No. 79252-6

WASHINGTON STATE SUPREME COURT

LEO C. BRUTSCHE,

Petitioner,

v.

CITY OF KENT,

Respondent.

BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE WASHINGTON CHAPTER

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INTRODUCTION

This Court is again faced with whether the Washington Constitution mandates that a municipality pay compensation to innocent third parties when that government damages property during a police investigation.[1] The City of Kent (the "City") and amicus curiae Washington State Association of Municipal Attorneys (WSAMA) urge this Court to apply the reasoning of the California Supreme Court in *Customer Co. v. City of Sacramento*, 10 Cal. 4th 368, 41 Cal. Rptr. 2d 658, 895 P.2d 900 (1995) ("*Customer Co.*"), and hold that the government need only provide compensation when the government damages property pursuant to public works projects or a condemnation. Resp't's Br. 13-17; Br. Of WSAMA As Amicus Curiae 8-12. This Court followed that path in *Eggleston v. Pierce County*, 148 Wn.2d 760, 772, 64 P.3d 618 (2003), when it held that the government need not compensate an innocent third party for property seized as evidence. To continue on this path, however, would essentially rewrite our state constitution and remove fundamental protections for Washington residents.[2]

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[1] Amicus curiae Institute for Justice Washington Chapter assumes solely for the purposes of this brief that the actions of the police here were not negligent and did not constitute a trespass on Leo Brutsche's property.

[2] Other courts have adopted the *Customer Co.* decision without noting the flaws in its reasoning or its questionable application outside of California. *Kelley v. Story County Sheriff*, 611 N.W.2d 475, 482 (Iowa 2000); *Sullivant v. City of Oklahoma City*, 940 P.2d 220, 225 (Okla. 1997); *Major v. City of St. Petersburg*, 864 So.2d 1145, 1150 (Fla. Dist. Ct. App. 2003); *but see Lee v. City of Chicago*, 330 F.3d 456, 476 (7th Cir. 2003) (Wood,

This Court should reject the *Customer Co.* approach because it is utterly inconsistent with this Court's constitutional jurisprudence. In *Customer Co.*, the California Supreme Court rejected a plain meaning interpretation of the California Constitution, rejected the equitable foundations for requiring payment of just compensation, and adopted a logically dubious approach to constitutional interpretation that severely restricts constitutional protections. The California court's approach is inconsistent with how this Court interprets the Washington Constitution and this Court should therefore explicitly reject its earlier reliance on *Customer Co.*, overrule *Eggleston* to the extent that that case relied upon *Customer Co.*, and hold that the City is liable to Leo Brutsche for the damage it caused to his trailer.

IDENTITY AND INTEREST OF AMICUS CURIAE

The Institute for Justice is a nonprofit, public interest legal center committed to defending and strengthening the essential foundations of a free society: private property rights, economic and educational liberty, and the free exchange of ideas. The Institute believes that "[i]ndividual freedom finds tangible expression in property rights." *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 61, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993). The national office of the Institute for Justice has

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J., concurring) (noting that innocent third party whose property is damaged by police during investigation may have a claim under Fifth Amendment to U.S. Constitution).

litigated property rights cases throughout the country and has filed *amicus curiae* briefs in important cases nationwide. The Institute was the lead counsel for the property owners in *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005), at the United States Supreme Court regarding the condemnation of private property for the benefit of private interests. In the wake of *Kelo*, the Institute has dedicated itself to ensuring that the state constitutional guarantees to possess one's property free from unfair governmental interference remain vibrant. In that regard, the Institute for Justice Washington Chapter (IJ-WA) litigates the same issues as the national office, but places special emphasis on vindicating rights protected by the Washington Constitution.

The instant case involves a fundamental right guaranteed by the Washington Constitution: the right of Washington residents to be justly compensated when the government damages their property. As such, this case is of vital interest to amicus curiae IJ-WA.

STATEMENT OF THE CASE

IJ-WA adopts the Statement of the Case in the Petition for Review.

ARGUMENT

The City seeks to weaken the constitutional protections for private property contained in article I, section 16 by restricting compensation under that clause to only damage caused by public works projects. To

absolve themselves from having to pay just compensation to innocent owners whose property is damaged by police in the course of governmental activity, the City and WSAMA urge this Court to simply apply its decision in *Eggleston,* including this Court's adoption of the California Supreme Court's decision in *Customer Co.* However, *Customer Co.* was a badly reasoned decision and represents an approach to constitutional interpretation completely inconsistent with how this Court interprets the Washington Constitution. The *Customer Co.* decision's treatment of the California Constitution's just compensation clause essentially rewrote that provision to apply only in narrow circumstances. In contrast, the history, intent and words of our state constitution do not mandate such a narrow reading of our clause. This Court should disavow its earlier reliance on *Customer Co.* and overrule or narrow *Eggleston* to the extent that that decision relied upon *Customer Co.*

A. The Plain Meaning Of The Washington Constitution Mandates That The Government Compensate Property Owners For Damage Caused By The Government

In *Eggleston*, this Court considered whether the Washington Constitution mandated that Pierce County compensate an innocent property owner after that municipality, pursuant to a police investigation, removed a load-bearing wall from the property owner's house, causing the entire structure to become unsafe. *Eggleston*, 148 Wn.2d at 764. This

Court concluded that the Washington Constitution did not mandate compensation because Pierce County removed the wall pursuant to its police powers and only an exercise of the eminent domain power would result in a compensatory activity. *Id.* at 773-74. This Court adopted the reasoning of the California Supreme Court in *Customer Co.*, which likewise held that damages done to the property of innocent third parties pursuant to the police power were not compensable and that the California Constitution's "just compensation" requirement applied only to damages caused by public works projects. *Id.* at 772; *Customer Co.*, 10 Cal. 4th at 370.[3] The City and WSAMA urge a similar result here.

However, to achieve the result in *Customer Co.*, the California Supreme Court disregarded the plain meaning of the California Constitution. In contrast, this Court begins, and often ends, its analysis of by applying the words of the Washington Constitution.

1. In Contrast To This Court's Interpretation Of The Washington Constitution, The California Supreme Court Rejected A "Plain Meaning" Approach To The California Constitution

The Washington Constitution provides, in pertinent part:

[3] This Court also relied upon the Iowa Supreme Court's decision in *Kelley*. WSAMA again urges this Court to follow this case here. Br. of WSAMA as Amicus Curiae 8. However, that case has no application here because the provision of the Iowa Constitution at issue in *Kelley* does not require compensation when the government damages private property. *See* Iowa Const. art. I, § 18 ("Private property shall not be taken for public use without just compensation first being made…").

> No private property shall be taken or damaged for public or private use without just compensation having been first made….

Wash. Const. art. I, § 16. The California Constitution provides:

> Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.

Cal. Const. art. I, § 19.

By their terms, both provisions would seem to require the government to compensate an innocent property owner whose property is damaged by the government pursuant to the government's public duties. However, the California Supreme Court rejected a "literal" interpretation of section 19 of article I, concluding that such an approach is "overly simplistic." *Customer Co.*, 10 Cal. 4th at 378. Instead, the court concluded, "[S]ection 19 never has been applied in a literal manner, without regard to the history or intent of the provision." *Id.*

In contrast to the California Supreme Court's conclusion that reading the constitution to mean what it says is "overly simplistic," this Court uses a different approach: "Where the text of a constitutional provision is plain, the court must give the language its reasonable interpretation without further construction." *Locke v. City of Seattle*, No. 79222-4, slip op. at 7-8 (Wash. Sup. Ct. Dec. 13, 2007) (emphasis added). "If the text is clear, then no construction or interpretation is necessary."

