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POPULAR WORDS IN LAW LEXICONS.¹ I.

The range of selection of words and phrases for explanation as legal expressions in several "law dictionaries" and "law lexicons," passes any man's finding out; and, it is believed, does not admit of justification.

While some of these words and phrases are described as "*quasi-legal*," they are not entitled to the privileges of such denizenship. They remain *pseudo-legal*, with all that that implies.

In the selection almost every department of knowledge is represented, no favoritism being shown to the law. Compilers have not stopped (1) with treating technical expressions peculiar to the several branches of jurisprudence and entitled to treatment in any book of the nature of a law dictionary;

Nor (2) with rendering a multitude of expressions in dead tongues, found in oldest rolls and quartos, consisting of medieval Latin, Norman-French, Anglo-Norman, Anglo-Saxon, and Early English: phrases not conveying legal ideas, colloquial utterances about familiar things;

Nor (3) with filling pages with middle age, monastic, and other ecclesiastical or religious phrases, strangely out of place in a "law book";

Nor (4) with including a mass of topographical, geographical, meteorological, astrological, chronological, terrene, and aquatic

¹ See "Law Dictionaries," by same writer, in *American Law Review*, for July-August, 1894.

terms, wholly outside the reasonable limits of any such compilation;

Nor (5) with colonizing a motley horde of genealogical, titular, economic, political, sociological, and ethnographical terms, incontrovertibly alien to a law dictionary;

Nor (6) with recruiting a confusing concourse of armorial, heraldic, and ancient military words, a man would not expect to find in such a book, however heterogeneously "comprehensive";

Nor (7) with producing a congestion of metaphysical, logical, educational, physiological, gynecological, gustatory, pathological, and necrological terms, all peculiarly abnormal;

Nor (8) with collecting a museum of mineralogical, metallurgical, monetary, numismatic, metrical, mathematical, nautical, and East Indian commercial terms, antipodal to the nature of a law book;

Nor (9) with accumulating heaps of ancient and modern agricultural, horticultural, arboricultural, and viticultural words, so conspicuously ill-chosen as to excite wonder;

Nor (10) with assembling from both hemispheres a "mammoth inter-continental aggregation" of anthropological, zoological, ornithological, piscatorial, and venatorial terminologies, the ultra nondescriptness of which, while captivating the adolescent spectator, must astound the reflecting adult;

Nor (11) with including other like stock-in-trade terms scarcely one of which even a justice of the peace would expect to find in any "law" dictionary, from antiquarian Spelman's "Glossarium Archaologicum," projected *two hundred and seventy-five years ago and more*, to its latest faithful copy, another American *omnium gatherum*.

Another class thronging the pages of lexical compilations, to the exclusion of legitimate law phrases and of important English non-legal expressions construed by the courts, consists of plain, common, home-spoken words. To call attention particularly to the conscienceless conscription of this humble class for multiplied service in dictionaries, glossaries, lexicons, etc., is the purpose of this paper.

The words in question are such as are heard every day in car, camp, mine, market, field, shop, school-room. An unassortable list, steadily lengthening, and hard to count, has been transplanted into law dictionaries. Without a shade of legal meaning, these words have been variously entered as genuine *law* terms: with cross-references between allied subjects omitted, propagation by cuttings into "correlatives," "synonyms," and "reciprocals," has been made a study.

From hundreds of these words I select as specimens some of those with the shortest definitions. Their inappropriateness as titles and the crudity of definitions will appear at a glance. They well illustrate "English as she is writ :"—

YARD. A measure of length, containing three feet, or thirty-six inches. A piece of land inclosed for the use and accommodation of the inhabitants of a house.

WINDOW. An opening made in the wall of a house to admit light and air, and to furnish a view or prospect.

WHOLE BLOOD. Blood compounded wholly of the same ingredients.

WHALER. A vessel employed in the whale fishery.

WEEK. Seven days of time. [*Sic*].

WAMPUM. Beads made of shells, used as money by the North American Indians.

VIGIL. The eve or next day before any solemn feast.

VESTRY. The place in a church where the priest's vestures are deposited.

VACCINATION. Inoculation with the cow-pox.

UNINTELLIGIBLE. That which cannot be understood.

TICK. A colloquial expression for credit or trust; credit given for goods purchased.

