO. (Fr. *Embargo*, Ger. *Beschlag, Embargo*, Sp. *Embargo*, It. *Embargo, sequestro di una nave*.)

This is a Government prohibition of ships from leaving a port for a certain time, or a stoppage of trade between certain ports by authority. The prohibition is generally imposed by belligerent states in time of war.

EMPLOYERS LIABILITY ACT, 1880. At common law no employer is liable for any injury to one of his servants, unless it is proved that he has been guilty personally of negligence, and that such negligence has really caused the accident. This is in many cases a great hardship to a servant, for with business growing more and more complex, and the number of persons employed in any particular trade continually increasing, an employer is bound to appoint subordinates to positions of superintendence, and to leave the main control in many hands. It was judicially held, more than half-a-century ago, that all

persons engaged by an employer were in a position of common employment. It is, therefore, obvious that at common law a workman could rarely have a remedy in the case of accident, because the employer did not interfere with the details of the business, and there was no duty on the part of one servant to exercise care in matters which might concern the safety of another. And in the case of companies and corporations it is clear that no claim for compensation could ever arise, since the actual employer took no part in the working of the business at all.

It was to remedy this defect of the common law that the Act of 1880 was passed. It has not destroyed the doctrine of common employment altogether, but it has made the employer responsible for the acts of those of his subordinates who are placed in a position of superintendence, or in charge of machinery, plant, etc., whether their position is one of superintendence or not. The Employers Liability Act does not go so far as the Workmen's Compensation Act, 1906, and although it may often be an advantage to choose the former Act as a remedy instead of the latter, the proposed litigant should weigh his chances very carefully before making his choice. If by any error he makes a mistake and proceeds under the Act of 1880 when he should have selected the 1906 Act, the injured workman is not necessarily deprived of all relief. He may still be compensated, but a first charge on the amount of compensation awarded will be the costs thrown away by the mistaken litigation.

A well-known authority on the subject has thus summed up the general effect of the Act. "Before the Act was passed a workman could only recover, if injured in his employment, when he could prove that the employer has personally been guilty of negligence which led to the injury, and which in the case of large employers was almost, and in the case of corporations quite impossible. Now, he will also be *prima facie* entitled to recover where the employer—be he private employer or corporation—has delegated his duties or powers of superintendence to other persons, and such other persons have caused injury to the workmen by negligently performing the duties and powers delegated to them."

The duration of the Act was limited in the first instance to seven years, but it has since been kept in force year by

year by being inserted annually in the Expiring Laws Continuance Act.

There are some difficult technical points to be considered in connection with the Act, but the text itself gives a fairly clear idea of the responsibility imposed upon an employer, and of the duties which devolve upon his subordinates. It is accordingly given *in extenso*.

1. Where after the commencement of this Act personal injury is caused to a workman

(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or

(2) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or

(4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway,

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say:—

(1) Under sub-section one of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing

that the ways, works, machinery, or plant were in proper condition.

(2) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned; provided that where a rule or by-law has been approved or has been accepted as a proper rule or by-law by one of His Majesty's Principal Secretaries of State, or by the Board of Trade, or any other department of the Government under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law.

(3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: provided always, that in the case of death, the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this

Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

6. (1) Every action for recovery of compensation under this Act shall be brought in a county court, but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed.

(2) Upon the trial of any such action in a county court before the judge without a jury, one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

County court shall, with respect to Scotland, mean the Sheriff's Court, and shall, with respect to Ireland, mean the Civil Bill Court.

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, section nine of the Sheriff Courts (Scotland) Act, 1877.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause

of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

8. For the purposes of this Act, unless the context otherwise requires,—

The expression "person who has superintendence entrusted to him," means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour;

The expression "employer" includes a body of persons corporate or unincorporate;

The expression "workman" means a railway servant and any person to whom the Employers' and Workmen's Act, 1875, applies.

The burden of proof is always on the workman to prove some negligence on the part of the employer or of a person in a position of superintendence, but sometimes the circumstances are such that the law will presume negligence without any special proof being adduced. The legal maxim *res ipsa loquitur*, the thing speaks for itself,

applies. In the same way an employer is not prevented by anything in the Act from setting up the defences of contributory negligence on the part of the workman, or that the workman has voluntarily and knowingly accepted the risks of the employment. As to the former, it has been well said that a plaintiff cannot recover damages if, but for his own negligence, the accident would not have happened, though there was negligence on the part of the defendant. As to the latter, it is really a question for a jury to decide whether the workman has placed himself in such a position as to preclude him from making a claim for injuries upon his employer. In one of the leading cases upon this point, it was said: "It is no doubt true that the knowledge on the part of the injured person, which will prevent him from alleging negligence against the employer, must be a knowledge under such circumstances as leads necessarily to the conclusion that the whole risk was voluntarily incurred. The maxim, be it observed, is not *scienti non fit injuria*, but *volenti*. It is plain that such knowledge may not be a conclusive defence—but where the danger is one incident to a perfectly lawful use of his own premises, neither contrary to statute nor common law, where the danger is visible and the risk appreciated, and where the injured person, knowing and appreciating both risk and danger, voluntarily encounters them, there is, in the absence of further acts of omission or commission, no evidence of negligence on the part of the occupier at all. Knowledge is not a conclusive defence in itself. But when it is a knowledge under circumstances that leave no inference open but one—namely, that the risk has been voluntarily encountered—the defence seems to me complete."

It will be seen from the wording of the Act that this is an exception to the common law maxim, *actio personalis moritur cum personâ*.

An important point is made of the notification of the accident from which the injury arises. Unless some strict limit of time were imposed, an employer might be deprived of the opportunity of collecting evidence and preparing his defence, or be seriously hampered in the same.

A workman may, if he chooses to do so, contract himself out of this particular Act, but seeing the great advantages conferred by the new Workmen's

Compensation Act this will not avail the employer to any extent (See also *Workmen's Compensation Act*, 1906).

From the county court there is a right of appeal to the Divisional Court of the High Court of Justice, and afterwards, by leave, to the Court of Appeal and to the House of Lords.

As to insurance against employers' liability, see *Life Insurance Companies Act*.

EMPORIUM. (Fr. *Entrepôt*, Ger. *Handelsplatz*, Sp. *Depósito*, It. *Emporio*.)

This is the name given to receptacles, in which wholesale merchants are accustomed to stow their goods in seaport or other towns. It is derived from the Greek, *emporion*, a trading-place.

ENDORSE. (See *Indorse*.)

ENDORSEMENT. (See *Indorsement*.)

ENDOWMENT. (Fr. *Dotation*, Ger. *Aussteuer*, Sp. *Dote*, It. *Dotazione*, *dote*.)

This term denotes the application of a fixed sum of money for some special purpose, or the creation of a fund to provide for the maintenance of a charity or public institution. It also signifies a fixed sum of money, payable at the end of a certain number of years, in the event of a person surviving the given time.

Endowment policies are now greatly favoured in life insurances. The premiums are only payable for a stated number of years, if the assured lives so long, whilst the amount for which the insurance is effected is payable at the end of a fixed number of years, or at death, whichever happens first.

ENFACED PAPER. (Fr. *Rente indienne*, Ger. *indische Schatzscheine*, Sp. *Pagaré del gobierno colonial*, It. *Rendita indiana*.)

This name is given to the promissory notes of the Indian Government, known in the market as "rupee paper," when they bear a notification that the interest upon them can be collected by presenting the notes at the Bank of England. The interest is paid by drafts payable in India, and these are readily bought at the current rate of exchange by money dealers and others, and sold to parties having remittances to send out there.

ENTERED AT STATIONERS' HALL. (Fr. *Enregistré*, Ger. *auf der Buchhändlerbörse eingeschrieben*, Sp. *Registrado*, It. *Registrato*.)

This expression, which is still to be seen upon certain books and other publications, means that the work has been registered in the books at Stationers' Hall, which was a proof of the title

and the date of publication, and that any person infringing rights in them could be proceeded against immediately for infringement of copyright. Registration was done away with when the Copyright Act of 1911 came into force in 1912, and the present note therefore refers to something that is now obsolete, except in so far as it is connected with books, etc., which were published prior to the date of the new law and regulations as to copyright.

ENTREPOT. (Fr. *Entrepôt*, Ger. *Entrepôt*, Sp. *Entrepôt*, *depósito*, It. *Deposito franco*, *magazzino doganale*.)

The term "entrepôt" is derived from the French, among whom it properly signifies a bonded warehouse, or a place where goods from abroad may be deposited, and whence they may again be withdrawn for export without the payment of any duty. In common language it has come to designate a seaport or a commercial town, through which the exports and imports of a large district pass.

ENTRY. (Fr. *Déclaration d'entrée*, Ger. *Zolldeklaration*, Sp. *Entrada*, It. *Dichiarazione alla dogana*.)

The term "entry" means the registry of a ship or of goods at the Custom House.

For the purpose of keeping an exact record of the exports and imports, all articles sent out of or brought into this country must be declared or entered in some shape or form, even though the goods are not liable to pay any duty upon importation.

ENTRY FOR WAREHOUSING. (Fr. *Bons d'entrée en entrepôt*, Ger. *Entrepôt-schein*, Sp. *Guías de almacenaje*, It. *Bolletta d'accompagnamento in deposito franco*.)

This is a Custom House document issued when dutiable goods are imported, but are to be stored in a Government or Bonded Warehouse until required for use. It is filled in by the importer, and fully describes the goods, so that they may be removed in the regular way from the import ship to the warehouse desired.

ENTRY OUTWARDS. (Fr. *Déclaration de sortie*, Ger. *Ausgangsdeklaration*, Sp. *Declaración de salida*, It. *Dichiarazione di uscita*.)

Before a vessel commences to load a cargo for a foreign port, she must "enter out" at the Custom House. The master or agent puts in a form stating the proposed destination. The outwards entry is called a specification. Entries are of various kinds:—

1. Free entry, for goods not liable to duty.

2. Entry for home use, for dutiable goods upon which duty is paid immediately. This is also known as a "prime entry," and if, on examination of the goods by the Custom officers before delivery, it is found that insufficient duty has been paid, a supplementary entry, called a "post entry" must be passed.

3. Entry for warehousing (*q.v.*).

EQUATED TIME. (See *Average due date.*)

EQUITABLE EXECUTION. (See *Action.*)

EQUITABLE MORTGAGE. (See *Mortgage.*)

EQUITY OF REDEMPTION. (See *Mortgage.*)

ERRORS EXCEPTED or **ERRORS AND OMISSIONS EXCEPTED.** (Fr. *Sauf erreur*, Ger. *Irrtum vorbehalten*, Sp. *Salvo error*, It. *Salvo errore, salvo errore ed omissione.*)

These words, generally abbreviated into E.E. or E. & O. E., are frequently written at the foot of invoices and accounts by merchants and others in order that they may legally be entitled to correct any errors or omissions which may afterwards be discovered.

ESCHEAT. (Fr. *Déshérence*, Ger. *Heimfall*, Sp. *Desherencia*, It. *Successione per confisca o per mancanza di eredi diretti.*)

This is property which falls to the lord of the manor or to the Crown, owing to failure of heirs or through forfeiture.

ESTATE. (Fr. *Biens*, Ger. *Vermögen*, Sp. *Bienes*, It. *Sostanze, beni, proprietà, patrimonio.*)

The term "estate" is usually applied to the aggregate of things possessed by a certain person, including his goods, money, and property of every kind.

Colloquially, the lands, houses, etc., of a landlord are spoken of as his estate, and the same word is used to represent the assets of a deceased person or a bankrupt.

Technically, estate signifies the amount or quantity of interest which a person possesses in property, as when land is said to be held in fee simple, fee tail, or for a life estate.

ESTATE DUTY. (Fr. *Droit de succession*, Ger. *Erbsteuer*, Sp. *Derechos de sucesión*, It. *Diritti di successione.*)

A duty created by the Finance Act, 1894, and regulated by various Acts since that date. It is the duty which is imposed upon the principal value of

all property, real or personal, settled or not settled, which passes on the death of any person after August 2, 1894.

Prior to the year 1894 there were six different death duties payable—probate, account, legacy, succession, additional succession, and estate. The probate, account, and additional succession duties were abolished by the Finance Act of 1894, and the new estate duty established. Legacy and succession duties are still payable, though the estate duty is the first charge.

Property passing on the death of a person is deemed to include the following:—

(a) Property of which the deceased was at the time of his death competent to dispose.

(b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole.

(c) Gifts of property, real or personal, such as *donationes mortis causá*, made within a year preceding the death.

(d) Gifts of property, real or personal, *inter vivos*, even though made more than twelve months preceding the death, if some interest or benefit has been reserved to the donor, either by contract or otherwise.

(e) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

In order to avoid difficulties which had arisen as to (d), the Finance Act, 1900, has enacted that in the case of every person dying after March 31, 1900, property, real or personal, in which the deceased or any other person had interest for the life of the deceased, is to be deemed to pass on the death of the deceased, notwithstanding that the interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless the surrender or disposition was made or effected *bonâ fide*, and possession

assumed *bonâ fide* twelve months before the death of the deceased.

It will be seen that the disposition of property with the idea of avoiding the death duties is attended with considerable risk. The donor's estate may not, after all, escape the duties, and if the donor survives the donee either the donor may lose any benefit for which he has privately stipulated, or he may be called upon to pay succession or legacy duty upon his own property which has reverted to him by the will, or otherwise, of the deceased donee.

Immovable, that is, real property situated out of the United Kingdom, is not chargeable with estate duty. Movable property situated out of the United Kingdom is not chargeable where the deceased was owner and was domiciled out of the United Kingdom at the time of his death. But estate duty is payable if the deceased was the owner and was domiciled in the United Kingdom when he died. Estate duty is also payable, generally, where the deceased was only interested for life, and at his death the property formed the subject of a British trust or was vested in a British trustee.

The following property, even though situated in the United Kingdom, is expressly exempted from estate duty:—

(1) Settled property of every description in respect of which estate duty has been paid since the date of the settlement, unless the deceased was, at the time of his death, or had been previously, competent to dispose of it.

(2) Property held by the deceased as a trustee for another person under a trust not created by the deceased, or under a trust created by the deceased more than twelve months before his death, and the beneficiary had possession and enjoyment of the property immediately after the creation of the trust, and continued to hold it to the exclusion of the deceased.

(3) Property passing for a full money consideration.

(4) Property of common seamen, marines, and soldiers dying in the service of the Crown.

(5) Estates the value of which does not exceed £100.

(6) Survivorship annuities of less than £25.

(7) Reversionary interests upon which the estate duty has been commuted.

(8) Pensions and annuities payable by the Indian Government to widows or children of deceased officers.

(9) Advowsons or church patronage.

(10) Property settled by a husband on his wife, or *vice versa*, and reverting on the death to the original settlor.

(11) Works of art, scientific collections, prints, manuscripts, etc., or other things not yielding income, either given for national purposes, or which appear to the Treasury to be of national, scientific, or historical interest, and settled so as to be enjoyed in kind in succession by different persons; provided that the exemption from estate duty will only continue so long as the property is unsold or does not come into the possession of a person competent to dispose of it.

The scale of estate duty has advanced very considerably in recent years, and in 1916 it was as follows:—

Where the principal value of the estate	Estate duty is payable at the rate per cent. of
Exceeds £100 and does not exceed £500	£ 1 0
Ditto £500	Ditto £1,000 2 0
Ditto £1,000	Ditto £5,000 3 0
Ditto £5,000	Ditto £10,000 4 0
Ditto £10,000	Ditto £20,000 5 0
Ditto £20,000	Ditto £40,000 6 0
Ditto £40,000	Ditto £60,000 7 0
Ditto £60,000	Ditto £80,000 8 0
Ditto £80,000	Ditto £100,000 9 0
Ditto £100,000	Ditto £150,000 10 0
Ditto £150,000	Ditto £200,000 11 0
Ditto £200,000	Ditto £250,000 12 0
Ditto £250,000	Ditto £300,000 13 0
Ditto £300,000	Ditto £350,000 14 0
Ditto £350,000	Ditto £400,000 15 0
Ditto £400,000	Ditto £500,000 16 0
Ditto £500,000	Ditto £600,000 17 0
Ditto £600,000	Ditto £800,000 18 0
Ditto £800,000	Ditto £1,000,000 19 0
Ditto £1,000,000	20 0

Payment of estate duty may, by agreement with the Commissioners, be made wholly or in part in the form of real or leasehold property comprised in the estate.

The duty is calculated upon the exact net principal value of the estate, including the shillings and pence. Where the gross value is less than £300, a fixed duty of £1 10s. may be paid, and where it is between £300 and £500, a fixed duty of £2 10s. may be paid. But the executor or successor has the option of paying on the *ad valorem* scale. In cases of doubt the latter should be done; because if it should turn out that the estate is of greater value than £500, and the fixed duty only has been paid, the *ad valorem* duty according to the true

value is payable, and no allowance is made for the duty paid at first.

Where the net value of the property, real and personal, in respect of which estate duty is payable exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000, such property, for the purpose of estate duty, is not to be aggregated with any other property, but is to form an estate of itself; and where the fixed duty or estate duty has been paid upon the principal value, the settlement estate duty and the legacy and succession duties are not payable under the will or intestacy of the deceased in respect of that estate.

The executor or the administrator is required to furnish particulars of all the property of the deceased. The necessary forms and copies of the affidavit required can be obtained free of cost from Somerset House, or from any Money Order Office outside the Metropolitan Postal District. Full particulars are given as to the method of arriving at the value of the estate of the deceased, and as to the deductions which are allowed from the gross amount. The principal of these deductions are reasonable funeral expenses, debts, and incumbrances. Other limited deductions are allowed where property is situated out of the United Kingdom, and its administration or realisation necessitates increased expense, and if any death duty is payable in a foreign country where the property is situated, the amount of the duty is to be deducted from the principal value of the property.

The executor or administrator is the person primarily accountable for the estate duty chargeable upon the personal property, and he may also pay the estate duty upon any other property under his control; and he may even pay it upon property not under his control if the persons accountable for the estate duty request him to do so. Where property passes, however, on the death of the deceased, and the executor is not accountable for the estate duty thereon, every person to whom such property passes for a beneficial interest in possession, and likewise, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, not being merely an agent or bailiff, and every person in whom the

same is vested in possession by alienation or other derivative title, is accountable for the estate duty on the property. This liability to account does not, however, extend to a *bonâ fide* purchaser for valuable consideration.

The estate duty is due and payable upon the delivery of the account by the representatives, or at the expiration of six months from the death of the deceased, whichever happens first. Until payment is made simple interest at the rate of 3 per cent. is charged upon the estate duty, and if the payment is delayed beyond six months the rate of interest is raised to 4 per cent.

At the option of the person delivering the account, the estate duty payable upon real property may be paid by eight equal yearly instalments or sixteen half-yearly instalments, with interest at the rate of 3 per cent. per annum from the date at which the first instalment is due, and which instalment becomes due at the expiration of twelve months from the death. The interest on the unpaid portion of the duty is added to such instalment and paid accordingly. If the real property is sold the estate duty is payable on the completion of the sale.

The general residue of the estate of the deceased is the portion of his property out of which the estate duty is payable.

In the valuation of the property liable to estate duty, the principal value is to be obtained by ascertaining the price which, in the opinion of the Commissioners of Inland Revenue, the property would realise in the open market at the date of the death of the deceased. If the property is agricultural, the estimated value is not to exceed twenty-five years' purchase of the property, as assessed under schedule A of the Income Tax Acts, and after deducting 5 per cent. for the expenses of management. Any disputes as to the valuation of the property may be referred to the High Court, or to a county court where the amount is less than £10,000. There is a right of appeal to the Court of Appeal.

ESTIMATE. (Fr. *Estimation, devis*, Ger. *Kostenanschlag*, Sp. *Presupuesto*, It. *Preventivo, valutazione*.)

An estimate is a document showing what is the amount required by a contractor, either for doing certain work, or for supplying goods on certain conditions, or for repairs.

EVEN. (Fr. *Quitte*, Ger. *gleich, quitt*, Sp. *En paz*, It. *A pareggio, pari*.)

On the Stock Exchange, when

securities are carried over "at even," the meaning is that there is neither contango nor backwardation to pay.

EX ALL. (Fr. *Sans privilèges*, Ger. *ohne alles*, Sp. *Sin reserva ó privilegio*, It. *Senza privilegio o riserva*.)

When these words are added to the quotation of the price of any stock or shares, they mean that the dividend just due, any bonus, return of capital, and right to claim new stock or shares are retained by the seller.

EX COUPON. (Fr. *Sans coupon*, Ger. *ohne Coupon*, Sp. *Sin cupón*, It. *Senza coupon*.)

This means without the interest coupon.

EX DIVIDEND. (Fr. *Coupon détaché*, Ger. *ohne Dividende*, Sp. *Cupón suelto*, It. *Senza dividendo, cedola o coupon staccato*.)

This means without the dividend that is due. When a stock is sold it is presumed, unless there is an agreement or custom to the contrary, that any dividend owing upon it goes to the buyer, and it is then sold "cum dividend."

EX DRAWING. (Fr. *Sans droit au tirage*, Ger. *ohne Ziehung*, Sp. *Sin sorteo*, It. *Senza diritto all' estrazione*.)

This term is used when bonds are sold without any benefit that may arise from a drawing about to take place.

EX INTEREST. (Fr. *Sans intérêt*, Ger. *ohne Zinsen*, Sp. *Sin interés*, It. *Senza interesse*.)

This means without interest.

EX MERO MOTU. This Latin phrase signifies "Of one's own accord."

EX NEW. (Fr. *Sans droit aux actions nouvelles*, Ger. *ohne Bezugsrecht auf junge Aktien*, Sp. *Sin privilegio*, It. *Senza diritti alle azioni nuove*.)

It sometimes happens that gas, railway, and water companies, when requiring more capital, issue a number of new shares, offering the allotment of them *pro ratâ* to the existing shareholders. Parties operating in such stock or shares, therefore, sell their holdings in the original stock "ex new," if they wish to retain the privilege of taking the new shares themselves. (See *Cum New*.)

EX OFFICIO. (Fr. *Officiellement*, Ger. *Amtlich*, Sp. *Oficialmente*, It. *Ufficialmente*.) This is a Latin phrase, meaning "by virtue of office."

EX PARTE. This is a Latin phrase, which means "on behalf of." Any proceeding that is taken by one party when the other or others is or are not present is said to be "ex parte."

EX SHIP. (Fr. *Franco jusqu'au dé-*

barquement, Ger. *ab Schiff*, Sp. *Franco en muelle*, It. *Franco alla banchina*.)

This signifies that goods are sold free out of the ship, the purchaser providing the means of removal, and the vendor's responsibility ceasing as soon as the goods leave the ship's side.