Larson v. Seattle Popular Monorail Auth., 156 Wn.2d 752, 758, 131 P.3d 892 (2006). Thus, under this Court's method of constitutional interpretation, the "literal" meaning of the constitution is typically the beginning and end of this Court's analysis.

Here, the government damaged Leo Brutsche's property by using it to protect the public.[4] Under a literal reading of our constitution, this Court need go no further—the City must compensate Mr. Brutsche.

2. The Definition Of "Damage" In 1889 Did Not Distinguish Between Damage Caused By Public Works And Other Causes

The words of the constitution are given their common and ordinary meaning, as determined at the time they were drafted. *Wash. Water Jet Workers Ass'n v. Yarborough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). The words of the Washington Constitution are an expression of the people's will, adopted by them. *State ex rel. Albright v. City of Spokane*, 64 Wn.2d 767, 770, 394 P.2d 231 (1964). They are given the meaning people of common intelligence would have given them. *See State ex rel. State Capitol Comm'n v. Lister*, 91 Wash. 9, 14, 156 P. 858 (1916).

Reviewing common dictionaries published at or around the time of

[4] The City and WSAMA may argue that the City never devoted Leo Brutsche's doors or his trailer to a "public use"–it just destroyed the doors and damaged the trailer. However, this Court does not read the just compensation requirement so narrowly. *See Dickgieser v. State*, 153 Wn.2d 530, 538-40, 105 P.3d 26 (2005) (government liable where third party logged state lands, causing floods and damage to downstream property owner; government never "used" the land in question).

our Constitutional Convention demonstrates that "people of common intelligence" in 1889 made no distinction between "damage" caused by public works and "damage" caused by an exercise of the police power. The *Encyclopaedic Dictionary* of 1894 defined "damage" as "I. *Ordinary Language:* 1. Any hurt, injury, mischief, or detriment done to any person or thing … 2. The hurt, injury, mischief, or detriment suffered by anyone; any loss or harm incurred." 2 *The Encyclopaedic Dictionary* 1441 (1894). *Webster's Dictionary* from 1903 defined "damage" as "Any permanent injury or harm to person, property, or reputation; an inflicted loss of value; detriment; injury; harm." *An American Dictionary of the English Language* 332 (1903).[5] Thus, the common understanding of the people that ratified our constitution was that the government must pay just compensation when it causes "hurt," "injury," or "detriment" to any "thing" or was responsible for "an inflicted loss of value" pursuant to a public use. There is no distinction whatsoever between "damage" caused by public works projects and damage caused by other activities and no distinction between the police power and the eminent domain power. In

[5] An emphasis on the plain language of this clause should insulate the government from an onslaught of "regulatory takings" claims related to the "or damaged" language, given that a regulation that permits a property owner to continue to use their property does not "take," and likewise does not "damage," the property unless the impact is so severe that the impact to the property owner outweighs the benefit to society. *See Dep't of Ecology v. Pacesetter Constr. Co.*, 89 Wn.2d 203, 208, 571 P.2d 196 (1977) (noting that the government need not compensate a property owner for regulations unless the imposition on the owner outweighs the benefit to the public).

other words, these distinctions arose only in the minds of California Supreme Court justices. "Generally speaking, the meaning given to words by the learned and technical is not to be given to words appearing in a Constitution." *State Capitol Comm'n*, 91 Wash. at 14.[6]

Had the drafters of our Constitution wished to put the narrow restrictions on article I, section 16's just compensation requirement before the voters in 1889, they certainly could have. The Framers, for instance, deliberately chose language in the Declaration of Rights that is distinct from the federal constitution. As Justice Utter noted:

> It is reasonable to assume that the men who drafted the Washington Constitution, many of whom were lawyers, were well aware of these linguistic differences [between the Federal and Washington State Constitutions] and their likely effect on the future legal interpretation of their work, and that they therefore intended to create such differences.

Robert F. Utter, *Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights*, 7 U. Puget Sound L. Rev. 491, 515 (1984) (footnotes omitted). Similarly, the Framers could have crafted a just compensation clause that limited compensation only to damage caused when the government engaged in

[6] But even if we were to look to the legal definition of "damage" existing at the time, there is no distinction between "damage" caused by public works projects and "damage" caused pursuant to the police power. In 1891, *Black's* defined "damage" as "Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property." *Black's Law Dictionary* 315 (1891). Thus, even the strictly "legal" definition of "damage" did not make the narrow distinctions adopted by the California Supreme Court.

public works projects or condemnations. They did not and we should not assume that this choice was anything but deliberate.

B. This Court Should Interpret The Washington Constitution Independently From The California Constitution

It is tempting to stop there—the constitution means what it says and any further interpretation is unnecessary. However, even if this Court were to review the history, context and purpose of the just compensation clause, the result would be the same—the City must compensate Mr. Brutsche for the damage it did to his property.

The California Supreme Court, as noted above, rejected a literal interpretation of their constitution, and came to the opposite conclusion based on the history of the California Constitution. Specifically, in *Customer Co.,* the California Supreme Court concluded, after examining the historical record of the California Constitutional Convention, that, given the debates on the issue, "the addition of the words 'or damaged' to the 1879 Constitution was intended to clarify that application of the just compensation provision is not limited to physical invasions of property taken for 'public use' in eminent domain, but also encompasses special and direct damage resulting from the construction of public improvements." *Customer Co.,* 10 Cal. 4th at 379-80. Despite the differences in language and history, in *Eggleston,* this Court, in adopting

the California court's construction, noted that the California Supreme Court's interpretation of its just compensation clause is especially important because Washington's clause was modeled after California's. *Eggleston*, 148 Wn.2d at 772 n.8. However, this Court has since recognized that when the language and history of a constitutional provision differs from state to state, an independent analysis of our state constitution is warranted. *Andersen v. King County*, 158 Wn.2d 1, 15-16, 138 P.3d 963 (2006) (plurality opinion); *see also* Robert F. Utter & Hugh D. Spitzer, *The Washington Constitution: A Reference Guide* 10 (2002) ("However, it should be emphasized that even where the Washington Constitution contains language identical to a provision of the U.S. or some other state constitution, it is quite possible that the intent of the framers was different from that of the framers of the other constitution."). Thus, an independent analysis is appropriate because the history and background of California's Constitution is significantly different than Washington's.

1. The Language Of The California Clause Is Significantly Different From Washington's Clause

The California Constitution was enacted in 1879, ten years before Washington's, and the language of its protections for property significantly differs from article I, section 16. Compare the full text of article I, section 19 of the California Constitution

> Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

with the original version of article I, section 16 of the Washington Constitution:

> Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes or ditches on or across the lands of others for agricultural, domestic or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into the court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

The Washington provision is far more protective of private property than the California clause—California's clause does not have an explicit restriction on private takings, does not mandate that only courts may make a final determination of public use, and is less explicit in its procedural

mandates for compensating property owners. The difference in these provisions shows a greater concern by our Framers with protecting private property from governmental abuse. As such, this Court should not view article I, section 16's just compensation clause as simply identical to the California provision. *See Andersen*, 158 Wn.2d at 15-16.

