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B. The second letter of the English alphabet: is used to denote the second of a series of pages, notes, etc.; the subsequent letters, the third and following numbers.

B. C. An abbreviation for "before Christ," "ball court," "bankruptcy cases," and "British Columbia."

B. E. An abbreviation for "Baron of the Court of Exchequer."

B. F. An abbreviation for *bonum factum*, a good or proper act, deed, or decree; signifies "approved."

B. R. An abbreviation for *Bancus Regis*, (King's Bench,) or *Bancus Reginae*, (Queen's Bench.) It is frequently found in the old books as a designation of that court. In more recent usage, the initial letters of the English names are ordinarily employed, *i. e.*, K. B. or Q. B.

B. S. *Bancus Superior*, that is, upper bench.

"BABY ACT." A plea of infancy, interposed for the purpose of defeating an action upon a contract made while the person was a minor, is vulgarly called "pleading the baby act." By extension, the term is applied to a plea of the statute of limitations.

BACHELERIA. In old records. Commonalty or yeomanry, in contradistinction to baronage.

BACHELOR. The holder of the first or lowest degree conferred by a college or university, *e. g.*, a bachelor of arts, bachelor of law, etc.

A kind of inferior knight; an esquire.

A man who has never been married.

BACK, v. To indorse; to sign on the back; to sign generally by way of acceptance or approval. Where a warrant issued in one county is presented to a magistrate of another county and he signs it for the purpose of making it executory in his county, he is said to "back" it. 4 Bl. Comm. 291. So an indorser of a note or bill is colloquially said to "back" it. *Seabury v. Hungerford*, 2 Hill (N. Y.) 80.

BACK, adv. To the rear; backward; in a reverse direction. Also, in arrear.

—Back lands. A term of no very definite import, but generally signifying lands lying back from (not contiguous to) a highway or a water-course. See *Ryerss v. Wheeler*, 22 Wend. (N. Y.) 150.—**Back taxes.** Those assessed for a previous year or years and remaining due and unpaid from the original tax debtor. *M. E. Church v. New Orleans*, 107 La. 611, 32 South. 101; *Gaines v. Galbraeth*, 14 Lea (Tenn.) 363.

—Backwater. Water in a stream which, in consequence of some dam or obstruction below,

is detained or checked in its course, or flows back. *Hodges v. Raymond*, 9 Mass. 316; *Chambers v. Kyle*, 87 Ind. 85. Water caused to flow backward from a steam-vessel by reason of the action of its wheels or screw.

BACKBEAR. In forest law. Carrying on the back. One of the cases in which an offender against vert and venison might be arrested, as being taken with the mainour, or manner, or found carrying a deer off on his back. *Manwood*; *Cowell*.

BACKBEREND. Sax. Bearing upon the back or about the person. Applied to a thief taken with the stolen property in his immediate possession. *Bract*, 1, 3, tr. 2, c. 32. Used with *handhabend*, having in the hand.

BACKBOND. In Scotch law. A deed attaching a qualification or condition to the terms of a conveyance or other instrument. This deed is used when particular circumstances render it necessary to express in a separate form the limitations or qualifications of a right. *Bell*. The instrument is equivalent to a declaration of trust in English conveyancing.

BACKING. Indorsement; indorsement by a magistrate.

BACKING A WARRANT. See **BACK**.

BACKSIDE. In English law. A term formerly used in conveyances and also in pleading; it imports a yard at the back part of or behind a house, and belonging thereto.

BACKWARDATION. In the language of the stock exchange, this term signifies a consideration paid for delay in the delivery of stock contracted for, when the price is lower for time than for cash. *Dos Passos, Stock-Brok.* 270.

BACKWARDS. In a policy of marine insurance, the phrase "forwards and backwards at sea" means from port to port in the course of the voyage, and not merely from one terminus to the other and back. 1 *Taunt.* 475.

BACULUS. A rod, staff, or wand, used in old English practice in making livery of seisin where no building stood on the land, (*Bract*, 40;) a stick or wand, by the erection of which on the land involved in a real action the defendant was summoned to put in his appearance; this was called "*baculus nuntiatorius*." 3 Bl. Comm. 279.

BAD. Substantially defective; inapt; not good. The technical word for unsoundness in pleading.

—Bad debt. Generally speaking, one which is uncollectible. But technically, by statute in

some states, the word may have a more precise meaning. In Louisiana, bad debts are those which have been prescribed against (barred by limitations) and those due by bankrupts who have not surrendered any property to be divided among their creditors. Civ. Code La. 1900, art. 1048. In North Dakota, as applied to the management of banking associations, the term means all debts due to the association on which the interest is past due and unpaid for a period of six months, unless the same are well secured and in process of collection. Rev. Codes N. D. 1899, § 3240.—**Bad faith.** The opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. *Hilgenberg v. Northup*, 134 Ind. 92, 33 N. E. 786; *Morton v. Immigration Ass'n*, 79 Ala. 617; *Coleman v. Billings*, 89 Ill. 191; *Lewis v. Holmes*, 109 La. 1030, 34 South. 66, 61 L. R. A. 274; *Harris v. Harris*, 70 Pa. 174; *Penn Mut. L. Ins. Co. v. Trust Co.*, 73 Fed. 653, 19 C. C. A. 316, 38 L. R. A. 33, 70; *Insurance Co. v. Edwards*, 74 Ga. 230.—**Bad title.** One which conveys no property to the purchaser of the estate; one which is so radically defective that it is not marketable, and hence such that a purchaser cannot be legally compelled to accept it. *Heller v. Cohen*, 15 Misc. Rep. 378, 36 N. Y. Supp. 668.

BADGE. A mark or cognizance worn to show the relation of the wearer to any person or thing; the token of anything; a distinctive mark of office or service.

BADGE OF FRAUD. A term used relatively to the law of fraudulent conveyances made to hinder and defraud creditors. It is defined as a fact tending to throw suspicion upon a transaction, and calling for an explanation. *Bump, Fraud. Conv.* 31; *Gould v. Sanders*, 69 Mich. 5, 37 N. W. 37; *Bryant v. Kelton*, 1 Tex. 420; *Goshorn v. Snodgrass*, 17 W. Va. 768; *Kirkley v. Lacey*, 7 Houst. (Del.) 213, 30 Atl. 994; *Phelps v. Samson*, 113 Iowa, 145, 84 N. W. 1051.

BADGER. In old English law. One who made a practice of buying corn or victuals in one place, and carrying them to another to sell and make profit by them.

BAG. A sack or satchel. A certain and customary quantity of goods and merchandise in a sack. *Wharton*.

BAGA. In English law. A bag or purse. Thus there is the petty-bag-office in the common-law jurisdiction of the court of chancery, because all original writs relating to the business of the crown were formerly kept in a little sack or bag, *in parva baga*. 1 Madd. Ch. 4.

BAGGAGE. In the law of carriers. This term comprises such articles of personal convenience or necessity as are usually carried by passengers for their personal use, and not merchandise or other valuables, although carried in the trunks of passengers, which are not designed for any such

use, but for other purposes, such as a sale and the like. The term includes whatever the passenger takes with him for his personal use or convenience according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or ultimate purpose of the journey. *Macrow v. Railway Co.*, L. R. 6 Q. B. 612; *Bomar v. Maxwell*, 9 Humph. (Tenn.) 621, 51 Am. Dec. 682; *Railroad Co. v. Collins*, 56 Ill. 217; *Hawkins v. Hoffman*, 6 Hill (N. Y.) 590, 41 Am. Dec. 767; *Mauritz v. Railroad Co.* (C. C.) 23 Fed. 771; *Dexter v. Railroad Co.*, 42 N. Y. 326, 1 Am. Rep. 527; *Story, Bailm.* § 499.

BAHADUM. A chest or coffer. *Fleta*.

BAIL, v. To procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court.

To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called "bail," because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, (that is, become bail for his due appearance when required,) in order that he may be safely protected from prison. *Wharton. Stafford v. State*, 10 Tex. App. 49.

BAIL, n. In practice. The sureties who procure the release of a person under arrest, by becoming responsible for his appearance at the time and place designated. Those persons who become sureties for the appearance of the defendant in court.

Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called "bail." Civ. Code Cal. § 2780.

The taking of bail consists in the acceptance by a competent court, magistrate, or officer, of sufficient bail for the appearance of the defendant according to the legal effect of his undertaking, or for the payment to the state of a certain specified sum if he does not appear. Code Ala. 1886, § 4407.

—**Bail absolute.** Sureties whose liability is conditioned upon the failure of the principal to duly account for money coming to his hands as administrator, guardian, etc.—**Bail-bond.** A bond executed by a defendant who has been arrested, together with other persons as sureties, naming the sheriff, constable, or marshal as obligee, in a penal sum proportioned to the damages claimed or penalty denounced, conditioned that the defendant shall duly appear to answer to the legal process in the officer's hands, or shall cause special bail to be put in, as the case may be.—**Bail common.** A fictitious proceeding, intended only to express the appearance of a defendant, in cases where special bail is not required. It is put in in the same form as special bail, but the sureties are merely nominal or imaginary persons, as *John Doe* and *Richard Roe*. 3 Bl. Comm. 287.—**Bail court.** In English law and practice. An auxiliary court of the court of queen's bench at Westminster, wherein points connected more

particularly with pleading and practice are argued and determined. **Holthouse.**—**Bail in error.** That given by a defendant who intends to bring a writ of error on the judgment and desires a stay of execution in the mean time.—**Bail piece.** A formal entry or memorandum of the recognizance or undertaking of special bail in civil actions, which, after being signed and acknowledged by the bail before the proper officer, is filed in the court in which the action is pending. 3 Bl. Comm. 291; 1 Tidd, Pr. 250; Worthen v. Prescott, 60 Vt. 68, 11 Atl. 690; Nicolls v. Ingersoll, 7 Johns. (N. Y.) 154.—**Bail to the action or bail above.** Special bail, (q. v.)—**Bail to the sheriff, or bail below.** In practice. Persons who undertake that a defendant arrested upon mesne process in a civil action shall duly appear to answer the plaintiff; such undertaking being in the form of a bond given to the sheriff, termed a "bail-bond," (q. v.) 3 Bl. Comm. 290; 1 Tidd, Pr. 221.—**Civil bail.** That taken in civil actions.—**Special bail.** In practice. Persons who undertake jointly and severally in behalf of a defendant arrested on mesne process in a civil action that, if he be condemned in the action, he shall pay the costs and condemnation, (that is, the amount which may be recovered against him,) or render himself a prisoner, or that they will pay it for him. 3 Bl. Comm. 291; 1 Tidd, Pr. 245.—**Straw bail.** Nominal or worthless bail. Irresponsible persons, or men of no property, who make a practice of going bail for any one who will pay them a fee therefor.

BAIL. Fr. In French and Canadian law. A lease of lands.

—**Bail à cheptel.** A contract by which one of the parties gives to the other cattle to keep, feed, and care for, the borrower receiving half the profit of increase, and bearing half the loss. Duverger.—**Bail à ferme.** A contract of letting lands.—**Bail à longues années.** A lease for more than nine years; the same as bail emphyteotique (see infra) or an emphyteutic lease.—**Bail à loyer.** A contract of letting houses.—**Bail à rente.** A contract partaking of the nature of the contract of sale, and that of the contract of lease; it is translatif of property, and the rent is essentially redeemable. Clark's Heirs v. Christ's Church, 4 La. 236; Poth. Bail à Rente, l. 3.—**Bail emphyteotique.** An emphyteutic lease; a lease for a term of years with a right to prolong indefinitely; practically equivalent to an alienation.

BAILABLE. Capable of being bailed; admitting of bail; authorizing or requiring bail. A bailable *action* is one in which the defendant cannot be released from arrest except on furnishing bail. Bailable *process* is such as requires the officer to take bail, after arresting the defendant. A bailable *offense* is one for which the prisoner may be admitted to bail.

BAILEE. In the law of contracts. One to whom goods are bailed; the party to whom personal property is delivered under a contract of bailment. Phelps v. People, 72 N. Y. 357; McGee v. French, 49 S. C. 454, 27 S. E. 487; Bergman v. People, 177 Ill. 244, 52 N. E. 363; Com. v. Chatham, 50 Pa. 181, 88 Am. Dec. 539.

BAILIE. In the Scotch law. A bailie is (1) a magistrate having inferior criminal jurisdiction, similar to that of an alderman, (q. v.); (2) an officer appointed to confer in-

feoffment, (q. v.); a bailiff, (q. v.); a server of writs. **Bell.**

BAILIFF. In a general sense, a person to whom some authority, care, guardianship, or jurisdiction is delivered, committed, or intrusted; one who is deputed or appointed to take charge of another's affairs; an overseer or superintendent; a keeper, protector, or guardian; a steward. **Spelman.**

A sheriff's officer or deputy. 1 Bl. Comm. 344. **C**

A magistrate, who formerly administered justice in the parliaments or courts of France, answering to the English sheriffs as mentioned by Bracton.

In the action of account render. A person who has by delivery the custody and administration of lands or goods for the benefit of the owner or bailor, and is liable to render an account thereof. Co. Litt. 271; Story, Eq. Jur. § 446; West v. Weyer, 46 Ohio St. 66, 18 N. E. 537, 15 Am. St. Rep. 552. **D**

A bailiff is defined to be "a servant that has the administration and charge of lands, goods, and chattels, to make the best benefit for the owner, against whom an action of account lies, for the profits which he has raised or made, or might by his industry or care have raised or made." Barnum v. Landon, 25 Conn. 149. **E**

—**Bailiff-errant.** A bailiff's deputy.—**Bailiffs of franchises.** In English law. Officers who perform the duties of sheriffs within liberties or privileged jurisdictions, in which formerly the king's writ could not be executed by the sheriff. **Spelman.**—**Bailiffs of hundreds.** In English law. Officers appointed over hundreds, by the sheriffs, to collect fines therein, and summon juries; to attend the judges and justices at the assises and quarter sessions; and also to execute writs and process in the several hundreds. 1 Bl. Comm. 345; 3 Steph. Comm. 29; Bract. fol. 116.—**Bailiffs of manors.** In English law. Stewards or agents appointed by the lord (generally by an authority under seal) to superintend the manor, collect fines, and quit rents, inspect the buildings, order repairs, cut down trees, impound cattle trespassing, take an account of wastes, spoils, and misdemeanors in the woods and demesne lands, and do other acts for the lord's interest. **Cowell.**—**High bailiff.** An officer attached to an English county court. His duties are to attend the court when sitting; to serve summonses; and to execute orders, warrants, writs, etc. St. 9 & 10 Vict. c. 95, § 33; Poll. C. C. Pr. 16. He also has similar duties under the bankruptcy jurisdiction of the county courts.—**Special bailiff.** A deputy sheriff, appointed at the request of a party to a suit, for the special purpose of serving or executing some writ or process in such suit. **F**

BAILIVIA. In old law. A bailiff's jurisdiction, a bailiwick; the same as *baillium*. **Spelman.** See **BAILIWICK.** **G**

In old English law. A liberty, or exclusive jurisdiction, which was exempted from the sheriff of the county, and over which the lord of the liberty appointed a bailiff with such powers within his precinct **H**

as an under-sheriff exercised under the sheriff of the county. Whishaw.

BAILIWICK. The territorial jurisdiction of a sheriff or bailiff. 1 Bl. Comm. 344. Greenup v. Bacon, 1 T. B. Mon. (Ky.) 108.

BAILLEUR DE FONDS. In Canadian law. The unpaid vendor of real estate.

BAILLI. In old French law. One to whom judicial authority was assigned or delivered by a superior.

BAILMENT. A delivery of goods or personal property, by one person to another, in trust for the execution of a special object upon or in relation to such goods, beneficial either to the bailor or bailee or both, and upon a contract, express or implied, to perform the trust and carry out such object, and thereupon either to redeliver the goods to the bailor or otherwise dispose of the same in conformity with the purpose of the trust. Watson v. State, 70 Ala. 13, 45 Am. Rep. 70; Com. v. Maher, 11 Phila. (Pa.) 425; McCaffrey v. Knapp, 74 Ill. App. 80; Krause v. Com., 93 Pa. 418, 39 Am. Rep. 762; Fulcher v. State, 32 Tex. Cr. R. 621, 25 S. W. 625. See Code Ga. 1882, § 2058.

A delivery of goods in trust upon a contract, expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 Bl. Comm. 455.

Bailment, from the French *bailleur*, to deliver, is a delivery of goods for some purpose, upon a contract, express or implied, that, after the purpose has been fulfilled, they shall be redelivered to the bailor, or otherwise dealt with, according to his directions, or (as the case may be) kept till he reclaims them. 2 Steph. Comm. 80.

A delivery of goods in trust upon a contract, expressed or implied, that the trust shall be duly executed, and the goods restored by the bailee as soon as the purposes of the bailment shall be answered. 2 Kent, Comm. 559.

Bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. Story, Bailm. 3.

A delivery of goods in trust on a contract, either expressed or implied, that the trust shall be duly executed, and the goods redelivered as soon as the time or use for which they were bailed shall have elapsed or be performed. Jones, Bailm. 117.

Bailment is a word of French origin, significant of the curtailed transfer, the delivery or mere handing over, which is appropriate to the transaction. Schouler, Pers. Prop. 695.

The test of a bailment is that the identical thing is to be returned; if another thing of equal value is to be returned, the transaction is a sale. Marsh v. Titus, 6 Thomp. & C. (N. Y.) 29; Sturm v. Boker, 150 U. S. 312, 14 Sup. Ct. 99, 37 L. Ed. 1093.

Classification. Sir William Jones has divided bailments into five sorts, namely: *Depositum*, or deposit; *mandatum*, or commission without recompense; *commodatum*, or loan for use without pay; *pignori acceptum*, or pawn; *locatum*, or hiring, which is always with reward. This last is subdivid-

ed into *locatio rei*, or hiring, by which the hirer gains a temporary use of the thing; *locatio operis faciendi*, when something is to be done to the thing delivered; *locatio operis mercium vehendarum*, when the thing is merely to be carried from one place to another. Jones, Bailm. 36.