EX WAREHOUSE. (Fr. *Franco jusqu'au dépôt*, Ger. *ab Speicher*, Sp. *En almacén*, It. *Franco al deposito, franco al magazzino*.)

When goods are sold thus, the purchaser must provide means of conveyance from the warehouse door.

EXCESS PROFITS. This is a new tax imposed during the Great War, and is levied upon the proprietors of certain businesses which have increased their profits since 1914. A pre-war standard of profit is arrived at first of all, generally by taking the amount of the two best years of the three years prior to 1914 and dividing this total by two. If the profits since 1914 have exceeded this figure, £200 is taken from this excess upon which nothing is charged; and the Government takes a percentage, at present 80 per cent. of the remainder. Full details as to the method of calculation, etc., must be obtained from the authorities.

EXCHANGE. (Fr. *Échange, change*, Ger. *Wechsel, Kurs*, Sp. *Cambio*, It. *Scambio, cambio*.)

This means the giving or taking of one thing or commodity for another, and in commercial language the word is employed to denote the means by which the debts of persons residing at a distance from their creditors are discharged without the transmission of money or goods. This is effected by means of what are known as bills of exchange. Exchanges between different parts of the United Kingdom are now almost entirely in the hands of bankers. In cities or countries having a considerable amount of intercourse together, the debts mutually due by the one to the other approach for the most part near to an equality. Between countries making use of different currencies there is what is known as a "par of exchange," which is the equivalency of a certain amount of the currency of one country in the currency of the other, the currencies of both being supposed to be of the precise weight and purity fixed by their respective units. Among the causes that affect the par of exchange, in addition to a rise or a fall in the price of the precious metals, are—

(1) Changes made by authority, in the quantity of pure metal contained in the coin by way of increase or diminution.

(2) Depreciation from the use of paper money.

(3) Clipping.

(4) Wear and tear.

When two countries trade together, and each buys of the other exactly to the amount that it sells, their claims will balance each other, and the exchange will be at par. This, however, is rarely the case, for there is almost always a balance owing on the one side or the other, and this balance affects the rate of exchange. These fluctuations in the real exchange are subject to certain limits, beyond which they cannot advance. Thus, the price of bills of exchange on any place above the par of exchange can never exceed the expense of sending bullion to that place, otherwise merchants will find it more to their advantage to transmit bullion than to take bills. The tendency of any advance in the rate of exchange is to stimulate exportation.

EXCHANGE. (Fr. *Bourse*, Ger. *Börse*, Sp. *Bolsa*, It. *Borsa*.)

An exchange is a building or place of resort for merchants, the name being adopted from the circumstance that buying and exchange of merchandise, and exchanging or paying away of money form the chief object of commerce.

EXCHEQUER. (Fr. *Cour de l'Echiquier*, Ger. *Schatzkammergericht*, Sp. *Tesoreria*, It. *Tesoreria*, *erario*, *ministero del tesoro*.)

The Exchequer was a superior court which formerly exercised jurisdiction only over matters connected with the revenue of the country. It is now a court of common law, and merged in the King's Bench Division of the High Court of Justice.

EXCHEQUER BILLS. (Fr. *Bons du trésor*, Ger. *Schatzkammerscheine*, Sp. *Bonos (pagarés) del tesoro*, It. *Boni del tesoro*.)

These are promissory notes issued by the authority of Parliament for £100, £200, £500, and £1,000, bearing interest from the day on which they are dated, at the current market value of money on their date of issue. The rate of interest is so much per cent. per day. They are generally paid off or renewed annually when the interest is paid up, and notice is duly given of the intention of the Exchequer by public advertisement. As the Government only pays them off at par, holders generally prefer a renewal, because by accepting payment they lose the premium which these bills generally bear in the money market.

Exchequer bills are much sought after by men with capital, because they are almost always quoted in the market at a premium, and they are easily convertible into ready money. They furnish, in fact, a sort of investment yielding interest, and yet they are of such a character that they are as useful as ready money.

EXCHEQUER BONDS. (Fr. *Bons du trésor*, Ger. *Schatzkammerscheine*, Sp. *Bonos del tesoro*, It. *Boni (obbligazioni) del tesoro*.)

These are Government promissory notes issued, under the authority of the same Act as Exchequer bills, by the Commissioners of the Treasury. They run for a definite period of time, but not exceeding six years, and bear interest at a certain rate per cent. per annum. The interest is payable half-yearly until the period for which they are issued has expired. They are then redeemable at par.

EXCISE. (Fr. *Accise*, Ger. *Accise*, *Verbrauchssteuer*, Sp. *Sisa*, It. *Dazio di consumo*.)

This is an inland tax on certain commodities produced and consumed within the country, as opposed to customs duties, and also on licences to carry on certain trades and professions.

Owing to the constant fluctuations in excise duties, it is impossible to give a complete list which can be of any continued value. Only the principal of them, and those which are likely to be more or less permanent, are included in the following list—

<i>Admission—</i>	£	s.	d.
As barrister	50	0	0
As solicitor, proctor, or writer of the signet	25	0	0
To any Inn of Court, or student of King's Inn, Dublin	25	0	0
As Fellow of College of Physicians	25	0	0
As burgess, by birth, ap- prenticeship, or marriage	1	0	0
Ditto (on any other ground)	3	0	0
As notary public in England	30	0	0
Ditto, in Scotland or Ireland	20	0	0
As burgess in Scotland	0	5	0
<i>Alkali Works</i> , certificate of registration	5	0	0
<i>Appraisers and house agents</i> , annual	2	0	0
<i>Armorial Bearings</i> , Great Bri- tain, annual	1	1	0
If used on any carriage, etc., annual	2	2	0
Now levied by County Councils.			

	£	s.	d.		£	s.	d.
<i>Auctioneers</i> , annual	10	0	0				
Auctioneers may act as appraisers or house agents without further licence.							
<i>Bankers</i> , annual	30	0	0				
<i>Cards</i> (playing), makers of, to sell, annual	1	0	0				
<i>Carriages</i> , annual, Great Britain—							
Hackney carriages	0	15	0				
For every other carriage with four wheels, and drawn or adapted or fitted to be drawn by two or more horses, or by mechanical power							
	2	2	0				
If with four wheels, and drawn or adapted or fitted to be drawn by one horse only							
	1	1	0				
If with less than four wheels							
	0	15	0				
Half rates only charged on licences taken out between October 1 and December 31, when all licences for carriages expire.							
The licences are now issued by County Councils.							
<i>Certificate</i> , annual—							
To act as attorney, solicitor, proctor, writer of the signet, notary public, and sworn clerk, practising within ten miles of the General Post Office, London; or either in the city or shire of Edinburgh, or in the city of Dublin, or within three miles thereof							
	9	0	0				
To act as any of the above, elsewhere							
	6	0	0				
During the first three years the fees are one-half of the above.							
<i>Certificate</i> of birth, baptism, marriage, death, or burial	0	0	1				
<i>Commission of Lunacy</i>	0	5	0				
<i>Dogs</i> , of any kind, Great Britain, annual	0	7	6				
Dogs under six months old, and those kept solely for the purpose of tending sheep or cattle on a farm, or by shepherds, or by blind persons for their guidance, are exempt.							
The issue of dog licences is now transferred to the County Councils.							
<i>Ecclesiastical Licences</i> —							
To hold office of lecturer, etc.	0	10	0				
For licensing a building for Divine Service, etc., and any chapel for the solemnisation of marriages							
	0	10	0				
Not otherwise charged							
	2	0	0				
<i>Faculty or Dispensation</i> —							
In England, in all cases							
	30	0	0				
In Scotland or Ireland, in some cases, £20; in others, £25.							
<i>Game Licences</i> —							
If taken out after July 31, and before November 1, to expire on July 31, following							
	3	0	0				
After July 31, to expire on October 31							
	2	0	0				
After October 31, to expire on July 31							
	2	0	0				
For any continuous period of fourteen days							
	1	0	0				
<i>Gamekeepers</i> —							
Annual, Great Britain, expiring July 31							
	2	0	0				
In Ireland the licences are the same as game licences.							
<i>Game Dealer</i> —							
Annual, expiring July 1							
	2	0	0				
The issue of game licences of all kinds in Great Britain has been transferred to the County Councils.							
<i>Guns</i> , including pistols and revolvers, annual, expiring July 31	0	10	0				
Persons holding game licences, soldiers, and volunteers are exempt. A licence cannot be transferred to a son or to a servant.							
The licences are now issued by County Councils.							
<i>Hawkers</i> , annual	2	0	0				
<i>House Agents</i> —							
Annual, expiring July 5							
	2	0	0				
A person is not liable to pay duty if he acts only in the letting of houses of an annual value not exceeding £25. A storey of a house, or a flat, rated and let as a separate tenement, is a house for this purpose.							
<i>House Duty</i> . See House.							
<i>Inebriates' Retreats</i>	5	0	0				
Ten shillings additional is payable for every patient over ten in number.							
<i>Male Servants</i> —							
Annual duty for each, Great Britain							
	0	15	0				
The licences are now issued by County Councils:							

	£	s.	d.
<i>Medicines, Patent, Great Britain—</i>			
Not exceeding 1s.	0	0	1½
" " 2s. 6d.	0	0	3
" " 4s.	0	0	6
" " 10s.	0	1	0
" " £1	0	2	0
" " £1 10s.	0	3	0
" " £2 10s.	0	10	0
Exceeding £2 10s.	1	0	0
Dealers, for each place of business, annual	0	5	0
<i>Money Lenders, registration fee</i>	1	0	0
<i>Motor-Cars and Cycles—</i>			
The duties on these are as follows:—			
Motor cycles, of whatever horse-power	1	0	0
Motor-cars, not exceeding 6½ horse-power	2	2	0
Exceeding 6½, but not ex- ceeding 12 horse-power	3	3	0
Exceeding 12, but not ex- ceeding 16 horse-power	4	4	0
Exceeding 16, but not ex- ceeding 26 horse-power	6	6	0
Exceeding 26, but not ex- ceeding 33 horse-power	8	8	0
Exceeding 33, but not ex- ceeding 40 horse-power	10	10	0
Exceeding 40, but not ex- ceeding 60 horse-power	21	0	0
Exceeding 60 horse-power	42	0	0
There are certain reductions and exemptions, the princi- pal of the former being in favour of medical men, who are charged only one-half of the above rates.			
Issued by the County Councils.			
<i>Motor Spirit, gal.</i>	0	0	3
The duty is repayable to persons who use the spirit otherwise than for motive power for motor-cars, and half duty is repayable when it is used for trade cars or hackney carriages, or by a medical man for professional purposes.			
<i>Motor Spirit Dealers, annu- ally</i>	0	5	0
(No licence is required as a dealer if the sale is of a quantity not exceeding one pint at a time.)			
<i>Motor Spirit Manufacturer, annually</i>	1	0	0
See also Motor-Car.			
<i>Pawnbrokers, annual</i>	7	10	0
If dealing in plate, without re- gard to weight, additional	5	15	0
<i>Pedlars (police licence)</i>	0	5	0

	£	s.	d.
<i>Plate dealers, annual, expiring July 5, whenever issued, for each place of business—</i>			
Gold, above 2 dwts. and un- der 2 oz. in weight, and silver above 5 dwts., and under 30 oz. in weight	2	6	0
Gold, above 2 oz., and silver above 30 oz.	5	15	0
Refiners of gold and silver	5	15	0
<i>Railways—</i>			
On passenger receipts per £100 in Great Britain, but subject to exemption in re- spect of fares not exceeding the rate of one penny a mile—			
Urban district traffic	2	0	0
Other traffic	5	0	0
Restaurant Car, annual	1	0	0
<i>Refreshment Houses—</i>			
Annual licence, rental under £30	0	10	6
£30 and upwards	1	1	0
<i>Tobacco Growers, Cultivators, or Curers (England and Scot- land), annual</i>	0	5	0
EXCISEMEN, OR INLAND REVENUE OFFICERS. (Fr. <i>Employés de l'accise</i> , <i>Rats de cave</i> , Ger. <i>Acciseinnehmer</i> , Sp. <i>Oficiales de la sisa</i> , It. <i>Guardie del dazio di consumo</i> .)			
The officers who are charged with the collection of the excise.			
EXECUTION. (Fr. <i>Exécution</i> , Ger. <i>Execution</i> , <i>Urteilsvollziehung</i> , Sp. <i>Ejecución</i> , It. <i>Esecuzione</i> .)			
Execution is the name given to the process by which a judgment of a court of law is enforced.			
In civil cases a judgment depends for its character upon the nature of the action. If an injunction is granted or if specific performance is decreed, the de- fendant must carry out the order of the court; otherwise he renders himself liable to have a writ of attachment issued against him, and he may then be im- prisoned for contempt of court until such time as he purges his contempt by obey- ing the judgment given against him. If an award of money damages is made, or if there is simply a judgment with costs, which invariably happens when the plaintiff fails in his claim, the successful party issues a writ of execution for the purpose of satisfying the judgment. The most common form is a writ of <i>fieri facias</i> —generally called a writ of <i>fi. fa.</i> —under which the sheriff is ordered to seize the goods of the debtor and to sell them in satisfaction of the debt. Execution must be carefully distinguished from distress			

(*q.v.*), as under the former no goods can be seized which are not the actual property of the debtor, whereas in the latter case they may be. If the debtor is possessed of lands, the order to seize the lands is carried out by means of what is known as a writ of *elegit*. Again, if the judgment is for the possession of premises and the delivery up of the same to the plaintiff, the sheriff is empowered to enter upon the premises and to eject the trespasser. Sometimes it is not possible to obtain satisfaction by the seizure of the debtor's goods or lands, although he is entitled to property in the possession or under the control of some other person or persons. Recourse is then had to what is known as "equitable execution," which may be of various kinds. Thus, a receiver may be appointed to collect any debts due, or a garnishee order may be obtained, under which the debtors of the debtor are compelled to pay their debts direct to the debtor's creditor. (See also *Action*.)

EXECUTOR. (Fr. *Exécuteur testamentaire*, Ger. *Testamentsvollstrecker*, Sp. *Ejecutor testamentario*, It. *Esecutore testamentario*.)

The person who is appointed by a testator to see that the directions contained in his will are carried into effect is known as the executor. The feminine form of the word is executrix.

An executor may be appointed by name or by implication; but in the latter case he is called an executor according to the tenor. Again, a testator may leave the appointment of an executor to a third person, and such third person may appoint himself to the office.

Where there is no will there can be no executor. The person who is then appointed to attend to the estate of the deceased is called an administrator, the female form of which is administratrix. In most cases the administrator is a near relative of the deceased, but if the proper person to take out letters of administration, i.e., the legal authority under which he or she is allowed to act in connection with the estate, neglects to do so, any other person who is entitled to make a claim against the estate, especially a creditor, can apply for letters of administration to be granted to him. Except in very few cases, such, for example, as where a husband acts as administrator of his deceased wife's estate, a bond with sureties is required from the applicant as a security for due administration.

An administrator is also appointed to

act, even when there is a will, in the following cases, and under the following names:—

(1) Administrator *ad litem*. This is the person who is named administrator of a deceased person's estate for the purpose of litigation only.

(2) Administrator *cum testamento annexo*. This is the title given to an administrator who obtains a grant of letters of administration when there is a will but no executor named in it, or when the executor named refuses or is unable to act.

(3) Administrator *de bonis non*. The person appointed to complete the administration of an estate, where the executor or administrator has died without fully administering the same.

(4) Administrator *durante absentia*. The administrator who acts during the absence abroad of a person who is legally entitled to the administration.

(5) Administrator *durante minore aetate*. The person appointed to act during the minority of an executor or of a person legally entitled to a grant of letters of administration.

(6) Administrator *pendente lite*. The person appointed to administer an estate pending any suit respecting the validity of a will or any other matter in dispute.

The rights and duties of executors and administrators are generally the same, except that the former must carry out the directions contained in the will of the deceased, whilst the latter have nothing further to consider than the obligations laid upon them by the law.

Any person may be appointed as executor unless he is specially excluded by law. A lunatic or an idiot is incapable of acting, owing to lack of understanding. An infant may be appointed, but he cannot act so long as he is a minor. When an infant is named sole executor, an administrator with the will annexed must be appointed to act during the minority. A married woman may act independently of her husband as executrix since the passing of the Married Women's Property Act, 1882. An alien is as capable of acting as a natural born or a naturalised citizen. A partnership firm, a company, or a corporation may each be appointed. A grant of the probate of a will is made to the members of a partnership firm individually, whilst in the case of a company or corporation aggregate a grant of letters of administration with

the will annexed is made to a representative of the company or corporation. There are now several companies in existence, whose special business it is to undertake executorships and trusteeships for an agreed commission.

There is no special form required for the appointment of an executor, but it is advisable for a testator to make his appointment clear so as to save expense. If there is no express appointment, any person who has duties imposed upon him may be an executor according to the tenor of the will. And it has been held that where a testator appointed a person "to hold and administer in trust all my estate well known to the said H. E.," this was sufficient to constitute H. E. an executor according to the tenor.

An executor is generally appointed absolutely, but his appointment may be qualified, and extend to certain property only, or it may be limited to a given time. Again, on the death of an executor the executorship is transmitted to the executor named, if there is one, in the will of the executor. But there is no transmission of an administratorship, nor does an executorship devolve upon the administrator of the estate of an executor or administrator. Whenever anything remains to be done as to an estate, and there is no executor surviving, an administrator must be appointed to administer the portion of the estate which has been left unadministered.

A person who intermeddles, without authority, with the estate of a deceased person, may render himself liable to be sued by creditors and legatees, and be put to much inconvenience. He is called an executor *de son tort*. But he is not liable beyond the amount of the assets which have come into his hands, and he may plead in an action brought against him that he has fully administered the estate.

No person is bound to accept the office of executor if it is thrust upon him. Nor need he accept it after the death of the testator, even though he promised during the lifetime of the deceased to act as executor. There must, however, be a clear renunciation, and the renunciation must be made before any act is performed which lies within the ordinary province of an executor, or before anything is done from which an inference might be drawn that the person named in the will had decided to act as executor. The acceptance or renunciation

must be complete—there cannot be a partial acceptance and a partial renunciation. If a person is dilatory in making up his mind as to acceptance or renunciation, he may be cited before the Probate Division of the High Court by any of his co-executors or by a proposed administrator.

Where two or more executors are appointed by a will they are considered as one person, and the survivor acts, after the death of the others, in the place of all. It is the first duty of the executors to bury the deceased in a suitable manner, and this must obviously be done before the probate of the will can be granted. There are also many other things which may be done before a grant of probate, or of letters of administration; but it is as well to obtain the one or the other as soon as possible—indeed, in the latter case, great difficulties may arise at very early stages of any semi-administration. On the other hand, an executor derives his authority entirely from the will, and probate is a mere ceremony evidencing his right to act. But no executor can proceed in an action at law in any matter concerning the estate of the deceased without producing the probate, which is the sole evidence of his title.

Executors have full power to sell, assign, mortgage, or pledge the assets of the testator. In certain matters, such as the granting of leases, they may be restrained by any special terms inserted in the will. They may likewise compromise debts and submit disputes to arbitration. In the payment of claims they have the peculiar right of retainer, that is, they may retain the amount of their own debts in priority to any debts owing by the testator of the same degree. Even statute barred debts may be paid, but not if they have been sued upon and disallowed on that account. Other debts, which are unenforceable by reason of various statutes, may not be paid. If the executors do nevertheless pay them an action may be commenced against the executors by the beneficiaries under the will for the repayment of the money so illegally expended.

For the purpose of relieving executors and administrators from too lengthy a period of administration, an Act was passed in 1859, commonly known as Lord St. Leonard's Act, by which the representatives of a deceased person were enabled to advertise in the London

Gazette and three other newspapers, one being a local one, calling upon creditors and others having claims to come in and make good the same on or before a fixed date. The notice is a well-known one, and it invariably goes on to declare that on the expiration of the fixed time the assets of the deceased will be distributed, regard being had only to those claims of which notice has been given, and that the executors will not be liable to any person of whose claim they have not had notice at the time of the distribution of the assets. This method exonerates the executors completely, but it in no way prejudices the right of a creditor to follow the assets into the hands of any persons who have received the same.

The duties of an executor or administrator may be summed up as follows :—

(1) To bury the deceased, incurring only such funeral expenses as are warranted by the estate and condition of the deceased.

(2) To prepare an accurate inventory of the goods and chattels of the deceased.

(3) In the case of a will, to obtain probate of the same within six months of the death of the deceased.

(4) To pay all the necessary death duties.

(5) To collect and realise the estate.

(6) To liquidate the outstanding debts of the deceased.

(7) To pay the legacies left by the will.

(8) To make whatever investments are ordered or are necessary.

(9) To distribute the residue.

(10) To keep accurate accounts of all matters connected with the estate, and obtain a proper discharge on the completion of the administration.

There are special rules in the administration of assets which are applicable both to the order in which the assets are to be devoted to the payment of debts, and also to the order in which the debts are to be paid. The assets are to be applied as follows :—

(1) The general personal estate, not bequeathed, or bequeathed only as residue.

(2) Real estate devised in trust to pay debts.

(3) Real estate not so charged.

(4) General legacies and annuities.

(5) Specific legacies.

(6) Real or personal estate subject to a general power of appointment, which power has been exercised in

favour of persons who have taken by a conveyance without consideration.

The order in which the debts are payable is :—

(1) Reasonable funeral and testamentary expenses.

(2) Debts due to the Crown in respect of rates or taxes.

(3) Debts to which special statutes have given priority, such as liabilities under Friendly Societies Acts.

(4) Judgment debts registered against the deceased, and judgment debts unregistered recovered against the executors or administrators.

(5) Recognisances and statutes.

(6) Specialty contracts, if for valuable consideration, and also simple contract debts, as well as unregistered judgment debts obtained against the deceased. Until the passing of Hinde Palmer's Act, 1869, specialty debts had priority over simple contract debts. They are now on the same footing.

(7) Voluntary bonds and covenants. But if a voluntary bond has been assigned for value during the lifetime of the deceased, it will rank as though it had been originally given for valuable consideration.

Until the passing of the Land Transfer Act, 1897, it was the personal estate alone of the deceased which vested in his executor, who has generally been called the personal representative. Now, however, the real estate also vests in the executor, and any person who claims the same must acquire his title through the executor. By section two of the Act it is provided that the personal representatives of a deceased person shall hold the real estate as trustees for the persons legally entitled to the beneficial interest in the same, and that those persons shall require a legal transfer to be made. Section three of the Act is as follows :—

(1) At any time after the death of the owner of any land, the personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease,

except as to any acts done or contracts entered into by them before such assent or conveyance.