2. Significant Portions Of The California Constitutional Convention Were Hostile To Private Property Ownership

The California Constitutional Convention, while sharing some of the same concerns of the Washington Constitutional Convention (notably a distrust of railroads and other corporate interests), was far more radical and demonstrated some hostility towards the concept of private property. *See* Timothy Sandefur, *A Natural Rights Perspective on Eminent Domain in California: A Rationale For Meaningful Judicial Scrutiny of "Public Use,"* 32 Sw. U. L. Rev. 569, 632-53 (2003). At that convention, the socialist Workingmen's Party was a major force and the Convention seriously considered a number of proposals to limit the right to own private property. *Id.* at 632. No similar movement gained any ground in the Washington Constitutional Convention. As such, the history of the California provision is significantly different and therefore an independent analysis is warranted. *See Andersen*, 138 Wn.2d at 16.

C. Washington's Framers Drafted A Clause Strongly Protective Of An Individual's Right To Own And Enjoy Property

1. Washington's Framers Continually Revised Our Constitution To Protect Individual Rights In Property

In contrast to the history of the California clause, the historical evidence demonstrates that at the Washington Constitutional Convention, the Framers of our constitution continually revised the language of article I, section 16 to make it more protective of private property, consistent with their concerns with protecting individual liberty. *See* James M. Dolliver, *Condemnation, Credit, and Corporations in Washington: 100 Years of Judicial Decisions—Have the Framers' Views Been Followed?,* 12 U. Puget Sound L. Rev. 163, 171-73 (1989) (hereinafter, "Dolliver"). The original proposed language concerning eminent domain stated that "Private property shall not be taken nor damaged for public use without just compensation therefor." *The Journal of the Washington State Constitutional Convention* (1889) §16, at 504 (Beverly Paulik Rosenow ed., 1962) (hereinafter *"Journal").* Subsequently, the Committee on Preamble and Declaration of Rights reported a clause that more closely matched the final version but did not contain an instruction to the judiciary that the courts disregard any legislative assertion that the contemplated use is public. *Journal* at 155. The Committee on the Judicial Department further expanded the proposal to make it even more protective of private

property. *Journal* at 264-65. This was the provision the framers adopted and the people ratified as article I, section 16 of the State Constitution.

The continual expansion of the language of the provision from introduction to adoption demonstrates that the Framers considered the protections of private property contained within the Federal Constitution to be inadequate. In that regard, the Framers clearly intended that the citizens of Washington be compensated when the government "damaged" their property pursuant to government action.

2. The Framers Intended The Phrase "Or Damaged" To Mean Something

While the Federal Constitution merely provides that private property shall not be "taken" without just compensation, the state constitution mandates that property shall not be "taken or damaged." Thus, Justice Dolliver's historical research led him to conclude:

> Given the language of section 16, the debates, and the accepted constitutional theories of the day, some framers' intent is evident. Beyond the traditional and universal intent to protect private property from being taken by the sovereign by limiting the power of eminent domain, the framers followed the lead of many states in seeking also to protect against damage to property short of a complete taking by the sovereign.

Dolliver at 173. Similarly, Professor Stoebuck concluded that by adding the word "damaged," the Framers' "original intent was that certain kinds of interferences that were not 'takings' would be 'damagings,' i.e., that the

words were not synonymous." William B. Stoebuck, *Nontrespassory Takings In Washington* 9 (1980). Thus, the Framers crafted a provision that sought to extend the situations in which property owners were to be compensated beyond traditional exercises of eminent domain.

3. A Near-Contemporaneous Interpretation Demonstrates That The Just Compensation Clause Is Not As Limited As The City Suggests

Just three years after the passage of Article I, section 16, this Court defined "damaged" in *Brown v. City of Seattle*, 5 Wash. 35, 31 P. 313 (1892). Justice Stiles, a convention delegate, wrote for the Court:

> "Damaged" does not mean the same thing as "taken," in ordinary phraseology. The makers of the [1870] Illinois constitution used the word in that instrument for some purpose . . . After almost twenty years of discussion and decision in Illinois and other states, we put the words "taken or damaged" into our constitution, and they must have their effect. In *Chicago v. Taylor*, 125 U.S. 161 (8 Sup. Ct. 820, 31 L. Ed. 638), the court said:
>
> > … [I]t would be meaningless if it should be adjudged that the [Illinois] constitution of 1870 gave no additional or greater security to private property sought to be appropriated to public use than was guaranteed by the former constitution [without the word "damaged"].

Brown, 5 Wash. at 40-41 (quoting *Chicago v. Taylor*, 125 U.S. 161, 168-69, 8 S. Ct. 820, 31 L. Ed. 638 (1888) (emphasis added)).

The California court concluded that similar words were added to the California Constitution only to compensate property owners whose

property is damaged during public works projects. It is undoubtedly true that both the California clause and the Washington clause mandate compensation in such instances. However, as Justice Baxter pointed out in dissent in *Customer Co.*, while such a clause obviously applies to traditional exercises of "eminent domain,"

> nothing in the section states or implies the converse, i.e., that just is due *only* where traditional eminent domain proceedings are possible or appropriate… [T]he language of the 1879 Constitution discloses no such limitation. That the convention's delegates used contemporaneous examples to illustrate why the additional protective language was needed does not demonstrate that the protection applies only to injuries of that kind.

Customer Co., 10 Cal. 4th at 407 (Baxter, J., dissenting) (emphasis in the original). Given that the history of the Washington Constitution demonstrates that the Framers desired broad protections for Washington citizens and crafted a provision that does not limit its application to public works projects, this Court should reject the majority holding in *Customer Co.* and instead adopt the views of Justice Baxter in dissent.[7]

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[7] Of course, the California courts have the transcripts of the California Constitutional Convention, while the transcripts of the Washington Convention were presumably destroyed. *Journal* at vii. However, none of the contemporaneous accounts of the Washington Convention that amicus curiae IJ-WA has reviewed alludes to a desire on the Framers' part to limit the payment of just compensation in the manner described by the California Supreme Court. If anything, what historical evidence that exists proves Justice Baxter's point—the Washington Constitution's "or damaged" clause was designed to require compensation for consequential damages from a taking of adjacent land, but nothing suggests that the clause was limited to only those circumstances. *See* W. Lair Hill, *A Constitution Adopted To The Coming State: Suggestions By Hon. W. Lair Hill* 8 (1889) (describing purpose of "or damaged" language in proposed Washington

4. The Words "Or Damaged" Were Added To The Washington Constitution To Ensure Fairness

In *Customer Co.,* the California court concluded that these words were designed solely to provide a method of compensation for exercises of eminent domain pursuant to public works projects. *Customer Co.,* 10 Cal. 4th at 379. The California court concluded that "Although in many circumstances it may appear 'fair' to require the government to compensate innocent persons for damage resulting, for example, from routine efforts to enforce the criminal laws, inverse condemnation is an inappropriate vehicle for achieving this goal because it was not designed for such a purpose." *Id.* at 389. Likewise, this Court in *Eggleston* concluded that "While we too feel the pull of the justness of the cause, the vehicle is not article I, section 16." *Eggleston,* 148 Wn.2d at 774.