SUTLER. A person who, as a business, follows an army, and sells provisions and liquor to the troops.

STANDARD. An ensign or flag used in war.

SOLDIER. A military man; a private in the army.

SCRAWL. A word used for scrawl or scroll.

SCHOOL-MASTER. One employed in teaching a school.

ROOT. The under-ground portion of a tree or plant, which serves to support and nourish it. [*Sic*].

ROADWAY. The ground allowed to a railway for track purposes.

ROADSTEAD. A general station for ships, notoriously used as such, and distinguished by the name.

RECTORY. The office of a rector; . . . a rector's manse, or parsonage house.

RED-HANDED. With the marks of crime fresh on him.

PUBLISHER. A person who makes a business of circulating books and the like.

POPERY. The religion of the Roman Catholic Church, comprehending doctrines and practices.

POPE. The bishop of Rome, and supreme head of the Roman Catholic Church.

POOL. A standing water, without any current or issue.

PEW. An inclosed seat in a church.

PERISH. To come to an end; to cease to be; to die.

PENNON. A standard, banner, or ensign carried in war.

PELT-WOOL. The wool pulled off the skin or pelt of dead sheep.

PECK. A measure of two gallons; a dry measure. [*Sic*].

PASTOR. Lat. A shepherd. Applied to a minister of the Christian religion, who has charge of a congregation, hence called his "flock". [*Sic*].

QUARTER. The fourth part of a thing, especially of a year.

NOTORIETY. The state of being notorious or universally well known.

NONSENSE. Unintelligible matter in a written agreement or will.

MINUTE. In measures of time or circumference, a minute is the sixtieth part of an hour or degree.

HOURLY. The twenty-fourth part of a natural day; sixty minutes of time.

MUSTER-BOOK. A book in which the forces are registered.

MOTHER-IN-LAW. The mother of one's wife or of one's husband.

MORAVIANS. . . . A sect of Christians whose social polity is particular and conspicuous. It sprang up . . . on the opening of that reformation which stripped the chair of St. Peter of so many votaries, and gave birth to so many denominations of Christians. [*Sic*].

MONOGRAM. A character or cipher composed of one or more letters *interwoven*, being an abbreviation of a name.

MISSAL. The mass-book.

MILL. A machine or engine for grinding, sawing, manufacturing, etc., also the building containing such machinery.

An American money of account, of the value of the tenth part of a cent.

MIDWIFE. A woman who practices midwifery; an *accoucheuse*.

METER. An instrument of measurement; as a coal-meter, a gas-meter, a land-meter.

MANSE. A residence or dwelling-house for the parish priest.

MASCULINE. Of the male sex.

MALE. Of the masculine sex; of the sex that begets young.

FEMININE. Of or pertaining to females, or the female sex.

FEMALE. Of the sex which conceives and gives birth to young. Also a member of such sex.

LOG. A portion of a trunk of a tree cut of a length convenient for manufacture into lumber. [*Sic*].

LATIN. The language of the ancient Romans.

KEY. An instrument for fastening and opening a lock.

PICK-LOCK. An instrument by which locks are opened without a key.

IOTA. The minutest quantity possible. Iota is the smallest Greek letter. The word "jot" is derived therefrom. [*Sic*].

INUNDATION. The overflow of waters by coming out of their bed.

INDIANS. The aboriginal inhabitants of North America.

HOUSE. A building designed for the habitation and residence of man.

APARTMENT. A part of a house occupied by a person, while the rest is occupied by another, or others.

WALL. An erection of stone, brick, or other material, raised to some height, and intended for purposes of security or inclosure.

HART. A stag or male deer of the forest five years old complete.

GUTTER. The diminutive of a sewer. [*Sic*].

GRADUATES. Scholars who have taken a degree in a college or university.

GUIDE-PLATE. An iron or steel plate to be attached to a rail for the purpose of guiding to their place on the rail wheels thrown off the track.

GAUGE. The measure of width of a railway, fixed, with some exceptions, at four feet eight and one-half inches in Great Britain and America, and five feet three inches in Ireland.

GLEANNING. The gathering of grain after reapers, or of grain left ungathered by reapers. [*Sic*].

GIVER. A donor; he who makes a gift.