(2) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the court may, if it thinks fit, on the application of that person, and after notice to the personal representatives order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land either solely or jointly with the personal representatives.

(3) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.

(4) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the registrar to register the person named in the assent as proprietor of the land.

Where a man making his will is actively engaged in business on his own account, he ought to be particularly careful to give directions as to his wishes in respect of the business, and to indicate what proportion of his estate is to be employed in it. Otherwise executors may find themselves personally liable for continuing the same. The safest plan is to sell the business, though this step should not be hurriedly taken to the detriment of the estate. The business is an asset and must not be squandered. No liability, however, attaches in the case of a partner. The death of a partner terminates, *ipso facto*, the partnership, and his estate is freed from all claims in respect of debts contracted after his decease. The doctrine of holding out does not extend to bind the estate of a deceased partner, whether the creditors of the firm are or are not aware of the death of the partner.

Legacies are not payable until after the expiration of a year from the death of the deceased. But executors are not compelled to delay payment for so long a period. On the other hand, an administrator would be acting unwisely to make any distribution of an intestate's estate until a year has expired. In the case of legacies payable to infants, the money should be paid into court, and not to the infant or to his parent,

unless there is a special direction to that effect in the will.

Executors are jointly responsible for the funds which come into their hands. They must use prudence in dealing with the same, otherwise they will render themselves liable for any losses which arise. Also an executor must not leave the unlimited control of the funds comprised in the estate to his fellow executor or executors, except at his own risk. Executors are just as responsible as trustees, and like them they are entitled to no remuneration for their services, however valuable, unless there is a special provision as to compensation contained in the will. The only deductions that are allowed to be made are for out-of-pocket expenses incurred in the executorship.

EXEQUATOR. (Fr., Ger., Sp., and It., *Exequatur*.)

This is a term used in international law to signify the official recognition of a consul or commercial agent given by the Government of the country in which he is to exercise his functions. It is generally issued by the Foreign Office of each nation, and may be either a separate document with *exequatur* for the first word, or the word itself may be simply impressed upon the commission under which the consul or agent holds his office. In England the *exequatur* of a foreign consul is always notified in the *London Gazette*.

EXPECTED TO RANK. (Fr. *Passif prévu*, Ger. *wahrscheinliche Schuldmasse*, Sp. *Passivo anticipado*, It. *Passivo previsto*.)

In bankruptcy this is the sum of money which, it is expected, will be the actual amount owing when the estate comes to be liquidated.

EXPECTATION OF LIFE. (Fr. *Expectation de vie*, Ger. *die zu erwartende Lebensdauer*, Sp. *Duracion media de la vida*, It. *Aspettazione di vita*.)

This signifies the average after-lifetime of a person of a given age, the calculation being made from statistics collected during the given number of years.

The expectation of life is of use in actuarial calculations, and also to a certain extent in estimating the values of life annuities and the amounts of life insurance premiums.

The table on the next page gives the mean after-lifetime, or expectation of life, of people in the United Kingdom, based upon the death returns of 1891-1900.

Age.	Male.	Female.	Age.	Male.	Female.
0	44.13	47.77	53	17.01	18.58
1	52.22	54.53	54	16.40	17.91
2	54.12	56.34	55	15.79	17.24
3	54.26	56.49	56	15.19	16.59
4	53.98	56.25	57	14.61	15.95
5	53.50	55.79	58	14.04	15.32
6	52.88	55.18	59	13.48	14.71
7	52.16	54.47	60	12.93	14.10
8	51.36	53.68	61	12.39	13.51
9	50.51	52.84	62	11.87	12.94
10	49.63	51.97	63	11.35	12.37
11	48.73	51.09	64	10.84	11.81
12	47.84	50.21	65	10.34	11.27
13	46.96	49.34	66	9.86	10.74
14	46.08	48.48	67	9.38	10.22
15	45.21	47.61	68	8.93	9.72
16	44.34	46.75	69	8.48	9.24
17	43.50	45.92	70	8.05	8.73
18	42.67	45.09	71	7.64	8.33
19	41.84	44.27	72	7.24	7.90
20	41.02	43.44	73	6.86	7.48
21	40.21	42.62	74	6.50	7.08
22	39.40	41.80	75	6.15	6.70
23	38.60	40.99	76	5.81	6.34
24	37.80	40.17	77	5.49	5.99
25	37.01	39.37	78	5.19	5.67
26	36.22	38.56	79	4.90	5.35
27	36.43	37.76	80	4.62	5.05
28	34.64	36.97	81	4.36	4.77
29	33.85	36.17	82	4.11	4.51
30	33.07	35.39	83	3.88	4.26
31	32.29	34.60	84	3.66	4.02
32	31.51	33.83	85	3.45	3.80
33	30.75	33.05	86	3.25	3.59
34	29.99	32.29	87	3.07	3.39
35	29.24	31.52	88	2.89	3.21
36	28.50	30.77	89	2.73	3.04
37	27.77	30.02	90	2.58	2.87
38	27.05	29.28	91	2.43	2.73
39	26.34	28.54	92	2.30	2.59
40	25.64	27.82	93	2.17	2.46
41	24.94	27.09	94	2.06	2.34
42	24.25	26.37	95	1.95	2.23
43	23.56	25.64	96	1.85	2.13
44	22.88	24.92	97	1.75	2.04
45	22.20	24.20	98	1.67	1.96
46	21.52	23.48	99	1.58	1.88
47	20.86	22.76	100	1.51	1.81
48	20.20	22.05	101	1.44	1.74
49	19.54	21.35	102	1.36	1.68
50	18.90	20.64	103	1.28	1.62
51	18.26	19.95	104	1.18	1.56
52	17.63	19.26	105	1.02	1.48

EXPORT LIST. (Fr. *Liste d'exportation*, Ger. *Ausfuhrliste*, Sp. *Lista de exportación*, It. *Lista di esportazione*.)

This is the alphabetical lists of headings under which exported goods are classified by the Customs for statistical purposes.

EXPORTATION. (Fr. *Exportation*, Ger. *Ausfuhr*, Sp. *Exportación*, It. *Esportazione*.)

This is the act of sending commodities out of one country into another.

EXPORTERS. (Fr. *Exportateurs*, Ger. *Exporthändler*, Sp. *Exportadores*, It. *Esportatori*.)

Exporters are persons who are engaged in sending goods to foreign countries.

EXPORTS. (Fr. *Marchandises exportées*, Ger. *Ausfuhrgüter*, Sp. *Exportaciones*, It. *Merci di esportazione*.)

The goods sent out of a country are known as exports.

The greater part of British exports consists of cotton and woollen goods. Most of the cotton goods are made in South Lancashire, the mills there employing more than half a million operatives. Woollen goods are manufactured in the West Riding of Yorkshire, in the west of England, and in Wales, the number of persons occupied in the industry being more than a quarter of a million. Metal goods and machinery are next in order of value.

Of natural products, the only export of consequence is coal.

EXTRACT. (Fr. *Extrait*, Ger. *wahre Abschrift*, Sp. *Extracto*, It. *Estratto*.)

An extract is an exact duplication or copy made of some original document or record.

F. This letter occurs in the following abbreviations:—

F.A.A., Free of All Average.

F.A.S., Free Alongside Ship.

F.O.B., Free On Board.

F.G.A., Free of General Average.

F.P.A., Free of Particular Average.

FACE VALUE. (Fr. *Valeur nominale*, Ger. *Nennwert*, *Nominalwert*, Sp. *Según valor*, It. *Valore nominale*.)

Face value is the nominal value written or printed upon the face of the bonds, notes, stock certificates, debentures, or other similar documents indicating their par value, that is, the amount for which they are issued. The face value is frequently very different from the market value, which may be higher or lower than the face value, at a premium or at a discount.

FACTOR. (Fr. *Agent*, *facteur*, Ger. *Agent*, *Faktor*, Sp. *Factor*, *agente*, It. *Agente*, *fattore*.)

A factor is a person who buys or sells goods for another, but carries on the business in his own name, and not in the name of his principal. A factor differs from a broker in that his authority is of a wider description, and, in addition, he has generally possession of the goods

with which he deals. When a factor is employed to dispose of a cargo which he accompanies on a voyage he is called a supercargo.

A factor being an agent, the authority conferred upon him is fixed by the contract of agency at the commencement of his employment. But much is left to usages and customs, and the usages and customs vary in the different markets in which the factor deals. These bind the principal in his dealings with the agent, unless expressly excluded, and they are always binding upon the principal at the instance of third parties.

As a security for the payment of his charges, a factor has a lien upon the goods entrusted to him in the course of his business.

The law with respect to factors was codified by the statute passed in 1889. This Act was the result of a long struggle between the mercantile community on one hand, and the principles of the common law on the other. The general rule of the common law is that no one can transfer to another person a better title to goods, etc., than that which he himself possesses. This was found to work injuriously, and merchants and bankers contended that, in the interests of commerce, if a person was put or left in possession of goods or documents of title, he ought, as regards innocent third parties, to be treated as the owner of the goods, and that innocent transferees for value ought to obtain a good title to them. The Factors Act has practically made this the law of the land, and has extended protection to dealings, in the way of sales, pledges, etc., between what are known as mercantile agents and third parties. It follows, therefore, that a purchaser who deals with a mercantile agent or factor, and who has no reason to suspect and does not know that the authority of such person is limited, obtains a perfectly good title to anything which he buys in the ordinary course of business.

The following are the provisions of the Act:—

1. (1) The expression "mercantile agent" shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

(2) A person shall be deemed to be in possession of goods or of the documents of title to goods, where the goods

or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf.

(3) The expression "goods" shall include wares and merchandise.

(4) The expression "document" of title shall include any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

(5) The expression "pledge" shall include 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.

(6) The expression "person" shall include any body of persons corporate or unincorporate.

2. (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent, provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

(3) Where a mercantile agent has obtained possession of any document of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

3. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

4. Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

5. The consideration necessary for the validity of a sale, pledge, or other disposition of goods, in pursuance of this Act, may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

6. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

7. (1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent.

8. Where a person, having sold goods, continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any

person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

9. Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

10. Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage in transitu as the transfer of a bill of lading has for defeating the right of stoppage in transitu.

11. For the purposes of this Act, the transfer of a document may be by indorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

12. (1) Nothing in this Act shall authorise an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing.

(2) Nothing in this Act shall prevent the owner of goods from recovering the goods from an agent or his trustee in bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them.

by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

(3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent.

13. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

The Factors Act was extended to Scotland in 1890, subject to the following provisions:—

(1) The expression "lien" shall mean and include right of retention; the expression "vendor's lien" shall mean and include any right of retention competent to the original owner or vendor; and the expression "set-off" shall mean and include compensation.

(2) In the application of section five of the Act, a sale, pledge, or other disposition of goods shall not be valid unless made for valuable consideration.

The remuneration paid to a factor for his work and labour is fixed by the agreement between the principal and the factor. It generally takes the form of a percentage commission, and is known as *factorage*.

FACTORY AND WORKSHOP ACT, 1901. This is the most recent Act passed to regulate all matters connected with factories and workshops. (A short Act of 1911, which gave power to make regulations with respect to cotton cloth factories, does not, in reality, affect the above general statement.) It is a consolidation, with amendments, of all previous legislation respecting both. The Act is extremely elaborate, and the duty of carrying out its provisions is entrusted to a staff of inspectors, seven of whom are women, under the direct control of the Home Office. These inspectors have full powers of entry to any factory or workshop or school where factory children are being educated. They may also demand the production of all registers and documents which are required to be kept in accordance with the Act, and they are empowered to take all legal proceedings for the enforcement of the duties imposed upon the occupiers or owners of the factories

and workshops which come within the scope of the Act. The inspectors have a further duty imposed upon them of appointing surgeons for their districts, whose province it is to investigate accidents and to examine young persons and children, and to issue certificates of fitness for employment. A factory or workshop which does not fall within the Act is generally under the direction and control of the local authorities, so far as the regulation and conduct of the same are concerned, to the same extent that factories and workshops are under the control and superintendence of inspectors by reason of the Act.

The following are the chief provisions of the Act. In the main the order of dealing with the different matters relating to factories and workshops is the same as in the Act itself, though for the sake of convenience the definitions of factories and workshops, as well as some general definitions, are placed at the beginning instead of at the end.

Factories and Workshops. Factories are divided into two classes, textile and non-textile.

(a) Textile factories.

These mean any premises wherein or within the close or curtilage of which steam, water, or other mechanical power, is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-glass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof; but print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works are not deemed to be textile factories.

(b) Non-textile factories.

These include

(1) Print works, that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper;

(2) Bleaching and dyeing works, that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on;

(3) Earthenware works, that is to say, any place in which persons work for hire in making or assisting in making, finishing or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles ;

(4) Lucifer-match works, that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood ;

(5) Percussion-cap works, that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps ;

(6) Cartridge works, that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges ;

(7) Paper-staining works, that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power ;

(8) Fustian-cutting works, that is to say, any place in which persons work for hire in fustian cutting ;

(9) Blast furnaces, that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on ;

(10) Copper mills ;

(11) Iron mills, that is to say, any mill, forge, or other premises, in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel ;

(12) Foundries, that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on ; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work ;

(13) Metal and india-rubber works, that is to say, any premises in which steam, water or other mechanical power is used for moving machinery employed

in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha ;

(14) Paper mills, that is to say, any premises in which the manufacture of paper is carried on ;

(15) Glass works, that is to say, any premises in which the manufacture of glass is carried on ;

(16) Tobacco factories, that is to say, any premises in which the manufacture of tobacco is carried on ;

(17) Letter-press printing works, that is to say, any premises in which the process of letter-press printing is carried on ;

(18) Bookbinding works, that is to say, any premises in which the process of bookbinding is carried on ;

(19) Flax scutch mills ;

(20) Electrical stations, that is to say, any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building, or of any hotel, or of any railway, mine, or other industrial undertaking.

The following are also non-textile factories if steam, water, or other mechanical power is used in aid of the manufacturing process carried on in them ;

(1) Hat works, that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on ;

(2) Rope works, that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power ;

(3) Bakehouses, that is to say, any places in which are baked bread, biscuits, or confectionery from the baking or the selling of which a profit is derived ;

(4) Lace warehouses, that is to say, any premises, room, or place not included in bleaching and dyeing works as hereinbefore defined, in which persons

are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power ;

(5) Shipbuilding yards, that is to say, any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired ;

(6) Quarries, that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals ;

(7) Pit banks ;

(8) Dry cleaning, carpet beating, and bottle washing works ;

(9) Places where manual labour is exercised by way of trade in altering, repairing, finishing, or adapting for sale any article.

(c) Workshop.

Where the steam, water, or other mechanical power which makes the premises a factory is absent, the place is termed a workshop.

General Definitions.—The expression "child" means a person who is under the age of fourteen years, and who has not, being of the age of thirteen years, obtained the certificate of proficiency or attendance at school ;

The expression "machinery" includes any driving strap or band ;

The expression "mill-gearing" comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley, or other appliance by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process ;

The expression "night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning ;

The expression "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 ;

The expression "prescribed" means prescribed for the time being by the Secretary of State ;

The expression "process" includes the use of any locomotive.

The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night ;

The expression "woman" means a woman of the age of eighteen years and upwards ;

The expression "young person" means

a person who has ceased to be a child and is under the age of eighteen years.

Health.—The requirements of the Act as to health as well as to safety apply to all factories and workshops except those in which male adults are exclusively employed. They must be maintained in a cleanly state, and kept free from effluvia arising from defective drains or other nuisances. For the purpose of securing cleanliness, all the inside walls of the rooms, ceilings, passages, and staircases must be lime-washed every fourteen months or painted once in seven years.

Overcrowding must be avoided, and a factory or workshop is deemed to be overcrowded if there is less than 250 cubic feet of space allowed for every person employed during ordinary times, or 400 cubic feet during overtime. This space allowance may be increased by order if any other artificial light than the electric light is used. A notice must be put up specifying the number of persons employed in each room of the factory or workshop. The ventilation must be of such a character as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing processes carried on that may be injurious to health. If the floors are likely to become wet, there must be a proper system of drainage. There must also be suitable sanitary accommodation for each sex. It is the duty of the inspector to see that these requirements are satisfied, though the Secretary of State may by a special order modify some of them in particular cases.

Safety.—All machinery must be fenced in, and the fencing must be maintained in an efficient state. Steam boilers must have a proper safety valve and steam gauge attached to them, and they must be examined by a competent person once every fourteen months. Self-acting machines are the subject of special regulations, set out in section twelve of the Act. No child is allowed to clean machinery in motion, and a young person may not clean any dangerous part of machinery so long as it is in motion. Means of escape in case of fire must be provided, and always maintained in good condition and free from obstruction. The doors must open easily from the inside, and in the case of new factories they must open outwards. A court of summary jurisdiction may prohibit the use of machinery or plant which is dangerous to

life or limb in any factory or workshop, on the complaint of an inspector, and may close a factory or a workshop which is in an unhealthy or dangerous condition.

Accidents.—Notice of any accident causing loss of life or serious injury is to be sent to the district inspector and to the certifying surgeon. A full investigation of the same is to be made, and a report prepared as to the circumstances of the whole affair.

Employment.—The regulations as to the hours of employment have reference to women, young persons, and children only. They do not apply to male adults. Notices clearly setting out the hours of labour and the time allotted for meals are to be affixed in the factories and workshops. Meals are not to be taken in the rooms where work is carried on. No Sunday work is allowed except in the case of Jews. The usual public holidays are to be observed, or other days granted instead thereof.

In textile factories, and in print, bleaching, and dyeing works, the hours of employment for women and young persons, on all days except Saturdays, may be between 6 a.m. and 6 p.m., or between 7 a.m. and 7 p.m. Two hours are to be devoted to meals, of which one hour must be before 3 p.m. On Saturdays, if work begins at 6 a.m., it is to end at mid-day for employment in any manufacturing process, and at 12.30 p.m. for any other employment, though half-an-hour is to be deducted from each of these times if less than one hour is allowed for meals. In any case there must be an allowance of half-an-hour. When work begins at 7 a.m. it is to finish at 12.30 or 1 p.m. under similar circumstances, half-an-hour being allowed for meals.

In non-textile factories and workshops, the daily hours, except Saturdays, are fixed as commencing at 6, 7, or 8 a.m., and finishing at 6, 7, or 8 p.m., with an allowance of $1\frac{1}{2}$ hours for meals, one hour of which must be before 3 p.m. On Saturdays, the hours are fixed as between 6, 7, and 8 a.m., and 2, 3, and 4 p.m., with half-an-hour's allowance for meals. If the period of employment on any one day of the week is not more than eight hours, Saturday's period may be from 6 a.m. to 4 p.m., with an interval of two hours for meals.

Children can only be employed on the system of morning and afternoon sets, or on alternate days. The minimum age for employment in a factory or workshop is twelve years.

There are many exceptions to the general rules and regulations as to the hours of employment, particulars of which must be obtained from the Act itself.

Overtime may be worked by women employed in non-textile factories and workshops to the extent of two hours daily or three days in any one week, or thirty days in any one year, an allowance of two hours being made for meals instead of an hour and a half, of which half-an-hour must be after 5 p.m. This rule may be extended by a special order of the Secretary of State, either generally or under special circumstances.

As to night work, a male young person of fourteen years of age may be employed in blast furnaces, iron mills, letter-press printing works and paper mills. The period of employment is not to exceed twelve consecutive hours, nor must there have been employment during the preceding twelve hours. There must likewise be no employment during the succeeding twelve hours. Night work is not allowed on more than six nights, or in the case of blast furnaces and paper mills, seven nights in any two consecutive weeks. If the night employment is in glass works, the total period must not exceed sixty hours in any one week. In a factory or workshop where newspaper printing is carried on, a male young person of sixteen years of age may be employed on two nights a week, but not for any longer consecutive period than twelve hours.

Notification must be made to the district inspector by the owner or occupier of a factory or workshop, if it is intended to take advantage of any of the exceptions of the Act to work overtime, or to utilise the night labour of a male young person under sixteen years of age.

No woman is allowed to work in a factory or workshop within four weeks of childbirth, and no person under sixteen years of age is to be employed unless the certifying surgeon has granted him or her a certificate of fitness.

Education.—Children employed in factories or workshops must attend some recognised efficient school, except those over the age of thirteen years who have obtained an educational certificate. Where the employment is on the morning or afternoon set system, one attendance per day must be made, and where it is on the alternate day system, two attendances must be made on each work-day preceding each day of employment.

Dangerous and Unhealthy Industries.—There are certain trades and industries

which are specifically regulated by the Act, but a wide discretion is given to the Secretary of State as to the classification of other industries as dangerous, and as to the imposition of regulations concerning them. There is no general disposition on the part of the legislature to extend their protection beyond women, young persons, and children. Male adults are left to contract as they choose, unless a special exception is made in their favour. In some industries young persons and children are altogether excluded from employment, and in all cases where there is risk of danger or the conditions are unhealthy, stringent regulations are imposed as to washing accommodation and ventilation. In addition, any medical practitioner who visits a patient suffering from lead, phosphorus, arsenical, or mercurial poisoning, or anthrax, which has been contracted in any factory or workshop, must notify the same to the Home Office, to the district inspector, and to the certifying surgeon. These matters are fully dealt with in sections 73 to 86 of the Act.

Special Modifications and Extensions.

--The fifth part of the Act deals with tenement factories, cotton cloth factories, bakehouses, laundries, docks, etc., from the provisions of which there is an exemption on the ground of men alone being employed in or about them.

(a) Tenement factories. This is the name given to those factories in which mechanical power is supplied from some common source to the different manufacturing processes carried on in the same building. For the purposes of the Act all buildings so supplied and situated within the same close or curtilage are treated as one building. The owner of the whole building, whether he is one of the occupiers or not, is responsible for the observance of the regulations as to cleanliness, over-crowding, ventilation, fencing of machinery, prevention of inhalation of impurities, and the affixing of notices and orders. Special precautions are required to be taken in those tenement factories in which the grinding of cutlery is carried on, and arrangements must be made by which there is instantaneous communication between the various rooms and with the engine-room and the boiler-house.

(b) Cotton cloth factories. In these factories atmospheric humidity is artificially produced. Sections 90 to 96 and the fourth schedule of the Act deal with the temperature and humidity

that are to be allowed, though the Secretary of State is empowered to make alterations in the same from time to time. For the protection of health there are minute regulations as to the sources of supplies of water, the sizes of steam-pipes and their covering, and the arrangements for ventilation.