Lord Holt divided bailments thus:

(1) *Depositum*, or a naked bailment of goods, to be kept for the use of the bailor.

(2) *Commodatum*. Where goods or chattels that are useful are lent to the bailee *gratis*, to be used by him.

(3) *Locatio rei*. Where goods are lent to the bailee to be used by him for hire.

(4) *Vadium*. Pawn or pledge.

(5) *Locatio operis faciendi*. Where goods are delivered to be carried, or something is to be done about them, for a reward to be paid to the bailee.

(6) *Mandatum*. A delivery of goods to somebody who is to carry them, or do something about them, *gratis*. 2 Ld. Raym. 909.

Another division, suggested by Bouvier, is as follows: *First*, those bailments which are for the benefit of the bailor, or of some person whom he represents; *second*, those for the benefit of the bailee, or some person represented by him; *third*, those which are for the benefit of both parties.

—Bailment for hire. A contract in which the bailor agrees to pay an adequate recompense for the safe-keeping of the thing intrusted to the custody of the bailee, and the bailee agrees to keep it and restore it on the request of the bailor, in the same condition substantially as he received it, excepting injury or loss from causes for which he is not responsible. Arent v. Squire, 1 Daly (N. Y.) 356.—**Gratuitous bailment.** Another name for a depositum or naked bailment, which is made only for the benefit of the bailor and is not a source of profit to the bailee. Foster v. Essex Bank, 17 Mass. 499, 9 Am. Dec. 168.—**Lucrative bailment.** One which is undertaken upon a consideration and for which a payment or recompense is to be made to the bailee, or from which he is to derive some advantage. Prince v. Alabama State Fair, 106 Ala. 340, 17 South. 449, 28 L. R., A. 716.

BAILOR. The party who *bails* or delivers goods to another, in the contract of bailment. McGee v. French, 49 S. C. 454, 27 S. E. 487.

BAIR-MAN. In old Scotch law. A poor insolvent debtor, left bare and naked; who was obliged to swear in court that he was not worth more than five shillings and five pence.

BAIRNS. In Scotch law. A known term, used to denote one's whole issue. Ersk. Inst. 3, 8, 48. But it is sometimes used in a more limited sense. Bell.

BAIRN'S PART. In Scotch law. Children's part; a third part of the defunct's free movables, debts deducted, if the wife survive, and a half if there be no relic.

BAITING ANIMALS. In English law. Procuring them to be worried by dogs. Punishable on summary conviction, under 12 & 13 Vict. c. 92, § 3.

BALENA. A large fish, called by Blackstone a "whale." Of this the king had the head and the queen the tail as a perquisite whenever one was taken on the coast of England. 1 Bl. Comm. 222.

BALANCE. The amount remaining due from one person to another on a settlement of the accounts involving their mutual dealings; the difference between the two sides (debit and credit) of an account.

A balance is the conclusion or result of the debit and credit sides of an account. It implies mutual dealings, and the existence of debt and credit, without which there could be no balance. *Loeb v. Keyes*, 156 N. Y. 529, 51 N. E. 285; *McWilliams v. Allan*, 45 Mo. 574; *Thillman v. Shadrick*, 69 Md. 523, 16 Atl. 138.

The term is also frequently used in the sense of residue or remainder; as when a will speaks of "the balance of my estate." *Lopez v. Lopez*, 23 S. C. 269; *Brooks v. Brooks*, 65 Ill. App. 331; *Lynch v. Spicer*, 53 W. Va. 426, 44 S. E. 255.

—**Balance-sheet.** When it is desired to ascertain the exact state of a merchant's business, or other commercial enterprise, at a given time, all the ledger accounts are closed up to date and balances struck; and these balances, when exhibited together on a single page, and so grouped and arranged as to close into each other and be summed up in one general result, constitute the "balance-sheet." *Eyre v. Harmon*, 92 Cal. 580, 28 Pac. 779.

BALCANIFER, or BALDAKINIFER. The standard-bearer of the Knights Templar.

BALCONIES. Small galleries of wood or stone on the outside of houses. The erection of them is regulated in London by the building acts.

BALDIO. In Spanish law. Waste land; land that is neither arable nor pasture. *White New Recop. b. 2, tit. 1, c. 6, § 4*, and note. Unappropriated public domain, not set apart for the support of municipalities. *Sheldon v. Milmo*, 90 Tex. 1, 36 S. W. 415.

BALE. A pack or certain quantity of goods or merchandise, wrapped or packed up in cloth and corded round very tightly, marked and numbered with figures corresponding to those in the bills of lading for the purpose of identification. *Wharton*.

A bale of cotton is a certain quantity of that commodity compressed into a cubical form, so as to occupy less room than when in bags. 2 Car. & P. 525. *Penrice v. Cocks*, 2 Miss. 229. But see *Bonham v. Railroad Co.*, 16 S. C. 634.

BALISE. Fr. In French marine law. A buoy.

BALIUS. In the civil law. A teacher; one who has the care of youth; a tutor; a guardian. *Du Cange*; *Spelman*.

BALIVA. L. Lat. In old English law. A balliwick, or jurisdiction.

BALLAST. In marine insurance. There is considerable analogy between *ballast* and *dunnage*. The former is used for trimming the ship, and bringing it down to a draft of water proper and safe for sailing. Dunnage is placed under the cargo to keep it from being wetted by water getting into the hold, or between the different parcels to keep them from bruising and injuring each other. *Great Western Ins. Co. v. Thwing*, 13 Wall. 674, 20 L. Ed. 607.

BALLASTAGE. A toll paid for the privilege of taking up ballast from the bottom of a port or harbor.

BALLIVO AMOVENDO. An ancient writ to remove a bailiff from his office for want of sufficient land in the balliwick. *Reg. Orig.* 78.

BALLOT. In the law of elections. A slip of paper bearing the names of the offices to be filled at the particular election and the names of the candidates for whom the elector desires to vote; it may be printed, or written, or partly printed and partly written, and is deposited by the voter in a "ballot-box" which is in the custody of the officers holding the election. *Opinion of Justices*, 19 R. I. 729, 36 Atl. 716, 36 L. R. A. 547; *Brisbin v. Cleary*, 26 Minn. 107, 1 N. W. 825; *State v. Timothy*, 147 Mo. 532, 49 S. W. 500; *Taylor v. Bleakley*, 55 Kan. 1, 39 Pac. 1045, 28 L. R. A. 683, 49 Am. St. Rep. 233.

Also the act of voting by balls or tickets.

A ballot is a ticket folded in such a manner that nothing written or printed thereon can be seen. *Pol. Code Cal.* § 1186.

A ballot is defined to be "a paper ticket containing the names of the persons for whom the elector intends to vote and designating the office to which each person so named is intended by him to be chosen." Thus a ballot, or a ticket, is a single piece of paper containing the names of the candidates and the offices for which they are running. If the elector were to write the names of the candidates upon his ticket twice or three or more times, he does not thereby make it more than one ticket. *People v. Holden*, 28 Cal. 136.

—**Joint ballot.** In parliamentary practice, a joint ballot is an election or vote by ballot participated in by the members of both houses of a legislative assembly sitting together as one body, the result being determined by a majority of the votes cast by the joint assembly thus constituted, instead of by concurrent majorities of the two houses. See *State v. Shaw*, 9 S. C. 144.

BALLOT-BOX. A case made of wood for receiving ballots.

BALLOTTEMENT. Fr. In medical jurisprudence. A test for pregnancy by palpation with the finger inserted in the vagina to the mouth of the uterus. The tip of the finger being quickly jerked upward, the

foetus, if one be present, can be felt rising upward and then settling back against the finger.

BALNEARII. In the Roman law. Those who stole the clothes of bathers in the public baths. 4 Bl. Comm. 239.

BAN. 1. In old English and civil law. A proclamation; a public notice; the announcement of an intended marriage. Cowell. An excommunication; a curse, publicly pronounced. A proclamation of silence made by a crier in court before the meeting of champions in combat. Id. A statute, edict, or command; a fine, or penalty.

2. In French law. The right of announcing the time of mowing, reaping, and gathering the vintage, exercised by certain seignorial lords. Guyot, Repert. Univ.

3. An expanse; an extent of space or territory; a space inclosed within certain limits; the limits or bounds themselves. Spelman.

4. A privileged space or territory around a town, monastery, or other place.

5. In old European law. A military standard; a thing unfurled, a banner. Spelman. A summoning to a standard; a calling out of a military force; the force itself so summoned; a national army levied by proclamation.

BANAL. In Canadian and old French law. Pertaining to a *ban* or privileged place; having qualities or privileges derived from a *ban*. Thus, a banal mill is one to which the lord may require his tenant to carry his grain to be ground.

BANALITY. In Canadian law. The right by virtue of which a lord subjects his vassals to grind at his mill, bake at his oven, etc. Used also of the region within which this right applied. Guyot, Repert. Univ.

BANC. Bench; the seat of judgment; the place where a court permanently or regularly sits.

The full bench, full court. A "sitting *in banc*" is a meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from the sitting of a single judge at the assises or at *nisi prius* and from trials at bar.

BANCI NARRATORES. In old English law. Advocates; counters; sergeants. Applied to advocates in the common pleas courts. 1 Bl. Comm. 24; Cowell.

BANGO. Ital. See BANC. A seat or bench of justice; also, in commerce, a word of Italian origin signifying a bank.

BANCUS. L. Lat. In old English law and practice. A bench or seat in the king's hall or palace. Fleta, lib. 2, c. 16, § 1.

A high seat, or seat of distinction; a seat of judgment, or tribunal for the administration of justice.

The English court of common pleas was formerly called "*Bancus*."

A sitting *in banc*; the sittings of a court with its full judicial authority, or in full form, as distinguished from sittings at *nisi prius*.

A stall, bench, table, or counter, on which goods were exposed for sale. Cowell.

—**Bancus reginae.** The queen's bench. See QUEEN'S BENCH.—**Bancus regis.** The king's bench; the supreme tribunal of the king after parliament. 3 Bl. Comm. 41.—**Bancus superior.** The upper bench. The king's bench was so called during the Protectorate.

BAND. In old Scotch law. A proclamation calling out a military force.

BANDIT. An outlaw; a man *banned*, or put under a ban; a brigand or robber. *Banditti*, a band of robbers.

BANE. A malefactor. Bract. l. 1, t. 8, c. 1.

Also a public denunciation of a malefactor; the same with what was called "*hutesium*," hue and cry. Spelman.

BANERET, or BANNERET. In English law. A knight made in the field, by the ceremony of cutting off the point of his standard, and making it, as it were, a banner. Knights so made are accounted so honorable that they are allowed to display their arms in the royal army, as barons do, and may bear arms with supporters. They rank next to barons; and were sometimes called "*veaillarii*." Wharton.

BANI. Deodands, (*q. v.*)

BANISHMENT. In criminal law. A punishment inflicted upon criminals, by compelling them to quit a city, place, or country for a specified period of time, or for life. See *Cooper v. Telfair*, 4 Dall. 14, 1 L. Ed. 721; *People v. Potter*, 1 Park. Cr. R. (N. Y.) 54.

It is inflicted principally upon political offenders, "transportation" being the word used to express a similar punishment of ordinary criminals. Banishment, however, merely forbids the return of the person banished before the expiration of the sentence, while transportation involves the idea of deprivation of liberty after the convict arrives at the place to which he has been carried. Rap. & L.

BANK. 1. A bench or seat; the bench or tribunal occupied by the judges; the seat of judgment; a court. The full bench, or full court; the assembly of all the judges of a court. A "sitting *in bank*" is a meeting of all the judges of a court, usually for the

purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from the sitting of a single judge at the assises or at *nisi prius* and from trials, at bar. But, in this sense, *banc* is the more usual form of the word.

2. An institution, of great value in the commercial world, empowered to receive deposits of money, to make loans, and to issue its promissory notes, (designed to circulate as money, and commonly called "bank-notes" or "bank-bills,") or to perform any one or more of these functions.

The term "bank" is usually restricted in its application to an incorporated body; while a private individual making it his business to conduct banking operations is denominated a "banker." *Hobbs v. Bank*, 101 Fed. 75, 41 C. C. A. 205; *Kiggins v. Munday*, 19 Wash. 233, 52 Pac. 855; *Rominger v. Keyes*, 73 Ind. 377; *Oulton v. Loan Soc.*, 17 Wall. 117, 21 L. Ed. 618; *Hamilton Nat. Bank v. American L. & T. Co.*, 66 Neb. 67, 92 N. W. 190; *Wells, Fargo & Co. v. Northern Pac. R. Co.* (C. C.) 23 Fed. 469.

Also the house or place where such business is carried on.

Banks in the commercial sense are of three kinds, to-wit: (1) Of deposit; (2) of discount; (3) of circulation. Strictly speaking, the term "bank" implies a place for the deposit of money, as that is the most obvious purpose of such an institution. Originally the business of banking consisted only in receiving deposits, such as bullion, plate, and the like, for safe-keeping until the depositor should see fit to draw it out for use, but the business, in the progress of events, was extended, and bankers assumed to discount bills and notes, and to loan money upon mortgage, pawn, or other security, and, at a still later period, to issue notes of their own, intended as a circulating currency and a medium of exchange, instead of gold and silver. Modern bankers frequently exercise any two or even all three of those functions, but it is still true that an institution prohibited from exercising any more than one of those functions is a bank, in the strictest commercial sense. *Oulton v. German Sav. & L. Soc.*, 17 Wall. 118, 21 L. Ed. 618; *Rev. St. U. S.* § 8407 (U. S. Comp. St. 1901, p. 2246).

3. An acclivity; an elevation or mound of earth; usually applied in this sense to the raised earth bordering the sides of a water-course.

—Bank-account. A sum of money placed with a bank or banker, on deposit, by a customer, and subject to be drawn out on the latter's check. The statement or computation of the several sums deposited and those drawn out by the customer on checks, entered on the books of the bank and the depositor's pass-book. *Gale v. Drake*, 51 N. H. 84.—**Bank-bill.** A promissory note issued by a bank, payable to the bearer on demand, and designed to circulate as money. *Townsend v. People*, 4 Ill. 328; *Low v. People*, 2 Park. Cr. R. (N. Y.) 37; *State v. Hays*, 21 Ind. 176; *State v. Wilkins*, 17 Vt.

155.—**Bank-book.** A book kept by a customer of a bank, showing the state of his account with it.—**Bank-check.** See CHECK.—**Bank-credits.** Accommodations allowed to a person on security given to a bank, to draw money on it to a certain extent agreed upon.—**Bank-note.** A promissory note issued by a bank or authorized banker, payable to bearer on demand, and intended to circulate as money. Same as BANK-BILL, *supra*.—**Bank of issue.** One authorized by law to issue its own notes intended to circulate as money. *Bank v. Gruber*, 87 Pa. 471, 30 Am. Rep. 378.—**Bank-stock.** Shares in the capital of a bank; shares in the property of a bank.—**Bank teller.** See TELLER.—**Joint-stock banks.** In English law. Joint-stock companies for the purpose of banking. They are regulated, according to the date of their incorporation, by charter, or by 7 Geo. IV. c. 46; 7 & 8 Vict. cc. 32, 113; 9 & 10 Vict. c. 45, (in Scotland and Ireland); 20 & 21 Vict. c. 49; and 27 & 28 Vict. c. 32; or by the "Joint-Stock Companies Act, 1862," (25 & 26 Vict. c. 89.) **Wharton.—Savings bank.** An institution in the nature of a bank, formed or established for the purpose of receiving deposits of money, for the benefit of the persons depositing, to accumulate the produce of so much thereof as shall not be required by the depositors, their executors or administrators, at compound interest, and to return the whole or any part of such deposit, and the produce thereof, to the depositors, their executors or administrators, deducting out of such produce so much as shall be required for the necessary expenses attending the management of such institution, but deriving no benefit whatever from any such deposit or the produce thereof. *Grant, Banks*, 546; *Johnson v. Ward*, 2 Ill. App. 274; *Com. v. Reading Sav. Bank*, 133 Mass. 16, 19, 43 Am. Rep. 495; *National Bank of Redemption v. Boston*, 125 U. S. 60, 8 Sup. Ct. 772, 31 L. Ed. 689; *Barrett v. Bloomfield Sav. Inst.*, 64 N. J. Eq. 425, 54 Atl. 543.

BANKABLE. In mercantile law. Notes, checks, bank-bills, drafts, and other securities for money, received as cash by the banks. Such commercial paper as is considered worthy of discount by the bank to which it is offered is termed "bankable." *Allis Co. v. Power Co.*, 9 S. D. 459, 70 N. W. 650.

BANKER. A private person who keeps a bank; one who is engaged in the business of banking. *People v. Doty*, 80 N. Y. 228; *Auten v. Bank*, 174 U. S. 125, 19 Sup. Ct. 628, 43 L. Ed. 920; *Richmond v. Blake*, 132 U. S. 592, 10 Sup. Ct. 204, 33 L. Ed. 481; *Meadowcroft v. People*, 163 Ill. 56, 45 N. E. 303, 35 L. R. A. 176, 54 Am. St. Rep. 447.

BANKER'S NOTE. A commercial instrument resembling a bank-note in every particular except that it is given by a private banker or unincorporated banking institution.

BANKEROUT. O. Eng. Bankrupt; insolvent; indebted beyond the means of payment.

BANKING. The business of receiving money on deposit, loaning money, discounting notes, issuing notes for circulation, collecting money on notes deposited, negotiating bills, etc. *Bank v. Turner*, 154 Ind. 456, 57 N. E. 110. See BANK; BANKER.

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BANKRUPT. A person who has committed an act of bankruptcy; one who has done some act or suffered some act to be done in consequence of which, under the laws of his country, he is liable to be proceeded against by his creditors for the seizure and distribution among them of his entire property. *Ashby v. Steere*, 2 Woodb. & M. 347, 2 Fed. Cas. 15; *In re Scott*, 21 Fed. Cas. 803; *U. S. v. Pusey*, 27 Fed. Cas. 632.

A trader who secretes himself or does certain other acts tending to defraud his creditors. 2 Bl. Comm. 471.