GRAIN. Any kind of corn sown in the ground. [*Sic*].

GOUT. An inflammation of the fibrous or ligamentous parts of the joints.

GARTER. A string or ribbon by which the stocking is held upon the leg. [*Sic*].

GARDEN. A small piece of land, appropriated to the cultivation of herbs, fruits, flowers, or vegetables.

FRACTION. A breaking or breaking up; a fragment or broken part; a portion of a thing, less than the whole. [!]

FORAGE. Hay and straw for horses, particularly in the army.

FODDER. Food for horses or cattle.

FOOT. A measure of length containing twelve inches or one-third of a yard.

INCH. A measure of length, containing one-twelfth part of a foot.

FISH. An animal which inhabits the water, breathes by means of gills, swims by the aid of fins, and is oviparous.

GAME. Birds and beasts of a wild nature, obtained by fowling and hunting.

FIGURES. The numerical characters by which numbers are expressed or written.

EXERCISE. To make use of. Thus, to exercise a right or power is to do something which it enables the holder to do.

EPISCOPALIAN. Of or pertaining to episcopacy or to the Episcopal Church.

DOOR. The place of usual entrance in a house, or into a room in the house. [*Sic*].

DIPLOMA. An instrument given by colleges and societies on the conferring of any degrees.

DELIVERY. The act of a woman giving birth to her offspring.

DECALOGUE. The ten commandments given by God to Moses. The Jews called them the "Ten Words," hence the name.

DAUGHTER-IN-LAW. The wife of one's son.

COMPOST. Several sorts of soil or earth or other matters mixed in order to make a fine kind of mould for fertilizing land. [*Sic*].

CHANCEL. The part of a church in which the communion table stands.

CABLE. The great rope of a ship, to which the anchor is fastened.

BUILDING. A structure or edifice erected by the hand of man, composed of natural materials, as stone or wood, and intended for use or convenience.

BRUISE. An injury upon the flesh of a person with a blunt or heavy instrument, without solution of continuity, or without breaking the skin.

BRITISH COLUMBIA. The territory on the north-west coast of North America, once known by the designation of "New Caledonia."

BOILARY. Water arising from a salt well belonging to a person who is not the owner of the soil.

BLIND. One who is deprived of the sense or faculty of sight. [*Sic*].

BIGOT. An obstinate person, or one that is wedded to an opinion in matters of religion, etc.

BEER. A liquor compounded of malt and hops.

BACKWATER. Water in a stream which, in consequence of some dam or obstruction below, is detained or checked in its course, or flows back.

Water caused to flow backward from a steam-vessel by reason of the action of its wheels or screw.

BAD. . . Unsoundness in pleading.

BREATH. The air expelled from the lungs at each expiration. [*Sic*].

AIR. That fluid transparent substance which surrounds our globe.

BURYING-GROUND. A place set apart for the interment of the dead; a cemetery.

BURIAL. Sepulture; the act of interring dead human bodies.

DEAD BODY. A corpse.

CORPSE. The dead body of a human being.

GRAVE. A sepulture. The place where a dead body is interred.

SEPULTURE. A grave or tomb. The place of interment of a dead human body.

FUNERAL EXPENSE. Money expended in procuring the interment of a corpse.

DUMB. One who cannot speak; a person who is mute. [*Sic*].

STULTIFY. To make one out mentally incapacitated for the performance of an act.

Space will not admit of comment upon particular words.

There is apparently no object or relation for describing which most of the ordinary words, any one may readily call to mind, may not be found in these convenient volumes. The reader has simply to take a subject, and he will here find words for any commonplace statement about it. Thus "house" suggests walls, windows, door, key, balcony, yard, garden, apartment, lodgings; which, with related words, as seen in the partial list given, are defined (not one upon the basis of a judicial ruling), establishing the claim that the dictionaries under review *are* "the most complete ever published . . . containing the largest number of words". But the inquiry suggests itself, Why did not the learned authors frame definitions for room, roof, chimney, gable, partition, transom, lock, portico, veranda, vestibule, laundry, coal-hole, ash-bin? Some boy may want these "terms" defined: he is as likely to look into a law dictionary for them as for those of equal "importance" (or unimportance) which he finds there. Definitions for one-half of a group of home words lead him to expect to find the others. He may regard the discarded ones as the more important. The Irish coachman was of the opinion that in docking his horses' tails his employer had thrown away the best part of the beasts.