(c) Bakehouses. No place or building of an insanitary character, nor any pipe or drain connecting with the same, must communicate with any part of a bakehouse. Underground bakehouses are forbidden, except those certified to be in a fit condition and constructed before 1902. (An underground bakehouse is one of which the floors are more than three feet below the level of the street.) No part of a building on the same level as a bakehouse may be used for sleeping accommodation unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling, and has an external glazed window which can be opened for ventilation. The interior of every bakehouse must be either lime-washed every six months, or painted or varnished every seven years, and in the latter case the paint or varnish must be washed every six months. The provisions of the Act as to retail bakehouses are enforced by the district council, and not by the factory inspector.

(d) Laundries. In every laundry carried on by way of trade or for the purpose of gain, the Act provides as follows:—

(1) (a) The period of employment, exclusive of meal hours and absence from work, shall not exceed, for women fourteen hours, for young persons twelve hours, and for children ten hours in any consecutive twenty-four hours; nor a total for women and young persons of sixty hours, and for children of thirty hours, in any one week, in addition to such overtime as may be allowed in the case of women.

(b) A woman, young person, or child must not be employed continuously for more than five hours without an interval of at least half-an-hour for a meal.

(c) Women, young persons, and children employed in the laundry shall have allowed to them the same holidays as are allowed to women, young persons, and children employed in a factory or workshop under this Act.

(d) So far as regards provisions with respect to health and safety, accidents, education of children, notice of occupation of a factory or workshop, the affixing of abstracts and notices and the

matters to be specified in those notices (so far as they apply to laundries), powers of inspectors, fines, and legal proceedings for any failure to comply with the provisions of this section, this Act shall have effect as if every laundry in which steam, water, or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop, and as if every occupier of a laundry were the occupier of a factory or of a workshop.

(e) The notice to be affixed in the laundry shall specify the period of employment and the times for meals, but the period and times so specified may be varied before the beginning of employment on any day.

(f) The provisions of this Act prohibiting the employment of women within four weeks after childbirth, and of children under the age of twelve years, shall apply to the laundry in like manner as to a factory or workshop.

(2) Women employed in laundries may work overtime, subject to the following conditions, namely:—

(a) A woman must not work more than fourteen hours in any day; and

(b) The overtime worked must not exceed two hours in any day; and

(c) Overtime must not be worked on more than three days in any week or more than thirty days in any year; and

(d) The requirements of section sixty of this Act with respect to notices must be observed.

(3) In the case of every laundry worked by steam, water, or other mechanical power—

(a) A fan or other means of a proper construction must be provided, maintained, and used for regulating the temperature in every ironing-room, and for carrying away the steam in every washhouse in the laundry; and

(b) All stoves for heating irons must be sufficiently separated from any ironing-room, and gas-irons emitting any noxious fumes must not be used; and

(c) The floors must be kept in good condition and drained in such manner as will allow the water to flow off freely.

A laundry in which these provisions are contravened shall be deemed to be a factory not kept in conformity with this Act.

(4) Nothing in this section shall apply to any laundry in which the only persons employed are—

(a) Inmates of any prison, reformatory, or industrial school, or other institution for the time being subject to

inspection under any Act other than this Act; or

(b) Inmates of an institution conducted in good faith for religious or charitable purposes; or

(c) Members of the same family dwelling there;

or in which not more than two persons dwelling elsewhere are employed.

Docks.—Docks, wharves, quays, warehouses connected with them, buildings for the construction of which machinery is temporarily used, and railway lines and sidings used in connection with a factory or a workshop, are classed as factories for the purposes of the Act, and the provisions and regulations as to accidents, dangerous trades, and the powers of inspectors apply to each.

Home Work.—In the case of persons employed in such classes of work as may from time to time be specified by special order of the Secretary of State, the occupier of every factory and workshop and every contractor employed by him is required to keep lists showing the names and addresses of all persons directly employed by him in the business of the factory or workshop outside the same, and the places where they work, and to send copies of the lists to the local district council on or before February 1 and August 1 of each year. If notice is given to the occupier of a factory or workshop by the local district council that any of these places outside the factory or workshop is injurious or dangerous to health, no further work must be given out to be done there. This provision applies to the following classes of work: making, repairing, and cleaning of wearing apparel; the making, ornamenting, and finishing of lace, lace curtains, and nets; cabinet and furniture making; upholstery work; the making of electro-plate and files; and fur pulling. Wearing apparel must not be given out to be made, cleaned, or repaired in any places in which an inmate is suffering from scarlet fever or small-pox. The local district council may also make an order forbidding any work to be given out to any person living or working in a house in which there is a person suffering from any infectious disease.

A private dwelling-house becomes a domestic factory or workshop by reason of the work carried on there by the members of the family, even when there is no mechanical power made use of. The Act regulates the hours of employment as far as young persons and children are concerned as follows:—

(a) No young person may be employed except between 6 a.m. and 9 p.m. on any week-day, nor after 4 p.m. on Saturdays. The allowance for meal times is two and a half hours on Saturdays, and four and a half on each of the other days of the week.

(b) No child may be employed except between 6 a.m. and 1 p.m., or 1 p.m. and 8 p.m. On Saturdays the last-named hour is reduced to 4 p.m. A child must not be employed in successive weeks during the same one of the above periods, nor on Saturday if he has been employed during that week in the morning, or on Saturday afternoon if employed during the week in the afternoon. Continuous employment beyond five hours without an interval for meals is forbidden, and attendance at school is compulsory unless a certificate of exemption has been granted.

The provisions of the Act do not apply to domestic workshops in which the only industries carried on are straw plaiting, pillow-lace making, glove making, or the making, altering, repairing, ornamenting, finishing, or adapting for sale of any article which is not the regular and principal means of livelihood of the family.

Particulars of Work and Wages.—In every textile factory the occupier is required to give particulars of the work done and of the rate of wages to be given to each piece worker, in order to enable such worker to compute the total amount of wages due to him. This may also be extended, by special order, to non-textile factories and workshops, and also to domestic factories and workshops. But where the persons employed are men only, this portion of the Act does not apply.

Notices, Registers, and Returns.—Great importance is attached to this portion of the Act. The sections dealing with them are therefore given in full.

127. (1) Every person shall, within one month after he begins to occupy a factory or workshop, serve on the inspector for the district a written notice containing the name of the factory or workshop, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power therein, and the name of the person or firm under which the business of the factory or workshop is to be carried on.

(2) In the event of a contravention of this section by the occupier of a

factory or workshop, he shall be liable to a fine not exceeding five pounds.

(3) Where an inspector receives notice in pursuance of this section with respect to a workshop, he shall forthwith forward the notice to the district council of the district in which the workshop is situate.

128. (1) There shall be affixed at the entrance of every factory and workshop, and in such other parts thereof as an inspector for the time being directs, and be constantly kept so affixed in the prescribed form and in such position as to be easily read by the persons employed in the factory or workshop—

(a) The prescribed abstract of this Act; and

(b) A notice of the name and address of the prescribed inspector; and

(c) A notice of the name and address of the certifying surgeon for the district; and

(d) A notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated; and

(e) Every notice and document required by this Act to be affixed in the factory or workshop.

(2) In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

129. (1) In every factory and workshop there shall be kept a register, called the general register, showing in the prescribed form the prescribed particulars as to—

(a) The children and young persons employed in the factory or workshop; and

(b) The lime-washing of the factory or workshop; and

(c) Every accident in the factory or workshop of which notice is required to be sent to an inspector; and

(d) Every special exception of which the occupier of the factory or workshop avails himself; and

(e) Such other matters as may be prescribed.

(2) Where any entry is required by this Act to be made in the general register, the entry made by the occupier of a factory or workshop or on his behalf shall, as against him, be admissible as *primâ facie* evidence of the facts therein stated, and the failure to make any entry so required with respect to the observance of any provision of this Act shall be admissible as *primâ facie*

evidence that that provision has not been observed.

(3) The register shall at all reasonable times be open to inspection by the certifying surgeon of the district.

(4) The occupier of a factory or workshop shall send to an inspector such extracts from the general register as the inspector from time to time requires for the execution of his duties under this Act.

(5) If in any factory or workshop any requirement of this section is not complied with, the occupier shall be liable to a fine not exceeding five pounds.

130. (1) The occupier of every factory or workshop shall, on or before such days as the Secretary of State may direct, at intervals of not less than one nor more than three years, send to the Chief Inspector of Factories a correct return specifying, with respect to such day or days, or such period as the Secretary of State may direct, the number of persons employed in the factory or workshop, with such particulars as to the age, sex, and occupation of the persons employed as the Secretary of State may direct, and in default of complying with this section shall be liable to a fine not exceeding ten pounds.

(2) The occupier of any place to which any of the provisions of this Act apply shall, if so required by the Secretary of State, make to the Chief Inspector of Factories a like return as is required to be made by this section, and shall be liable to a like fine for default in compliance with the requirement.

131. Every district council shall keep a register of all workshops situate within their district.

132. The medical officer of health of every district council shall, in his annual report to them, report specifically on the administration of this Act in workshops and workplaces, and he shall send a copy of his annual report, or so much of it as deals with this subject, to the Secretary of State.

Penalties.—Various penalties are imposed for specific offences set out in the Act. Proceedings are ordinarily taken before justices on the complaint of the factory inspector, or the local district council. There is a right of appeal from the decision of the justices to quarter sessions.

FAILURE. (Fr. *Faillite*, Ger. *Zahlungseinstellung*, Sp. *Quiebra*, *fallido*, It. *Fallimento*.)

This means the suspension of payment of a commercial firm or an individual.

FAIR TRADE. (Fr. *Commerce loyal*,

Ger. *gerechter Handel*, Sp. *Comercio legal*, It. *Traffico leale*, *commercio leale*.)

This phrase has come into vogue in recent times and may be defined as the taxing of goods coming into this country from those countries which impose duties upon English manufactures, and only admitting the commodities of other nations duty free to the same extent as they admit English goods on the same terms.

FARTHING. (Fr. *Farthing*, *centime*, Ger. *Heller*, Sp. *Farding* (*Moneda inglesa*), It. *Duo centesimi*.)

A farthing is the fourth part of a penny. At one time the penny was issued nearly divided into quarters by two deep cuts, so that a fourth would be easily broken away. Farthings are indicated in accounts by fractions of a penny. In banking accounts farthings do not occur, as fractions of a penny are not recognised.

FATHOM. (Fr. *Brasse*, Ger. *Klafter*, Sp. *Braza*, It. *Misura di profondità*, *metri 1.82*.)

This is a measure of length containing six feet. It is principally employed in ascertaining the depth of water and mines, and for regulating the length of cordage and cables.

FAVOUR. (F. *Lettre*, *honorée*, *commande*, Ger. *geehrtes Schreiben*, *Geehrtes*, Sp. *Carta*, *su estimada*, *favorecida*, It. *Lettera*, *la pregrata (vostra)*.)

In commercial correspondence this word is often used to indicate a letter received.

FEE. This word has two meanings in law and commerce—

1. (Fr. *Fief*, Ger. *Lehen*, Sp. *Feudo*, It. *Feudo*.)

A grant of land for feudal service.

2. (Fr. *Honoraires*, Ger. *Gebühr*, *Honorar*, Sp. *Honorarios*, *gratificaciones*, *cuotas*, It. *Salario*, *onorario*, *paga*.)

A recompense for services rendered or to be rendered.

FEE-SIMPLE. (Fr. *Fief simple*, *propriété libre*, Ger. *Freilehen*, Sp. *Propiedad libre de cargas*, It. *Franco allodio*, *feudo assoluto*.)

A fee-simple is a freehold estate or inheritance absolutely free and at the entire disposal of the owner. It is the highest estate in land known to the English law.

FEE-TAIL. (Fr. *Bien substitué*, Ger. *bedingtes Lehen*, Sp. *Bienes substituidos*, It. *Proprietà sostituita o vincolata*.)

A fee-tail is a freehold estate or inheritance which must descend in a particular line.

FEU. (Fr. *Fief, rente foncière*, Ger. *Lehngut*, Sp. *Feudo, tenencia feudal*, It. *Rendita fondiaria, feudo*.)

This is, literally, land that is held on feudal tenure. In Scotland, it is a tenure in which the vassal makes a return in grain or in money, in place of military service.

FIAT. (Fr. *Commandement, ordre, décret, consentement*, Ger. *Befehl*, Sp. *Orden, decreto*, It. *Decreto, ordine*.)

This Latin word means "let it be done." It is generally used to indicate a formal order.

FIDELITY GUARANTEE. (Fr. *Garantie de fidélité*, Ger. *Redlichkeitssicherheit*, Sp. *Fianza de fidelidad*, It. *Garanzia di fedeltà*.)

(See *Guarantee*.)

FIDUCIARY LOAN. (Fr. *Prêt fiduciaire*, Ger. *ungedechte Anleihe*, Sp. *Prestamo fiduciario*, It. *Prestito fiduciario*.)

A fiduciary loan is one that is granted without security upon the confidence of the honour of the borrower.

FIDUCIARY NOTE ISSUE. (Fr. *Émission fiduciaire*, Ger. *ungedechte Notenausgabe*, Sp. *Emisión fiduciaria*, It. *Emissione fiduciaria*.)

This is an issue of notes by banks or governments without any reserve of coin or bullion to meet them, but on the faith that they will be paid upon presentation.

FIEF. (Fr. *Fief*, Ger. *Lehen*, Sp. *Feudo*, It. *Feudo, dominio in feudo*.)

Land held of a superior in fee, or on condition of the performance of military or other service.

FIERI FACIAS. This is the name of the writ which is issued after a judgment has been obtained (generally called *fi. fa.*), commanding the sheriff to recover the amount of the judgment out of the goods and chattels of the judgment debtor, together with interest at the rate of 4 per cent., and to pay the same into court for the benefit of the judgment creditor. By the authority thus given, the sheriff can enter the dwelling place of the debtor and seize any goods that are his property. But he must not seize the goods of any other person, and he will be a trespasser if he enters the house of a third person and there are no goods in it which are the property of the debtor. Execution under a writ *fi. fa.* must be carefully distinguished from distress.

Under the writ the sheriff after seizure may sell all the goods and chattels which he has taken with the exception of the wearing apparel and

bedding of the judgment debtor or his family, and the tools and implements of his trade to the value of £5. He may also sell a lease or term of years, and assign the same under his seal of office to the purchaser. Growing corn and crops which are raised by the industry of man are liable to seizure, and, by statute, such *choses in action* as bank-notes, cheques, bills of exchange, bonds, and other securities for money may be taken. But goods which are in the custody of the law, as by distress, are exempt.

If goods are wrongfully seized, as being the property of a third person, the rightful owner may intervene and claim them. The usual course, however, in any case of doubt, is for the sheriff to claim the protection of the court. This is done by means of what is called "an interpleader summons," which is served upon the claimant and the execution creditor. Both these parties and the sheriff attend before a master, and the latter almost invariably directs an issue, that is, orders that the claims of the execution creditor and the claimant shall be heard in an ordinary trial, the sheriff meantime retaining the goods, and being ready to give them up to the successful party. The master has power to decide the case summarily if the amount in dispute is less than £50, and there is no difficult question of law or fact. Unless the claimant is willing to give security to abide the event of the issue, the sheriff may be empowered to sell so much of the goods as will realise the amount of the judgment debt.

In many cases the trial of an interpleader issue, where the amount of the judgment is not very considerable, is heard in some county court, as it is likely to come on at an earlier date than if it is tried in the High Court.

FIGURE CODE. (Fr. *Code télégraphique en chiffres*, Ger. *Ziffer-Telegraphenschlüssel*, Sp. *Código telegráfico en guarismos*, It. *Codice telegrafico in cifre*.)

Codes used for cabling or telegraphing are of various kinds, sometimes in words and sometimes in figures. When the latter method is adopted the code used is called a figure code.

FILE. (Fr. *Liasse, pique-notes*, Ger. *Vorrichtung zum Aufreihen von Papieren*, Sp. *Fila de papeles*, It. *Filo per infilar carte, casellario*.)

A file is a wire or other contrivance in or upon which papers are arranged in order.

FINANCE. (Fr. *Finances*, Ger. *Finanzwesen*, Sp. *Financias*, It. *Finanze*.)

Finance is the science regulating money matters. Formerly the word was used only in connection with the management of the revenues of a State. Now it has a wider meaning, and is most generally applied in commerce to the raising of money by subscriptions, and in the employment of it in loans for the carrying out of public or commercial undertakings.

FINANCIER. (Fr. *Financier*, Ger. *Finanzmann*, Sp. *Financiero*, It. *Finanziere*.)

A financier is a person who is versed in finance, or who raises or supplies money for public or commercial undertakings.

FINE GOLD. (Fr. *Or pur*, Ger. *Feingold*, Sp. *Oro de ley*, It. *Oro puro*, *oro di zecchino*.)

The gold from which our coins are made is composed of twenty-two parts of pure gold and two parts of alloy. As contradistinguished from pure gold it is called fine gold.

FINE PAPER. (Fr. *Papier de première valeur*, Ger. *bestes Papier*, Sp. *Papel de buena firma*, It. *Carta con buone firme*, *carta di primo ordine*.)

(See *First-class Paper*.)

FIRE INSURANCE. (Fr. *Assurance contre l'incendie*, Ger. *Feuerversicherung*, Sp. *Seguro contra incendio*, It. *Assicurazione contro l'incendio*.)

This is a contract of indemnity, almost invariably effected by joint-stock companies. The insurer undertakes, in consideration of the premium paid, to make good any loss or damage caused by fire during a specified time. The maximum amount which can be claimed is fixed by the parties and inserted in the policy, but this amount is not the measure of the loss. The loss can only be ascertained after a fire has occurred.

The period for which the insurance is effected is generally one year, and the policy is renewed annually by payment of another premium, the insurer generally allowing fifteen days, called days of grace, after the expiration of the year for the renewal of the policy.

The insured person must have an interest of a pecuniary nature in the subject matter of the contract. As a rule any existing right or interest amounts to an insurable interest. An owner can insure his own goods, a trustee the property which he holds in trust, a common carrier the things which come into his possession in the ordinary course

of his trade, and a pawnbroker his pledges.

The utmost good faith is required in filling the proposal form. The policy sets out the risks which are insured against. Fire policies vary greatly according to the nature of the property or goods insured, and the exact construction of each will depend upon the particular facts. As a general rule, in addition to the requirements of full disclosure and true description, in order to maintain the policy valid, the insured is bound—

(1) Not to increase the risk subsequently to the granting of the policy by doing anything to the goods or to the building in which they are contained;

(2) Not to remove the goods without the consent of the insurer.

(3) Not to assign the goods otherwise than by will.

No policy is issued until after the first premium has been paid.

When a loss occurs, it is generally stipulated that notice shall be given to the insurance office within a certain time, accompanied by full particulars of the goods destroyed and an estimate of their value. This will then be a condition precedent to the insured's taking proceedings to recover the amount of the loss he has sustained. If the parties cannot agree, the dispute is commonly referred to arbitration.

As a person cannot recover more than the amount of his actual loss, limited as has been stated to the sum fixed by the policy, there is no advantage in effecting numerous insurances in various offices in excess of the total value of the property. If this is done, the insurance offices share the losses, each paying in proportion to the amount insured with them. Moreover, an insurer is entitled to every right of the insured which arises upon the occurrence of the risk, and is independent of the insurance. This is called the "doctrine of subrogation," and a good example of it is the case of *Castellain v. Preston*, 1883, 11 Q.B.D. 380. In that case a vendor had contracted with a purchaser for the sale of a house at a specified sum. The house had been insured by the vendor against fire, but the contract of sale contained no reference to the insurance. After the date of the contract, but before the date fixed for the completion of the sale, the house was damaged by fire, and the insurance company paid the amount of the damage to the vendor. The purchase was afterwards completed

and the purchaser paid the agreed purchase money without any deduction on account of the damage caused by the fire. It was held that the vendor, having suffered no loss on the sale of the house, was bound to return the insurance money to the company.

By 14 Geo. III, c. 78, passed in 1774, it was enacted when a building in the Metropolitan district is burnt down, any person interested—especially the insurance offices—may require the insurance money to be laid out in repairing or rebuilding the structure. By 28 & 29 Vict. c. 90, passed in 1865, any damage occasioned by the Metropolitan Fire Brigade in the due execution of their duties shall be deemed to be damage by fire within the meaning of any policy of insurance against fire.

The rate of premium usually charged on common risks is 1s. 6d. per cent., hazardous, 2s. 6d. per cent., and doubly hazardous, 4s. 6d. per cent., but these are subject to variation.

The policy must bear a penny stamp, which may be an adhesive one.

An ordinary fire insurance policy will not cover damage caused by extraordinary means, such as incendiary bombs dropped from air craft in war, etc. Risks of this kind must be provided against by special insurance.

FIRKIN. (Fr. *Quartaut*, Ger. *Viertel-fass*, Sp. *Cuñete*, It. *Barile*, *fusto*.)

This is an old measure of capacity, the fourth part of a barrel, equivalent to nine imperial gallons.

FIRM. (Fr. *Maison*, *raison sociale*, Ger. *Firma*, Sp. *Razón social*, *casa*, It. *Ditta*, *casa commerciale*, *ragione sociale*.)

When a number of individuals combine together for the purpose of carrying on a business they are only known collectively as the firm. The number of persons must not exceed twenty in any case, nor ten if it is a bank, unless the same is registered under the Companies Act, 1908. In legal proceedings, the firm name may always be used instead of the individual names of the partners, even when the business is carried on by one person in some name or under some style which is not his own. But no order of adjudication in bankruptcy is made against a firm in the firm name, but against each partner individually.

FIRST HAND. (Fr. *De première main*, Ger. *aus erster Hand*, Sp. *De primera mano*, It. *Di prima mano*.)

This term is applied to all goods obtained direct from the maker, importer, or wholesale dealer.

FIRST OF EXCHANGE. (Fr. *Première de change*, *première*, Ger. *Primawechsel*, *prima*, Sp. *Primera de cambio*, *primera*, It. *Prima di cambio*, *prima*.)

(See *Bill of Exchange*.)

FIRST-CLASS PAPER. (Fr. *Papier de première valeur*, Ger. *feinstes Papier*, Sp. *Papel de primera*, It. *Carte con buone firme*, *carte di primo ordine*.)

In the money market, this phrase is given to bills, drafts, promissory notes, and similar documents, which bear the names of well-known houses or financiers as acceptors or indorsers. Consols, exchequer bills and bonds, and treasury bills and bonds, being guaranteed by the Government, are included under this head.

FITTAGE. (Fr. *Commission*, Ger. *Provision*, Sp. *Comisión*, It. *Provvigione*, *senseria*.)

Fittage is a term used in certain trades for a commission or brokerage.

FITTER. (Fr. *Commissionnaire*, Ger. *Kohlenagent*, Sp. *Agente*, It. *Rappresentante*, *commissionario*, *agente*.)

