Legal glossary
For Washington County, Maryland, 1804-1806, Sheriff's Records

The majority of these terms are taken from
A dictionary of American and English law : with definitions of the technical terms of the canon and civil laws : also, containing a full collection of Latin maxims, and citations of upwards of forty thousand reported cases in which words and phrases have been judicially defined or construed. By Stewart Rapalje and Robert L. Lawrence. Jersey City, N. J.; Frederick D. Linn and Co., 1883.

While the Rochester records used the legal terminology of the 1804-1806 time period, this 1883 text may be useful in providing an understanding of some of the terms. The book was made available by the Maryland State Law Library. Additional historical and reference sources may be found at http://www.lawlib.state.md.us/

The other definitions, marked with a *, are from:
Black's law dictionary. Bryan A. Garner, editor in chief. St. Paul, MN : Thomson/West, c2004.
The example of a Warrant of Resurvey is from www.findlaw.com.

Capias
[Latin "that you take"] Any of various types of writs that require an officer to take a named defendant into custody. • A capias is often issued when a respondent fails to appear. *

Capias ad satisfaciendum
[Latin "that you take to satisfy"] Hist. A post judgment writ commanding the sheriff to imprison the defendant until the judgment is satisfied. Abbreviated - ca-sa *

Cepi corpus
Cepi often used in a capias return by an arresting sheriff as in cepi corpus et est in custodia ("I have taken the defendant [or body] and he is in custody").*

Distress.
The act of taking movable property out of the possession of a wrong-doer, to compel the performance of an obligation, or to procure satisfaction for a wrong committed.

Distress for Rent.
The principal kind of distress given by law is that used to compel payment of rent in arrear, especially of a landlord against his tenant.

Docket, or Docquet.
(From "dock," to cut,) is an epitome or abstract of a judgment, decree, order, &c.
§ 2. Enrolment. — In English Chancery practice, a docket was formerly used for the purpose of enrolling a decree or order of the court. (See Enrolment.) It consisted of a statement of the tiling of the bill, petition, &a, and the other pleadings or proceedings; a recital of the decree made on the hearing, and the adjudication or adjudicatory part (q. v.), which set forth the mandatory part of the decree. It was certified by the clerk of records and writs, signed by the lord chancellor, engrossed on parchment in the form of a continuous roll, and deposited at the Public Record Office, when it became a record (q. v.) Dan. Ch. Pr. 882; Braith. Pr. 446.

§ 3. Judgment. —By Stat. 4 and 5 Will. & Mary, c. 20, an alphabetical index or docket of judgments was directed to be kept by the clerk of the dockets in each of the superior courts of the common law, in order to give notice to intending purchasers of land from judgment debtors, because the judgment bound the land of the debtor from its date, even if the land had been sold before execution was issued. These dockets were closed by Stat. 2 and 3 Vict. c. 11, the provisions for registration of judgments (q. v.) having made them unnecessary. (1 Wms. Real Prop. 85.) Similar judgment docket books are kept in the offices of the clerics of courts in many of the States.

Ejectment.
§ 1. An action brought for recovering land from a person wrongfully in possession of it. Now, such an action is called, in England and in the code States, "an action for the recovery of land," as to which, see Recovery.
§ 2. The action of ejectment was originally a complicated proceeding, resting on several fictions. It was devised to escape from the still greater intricacies of real actions, which were the proper mode of trying questions of title to the freehold of land, while ejectment was available only for persons entitled to the possession of land under a lease or other chattel interest. To adapt the remedy to questions of freehold title two fictions were introduced— one, an imaginary lease by the real plaintiff (the freeholder) to an imaginary "John Doe" (the nominal plaintiff); and the other, an imaginary ouster of John Doe by "Richard Roe," the nominal defendant, commonly known as the "casual ejector." The person really in possession of the land was then allowed to defend the action on condition that he admitted the truth of these fictions and relied only on his title, as a def6nce. Ad. Eject. 1-1G; First Rep. C. L. P. Comm. 54 et seq.