By means of unconstrued words, explained at length in these erudite works, one might outline an episode of commercial life, thus :

(1) Letter, autograph; spelling, punctuation, points; introduction; clause, paragraph, parenthesis; common sense proposition, offer; printed bill-head; hand, handwriting, initials; correspondence; letter-book;

- (2) Address; postage, postage stamp, stamp; courier, messenger; drop letter; letter-carrier, postman; post-marked;
- (3) Mislaid, lost;
- (4) Despatch, dispatch;
- (5) Dead letter, dead-letter office; P. M., postmaster, local, general; P. O., post office, post office department;
- (6) Produce, remit;
- (7) Excuse, extenuate, quibble;
- (8) Modify; fraction, cent, half-cent, farthing.

In like manner there may be prepared from unadjudged words, also learnedly expounded in these "handy" publications, *inter alia*, an account of foreign travel, an address on economics, an essay on a natural science, a discourse on church architecture, a homily on denominational tenets, a pregnant lecture on obstetrics. For some unexplained reason one gravid volume is full of gynecological terms, but, consistently with the general plan according to which its miscellaneous contents have been thrown together, it fails to include scores of kindred terms, not a few of which are found in its own definitions.

Inspection will confirm the truth of these statements.

Defining "hand" as chirography, "midwife" as accoucheuse, "vaccination" as inoculation, "gout" as inflammation of the ligamentous parts, "fish" as an oviparous animal, and neglecting to explain to beginners (in law studies) these less familiar terms, makes a "scholarly" work a *felo de se*, and recalls the German's observation that "vereeas in Ingleesh you say 'tscientz', in Tcherman ve haf der vord 'Wissenschaftlichen', vich is more simble unt gombrehensif."

But authorship in legal lexicography has not stopped with vying with the publishers of school dictionaries in expounding words current in the speech of the common people. The "terms" selected, it was seen, admitted of other service. Words could be entered under different inflections; the initial word in combinations could be transposed till each had stood first. A service, perhaps as high as sevenfold, could be exacted of a single pertinent or impertinent entry by re-defining, literally or substantially, under correlatives, derivatives, synonyms, and antonyms. With cross-references omitted, who would discover the "system"? Examples:—

HE. The use of this pronoun in a written instrument, in referring to a person whose Christian name is designated therein by a mere initial, is not conclusive that the person referred to is a male; it may be shown by parol that the person intended is a female.

HIS. The use of this pronoun in a written instrument, in referring to a person whose Christian name is designated therein by a mere initial, is not conclusive that the person referred to is a male; it may be shown by parol that the person intended is a female.

LIGHT. A window, or opening in the wall for the admission of light.

LIGHTS. Windows; openings in the wall of a house for the admission of light.

INCOME. . . . "Income" means that which comes in or is received from any business or investment of capital, without reference to the outgoing expenditures.

ANNUAL INCOME. . . . Income means that which comes in or is received from any business, or investment of capital, without reference to the outgoing expenditures.

KEY. A wharf for the lading or unlading of merchandise from vessels. More commonly spelled "quay".

QUAY. A wharf for the loading or unloading of goods carried in ships. This word is sometimes spelled "key".

WEAR, or WEIR. A great dam or fence made across a river, or against water, formed of stakes interlaced by twigs of osier, and accommodated for the taking of fish, or to convey a stream to a mill.

WEIR. A fence or an enclosure of twigs, set in a stream to catch fish.

FISH ROYAL. These were the whale and the sturgeon, which, when thrown ashore, or caught near the coast, became the property of the king.

ROYAL FISH. Whale and sturgeon; so called in English law, as belonging to the king by prerogative, when thrown ashore, or caught near the coast.

REGAL FISH. Whales and Sturgeons.

STURGEON. A royal fish which, when either thrown ashore or caught near the coast, is the property of the sovereign.

WHALE. A royal fish, etc.

DOE, JOHN. The name of the fictitious plaintiff in the action of ejectment.

JOHN DOE. The name which was usually given to the fictitious lessee of the plaintiff in a mixed action of ejectment.