With all due respect, this Court's conclusion in *Eggleston* that issues of fairness should not guide its interpretation of the just compensation clause is simply wrong. Justice Stiles conclusively demonstrated that equity is its very purpose:

> If private property is damaged for the public benefit, the public should make good the loss to the individual. Such always was the equity of the case, and the constitution makes the hitherto disregarded equity now the law of it.

Constitution, but emphasizing the equitable foundation of this concern). Absent such evidence, it would be an error to simply ascribe to our Framers such a narrow reading when the provision they wrote is quite broad.

Brown, 5 Wash. at 41; *accord* Hill, *supra* note 7, at 8 ("Such cases [concerning damage caused by taking adjacent land] are certainly within the equity of the rule against taking private property for public use without compensation. They appeal as forcibly to the sense of justice as if the damaged property were itself appropriated."). Assuming Hill and Justice Stiles understood the motivations behind the constitution they helped write, article I, section 16 mandates that the City compensate Leo Brutsche for the damage done to his property—it is, after all, only fair.

CONCLUSION

This Court should engage in an independent analysis of the Washington Constitution and disavow its earlier reliance on the majority decision in *Customer Co.* The words, history, and intent of our constitutional provision mandate both an independent analysis and a different result. The Court of Appeals should be reversed.

RESPECTFULLY submitted this 18th day of December 2007.

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ATTACHMENTS

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Prof. T. Rupert Jones, F. R. S.; Dr. Moir, L. R. C. S. & P., E.

It is impossible to mention by name a tithe of those who have contributed directly or indirectly to lighten the labors of the Editors in securing accuracy and in bringing this work to completion.

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Colobium, which it closely imitates, whence it has been confounded with that vestment. It was sometimes embroidered with orphreys round the bottom of the robe and on the edges of the sleeves, and with pearls and jewels. (*Staunton, &c.*)

"*Dalmatyk. Dalmatica.*"—*Prompt. Parv.*

dalmes, *s.* [Damask.] Damask cloth.

dal segno (pr. **dăl sān'-yō**), *phr.* [Ital. = from the sign.]

Music: A direction put at the end of a passage to go back to the sign 𝄋 and repeat to the close.

†alt, *s.* [Gael. *dalta.*] A foster-child.

"It is false of thy father's child; falser of thy mother's son; falsest of my *dalt.*"—*Scott: Fair Maid of Perth,* ch. xxix.

***dalt,** *pret. of v.* [Deal, *v.*]

"Al the loud that ther was they *dalten* it in two."
The Cokes Tale of Gamelyn, 44, 45.

dăl-tō'-nī-ăn, *a. & s.* [From the proper name *Dalton,* and Eng. adj. suff. *-ian.*]

A. *As adj.:* Pertaining to or discovered by Dalton. [Daltonism.]

B. *As subst.:* One suffering from daltonism (q.v.).

dăl'-tŏn-ĭzm, *s.* [From the proper name *Dalton,* and Eng. suff. *-ism.*] Colour-blindness (q.v.).

¶ Daltonism, or inability to distinguish between different colours, especially between green and red, is so called from John Dalton, the celebrated physicist and founder of the atomic theory of chemistry. In a paper which he read before the Manchester Literary and Philosophical Society, in October, 1794, he gives the earliest account of that ocular peculiarity known as dyschromatopsis, chromatopseudopsis, daltonism, parachromatism, or colour-blindness, and sums up its characteristics as observed in himself and others. When a boy, being present at a review of troops, and hearing those around him expatiating on the brilliant effect of a military costume, he asked in what the colour of a soldier's coat differed from that of the grass on which he trod, and the derisive laugh of his companions first made him aware of the defectiveness of his eyesight. He stated in the paper above referred to, "That part of the image which others call red appears to me little more than a shade or defect of light; after that the orange, yellow, and green seem one colour, which descends pretty uniformly from an intense to a rare yellow, making what I should call different shades of yellow." The subject is fully treated of in Dr. G. Wilson's *Researches on Colour-Blindness* (1855).

dăm (1), ***damme** (1), *s.* [A corruption of *dame* (q.v.).]

I. Ordinary Language:

***1.** A woman, a lady. (A title of respect.)

"*Dam* Helienore quene was sche."
Langtoft, p. 73.

†2. A mother. (Of a woman in contempt.)

"Hence with it, and together with the *dam*
Commit them to the fire!"
Shakesp.: Winter's Tale, ii. 3.

3. A female parent. (Used of beasts.)

"A faithful nurse thou hast; the *dam* that did thee yearn
Upon the mountain-tops no kinder could have been."
Wordsworth: The Pet Lamb.

II. Draughts: A crowned man in the game of draughts. [Dam-board.]

dăm (2), ***dame, *damme** (2), *s.* [Prob. an A.S. word, though not found except in the compound verb *fordemma* = to stop up. O. Fris. *dam, dom;* M. H. Ger. *tam;* Icel. *dammr;* Dut. & Dan. *dam;* Sw. *damm.*]

I. Ord. Lang.: In the same sense as II. 1. and 2.

II. Technically:

1. *Engineering:*

(1) A bank or structure across the current of a stream, intended to obstruct or keep back the flow of the water for any purpose, as to obtain sufficient head and power for driving a water-wheel, &c.

(2) The water kept back by a mound, mole, or bank.

*(3) A pond, a lake, a body of water.

"*Hoc stangnum,* a *dame.*"—*Wright: Vol. of Vocab.,* p. 239.

2. *Iron-works:* A wall of fire-brick closing the hearth of a blast-furnace. [Dam-plate, Dam-stone.]

3. *Law:* A boundary or confinement within the bounds of a person's own property or jurisdiction.

dam-head, *s.* The top of a dam or mole.

". . . as much water must run over the *dam-head* as if there was no dam at all."—*Smith: Wealth of Nations,* bk. iv., ch. v.

dam-plate, *s.* A plate in front of the dam-stone which forms the bottom of the hearth in a blast-furnace (q.v.). (*Knight.*)

dam-stone, *s.* The stone at the bottom of the hearth of a blast-furnace.

dăm, *v.t.* [Sw. *dämma;* Dut. *dammen;* Icel. *demma.*] [Dam, *s.*]

I. Lit.: To confine, keep back, or obstruct the flow of water by a dam. (Generally used with the adverbs *in* or *up.*)

". . . a weight of earth, that *dams* in the water, . . ."—*Mortimer.*

***II.** *Figuratively:*

1. To confine, to restrain, to keep down.

"The more thou *damm'st* it up, the more it burns."
Shakesp.: Two Gent. of Verona, ii. 7.

2. To obstruct, to hinder.

"And *dammed* the lovely splendour of their sight."
Cowley.

dā'-mą, *s.* [Lat. = a fallow-deer, buck or doe.]

Zool.: A genus of mammals, family Cervidæ. *Dama platyceros* is the Fallow-deer, called by Prof. Thomas Bell and many other zoologists, *Cervus dama.* [Fallow-deer.]

dăm'-ąġe, *s.* [O. Fr. *damage, domage;* Fr. *dommage;* Ital. *dannaggio,* from Low Lat. **damnaticum,* from Lat. *damnum* = loss, injury.]