In a looser sense, an insolvent person; a broken-up or ruined trader. *Everett v. Stone*, 3 Story, 453, Fed. Cas. No. 4,577.

A person who, by the formal decree of a court, has been declared subject to be proceeded against under the bankruptcy laws, or entitled, on his voluntary application, to take the benefit of such laws.

BANKRUPT LAW. A law relating to bankrupts and the procedure against them in the courts. A law providing a remedy for the creditors of a bankrupt, and for the relief and restitution of the bankrupt himself.

A bankrupt law is distinguished from the ordinary law between debtor and creditor, as involving these three general principles: (1) A summary and immediate seizure of all the debtor's property; (2) a distribution of it among the creditors in general, instead of merely applying a portion of it to the payment of the individual complainant; and (3) the discharge of the debtor from future liability for the debts then existing.

The leading distinction between a bankrupt law and an insolvent law, in the proper technical sense of the words, consists in the character of the persons upon whom it is designed to operate,—the former contemplating as its objects bankrupts only, that is, traders of a certain description; the latter, insolvents in general, or persons unable to pay their debts. This has led to a marked separation between the two systems, in principle and in practice, which in England has always been carefully maintained, although in the United States it has of late been effectually disregarded. In further illustration of this distinction, it may be observed that a bankrupt law, in its proper sense, is a remedy intended primarily for the benefit of creditors; it is set in motion at their instance, and operates upon the debtor against his will, (*in invitum*.) although in its result it effectually discharges him from his debts. An insolvent law, on the other hand, is chiefly intended for the benefit of the debtor, and is set in motion at his instance, though less effective as a discharge in its final result. *Sturges v. Crowninshield*, 4 Wheat. 194, 4 L. Ed. 529; *Vanuxen v. Hazlehurst*, 4 N. J. Law, 192, 7 Am. Dec. 582; *Adams v. Storey*, 1 Paine, 79, 1 Fed. Cas. 142; *Kunzler v. Kohaus*, 5 Hill (N. Y.) 317.

The only substantial difference between a strictly bankrupt law and an insolvent law lies in the circumstance that the former affords relief upon the application of the creditor, and the latter upon the application of the debtor. In the general character of the remedy, there is no difference, however much the modes by which the remedy may be administered may vary. *Martin v. Berry*, 37 Cal. 222.

BANKRUPTCY. 1. The state or condition of one who is a bankrupt; amenability

to the bankrupt laws; the condition of one who has committed an act of bankruptcy, and is liable to be proceeded against by his creditors therefor, or of one whose circumstances are such that he is entitled, on his voluntary application, to take the benefit of the bankrupt laws. The term is used in a looser sense as synonymous with "insolvency,"—inability to pay one's debts; the stopping and breaking up of business because the trader is broken down, insolvent, ruined. *Phipps v. Harding*, 70 Fed. 468, 17 C. O. A. 203, 30 L. R. A. 513; *Arnold v. Maynard*, 2 Story, 354, Fed. Cas. No. 561; *Bernhardt v. Curtis*, 109 La. 171, 33 South. 125, 94 Am. St. Rep. 445.

2. The term denotes the proceedings taken under the bankrupt law, against a person (or firm or company) to have him adjudged a bankrupt, and to have his estate administered for the benefit of the creditors, and divided among them.

3. That branch of jurisprudence, or system of law and practice, which is concerned with the definition and ascertainment of acts of bankruptcy and the administration of bankrupts' estates for the benefit of their creditors and the absolution and restitution of bankrupts.

As to the distinction between bankruptcy and insolvency, it may be said that insolvent laws operate at the instance of an imprisoned debtor; bankrupt laws, at the instance of a creditor. But the line of partition between bankrupt and insolvent laws is not so distinctly marked as to define what belongs exclusively to the one and not to the other class of laws. *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L. Ed. 529.

Insolvency means a simple inability to pay, as debts should become payable, whereby the debtor's business would be broken up; bankruptcy means the particular legal status, to be ascertained and declared by a judicial decree. *In re Black*, 2 Ben. 196, Fed. Cas. No. 1,457.

Classification. Bankruptcy (in the sense of proceedings taken under the bankruptcy law) is either voluntary or involuntary; the former where the proceeding is initiated by the debtor's own petition to be adjudged a bankrupt and have the benefit of the law (*In re Murray* [D. C.] 96 Fed. 600; *Metsker v. Bonebrake*, 108 U. S. 66, 2 Sup. Ct. 351, 27 L. Ed. 654), the latter where he is forced into bankruptcy on the petition of a sufficient number of his creditors.

—**Act of bankruptcy**, see **ACT.—Adjudication of bankruptcy.** The judgment or decree of a court having jurisdiction, that a person against whom a petition in bankruptcy has been filed, or who has filed his voluntary petition, be ordered and adjudged to be a bankrupt.—**Bankruptcy courts.** Courts for the administration of the bankrupt laws. The present English bankruptcy courts are the London bankruptcy court, the court of appeal, and the local bankruptcy courts created by the bankruptcy act, 1869.—**Bankruptcy proceedings.** The term includes all proceedings in a federal court having jurisdiction in bankruptcy, founded on a petition in bankruptcy and either directly or collaterally involved in the adjudication and discharge of the bankrupt and the collection and administration of his estate. *Kidder v. Horrobin*, 72 N. Y. 167.

BANLEUCA. An old law term, signifying a space or tract of country around a

city, town, or monastery, distinguished and protected by peculiar privileges. Spelman.

BANLIEU, or BANLIEUE. A French and Canadian law term, having the same meaning as *banlieuca*, (*q. v.*)

BANNERET. See **BANERET.**

BANNI, or BANNITUS. In old law, one under a ban, (*q. v.*) an outlaw or banished man. Britt. cc. 12, 13; Calvin.

BANNI NUPTIARUM. L. Lat. In old English law. The bans of matrimony.

BANNIMUS. We ban or expel. The form of expulsion of a member from the University of Oxford, by affixing the sentence in some public places, as a promulgation of it. Cowell.

BANNIRE AD PLACITA, AD MO-LENDINUM. To summon tenants to serve at the lord's courts, to bring corn to be ground at his mill.

BANNS. See **BANS OF MATRIMONY.**

BANNUM. A ban, (*q. v.*)

BANNUS. In old English law. A proclamation. *Bannus regis*; the king's proclamation, made by the voice of a herald, forbidding all present at the trial by combat to interfere either by motion or word, whatever they might see or hear. Bract. fol. 142.

BANQUE. Fr. A bench; the table or counter of a trader, merchant, or banker. *Banque route*; a broken bench or counter; bankrupt.

BANS OF MATRIMONY. A public announcement of an intended marriage, required by the English law to be made in a church or chapel, during service, on three consecutive Sundays before the marriage is celebrated. The object is to afford an opportunity for any person to interpose an objection if he knows of any impediment or other just cause why the marriage should not take place. The publication of the bans may be dispensed with by procuring a special license to marry.

BANYAN. In East Indian law. A Hindoo-merchant or shop-keeper. The word is used in Bengal to denote the native who manages the money concerns of a European, and sometimes serves him as an interpreter.

BAR. 1. A partition or railing running across a court-room, intended to separate the general public from the space occupied by the judges, counsel, jury, and others concerned in the trial of a cause. In the English courts it is the partition behind which all outer-bar-

risters and every member of the public must stand. Solicitors, being officers of the court, are admitted within it; as are also queen's counsel, barristers with patents of precedence, and serjeants, in virtue of their ranks. Parties who appear in person also are placed within the bar on the floor of the court.

2. The term also designates a particular part of the court-room; for example, the place where prisoners stand at their trial, whence the expression "prisoner at the bar."

3. It further denotes the presence, actual or constructive, of the court. Thus, a trial *at bar* is one had before the full court, distinguished from a trial had before a single judge at *nisi prius*. So the "case at bar" is the case now before the court and under its consideration; the case being tried or argued.

4. In the practice of legislative bodies, the *bar* is the outer boundary of the house, and therefore all persons, not being members, who wish to address the house, or are summoned to it, appear *at the bar* for that purpose.

5. In another sense, the whole body of attorneys and counsellors, or the members of the legal profession, collectively, are figuratively called the "bar," from the place which they usually occupy in court. They are thus distinguished from the "bench," which term denotes the whole body of judges.

6. In the law of contracts, "bar" means an impediment, an obstacle, or preventive barrier. Thus, relationship within the prohibited degrees is a *bar* to marriage. In this sense also we speak of the "bar of the statute of limitations."

7. It further means that which defeats, annuls, cuts off, or puts an end to. Thus, a provision "in bar of dower" is one which has the effect of defeating or cutting off the dower-rights which the wife would otherwise become entitled to in the particular land.

8. In pleading, it denoted a special plea, constituting a sufficient answer to an action at law; and so called because it *barred*, *i. e.*, prevented, the plaintiff from further prosecuting it with effect, and, if established by proof, defeated and destroyed the action altogether. Now called a special "plea in bar." See **PLEA IN BAR.**

BAR FEE. In English law. A fee taken by the sheriff, time out of mind, for every prisoner who is acquitted. Bac. Abr. "Extortion." Abolished by St. 14 Geo. III. c. 26; 55 Geo. III. c. 50; 8 & 9 Vict. c. 114.

BARAGARIA. Span. A concubine, whom a man keeps alone in his house, unconnected with any other woman. Las Partidas, pt. 4, tit. 14.

Baratriam committit qui propter pecuniam justitiam haractat. He is guilty of barratry who for money sells justice. Bell.

BARBANUS. In old Lombardic law. An uncle, (*patruus*.)

BARBICANAGE. In old European law. Money paid to support a barbican or watch-tower.

BARBITTS. L. Fr. (Modern Fr. *brebis*.) Sheep. See *Millen v. Fawen*, Bendloe, 171, "*home ove petit chien chase barbitts.*"

BARE TRUSTEE. A person to whose fiduciary office no duties were originally attached, or who, although such duties were originally attached to his office, would, on the requisition of his *cestuis que trust*, be compellable in equity to convey the estate to them or by their direction. 1 Ch. Div. 279.

BARET. L. Fr. A wrangling suit. Britt. c. 92; Co. Litt. 368b.

BARGAIN. A mutual undertaking, contract, or agreement.

A contract or agreement between two parties, the one to sell goods or lands, and the other to buy them. *Hunt v. Adams*, 5 Mass. 360, 4 Am. Dec. 68; *Sage v. Wilcox*, 6 Conn. 91; *Bank v. Archer*, 16 Miss. 192.

"If the word 'agreement' imports a mutual act of two parties, surely the word 'bargain' is not less significative of the consent of two. In a popular sense, the former word is frequently used as declaring the engagement of one only. A man may agree to pay money or to perform some other act, and the word is then used synonymously with 'promise' or 'engage.' But the word 'bargain' is seldom used, unless to express a mutual contract or undertaking." *Packard v. Richardson*, 17 Mass. 131, 9 Am. Dec. 123.

—**Bargainee.** The party to a bargain to whom the subject-matter of the bargain or thing bargained for is to go; the grantee in a deed of bargain and sale.—**Bargainor.** The party to a bargain who is to perform the contract by delivery of the subject-matter.—**Catching bargain.** A bargain by which money is loaned, at an extortionate or extravagant rate, to an heir or any one who has an estate in reversion or expectancy, to be repaid on the vesting of his interest; or a similar unconscionable bargain with such person for the purchase outright of his expectancy.

BARGAIN AND SALE. In conveyancing. The transferring of the property of a thing from one to another, upon valuable consideration, by way of sale. *Shep. Touch.* (by Preston,) 221.

A contract or bargain by the owner of land, in consideration of money or its equivalent paid, to sell land to another person, called the "bargainee," whereupon a use arises in favor of the latter, to whom the seisin is transferred by force of the statute of uses. 2 Washb. Real Prop. 128; *Brittin v. Freeman*, 17 N. J. Law, 231; *Iowa v. McFarland*, 110 U. S. 471, 4 Sup. Ct. 210, 28 L. Ed. 198; *Love v. Miller*, 53 Ind. 296, 21 Am. Rep. 192; *Slifer v. Beates*, 9 Serg. & R. (Pa.) 176.

The expression "bargain and sale" is also

applied to transfers of personalty, in cases where there is first an executory agreement for the sale, (the bargain,) and then an actual and completed sale.

The proper and technical words to denote a bargain and sale are "bargain and sell;" but any other words that are sufficient to raise a use upon a valuable consideration are sufficient. 2 Wood. Conv. 15; *Jackson ex dem. Hudson v. Alexander*, 3 Johns. 484, 3 Am. Dec. 517.

BARK. Is sometimes figuratively used to denote the mere words or letter of an instrument, or outer covering of the ideas sought to be expressed, as distinguished from its inner substance or essential meaning. "If the *bark* makes for them, the pith makes for us." Bacon.

BARLEYCORN. In linear measure. The third of an inch.

BARMOTE COURTS. Courts held in certain mining districts belonging to the Duchy of Lancaster, for regulation of the mines, and for deciding questions of title and other matters relating thereto. 3 Steph. Comm. 347, note b.

BARNARD'S INN. An inn of chancery. See INNS OF CHANCEERY.

BARO. An old law term signifying, originally, a "man," whether slave or free. In later usage, a "freeman," a "strong man," a "good soldier," a "baron," also a "vassal," or "feudal tenant or client," and "husband," the last being the most common meaning of the word.

BARON. A lord or nobleman; the most general title of nobility in England. 1 Bl. Comm. 398, 399.

A particular degree or title of nobility, next to a viscount.

A judge of the court of exchequer. 3 Bl. Comm. 44; Cowell.

A freeman. Co. Litt. 58a. Also a vassal holding directly from the king.

A husband; occurring in this sense in the phrase "*baron et feme*," husband and wife.

—**Baron and feme.** Husband and wife. A wife being under the protection and influence of her baron, lord, or husband, is styled a "*feme-covert*," (*femina viro cooperta*), and her state of marriage is called her "coverture." *Cummings v. Everett*, 82 Me. 260, 19 Atl. 456.

—**Barons of the cinque ports.** Members of parliament from these ports, viz.: Sandwich, Romney, Hastings, Hythe, and Dover. Winchelsea and Rye have been added.—**Barons of the exchequer.** The six judges of the court of exchequer in England, of whom one is styled the "chief baron;" answering to the justices and chief justice of other courts.

BARONAGE. In English law. The collective body of the barons, or of the nobility at large. Spelman.

BARONET. An English name or title of dignity, (but not a title of nobility,) established A. D. 1611 by James I. It is created by letters patent, and descends to the male heir. Spelman.

BARONY. The dignity of a baron; a species of tenure; the territory or lands held by a baron. Spelman.

—**Barony of land.** In England, a quantity of land amounting to 15 acres. In Ireland, a subdivision of a county.

BARRA, or BARRE. In old practice. A plea in bar. The bar of the court. A barrister.

BARRATOR. One who is guilty of the crime of barratry.

BARRATROUS. Fraudulent; having the character of barratry.

BARRATRY. In maritime law. An act committed by the master or mariners of a vessel, for some unlawful or fraudulent purpose, contrary to their duty to the owners, whereby the latter sustain injury. It may include negligence, if so gross as to evidence fraud. *Marcadier v. Insurance Co.*, 8 Cranch, 49, 3 L. Ed. 481; *Atkinson v. Insurance Co.*, 65 N. Y. 538; *Atkinson v. Insurance Co.*, 4 Daly (N. Y.) 16; *Patapsco Ins. Co. v. Coulter*, 3 Pet. 231, 7 L. Ed. 659; *Lawton v. Insurance Co.*, 2 Cush. (Mass.) 501; *Earle v. Rowcroft*, 8 East, 135.

Barratry is some fraudulent act of the master or mariners, tending to their own benefit, to the prejudice of the owner of the vessel, without his privity or consent. *Kendrick v. Delafield*, 2 Caines (N. Y.) 67.

Barratry is a generic term, which includes many acts of various kinds and degrees. It comprehends any unlawful, fraudulent, or dishonest act of the master or mariners, and every violation of duty by them arising from gross and culpable negligence contrary to their duty to the owner of the vessel, and which might work loss or injury to him in the course of the voyage insured. A mutiny of the crew, and forcible dispossession by them of the master and other officers from the ship, is a form of barratry. *Greene v. Pacific Mut. Ins. Co.*, 9 Allen (Mass.) 217.

In criminal law. Common barratry is the practice of exciting groundless judicial proceedings. Pen. Code Cal. § 158; Pen. Code Dak. § 191; *Lucas v. Pico*, 55 Cal. 128; *Com. v. McCulloch*, 15 Mass. 229.

Also spelled "Barretry," which see.

In Scotch law. The crime committed by a judge who receives a bribe for his judgment. *Skene; Brande.*

BARRED. Obstructed by a bar; subject to hindrance or obstruction by a bar or barrier which, if interposed, will prevent legal redress or recovery; as, when it is said that a claim or cause of action is "barred by the statute of limitations." *Knox County v.*

Morton, 68 Fed. 791, 15 C. C. A. 671; *Cowan v. Mueller*, 176 Mo. 192, 75 S. W. 606; *Wilson v. Knox County*, 132 Mo. 387, 84 S. W. 45, 477.

BARREL. A measure of capacity, equal to thirty-six gallons.

In agricultural and mercantile parlance, as also in the inspection laws, the term "barrel" means, *prima facie*, not merely a certain quantity, but, further, a certain state of the article; namely, that it is in a cask. *State v. Moore*, 33 N. C. 72. C

BARREN MONEY. In the civil law. A debt which bears no interest.