In the coal trade a fitter is the manager or salesman of coal for a colliery—not necessarily at the mine—who arranges sales and the loading of boats with coal.

FIXED CAPITAL. (Fr. *Capital fixe*, *capital engagé*, Ger. *festes Kapital*, Sp. *Capital fijo*, It. *Capitale fisso*, *capitale impegnato o investito*.)

This signifies capital which is employed in the purchase of land, in the execution of works, or in the erection of machinery in the hope of making a series of profits during an indefinite period of time. As all things are liable to destruction by wear and tear no capital can be considered as absolutely fixed; but every capitalist expects that the profits derived from the employment of what is generally known as fixed capital will be sufficient to replace the old stock by new, and yield in addition a certain gain to himself.

FIXED CHARGES. (Fr. *Prix fixes*, *frais fixes*, Ger. *feste Preise*, *feste Spesen*, Sp. *Precios fijos*, *gastos fijos*, It. *Prezzi fissi*, *spese fisse*.)

In book-keeping, fixed charges are those charges which recur regularly without any regard as to trade done, such as rent, rates, taxes, etc.

FIXED OILS. (Fr. *Huiles comprimées*, Ger. *fette Öle*, Sp. *Aceites fijados*, It. *Oli pressati o torchiati*.)

These are the oils obtained by pressure, such as palm oil, olive oil, linseed oil, etc.

FIXTURES. (Fr. *Meubles fixés à*

demeure, Ger. *unbewegliche Gegenstände*, Sp. *Muebles fijos*, It. *Infissi*.)

Fixtures may be described generally as articles of a personal nature which have become affixed to land. The principle from which this definition originates is found in the maxim *quidquid plantatur in solo solo cedit*. In early times the maxim was carried out literally. When anything was annexed to land and made a part of it, the owner of the article lost the whole of his property in the same, and was considered to have made a gift of it to the freeholder. But in more recent times the meaning of the word has been considerably restricted.

Difficulties as to fixtures may arise either between the devisee of an estate and the personal representative of a deceased person, or between a landlord and his tenant. In the former case there is this single point to consider: Did the person who annexed the chattel to the land do so with the intention of incorporating the same with the property? If he did the fixture passes to the devisee of the land; if not it forms part of the general estate of the testator and passes to the personal representative. It is impossible to lay down a general rule, and the circumstances of each case must be considered before an inference can be drawn as to the purpose of annexation. In a quite recent case the facts were as follows: Tapestries had been purchased by the tenant for life of freehold estates and affixed to the walls of the drawing-room in the mansion house. Strips of wood were placed over the paper which covered the walls, and were fastened by nails to the walls. Canvas was then stretched over the strips of wood and nailed to them, and the tapestries were then stretched over the canvas and fastened by tacks to it and the pieces of wood. Mouldings, resting on the surface of the wall and fastened to it, were placed round each piece of tapestry. Portions of the walls which were not covered by the tapestries were covered with canvas, which was coloured or painted so as to harmonise with the tapestries. It was held that the tapestries had been thus affixed for the purpose of ornamentation and the better enjoyment of them as chattels, and that on the death of the tenant for life they did not pass with the freehold to the remainderman, but formed part of the personal estate of the tenant for life, and could be removed by the executor, the latter paying the expenses of making good the damage done in

removing the tapestries, but not the cost of redecorating the room.

Between landlord and tenant the question of fixtures is of a more extensive character. The fixtures may be divided into two classes: (a) landlord's fixtures, and (b) tenant's fixtures. The former include all those chattels which have been placed on the land by the landlord himself, either before the commencement or during the continuation of the term, or which are on the premises at the beginning of such term, and also those erected by the tenant which he is not at liberty to take away. The latter are those which a tenant has a right to remove and take away at the end of his tenancy, and which have been erected by him for the purposes of trade, ornament, domestic use, or agriculture. A tenant may also remove any fixtures which have been the subject of special stipulations between the landlord and himself.

It is the general rule of law that if the tenant affixes anything to the freehold during the period of his tenancy, no removal can take place without the consent of the landlord. But there must be complete annexation. Mere contact with the soil is insufficient, no matter how heavy the chattel is. A wooden barn supported by beams resting on the ground is not a fixture which passes to the landlord, nor does it make any difference if the supports of such a building are fixed in the ground. But where an engine was affixed by means of screws and bolts to a concrete bed in freehold land, for the purpose of driving a saw mill on the land, the engine was held to have ceased to be a chattel and to have become a part of the freehold. The annexation may likewise be constructive, as, for example, keys, locks, movable windows, and doors, and the duplicate parts of machines which are in themselves fixtures. But the annexation may be shown to be incomplete, if it is clear that the mode of annexation is such that the chattel can be removed and taken away without any injury being done to the freehold, and if the circumstances are such as to lead to a presumption that the annexation was intended to be for a temporary purpose or for the sake of enjoyment. Otherwise a carpet or a picture would not be removable by a tenant.

It was not until a century and a half ago that a tenant was allowed to remove fixtures set up for the purpose of ornament or convenience. And even now,

if any erection is in the nature of a permanent improvement of the premises, and cannot be removed without substantial damage being done to the freehold, the old rule of law remains, and the landlord becomes the owner. Among articles set up for ornament or convenience which may be removed are looking-glasses, tapestry hangings, window-blinds, cornices, ornamental chimney-pieces, cupboards, bookcases, or brackets screwed to the walls, and gas-fittings. But it has been held that a verandah fixed to posts in the ground, greenhouses built in a garden, a boiler built in masonry for heating purposes, and a conservatory erected on a brick foundation and attached to a dwelling-house cannot be removed. A tenant who is not a gardener by trade cannot move a border of box planted during his tenancy without the permission of the landlord.

In the interests of trade a tenant has a much more extensive power to remove fixtures, when they are used for trade purposes, than where the fixtures are for ornament or convenience. But even then the tenant has not the right to remove everything which he has set up. Much will depend upon the permanency of the erection, and upon the following three points: (a) was the article of a chattel nature before it was put up? (b) is it still of a chattel nature, although affixed to the freehold? and (c) can it be easily removed without any injury being done to itself or to the premises? If these can be answered in the affirmative the tenant will have a right to remove; if not, the chattel will go to the landlord. The following fixtures have been allowed to be removed by a tenant: a soap-boiler's vats, fire-engines at a colliery, saltpans fixed over furnaces in a brick frame, nursery trees, greenhouses and hothouses belonging to a market gardener, a hydraulic press fixed in bricks and mortar, and a fixed steam-engine and boilers. The exception to the general rule of law in favour of trade fixtures has been thus judicially expressed: "An exception has long been established in favour of a tenant erecting fixtures for the purposes of trade, allowing him the privilege of removing them during the continuance of the term. When he brings any chattel to be used in his trade, and annexes it to the ground, it becomes a part of the freehold, but with a power as between himself and his landlord of bringing it back to the state of a chattel again by severing it from the soil."

The rights of agricultural tenants are wider than those of ordinary tenants. By the 21st section of the Agricultural Holdings Act, 1908, it is enacted:—

"Where after the commencement of this Act, a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act, or otherwise, entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf, or instead of some fixture or building belonging to the landlord, then such fixture or building shall be the property of, and be removable by the tenant, before or within a reasonable time of the termination of the tenancy. Provided as follows:—

"(1) Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other of his obligations to the landlord in respect to the holding;

"(2) In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding;

"(3) Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building, or other part of the holding, by the removal;

"(4) The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it;

"(5) At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal; and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value shall be settled by a reference under the Act, as in case of compensation (but without appeal)."

Similar rights are given to allotment tenants under the Allotment Act, 1907, and the above section applies to market gardens, under the Agricultural Holdings Act, 1908.

Where the tenant has the right to remove fixtures, he must take care to do so during the continuance of the tenancy, even though the lease is determined by forfeiture and not by effluxion of time.

Otherwise it is a presumption of law that the tenant has given them to the landlord. And if a tenant holds over wrongfully after the termination of his tenancy he cannot then remove his fixture. The rule is construed very strictly. In one case it was held to apply even though the fixtures remained on the premises by the parol consent of the landlord. Such a consent might give the tenant a right of action for the value of the fixtures against the landlord if permission to remove was subsequently refused, but it would give no right against the mortgagees of the landlord who were no parties to the permission granted if they were to refuse leave to remove.

An incoming tenant generally agrees to take the fixtures of an outgoing tenant at a valuation. It is generally desirable that the landlord should be made a party to the agreement; otherwise he might set up a claim on the ground that the outgoing tenant had forfeited any right to them by not removing them, and the incoming tenant could not, then, remove them at the end of his term.

On the sale of a freehold estate the fixtures pass from the vendor to the vendee, unless there is an express agreement to the contrary.

A contract for the sale of fixtures need not be evidenced by writing, since fixtures do not fall within the Statute of Frauds as being an interest in land.

If a landlord prevents a tenant from removing fixtures which belong to the tenant at the end of the tenancy, there is a right of action to recover the value of the fixtures. On the other hand, if the tenant removes fixtures to which he is not entitled, the landlord has a right of action for waste, that is, damage to his property, or, if there has been any agreement as to the fixtures, for breach of covenant. Where the fixtures have been actually severed and disposed of, an action may be maintained for the value of the same.

FLASH POINT. (Fr. *Point d'inflammation*, Ger. *Entflammungspunkt*, Sp. *Grado de inflamación*, It. *Punto d'inflamazione o combustione*.)

This is temperature registered by the thermometer at which oil gives off explosive vapour. When oil is said to have a flash point of 80° or 100°, it is meant that oil heated to that degree becomes inflammable by reason of the vapour which it then gives off.

FLOATING CAPITAL. (Fr. *Capital*

circulant, *fonds de roulement*, Ger. *Betriebskapital*, Sp. *Capital flotante*, It. *Capitale circolante o in circolazione*.)

Floating capital is that portion of the wealth of a banker or trader which is employed in such a way that by parting with it the banker or trader replaces the same with a profit by a single operation. It is most generally applied to that sum of money which is actually at command for the carrying on of any business. In this sense it includes that portion of the capital which is not permanently invested, but which is only temporarily employed for profit in marketable securities.

FLOATING DEBT. (Fr. *Dette non-consolidée*, Ger. *schwebende Schuld*, Sp. *Deuda flotante*, It. *Debito fluttuante*.)

This is a term which signifies a debt which a borrower may be called upon to pay at short notice. It is also used to distinguish short loans from loans borrowed for a long period.

FLOATING MORTGAGE. (Fr. *Hypothèque flottante*, Ger. *flüssige Hypothek*, Sp. *Hipoteca flotante*, It. *Ipoteca fluttuante*.)

This is a security or charge which affects a variety of property and may attach to any one class to the exoneration of the remainder.

FLOATING POLICY. (Fr. *Police d'assurance flottante*, Ger. *offene Police*, Sp. *Póliza flotante*, It. *Polizza fluttuante*.)

A policy of insurance is called a floating policy when the insurance is effected for a certain amount, insuring goods which are not all in one place, but spread over a certain district or area, so that the goods, wherever they may be deposited, are covered, either wholly or in part, according as their aggregate value may happen to be either under or above the sum insured.

FLORIN. (Fr. *Florin*, Ger. *Gulden*, Sp. *Florin*, It. *Fiorino*.)

The name which is now applicable to a two-shilling piece in England. A coin of Austria is also called a florin, or gulden; its value is about 1s. 11½d. The Dutch florin or guilder is double the value of the franc, that is, 1s. 8d.

FLOTSAM. (Fr. *Epave flottante*, Ger. *Strandgut*, Sp. *Géneros flotantes*, It. *Avanzo di naufragio*.)

The name of goods lost by shipwreck and found floating on the sea.

FLUCTUATION. (Fr. *Fluctuation*, Ger. *Schwankung*, Sp. *Fluctuación*, It. *Fluttuazione, oscillazione*.)

This means a rise or fall in the price of anything.

FOLIO. (Fr. *Folio*, Ger. *Folioformat*, Sp. *Folio*, It. *Foglio*.)

A folio is a sheet of paper folded once only so as to make two leaves. In book-keeping the word is used strictly to denote the two opposite pages of an account book numbered as one, but it now commonly means the same as a page. In law-writing a folio indicates seventy-two words.

FOOLSCAP. (Fr. *Papier-pot*, *papier écolier*, Ger. *Kanzleiformat*, Sp. *Papel de barba*, *papel rayado*, It. *Carta fina e sostenuta*.)

This is a sheet of paper, 17 ins. by 13½ ins., so called from having formerly borne the water-mark of a fool's cap and bells, which is said to have been substituted by Cromwell for the Royal arms.

FOOT. (Fr. *Pied*, Ger. *Fuss*, Sp. *Pie*, It. *Piede*, *metri* 30.)

In linear measurement the term "foot" is applied to a unit of measurement in most countries of the world, which differs considerably in length. It was evidently taken originally from the length of the human foot, as other measures of length were taken from other parts of the body. The English foot is 12 ins. long, or the third part of a yard. The French and the Rhenish foot (in common use in Germany) are slightly longer than the English foot, with which the Russian foot is identical. A metre is equal in length to 3.2818 English feet.

FOR MONEY. (Fr. *Au comptant*, Ger. *Kassageschäfte*, Sp. *Al contado*, It. *A contanti*.)

This, on the Stock Exchange, means dealings which are paid for in cash at the time they are made.

FOR THE ACCOUNT. (Fr. *À terme*, Ger. *Zeitgeschäfte*, Sp. *A plazos*, It. *A termine*.)

This, on the Stock Exchange, means dealings which are to be paid for on the next settling day.

FORCE MAJEURE. (Fr. *Force majeure*, Ger. *höhere Macht*, *höhere Gewalt*, Sp. *Fuerza mayor*, It. *Forza maggiore*.)

This term is used to denote circumstances or events which no human precaution could have averted, or which no fraudulent intention could have produced; and those dangers and accidents which are beyond human power to control or to oppose.

FORECLOSE. (Fr. *Forclore*, Ger. *kündigen*, Sp. *Excluir*, It. *Escludere*.)

This signifies the taking actual

possession of an estate or other thing mortgaged to secure repayment of a loan.

In equity it was always considered that a thing mortgaged was nothing more than a security for the money advanced. "Once a mortgage, always a mortgage." A mortgagee, therefore, was never allowed to take an estate on the failure of the mortgagor to pay at the stipulated time. Nevertheless payment must be made within a reasonable time, and a mortgagee is entitled to bring a foreclosure action to recover the money lent. There can be no foreclosure without an action. A date is then fixed by the court upon which the money due and the interest must be paid, and, failing this, the mortgagee is then permitted to take possession of the estate, and the mortgagor has no further right to redeem at any time.

FORECLOSURE. (Fr. *Forclusion*, Ger. *Subhastation*, Sp. *Subastación*, It. *Subasta*.)

This is the act of foreclosing.

FOREDATE. (Fr. *Antidater*, Ger. *vordatieren*, Sp. *Antefegar*, It. *Antidatate*.)

This means the dating of a document before its proper time.

FOREIGN BILL OF EXCHANGE. (Fr. *Lettre de change sur l'étranger*, Ger. *auswärtiger Wechsel*, Sp. *Letra de cambio sobre el extranjero*, It. *Divisa estera di cambio*, *cambiale sal estero*.)

A bill which is not drawn and payable within the British Islands, or not drawn within the British Islands upon some person resident therein is a foreign bill of exchange. (See *Bill of Exchange*.)

The Act of 1882 provides that when a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:—

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *suprà protest*, is determined by the law of the place where such contract was made. But where a bill is issued out of the United Kingdom, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue; and where such a bill conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all

persons who negotiate, hold, or become parties to it in the United Kingdom.

(2) The interpretation of the drawing, indorsement, acceptance, or acceptance *suprà* protest of a bill is determined by the law of the place where such contract is made; but where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted according to the law of the United Kingdom.

(3) The duties of the holder with respect to presentment for acceptance or payment, and the necessity for a sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where a bill is drawn out of, but payable in the United Kingdom, and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts of the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

What particular rules are applicable must be decided by the law of the country in question. For example, French law does not allow days of grace, and Spanish law does not require any notice of dishonour for non-acceptance.

FOREIGN GENERAL AVERAGE. (Fr. *Avarie grosse étrangère*, Ger. *ausländische grosse Haverei*, Sp. *Averia gruesa extranjera*, It. *Avaria grossa straniera*.)

This is a term used in marine insurance to imply that general average will be paid by the underwriters in accordance with an average statement made abroad.

FOREIGN MONEY. (See *Par of Exchange*.)

FOREIGN MONEY ORDERS. (Fr. *Mandats sur l'étranger*, Ger. *ausländische Postanweisungen*, Sp. *Giros mutuos*, It. *Vaglia internazionali*.)

These are money orders issued by the Post Office for the transmission of sums abroad. (See *Money Orders*.)

FOREIGN TELEGRAMS. (Fr. *Télégrammes extérieurs*, Ger. *ausländische Telegramme*, Sp. *Telegramas para el extranjero*, It. *Telegrammi per l'estero o internazionali*.)

These are telegrams sent or received from all parts beyond the seas.

FOREIGN TRADE. (Fr. *Commerce*

étranger, Ger. *Aussenhandel*, Sp. *Comercio con el extranjero*, It. *Commercio estero*.)

Foreign trade is the commerce carried on between traders in different countries.

FORGERY. (Fr. *Falsification*, Ger. *Urkundenfälschung*, Sp. *Falsificación*, It. *Falsificazione*.)

The law relating to forgery and kindred offences was consolidated by the Forgery Act, 1913, and by section 1 of the Act it is provided:—

“(1) For the purpose of this Act, forgery is the making of a false document in order that it may be used as genuine, and in the case of the seals and dies mentioned in this Act the counterfeiting of a seal or die, and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.

“(2) A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorise its making; or if, though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or in the case of a document identified by number or mark, the number or distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false—

“(a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein;

“(b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person;

“(c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorised it.

“(3) For the purposes of this Act—

“(a) It is immaterial in what language a document is expressed or in what place within or without the King's Dominions it is expressed to take effect;

“(b) Forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law;

“(c) The crossing on any cheque, draft on a banker, post office money order, postal order, coupon, or other document, the crossing of which is

authorised or recognised by law, shall be a material part of such cheque, draft, order, coupon, or document."

Generally speaking, a forged document is valueless, and no person can obtain any rights through the same. A banker who pays a bill bearing a forged acceptance or indorsement must bear the loss, but he is not responsible for paying a cheque drawn upon himself which bears a forged indorsement, when acting in the ordinary course of business. He may rightly debit his customer with the amount of the cheque.

Difficulties sometimes occur in the case of forged transfers of shares in a joint-stock company. The forgery cannot destroy the title of the true holder. In any case his name must be restored to the register. But the company itself may be liable to a transferee if it has issued a certificate on the faith of the forged transfer, and the transferee has purchased on the faith of the certificate. The certificate acts as an estoppel. But if the transferee has acted solely upon the forged transfer and not upon any certificate the case is different. In order to protect themselves from liability, many companies refuse to certify a transfer of shares until they have communicated with the holder.

By the Forged Transfer Acts, 1891 and 1892, joint-stock companies, local authorities, incorporated friendly societies, and building or other provident societies, are empowered to create a fund for the compensation of transferees under forged transfers, whether they are legally liable or not to indemnify such transferees for losses sustained.

FORM OF APPLICATION. (Fr. *Imprimé*, Ger. *Bestellzettel*, Sp. *Forma de aplicación*, It. *Stampiglia di sottoscrizione*.)

When a joint-stock company is being brought out a form is issued, known by this name, so that parties may fill in the particulars as to the number of shares or the amount of stock they desire to hold, and state the amount they have paid as a preliminary to the company's bankers as a proof of *bona fides*. The form, when filled in, is taken to the bank, or other place denoted, and the counterpart, which is filled in by the bank cashier, forms the banker's receipt for the money paid.

FORTIFYING. (Fr. *Vinage, coupage*, Ger. *Mischung*, Sp. *Coupage*, It. *Taglio di liquidi per fortificarli*.)

This word means the mixing together of various qualities or growths of wines

or spirits for the purpose of improving or strengthening the whole.

FORWARDING. (Fr. *Expédition*, Ger. *Beförderung*, Sp. *Expedición*, *envío*, It. *Spedizione*, *spedire*.)

This is the act of sending forward merchandise for others.

FORWARDING AGENTS. (Fr. *Expéditeurs*, Ger. *Spediteure*, Sp. *Agentes expedicionarios*, It. *Spedizionieri*.)

These are persons who undertake the collection, forwarding, and delivery of goods.

FOUL BILL. (Fr. *Patente brute*, Ger. *unreiner Gesundheitspass*, Sp. *Patente sucia*, It. *Patente sudicia*.)

This is a certificate or instrument granted by a consul, or other competent authority, to the master of a ship at the time of clearing a port, declaring that the port is infected with disease. If a ship brings a foul bill the authorities may order a period of quarantine, the length of time depending upon the circumstances of the case.

FOUNDERS' SHARES. (Fr. *Actions des fondateurs*, Ger. *Gründeraktien*, Sp. *Acciones de fundadores*, It. *Azioni dei fondatori*.)

These are shares granted to the originator of a joint-stock company as a reward for services rendered in floating the concern, or to other persons, such as promoters and underwriters, who have interested themselves in procuring the necessary capital.

These shares are generally few in number, though they may become of great value if the business turns out a success. The rights attached to the shares vary considerably, and are generally provided for in the articles or memorandum of association. The prospectus of the company must state the number of such shares, unless, all the other necessary preliminaries having been observed, the company has become entitled to commence business a year before the issue of the prospectus.

Founders' shares are becoming less common than they were some years ago.

FRANC. (Fr. *Franc*, Ger. *Franc*, Sp. *Franco*, It. *Franco*.)

A franc is a French silver coin of the circulating value of about 9½d. sterling. £1 sterling is equivalent to 25.2 francs.

FRAUD. (Fr. *Fraude, circonvention*, Ger. *Betrug*, Sp. *Fraude, artificio*, It. *Frode, inganno*.)

Fraud is a false representation of facts, made with a knowledge of its falsehood, or recklessly without any belief in its truth, and with the intention that such

representation should be acted upon by the party defrauded, and actually inducing him to act upon it.

Fraud is always a ground for the avoidance of a contract. But it does not, of itself, render the contract void. The person defrauded may either repudiate it or adopt it, and in the latter case sue for any damages which have been sustained. But a person who intends to take action must not be guilty of undue delay, otherwise he will be held to have waived his rights.

Fraudulent statements made in writing as to a person's business stability, upon which another acts to his own detriment, may give rise to an action for deceit. Also directors are liable for fraudulent statements made in a prospectus, unless they are able to claim the protection of the Directors' Liability Act, 1890, or, since the passing of the Companies (Consolidation) Act, 1908, the provisions of the latter Act, which have now replaced the repealed Act of 1890. As to the liability of a principal for the fraud of his agent, see *Agency*.