I. Ordinary Language:

1. Any hurt, injury, mischief, or detriment done to any person or thing.

". . . to the great *damage* both of their fame and fortune."—*Bacon.*

2. The hurt, injury, mischief, or detriment suffered by anyone; any loss or harm incurred.

3. The value or cost of hurt or injury done. [II.] (Generally plural.)

". . . to pay the *damages* which had been sustained by the war."—*Clarendon.*

4. Retribution or reparation for hurt, injury, or detriment done or suffered. [II.]

"The bishop demanded restitution of the spoils taken by the Scots, or *damages* for the same."—*Bacon.*

5. The cost of anything. (*Slang.*)

II. Law:

1. (*Sing.*): Any loss or injury sustained by the fault or illegal act of another.

2. (*Pl.*): The amount in money at which any damage sustained by any person, through the act or omission of another, is assessed by a jury; the pecuniary recompense for damage sustained claimed by the plaintiff, or awarded by the jury, in a civil action.

"Tell me whether . . . I may not sue her for *damages* in a court of justice?"—*Addison.*

¶ For the difference between *damage* and *injury,* see Injury.

***damage-cleer,** *s.* [Lat. *damna clericorum* = damages—that is, fees—of the clerks.] [See def.]

Old law: A fee formerly assessed on the tenth part in the Court of Common Pleas, and on the twentieth part in the Courts of King's Bench and Exchequer, out of all damages, exceeding five marks, recovered in those Courts in all actions in the case of covenant, trespass, battery, &c., and given originally to the prothonotaries and their clerks for drawing special writs and pleadings. It was abolished by the Stat. 17 Charles II., c. 6, § 2.

***damage-feasant, *damage-feceant,** *a.* [O. Fr. *damage faisant* = causing damage.]

Old law: Doing hurt or injury, as the cattle of one person entering the grounds of another without his consent, and there feeding or otherwise damaging the crops, wood, fences, &c. In such cases the owner may distrain the trespassing animals, or impound them, until satisfaction be made for the injury done or damage sustained.

dăm'-ąġe, *v.t. & i.* [Damage, *s.*]

A. *Transitive:*

1. *Lit.:* To cause damage, hurt, or injury to, to hurt, to injure, to harm.

"Soon after the English fleet had refitted themselves (for they had generally been much *damaged* by the engagement in Solbay,) they appeared in sight of Scheveling, making up to the shore."—*Burnet: Own Time,* an. 1672.

2. *Fig.:* To hurt, to impair, to cause detriment to; as, To *damage* one's reputation or character.

† **B.** *Intrans.:* To receive damage or hurt, to become damaged.

dăm'-ąġe-ą-ble, *a.* [Eng. *damage; -able.*]

† 1. Liable to be damaged, susceptible of damage.

* 2. Causing damage, hurtful, mischievous.

"*Damageable* and infectious to the innocence of our neighbours."—*Government of the Tongue.*

dăm'-ąġed, *pa. par.* or *a.* [Damage, *v.*]

*** dăm'-ąġe-mĕnt,** *s.* [Eng. *damage; -ment.*] Damage, injury.

"The more's the soule and bodie's *damagement.*"—*Davies: Microcosmos,* p. 44.

*** dăm'-ąġe-ŏŭs,** *a.* [Eng. *damage; -ous.*] Hurtful, injurious, damaging.

"*Damageous* or doynge hurte or hurtful. *Damnificus, incommodus, iniuriosus.*"—*Huloet.*

dăm'-ąġ-ĕş, *s. pl.* [Damage, *s.*]

¶ *Damages ultra:*

Law: Damages claimed by a plaintiff beyond those paid into court by a defendant.

dăm'-ąġ-ĭng, *pr. par., a., & s.* [Damage, *v.*]

A. & B. *As pr. par. & particip. adj.:* (See the verb).

C. *As substantive:*

1. The act of causing damage, hurt, or injury to.

2. The act or process of becoming damaged.

da-mą-ja'-văg, *s.* [Etym doubtful.] A preparation of the chestnut tree, used as a substitute for oak-bark and gall-nuts in tanning. (*Ogilvie.*)

dăm'-ąl-ĭs, *s.* [Gr. = a young cow, a heifer.]

Zool.: A genus of antelopes, related to, and sometimes included in, the genus *Alcelaphus.* The horns are sub-cylindrical, lyrate, and diverge from each other; a small, bald, moist muffle exists between and below the nostrils; the female has two teats. *Damalis lunatus* is the Sassaby or Bastard Harte-Beest; *D. senegalensis,* the Korrigum; *D. pygarga,* the Nunni or Bonte-boc; *D. albifrons,* the Bless-boc; and *D. zebra,* the Doria.

dăm-ąl-ūr'-ĭc, *a.* [Gr. δάμαλις, (*damalis*) = a young cow, a heifer, and Eng. *uric* (q.v.).] Pertaining to the urine of cows.

damaluric acid, *s.*

Chem.: $C_7H_{12}O_9$. A volatile monatomic acid, said to exist in the urine of cows and horses.

dam'-an, *s.* [Syriac.]

Zool.: *Procavia syriaca* (= **Hyrax syriacus*), the "coney" of Scripture. [Cony.]

dăm'-ar, *s.* [Dammar.]

dăm-ą-rē-teī'-ŏn (pl. **dăm-ą-rē-teī'-ą),** *s.* [Gr. δαμαρέτειον (*damareteion*) = pertaining to Damarete, the wife of Gelon.] A Syracusan silver coin, weighing about ten Attic drachmæ.

dăm'-ąs, *s.* [Fr. = Damascus.] A sabre made of Damascus-steel. (*Nuttall.*)

Dăm-ąs-cēne', *a. & s.* [Lat. *Damascenus,* from *Damascus.*]

A. *As adj.:* Of or pertaining to Damascus.

B. *As substantive:*

1. *Ord. Lang.:* A native or inhabitant of Damascus.

"In Damascus the governor under Aretas the king kept the city of the *Damascenes* with a garrison, . . . —*2 Cor.* xi. 32.

2. *Bot.:* [Damson].

"In April follow the cherry-tree in blossom, the *damascene* and plum-trees in blossom, and the white thorn in leaf."—*Bacon.*

Damascene lace. An imitation of Honiton lace, and made with lace braid and lace sprigs joined together with corded bars. The difference between it and modern point lace, which it closely resembles, consists in the introduction into Damascene of real Honiton sprigs, and the absence of any needlework fillings. (*Dict. of Needlework.*)

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We have trifled too long already: it is madness to *dally* any longer. *Calamy.*

2. To interchange caresses, especially with one of the opposite sex; to use fondling or wantonness; to sport.

Not *dallying* with a brace of courtesans. *Shak.*

She . . . *dallies* with the wind, and scorns the sun. *Shak.*

Dăl'ly, *v. t.* To delay; to defer; to put off; to amuse. [*Rare.*]

Dallying off the time with often skirmishes. *Knolles.*

Dal-măt'ic, *n.* See DALMATICA.

Dal-măt'i-cā, *n.* [L. Lat. *dalmatica.*]

1. (*Eccl.*) A short outer vestment worn at mass by deacons in the Roman Catholic church, and imitated from a dress originally worn in Dalmatia.

2. A similar robe worn by kings in the middle ages on solemn occasions. [Written also *dalmatic.*] *Fosbroke.*

Dalmatica.

Dăl'ri-ad, *n.* (*Geog.*) One of a tribe of people formerly inhabiting a part of Scotland.

Dăl'ri-ăd'ic, *a.* Pertaining to the Dalriads.

Dal Segn'o (dăl sān'yō). [It., from the sign.] (*Mus.*) A direction to go back to the sign, and repeat from thence to the close.