Facias
[Law Latin] That you cause. • Facias is used in writs as an emphatic word. *

Fee.
Norman-French : *fee, fe, fle*; Low Latin: *feodum*, from Gothic, *faihu*, property (modern German *vieh*, cattle). *Feodum* originally meant land granted in consideration of services to be rendered, as opposed to allodium, or land held absolutely. Litt. Dict. 8 v. Fief; Diez. Worth, s. v. Fio; Digby Hist. it. P. 59 n. (9):
§ 1. Fee is applied to property to denote that it has the quality of descending to the heirs of the owner for the time being if he does not dispose of it during his life or by his will, supposing he has power to do so. Thus, an office or annuity in fee is one which descends to the heir of the holder for the time being on his death intestate. (See Annuity; Office.) The term is, however, chiefly of importance as applied to land, estates of inheritance in land being called "estates in fee."

Fieri facias
[Latin "that you cause to be done"] A writ of execution that directs a sheriff to seize and sell a defendant's property to satisfy s money judgment. Abbreviated to Fi fa *

Fine.
Fines were so called from the words with which the record of the fine began: *Haece est finalis concordia inter*, &c: "This is a final concord or compromise between," &c. Wms. 106; Litt. § 441.

§ 1. Criminal.— In criminal law, a fine is a sum of money ordered to be paid by an offender, as a punishment for his offence. A fine is at common law one of the punishments for misdemeanors, and it has been made a punishment for many offences by modern statutes. (Greaves Cr. L. 6 ; Steph. Cr. Dig. 7; 4 Steph. Com. 444. "And it is called *finis*, because it is an end for that offence." Co. Litt. 126b; 8 Co. 39a, 59b.) Thus, in England, when any person has been convicted of an indictable misdemeanor punishable under the Criminal Law Consolidation Acts (24 and 25 Vict, cc. 96, 97, 98, 99, 100), the court may, in addition to or in lieu of any punishment authorized by the particular act, inflict a fine upon the offender. (4 Broom & H. Com. 247,472; 4 Steph. Com. 444.) In the United States, fines are to a great extent discretionary as to amount (within certain statutory limits), but the United States constitution forbids the imposition of excessive fines. Amend. Art. 8.

§ 2. For contempt of court.—The superior courts and courts of record [see Court, 2, 3,) have a general power of imposing pecuniary mulcts for disobedience to their orders, not only on their own officers and on parties to suits pending before them, but also on strangers, e. g. recusant witnesses and the like. See Amercement ; Contempt.

§ 3. Copyhold fines. — In the law of tenure, a fine is a money payment made by a feudal tenant to his lord. The only existing fines of any importance occur in copyhold lands, where upon a change in the tenancy a fine is commonly due to the lord. (Co. Litt. 59 b.) The most usual fine is that payable on the admittance of a new tenant, but there are also due in some manors fines upon alienation, on a license to demise the lands, or on the death of the lord, or other events. Elt. Copyh. 159.

Fines are of two kinds, arbitrary and certain.

§ 4. Certain.—A fine certain may be fixed by the custom at a particular sum for every admittance, when it is called a "general fine," (Middleton v. Jackson, 1 Ch. Rep. 33; Toth. 164;) or at so much for every acre, or the like; or it may be ascertained by reference to some other standard, as where the tenant is to pay a year's value for a line.

§ 5. Arbitrary.—The amount of an arbitrary fine is not left to the discretion of the lord, except in those cases where the grant is purely voluntary, as where a copyhold has come into the ownership of the lord, or where a copyholder for lives, without right of renewal or power of nominating a successor, surrenders his estate for the purpose of putting in more lives. In other cases the fine, though arbitrary, must be reasonable; and the court will decide what is reasonable under the particular circumstances. (Elt-Copyb. 162.) In ordinary cases it must not exceed two years' improved value of the land. Id. 105 ; Co. Litt 59 b.

§ 6. Full-Small.—A full fine is the highest amount which the lord can exact on an ordinary admittance, as opposed to a small or nominal fine; thus, in some manors where a person who is already a customary tenant is admitted to other copyholds he pays only a small fine certain, e.g. a penny. Elt. Copyh. 164

§ 7. General fine—Dropping fine.— There are also many fines payable under particular customs and having special names; thus, in some manors there is a custom for the lord of the manor for the time being to admit each tenant to his estate, which gives him the right to hold it during the joint lives of himself and the admitting lord ; on the death of the lord the tenant pays what is called a "general fine" for admittance to the succeeding lord, which gives him a new estate during the joint lives of himself and the new lord, while on the death or alienation of the tenant his heir or devisee pays the lord a "dropping fine" for admittance. Somerset v. France, 1 Str., cited in Elt. Copyh. 160.