The longer expressions, and more particularly the technical legal ones, furnish still better illustrations.

The meaning of "whole blood" and of "half-blood" is given at length, in almost the same language, under BLOOD, BROTHER, FULL BLOOD, HALF-BROTHER, and WHOLE BLOOD. The difference between a "court of record" and a "court not of record", is stated in identically the same language, under COURT, COURT OF RECORD, and RECORD, COURTS OF. And the same matters are doubtless inserted under other titles.

The rule, with few exceptions, has been to treat expressions consisting of an adjective and a substantive, under each word, and many are also entered elsewhere. The extent to which reduplication has been carried, in certain books, with all sorts of expressions, could not easily be overstated.

The formula followed would seem to have been: Anything, everything, variations. Divide, subdivide, redivide. Transpose, transform. Reverse, invert.

Like methods have been used in selecting and treating obsolete, isolated "terms" from the every-day speech of earlier generations. These have been disinterred by more than one aspirant to a place in law literature. Such dead words, descriptive of commonest external objects, not a few in vogue solely in localities remote from cities, have been enrolled upon the poll books, without investigation, without concern whether they were a portion of the speech to which accredited, without discrimination; but *en masse*, as scissored by assistants, out of the oldest English and Scotch word-books (not to speak of glossaries of Norman-French, Anglo-Saxon, and Latin, pure and impure), and admitted unchallenged, nay welcomed, into no fewer than four American law lexicons, each "the most comprehensive," though each lexicographer in turn crowded his morgue by desecrating the same old unprotected burying grounds.

For the delectation of the reader, a few terms with their time-honored definitions, the shortest again being selected:—

BALAEANA. A large fish, called by Blackstone a whale.

GARTH. A dam or wear in a river, for the catching of fish.

FISH GARTH. A dam or wear in a river for taking fish.

BEASTGATE. In Suffolk, England, imports land and common for one beast.

FENATIO. The fawning of deer; the fawning season.

FEONATIO. The fawning season of deer.

FOINESUN. The fawning of deer.

HIBERNAGIUM. The season for sowing winter corn.

HYBERNAGIUM. The season for sowing winter grain, etc.

IBERNAGIUM. The season for sowing winter corn.

JOCELET. A little manor or farm.

YOKELET. A little farm, requiring but a yoke of oxen to till it.

JONCARIA, or JUNCARIA. Land where rushes grow.

JUNCARIA. The soil where rushes grow.

ANCHOR. A measure containing ten gallons.

ANKER. A measure containing ten gallons.

KINTAL, or KINTLE. A hundred pounds in weight.

QUINTAL, or KINTAL. A weight of one hundred pounds.

SOWLEGROVE. February; so called in South Wales.

HYEMS, HIEMS. Lat. Winter. Written, in some of the old books "yems."

YEME. Winter; a corruption of the Latin "hieme."

IULE. In old English law, Christmas.

YULE. The times of Christmas and Lammas.

ARVIL-SUPPER. A feast or entertainment made at a funeral in the North of England.

PERTICULAS. Certain poor scholars of the Isle of Man.

CIRIC-BRYCE. Any violation of the privileges of a church.

CYRICBRYCE. A breaking into a church.

CIRIC SCEAT. An ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.

CYRICSCEAT. (From *cyric*, church, and *sceat*, a tribute.) A tribute or payment due to the church.

FOGAGIUM. A kind of rank grass of late growth, not eaten in summer.

MARKEPENNY. A penny anciently paid at the town of Maldon by those who had gutters laid or made out of their houses into the streets.

ANSEL, ANSUL, or AUNCEL. An ancient mode of weighing by hanging scales or hooks at either end of a beam or staff, which, being lifted with one's finger or hand by the middle, showed the equality or difference between the weight at one end and the thing weighed at the other.

AUNCEL WEIGHT. An ancient mode of weighing, described as a kind of weight with scales hanging, or hooks fastened to each end of a staff which a man, lifting up upon his forefinger or hand, etc., etc.

VADLET. The king's eldest son; hence the valet or knave follows the king and queen in a pack of cards. [*Sic*].

HIKENILD STREET. One of the four great Roman roads of Britain. More commonly called "Ikenild Street."

IKENILD STREET. One of the four great Roman roads in Britain; supposed to be so called from the *Iceni*.