Dal-tō'ni-an, *n.* One afflicted with color-blindness.

Dal'ton-ism, *n.* Inability to perceive or distinguish certain colors; color-blindness; — so called from the chemist *Dalton*, who had this infirmity. *Nichol.*

Dăm, *n.* [O. Eng. *dame*, mistress, lady; also, mother. See DAME.]

1. A female parent; — used of beasts, especially of quadrupeds.

2. A human mother; — in contempt.

3. A crowned man in the game of draughts.

Dăm, *n.* [O. L. Ger., D., & Dan. *dam*, Ger. & Sw. *damm*, Icel. *dammr*, L. Lat. *damma.*] A mole, bank, or mound of earth, or any wall, or a frame of wood, designed to obstruct the flow of water.

Dăm, *v. t.* [*imp.* & *p. p.* DAMMED; *p. pr.* & *vb. n.* DAMMING.] [A-S. *demman*, D. *dammen*, Ger. *dämmen*, Sw. *dämma*, Dan. *damme*, Goth. *dammjan.* See *supra.*]

1. To obstruct or restrain the flow of, by a dam; to confine by constructing a dam, as a stream of water; — often used with *in* or *up*.

2. To shut up; to restrain.

The strait pass was *dammed* With dead men hurt behind, and cowards. *Shak.*

To dam out, to keep out by means of a dam.

Dăm'age, *n.* [O. Fr. *damage*, Pr. *dommatge, dampnatge*, Norm. Fr. *domage*, N. Fr. *dommage*, O. It. *dannaggio*, now *danno*, from Lat. *damnum*, damage.]

1. Any permanent injury or harm to person, property, or reputation; an inflicted loss of value; detriment; injury; harm.

Great errors and absurdities many commit for want of a friend to tell them of them, to the great *damage* both of their fame and fortune. *Bacon.*

2. (*pl.*) (*Law.*) The estimated reparation in money for detriment or injury sustained; a compensation, recompense, or satisfaction to one party, for a wrong or injury actually done to him by another.

☞ In common law actions, the jury are the proper judges of damages.

Nominal damages, those given for a violation of a right where no actual loss has accrued.

Syn. — Mischief; injury; harm. See MISCHIEF.

Dăm'age, *v. t.* [*imp.* & *p. p.* DAMAGED; *p. pr.* & *vb. n.* DAMAGING.] [O. Fr. *damagier, domagier*, Pr. *dampnatgar*, It. *danneggiare.* See *supra.*] To occasion damage to the soundness, goodness, or value of; to inflict injury upon; to hurt; to injure; to impair.

He . . . came up to the English admiral and gave him a broadside, with which he killed many of his men and *damaged* the ship. *Clarendon.*

Dăm'age, *v. i.* To suffer damage; to be injured or impaired in soundness or value.

Dăm'age-a-ble, *a.* [Fr. *dommageable.*]

1. Capable of being injured or impaired; susceptible of damage.

2. Hurtful; pernicious. [*Rare.*]

It may appear that it be not *damageable* to your royal majesty. *Hacklugt.*

Dăm'age-fēas'ant (dăm'ej-fāz'ant), *a.* [From *damage* and Fr. *faisant*, making, doing, p. pr. of *faire*, to make, to do, equivalent to Lat. *facere.*] (*Law.*) Doing injury; trespassing, as cattle. *Blackstone.*

Dăm'ar, *n.* See DAMMAR.

Dăm'as-cēne, *n.* [Lat. *Damascenus*, of Damascus, from *Damascus*, Gr. Δαμασκός, the ancient capital of Cœlesyria, celebrated for its terebinths, plums, and fabrics in steel.]

1. (*Geog.*) A portion of the country of Syria, of which Damascus was the capital.

2. A particular kind of plum; — usually called *damson.* See DAMSON.

Dăm'ask, *a.* 1. Pertaining to, or originating at, the city of Damascus; resembling the products or manufactures of Damascus.

2. Having the color of the damask-rose.

While dreaming on your *damask* cheek The dewy sister eyelids lay. *Tennyson.*

Damask color, a color like that of the damask rose. — *Damask plum*, a small dark-colored plum, generally called *damson.* — *Damask rose* (*Bot.*), a variety of rose (*Rosa damascena*) native to Damascus, and brought from thence. — *Damask silk*, a kind of heavy, rich, figured silk; — usually called simply *damask.* — *Damask steel*, a fine quality of steel originally made at Damascus, and formerly much valued for sword-blades, from its great flexibility and tenacity.

Dăm'ask, *n.* [It. *damasco, damasto, dommasco*, Sp. *damasco*, Fr. *damas*, Ger. *damast*, from *Damascus.* See *supra.*]

1. A kind of stuff with raised figures in various patterns, as flowers, &c., woven in the loom. It was originally made at Damascus, and was composed of rich silk: it is now made of silk intermingled with flax, cotton, or wool.

A bed of ancient *damask*, with a tester sufficiently lofty to grace a couch of state. *W. Irving.*

2. Linen woven in imitation of the figures in damask silk.

Dăm'ask, *v. t.* [*imp.* & *p. p.* DAMASKED (dăm'askt); *p. pr.* & *vb. n.* DAMASKING.] To decorate with ornamental figures, as silk or other stuff with raised flowers, &c., or steel with devices; hence, to adorn; to embellish; to variegate.

Mingled metal *damasked* o'er with gold. *Dryden.*

The soft, downy bank, *damasked* with flowers. *Milton.*

Dăm'ask-en, **Dăm'ask-een'**, *v. t.* [Fr. *damasquiner*, It. *damaschinare*, Sp. *damasquinar*, from It. *damaschino*, Sp. *damasquino*, from Lat. *damascenus.* See DAMASCENE.] To decorate, as iron, steel, &c., with designs produced by inlaying or incrusting with another metal, as silver or gold, or by etching, &c.; to damask.

Damaskeening is partly mosaic work, partly engraving, and partly carving. *Ure.*

Dă-măsse', *n.* [Fr.] A kind of linen manufactured in Flanders; — so called because woven in flowers and figures imitating those of damask.

Dăm'as-sin, (Synop., § 130), *n.* [Fr. *damassin*, from *damas.* See DAMASK.] A kind of damask with gold and silver flowers woven in the warp and woof. *Ure.*

Dāme, *n.* [Fr. *dame*, It. *dama, donna*, Sp. *dama, doña, dueña*, Pg. *dama, dona*, Pr. *dama, domna, dona*, L. Lat. *domna, donna*, from Lat. *domina*, mistress, lady, f. of *dominus*, master of the house, from *domus*, house, Gr. δόμος.]

1. A mistress; a woman in authority; especially, a lady in rank or culture.

Then shall the priest be as the people, the master as the servant, the *dame* like the maid. *Bible*, 1551.

Not all these lords do vex me half so much As that proud *dame*, the lord protector's wife. *Shak.*

Soyran of creatures, universal *dame*. *Milton.*

2. The mistress of a family in common life, or the mistress of a common school; as, a *dame's* school, or *dame* school.

Dāme's-vī'o-let, **Dāme'wort** (-wûrt), *n.* (*Bot.*) A cruciferous plant of the genus *Hesperis* (*H. matronalis*), remarkable for fragrance, especially toward the close of the day; — called also *rocket.* *Loudon.*

Dā'mi-an-ĭst, *n.* (*Eccl. Hist.*) A follower of Damianes, patriarch of Alexandria in the sixth century, who made a distinction between the divine essence and the persons of the Father, Son, and Holy Ghost. In other words, they denied that each person by himself and in nature was God, but maintained that the three persons had a common divinity, by an undivided participation of which each one was God.