Gifts and conveyances of property, whether of lands or chattels, are fraudulent if they are made for the purpose of delaying or defrauding creditors, and are therefore null and void against the creditors. But this does not extend to conveyances that are made for valuable consideration and *bonâ fide* to persons who have no notice of the fraud. Nevertheless, there are circumstances in which fraud will be presumed from the very nature of the transaction.

By the Bankruptcy Act, 1914, all voluntary conveyances, i.e., those made without consideration, are liable to be set aside as fraudulent if made within ten years before the date of the bankruptcy. Those made within two years are absolutely void, and those made within ten years are also void unless it is shown that the interest of the settlor passed entirely to the trustee of the settlement on the execution of the same, and that the settlor was able to pay the whole of his debts at the date of the settlement without the aid of any of the property comprised in it. For further particulars, see section 42 of the Bankruptcy Act.

To prefer one or more creditors to others is a fraud upon those others, and a deed purporting to carry out such an arrangement may be set aside. Fraudulent preference is now, however, an act of bankruptcy upon which any person aggrieved may present a petition.

FRAUDS, STATUTE OF. This statute was passed in 1678. Its professed object was the requirement that certain transactions should be evidenced by writing in order to prevent fraud and perjury. Only those portions of the statute are noticed which are of practical importance from a commercial standpoint.

The effect of this statute and the Act to amend the Law of Real Property, passed in 1845, so far as conveyances and leases are concerned, is that leases for more than three years, and those for a less period when the rent is not equal to two-thirds of the annual value of the land, must be by deed, and so must all assignments, grants, and surrenders of leases. A deed is necessary for the assignment of a lease, even though it is of such a kind that it could be made by parol. A lease for three years or less may be made by word of mouth, but an agreement for a lease for the same period is not enforceable unless evidenced by writing, by reason of the fourth section of the Statute of Frauds. The lessee must get into possession. Leases required to be by deed, if evidenced by writing only, may be enforced as agreements for leases. There is an exception in the case of an equitable mortgage, where it frequently happens that no writing is used at all.

As to trusts, the Statute of Frauds provides that "all declarations or creations of trusts or confidences of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect." Any trust as to personal chattels, however, may be created by parol, provided it is to take effect in the lifetime of the creator of the trust. But a transfer of any trust must be evidenced by writing.

The fourth section of the statute is as follows: "No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made in consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within

the space of one year from the making thereof; unless the agreement upon which such contract shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other party thereunto by him lawfully authorised."

Here it will be noticed that there are five kinds of contract which must have some document in writing to prove their existence. The third of these, viz., an agreement made in consideration of marriage, does not mean a promise to marry. The fifth, viz., an agreement not to be performed within a year, refers to those contracts only which cannot, according to their provisions, be wholly performed within a year. The best example that can be given is the very common one of the engagement of a servant. If the engagement is to commence immediately and to continue for one year, there is no need for the contract to be evidenced by writing. But if the engagement is to commence next week and to continue for one year certain, there must be some memorandum or note to satisfy the statute, otherwise no action can be brought upon the contract. In an action for wrongful dismissal, which came before the courts in 1901, it was held that a plaintiff who had been engaged on September 4 for one year commencing on September 5 could not recover damages for breach of contract in the absence of some memorandum or note in writing, signed by the defendant. In a later case, in 1903, a Divisional Court laid down the rule that this construction of the statute was too strict, and that no writing was necessary where the employment for a year was to commence on the day following that on which the agreement was made. This latter decision seems doubtful, and a prudent person will do well to take the former as being the more correct exposition of the law.

The memorandum or note in writing which is required to prove the existence of a contract need not be made at the time when the contract is entered into. It must, however, be in existence before any action can be brought upon the contract itself. No special form is required. It is "just such a memorandum as merchants in the hurry of business might be supposed to make." But it is necessary that the names of the parties should appear, that the subject matter of the contract should be set forth, that the consideration for the

promise should be stated (except in the case of a guarantee), and that the party to be charged, or his duly authorised agent, should sign the document. If the party to be charged writes out the memorandum or note himself, and his name appears in any part of it, that is a sufficient signature. A recital in a will has been held to be a memorandum or note sufficient to satisfy the statute; and in order to connect the parties, when the name of the one to be charged and his signature appeared in the document relied on, but the name of the other party was not there, the envelope in which the document was sent was allowed to be put in evidence to show who the other party was, and thus make the memorandum complete.

The memorandum of agreement, or any agreement made under hand only, and not otherwise specifically charged with duty, must be stamped with a sixpenny stamp. An adhesive stamp may be used, but it must be cancelled by the person first signing the agreement. Fourteen days after execution are allowed for the stamping of an agreement under hand, and such post-execution stamping should always be by an impressed stamp. The following agreements are exempted from stamp duty:—

(1) Where the subject matter is of less value than £5, or is incapable of pecuniary measurement.

(2) Where the agreement has reference to the hire of any labourer, artificer, manufacturer, or menial servant.

(3) Where the agreement is one relating to the sale of any goods, wares, or merchandise.

The 17th section of the Statute of Frauds, as amended by Lord Tenterden's Act, 1828, has been repealed and replaced by the fourth section of the Sale of Goods Act, 1893. (See *Sale*.)

The contracts, which are included in section 4 of the Statute of Frauds, are neither void nor voidable, because there is no evidence in writing of their existence. They are merely unenforceable by action. A defendant in an action at law must specially plead the section in his defence, otherwise he will not be heard as to any objection he might have raised against the action being brought on the ground of the want of statutory proof of the contract.

FRAUDULENT PREFERENCE. (Fr. *Préférence frauduleuse*, Ger. *betrügerischer Vorzug*, Sp. *Preferencia fraudulenta*, It. *Preferenza fraudolenta*.)

Whenever a debtor is bordering upon insolvency and endeavours to pay off some of his creditors whilst ignoring others, he is said to be making a fraudulent preference. Such a preference, if made shortly before bankruptcy proceedings, is absolutely void.

FREE ALONGSIDE SHIP. (F.A.S.) (Fr. *Franco quai*, Ger. *frei Längsseite*, Sp. *Libre al costado*, It. *Franco alla banda*.)

This is an indication that goods are sold, including free delivery alongside the ship. The cost of taking such goods on board must be borne by the purchaser.

FREE OF ALL AVERAGE. (Fr. *Franco d'avarie*, Ger. *frei von Havarie*, Sp. *Libre de averia*, It. *Franco da ogni avaria*.)

This signifies that claims for general and particular average cannot be recovered under an insurance policy containing this clause. Such a policy insures against total loss only.

FREE OF CAPTURE AND SEIZURE. (Fr. *Franco de prise et saisie*, Ger. *frei von Wegnahme und Beschlagnahme*, Sp. *Libre de presa y embargo*, It. *Esente di cattura e staggimento*.)

When this clause is inserted in a policy of marine insurance, which generally happens in war, it means that the underwriters refuse to take responsibility for loss occasioned by the capture or seizure of the ship or goods insured.

FREE OF PARTICULAR AVERAGE. (F.P.A.) (Fr. *Franco d'avarie partielle*, or *particulière*, Ger. *frei von Beschädigung*, Sp. *Libre de avaria particular*, It. *Franco d'avaria speciale*.)

When this clause is inserted in a marine policy of insurance, the underwriters only insure the goods concerned against damage or partial loss in case the ship, craft, or any conveyance, or the interest insured, is stranded, sunk, burned, on fire, or in collision. They are not responsible for goods rendered worthless by any ordinary perils of the sea. Goods so insured are said to be free of particular average.

FREE ON BOARD. (F.O.B.) (Fr. *Franco à bord*, Ger. *frei an Bord*, Sp. *Franco á bordo*, It. *Franco a bordo*.)

This signifies that the vendor of the goods puts them on board ship free of all charges to the purchaser.

FREE ON BOARD AND TRIMMED. (Fr. *Franco à bord et d'arrimage*, Ger. *frei an Bord und gestaut*, Sp. *Franco á bordo y estivado*, It. *Franco a bordo e stivato*.)

In the coal trade, sales of bunker coal

are usually made "F.O.B. and Trimmed," which means that the coal shall be properly stowed after being put on board.

FREE OVERSIDE. (Fr. *Franco hors du navire*, Ger. *frei ab Schiff*, Sp. *Franco fuera del buque*, It. *Franco fuori della nave*.)

This term is used when goods are sold, and the responsibility of the seller ceases as soon as the goods leave the slings overside the ship, and the buyer must provide his own barge in which to receive them.

FREE PORT. (Fr. *Port franc*, Ger. *Freihafen*, Sp. *Puerto franco*, It. *Porto franco*.)

A free port is one where no export or import duties are levied.

FREE TRADE. (Fr. *Libre commerce*, *libre échange*, Ger. *Freihandel*, Sp. *Libre cambio*, It. *Commercio libero*, *libero scambio*.)

Free trade really means trade which is carried on without restriction or interference. It refers, more particularly, to the admission of goods into a country without the payment of any customs duties.

No country is absolutely free trading, for where the restrictions are of the slightest, as in the United Kingdom, a large revenue is raised by means of duties levied upon what are generally considered articles of luxury. But it has been the deliberate policy of this country, for more than half a century, to admit raw goods for manufacture without the slightest restriction, and also food-stuffs to meet the demands of the growing population.

The opponents of free trade are called protectionists, and they advocate the imposition of duties for the sake of fostering home industries. Another class of opponents are known as fair traders, who desire to establish a system of reciprocity, that is, to treat foreign countries on the same footing as they treat the importers of goods into their countries.

FREEHOLD PROPERTY. (Fr. *Propriété foncière libre*, Ger. *Freigut*, Sp. *Feudo franco*, It. *Proprietà fondiaria*.)

This is an estate which is held direct from the Crown, and for which no services are due to any feudal lord. In theory there is no such thing as absolute ownership of land, and no person can hold more than an estate in the same, whether it is in fee simple, fee tail, or for life. Each of these is a freehold, though the term has become generally

applicable, in everyday language, to estates which are held in fee simple, that is, to those which are, as nearly as land can be, the absolute property of the holder, and of which he can dispose to any person he chooses.

FREIGHT. (Fr. *Fret*, Ger. *Fracht*, Sp. *Flete*, It. *Nolo, spese di nolo*.)

Freight is the money paid for the carriage of goods by sea, or the price paid by a merchant for the use of a ship to transport goods. The amount is generally fixed by the charter-party or the bill of lading, but where there is no formal agreement it is regulated by the custom or usage of trade. In the absence of any stipulation to the contrary, freight is only payable on the delivery of the goods at the place of destination; but it is the general practice to provide otherwise by the bill of lading, and to make the freight payable in any event, and before the delivery of the cargo. This freight is then known as "advance freight," but it is always upon the special terms of the contract that a decision must be arrived at as to whether freight is or is not advance freight. A shipowner or a shipper of goods has therefore what is known as an insurable interest in the freight, and may protect himself against any loss by adding the amount of the freight to the value of the goods. A shipowner has a lien upon the goods for the freight dues, unless it is expressly or impliedly waived.

The word "freight" is often used as synonymous with cargo.

FREIGHT FORWARD. (Fr. *Frais sous remboursement*, Ger. *Fracht gegen Nachnahme*, Sp. *Contra reembolso del flete*, It. *Contro rimborso del nolo*.)

This term is used to indicate freight which is payable at the port of destination.

FREIGHT NOTE. (Fr. *Note de fret*, Ger. *Frachtliste*, Sp. *Nota de flete*, It. *Nota di nolo*.)

This is a statement sent out by a shipbroker to his customers, the shippers, showing the sums due for freight upon goods which have been shipped.

FREIGHT RELEASE. (Fr. *Délivrance contre paiement du fret*, Ger. *Freigabe*, Sp. *Autorización de descarga*, It. *Mandato di scarico, consigna contro pagamento del nolo*.)

This term means the official document given by shipbrokers, or an indorsement by them on a bill of lading, authorising the officer in charge of the ship to give up possession of the goods, the freight upon them having been paid. A freight

release is used when goods have been shipped "freight forward" from the other side.

FREIGHTER. (Fr. *Affréteur*, Ger. *Bejrachter*, Sp. *Fletador*, It. *Noleggiatore*.)

This is the name which is very often applied to the charterer of a vessel.

FUNDED OR PERMANENT DEBT. (Fr. *Consolidés*, Ger. *Jundierte Schuld*, Sp. *Consolidados*, It. *Debito pubblico perpetuo o consolidato*.)

This is the debt owing by the Government, which it is under no obligation to pay at any fixed time. It is represented by consols, and the debts due to the Banks of England and Ireland.

FUNDS. This word is used with various meanings.

1. (Fr. *Capital*, Ger. *Kapital*, Sp. *Capital*, It. *Capitale*.)

Stock or capital.

2. (Fr. *Fonds*, Ger. *Fonds*, Sp. *Fondos*, It. *Fondi di riserva*.)

Money, the income of which is set apart for some permanent object.

3. (Fr. *Fonds publics*, Ger. *Staatspapiere*, Sp. *Fondos públicos*, It. *Fondi pubblici, cartelle*.)

Debts due by a government and on which interest is paid.

4. (Fr. *Fonds publics*, Ger. *Staatspapiere*, Sp. *Caudal*, It. *Fondi pubblici, cartelle*.)

Government stock and public securities.

FURLONG. (Fr. *Furlong, huitième d'un mille, 201 mètres*, Ger. *Furlong*, Sp. *Furlong, estadio, medida*, It. *Stadio, metri 201*.)

This is an English measure of length, the eighth part of a mile, or 220 yards.

FUTURES. (Fr. *Livraisons à terme*, Ger. *Termingeschäfte*, Sp. *Para llegar*, It. *Consegna a termine*.)

These are goods for shipment at some future time. The term is generally used with reference to foreign produce to be shipped. Importers, merchants, and others speculate in futures of corn, cotton, hops, tallow, etc., in the same way that speculators on the Stock Exchange operate for the account.

GALLON. (Fr. *Gallon, 4½ litres*, Ger. *Gallone, 4½ Liter*, Sp. *Galón, 4½ litros*, It. *Litri 4½*.)

This measure of capacity, for dry and liquid articles, contains exactly four quarts. The imperial gallon contains 10 lbs. avoirdupois weight of distilled water, weighed in air at the temperature of 60° Fahrenheit, the

barometer standing at 30 ins. The imperial gallon measures 277·274 cubic inches.

The American gallon is equal to 231 cubic inches, and the litre to 0·22 gallon.

GARBLING COIN. (Fr. *Trier des pièces de monnaie*, Ger. *Münzen aussuchen*, Sp. *Apartar moneda*, It. *Scegliere monete*, *scartare monete*.)

This term refers to the practice of money dealers in picking out new full-weighted coins from those which pass through their hands, for the purpose of exporting them, or melting them down, and retaining the lighter ones for circulation and the payment of trade debts at home. Garbling was formerly used to signify the process of sorting or picking out the worst of anything.

GARNISHEE. (Fr. *Tiers saisi*, Ger. *Sequester*, Sp. *Secuestro*, It. *Sequestratario*.)

This is a person in whose hands property belonging to another person is attached by an order of a court of justice. The order warns the person upon whom it is served not to pay the debt which he owes to his creditor.

GARNISHEE ORDER. (Fr. *Mandat de saisie-arrêt*, Ger. *Sequestrationsbefehl*, Sp. *Orden de secuestro*, It. *Mandato di sequestro*.)

A garnishee order is a notice sent to persons who owe judgment debtors money, or who hold goods belonging to them, warning them not to part with such money or goods. The object of these orders is to prevent the debtor applying such property to his own use instead of paying his creditors.

A garnishee order is obtained upon an application to the court or a judge, *ex parte*, by any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable upon the judgment or order. The application must be supported by an affidavit on the part of the applicant or of his solicitor stating—

(a) That judgment has been recovered, or the order made;

(b) That the judgment is still unsatisfied;

(c) The amount of the judgment;

(d) The name and address of the third person (called the garnishee) from whom money is due to the debtor;

(e) That the garnishee is within the jurisdiction.

After the order has been served upon the garnishee, he must, unless he is able to prove that there is no debt owing by

him to the judgment debtor, pay the money into court, or execution will be levied against him for the amount. Payment made by or execution levied upon the garnishee under any proceedings of this kind is a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, even though the proceedings are subsequently set aside, or the judgment or order reversed.

A garnishee order is not valid against the trustee in bankruptcy of the judgment debtor, unless completed by receipt of the debt before the date of the receiving order and notice of the presentation of a bankruptcy petition by or against the debtor, or the commission of an available act of bankruptcy by him.

The following are not available for attachment:—

(1) Unliquidated damages due to a judgment debtor.

(2) Money due to a shareholder in the voluntary winding-up of a limited liability company.

(3) Purchase money payable upon the completion of a sale of real property.

(4) Wages due to a seaman, servant, labourer, or workman.

(5) Future income of a tenant for life.

(6) Salary accruing but not actually due.

(7) The pay or pension of an officer.

GARNISHMENT. (Fr. *Saisie-arrêt*, Ger. *Sequestration*, Sp. *Secuestración*, It. *Sequestro*, *citazione*.)

This is the notice issued to a garnishee, warning him not to part with money or goods in his possession pending the settlement of a claim against the owner.

GAUGE (Noun). This word is used in two senses:—

1. (Fr. *Jauge*, Ger. *Messstab*, Sp. *Aforo*, It. *Staza*.)

A measuring rod for ascertaining the contents of casks.

2. (Fr. *Mesure*, Ger. *Mass*, Sp. *Medida*, It. *Misura*, *scandaglio*.)

A standard of measure.

GAUGE (Verb). (Fr. *Jauger*, *mesurer*, Ger. *aichen*, *messen*, Sp. *Aforar*, *medir*, It. *Misurare*, *scandagliare*.)

To gauge is to ascertain the contents of casks, that is, the number of gallons contained in them, by means of a gauge or gauging-rod.

GAUGER. (Fr. *Jaugeur*, Ger. *Ausmesser*, Sp. *Aforador*, It. *Misuratore*, *stazatore*.)

This is the officer of Customs or Inland Revenue, whose business it is to ascertain the contents of casks.

GAUGING ROD. (Fr. *Jauge*, Ger. *Messstab*, Sp. *Manómetro*, It. *Manometro*, *scandaglio*, *canna da misurare*.)

This is the instrument which is used for gauging or measuring the contents of casks, etc.

GAZETTE. (Fr. *Gazette*, Ger. *offizielle Zeitung*, Sp. *Gaceta*, It. *Gazzetta*.)

This gazette is the official periodical published by the authority of the Government. In England it is published every Tuesday and Friday.

The production of a copy of the *Gazette* is generally accepted as evidence of any notice or order contained in it. Great care is taken as to the insertion of notices, and all those which do not come direct from Government offices must be duly authenticated. The signature of a solicitor is in most cases sufficient, but if this cannot be obtained any advertisement or notice must be accompanied by a declaration.

In addition to the official notices of the Government, all the principal steps taken in bankruptcy and winding-up proceedings must be advertised, as well as notices of changes of partnerships, and those calling upon creditors and others to come in and prove their claims in the administration of estates.

GENERAL ACCEPTANCE. (Fr. *Acceptation générale*, Ger. *reines Accept*, Sp. *Aceptación general*, It. *Accettazione pura e semplice*, *accettazione non limitata*.)

This kind of acceptance, which is often called a clean acceptance, is one having merely the signature of the drawee (who thus becomes the acceptor) and the name of the place of payment.

GENERAL AVERAGE. (See *Average, General*.)

GILL. (Fr. *Gill*, *quart de pinte anglaise*, Ger. *Gill*, *die Viertelpinte*, Sp. *Cuarta parte de pinta*, It. *Gill*.)

This is a measure of capacity, holding the thirty-second portion of a gallon, or the fourth part of a pint. It is nearly equal to 14.2 centilitres.

GILT-EDGED SECURITIES. (Fr. *Papier doré sur tranche*, Ger. *Papiere erster Qualität*, Sp. *Seguridades de gran valor*, It. *Garanzie di primo ordine*.)

Securities which are considered to be absolutely safe and assured are so designated.

GIVE ON. (Fr. *Faire le report*, Ger. *in Prolongation geben*, Sp. *Pagar la prolongación*, It. *Pagare il riporto*.)

This is the same thing as to pay *contango*.

GLUT. (Fr. *Surabondance*, Ger.

Überfüllung, Sp. *Exceso*, It. *Eccesso*, *sovraabbondanza*.)

A glut of any commodity in the market occurs when the supply is greatly in excess of the demand.

GODOWN. (Fr. *Comptoir*, Ger. *Ge-wölbe*, *Magazin*, Sp. *Almacén*, It. *Magazzino*.)

This is the name given to a warehouse in the East, where imported goods are stored until they are required for use.

GOLD AND SILVER. (Fr. *Or et argent*, Ger. *Gold und Silber*, Sp. *Oro y plata*, It. *Oro e argento*.)

Articles manufactured of gold and silver must be taken by the makers to be stamped at the Assay Office in one of the places named below, and if found to be of the legal quality each article is stamped with four marks, as follows:—

(a) The Hall Mark. This is for Birmingham, an anchor; for Chester, three wheat sheaves, or a dagger; for Dublin, a harp, or the figure of Hibernia; for Edinburgh, a thistle, or a castle and lion; for Exeter, a castle with two wings; for Glasgow, a tree and a salmon with a ring in its mouth; for London, a leopard's head; for Newcastle-on-Tyne, three castles; for Sheffield, a crown; for York, five lions and a cross.

(b) The Standard Mark. This shows the fineness, and is represented for England by a lion passant; for Edinburgh, by a thistle; for Glasgow, a lion rampant; for Ireland, a harp crowned. The gold must be of 22 carats, and silver of 11.ozs. 2 dwts. fine. In gold of 18 carats fine, a crown and the figures 18 are used.

(c) The Mark. This consists of the maker's initials.

(d) The Date Mark. A letter of the alphabet in a shield, the letter itself being periodically changed.

GOLD BONDS. (Fr. *Obligations payables en or*, Ger. *Goldobligationen*, Sp. *Obligaciones pagaderas en oro*, It. *Obbligazioni pagabili in oro*.)

Gold bonds are bonds which are payable in gold coin, either in New York, or at a fixed rate of exchange in London. They are issued by the various American railroad companies.

GOLD PREMIUM. (Fr. *Agio sur l'or*, *prime sur l'or*, Ger. *Goldprämie*, *Goldagio*, Sp. *Agio del oro*, *premio del oro*, It. *Agio sull'oro*, *premio sull'oro*.)