BARRENESS. Sterility; the incapacity to bear children. D

BARRETOR. In criminal law. A common mover, exciter, or maintainer of suits and quarrels either in courts or elsewhere in the country; a disturber of the peace who spreads false rumors and calumnies, whereby discord and disquiet may grow among neighbors. *Co. Litt.* 368. E

—**Common barretor.** One who frequently excites and stirs up groundless suits and quarrels, either at law or otherwise. *State v. Chitty*, 1 Bailey, (S. C.) 379; *Com. v. Davis*, 11 Pick. (Mass.) 432. F

BARRETRY. In criminal law. The act or offense of a barretor, (*q. v.*) usually called "common barretry." The offense of frequently exciting and stirring up suits and quarrels, either at law or otherwise. 4 Bl. Comm. 134; 4 Steph. Comm. 262. G

BARRIER. In mining law and the usage of miners, is a wall of coal left between two mines. H

BARRISTER. In English law. An advocate; one who has been called to the bar. A counsellor learned in the law who pleads at the bar of the courts, and who is engaged in conducting the trial or argument of causes. To be distinguished from the *attorney*, who draws the pleadings, prepares the testimony, and conducts matters out of court. In *re Rickert*, 66 N. H. 207, 29 Atl. 559, 24 L. R. A. 740. I

Inner barrister. A serjeant or king's counsel who pleads within the bar.

Ouster barrister. One who pleads "ouster" or without the bar. J

Vacation barrister. A counsellor newly called to the bar, who is to attend for several long vacations the exercise of the house.

—**Junior barrister.** A barrister under the rank of queen's counsel. Also the junior of two counsel employed on the same side in a case. *Mozley & Whitley.* L

BARTER. A contract by which parties exchange goods or commodities for other goods. It differs from *sale*, in this: that in M

the latter transaction goods or property are always exchanged for money. *Guerreiro v. Pelle*, 3 Barn. & Ald. 617; *Cooper v. State*, 37 Ark. 418; *Meyer v. Rousseau*, 47 Ark. 460, 2 S. W. 112.

This term is not applied to contracts concerning land, but to such only as relate to goods and chattels. Barter is a contract by which the parties exchange goods. *Speigle v. Meredith*, 4 Biss. 123, Fed. Cas. No. 13, 227.

BARTON. In old English law. The demesne land of a manor; a farm distinct from the mansion.

BAS. Fr. Low; inferior; subordinate.

—**Bas chevaliers.** In old English law. Low, or inferior knights, by tenure of a base military fee, as distinguished from *barons* and *bannerets*, who were the chief or superior knights. *Cowell*.—**Bas ville.** In French law. The suburbs of a town.

BASE, *adj.* Low; inferior; servile; of subordinate degree; impure, adulterated, or alloyed.

—**Base animal.** See **ANIMAL**.—**Base bullion.** Base silver bullion is silver in bars mixed to a greater or less extent with alloys or base materials. *Hope Min. Co. v. Kennon*, 3 Mont. 44.—**Base coin.** Debased, adulterated, or alloyed coin. *Gabe v. State*, 6 Ark. 540.—**Base court.** In English law. Any inferior court that is not of record, as a court baron, etc. *Kitch.* 95, 96; *Cowell*.—**Base estate.** The estate which "base tenants" (*q. v.*) have in their land. *Cowell*.—**Base fee.** In English law. An estate or fee which has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. 2 Bl. Comm. 109. *Wiggins Ferry Co. v. Railroad Co.*, 94 Ill. 93; *Camp Meeting Ass'n v. East Lyme*, 54 Conn. 152, 5 Atl. 849.—**Base-infertment.** In Scotch law. A disposition of lands by a vassal, to be held of himself.—**Base right.** In Scotch law. A subordinate right; the right of a subvassal in the lands held by him. *Bell*.—**Base services.** In feudal law. Such services as were unworthy to be performed by the nobler men, and were performed by the peasants and those of servile rank. 2 Bl. Comm. 61.—**Base tenants.** Tenants who performed to their lords services in villenage; tenants who held at the will of the lord, as distinguished from *frank* tenants, or freeholders. *Cowell*.—**Base tenure.** A tenure by villenage, or other customary service, as distinguished from tenure by military service; or from tenure by free service. *Cowell*.

BASILEUS. A Greek word, meaning "king." A title assumed by the emperors of the Eastern Roman Empire. It is used by Justinian in some of the Novels; and is said to have been applied to the English kings before the Conquest. See 1 Bl. Comm. 242.

BASILICA. The name given to a compilation of Roman and Greek law, prepared about A. D. 880 by the Emperor Basilius, and published by his successor, Leo the Philosopher. It was written in Greek, was mainly an abridgment of Justinian's *Corpus Juris*, and comprised sixty books, only a por-

tion of which are extant. It remained the law of the Eastern Empire until the fall of Constantinople, in 1453.

BASILS. In old English law. A kind of money or coin abolished by Henry II.

BASIN. In admiralty law and marine insurance. A part of the sea inclosed in rocks. *U. S. v. Morel*, 13 Am. Jur. 236, 26 Fed. Cas. 1310.

BASKET TENURE. In feudal law. Lands held by the service of making the king's baskets.

BASSE JUSTICE. In feudal law. Low justice; the right exercised by feudal lords of personally trying persons charged with trespasses or minor offenses.

BASTARD. An illegitimate child; a child born of an unlawful intercourse, and while its parents are not united in marriage. *Timmins v. Lacy*, 30 Tex. 135; *Miller v. Anderson*, 43 Ohio St. 473, 3 N. E. 605, 54 Am. Rep. 823; *Pettus v. Dawson*, 82 Tex. 18, 17 S. W. 714; *Smith v. Perry*, 80 Va. 570.

A child born after marriage, but under circumstances which render it impossible that the husband of his mother can be his father. *Com. v. Shepherd*, 6 Bin. (Pa.) 283, 6 Am. Dec. 449.

One begotten and born out of lawful wedlock. 2 Kent, Comm. 208.

One born of an illicit union. Civ. Code La. arts. 29, 190.

A bastard is a child born out of wedlock, and whose parents do not subsequently intermarry, or a child the issue of adulterous intercourse of the wife during wedlock. Code Ga. 1882, § 1797.

—**Bastard eigne.** In old English law. Bastard elder. If a child was born of an illicit connection, and afterwards the parents intermarried and had another son, the elder was called "*bastard eigne*," and the younger, "*mulier puisne*," i. e., afterwards born of the wife. See 2 Bl. Comm. 248.—**Special bastard.** One born of parents before marriage, the parents afterwards intermarrying. By the civil and Scotch law he would be then legitimated.

BASTARDA. In old English law. A female bastard. *Fleta*, lib. 5, c. 5, § 40.

BASTARDIZE. To declare one a bastard, as a court does. To give evidence to prove one a bastard. A mother (married) cannot bastardize her child.

Bastardus nullius est filius, aut filius populi. A bastard is nobody's son, or the son of the people.

Bastardus non potest habere heredem nisi de corpore suo legitime procreatum. A bastard can have no heir unless it be one lawfully begotten of his own body. *Tray. Lat. Max.* 51.

BASTARDY. The offense of begetting a bastard child. The condition of a bastard. *Dinkey v. Com.*, 17 Pa. 129, 55 Am. Dec. 542.

BASTARDY PROCESS. The method provided by statute of proceeding against the putative father to secure a proper maintenance for the bastard.

BASTON. In old English law, a baton, club, or staff. A term applied to officers of the wardens of the prison called the "Fleet," because of the staff carried by them. *Cowell*; *Spelman*; *Termes de la Ley*.

BATABLE-GROUND. Land that is in controversy, or about the possession of which there is a dispute, as the lands which were situated between England and Scotland before the Union. *Skene*.

BATAILLE. In old English law. Battle; the trial by combat or *duellum*.

BATH, KNIGHTS OF THE. In English law. A military order of knighthood, instituted by Richard II. The order was newly regulated by notifications in the *London Gazette* of 25th May, 1847, and 16th August, 1850. *Wharton*.

BATIMENT. In French marine law. A vessel or ship.

BATONNIER. The chief of the French bar in its various centres, who presides in the council of discipline. *Arg. Fr. Merc. Law*, 546.

BATTEL. Trial by combat; wager of battel.

BATTEL, WAGER OF. In old English law. A form of trial anciently used in military cases, arising in the court of chivalry and honor, in appeals of felony, in criminal cases, and in the obsolete real action called a "writ of action." The question at issue was decided by the result of a personal combat between the parties, or, in the case of a writ of right, between their champions.

BATTERY. Any unlawful beating, or other wrongful physical violence or constraint, inflicted on a human being without his consent. 2 *Bish. Crim. Law*, § 71; *Goodrum v. State*, 60 Ga. 511; *Razor v. Kinsey*, 55 Ill. App. 614; *Lamb v. State*, 67 Md. 524, 10 Atl. 209, 298; *Hunt v. People*, 53 Ill. App. 112; *Perkins v. Stein*, 94 Ky. 433, 22 S. W. 649, 20 L. R. A. 861. And see *BEAT*.

A battery is a willful and unlawful use of force or violence upon the person of another. *Pen. Code Cal.* § 242; *Pen. Code Dak.* § 306.

The actual offer to use force to the injury of another person is *assault*; the use of it is *battery*; hence the two terms are commonly combined in the term "assault and battery."

—**Simple battery.** In criminal law and torts. A beating of a person, not accompanied by circumstances of aggravation, or not resulting in grievous bodily injury.

BATTURE. In Louisiana. A marine term used to denote a bottom of sand, stone, or rock mixed together and rising towards the surface of the water; an elevation of the bed of a river under the surface of the water, since it is rising towards it; sometimes, however, used to denote the same elevation of the bank when it has risen above the surface of the water, or is as high as the land on the outside of the bank. In this latter sense it is synonymous with "alluvion." It means, in common-law language, land formed by accretion. *Morgan v. Livingston*, 6 Mart. (O. S.) (La.) 111; *Hollingsworth v. Chaffe*, 33 La. Ann. 551; *New Orleans v. Morris*, 3 Woods 117, Fed. Cas. No. 10,183; *Leonard v. Baton Rouge*, 39 La. Ann. 275, 4 South. 243.

BAWD. One who procures opportunities for persons of opposite sexes to cohabit in an illicit manner; who may be, while exercising the trade of a bawd, perfectly innocent of committing in his or her own proper person the crime either of adultery or of fornication. See *Dyer v. Morris*, 4 Mo. 216.

BAWDY-HOUSE. A house of prostitution; a brothel. A house or dwelling maintained for the convenience and resort of persons desiring unlawful sexual connection. *Davis v. State*, 2 Tex. App. 427; *State v. Porter*, 38 Ark. 638; *People v. Buchanan*, 1 Idaho, 689.

BAY. A pond-head made of a great height to keep in water for the supply of a mill, etc., so that the wheel of the mill may be turned by the water rushing thence, through a passage or flood-gate. *St. 27 Eliz. c. 19*. Also an arm of the sea surrounded by land except at the entrance.

In admiralty law and marine insurance. A bending or curving of the shore of the sea or of a lake. *State v. Gilmanton*, 14 N. H. 477. An opening into the land, where the water is shut in on all sides except at the entrance. *U. S. v. Morel*, 13 Amer. Jur. 286, Fed. Cas. No. 15,807.

BAYLEY. In old English law. Bailiff. This term is used in the laws of the colony of New Plymouth, Mass., A. D. 1670, 1671. *Burrill*.

BAYOU. A species of creek or stream common in Louisiana and Texas. An outlet from a swamp, pond, or lagoon, to a river, or the sea. See *Surgett v. Lapice*, 8 How. 48, 70, 12 L. Ed. 982.

BEACH. This term, in its ordinary signification, when applied to a place on tide-

waters, means the space between ordinary high and low water mark, or the space over which the tide usually ebbs and flows. It is a term not more significant of a sea margin than "shore." *Niles v. Patch*, 13 Gray (Mass.) 257.

The term designates land washed by the sea and its waves; is synonymous with "shore." *Littlefield v. Littlefield*, 28 Me. 180.

When used in reference to places near the sea, beach means the land between the lines of high water and low water, over which the tide ebbs and flows. *Hodge v. Boothby*, 48 Me. 68.

Beach means the shore or strand. *Cutts v. Hussey*, 15 Me. 237.

Beach, when used in reference to places anywhere in the vicinity of the sea, means the territory lying between the lines of high water and low water, over which the tide ebbs and flows. It is in this respect synonymous with "shore," "strand," or "flats." *Doane v. Willcutt*, 5 Gray (Mass.) 328, 335, 66 Am. Dec. 369.

Beach generally denotes land between high and low water mark. *East Hampton v. Kirk*, 6 Hun (N. Y.) 257.

To "beach" a ship is to run it upon the beach or shore; this is frequently found necessary in case of fire, a leak, etc.

BEACON. A light-house, or sea-mark, formerly used to alarm the country, in case of the approach of an enemy, but now used for the guidance of ships at sea, by night, as well as by day.

BEACONAGE. Money paid for the maintenance of a beacon or signal-light.

BEADLE. In English ecclesiastical law. An inferior parish officer, who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings, to execute its orders, to attend upon inquests, and to assist the constables. *Wharton*.

BEAMS AND BALANCE. Instruments for weighing goods and merchandise.

BEAR. To support, sustain, or carry; to give rise to, or to produce, something else as an incident or auxiliary.

—Bear arms. To carry arms as weapons and with reference to their military use, not to wear them about the person as part of the dress. *Aymette v. State*, 2 Humph. (Tenn.) 158. As applied to fire-arms, includes the right to load and shoot them, and to use them as such things are generally used. *Hill v. State*, 53 Ga. 480.

—Bear interest. To generate interest, so that the instrument or loan spoken of shall produce or yield interest at the rate specified by the parties or granted by law. *Slaughter v. Slaughter*, 21 Ind. App. 641, 52 N. E. 995.

—Bearer. One who carries or holds a thing. When a check, note, draft, etc., is payable to "bearer," it imports that the contents thereof shall be payable to any person who may present the instrument for payment. *Thompson v. Ferrine*, 106 U. S. 589, 1 Sup. Ct. 564, 568, 27 L. Ed. 298; *Bradford v. Jenks*, 3 Fed. Cas. 1,132; *Hubbard v. Railroad Co.*, 14 Abb. Prac. (N. Y.) 278. **—Bearers.** In old English law.

Those who bore down upon or oppressed others; maintainers. *Cowell*.—**Bearing date.** Disclosing a date on its face; having a certain date. These words are often used in conveyancing, and in pleading, to introduce the date which has been put upon an instrument.

BEAST. An animal; a domestic animal; a quadruped, such as may be used for food or in labor or for sport.

—Beasts of the chase. In English law. The buck, doe, fox, martin, and roe. *Co. Litt. 233a*.—**Beasts of the forest.** In English law. The hart, hind, hare, boar, and wolf. *Co. Litt. 233a*.—**Beasts of the plow.** An old term for animals employed in the operations of husbandry, including horses. *Somers v. Emerson*, 58 N. H. 49.—**Beasts of the warren.** In English law. Hares, coney, and roes. *Co. Litt. 233*; 2 Bl. Comm. 39.—**Beastgate.** In Suffolk, England, imports land and common for one beast. *Bennington v. Goodtitle*, 2 Strange, 1084; *Rosc. Real Act. 485*.

BEAT, v. In the criminal law and law of torts, with reference to assault and battery, this term includes any unlawful physical violence offered to another. See **BATTERY**. In other connections, it is understood in a more restricted sense, and includes only the infliction of one or more blows. *Regina v. Hale*, 2 Car. & K. 327; *Com. v. McClellan*, 101 Mass. 35; *State v. Harrigan*, 4 Penne-will (Del.) 129, 55 Atl. 5.

BEAT, n. In some of the southern states (as Alabama, Mississippi, South Carolina) the principal legal subdivision of a county, corresponding to towns or townships in other states; or a voting precinct. *Williams v. Pearson*, 38 Ala. 308.

BEAU-PLEADER, (to plead fairly.) In English law. An obsolete writ upon the statute of Marlbridge, (52 Hen. III. c. 11,) which enacts that neither in the circuits of the justices, nor in counties, hundreds, or courts-baron, any fines shall be taken for fair-pleading, *i. e.*, for not pleading fairly or aptly to the purpose; upon this statute, then, this writ was ordained, addressed to the sheriff, bailiff, or him who shall demand such fine, prohibiting him to demand it; an *alias*, *pluries*, and attachment followed. *Fitzh. Nat. Brev. 596*.

BED. 1. The hollow or channel of a water-course; the depression between the banks worn by the regular and usual flow of the water.

"The *bed* is that soil so usually covered by water as to be distinguishable from the banks by the character of the soil, or vegetation, or both, produced by the common presence and action of flowing water." *Howard v. Ingersoll*, 13 How. 427, 14 L. Ed. 189. And see *Paine Lumber Co. v. U. S.* (C. C.) 55 Fed. 864; *Alabama v. Georgia*, 23 How. 515, 16 L. Ed. 556; *Haight v. Keokuk*, 4 Iowa, 213; *Pulley v. Municipality*

No. 2, 18 La. 282; Harlan, etc., Co. v. Paschall, 5 Del. Ch. 463.

2. The right of cohabitation or marital intercourse; as in the phrase "divorce from bed and board," or a *mensa et thoro*.

—**Bed of justice.** In old French law. The seat or throne upon which the king sat when personally present in parliament; hence it signified the parliament itself.

BEDEL. In English law. A crier or messenger of court, who summons men to appear and answer therein. Cowell.

An officer of the forest, similar to a sheriff's special bailiff. Cowell.

A collector of rents for the king. Plowd. 199, 200.

A well-known parish officer. See BEADLE.

BEDELARY. The jurisdiction of a bedel, as a bailiwick is the jurisdiction of a bailiff. Co. Litt. 234b; Cowell.

BEDEREPE. A service which certain tenants were anciently bound to perform, as to reap their landlord's corn at harvest. Said by Whishaw to be still in existence in some parts of England. Blount; Cowell; Whishaw.

BEER. A liquor compounded of malt and hops.

In its ordinary sense, denotes a beverage which is intoxicating, and is within the fair meaning of the words "strong or spirituous liquors," used in the statutes on this subject. *Tompkins County v. Taylor*, 21 N. Y. 175; *Nevin v. Ladue*, 3 Denio (N. Y.) 44; *Mullen v. State*, 96 Ind. 306; *People v. Wheelock*, 3 Parker, Cr. Cas. (N. Y.) 14; *Maier v. State*, 2 Tex. Civ. App. 296, 21 S. W. 974.

—**Beer-house.** In English law. A place where beer is sold to be consumed on the premises; as distinguished from a "beer-shop," which is a place where beer is sold to be consumed off the premises. 16 Ch. Div. 721.