Dăm'mar, **Dăm'ma-rā**, *n.* [Javan. & Malay. *dámar.*] A resinous substance obtained from certain trees indigenous to the East Indies, especially the Dammara and Dammar-pine, and used for making varnish and like purposes.

Dăm'mā-rā, **Dăm'mar-pīne**, *n.* (*Bot.*) A large tree of the order *Coniferæ*, indigenous to the East Indies, and of two species, *Dammara orientalis* and *D. australis.* *Loudon.*

Dămn (dăm), *v. t.* [*imp.* & *p. p.* DAMNED (dămd); *p. pr.* & *vb. n.* DAMNING (dăm'ing).] [Lat. *damnare*, to condemn, from *damnum*, damage, a fine, penalty, Fr. *damner*, Pr. *dampnar*, O. Sp. & Pg. *dannar*, It. *dannare.*]

1. To condemn; to decide to be wrong or worthy of punishment; to adjudge to punishment or death; to censure; to sentence.

He shall not live; look! with a spot I *damn* him. *Shak.*

2. (*Theol.*) To condemn to punishment in the future world; to consign to perdition.

He that believeth not shall be *damned*. *Mark* xvi. 16.

3. To condemn as bad, or displeasing, by open expression, as by hissing, &c.

You are not so arrant a critic as to *damn* them [the works of modern poets] without hearing. *Pope.*

Damn with faint praise, assent with civil leer, And without sneering teach the rest to sneer. *Pope.*

Dăm'na-bĭl'i-ty, *n.* The state or quality of deserving condemnation, damnableness.

Dăm'na-ble, *a.* [Lat. *damnabilis*, from *damnare*, Fr. & O. Sp. *damnable*, Pr. *dampnable*, It. *dannabile.* See *supra.*]

1. Worthy of, or liable to, damnation.

He is a creature unprepared, unmeet for death, And to transport him in the mind he is, Were *damnable*. *Shak.*

2. Odious; detestable, or pernicious. [*Low.*]

Begin, murderer; leave thy *damnable* faces. *Shak.*

Dăm'na-ble-ness, *n.* The state or quality of deserving damnation.

Dăm'na-bly, *adv.* 1. In a manner to incur severe censure, condemnation, or punishment.

2. Odiously; detestably; excessively. [*Low.*]

Dam-nā'tion, *n.* [Lat. *damnatio*, from *damnare*, Fr. *damnation*, Pr. *dampnacio*, O. Sp. *damnacion*, It. *dannazione.* See *supra.*]

1. The state of being damned; condemnation; censure. [*Obs.*]

2. (*Theol.*) Condemnation to everlasting punishment in the future state.

Wickedness is sin, and sin is *damnation*. *Shak.*

Dăm'na-to-ry, *a.* [Lat. *damnatorius*, from *damnator*, a condemner, from *damnare.* See DAMN.] Condemning to damnation; condemnatory.

Dămned (dămd; in serious discourse, dăm'ned), *p. a.*

1. Sentenced to punishment in a future state; condemned.

2. Hateful; detestable; abominable. [*Low.*]

Dam-nĭf'ic, *a.* [Lat. *damnificus*, from *damnum*, damage, loss, and *facere*, to make.] Procuring or causing loss; mischievous.

Dăm'ni-fy, *v. t.* [L. Lat. *damnificare*, from Lat. *damnificus*; O. Fr. *dampnifier*, Pr. *dampnificar, damnificar*, Sp. *damnificar*, Pg. *danificar*, It. *dannificare.* See *supra.*] To cause loss or damage to; to hurt in person, estate, or interest; to injure; to endamage; to impair. [*Rare.*]

This work will ask as many more officials to make expurgations and expunctions, that the commonwealth of learning be not *damnified*. *Milton.*

Dăm'ning-ness, *n.* Tendency to bring damnation. [*Obs.*] *Hammond.*

Dăm'o-sel, **Dăm'o-sĕl'la**, *n.* Same as DAMSEL. [*Obs.*]

Dămp, *a.* [*compar.* DAMPER; *superl.* DAMPEST.] From *damp*, n., q. v.]

1. Being in a state between dry and wet; moderately wet; moist; humid.

O'erspread with a *damp* sweat and holy fear. *Dryden.*

2. Dejected; depressed; sunk. [*Rare.*]

All these and more came flocking, but with looks Downcast and *damp*. *Milton.*

Dămp, *n.* [L. Ger., D., & Dan. *damp*, Sw. *damb*, Icel. *dampi*, Ger. *dampf*, steam, vapor, fog, smoke, from M. H. Ger. *dimpfen*, to smoke, imp. *dampf.*]

1. Moisture; humidity; fog.

Night . . . with black air Accompanied, with *damps* and dreadful gloom. *Milton.*

2. Dejection; depression; discouragement.

Even now, when thus I stand blest in thy presence, A secret *damp* of grief comes o'er my soul. *Addison.*

3. (*pl.*) (*Mining.*) Gaseous products, that are eliminated in coal-mines, wells, &c.

☞ These are the *choke-damp*, consisting principally of carbonic acid, and so called from its extinguishing flame and life; and *fire-damp*, consisting chiefly of light carbureted hydrogen, and so called from its tendency to explode when mixed with atmospheric air and brought into contact with flame.

Dămp, *v. t.* [*imp.* & *p. p.* DAMPED (dămpt, 85); *p. pr.* & *vb. n.* DAMPING.]

1. To render damp; to moisten; to make humid, or moderately wet.

2. To render chilly; to depress or deject; to abate.

I do not mean to wake the gloomy form Of superstition dressed in wisdom's garb To *damp* your tender hopes. *Akenside.*

3. To make dull; as, to *damp* sound. *Bacon.*

4. To check or restrain, as action or vigor; to weaken; to make languid; to discourage.

Usury dulls and *damps* all industries, improvements, and new inventions, wherein money would be stirring if it were not for this slug. *Bacon.*

Dămp'en (dămp'n), *v. t.* or *i.* [*imp.* & *p. p.* DAMPENED; *p. pr.* & *vb. n.* DAMPENING.] To make or become damp or moist.

Dămp'er, *n.* (*a.*) That which damps or checks; as, a valve or movable plate in the flue or other part of a stove, furnace, &c., used to check or regulate the draught of air. (*b.*) A contrivance, as in a piano-forte, to deaden vibrations; or, as in other pieces of mechanism, to check some action at a particular time.

Dămp'ish, *a.* Moderately damp or moist.

Dămp'ish-ly, *adv.* In a dampish manner.

Dămp'ish-ness, *n.* A moderate degree of dampness or moistness; slight humidity. *Bacon.*

A

DICTIONARY OF LAW

CONTAINING

DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE, ANCIENT AND MODERN

INCLUDING

THE PRINCIPAL TERMS OF INTERNATIONAL, CONSTITUTIONAL, AND COMMERCIAL LAW; WITH A COLLECTION OF LEGAL MAXIMS AND NUMEROUS SELECT TITLES FROM THE CIVIL LAW AND OTHER FOREIGN SYSTEMS

By Henry Campbell Black, M.A.