When a paper currency is worth less than its face value in gold, gold is said to be at a premium, and the difference is known as the "gold premium."

GOOD MERCHANTABLE QUALITY AND CONDITION. (Fr. *Marchandises de bonne qualité vendable*, Ger. *Waren guter Qualitat und Beschaffenheit*, Sp. *Merancias de buena calidad y acondicionadas*, It. *Merci de qualità e condizioni vendibili facilmente*.)

This phrase is commonly used in making contracts. It means that the goods supplied must be up to the ordinary standard of quality, and in their customary sound state.

GOODS. (Fr. *Marchandises*, Ger. *Waren*, Sp. *Géneros*, *mercancias*, It. *Merci*, *mercanzie*.)

This is the collective term used to denote all kinds of merchandise.

GOODWILL. (Fr. *Clientèle*, Ger. *Kundschaft*, Sp. *Clientela*, It. *Diritto di rilevare un negozio o commercio avviato e con clientela*.)

This term, although an exceedingly familiar one, is not easy to define. In one sense it means every practical advantage that has been acquired by an established firm in carrying on a business under a particular name and style. Lord Eldon described it as "nothing more than the probability that the old customers will resort to the old place."

Lord Lindley says: "The term 'goodwill' can hardly be said to have any precise signification. It is generally used to denote the benefit arising from connection and reputation, and its value is what can be got for the chance of being able to keep that connection and improve it. Upon the sale of an established business its goodwill has a marketable value, whether the business is that of a professional man or of any other person. But it is plain that goodwill has no meaning except in connection with a continuing business; and the value of the goodwill of any business to a purchaser depends, in some cases entirely, and in all very much, on the absence of competition on the part of those by whom the business has been previously carried on."

A writer on Commercial Law has summarised the various definitions thus:—

"All that can be gathered from the various definitions is that where the locality of the business premises makes the trade, goodwill represents the advantage derived from the chance that customers will frequent the premises in which the business has been carried on; that where the business is one which depends upon the reputation of a firm, the goodwill consists of the

advantage which the owner derives from being allowed to represent himself as such; that where the business is due to the individuality of the owner, and where its reputation cannot be separated from his, the goodwill is all but non-existent; and that where the value of the business depends upon the business connection, the goodwill consists of the right to be properly introduced to those connections."

The goodwill of a business is frequently its most valuable asset, and there is a legal right or interest in it, an incorporeal right, which is most jealously guarded. On a conveyance or an agreement for the sale of the goodwill of a business an *ad valorem* stamp duty is levied. What is the value of the goodwill of a business must depend entirely upon circumstances.

When a business is sold, the goodwill passes to the transferee, and it is most important that nothing should be done by the transferor to interfere with the conduct of the business. The common method is for the transferor to enter into an agreement with the transferee not to compete with him in any similar business. If the agreement is not too wide to be enforced, according to the rules to be observed in connection with contracts in restraint of trade, a transferor will be bound by it. In the absence of any special agreement the present state of the law may be summed up as follows:—

(a) Only the person who acquires the goodwill is at liberty to represent himself as continuing or succeeding to the business of the vendor.

(b) The transferor is at liberty to set up in similar business and to enter into competition with the transferee, but he must not do so under a name which amounts to a representation that he is carrying on the old business.

(c) The transferor may publicly advertise his business, but he must not, either personally or by circular, solicit the customers of the old firm.

As the goodwill is a part, and often the most valuable part, of the partnership property, it should always be sold on the dissolution of a partnership, unless the parties otherwise agree as to its disposal. In the absence of any agreement as to sale, each of the members of the old firm, who continues to carry on a business of a similar nature after the dissolution of the partnership, is entitled to the benefit of the goodwill.

Compensation.—The proprietor of the

goodwill of any business is entitled to compensation if he is compelled to vacate his premises by reason of the land, etc., being taken under statutory powers, and if it is clear that the goodwill suffers any diminution in value through the removal or extinction of the business. If the parties cannot agree upon terms the matter is generally referred to arbitration.

Mr. Cripps says: "When lands are taken under compulsory powers, the goodwill is not purchased by the promoters, but remains the property of the trader, and the loss suffered by him is the diminution in its value in consequence of his compulsory ejection from the premises he is occupying. So far from the goodwill being purchased or destroyed by the promoters, there are many cases in which the diminution in its value is hardly appreciable, although the trade premises have compulsorily been taken. If a business is of a wholesale character, or is one which consists of orders from a widely extended area, a compulsory change of trade premises would be productive of small loss. If, in addition, convenient premises can be acquired in the immediate neighbourhood of the premises taken, the loss incurred through diminution in the value of goodwill becomes merely nominal, and the owner's only claim to compensation is in respect of any reasonable expenses which the taking of equally convenient new premises has rendered necessary. On the other hand, there are cases in which the diminution in the value of a goodwill may almost equal the entire value of a goodwill. This is the case where a business is retail and local, depending on neighbouring customers, and no suitable premises can be found in the locality within which the business connection extends. When premises are taken and business is carried on at a loss, the owner may be entitled to compensation on the ground that, but for compulsory powers, he would have been entitled to remain on the premises and to carry on his business."

GOSCHENS. (Fr., Ger., Sp., and It., *Goschens*.)

This is the name given to consols after their conversion by Mr. Goschen in 1888.

GRAIN. (Fr. *Grain*, Ger. *Gran*, Sp. *Grano*, *grana*, It. *Misura di peso*, *grammi* .06.)

The lowest standard in the systems commonly used in England and America

for denoting the weights of bodies is called the grain. The origin of measures and weights in England is to be found in a grain of barley or wheat. The weight of 32 grains, well dried and taken from the middle of the ear, was called one pennyweight. The pennyweight was afterwards divided into 24 grains, and is now an artificial standard.

In a statute of Edward I, it is enacted:—

(a) "An English penny, now the largest coin in England, which is called a sterling, round and without clipping, shall weigh 32 grains of wheat, well dried, and gathered out of the middle of the ear;

(b) "And twenty of these pence, or twenty pennyweights, shall make an ounce;

(c) "And twelve of these ounces shall make a pound."

The grain can be taken as the common unit in comparing the system of weight known as *avoirdupois*, containing 437.5 grains to an ounce, or 7,000 grains to the pound, with the apothecaries' and the troy ounce of 480 grains. The principal terms of the decimal system of weights may thus be expressed in grains:—

	<i>Grains.</i>
1 Kilogramme	15432.3564
1 Gramme	15.4323
1 Centigramme	0.15432
1 Milligramme	0.01543

The German pound contains 7,217 grains, and the Spanish libra 7,099 grains.

GRAIN. (Fr. *Grains*, *céréales*, Ger. *Getreide*, Sp. *Granos*, *cereales*, It. *Cereali*, *granaglie*.)

Grain is the seed of any plant of the order *gramineae*, such as wheat, oats, barley, rye, rice, maize, etc. Commercially, these are all included in the general term *grain*. They are also known as *Cereals*, from the Latin, *cerealis*, pertaining to *Ceres*, the goddess of corn and harvest.

GRAMME. (Fr. *Gramme*, Ger. *Gramm*, Sp. *Gramo*, It. *Grammo*.)

This is the unit of weight in the metric system. It is the weight of a cubic centimetre of distilled water at its greatest density, that is, at a temperature of 4° Centigrade. It is rather less than 15½ grains, its exact value in grains being expressed decimally by 15.432349.

An English pound, *avoirdupois*, is equal to 453.6 grammes, a German pound to 500 grammes, and a Spanish libra to 460 grammes.

GRAVING. (Fr. *Radoub*, Ger. *Reinigen und Labsalben*, Sp. *Grabura*, It. *Raddobbare, racconciare*.)

Graving is the act of cleaning a ship's bottom.

GRAVING DOCK. (Fr. *Bassin de radoub*, Ger. *Trockendock*, Sp. *Darsena, dique seco*, It. *Arsenale, cantiere*.)

This is the name given to a dock in which ships are taken for the purpose of being graved; a dry dock.

GREAT HUNDRED. (Fr. *Cent-vingt* (120/000), Ger. *grosser Hundert* (120) Sp. *Palabra inglesa para 120 artículos*, It. 120).

In commercial circles this phrase is used to signify one hundred and twenty articles.

GREENBACKS. (Fr., Ger., and Sp., *Greenbacks*, It. *Greenbacks, Carta monetata degli Stati Uniti*.)

This is the familiar name by which the notes of the United States Government are known.

GROCER. (Fr. *Épicier*, Ger. *Kolonialwarenhändler*, Sp. *Lonjista, especiero*, It. *Droghiere, pizzicagnolo*.)

Originally given to a person who sold goods by the gross, or wholesale, this name is now applied to a dealer in tea, sugar, and other produce generally.

GROCERIES. (Fr. *Épicerie*, Ger. *Spezereiwaren*, Sp. *Especierías*, It. *Droghe, merci coloniali*.)

These are commodities dealt in by grocers. In America a grocer's shop or store is called a grocery.

GROSS. This word is used with two meanings:—

1. (Fr. *Grosse*, Ger. *Gros*, Sp. *Grueso*, It. *Grossa*.)

A great hundred, now taken to be twelve dozen.

2. Fr. *Brut*, Ger. *Brutto*, Sp. *Bruto*, It. *Grosslorde, in blocco, totale*.)

The full weight or quantity of any commodity without any deduction whatever.

GROSS RECEIPTS. (Fr. *Recette brute*, Ger. *Bruttoeinnahme*, Sp. *Entrada bruta*, It. *Incasso brutto, recette lordo*.)

This signifies the total receipts before any deductions whatever have been made for expenses of any kind.

GROSS VALUE. (Fr. *Valeur brute*, Ger. *Bruttowert*, Sp. *Valor bruto*, It. *Reddito imponible, valore lordo*.)

When reference is made to property, the gross value is defined to be the annual value which a tenant might reasonably be expected to pay, taking one year with another, for any hereditament, if such tenant undertook to pay all the

usual tenant's rates and taxes, and if the landlord undertook to bear the costs, repairs, insurance, and other expenses, if any, necessary to maintain the hereditament in a state to command that rent.

GROSS WEIGHT. (Fr. *Poids brut*, Ger. *Bruttogewicht*, Sp. *Peso bruto*, It. *Peso lordo*.)

This means the weight of goods and the package in which they are contained. The weight of the package itself is the "tare," that of the goods only the "net weight."

GROUNDAGE. (Fr. *Droits d'ancrage*, Ger. *Tonnengeld*, Sp. *Derechos de fondeo*, It. *Tassa di ancoraggio*.)

Groundage is the tax paid by a ship for the groundage or space occupied while in port.

GROUND RENT. (Fr. *Rente foncière*, Ger. *Grundzins*, Sp. *Renta enfundadora*, It. *Rendita fondiaria*.)

This is the rent paid to a landlord for liberty to build upon his ground. The lease is granted for a fixed number of years, and on its termination the buildings which have been erected become the property of the landlord, or of his representatives.

GUARANTEE. (Fr. *Garantie, caution, aval*, Ger. *Bürgschaft, Garantie, Kaution*, Sp. *Garantía, caución*, It. *Sicurtà, garanzia, cauzione*.)

The contract of suretyship, or guarantee, is one in which a person undertakes to be answerable to another for the payment of a debt or the performance of some act on the part of a third person. The third person must be legally bound to pay the debt or to perform the act, and the surety, as the person giving the undertaking is called, is only liable on the failure of the principal, the debtor, to carry out his legal obligation.

By the fourth section of the Statute of Frauds, it is necessary that a guarantee, an undertaking to answer for the "debt, default, or miscarriage" of another, should be evidenced by writing. There must be some memorandum setting out all the necessary particulars of the transaction. The existence of the written memorandum does not, of course, dispense with the necessity for a consideration. The consideration must be a valuable one, moving from the creditor, and satisfying the ordinary rules as to consideration. If the contract is under seal, there is no need for a consideration.

At one time it was necessary that the consideration should be set out in the

memorandum, but since the passing of the Mercantile Law Amendment Act, 1856, the statement of the consideration is no longer necessary in the case of guarantees provided that a consideration does in fact exist.

It is not always easy to determine whether an undertaking of this kind is a guarantee or simply an indemnity. Yet it is most important to distinguish the two, because, whereas a guarantee requires evidence in writing, an indemnity needs no such authentication. The distinction has been dealt with in two modern cases by the Court of Appeal. In the first the facts were as follows: The plaintiffs, a firm of stockbrokers, verbally agreed with the defendant to undertake the transaction of business upon the Stock Exchange, and to be answerable for customers whom the defendant should introduce, upon the terms that the defendant was to receive one-half of the commission earned upon, and to be liable to the plaintiff for one-half of the losses arising from, such transactions. Through the default of a customer the plaintiffs incurred a heavy loss, and they sought to recover one-half of the amount under the verbal agreement. It was held that the promise to be answerable for the losses was the ulterior consequence only to the agreement, the main object being to regulate the terms of the defendant's employment in respect of transactions in which he was interested, and that therefore the contract was one of indemnity and not a promise to guarantee the debt of another person. The fourth section of the Statute of Frauds, therefore, did not apply. In the second case the defendant had orally agreed with the plaintiff that if the plaintiff would accept certain bills for a firm in which the defendant's son was a partner, the defendant himself would find the funds to meet them. It was held that this understanding was a promise on the part of the defendant to be liable primarily, and that therefore it was an indemnity, needing no evidence in writing to make it enforceable by action.

A test which has been approved as one to be applied in distinguishing a guarantee from an indemnity is this: Whether the person who makes the promise is, but for the liability which attaches to him by reason of the promise, totally unconnected with the transaction, or whether he has an interest in it independently of the promise.

The distinction is clearly seen in such

a case as the following. A. and B. enter a tailor's shop. A. says to the tailor: "Make B. a coat, and if he does not pay you I will." This is a guarantee, and the tailor cannot sue A. upon it, unless there is some memorandum in writing. But if A. says: "Make B. a coat, and put it down to me," here A. makes himself primarily liable, and there is no need of any writing.

It is thus clear that a contract of guarantee involves the existence of another contract, and that one of the parties to this contract, viz., the creditor, is also a party to the contract of guarantee. The principal debtor is the person liable on the first contract, and the guarantor or surety is only liable on the second.

The undertaking, to constitute a guarantee and thus fall within the statute, must be given to the creditor himself.

Before the guarantee is binding upon the guarantor it must be accepted by the person to whom it is offered. Otherwise the requirements of a simple contract are not fulfilled. Thus, in an old case, a gentleman wrote to a firm of publishers, stating his willingness to be answerable up to £50 for the cost of bringing out a certain book by another person. The publishers never replied to the letter, but brought out the book. In an action, which afterwards became necessary, it was held that the letter could not be treated as a guarantee, since the offer contained in it had never been accepted.

But if the guarantee is an acceptance, e.g., in the example just given if the publishers had written to the guarantor and the guarantee had then been sent in reply to the publishers' letter, no further communication between the parties is necessary.

A guarantor can always revoke his offer to become a surety until it has been accepted.

A guarantee, like any other agreement under hand, must be stamped with a sixpenny stamp. This must be done within fourteen days of the date of the instrument.

It has been decided, in a case tried in 1900, that the contract of suretyship is not one of the class *uberrimae fidei*.

The contract itself will state the amount of the liability of the surety, and will generally further specify any conditions precedent to the creditor's suing the guarantor on default being made by the principal debtor. In the

absence of any such conditions, the creditor can sue the surety at once, even before suing the principal, and need give no notice to the surety, nor make any preliminary demand upon him.

The extent of the liability of the guarantor, in point of time, will depend upon the terms of the contract. It may extend to a single transaction, or cover transactions spread over a considerable space of time. The latter are called "continuing guarantees." Each case must be decided upon its own facts, and no general rules can be laid down. The decisions of the courts upon this subject run remarkably close, and it is very difficult to distinguish some of them.

If a surety becomes bankrupt, the creditor can prove against his estate for the amount of his guarantee.

When the surety has become absolutely liable under the guarantee, he has the following rights:—

(1) Against the principal debtor. He can recover all moneys properly paid under the guarantee, together with interest upon the same, or, if no moneys have been paid, he can take proceedings to compel the principal debtor to exonerate him from liability.

(2) Against the principal creditor. In return for discharging the debt under the guarantee, the surety has a right to be placed in the same position towards the principal debtor as the creditor is. All securities and other rights, such as judgments, must be transferred to him. This right was given to sureties by the Mercantile Law Amendment Act, 1856.

(3) Against co-sureties. When the contract of guarantee is entered into by several sureties, any one of the latter, on paying the amount fixed by the guarantee, can claim contribution from his co-sureties. And the right of contribution is not affected by the fact that the sureties are bound by different instruments. If, however, the various sureties are bound in varying amounts, they must contribute proportionally to the amount guaranteed, and not equally. In reckoning the sureties, when there are several, only those are counted who are able to pay. Thus, if there are three co-sureties, and one of them has become insolvent, the surety who has had to pay the debt can compel the remaining solvent surety to pay one-half of the sum guaranteed, if he has had to pay the whole, and not one-third only.

On the general principles of the law of contract, fraud or misrepresentation will make a guarantee absolutely void.

So also will a failure of the consideration for which it is given. In such cases a surety is freed from liability.

But, in addition, there are several other ways in which a surety may be released. The most common of these is an alteration in the terms of the contract between the creditor and the debtor behind the surety's back. The law upon the subject was thus summed up by the late Lord Justice Cotton: "The true rule, in my opinion, is that if there is any agreement between the principals with reference to the contract guaranteed, the surety ought to be consulted, and that if he has not consented to the alteration, although in cases where it is without inquiry evident that the alteration is unsubstantial, or that it cannot be otherwise than beneficial to the surety, the surety may not be discharged; yet that if it is not self-evident that the alteration is unsubstantial, or one which cannot be prejudicial to the surety, the court will not, in an action against the surety, go into an inquiry as to the effect of the alteration, or allow the question whether the surety is discharged or not to be determined by the finding of a jury as to the materiality of the alteration, or on the question whether it is to the prejudice of the surety, but will hold that, in such a case, the surety himself must be the sole judge whether or not he will consent to remain liable notwithstanding the alteration, and that if he has not so consented he will be discharged."

A good illustration of the way in which a material alteration will release a surety is to be found in a case decided in 1896. A joint and several bond of suretyship was executed by four persons. By the terms of the instrument the liability of two of them was limited to £25 each, and of the other two to £50 each. One of the latter, after the other three had executed the bond, executed it himself, but added the words "£25 only" to his signature. The creditor accepted the bond without objection. On the default of the principal debtor it was held, in an action brought by the creditor, that the bond had been materially altered, and that the first three sureties were discharged from all liability under it.

Again, a surety is discharged if the creditor binds himself to give time to the principal debtor. The reason for this is that the creditor has deprived the surety, for the time being, of the opportunity of considering his position and

pursuing his remedies against the debtor, remedies which may be lost if an extension of the period of liability is granted. But mere forbearance or delay in suing will not discharge a surety.

In the case of what is called a "fidelity guarantee," that is, a guarantee by which a surety is responsible for the honesty of a person employed in a particular office or vocation, the guarantee only continues, unless otherwise agreed, so long as the duties of the office or appointment remain the same. Moreover, an employer cannot claim under a guarantee if he regularly throws temptations in the way of his servant; and if he discovers that the servant has been guilty of any act of dishonesty, it is his duty to inform the surety of the fact, and the latter is then entitled to withdraw from his contract.

Unless by the terms of the contract it is otherwise agreed, a continuing guarantee is, after the death of the surety, revoked as to all future transactions by a notice given to the creditor; and if a guarantee is given for a firm, it ceases to be binding after a change has been made in the constitution of the members of the firm.

The release or satisfaction of the principal debt at once puts an end to a contract of guarantee.

A surety will be freed from all liability if the creditor fails to take proceedings against him within the time fixed by the Statute of Limitations, that is, within six years in the case of a simple contract, or within twenty years if the contract is under seal.

Closely connected with suretyship and guarantee, though belonging to the law of tort and not of contract, is the right of action for what is known as deceit. It arises when a person has made a fraudulent representation as to the credit of another, and a third party has acted upon such representation and suffered loss. To maintain such an action it is necessary for the plaintiff to prove that the false representation was fraudulently made, and that such false representation was the cause which induced him to act to his prejudice. By Lord Tenterden's Act, passed in 1828, any representation as to the "conduct, character, credit, or ability" of another must be made in writing, and signed by the person making it.

GUARANTEE FUND. (Fr. *Fonds de réserve*, Ger. *Reservefonds*, Sp. *Fondos de reserva*, It. *Fondi di riserva*.)

This is the fund set apart out of the profits of a business to meet any exceptional losses.

GUARANTEE SOCIETY. (Fr. *Société de sécurité*, Ger. *Kautionsversicherungsgesellschaft*, Sp. *Sociedad de garantía*, It. *Società di garanzia*.)

This is a society which, upon the payment of an annual premium, grants security in bonds to guarantee employers against theft or forgery, which may be made by clerks or others in positions of trust.

GUARANTEE STOCKS. (Fr. *Actions garanties*, Ger. *garantierte Aktien*, Sp. *Valores garantizados*, It. *Capitali garantiti*.)

Stocks upon which the interest, or the principal together with the interest, is guaranteed, are called guarantee stocks. Sometimes the interest is guaranteed by another company—as in the case of a railway company having running powers over another line—and when the interest cannot be paid by the company itself, it must be paid by the company which guarantees it.

GUARANTOR. (Fr. *Garant*, Ger. *Bürge*, *Garant*, Sp. *Garante*, *fiador*, It. *Garante*, *mallevadore*, *avallante*.)

This is the person who gives a guarantee.

GUILD. (Fr. *Corps de métier*, *corporation*, Ger. *Gilde*, Sp. *Gremio*, *hermandad*, It. *Maestranza*, *corporazione*.)

This is the name of a society or body of individuals associated together for promoting the interest of the particular trade or calling to which the members belong. It was not until 1835 that the law was formally abolished by which no person was permitted to exercise a trade or calling in a town unless he was a member of a guild. The word is said to be derived from the Anglo-Saxon word, *gildan*, which means, to pay.

GUILDER. (See *Florin*.)

GUINEA. (Fr. *Guinée*, Ger. *Guinee*, Sp. *Guinea*, It. *Ghinea*.)

A guinea is the name of a gold coin formerly current in Great Britain, which was so called because it was first coined of gold brought from Guinea, in West Africa. By a proclamation of December 22, 1717, the guinea was made current at twenty-one shillings, although its true market value was fourpence less than that sum. There is now no English coin of this name, but it is customary to reckon professional fees and voluntary subscriptions in guineas, instead of pounds, shillings, and pence. Guineas have not been coined since 1817.