BEFORE. Prior to; preceding. In the presence of; under the official purview of; as in a magistrate's jurat, "before me personally appeared," etc.

In the absence of any statutory provision governing the computation of time, the authorities are uniform that, where an act is required to be done a certain number of days or weeks before a certain other day upon which another act is to be done, the day upon which the first act is done is to be excluded from the computation, and the whole number of days or weeks must intervene before the day fixed for doing the second act. *Ward v. Walters*, 63 Wis. 44, 22 N. W. 844, and cases cited.

BEG. To solicit alms or charitable aid. The act of a cripple in passing along the sidewalk and silently holding out his hand and receiving money from passers-by is "begging for alms," within the meaning of a statute which uses that phrase. In re Haller, 3 Abb. N. C. (N. Y.) 65.

BEGA. A land measure used in the East Indies. In Bengal it is equal to about a third part of an acre.

BEGGAR. One who lives by begging charity, or who has no other means of support than solicited alms.

BEGUM. In India. A lady, princess, woman of high rank.

BEHALF. A witness testifies on "behalf" of the party who calls him, notwithstanding his evidence proves to be adverse to that party's case. *Richerson v. Sternburg*, 65 Ill. 274. See, further, 12 Q. B. 693; 18 Q. B. 512.

BEHAVIOR. Manner of behaving, whether good or bad; conduct; manners; carriage of one's self, with respect to propriety and morals; deportment. *Webster. State v. Roll*, 1 Ohio Dec. 284.

Surety to be of good *behavior* is said to be a larger requirement than surety to keep the peace.

BEHETRIA. In Spanish law. Lands situated in places where the inhabitants had the right to select their own lords.

BEHOOF. Use; benefit; profit; service; advantage. It occurs in conveyances, *e. g.*, "to his and their use and behoof." *Stiles v. Japhet*, 84 Tex. 91, 19 S. W. 450.

BELIEF. A conviction of the truth of a proposition, existing subjectively in the mind, and induced by argument, persuasion, or proof addressed to the judgment. *Keller v. State*, 102 Ga. 506, 31 S. E. 92. Belief is to be distinguished from "proof," "evidence," and "testimony." See EVIDENCE.

With regard to things which make not a very deep impression on the memory, it may be called "belief." "Knowledge" is nothing more than a man's firm belief. The difference is ordinarily merely in the degree; to be judged of by the court, when addressed to the court; by the jury, when addressed to the jury. *Hatch v. Carpenter*, 9 Gray (Mass.) 274.

The distinction between the two mental conditions seems to be that knowledge is an assurance of a fact or proposition founded on perception by the senses, or intuition; while belief is an assurance gained by evidence, and from other persons. *Abbott*.

BELLIGERENT. In international law. A term used to designate either of two nations which are actually in a state of war with each other, as well as their allies actively co-operating; as distinguished from a nation which takes no part in the war and maintains a strict indifference as between the contending parties, called a "neutral." *U. S. v. The Ambrose Light* (D. C.) 25 Fed. 412; *Johnson v. Jones*, 44 Ill. 151, 92 Am. Dec. 159.

Bello parta cedunt reipublicæ. Things acquired in war belong or go to the state.

1 Kent, Comm. 101; 5 C. Rob. Adm. 173, 181; The Joseph, 1 Gall. 553, Fed. Cas. No. 7,533. The right to all captures vests primarily in the sovereign. A fundamental maxim of public law.

BELLUM. Lat. In public law. War. An armed contest between nations; the state of those who forcibly contend with each other. *Jus belli*, the law of war.

BELOW. In practice. Inferior; of inferior jurisdiction, or jurisdiction in the first instance. The court from which a cause is removed for review is called the "court below."

Preliminary; auxiliary or instrumental. Bail to the sheriff is called "bail below," as being preliminary to and intended to secure the putting in of bail above, or special bail. See BAIL.

BENCH. A seat of judgment or tribunal for the administration of justice; the seat occupied by judges in courts; also the court itself, as the "King's Bench," or the aggregate of the judges composing a court, as in the phrase "before the full bench."

The collective body of the judges in a state or nation, as distinguished from the body of attorneys and advocates, who are called the "bar."

In English ecclesiastical law. The aggregate body of bishops.

—Bench warrant. Process issued by the court itself, or "from the bench," for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who does not obey the *subpoena*. So called to distinguish it from a warrant, issued by a justice of the peace, alderman, or commissioner.—**Benchers.** In English law. Seniors in the inns of court, usually, but not necessarily, queen's counsel, elected by co-optation, and having the entire management of the property of their respective inns.

BENE. Lat. Well; in proper form; legally; sufficiently.

Benedicta est expositio quando res redimitur à destructione. 4 Coke, 26. Blessed is the exposition when anything is saved from destruction. It is a laudable interpretation which gives effect to the instrument, and does not allow its purpose to be frustrated.

BENEFICE. In ecclesiastical law. In its technical sense, this term includes ecclesiastical preferments to which rank or public office is attached, otherwise described as ecclesiastical dignities or offices, such as bishoprics, deaneries, and the like; but in popular acceptation, it is almost invariably appropriated to rectories, vicarages, perpetual curacies, district churches, and endowed chapelries. 3 Steph. Comm. 77.

"Benefice" is a term derived from the feudal law, in which it signified a permanent stipendiary estate, or an estate held by feu-

dal tenure. 3 Steph. Comm. 77, note, 4; 4 Bl. Comm. 107.

BÉNÉFICE. Fr. In French law. A benefit or advantage, and particularly a privilege given by the law rather than by the agreement of the parties.

—Bénéfice de discussion. Benefit of discussion. The right of a guarantor to require that the creditor should exhaust his recourse against the principal debtor before having recourse to the guarantor himself.—**Bénéfice de division.** Benefit of division; right of contribution as between co-sureties.—**Bénéfice d'inventaire.** A term which corresponds to the *beneficium inventarii* of Roman law, and substantially to the English law doctrine that the executor properly accounting is only liable to the extent of the assets received by him.—**Bénéficiaire.** The person in whose favor a promissory note or bill of exchange is payable; or any person in whose favor a contract of any description is executed. Arg. Fr. Merc. Law, 547.

BENEFICIAL. Tending to the benefit of a person; yielding a profit, advantage, or benefit; enjoying or entitled to a benefit or profit. In re Importers' Exchange (Com. Pl.) 2 N. Y. Supp. 257; Regina v. Vange, 3 Adol. & El. (N. S.) 254. This term is applied both to estates (as a "beneficial interest") and to persons, (as "the beneficial owner.")

—Beneficial association. Another name for a benefit society. See BENEFIT.—**Beneficial enjoyment.** The enjoyment which a man has of an estate in his own right and for his own benefit, and not as trustee for another. 11 H. L. Cas. 271.—**Beneficial estate.** An estate in expectancy is one where the right to the possession is postponed to a future period, and is "beneficial" where the devisee takes solely for his own use or benefit, and not as the mere holder of the title for the use of another. In re Seaman's Estate, 147 N. Y. 69, 41 N. E. 401.—**Beneficial interest.** Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control.—**Beneficial power.** In New York law and practice. A power which has for its object the donee of the power, and which is to be executed solely for his benefit; as distinguished from a trust power, which has for its object a person other than the donee, and is to be executed solely for the benefit of such person. Jennings v. Conboy, 73 N. Y. 234; Rev. St. N. Y. § 79.—**Beneficial use.** The right to use and enjoy property according to one's own liking or so as to derive a profit or benefit from it, including all that makes it desirable or habitable, as, light, air, and access; as distinguished from a mere right of occupancy or possession. Reining v. Railroad Co. (Super. Ct.) 13 N. Y. Supp. 240.

BENEFICIARY. One for whose benefit a trust is created; a *cestui que trust*. 1 Story, Eq. Jur. § 321; In re Welch, 20 App. Div. 412, 46 N. Y. Supp. 689; Civ. Code Cal. 1903, § 2218. A person having the enjoyment of property of which a trustee, executor, etc., has the legal possession. The person to whom a policy of insurance is payable. Rev. St. Tex. 1895, art. 3096a.

—Beneficiary heir. In the law of Louisiana. One who has accepted the succession under the benefit of an inventory regularly made. Civ. Code La. 1900, art. 853. Also one who may accept the succession. Succession of Gusman, 36 La. Ann. 299.

BENEFICIO PRIMA [ECCLIAS-TICO HABENDO.] In English law. An ancient writ, which was addressed by the king to the lord chancellor, to bestow the benefice that should first fall in the royal gift, above or under a specified value, upon a person named therein. Reg. Orig. 307.

BENEFICIUM. In early feudal law. A benefice; a permanent stipendiary estate; the same with what was afterwards called a "fief," "feud," or "fee." 3 Steph. Comm. 77, note t; Spelman.

In the civil law. A benefit or favor; any particular privilege. Dig. 1, 4, 3; Cod. 7, 71; Mackeld. Rom. Law, § 196.

A general term applied to ecclesiastical livings. 4 Bl. Comm. 107; Cowell.

—Beneficium abstinendi. In Roman law. The power of an heir to abstain from accepting the inheritance. Sandars, Just. Inst. (5th Ed.) 214.—**Beneficium cedendarum actionum.** In Roman law. The privilege by which a surety could, before paying the creditor, compel him to make over to him the actions which belonged to the stipulator, so as to avail himself of them. Sandars, Just. Inst. (5th Ed.) 332, 351.—**Beneficium clericale.** Benefit of clergy. See BENEFIT.—**Beneficium competentiæ.** In Scotch law. The privilege of competency. A privilege which the grantor of a gratuitous obligation was entitled to, by which he might retain sufficient for his subsistence, if, before fulfilling the obligation, he was reduced to indigence. Bell. In the civil law. The right which an insolvent debtor had, among the Romans, on making cession of his property for the benefit of his creditors, to retain what was required for him to live honestly according to his condition. 7 Toullier, n. 258.—**Beneficium divisionis.** In civil and Scotch law. The privilege of one of several co-sureties (cautioners) to insist upon paying only his *pro rata* share of the debt. Bell.—**Beneficium inventarii.** See BENEFIT.—**Beneficium ordinis.** In civil and Scotch law. The privilege of order. The privilege of a surety to require that the creditor should first proceed against the principal and exhaust his remedy against him, before resorting to the surety. Bell.—**Beneficium separationis.** In the civil law. The right to have the goods of an heir separated from those of the testator in favor of creditors.

Beneficium non datum nisi propter officium. Hob. 148. A remuneration [is] not given, unless on account of a duty performed.

BENEFIT. Advantage; profit; privilege. Fitch v. Bates, 11 Barb. (N. Y.) 473; Synod of Dakota v. State, 2 S. D. 366, 50 N. W. 632, 14 L. R. A. 418; Winthrop Co. v. Clinton, 196 Pa. 472, 46 Atl. 435, 79 Am. St. Rep. 729.

In the law of eminent domain, it is a rule that, in assessing damages for private property taken or injured for public use, "special benefits" may be set off against the amount of damage found, but not "general benefits." Within the meaning of this rule, general benefits are such as accrue to the community at large to the vicinage, or to all property similarly situated with reference to the work or improvement in question; while special benefits are such as accrue directly and solely to the owner of the land in question and not to others. Little Miami R.

Co. v. Collett, 6 Ohio St. 182; St. Louis, etc., Ry. Co. v. Fowler, 142 Mo. 670, 44 S. W. 771; Gray v. Manhattan Ry. Co., 16 Daly, 510, 12 N. Y. Supp. 542; Barr v. Omaha, 42 Neb. 341, 60 N. W. 591.

—Benefit building society. The original name for what is now more commonly called a "building society," (*q. v.*)—**Benefit of cession:** In the civil law. The release of a debtor from future imprisonment for his debts, which the law operates in his favor upon the surrender of his property for the benefit of his creditors. Poth. Proc. Civil, pt. 5, c. 2, § 1.—**Benefit of clergy.** In its original sense, the phrase denoted the exemption which was accorded to clergymen from the jurisdiction of the secular courts, or from arrest or attachment on criminal process issuing from those courts in certain particular cases. Afterwards, it meant a privilege of exemption from the punishment of death accorded to such persons as were clerks, or who could read. This privilege of exemption from capital punishment was anciently allowed to clergymen only, but afterwards to all who were connected with the church, even to its most subordinate officers, and at a still later time to all persons who could read, (then called "clerks,") whether ecclesiastics or laymen. It does not appear to have been extended to cases of high treason, nor did it apply to mere misdemeanors. The privilege was claimed after the person's conviction, by a species of motion in arrest of judgment, technically called "praying his clergy." As a means of testing his clerical character, he was given a psalm to read, (usually, or always, the fifty-first) and, upon his reading it correctly, he was turned over to the ecclesiastical courts, to be tried by the bishop or a jury of twelve clerks. These heard him on oath, with his witnesses and compurgators, who attested their belief in his innocence. This privilege operated greatly to mitigate the extreme rigor of the criminal laws, but was found to involve such gross abuses that parliament began to enact that certain crimes should be felonies "without benefit of clergy," and finally, by St. 7 Geo. IV. c. 28, § 6, it was altogether abolished. The act of congress of April 30, 1790, § 30, provided that there should be no benefit of clergy for any capital crime against the United States, and, if this privilege formed a part of the common law of the several states before the Revolution, it no longer exists.—**Benefit of discussion.** In the civil law. The right which a surety has to cause the property of the principal debtor to be applied in satisfaction of the obligation in the first instance. Civ. Code La. arts. 3014-3020. In Scotch law. That whereby the antecedent heir, such as the heir of line in a pursuit against the heir of tailzie, etc., must be first pursued to fulfill the defunct's deeds and pay his debts. This benefit is likewise competent in many cases to cautioners.—**Benefit of division.** Same as *beneficium divisionis*, (*q. v.*)—**Benefit of inventory.** In the civil law. The privilege which the heir obtains of being liable for the charges and debts of the succession, only to the value of the effects of the succession, by causing an inventory of these effects within the time and manner prescribed by law. Civil Code La. art. 1032.—**Benefit societies.** Under this and several similar names, in various states, corporations exist to receive periodical payments from members, and hold them as a fund to be loaned or given to members needing pecuniary relief. Such are beneficial societies of Maryland, fund associations of Missouri, loan and fund associations of Massachusetts, mechanics' associations of Michigan, protection societies of New Jersey. Friendly societies in Great Britain are a still more extensive and important species belonging to this class. Comm. v. Equitable Ben. Ass'n, 137 Pa. 412, 18 Atl. 1112; Com. v. Aid Ass'n, 94 Pa. 489.

BENERTH. A feudal service rendered by the tenant to his lord with plow and cart. Cowell.

BENEVOLENCE. The doing a kind or helpful action towards another, under no obligation except an ethical one.

Is no doubt distinguishable from the words "liberality" and "charity;" for, although many charitable institutions are very properly called "benevolent," it is impossible to say that every object of a man's benevolence is also an object of his charity. James v. Allen, 3 Mer. 17; Pell v. Mercer, 14 R. I. 443; Murdock v. Bridges, 91 Me. 124, 39 Atl. 475.

In public law. Nominally a voluntary gratuity given by subjects to their king, but in reality a tax or forced loan.

BENEVOLENT. Philanthropic; humané; having a desire or purpose to do good to men; intended for the conferring of benefits, rather than for gain or profit.

This word is certainly more indefinite, and of far wider range, than "charitable" or "religious;" it would include all gifts prompted by good-will or kind feeling towards the recipient, whether an object of charity or not. The natural and usual meaning of the word would so extend it. It has no legal meaning separate from its usual meaning. "Charitable" has acquired a settled limited meaning in law, which confines it within known limits. But in all the decisions in England on the subject it has been held that a devise or bequest for benevolent objects, or in trust to give to such objects, is too indefinite, and therefore void. Norris v. Thomson, 19 N. J. Eq. 313; Thomson v. Norris, 20 N. J. Eq. 523; Suter v. Hilliard, 132 Mass. 413, 42 Am. Rep. 444; Fox v. Gibbs, 86 Me. 87, 29 Atl. 940. This word, as applied to objects or purposes, may refer to those which are in their nature charitable, and may also have a broader meaning and include objects and purposes not charitable in the legal sense of that word. Acts of kindness, friendship, forethought, or good-will might properly be described as benevolent. It has therefore been held that gifts to trustees to be applied for "benevolent purposes" at their discretion, or to such "benevolent purposes" as they could agree upon, do not create a public charity. But where the word is used in connection with other words explanatory of its meaning, and indicating the intent of the donor to limit it to purposes strictly charitable, it has been held to be synonymous with, or equivalent to, "charitable." Suter v. Hilliard, 132 Mass. 412, 42 Am. Rep. 444; De Camp v. Dobbins, 31 N. J. Eq. 695; Chamberlain v. Stearns, 111 Mass. 268; Goodale v. Mooney, 60 N. H. 535, 49 Am. Rep. 334.

—**Benevolent associations.** Those having a philanthropic or charitable purpose, as distinguished from such as are conducted for profit; specifically, "benefit associations" or "beneficial associations." See BENEFIT.—**Benevolent societies.** In English law. Societies established and registered under the friendly societies act, 1875, for any charitable or benevolent purposes.

Benigne faciendæ sunt interpretationes chartarum, ut res magis valeat quam pereat; et quæ libet concessio fortissime contra donatorem interpretanda est. Liberal interpretations are to be made of deeds, so that the purpose may rather stand than fall; and every grant is to be

taken most strongly against the grantor. Wallis v. Wallis, 4 Mass. 135, 3 Am. Dec. 210; Hayes v. Kershow, 1 Sandf. Ch. (N. Y.) 258, 268.

Benigne faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat. Constructions [of written instruments] are to be made liberally, on account of the simplicity of the laity, [or common people,] in order that the thing [or subject-matter] may rather have effect than perish, [or become void.] Co. Litt. 36a; Broom, Max. 540.

Benignior sententia in verbis generalibus seu dubiis, est præferenda. 4 Coke, 15. The more favorable construction is to be placed on general or doubtful expressions.