Author of Treatises on "Judgments," "Tax-Titles," "Constitutional Prohibitions," etc.

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D.

D. The fourth letter of the English alphabet. It is used as an abbreviation for a number of words, the more important and usual of which are as follows:

1. *Digestum*, or *Digesta*, that is, the Digest or Pandects in the Justinian collections of the civil law. Citations to this work are sometimes indicated by this abbreviation, but more commonly by "Dig."

2. *Dictum*. A remark or observation, as in the phrase "*obiter dictum*," (*q. v.*)

3. *Demissione*. "On the demise." An action of ejectment is entitled "Doe *d.* Stiles v. Roe;" that is, "Doe, on the demise of Stiles, against Roe."

4. "*Doctor*." As in the abbreviated forms of certain academical degrees. "M. D.," "doctor of medicine;" "LL.D.," "doctor of laws;" "D. C. L.," "doctor of civil law."

5. "*District*." Thus, "U. S. Cir. Ct. W. *D.* Pa." stands for "United States Circuit Court for the Western *District* of Pennsylvania."

6. "*Dialogue*." Used only in citations to the work called "Doctor and Student."

D. In the Roman system of notation, this letter stands for five hundred; and, when a horizontal dash or stroke is placed above it, it denotes five thousand.

D. B. E. An abbreviation for *de bene esse*, (*q. v.*)

D. B. N. An abbreviation for *de bonis non*; descriptive of a species of administration.

D. C. An abbreviation standing either for "District Court" or "District of Columbia."

D. E. R. I. C. An abbreviation used for *De ea re ita censuere*, (concerning that matter have so decreed,) in recording the decrees of the Roman senate. Tayl. Civil Law, 564, 566.

D. J. An abbreviation for "District Judge."

D. P. An abbreviation for *Domus Procerum*, the house of lords.

D. S. An abbreviation for "Deputy Sheriff."

D. S. B. An abbreviation for *debitum sine brevi*, or *debit sans breve*.

Da tua dum tua sunt, post mortem tunc tua non sunt. 3 Bulst. 18. Give the things which are yours whilst they are yours; after death they are not yours.

DABIS? DABO. Lat. (Will you give? I will give.) In the Roman law. One of the forms of making a verbal stipulation. Inst. 3, 15, 1; Bract. fol. 15*b*.

DACION. In Spanish law. The real and effective delivery of an object in the execution of a contract.

DAGGE. A kind of gun. 1 How. State Tr. 1124, 1125.

DAGUS, or DAIS. The raised floor at the upper end of a hall.

DAILY. Every day; every day in the week; every day in the week except one. A newspaper which is published six days in each week is a "daily" newspaper. 45 Cal. 30.

DAKER, or DIKER. Ten hides. Blount.

DALE and SALE. Fictitious names of places, used in the English books, as examples. "The manor of *Dale* and the manor of *Sale*, lying both in Vale."

DALUS, DAILUS, DAILIA. A certain measure of land; such narrow slips of pasture as are left between the plowed furrows in arable land. Cowell.

DAM. A construction of wood, stone, or other materials, made across a stream for the purpose of penning back the waters.

This word is used in two different senses. It properly means the work or structure, raised to obstruct the flow of the water in a river; but, by a well-settled usage, it is often applied to designate the pond of water created by this obstruction. 19 N. J. Eq. 248. See, also, 44 N. H. 78.

DAMAGE. Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. The word is to be distinguished from its plural,—"damages,"—which means a compensation in money for a loss or damage.

An injury produces a right in them who have suffered any damage by it to demand reparation of such damage from the authors of the injury. By

damage, we understand every loss or diminution of what is a man's own, occasioned by the fault of another. 1 Ruth. Inst. 399.

DAMAGE-CLEER. A fee assessed of the tenth part in the common pleas, and the twentieth part in the queen's bench and exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, etc., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, before he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks for drawing special writs and pleadings; but it was taken away by statute, since which, if any officer in these courts took any money in the name of damage-cleer, or anything in lieu thereof, he forfeited treble the value. Wharton.

DAMAGE FEASANT or FAISANT. Doing damage. A term applied to a person's cattle or beasts found upon another's land, doing damage by treading down the grass, grain, etc. 3 Bl. Comm. 7, 211; Tomlins. This phrase seems to have been introduced in the reign of Edward III., in place of the older expression "*en son damage,*" (*in damno suo.*) Crabb, Eng. Law, 292.

DAMAGED GOODS. Goods, subject to duties, which have received some injury either in the voyage home or while bonded in warehouse.

DAMAGES. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another.

A sum of money assessed by a jury, on finding for the plaintiff or successful party in an action, as a compensation for the injury done him by the opposite party. 2 Bl. Comm. 438; Co. Litt. 257*a;* 2 Tidd, Pr. 869, 870.

Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called "damages." Civil Code Cal. § 3281; Civil Code Dak. § 1940.

In the ancient usage, the word "damages" was employed in two significations. According to Coke, its proper and general sense included the costs of suit, while its strict or relative sense was exclusive of costs. 10 Coke, 116, 117; Co. Litt. 257*a;* 9 East, 299. The latter meaning has alone survived.

Damages are either *general* or *spe* Damages for losses which necessarily r from the wrong sued for are called "gen damages, and may be shown under th *damnum*, or general allegation of dan for the defendant does not need noti such consequences to enable him to r his defense; he knows that they must e and will be in evidence. But if certain l do not necessarily result from defend wrongful act, but, in fact, follow it natural and proximate consequence in particular case, they are called "special," must be specially alleged, that the defen may have notice and be prepared to go the inquiry. 28 Conn. 201, 212.

"General" damages are such as the law sumes to flow from any tortious act, and m recovered without proof of any amount. "Spe damages are such as actually flowed from th and must be proved in order to be recov Code Ga. 1882, § 3070.

Damages may also be classed as *direct* *consequential*. "Direct" damages are as follow immediately upon the act "Consequential" damages are such as ar necessary and connected effect of the tor act, though to some extent depending other circumstances. Code Ga. 1882, §

Another division of damages is into *l dated* and *unliquidated;* the former being applicable when the amount th has been ascertained by the judgment in action or by the specific agreement of parties; while the latter denotes such ages as are not yet reduced to a certain respect of amount, nothing more being e lished than the plaintiff's right to recov

Damages are also either *nominal* or *stantial;* the former being trifling in amo and not awarded as compensation for injury, but merely in recognition of p tiff's right and its technical infraction b fendant; while the latter are considerab amount, and intended as real compensa for a real injury

Damages are either *compensatory* or *dictive;* the former when nothing mo allowed than a just and exact equivalen plaintiff's loss or injury; the latter wh greater sum is given than amounts to compensation, in order to punish the def ant for violence, outrage, or other cir stances of aggravation attending the tra tion. Vindictive damages are also "exemplary" or "punitive."

DAMAGES ULTRA. Additional ages claimed by a plaintiff not satisfied those paid into court by the defendant.

DECLARATION OF SERVICE

I, Yvonne Maletic, declare:

I am not a party in this action. I reside in the State of Washington and am employed by Institute for Justice in Seattle, Washington. On December 18, 2007, a true copy of the foregoing Amicus Curiae Brief was placed in envelopes addressed to the following persons:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 18th day of December 2007 at Seattle, Washington.

/s/Yvonne Maletic
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