§ 8. Fines on alienation.—One of the incidents of tenure *in capite* by knight service was that a fine was due to the king on every alienation or conveyance of the land by the tenant to another person. Fines of this kind were abolished by Stat. 12 Car. II. c. 21. 2 Bl. Com. 71.
§ 9. Fines of land.—Before the Fines and Recoveries Act (q. v.) (Stat. 3 and 1 Will. IV. e. 74,) there existed a fictitious judicial proceeding known as a fine, which was formerly in common use as a mode of conveying land. It was really a compromise of a fictitious suit commenced concerning the lands intended to be conveyed, and the operation (called levying a fine) was thus performed. A *praecipe*, or writ, was sued out and the parties appeared in court; a composition of the suit was then entered into, with the consent of the judges, whereby the lands in question were declared to be the right of (i. e. to belong to) one of the parties. This agreement was reduced into writing, and was enrolled amongst the records of the court, so that it had the effect of a judgment of the court. On the completion of the fine a writ was issued to the sheriff of the county in which the land lay, in the same form as if a judgment had been obtained in a hostile suit, directing the sheriff to deliver seisin and possession to the person who acquired the lands. But if he was already in possession this writ was dispensed with. A fine consisted of five parts, namely, the original writ, the license to agree, or *licencia concordandi*, which was given by the leave of the court, on payment of a fine to the king, called the "king's silver." The third part was the concord or agreement, by which it was agreed that the lands were the right of the person in whose favor the fine was levied. The fourth part was a note of the proceedings, drawn up by an officer called the "chirographer;" and the fifth part was the foot or chirograph of the fine, which recited the whole proceedings. This chirograph was delivered to the parties, and was legal evidence of the fine, and was retained by the purchaser as one of his title-deeds. (Wms. Seis. 106; 2 Bl. Com. 348 ; 1 Steph. Com. 559; Shelf. R. P. Stat. 301.) The person to whom the land was to be conveyed was called the complainant or conusee, and he by whom it was to be conveyed the deforciant (see Deforcement) or conusor (cognisor), because he acknowledged the right of the complainant. Wms. Seis. 108; 3 Bl. Com. 174.
§ 10. The principal use of fines was to put an end to all adverse claims to the land after a certain period. For this purpose a fine required to be levied with proclamations, i. e. to be openly and solemnly read in court in four successive terms. Such a fine barred the claims of all persons unless they took proceedings within five years. (Wms. Seis. 109.) A common instance of this being done was when a person had acquired a tortious fee-simple by a feoffment, and wished to bar the owner of the reversion; he did this by levying a fine.
§11. Fines were also used by tenants in tail to effect a discontinuance of the entail (see Discontinuance), and to bar their issue in tail (Wms. Seis. 158; see recovery), and to enable a married woman to join with her husband in making a conveyance of her lands, which she could not otherwise do; in such a case the wife was examined by the judges apart from her husband, in order to ascertain whether she consented freely to the conveyance. Id. 108. For the other operations of a fine, see Smith Fines 2; Hargrove's note to Co. Litt. 121a n. (1).
…
$ 16. Abolition.—Fines were abolished by the Fines and Recoveries Act (q. v.), which substitutes simpler modes in those cases where the operation of fines was beneficial. The Statute of Limitations (3 and 4 Will. IV. c. 27) was passed to provide for the protection of titles to land after the lapse of a certain time, without the necessity of levying a fine. See Non-claim.

Forfeiture

§ 1. Forfeiture is where a person loses some property, right, privilege, or benefit in consequence of having done or omitted to do a certain act.

§ 2. Lease.—Thus, where a lease contains a provision enabling the lessor to put an end to the term if the lessee fails to pay the rent, or comply with the covenants, then if the lessee fails to pay his rent or repair, and the lessor puts an end to the term by re-entry, a forfeiture of the lease is said to take place.

§ 3. Relief against forfeiture.—In some cases the courts will relieve against a forfeiture, i. e. prevent the person entitled to take advantage of it from doing so, the general rule being that the court will relieve against a forfeiture when its object is to secure the performance of some collateral act, such as the payment of money, and when the court can give by way of compensation all that was expected or desired. (Peachy v. Duke of Somerset, 1 Str. 447; Sloman v. Walter, 1 Bro. Ch. 418; 2 White & T. Lead. Cas. 992.) Thus, the court will relieve against the forfeiture of a lease for non-payment of rent, on the lessee paying what is due. (Snell Eq. 274.) The powers of the court in this respect have been extended by statute, in England, to the case of forfeiture for breach of a covenant to insure against fire. 22 and 23 Vict. c.35, § 14; 23 and 24 Vict. c. 126, § 2; Wms. Real Prop. 384; Woodf. Laud. & T. 297 et seq.