WATLING or WETLING STREET. One of the four great Roman roads in Britain.

SADBERGE. A denomination of part of the County Palatine of Durham.

WINDSOR FOREST. A royal forest founded by Henry VIII.

HARBINGER. In England, an officer of the royal household.

HERBINGER, or HARBINGER. An officer of the royal house who . . . allots lodgings.

JUDGER. A Cheshire juryman.

KYMORTHA. A Welsh term for a waster, rhymer, minstrel, or other vagabond who makes assemblies and collections.

COUNTER. The name of two prisons formerly standing in London, but now demolished. They were the Poultry Counter and the Wood Street Counter.

POULTRY COUNTER. The name of a prison formerly existing in London.

WOOD-STREET COMPTE. The name of an old prison in London.

Why not five thousand other old-timers, fully as "legal" as the thousand of which the preceding are specimens? Why discriminate between non-legal expressions, old or new, except on the *quantum sufficit* principle? Comment upon individual words and definitions must be dispensed with. *Res ipsa loquitur*.

While the proclaimed "function of a law dictionary is not to explain words which every intelligent man is credited with knowing," the real object of a few compilers has been, it is plain, to crowd together for explanation, and ingeniously to reduplicate, *ad libitum*, anything and everything, under the name of "law."

A composite of odds and ends must remain a miscellany; enlargement is not improvement; distention is not growth; copying is not scholarship; scissoring not editing; reprint not revision; manufacture not authorship.

From the view furnished by the foregoing specimens of *modern* common words, it is apparent that in the compilation of these law works, so styled, designed largely, if not chiefly, for the instruction of students, the assumption seems to have been that law students need information upon every-day matters. Indeed, the thoughtful reader again and again has forced upon him the query, Do these authors include law students among intelligent people? Do they credit students with common sense? The query is necessarily limited to *students*. Lawyers and judges, all learned in the law and acquainted with common English words, are the only other persons who occasionally consult law dictionaries.

Authors and publishers have ever evinced a paternal interest in the books students buy. But not all authors regard students, in and out of law schools, as deficient in common school knowledge. That this has been the conception of the needs of students generally, by a few men who get up books heralded as "scholarly," "comprehensive," "exhaustive," is justly inferable from the words already considered, apparently transferred, with "improvements," from spelling books to the pages of "law" dictionaries.

As to the popular words defined in original language in the books under consideration, while an office boy might be gratified by their variety, it is not easy to believe that any young man admitted to read law would expect to find them in his law dictionary; or, discovering them there, could not frame more creditable, less puerile, definitions than some of those given.

In perusing these tumescent productions, one recalls definitions found in school examination papers; *e. g.*: CHIMERA. A thing used to take likenesses with. CYNICAL. A cynical lump of sugar is one pointed at the top. GENDER. The way whereby you tell what sex a boy is. IMMACULATE. The state of those who have passed the entrance examination at Harvard.

The foregoing observations would not apply to a book containing a few common words *defined* for an artistic end; as where, owing to sizes of type which will not "justify" on the same line, the choice lies between leaving blank all of the line after the title word, and inserting a brief definition of that word in type which will justify. This mechanical difficulty would occur if a subject word in antique capitals were followed by comment in nonpareil.

If, peradventure, the classes of words of which those given are representative should be considered germane, then the *modus faciendi* for the future glossary-maker is established:—

1. Procure, among other material-furnishers, two copies each of a vernacular, an Anglo-Saxon, a Norman-French, a Latin and a Scotch dictionary, and an old English law dictionary.

2. Transfer to the copy substantial portions of these with copious excerpts from political histories; antiquated grammars; chronicles of the middle ages; church rituals; inventories and rosters of castles, monasteries and nunneries; archæological encyclopedias; and other repositories of ancient learning—four-fifths of it already found in transatlantic compilations two hundred and fifty years out of date.

3. Preface each translation or explanation with the formula "In old English law," "In old Scotch law," "In Roman law," etc., as the case may require.

4. Print and label the whole as "Law," and *fiat! presto! mirabile!* after the lapse of six short months, a "Law Dictionary," or a "Law Dictionary and Law Glossary," composed and otherwise manufactured, and marketed!

William C. Anderson.