Benignius leges interpretandæ sunt quo voluntas earum conservetur. Laws are to be more liberally interpreted, in order that their intent may be preserved. Dig. 1, 3, 18.

BEQUEATH. To give personal property by will to another. Lasher v. Lasher, 13 Barb. (N. Y.) 106.

This word is the proper term for a testamentary gift of personal property only, the word "devise" being used with reference to real estate; but if the context clearly shows the intention of the testator to use the word as synonymous with "devise," it may be held to pass real property. Dow v. Dow, 36 Me. 216; Borgner v. Brown, 133 Ind. 391, 33 N. E. 92; Logan v. Logan, 11 Colo. 44, 17 Pac. 99; Laing v. Barbour, 119 Mass. 525; Scholle v. Scholle, 113 N. Y. 261, 21 N. E. 84; In re Fetrow's Estate, 58 Pa. 427; Ladd v. Harvey, 21 N. H. 528; Evans v. Price, 118 Ill. 593, 8 N. E. 854.

BEQUEST. A gift by will of personal property; a legacy.

A *specific* bequest is one whereby the testator gives to the legatee all his property of a certain class or kind; as all his pure personality.

A *residuary* bequest is a gift of all the remainder of the testator's personal estate, after payment of debts and legacies, etc.

An *executory* bequest is the bequest of a future, deferred, or contingent interest in personality.

A *conditional* bequest is one the taking effect or continuing of which depends upon the happening or non-occurrence of a particular event. Mitchell v. Mitchell, 143 Ind. 113, 42 N. E. 465; Farnam v. Farnam, 53 Conn. 261, 2 Atl. 325, 5 Atl. 682; Merrill v. College, 74 Wis. 415, 43 N. W. 104.

BERCARIA. In old English law, a sheepfold; also a place where the bark of trees was laid to tan.

BERCARIUS, or BERCTOR. A shepherd.

BEREWICHA, or BEREWICA. In old English law. A term used in Domesday for a village or hamlet belonging to some town or manor.

BERGHMAISTER. An officer having charge of a mine. A bailiff or chief officer among the Derbyshire miners, who, in addition to his other duties, executes the office of coroner among them. Blount; Cowell.

BERGHMOTH, or BERGHMOTE. The ancient name of the court now called "bar-mote," (*q. v.*)

BERNET. In Saxon law. Burning; the crime of house burning, now called "arson." Cowell; Blount.

BERRA. In old law. A plain; open heath. Cowell.

BERRY, or BURY. A villa or seat of habitation of a nobleman; a dwelling or mansion house; a sanctuary.

BERTILLON SYSTEM. A method of anthropometry, used chiefly for the identification of criminals and other persons, consisting of the taking and recording of a system of numerous, minute, and uniform measurements of various parts of the human body, absolutely and in relation to each other, the facial, cranial, and other angles, and of any eccentricities or abnormalities noticed in the individual.

BERTON. A large farm; the barn-yard of a large farm.

BES. Lat. In the Roman law. A division of the *as*, or pound, consisting of eight *unciae*, or duodecimal parts, and amounting to two-thirds of the *as*. 2 Bl. Comm. 462, note *m*.

Two-thirds of an inheritance. Inst. 2, 14, 5.

Eight per cent. interest. 2 Bl. Comm. ubi supra.

BESAILE, BESAYLE. The great-grandfather, *proavus*. 1 Bl. Comm. 186.

BESAYEL, Besaiel, Besayle. In old English law. A writ which lay where a great-grandfather died seised of lands and tenements in fee-simple, and on the day of his death a stranger abated, or entered and kept out the heir. Reg. Orig. 226; Fitzh. Nat. Brev. 221 D; 3 Bl. Comm. 186.

BEST EVIDENCE. Primary evidence, as distinguished from secondary; original, as distinguished from substitutionary; the best and highest evidence of which the nature of the case is susceptible. A written instrument is itself always regarded as the primary or best possible evidence of its ex-

istence and contents; a copy, or the recollection of a witness, would be secondary evidence. State v. McDonald, 65 Me. 467; Elliott v. Van Buren, 33 Mich. 53, 20 Am. Rep. 668; Scott v. State, 3 Tex. App. 104; Gray v. Pentland, 2 Serg. & R. (Pa.) 34; U. S. Sugar Refinery v. Allis Co., 56 Fed. 788, 6 C. C. A. 121; Manhattan Malting Co. v. Sweteland, 14 Mont. 269, 36 Pac. 84.

BESTIALITY. Bestiality is the carnal knowledge and connection against the order of nature by man or woman in any manner with a beast. Code Ga. 1882, § 4354.

We take it that there is a difference in signification between the terms "bestiality," and the "crime against nature." Bestiality is a connection between a human being and a brute of the opposite sex. Sodomy is a connection between two human beings of the same sex,—the male,—named from the prevalence of the sin in Sodom. Both may be embraced by the term "crime against nature," as felony embraces murder, larceny, etc., though we think that term is more generally used in reference to sodomy. Buggery seems to include both sodomy and bestiality. Ausman v. Veal, 10 Ind. 356, 71 Am. Dec. 331.

BET. An agreement between two or more persons that a sum of money or other valuable thing, to which all jointly contribute, shall become the sole property of one or some of them on the happening in the future of an event at present uncertain, or according as a question disputed between them is settled in one way or the other. Harris v. White, 81 N. Y. 532; Rich v. State, 38 Tex. Cr. R. 199, 42 S. W. 291, 38 L. R. A. 719; Jacobus v. Hazlett, 78 Ill. App. 241; Shaw v. Clark, 49 Mich. 384, 13 N. W. 786, 43 Am. Rep. 474; Alvord v. Smith, 63 Ind. 62.

Bet and wager are synonymous terms, and are applied both to the contract of betting or wagering and to the thing or sum bet or wagered. For example, one bets or wagers, or lays a bet or wager of so much, upon a certain result. But these terms cannot properly be applied to the act to be done, or event to happen, upon which the bet or wager is laid. Bets or wagers may be laid upon acts to be done, events to happen, or facts existing or to exist. The bets or wagers may be illegal, and the acts, events, or facts upon which they are laid may not be. Bets or wagers may be laid upon games, and things that are not games. Everything upon which a bet or wager may be laid is not a game. Woodcock v. McQueen, 11 Ind. 16; Shumate v. Com., 15 Grat. 660; Harris v. White, 81 N. Y. 539.

BETROTHMENT. Mutual promise of marriage; the plighting of troth; a mutual promise or contract between a man and woman competent to make it, to marry at a future time.

BETTER EQUITY. See EQUITY.

BETTERMENT. An improvement put upon an estate which enhances its value more than mere repairs. The term is also applied to denote the additional value which an estate acquires in consequence of some public improvement, as laying out or widening a street, etc. French v. New York, 16

How. Prac. (N. Y.) 220; *Abell v. Brady*, 79 Md. 94, 28 Atl. 817; *Chase v. Sioux City*, 86 Iowa, 603, 53 N. W. 333.

—**Betterment acts.** Statutes which provide that a bona fide occupant of real estate making lasting improvements in good faith shall have a lien upon the estate recovered by the real owner to the extent that his improvements have increased the value of the land. Also called "occupying claimant acts." *Jones v. Hotel Co.*, 86 Fed. 386, 30 C. C. A. 108.

BETWEEN. As a measure or indication of distance, this word has the effect of excluding the two termini. *Revere v. Leonard*, 1 Mass. 93; *State v. Godfrey*, 12 Me. 366. See *Morris & E. R. Co. v. Central R. Co.*, 31 N. J. Law, 212.

If an act is to be done "between" two certain days, it must be performed before the commencement of the latter day. In computing the time in such a case, both the days named are to be excluded. *Richardson v. Ford*, 14 Ill. 333; *Bunce v. Reed*, 16 Barb. (N. Y.) 352.

In case of a devise to A. and B. "between them," these words create a tenancy in common. *Lashbrook v. Cock*, 2 Mer. 70.

BEVERAGE. This term is properly used to distinguish a sale of liquors to be drunk for the pleasure of drinking, from liquors to be drunk in obedience to a physician's advice. *Com. v. Mandeville*, 142 Mass. 469, 8 N. E. 327.

BEWARED. O. Eng. Expended. Before the Britons and Saxons had introduced the general use of money, they traded chiefly by exchange of wares. *Wharton*.

BEYOND SEA. Beyond the limits of the kingdom of Great Britain and Ireland; outside the United States; out of the state.

Beyond sea, beyond the four seas, beyond the seas, and out of the realm, are synonymous. Prior to the union of the two crowns of England and Scotland, on the accession of James I., the phrases "beyond the four seas," "beyond the seas," and "out of the realm," signified out of the limits of the realm of England. *Pan-coast's Lessee v. Addison*, 1 Har. & J. (Md.) 350, 2 Am. Dec. 520.

In Pennsylvania, it has been construed to mean "without the limits of the United States," which approaches the literal signification. *Ward v. Hallam*, 2 Dall. 217, 1 L. Ed. 355; *Id.*, 1 Yeates (Pa.) 329; *Green v. Neal*, 6 Pet. 291, 300, 8 L. Ed. 402. The same construction has been given to it in Missouri. *Keeton's Heirs v. Keeton's Adm'r*, 20 Mo. 530. See *Ang. Lim.* §§ 200, 201.

The term "beyond seas," in the proviso or saving clause of a statute of limitations, is equivalent to without the limits of the state where the statute is enacted; and the party who is without those limits is entitled to the benefit of the exception. *Faw v. Roberdeau*, 3 Cranch, 174, 2 L. Ed. 402; *Murray v. Baker*, 3 Wheat. 541, 4 L. Ed. 454; *Shelby v. Guy*, 11 Wheat. 361, 6 L. Ed. 495; *Piatt v. Vattier*, 1 McLean, 146, Fed. Cas. No. 11,117; *Forbes' Adm'r v. Foot's Adm'r*, 2 McCord (S. C.) 331, 13 Am. Dec. 732; *Wakefield v. Smart*, 8 Ark. 488; *Denham v. Holeman*, 26 Ga. 182, 71 Am. Dec. 198; *Galusha v. Cobleigh*, 13 N. H. 79.

BIAS. Inclination; bent; prepossession; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. *Maddox v. State*, 32 Ga. 587, 79 Am. Dec. 307; *Pierson v. State*, 18 Tex. App. 558; *Hinkle v. State*, 94 Ga. 595, 21 S. E. 601.

This term is not synonymous with "prejudice." By the use of this word in a statute declaring disqualification of jurors, the legislature intended to describe another and somewhat different ground of disqualification. A man cannot be prejudiced against another without being biased against him; but he may be biased without being prejudiced. Bias is "a particular influential power, which sways the judgment; the inclination of the mind towards a particular object." It is not to be supposed that the legislature expected to secure in the juror a state of mind absolutely free from all inclination to one side or the other. The statute means that, although a juror has not formed a judgment for or against the prisoner, before the evidence is heard on the trial, yet, if he is under such an influence as so sways his mind to the one side or the other as to prevent his deciding the cause according to the evidence, he is incompetent. *Willis v. State*, 12 Ga. 444.

Actual bias consists in the existence of a state of mind on the part of the juror which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issues impartially and without prejudice to the substantial rights of the party challenging. *State v. Chapman*, 1 S. D. 414, 47 N. W. 411, 10 L. R. A. 432; *People v. McQuade*, 110 N. Y. 284, 18 N. E. 156, 1 L. R. A. 273; *People v. Wells*, 100 Cal. 227, 34 Pac. 718.

BID. An offer by an intending purchaser to pay a designated price for property which is about to be sold at auction. *U. S. v. Vestal* (D. C.) 12 Fed. 59; *Payne v. Cave*, 3 Term, 149; *Eppes v. Railroad Co.*, 35 Ala. 56.

—**Bid in.** Property sold at auction is said to be "bid in" by the owner or an incumbrancer or some one else who is interested in it, when he attends the sale and makes the successful bid.—**Bid off.** One is said to "bid off" a thing when he bids for it at an auction sale, and it is knocked down to him in immediate succession to the bid and as a consequence of it. *Eppes v. Railroad Co.*, 35 Ala. 56; *Doudna v. Harlan*, 45 Kan. 484, 25 Pac. 883.—**Bidder.** One who offers to pay a specified price for an article offered for sale at a public auction. *Webster v. French*, 11 Ill. 254.—**Biddings.** Offers of a designated price for goods or other property put up for sale at auction.—**By-bidding.** In the law relating to sales by auction, this term is equivalent to "puffing." The practice consists in making fictitious bids for the property, under a secret arrangement with the owner or auctioneer, for the purpose of misleading, and stimulating other persons who are bidding in good faith.—**Upset bid.** A bid made after a judicial sale, but before the successful bid at the sale has been confirmed, larger or better than such successful bid, and made for the purpose of upsetting the sale and securing to the "upset bidder" the privilege of taking the property at his bid or competing at a new sale. *Yost v. Porter*, 80 Va. 858.

BIDAL, or BIDALL. An invitation of friends to drink ale at the house of some poor man, who hopes thereby to be relieved by charitable contribution. It is something like "house-warming," & c., a visit of friends

to a person beginning to set up house-keeping. Wharton.

BIELBRIEF. Germ. In European maritime law. A document furnished by the builder of a vessel, containing a register of her admeasurement, particularizing the length, breadth, and dimensions of every part of the ship. It sometimes also contains the terms of agreement between the party for whose account the ship is built, and the ship-builder. It has been termed in English the "grand bill of sale;" in French, "*contrat de construction ou de la vente d'un vaisseau*," and corresponds in a great degree with the English, French, and American "register," (*q. v.*) being an equally essential document to the lawful ownership of vessels. Jac. Sea Laws, 12, 13, and note. In the Danish law, it is used to denote the contract of bottomry.

BIENES. Sp. In Spanish law. Goods; property of every description, including real as well as personal property; all things (not being persons) which may serve for the uses of man. *Larkin v. U. S.*, 14 Fed. Cas. 1154.

—**Bienes comunes.** Common property; those things which, not being the private property of any person, are open to the use of all, such as the air, rain, water, the sea and its beaches. *Lux v. Haggin*, 69 Cal. 255, 315, 10 Pac. 707.—**Bienes gananciales.** A species of community in property enjoyed by husband and wife, the property being divisible equally between them on the dissolution of the marriage; does not include what they held as their separate property at the time of contracting the marriage. *Welder v. Lambert*, 91 Tex. 510, 44 S. W. 281.—**Bienes publicos.** Those things which, as to property, pertain to the people or nation, and, as to their use, to the individuals of the territory or district, such as rivers, shores, ports, and public roads. *Lux v. Haggin*, 69 Cal. 315, 10 Pac. 707.

BIENNIALLY. This term, in a statute, signifies, not duration of time, but a period for the happening of an event; once in every two years. *People v. Tremain*, 9 Hun (N. Y.) 576; *People v. Kilbourn*, 68 N. Y. 479.

BIENS. In English law. Property of every description, except estates of freehold and inheritance. *Sugd. Vend.* 495; *Co. Litt.* 119b.

In French law. This term includes all kinds of property, real and personal. *Biens* are divided into *biens meubles*, movable property; and *biens immeubles*, immovable property. The distinction between movable and immovable property is recognized by the continental jurists, and gives rise, in the civil as well as in the common law, to many important distinctions as to rights and remedies. *Story, Conf. Laws*, § 13, note 1.

BIGA, or BIGATA. A cart or chariot drawn with two horses, coupled side to side; but it is said to be properly a cart with two wheels, sometimes drawn by one horse; and

in the ancient records it is used for any cart, wain, or wagon. *Jacob.*

BIGAMUS. In the civil law. A man who was twice married; one who at different times and successively has married two wives. 4 Inst. 88. One who has two wives living. One who marries a widow.

Bigamus seu trigamus, etc., est qui diversis temporibus et successivè duas seu tres uxores habuit. 4 Inst. 88. A bigamus or trigamus, etc., is one who at different times and successively has married two or three wives.

BIGAMY. The criminal offense of willfully and knowingly contracting a second marriage (or going through the form of a second marriage) while the first marriage, to the knowledge of the offender, is still subsisting and undissolved. *Com. v. McNerny*, 10 Phila. (Pa.) 207; *Gise v. Com.*, 81 Pa. 430; *Scoggins v. State*, 32 Ark. 213; *Cannon v. U. S.*, 116 U. S. 55, 6 Sup. Ct. 287, 29 L. Ed. 561.

The state of a man who has two wives, or of a woman who has two husbands, living at the same time.

The offense of having a plurality of wives at the same time is commonly denominated "polygamy;" but the name "bigamy" has been more frequently given to it in legal proceedings. 1 Russ. Crimes, 185.

The use of the word "bigamy" to describe this offense is well established by long usage, although often criticised as a corruption of the true meaning of the word. Polygamy is suggested as the correct term, instead of bigamy, to designate the offense of having a plurality of wives or husbands at the same time, and has been adopted for that purpose in the Massachusetts statutes. But as the substance of the offense is marrying a second time, while having a lawful husband or wife living, without regard to the number of marriages that may have taken place, bigamy seems not an inappropriate term. The objection to its use urged by Blackstone (4 Bl. Comm. 163) seems to be founded not so much upon considerations of the etymology of the word as upon the propriety of distinguishing the ecclesiastical offense termed "bigamy" in the canon law, and which is defined below, from the offense known as "bigamy" in the modern criminal law. The same distinction is carefully made by Lord Coke, (4 Inst. 88.) But, the ecclesiastical offense being now obsolete, this reason for substituting polygamy to denote the crime here defined ceases to have weight. *Abbott.*

In the canon law, the term denoted the offense committed by an ecclesiastic who married two wives successively. It might be committed either by marrying a second wife after the death of a first or by marrying a widow.

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

BILAGINES. By-laws of towns; municipal laws.

BILAN. A term used in Louisiana, derived from the French. A book in which bankers, merchants, and traders write a statement of all they owe and all that is due them; a balance-sheet. See *Dauphin v. Soulie*, 3 Mart. (N. S.) 446.

BILANCIIS DEFERENDIS. In English law. An obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh the wool anciently licensed for transportation. Reg. Orig. 270.