§ 4. Copyhold.—A copyhold may be forfeited by a wrongful act to the prejudice of the lord, or by anything which amounts to a determination of the tenancy, e. y. by waste, refusal to perform the customary services, &c. Elt. Copyh 200.

§ 5. Ship.—If the master or owner of a British ship conceals the British character of the ship, or assumes a foreign character with intent to deceive any person entitled to inquire into the matter, the ship is forfeited to the crown. Merch. Shipp. Act, 1854, s. 103, § 2; The Annandale, 2 P. D. 179, 218.

§ 6. Estates.—Formerly, forfeiture was a result of many acts by tenants' or owners of estates on the ground of their being considered by the feudal law as contrary to the duties of the tenants towards their lords. Thus, a feoffment of land by a tenant for life was a forfeiture of his estate, because it was an attempt to dispose of the reversion, (Co. Litt. 251a, where other instances of forfeiture are given; 2 Bl. Com. 275;) but this operation of a feoffment has been abolished. Stat. 8 and 9 Vict. c. 106. See Feoffment.

§ 7. In criminal law, forfeiture now seldom occurs. If a person solemnizes or assists at the marriage of any descendant of King George II., in contravention of the Stat. 12 Geo. III. c. II his lands and goods are forfeited to the queen. (Steph. Cr. Dig. 39.) If a person is outlawed for treason, his lands are forfeited to the crown. If a person is outlawed for felony, he forfeits to the crown all his goods and chattels, real and personal, and also the profits of his freeholds during his life. After his death, the queen is further entitled to his freeholds for a year and a day, with the right of committing in them any waste she pleases (called the queen's year, day, and waste). Formerly, conviction for any kind of felony caused a forfeiture of goods and chattels, both real and personal, but this has been abolished. Wms. Real Prop. 12G; 2 Bl. Com. 251; Stats. 33 and 34 Vict, c 23; 54 Geo. III c. 145.

Gaol.

A prison for temporary confinement; a jail; a strong place for the confinement of offenders against the law.

Legal glossary
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Habere facias possessionem .
[Law Latin "that you cause to have possession"] Hist. A writ giving a successful -action plaintiff the possession of the recovered land. Abbreviated to habere facias or hab. fa. *

Imparlance
Hist. 1. A continuance granted for the purpose of giving the requesting party (usu. the defendant) further time to answer the adversary's last pleading (esp. the plaintiff s writ, bill, or count), often so that the parties will have time to settle the dispute. • Imparlances were abolished in England in 1853. 2. A petition for such a continuance. 3. The permission granting such a continuance. *

Military law.
The branch of public law governing military discipline and other rules regarding service in the armed forces. It is exercised both in peacetime and in war, is recognized by civil courts, and includes rules far broader than for the punishment of offenders. Also termed military justice. Sometimes loosely termed martial law. *

Orphans' Court .
The name used in some of the States - Delaware and New Jersey, for instance, - as the title of a court having jurisdiction over the probate of wills, and the administration and settlements of decedents' estates.

Recognizances
A bond or obligation, made in court, by which a person promises to perform some act or observe some condition, such as to appear when called, to pay a debt, or to keep the peace; specif., an in-court acknowledgment of an obligation in a penal sum, conditioned on the performance or nonperformance of a particular act. • Most commonly, a recognizance takes the form of a bail bond that guarantees an unjailed criminal defendant's return for a court date (the defendant was released on his own recognizance). *

Summons.
§ 1. In English law.—A summons is a document issued from the office of a court of justice, calling upon the person to whom it is directed to attend before a judge or officer of the court for a certain purpose.
§ 2. In New York and many other code States, the summons is the process used in commencing a civil action in a court of record, whether it be an action at law or a suit of an equitable nature. Properly speaking, such a summons is not " process " but is rather in the nature of a mere notice informing the defendant that an action has been commenced against him, and that he is required to answer the complaint of the plaintiff therein within a specified time. In some cases a copy of the complaint is annexed to and served with the summons; if this is not done the summons notifies the defendant where the complaint will be filed.
§ 3. In police court practice, a summons is the ordinary way of compelling the appearance of a person against whom a complaint, information or other proceeding has been brought, in cases where the justice does not desire to issue a warrant in the first instance. See Warrant.