GULDEN. (Fr., Ger., Sp., and It., *Gulden.*)

This is another name for the Austrian florin.

H. This letter occurs in the following abbreviations:—

- Hhd., Hogshead.
- H.M.C., His Majesty's Customs.
- H.M.S., His Majesty's Service.
- H.P., Horse-Power.
- H.P.N., Horse-Power Nominal.

HABERDASHER. (Fr. *Mercier*, Ger. *Kurzwarenhändler*, Sp. *Mercero*, It. *Merciaio*.)

A haberdasher is a seller of small wares, such as ribbons, tapes, etc.

HALL MARK. (Fr. *Poinçon du contrôle*, Ger. *Feingehaltsstempel*, Sp. *Marca del Gremio*, It. *Marco o bollo del registro, punzone del controllo*.)

This is the mark which is made on jewellery and plate at the Goldsmiths' Hall, or the Assay Office, to show its quality, and to indicate in addition the year of marking.

HAMMERED. (Fr. *Exécuté*, Ger. *verkracht*, Sp. *Insolvente*, It. *Expulso, interdetto*.)

A member of the Stock Exchange who is unable to meet his liabilities is said to be "hammered," because the fact of his default is publicly announced to the other members after attention has been called by striking the rostrum with three blows of a wooden hammer. The name of the defaulter is then added to the list of members who have been suspended or expelled owing to their inability to meet their liabilities. If the estate of the defaulter realises 10s. in the £ he may apply to be re-admitted as a member.

HANDSEL. (Fr. *Étrenne*, Ger. *Handgeld*, Sp. *Estreno*, It. *Regalo, caparra*.)

This word has the same meaning as earnest money, that is, money paid to bind a bargain.

HANSE. (Fr. *Hanséatique*, Ger. *Hansa*, Sp. *Hanséatico*, It. *Anseatica lega*.)

This word means a league. It was the name applied to certain commercial cities in north and central Europe, which leagued together for mutual defence in the thirteenth century. The last three of the Hanse Towns, as they were called, were Hamburg, Bremen, and Lübeck. They have now been incorporated with the German Empire.

HARBOUR. (Fr. *Port*, Ger. *Hafen*, Sp. *Puerto*, It. *Porto*.)

A harbour is a haven in which ships can anchor or moor. A harbour is only partly enclosed, and is so distinguished from a dock, which is wholly enclosed.

HARBOUR DUES. (Fr. *Droits de port*, Ger. *Hafengebühren*, Sp. *Derechos de puerto*, It. *Diritti del porto*.)

These are sums paid by ships for entering certain harbours, and for the use of landing-stages, etc.

HARBOUR MASTER. (Fr. *Capitaine de port*, Ger. *Hafenmeister*, Sp. *Capitán de puerto*, It. *Capitano del porto*.)

This is the public officer who has control or charge of a harbour.

HATCHWAY. (Fr. *Escotille*, Ger. *Luke*, Sp. *Escotilla*, It. *Boccaporto*.)

Hatchway is the name given to the opening in the decks of a ship giving access to hold.

HAULAGE. (Fr. *Halage*, Ger. *Transportkosten*, Sp. *Arrastre*, It. *Alaggio*.)

Haulage is an exclusive charge made by railway, dock, and canal companies for the use of carriages or trucks, the use of a line of rails, or the haulage of loaded or empty trucks or wagons between respective points. It does not cover the services of loading and discharging the trucks.

HAVEN. (Fr. *Havre, port*, Ger. *Hafen*, Sp. *Abra, puerto*, It. *Rada, porto*.)

A haven is an inlet of the sea, or the mouth of a river where ships can obtain good anchorage.

HEALTH, BILL OF. (See *Bill of Health*.)

HEAVIES. (See *Heavy Stock*.)

HEAVY STOCK. (Fr. *Actions des compagnies de chemin de fer de transport*, Ger. *Eisenbahnaktien*, Sp. *Valores de compañías de ferrocarriles*, It. *Azioni di ferrovie e di società trasporti*.)

This is the stock of those railways which have a heavy goods traffic.

HECTARE. (See *Metric System*.)

HERITABLE BONDS. (Fr. *Obligations héréditaires*, Ger. *erbliche Obligationen*, Sp. *Obligaciones hereditarias*, It. *Obbligazioni ereditarie*.)

These are bonds having a conveyance of land attached to them, and are given as a security for the faithful repayment of money lent or owing, the latter documents being available in the event of the bonds not being duly honoured, or the interest upon them not being paid when due.

HIGH BAILIFF. (Fr. *Grand bailli*, Ger. *Oberamtmann*, Sp. *Alguacil mayor*, It. *Usciére di campagna*.)

This is the chief officer of the county

court, appointed under the County Court Act, 1888, to attend the sittings of the court, and by himself or by the bailiffs appointed to assist him, to serve all summonses and orders, and execute all warrants, precepts, and writs of the court, with certain exceptions provided by the Act.

HIGH SEAS. (Fr. *Haute mer*, Ger. *hohes or offenes See*, Sp. *Alta mar*, It. *Alto mare*.)

By international law every country bordering on the sea has the exclusive sovereignty over such sea to the extent of three miles from its shores. Such portion of the ocean is known as the closed sea, or territorial waters. All beyond this is the high seas, open to all.

HINDE PALMER'S ACT, 1869. This Act abolished the priority of specialty over simple contract debts which existed previously to January 1, 1870, in the administration of the estates of deceased persons. (Specialty debts are those created by deed, whilst simple contract debts are those created by parol, that is, by any agreement, verbal or otherwise, not under seal.) Any lien, charge, or other security held by a creditor for the payment of his debt is not affected by the Act. Moreover, an executor is not able to retain his own simple contract so as to defeat specialty creditors. If there is a right of retainer the assets of the deceased's estate must first be applied rateably between the creditors by specialty and by simple contract, then the claims of the specialty creditors must be satisfied to the extent of the amount allotted to them, and it is out of the residue, namely, that to which the simple contract creditors are entitled, that the executor must first deduct any debt that is due to himself.

HIRE. (Fr. *Louage*, Ger. *Heuer*, *Miete*, Sp. *Alquilado*, It. *Nolo, fitto*.)

This may signify:—

(1) Wages for service.

(2) The price paid for the temporary use of anything.

HIRE-PURCHASE. (Fr. *Par acompte*, Ger. *Abzahlungsgeschäft*, Sp. *Compra á plazos*, It. *Compra a pagamento rateale*.)

This is an arrangement by which it is agreed that the property in goods is to be transferred in consideration of a certain number of periodical payments. Until the whole of the payments have been made, the property in the goods remains in the vendor or letter. But as the hirer—who is to become the eventual purchaser—gains possession of the goods, he can dispose of them and give a good

title to a third person if the agreement is enforceable as a sale. To prevent such a result it is now the common practice to have the hire-purchase agreement drawn up in such a manner that the hiring may be terminated on the happening of certain events, or at the option of either party. The sale is then subject to a condition precedent, and the hirer is unable to give a title to any person who takes the goods from him, so long as the hiring agreement lasts. Each case depends upon the construction of the wording of the agreement. The cases of *Lee v. Butler*, 1893, 2 Q.B. 318, and *Helby v. Matthews*, 1895, A.C. 471, point out the distinction with the utmost clearness.

Goods let out on the hire-purchase system are not exempt from distraint for rent, if they are upon the premises at the time of the distraint. This is specially provided for by the Law of Distress Amendment Act, 1908.

If the hire-purchase agreement is one under hand alone, a stamp of 6*d.* is required; if under seal, a deed stamp of 10*s.* is necessary.

HIRER. (Fr. *Loueur*, Ger. *Mieter*, Sp. *Arrendador*, It. *Locatore*.)

This is the person who hires goods.

HITHE. (Fr. *Quai*, Ger. *Kai*, *Quai*, Sp. *Muelle*, It. *Molo, banchina*.)

A hithe is a small haven.

HOGSHEAD (hhd.). (Fr. *Tonneau, demi-pièce (anglaise)*, Ger. *Oxhoft*, Sp. *Hogshead, medida inglesa equivalente á 245 litros*, It. *Botte della capacità di litri 245*.)

This term was formerly employed to denote a measure of capacity, but as all liquid measurements are now made in gallons, it is used to designate any large cask. The hogshead, in wine measure, contained 63 gallons, while in beer and ale measure there were only 54 gallons. In the United States it is still used as a measure for liquids, equal to 63 gallons. A hogshead of tobacco varies in different states from about 750 to 1,200 lbs. The word is supposed to mean ox-head, not hogshead.

HOLD. (Fr. *Cale*, Ger. *Schiffsraum*, Sp. *Bodega, presa*, It. *Stiva*.)

The hold is the hollow interior of a ship used for the stowage of cargo.

HOLDER. (Fr. *Porteur*, Ger. *Inhaber*, Sp. *Tenedor, portador*, It. *Possessore, detentore, portatore*.)

This is the person into whose possession a bill of exchange, note, or cheque falls. He may be a simple holder, a holder for value, or a holder in due course. The

first explains itself, and the second is satisfied if value has been given at any time. The holder in due course, by the Bills of Exchange Act, 1882, is defined as a holder who has taken a bill, complete and regular on the face of it, under the following conditions:—

(a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;

(b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(The title of a person who negotiates a bill is defective within the meaning of the Act when he has obtained the bill, or the acceptance thereof, by fraud, duress, force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.)

A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor, and all parties to the bill prior to that holder.

The holder must in due course present the bill for acceptance and payment, and if the acceptance or the payment is refused he must give the requisite notice of dishonour or protest the bill, according as it is an inland or a foreign one.

His rights and powers are as follows:—

(1) He may sue on the bill in his own name.

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.

(3) Where his title is defective, (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

The holder can prove against the estate of any party to the bill who has become bankrupt; and if an act of bankruptcy has been committed by any party who is chargeable upon the bill, the holder can present a bankruptcy petition against him even though the bill is not yet due.

HOME CONSUMPTION. (Fr. *Consommation intérieure*, Ger. *einheimischer Verbrauch*, Sp. *Consumo del (en) país*, It. *Consumo interno*.)

This includes:—

(1) Goods consumed in the country where they are produced.

(2) Foreign goods which have been placed in a bonded warehouse on importation, until the duty is paid, in order that they may be brought into consumption.

HOME USE ENTRY. (Fr. *Sortie de l'entrepôt pour consommation*, Ger. *Be-gleitzettel*, Sp. *Autorización para sacar del depósito*, It. *Permesso di dogana per ritiro dal magazzino per il consumo interno*.)

This is a Custom House document used when dutiable goods are to be removed from a warehouse for home consumption.

HONG. (Fr., Ger., Sp., and It., *Hong*.)

This name is given by the Chinese to any factory belonging to European merchants in Canton. The hong merchants were, previous to the wars with England, ten or twelve natives, who alone were legally entitled to trade with foreigners, or "the outer barbarians."

HONG NAME. (Fr. *Nom écrit en chinois*, Ger. *Hongname*, Sp. *Nombre escrito en chino*, It. *Marca in chinese*.)

This is a mark in Chinese characters used by merchants in China, so that the Chinese can ask for the hong, or manufacture, which they like.

HONORARY. (Fr. *Honoraire*, Ger. *ehren-, unbesoldet*, Sp. *Honorario*, It. *Onorario*.)

This signifies the holding of a title or an office without receiving any fee or salary. The payment to a barrister, and formerly to a physician, since he is supposed to give his services, and cannot sue for his fees, is called an "honorarium."

HONORARY SECRETARY. (Fr. *Secrétaire honoraire*, Ger. *Ehrensekretär*, Sp. *Secretario honorario*, It. *Segretario onorario*.)

This is any person who undertakes to perform secretarial work without any remuneration.

HONOUR. (Fr. *Honorer, faire honneur à*, Ger. *einlösen, honorieren*, Sp. *Honrar*, It. *Onorare, far onore*.)

In commercial circles this signifies the due meeting of some claim or obligation, as the acceptance and payment of a bill of exchange when it becomes due.

HORSE-POWER. (*Force de cheval, force de . . . chevaux*, Ger. *Pferdekraft*.)

Sp. *Caballos de fuerza*, It. *Forza di . . . cavalli*.)

This is the accepted standard used for estimating the power of a steam-engine. According to the theory of Watt and Boulton, it is the force required to raise 33,000 lbs. avoirdupois through one foot in a minute. It is now generally considered that this estimate is too high.

HOUSE. (Fr. *Maison*, Ger. *Firma*, Haus, Sp. *Casa*, Razón social, It. *Casa commerciale*, ragione, ditto.)

This name is applied not only to a dwelling, but also to a firm or trading concern. It is also a term familiarly used when speaking of the Stock Exchange; and amongst bankers the clearing house is often referred to as "the house."

On any inhabited house, occupied as a farm-house, public-house, coffee-shop, shop, warehouse, or lodging-house, the following duties are payable:—

In the £

If the annual value is £20, but does not exceed £40	2d.
Exceeds £40, but does not exceed £60	4d.
Exceeds £60	6d.

Other houses, not included in the list, or dwellings let as flats, pay duties of 3d., 6d., and 9d., respectively.

HULK. (Fr. *Carcasse*, Ger. *Schiffsrumpf*, Sp. *Casco*, It. *Ossatura di scafo*, carcassa di vecchia nave, stiva.)

A hulk is an old ship which is unfit for service and used as a store, etc.

HULL. (Fr. *Coque*, Ger. *Casco*, Sp. *Casco*, It. *Scafo*.)

This is the body of a ship, as distinguished from the masts, spars, rigging, etc.

HUNDRED-WEIGHT. (Fr. *Quintal*, 50 kilogrammes, Ger. *Centner*, Sp. *Quintal*, It. *Mezzo quintale o chilogrammi 50*, quintale inglese.)

This is one of the terms of avoirdupois weight, and generally expressed by the abbreviation cwt. A hundred-weight contains 112 lbs., and is sub-divided into four quarters, each containing 28 lbs. The French quintal is equal to 220.46 lbs., and the Zollverein centner to 110.23 lbs.

HUSBAND AND WIFE. (Fr. *Époux et épouse*, Ger. *Ehemann und Frau*, Sp. *Marido y esposa*, It. *Marito e sposa*.)

The relationship of husband and wife is considered in law as one of contract. In most respects the ordinary law of contract attaches to marriage. In one important respect, however, there is a difference. A marriage is quite legal in England, if it is solemnised, provided

the husband is over fourteen years of age and the wife twelve. These are the ages of consent of the parties themselves. There may now be a valid marriage without the assent of the parents or guardians being obtained. But sometimes difficulties arise. If either of the parties, for instance, makes a false statement when certain preliminaries are required, there is the risk in some cases of a criminal prosecution. These matters, however, are outside the scope of the present article. But all this is entirely on the assumption that the domicile of the parties is English. If the domicile of either of the contracting parties is not English, the law of the domicile must prevail, and the marriage may or may not be valid. A wife acquires the domicile of her husband as soon as she is married, just as she also acquires his nationality, and the domicile of the husband is the domicile of the wife so long as the marriage tie lasts. If the husband changes his domicile, that of the wife is changed also. This matter becomes all important in matrimonial causes. The court will not entertain jurisdiction in a divorce suit in England unless the parties are domiciled in the country, and a husband may prevent his wife from obtaining a release from the marriage tie by changing his domicile before the suit is heard. But residence of the wife is enough to give the court jurisdiction in cases of judicial separation. There are still certain restrictions as to marriage where the parties are related. The table of prohibited marriages is contained in the Prayer Book; but in 1907 the formerly forbidden marriage with a deceased wife's sister was rendered legally possible by a special Act of Parliament.

The agreement of two parties to marry is a contract of betrothment. The promise of each is the consideration for the promise of the other. But though parties may marry during their minority, no action can be taken on a contract of betrothment against the party who is a minor. The minor, however, can sue if the other party to the contract is over age. Mere ratification after the attainment of twenty-one years of a promise to marry made during minority is not enough to make the contract binding. There must be a fresh promise. The promise need not be in writing, but the plaintiff's evidence must be corroborated in some material particular.

A married man may be sued on a

breach of promise to marry, if the woman was unaware of the fact that he was married at the time of making the promise, but not otherwise.

The right of action on a breach of promise does not pass to the executors or administrators of a deceased person unless it is shown that the plaintiff's estate has suffered special damage, which damage was in the contemplation of the parties when the promise was made. This is a matter of considerable complexity, and depends upon many very special circumstances.

By the common law husband and wife were considered one for almost all purposes. Subject to any settlements made, a husband was entitled on marriage to take the rents arising out of any real property held by his wife, and he became the absolute owner of any personal property which belonged to her, either at the time of or after the marriage. These rights are preserved as to those parties who were married before 1883; but a radical change has been made in the law as to those who have been married on or since the first day of that year. The Married Women's Property Act, 1882, has placed married women in a position of comparative independence so far as their property is concerned. For the purposes of contract they are no longer considered as one with their husbands. They contract entirely as to their separate estate, and they can enter into contracts with their husbands as with other persons. The effect of their contracts made since the Act of 1882, and the amending Act of 1893, is to give married women considerable advantages without any of the disadvantages which attach to other persons. Their powers as to the disposition of trust estates was put on the same footing as those of men by a special Act of 1907. The principal advantages enjoyed by married women as to contracting powers are these:—

(a) A married woman only contracts as to her separate estate. If she has no separate estate a creditor is helpless, unless she is in trade.

(b) She cannot be committed on a judgment summons for debts contracted during coverture.

(c) Until the Act of 1882, she could not be made a bankrupt under any circumstances, and after that date she could only be made bankrupt if she was trading separately and apart from her husband. Now, however, under the Bankruptcy Act, 1914, she is amenable

to the bankruptcy law if she carries on trade, whether separately from her husband or not, in the same way as a *feme sole*.

For her own protection the property of a married woman is often so settled upon her that she can neither touch the capital, nor assign or charge the income arising from it. This is called a "restraint against anticipation." It only lasts so long as the marriage tie continues. A restraint against anticipation will not affect the rights of creditors to whom a married woman was indebted at the time of her marriage, and in certain cases the court may remove it if it is shown to be for the benefit of the married woman that this should be done. But here again the Bankruptcy Act of 1914 has stepped in. If a married woman is made a bankrupt, the court may order her separate property, or a part of it, to be taken possession of by the trustee in bankruptcy, even though there is a restraint against anticipation.

It does not necessarily follow that marriage creates a kind of agency, empowering the wife to contract in her husband's name and to bind him when she has no separate property of her own. He is only bound when he has given her authority, express or implied, to pledge his credit. The authority will generally be presumed, so far as necessaries are concerned, when the parties are living together. The wife is, in fact, considered to be the husband's domestic agent. But this presumption may be rebutted. A husband may show that his wife is well supplied with necessaries, or the money with which to purchase them; that he has forbidden her to pledge his credit; that he has forbidden the plaintiff to give her credit; or that the credit has been given to the woman herself, and not to him as principal. If the parties are living apart, the burden of proof is on the creditors to show that the husband is still liable to support his wife, which he must be if the parties have separated by mutual consent, and she is not otherwise provided for. But where the wife is living in adultery, the husband is freed from all responsibility. The question of the agency of a wife depends very largely upon the facts of the particular case. If the husband has once held her out as an agent, he will have great difficulty in displacing the presumption that she has continued to be so.

A husband is still liable to be joined as a defendant with his wife where she

has committed a tort. For example, if a wife publishes a libel or a slander, her husband may be sued for damages for the same. In criminal law, except in the gravest cases, there is a presumption that the wife acts under the compulsion of her husband, and if she is indicted with him she cannot be punished.

The husband must maintain his wife and the children of the marriage, as well as any other children which she may have had before marriage, whilst they are of tender years. If he is unable to do so, the responsibility devolves upon the wife, and any separate property she may possess can be taken to support the husband, children, and grandchildren, if necessary.

The father is generally entitled to the custody and control of his children, and to have them educated in his religion. He may forfeit his rights by misconduct. On his death the mother becomes the guardian of the children, either alone or in conjunction with any other guardian or guardians appointed by the father. This was the state of the law before the decisions under the Guardianship of Infants Act, 1886, made it a matter of pure discretion as to the line which the court will take in any particular case. Also, under this Act of 1886, a mother may nominate a guardian by will to act in conjunction with her husband.

In the absence of a will, and subject to the terms of any settlement, the rights of a husband in the property of his deceased wife are that he is absolutely entitled to the whole of her personal estate, and to a life interest in her real estate, provided, in the latter case, a child has been born capable of inheriting such real estate. Otherwise the real estate goes to the deceased wife's heirs to the complete exclusion of the husband. If the husband dies intestate, the rights of the widow vary according as there are or are not any children of the marriage. If there are no children, the widow, after the creditors have been satisfied, takes the whole of the estate, if its value does not exceed £500, and if it exceeds that sum, then she takes £500 and one-half of the residue of the personal estate. If there are children, the widow's share is one-third of the personal estate. In either case she is entitled to a life interest in one-third of the real estate left by her husband, unless this right, called "dower," has been barred.

Since the old common law unity of

husband and wife has largely disappeared, a married woman can receive gifts from or make gifts to her husband just as though she was a complete stranger. By the law of England a gift is irrevocable, and consequently if a married woman holds any gifts she receives from her husband as her own separate property, though the same may be impugned on the ground of fraud if made shortly before the husband's bankruptcy, especially if they are of an extravagant nature. It has been decided, however, that if a husband makes allowances to his wife for housekeeping expenses, and no special arrangements have been made in respect of any part of the same, whatever savings she effects out of these allowances are not her property, but the property of the husband. A wife may also sue her husband in tort so far as her separate estate is concerned, but the husband has no corresponding right of action against his wife in respect of her torts against his property. By a special provision of the Married Women's Property Act, 1882, however, he can recover property of his own which his wife detains from him by means of what is known as an originating summons. Except as regards separate property, there is no right of action in tort by husband or wife against each other. Also, no criminal proceedings can be instituted by a wife against her husband whilst they are living together as to any property claimed by her. The same thing is true if they are living apart, unless the property has been wrongfully taken by the husband when he is deserting or is on the point of deserting his wife.

Any settlements made between a husband and wife as to the property of either of them may be rectified after a decree has been pronounced dissolving their marriage.

HYPOTHEC. (Fr. *Hypothèque*, Ger. *Hypothek*, Sp. *Hipoteca*, It. *Ipoteca*.)

In Scottish law this is a security in favour of a creditor over the property of his debtor while the property continues in the debtor's possession. It is further used to include what is called in English law a lien, when goods, documents, etc., are in the possession of the creditor.

HYPOTHECATE. (Fr. *Hypothéquer*, Ger. *hypothekieren*, Sp. *Hipotecar*, It. *Ipotecare*.)

This is to place or assign property as security under an agreement; to pledge or to mortgage.