BILATERAL CONTRACT. A term, used originally in the civil law, but now generally adopted, denoting a contract in which both the contracting parties are bound to fulfill obligations reciprocally towards each other; as a contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it. *Montpelier Seminary v. Smith*, 69 Vt. 382, 38 Atl. 66.

"Every convention properly so called consists of a promise or mutual promises proffered and accepted. Where one only of the agreeing parties gives a promise, the convention is said to be 'unilateral.' Wherever mutual promises are proffered and accepted, there are, in strictness, two or more conventions. But where the performance of either of the promises is made to depend on the performance of the other, the several conventions are commonly deemed one convention, and the convention is then said to be 'bilateral.'" Aust. Jur. § 308.

BILGED. In admiralty law and marine insurance. That state or condition of a vessel in which water is freely admitted through holes and breaches made in the planks of the bottom, occasioned by injuries, whether the ship's timbers are broken or not. *Peele v. Insurance Co.*, 3 Mason, 27, 39, 19 Fed. Cas. 103.

BILINE. A word used by Britton in the sense of "collateral." *En line biline*, in the collateral line. Britt. c. 119.

BILINGUIS. Of a double language or tongue; that can speak two languages. A term applied in the old books to a jury composed partly of Englishmen and partly of foreigners, which, by the English law, an alien party to a suit is, in certain cases, entitled to; more commonly called a "jury *de medietate linguæ*." 3 Bl. Comm. 360; 4 Steph. Comm. 422.

BILL. A formal declaration, complaint, or statement of particular things in writing. As a legal term, this word has many meanings and applications, the more important of which are enumerated below.

1. A formal written statement of complaint to a court of justice.

In the ancient practice of the court of king's bench, the usual and orderly method of beginning an action was by a *bill*, or original bill, or plaint. This was a written state-

ment of the plaintiff's cause of action, like a declaration or complaint, and always alleged a trespass as the ground of it, in order to give the court jurisdiction. 3 Bl. Comm. 43.

In Scotch law, every summary application in writing, by way of petition to the Court of Session, is called a "bill." Cent. Dict.

—**Bill chamber.** In Scotch law. A department of the court of session in which petitions for suspension, interdiction, etc., are entertained. It is equivalent to sittings in chambers in the English and American practice. Paters. Comp.

—**Bill of privilege.** In old English law. A method of proceeding against attorneys and officers of the court not liable to arrest. 3 Bl. Comm. 289.—**Bill of proof.** In English practice. The name given, in the mayor's court of London, to a species of intervention by a third person laying claim to the subject-matter in dispute between the parties to a suit.

2. A species of writ; a formal written declaration by a court to its officers, in the nature of process.

—**Bill of Middlesex.** An old form of process similar to a *capias*, issued out of the court of king's bench in personal actions, directed to the sheriff of the county of Middlesex, (hence the name,) and commanding him to take the defendant and have him before the king at Westminster on a day named, to answer the plaintiff's complaint. *State v. Mathews*, 2 Erev. (S. C.) 83; *Sims v. Alderson*, 8 Leigh (Va.) 484.

3. A formal written petition to a superior court for action to be taken in a cause already determined, or a record or certified account of the proceedings in such action or some portion thereof, accompanying such a petition.

—**Bill of advocacy.** In Scotch practice. A bill by which the judgment of an inferior court is appealed from, or brought under review of a superior. Bell.—**Bill of certiorari.** A bill, the object of which is to remove a suit in equity from some inferior court to the court of chancery, or some other superior court of equity, on account of some alleged incompetency of the inferior court, or some injustice in its proceedings. Story, Eq. Pl. (5th Ed.) § 298.—**Bill of exceptions.** A formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instructions of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and, in order to attest its accuracy, signed and sealed by the judge; the object being to put the controverted rulings or decisions upon the record for the information of the appellate court. *Ex parte Crane*, 5 Pet. 193, 8 L. Ed. 92; *Galvin v. State*, 56 Ind. 56; *Coxe v. Field*, 13 N. J. Law, 218; *Sackett v. McCord*, 23 Ala. 854.

4. In equity practice. A formal written complaint, in the nature of a petition, addressed by a suitor in chancery to the chancellor or to a court of equity or a court having equitable jurisdiction, showing the names of the parties, stating the facts which make up the case and the complainant's allegations, averring that the acts disclosed are contrary to equity, and praying for process and for specific relief, or for such relief as the circumstances demand. *U. S. v. Ambrose*, 108 U. S. 336, 2 Sup. Ct. 682, 27 L. Ed. 746; *Feeney v. Howard*, 79 Cal. 525, 21

Pac. 984, 4 L. R. A. 826, 12 Am. St. Rep. 162; Sharon v. Sharon, 67 Cal. 185, 7 Pac. 456.

Bills are said to be original, not original, or in the nature of original bills. They are original when the circumstances constituting the case are not already before the court, and relief is demanded, or the bill is filed for a subsidiary purpose.

—Bill for a new trial. A bill in equity in which the specific relief asked is an injunction against the execution of a judgment rendered at law and a new trial in the action, on account of some fact which would render it inequitable to enforce the judgment, but which was not available to the party on the trial at law, or which he was prevented from presenting by fraud or accident, without concurrent fraud or negligence on his own part.—**Bill for foreclosure.** One which is filed by a mortgagee against the mortgagor, for the purpose of having the estate sold, thereby to obtain the sum mortgaged on the premises, with interest and costs. 1 Madd. Ch. Pr. 523.—**Bill in nature of a bill of review.** A bill in equity, to obtain a re-examination and reversal of a decree, filed by one who was not a party to the original suit, nor bound by the decree.—**Bill in nature of a bill of revivor.** Where, on the abatement of a suit, there is such a transmission of the interest of the incapacitated party that the title to it, as well as the person entitled, may be the subject of litigation in a court of chancery, the suit cannot be continued by a mere bill of revivor, but an original bill upon which the title may be litigated must be filed. This is called a "bill in the nature of a bill of revivor." It is founded on privity of estate or title by the act of the party. And the nature and operation of the whole act by which the privity is created is open to controversy. Story, Eq. Pl. §§ 378-380; 2 Amer. & Eng. Enc. Law, 271.—**Bill in nature of a supplemental bill.** A bill filed when new parties, with new interests, arising from events happening since the suit was commenced, are brought before the court; wherein it differs from a supplemental bill, which is properly applicable to those cases only where the same parties or the same interests remain before the court. Story, Eq. Pl. (5th Ed.) § 345 et seq.—**Bill of conformity.** One led by an executor or administrator, who finds the affairs of the deceased so much involved that he cannot safely administer the estate except under the direction of a court of chancery. This bill is filed against the creditors, generally, for the purpose of having all their claims adjusted, and procuring a final decree settling the order of payment of the assets. 1 Story, Eq. Jur. § 440.—**Bill of discovery.** A bill in equity filed to obtain a discovery of facts resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power. Story, Eq. Pl. (5th Ed.) § 311; Wright v. Superior Court, 139 Cal. 469, 73 Pac. 145; Everson v. Assur. Co. (C. C.) 68 Fed. 258; State v. Savings Co., 23 Or. 410, 43 Pac. 162.—**Bill of information.** Where a suit is instituted on behalf of the crown or government, or of those of whom it has the custody by virtue of its prerogative, or whose rights are under its particular protection, the matter of complaint is offered to the court by way of information by the attorney or solicitor general, instead of by petition. Where a suit immediately concerns the crown or government alone, the proceeding is purely by way of information, but, where it does not do so immediately, a relator is appointed, who is answerable for costs, etc., and, if he is interested in the matter in connection with the crown or government, the proceeding is by information and bill. Informations differ from bills in little more than name and form, and the same rules are substantially applicable to both. See Story, Eq. Pl. 5; 1 Daniell, Ch. Pr.

2, 8, 288; 3 Bl. Comm. 261.—**Bill of interpleader.** The name of a bill in equity to obtain a settlement of a question of right to money or other property adversely claimed, in which the party filing the bill has no interest, although it may be in his hands, by compelling such adverse claimants to litigate the right or title between themselves, and relieve him from liability or litigation. Van Winkle v. Owen, 54 N. J. Eq. 253, 34 Atl. 400; Wakeman v. Kingsland, 46 N. J. Eq. 113, 18 Atl. 680; Gibson v. Goldthwaite, 7 Ala. 281, 42 Am. Dec. 592.—**Bill of peace.** One which is filed when a person has a right which may be controverted by various persons, at different times, and by different actions. Ritchie v. Dorland, 6 Cal. 33; Murphy v. Wilmington, 6 Houst. (Del.) 108, 22 Am. St. Rep. 345; Eldridge v. Hill, 2 Johns. Ch. (N. Y.) 281; Randolph v. Kinney, 3 Rand. (Va.) 395.—**Bill of revivor.** One which is brought to continue a suit which has abated before its final consummation, as, for example, by death, or marriage of a female plaintiff. Clarke v. Mathewson, 12 Pet. 164, 9 L. Ed. 1041; Brooks v. Laurent, 98 Fed. 647, 39 C. C. A. 201.—**Bill of revivor and supplement.** One which is a compound of a supplemental bill and bill of revivor, and not only continues the suit, which has abated by the death of the plaintiff, or the like, but supplies any defects in the original bill arising from subsequent events, so as to entitle the party to relief on the whole merits of his case. Mitf. Eq. Pl. 32, 74; Westcott v. Cady, 5 Johns. Ch. (N. Y.) 342, 9 Am. Dec. 306; Bowie v. Minter, 2 Ala. 411.—**Bill of review.** One which is brought to have a decree of the court reviewed, corrected, or reversed. Dodge v. Northrop, 85 Mich. 243, 48 N. W. 505.—**Bill quia timet.** A bill invoking the aid of equity "because he fears," that is, because the complainant apprehends an injury to his property rights or interests, from the fault or neglect of another. Such bills are entertained to guard against possible or prospective injuries, and to preserve the means by which existing rights may be protected from future or contingent violations; differing from injunctions, in that the latter correct past and present or imminent and certain injuries. Bisp. Eq. § 568; 2 Story, Eq. Jur. § 826; Bailey v. Southwick, 6 Lans. (N. Y.) 364; Bryant v. Peters, 3 Ala. 169; Randolph v. Kinney, 3 Rand. (Va.) 398.—**Bill to carry a decree into execution.** One which is filed when, from the neglect of parties or some other cause, it may become impossible to carry a decree into execution without the further decree of the court. Hind, Ch. Pr. 68; Story, Eq. Pl. § 42.—**Bill to perpetuate testimony.** A bill in equity filed in order to procure the testimony of witnesses to be taken as to some matter not at the time before the courts, but which is likely at some future time to be in litigation. Story, Eq. Pl. (5th Ed.) § 300 et seq.—**Bill to suspend a decree.** One brought to avoid or suspend a decree under special circumstances.—**Bill to take testimony de bene esse.** One which is brought to take the testimony of witnesses to a fact material to the prosecution of a suit at law which is actually commenced, where there is good cause to fear that the testimony may otherwise be lost before the time of trial. 2 Story, Eq. Jur. § 1813, n.—**Cross-bill.** One which is brought by a defendant in a suit against a plaintiff in or against other defendants in the same suit, or against both, touching the matters in question in the original bill. Story, Eq. Pl. § 389; Mitf. Eq. Pl. 80. A cross-bill is a bill brought by a defendant against a plaintiff, or other parties in a former bill depending, touching the matter in question in that bill. It is usually brought either to obtain a necessary discovery of facts in aid of the defense to the original bill, or to obtain full relief to all parties in reference to the matters of the original bill. It is to be treated as a mere auxiliary suit. Shields v. Barrow, 17 How. 144, 15 L. Ed. 158; M

Kidder v. Barr, 35 N. H. 251; *Blythe v. Hinckley* (C. C.) 84 Fed. 234. A cross-bill is a species of pleading, used for the purpose of obtaining a discovery necessary to the defense, or to obtain some relief founded on the collateral claims of the party defendant to the original suit. *Tison v. Tison*, 14 Ga. 167. Also, if a bill of exchange or promissory note be given in consideration of another bill or note, it is called a "cross" or "counter" bill or note.

5. In legislation and constitutional law, the word means a draft of an act of the legislature before it becomes a law; a proposed or projected law. A draft of an act presented to the legislature, but not enacted. An *act* is the appropriate term for it, after it has been acted on by, and passed by, the legislature. *Southwark Bank v. Comm.*, 26 Pa. 450; *Sedgwick County Com'rs v. Bailey*, 13 Kan. 608; *May v. Rice*, 91 Ind. 549; *State v. Hegeman*, 2 Pennewill (Del.) 147, 44 Atl. 621. Also a special act passed by a legislative body in the exercise of a *quasi* judicial power. Thus, bills of attainder, bills of pains and penalties, are spoken of.

—**Bill of attainder**, see **ATTAINDER**.—**Bill of indemnity**. In English law. An act of parliament, passed every session until 1869, but discontinued in and after that year, as having been rendered unnecessary by the passing of the promissory oaths act, 1868, for the relief of those who have unwittingly or unavoidably neglected to take the necessary oaths, etc., required for the purpose of qualifying them to hold their respective offices. Wharton.—**Bill of pains and penalties**. A special act of the legislature which inflicts a punishment, less than death, upon persons supposed to be guilty of treason or felony, without any conviction in the ordinary course of judicial proceedings. It differs from a bill of attainder in this: that the punishment inflicted by the latter is death.—**Private bill**. All legislative bills which have for their object some particular or private interest are so termed, as distinguished from such as are for the benefit of the whole community, which are thence termed "public bills." See *People v. Chautauqua County*, 43 N. Y. 17.—**Private bill office**. An office of the English parliament where the business of obtaining private acts of parliament is conducted.

6. A solemn and formal legislative declaration of popular rights and liberties, promulgated on certain extraordinary occasions, as the famous Bill of Rights in English history.

—**Bill of rights**. A formal and emphatic legislative assertion and declaration of popular rights and liberties usually promulgated upon a change of government; particularly the statute 1 W. & M. St. 2, c. 2. Also the summary of the rights and liberties of the people, or of the principles of constitutional law deemed essential and fundamental, contained in many of the American state constitutions.—*Eason v. State*, 11 Ark. 491; *Atchison St. R. Co. v. Missouri Pac. R. Co.*, 31 Kan. 661, 3 Pac. 234; *Orr v. Quimby*, 54 N. H. 613.

7. In the law of contracts, an obligation; a deed, whereby the obligor acknowledges himself to owe to the obligee a certain sum of money or some other thing. It may be indented or poll, and with or without a penalty.

—**Bill obligatory**. A bond absolute for the payment of money. It is called also a "single

bill," and differs from a promissory note only in having a seal.—*Bank v. Greiner*, 2 Serg. & R. (Pa.) 115.—**Bill of debt**. An ancient term including promissory notes and bonds for the payment of money. Com. Dig. "Merchant," F. 2.—**Bill penal**. A written obligation by which a debtor acknowledges himself indebted in a certain sum, and binds himself for the payment thereof, in a larger sum, called a "penalty."—**Bill single**. A written promise to pay to a person or persons named a stated sum at a stated time, without any condition. When under seal, as is usually the case, it is sometimes called a "bill obligatory," (q. v.) It differs from a "bill penal," (q. v.,) in that it expresses no penalty.

8. In commercial law. A written statement of the terms of a contract, or specification of the items of a transaction or of a demand; also a general name for any item of indebtedness, whether receivable or payable.

—**Bill-book**. In mercantile law. A book in which an account of bills of exchange and promissory notes, whether payable or receivable, is stated.—**Bill-head**. A printed form on which merchants and traders make out their bills and render accounts to their customers.—**Bill of lading**. In common law. The written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight. *Mason v. Lickbarrow*, 1 H. Bl. 359. A written memorandum, given by the person in command of a merchant vessel, acknowledging the receipt on board the ship of certain specified goods, in good order or "apparent good order," which he undertakes, in consideration of the payment of freight, to deliver in like good order (dangers of the sea excepted) at a designated place to the consignee therein named or to his assigns. *Devato v. Barrels* (D. C.) 20 Fed. 510; *Gage v. Jaqueth*, 1 Lans. (N. Y.) 210; *The Delaware*, 14 Wall. 600, 20 L. Ed. 779. The term is often applied to a similar receipt and undertaking given by a carrier of goods by land. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. Civil Code Cal. § 2126; Civil Code Dak. § 1229.—**Bill of parcels**. A statement sent to the buyer of goods, along with the goods, exhibiting in detail the items composing the parcel and their several prices, to enable him to detect any mistake or omission; an invoice.—**Bill of sale**. In contracts. A written agreement under seal, by which one person assigns or transfers his right to or interest in goods and personal chattels to another. An instrument by which, in particular, the property in ships and vessels is conveyed. *Putnam v. McDonald*, 72 Vt. 4, 47 Atl. 159; *Young v. Stone*, 61 App. Div. 364, 70 N. Y. Supp. 558.—**Bill payable**. In a merchant's accounts, all bills which he has accepted, and promissory notes which he has made, are called "bills payable," and are entered in a ledger account under that name, and recorded in a book bearing the same title.—**Bill receivable**. In a merchant's accounts, all notes, drafts, checks, etc., payable to him, or of which he is to receive the proceeds at a future date, are called "bills receivable," and are entered in a ledger-account under that name, and also noted in a book bearing the same title. *State v. Robinson*, 57 Md. 501.—**Bill rendered**. A bill of items rendered by a creditor to his debtor; an "account rendered," as distinguished from "an account stated." *Hill v. Hatch*, 11 Me. 455.—**Grand bill of sale**. In English law. The name of an instrument used for the transfer of a ship while she is at sea. An expression which

is understood to refer to the instrument whereby a ship was originally transferred from the builder to the owner, or first purchaser. 3 Kent, Comm. 133.

9. In the law of negotiable instruments. A promissory obligation for the payment of money.

Standing alone or without qualifying words, the term is understood to mean a bank note, United States treasury note, or other piece of paper circulating as money. Green v. State, 28 Tex. App. 493, 13 S. W. 785; Keith v. Jones, 9 Johns. (N. Y.) 121; Jones v. Fales, 4 Mass. 252.