Warrant.

§ 1. In its primary sense, a warrant is an authority: See Co. Litt. 52a.

§ 2. Letters patent.—In England, every royal grant under the great seal is sealed by the lord chancellor under the authority of a warrant prepared by the attorney or solicitor-general, setting forth the proposed letters patent, countersigned by one of the principal secretaries of state, and sealed with the privy seal. Stat. 14 and 15 Vict. c. 82; 1 Steph. Com. 619; Stat. 15 and 16 Vict. c. 83, § 15 ; Johns. Pat. 288. See Great Seal ; Privy Seal ; Sign Manual.

As to warrants for the delivery of goods, see Dock Warrant; Delivery Order. As to share warrants, see Share, § 5. See, also, Warrant of Attorney.

Warrants are used in executing process both in civil and criminal cases.

§ 3. Bailiff's warrant.—In ordinary actions, when a sheriff does not execute a writ either personally or by his under-sheriff, he must authorize a bailiff or deputy to execute it, and this authority is given by a document called a "warrant." Sm. Ac. 251. See Bailiff.

§ 4. Warrant to bring up prisoner as witness.—Stat 16 and 17 Vict. c. 30, §9, enables a secretary of state, or judge of any of the common law courts, to issue a warrant for bringing up any prisoner or person committed for trial, to he examined as a witness in any court. Coe Pr. 171. See Habeas Corpus, § 4.

§ 5; Admiralty practice.—Under the old practice of the English Admiralty Court, a warrant in a cause i*n rem* answered to and was almost in the same words as the writ of summons in an admiralty action *in rem* under the new practice. Wms. & B. Adm. 191.

In criminal procedure, warrants authorizing the arrest or apprehension of persons charged with or suspected of having committed indictable offenses, are issued in the-following cases:

§ 6. Warrant to answer.—A warrant to apprehend a person accused of an indictable offense may be issued by a justice of the peace or police justice, either in the first instance on a sworn information, or after a summons requiring the accused to appear and answer the charge has been served on him and disobeyed. This kind of warrant is sometimes called a "warrant to answer." Stone Just. 100.

§ 7. Warrant to appear on indictment.—A warrant may also be granted by a justice to apprehend a person who has been indicted of an offense, and is at large. Arch. Cr. PI. 83; Pritch. Quar. Sess. 176. See Backing a Warrant.

§ 8. Bench warrant.—A bench warrant is a warrant issued by the court before which an indictment has been found, to arrest the accused and bring him before the court to find bail for his appearance at the trial. Arch. Cr. PI. 83; Pritch. Quar. Sess. 178.

§ 9. Warrant of deliverance.—A warrant of deliverance is a warrant to discharge from prison a person who has been bailed. Arch. 90.

The following kinds of warrants are used in summary proceedings, before justices of the peace and other magistrates:

§ 10. Warrant of distress.—A warrant of distress is a warrant authorizing a penalty or other sum of money to be levied by distress and sale of the defendant's goods. Stone Just. 193.

§ 11. Warrant of Commitment.—A warrant of commitment authorizes the commitment of the defendant to prison for a certain time, and is granted either (1) where the imprisonment is the punishment for/the offense; or (2) after a return of *nulla bona* to a warrant of distress; or (3) in the first instance on default in paying a penalty or other sum of money. Stone Just. 197 et seq.

Legal glossary
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Warrant of Resurvey

The early Maryland case of Cunningham v. Browning, 1 Bland 299, 310-12 (1827), is helpful in identifying a variety of warrants.

> There were under the Proprietary's government, and still are, five different modes of beginning to obtain title to lands, or, in other words, five several kinds of warrants.... If it be his object...to obtain a certain quantity of vacant land any where, without regard to any particular space, or tract...the register of the land office gives him a common warrant, directed to the surveyor, commanding him to lay out the specified quantity of land.... But if required by the applicant ...the register will insert a particular description of the land...in the warrant itself; which specification gives to it the denomination of a special warrant... . But, if the applicant had already obtained a title...and only wished to add to it some contiguous vacancy, he may obtain...a warrant of resurvey....

Hollander, J., 1998. Alan Potter v. Genevieve Yonkers Shaffer, Court of Special Appeals of Maryland, September, 1998.
http://caselaw.lp.findlaw.com/data2/marylandstatecases/cosa/1999/773s98.pdf
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Writ

A court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act. *