—**Bill of exchange.** A written order from A. to B., directing B. to pay to C. a certain sum of money therein named. Byles, Bills, 1. An open (that is, unsealed) letter addressed by one person to another directing him, in effect, to pay, absolutely and at all events, a certain sum of money therein named, to a third person, or to any other to whom that third person may order it to be paid, or it may be payable to bearer or to the drawer himself. 1 Daniel, Neg. Inst. 27. A bill of exchange is an instrument, negotiable in form, by which one, who is called the "drawer," requests another, called the "drawee," to pay a specified sum of money. Civil Code Cal. § 3171. A bill of exchange is an order by one person, called the "drawer" or "maker," to another, called the "drawee" or "acceptor," to pay money to another, (who may be the drawer himself,) called the "payee," or his order, or to the bearer. If the payee, or a bearer, transfers the bill by indorsement, he then becomes the "indorser." If the drawer or drawee resides out of this state, it is then called a "foreign bill of exchange." Code Ga. 1882, § 2773.—**Bill of credit.** In constitutional law. A bill or promissory note issued by the government of a state or nation, upon its faith and credit, designed to circulate in the community as money, and redeemable at a future day. *Briscoe v. Bank of Kentucky*, 11 Pet. 271, 9 L. Ed. 709; *Craig v. Missouri*, 4 Pet. 431, 7 L. Ed. 903; *Hale v. Huston*, 44 Ala. 138, 4 Am. Rep. 124. In mercantile law. A license or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents abroad.—**Domestic bill of exchange.** A bill of exchange drawn on a person residing in the same state with the drawer; or dated at a place in the state, and drawn on a person living within the state. It is the residence of the drawer and drawee which must determine whether a bill is domestic or foreign. *Ragsdale v. Franklin*, 25 Miss. 143.—**Foreign bill of exchange.** A bill of exchange drawn in one state or country, upon a foreign state or country. A bill of exchange drawn in one country upon another country not governed by the same homogeneous laws, or not governed throughout by the same municipal laws. A bill of exchange drawn in one of the United States upon a person residing in another state is a foreign bill. See *Story, Bills*, § 22; 3 Kent, Comm. 94, note; *Buckner v. Finley*, 2 Pet. 586, 7 L. Ed. 528; *Duncan v. Course*, 1 Mill, Const. (S. C.) 100; *Phoenix Bank v. Hussey*, 12 Pick. (Mass.) 484.

10. In maritime law. The term is applied to contracts of various sorts, but chiefly to bills of lading (see *supra*) and to bills of adventure (see *infra*.)

—**Bill of adventure.** A written certificate by a merchant or the master or owner of a ship, to the effect that the property and risk in goods shipped on the vessel in his own name belong to another person, to whom he is account-

able for the proceeds alone.—**Bill of gross adventure.** In French maritime law. Any written instrument which contains a contract of bottomry, *respondentia*, or any other kind of maritime loan. There is no corresponding English term. Hall, Marit. Loans, 182, n.—**Bill of health.** An official certificate, given by the authorities of a port from which a vessel clears, to the master of the ship, showing the state of the port, as respects the public health, at the time of sailing, and exhibited to the authorities of the port which the vessel next makes, in token that she does not bring disease. If the bill alleges that no contagious or infectious disease existed, it is called a "clean" bill; if it admits that one was suspected or anticipated, or that one actually prevailed, it is called a "touched" or a "foul" bill.

11. In revenue law and procedure, the term is given to various documents filed in or issuing from a custom house, principally of the sorts described below.

—**Bill of entry.** An account of the goods entered at the custom house, both incoming and outgoing. It must state the name of the merchant exporting or importing, the quantity and species of merchandise, and whither transported, and whence.—**Bill of sight.** When an importer of goods is ignorant of their exact quantity or quality, so that he cannot make a perfect entry of them, he may give to the customs officer a written description of them, according to the best of his information and belief. This is called a "bill of sight."—**Bill of store.** In English law. A kind of license granted at the custom-house to merchants, to carry such stores and provisions as are necessary for their voyage, custom free. *Jacob*.—**Bill of sufferance.** In English law. A license granted at the custom-house to a merchant, to suffer him to trade from one English port to another, without paying custom. *Cowell*.

12. In criminal law, a bill of indictment, see *infra*.

—**Bill of indictment.** A formal written document accusing a person or persons named of having committed a felony or misdemeanor, lawfully laid before a grand jury for their action upon it. If the grand jury decide that a trial ought to be had, they indorse on it "a true bill;" if otherwise, "not a true bill" or "not found."—*State v. Ray, Rice* (S. C.) 4, 33 Am. Dec. 90.—**Bill of appeal.** An ancient, but now abolished, method of criminal prosecution. See *BATTEL*.

13. In common-law practice. An itemized statement or specification of particular details, especially items of cost or charge.

—**Bill of costs.** A certified, itemized statement of the amount of costs in an action or suit. *Doe v. Thompson*, 22 N. H. 219. By the English usage, this term is applied to the statement of the charges and disbursements of an attorney or solicitor incurred in the conduct of his client's business, and which might be taxed upon application, even though not incurred in any suit. Thus, conveyancing costs might be taxed. *Wharton*.—**Bill of particulars.** In practice. A written statement or specification of the particulars of the demand for which an action at law is brought, or of a defendant's set-off against such demand, (including dates, sums, and items in detail,) furnished by one of the parties to the other, either voluntarily or in compliance with a judge's order for that purpose. 1 Tidd, Pr. 596-600; 2 Archb. Pr. 221; *Ferguson v. Ashbell*, 53 Tex. 250; *Baldwin v. Gregg*, 13 Metc. (Mass.) 255.

14. In English law, a draft of a patent for a charter, commission, dignity, office, or appointment.

Such a bill is drawn up in the attorney general's patent bill office, is submitted by a secretary of state for the King's signature, when it is called the "King's bill," and is then countersigned by the secretary of state and sealed by the privy seal, and then the patent is prepared and sealed. Sweet.

BILLA. L. Lat. A bill; an original bill.—**Billa excambii.** A bill of exchange.—**Billa exonerationis.** A bill of lading.—**Billa vera.** (A true bill.) In old practice. The indorsement anciently made on a bill of indictment by a grand jury, when they found it sufficiently sustained by evidence. 4 Bl. Comm. 306.

BILLA CASSETUR, or QUOD BILLA CASSETUR. (That the bill be quashed.) In practice. The form of the judgment rendered for a defendant on a plea in abatement, where the proceeding is *by bill*; that is, where the suit is commenced by *capias*, and not by original writ. 2 Archb. Pr. K. B. 4.

BILLET. A soldier's quarters in a civilian's house; or the ticket which authorizes him to occupy them.

In French law. A bill or promissory note. *Billet à ordre*, a bill payable to order. *Billet à vue*, a bill payable at sight. *Billet de complaisance*, an accommodation bill. *Billet de change*, an engagement to give, at a future time, a bill of exchange, which the party is not at the time prepared to give. Story, Bills, § 2, n.

BILLETA. In old English law. A bill or petition exhibited in parliament. Cowell.

BI-METALLIC. Pertaining to, or consisting of, two metals used as money at a fixed relative value.

BI-METALLISM. The legalized use of two metals in the currency of a country at a fixed relative value.

BIND. To obligate; to bring or place under definite duties or legal obligations, particularly by a bond or covenant; to affect one in a constraining or compulsory manner with a contract or a judgment. So long as a contract, an adjudication, or a legal relation remains in force and virtue, and continues to impose duties or obligations, it is said to be "*binding*." A man is *bound* by his contract or promise, by a judgment or decree against him, by his bond or covenant, by an estoppel, etc. Stone v. Bradbury, 14 Me. 193; Holmes v. Tutton, 5 El. & Bl. 80; Bank v. Ireland, 127 N. C. 238, 37 S. E. 223; Douglas v. Hennessy, 15 R. I. 272, 10 Atl. 583.

BIND OUT. To place one under a legal obligation to serve another; as to *bind out* an apprentice.

BINDING OVER. The act by which a court or magistrate requires a person to enter into a recognizance or furnish bail to appear for trial, to keep the peace, to attend as a witness, etc.

BIPARTITE. Consisting of, or divisible into, two parts. A term in conveyancing descriptive of an instrument in two parts, and executed by both parties.

BIRRETUM, BIRRETUS. A cap or coif used formerly in England by judges and serjeants at law. Spelman.

BIRTH. The act of being born or wholly brought into separate existence. Wallace v. State, 10 Tex. App. 270.

BIS. Lat. Twice.

Bis idem exigi bona fides non patitur; et in satisfactionibus non permittitur amplius fieri quam semel factum est. Good faith does not suffer the same thing to be demanded twice; and in making satisfaction [for a debt or demand] it is not allowed to be done more than once. 9 Coke, 53.

BISAILE. The father of one's grandfather or grandmother.

BISANTIUM, BESANTINE, BEZANT. An ancient coin, first issued at Constantinople; it was of two sorts,—gold, equivalent to a ducat, valued at 9s. 6d.; and silver, computed at 2s. They were both current in England. Wharton.

BI-SCOT. In old English law. A fine imposed for not repairing banks, ditches, and causeways.

BISHOP. In English law. An ecclesiastical dignitary, being the chief of the clergy within his diocese, subject to the archbishop of the province in which his diocese is situated. Most of the bishops are also members of the House of Lords.

BISHOPRIC. In ecclesiastical law. The diocese of a bishop, or the circuit in which he has jurisdiction; the office of a bishop. 1 Bl. Comm. 377-382.

BISHOP'S COURT. In English law. An ecclesiastical court, held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law; and, if the diocese be large, he has his commissaries in remote parts, who hold consistory courts, for matters limited to them by their commission.

BISSEXTILE. The day which is added every fourth year to the month of February,

in order to make the year agree with the course of the sun.

Leap year, consisting of 366 days, and happening every fourth year, by the addition of a day in the month of February, which in that year consists of twenty-nine days.

BLACK ACRE and WHITE ACRE. Fictitious names applied to pieces of land, and used as examples in the old books.

BLACK ACT. The statute 9 Geo. I. c. 22, so called because it was occasioned by the outrages committed by persons with their faces blacked or otherwise disguised, who appeared in Epping Forest, near Waltham, in Essex, and destroyed the deer there, and committed other offenses. Repealed by 7 & 8 Geo. IV. c. 27.

BLACK ACTS. Old Scotch statutes passed in the reigns of the Stuarts and down to the year 1586 or 1587, so called because printed in black letter. Bell

BLACK BOOK OF HEREFORD. In English law. An old record frequently referred to by Cowell and other early writers.

BLACK BOOK OF THE ADMIRALTY. A book of the highest authority in admiralty matters, generally supposed to have been compiled during the reign of Edward III. with additions of a later date. It contains the laws of Oleron, a view of crimes and offenses cognizable in the admiralty, and many other matters. See *DeLovio v. Boit*, 2 Gall. 404, Fed. Cas. No. 3,776.

BLACK BOOK OF THE EXCHEQUER. The name of an ancient book kept in the English exchequer, containing a collection of treaties, conventions, charters, etc.

BLACK CAP. The head-dress worn by the judge in pronouncing the sentence of death. It is part of the judicial full dress, and is worn by the judges on occasions of especial state. Wharton.

BLACK CODE. A name given collectively to the body of laws, statutes, and rules in force in various southern states prior to 1865, which regulated the institution of slavery, and particularly those forbidding their reception at public inns and on public conveyances. *Civil Rights Cases*, 109 U. S. 3, 3 Sup. Ct. 18, 27 L. Ed. 835.

BLACK GAME. In English law. Heath fowl, in contradistinction to red game, as grouse.

BLACK-LIST. A list of persons marked out for special avoidance, antagonism, or enmity on the part of those who prepare the

list or those among whom it is intended to circulate; as where a trades-union "black-lists" workmen who refuse to conform to its rules, or where a list of insolvent or untrustworthy persons is published by a commercial agency or mercantile association. *Masters v. Lee*, 39 Neb. 574, 58 N. W. 222; *Mattison v. Railway Co.*, 2 Ohio N. P. 279.

BLACK-MAIL. 1. In one of its original meanings, this term denoted a tribute paid by English dwellers along the Scottish border to influential chieftains of Scotland, as a condition of securing immunity from raids of marauders and border thieves.

2. It also designated rents payable in cattle, grain, work, and the like. Such rents were called "black-mail," (*reditus nigri*) in distinction from white rents, (*blanche firmes*), which were rents paid in silver.

3. The extortion of money by threats or overtures towards criminal prosecution or the destruction of a man's reputation or social standing.

In common parlance, the term is equivalent to, and synonymous with, "extortion,"—the exaction of money, either for the performance of a duty, the prevention of an injury, or the exercise of an influence. It supposes the service to be unlawful, and the payment involuntary. Not infrequently it is extorted by threats, or by operating upon the fears or the credulity, or by promises to conceal, or offers to expose, the weaknesses, the follies, or the crimes of the victim. *Edsall v. Brooks*, 3 Rob. (N. Y.) 284, 17 Abb. Prac. 221; *Life Ass'n v. Boogher*, 3 Mo. App. 173; *Hess v. Sparks*, 44 Kan. 463, 24 Pac. 979, 21 Am. St. Rep. 300; *People v. Thompson*, 97 N. Y. 313; *Utterback v. State*, 153 Ind. 545, 55 N. E. 420; *Mitchell v. Sharon* (C. C.) 51 Fed. 424.

BLACK MARIA. A closed wagon or van in which prisoners are carried to and from the jail, or between the court and the jail.

BLACK RENTS. In old English law. Rents reserved in work, grain, provisions, or baser money, in contradistinction to those which were reserved in *white* money or silver, which were termed "white rents," (*reditus albi*) or blanch farms. Tomlins; Whishaw.

BLACK-ROD, GENTLEMAN USHER OF. In England, the title of a chief officer of the king, deriving his name from the *Black Rod* of office, on the top of which reposes a golden lion, which he carries.

BLACK WARD. A subvassal, who held ward of the king's vassal.

BLACKLEG. A person who gets his living by frequenting race-courses and places where games of chance are played, getting the best odds, and giving the least he can, but not necessarily cheating. That is not indictable either by statute or at common law. *Barnett v. Allen*, 3 Hurl. & N. 379.

BLADA. In old English law. Growing crops of grain of any kind. Spelman. All manner of annual grain. Cowell. Harvested grain. Bract. 217*b*; Reg. Orig. 94*b*, 95.

BLADARIUS. In old English law. A corn-monger; meal-man or corn-chandler; a bladier, or engrosser of corn or grain. Blount.

BLANC SEIGN. In Louisiana, a paper signed at the bottom by him who intends to bind himself, give acquittance, or compromise, at the discretion of the person whom he intrusts with such *blanc seign*, giving him power to fill it with what he may think proper, according to agreement. *Musson v. U. S. Bank*, 6 Mart. O. S. (La.) 718.

BLANCH HOLDING. An ancient tenure of the law of Scotland, the duty payable being trifling, as a penny or a pepper-corn, etc., if required; similar to free and common socage.

BLANCHE FIRME. White rent; a rent reserved, payable in silver.

BLANCUS. In old law and practice. White; plain; smooth; blank.

BLANK. A space left unfilled in a written document, in which one or more words or marks are to be inserted to complete the sense. *Angle v. Insurance Co.*, 92 U. S. 337, 23 L. Ed. 556.

Also a skeleton or printed form for any legal document, in which the necessary and invariable words are printed in their proper order, with blank spaces left for the insertion of such names, dates, figures, additional clauses, etc., as may be necessary to adapt the instrument to the particular case and to the design of the party using it.

Blank acceptance. An acceptance of a bill of exchange written on the paper before the bill is made, and delivered by the acceptor.

Blank bar. Also called the "common bar." The name of a plea in bar which in an action of trespass is put in to oblige the plaintiff to assign the certain place where the trespass was committed. It was most in practice in the common bench. See *Cro. Jac.* 594.—**Blank bonds.** Scotch securities, in which the creditor's name was left blank, and which passed by mere delivery, the bearer being at liberty to put in his name and sue for payment. Declared void by Act 1696, c. 25.—**Blank indorsement.** The indorsement of a bill of exchange or promissory note, by merely writing the name of the indorser, without mentioning any person to whom the bill or note is to be paid; called "blank," because a blank or space is left over it for the insertion of the name of the indorsee, or of any subsequent holder. Otherwise called an indorsement "in blank." 3 Kent, Comm. 89; Story, Prom. Notes, § 138.

BLANKET POLICY. In the law of fire insurance. A policy which contemplates that the risk is shifting, fluctuating, or varying, and is applied to a class of property, rather than to any particular article or thing. 1

Wood, Ins. § 40. See *Insurance Co. v. Baltimore Warehouse Co.*, 93 U. S. 541, 23 L. Ed. 868; *Insurance Co. v. Landau*, 62 N. J. Eq. 73, 49 Atl. 738.

BLANKS. A kind of white money, (value 8*d.*) coined by Henry V. in those parts of France which were then subject to England; forbidden to be current in that realm by 2 Hen. VI. c. 9. Wharton.

BLASARIUS. An incendiary.

BLASPHEMY. In English law. Blasphemy is the offense of speaking matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound the feelings of mankind or to excite contempt and hatred against the church by law established, or to promote immorality. Sweet.

In American law. Any oral or written reproach maliciously cast upon God, His name, attributes, or religion. *Com. v. Kneeland*, 20 Pick. (Mass.) 213; *Young v. State*, 10 Lea (Tenn.) 165; *Com. v. Spratt*, 14 Phila. (Pa.) 365; *People v. Ruggles*, 8 Johns. (N. Y.) 290, 5 Am. Dec. 335; *Updegraph v. Com.*, 11 Serg. & R. (Pa.) 406; 2 Bish. Cr. Law, § 76; *Pen. Code Dak.* § 31.

In general, blasphemy may be described as consisting in speaking evil of the Deity with an impious purpose to derogate from the divine majesty, and to alienate the minds of others from the love and reverence of God. It is purposely using words concerning God calculated and designed to impair and destroy the reverence, respect, and confidence due to Him as the intelligent creator, governor, and judge of the world. It embraces the idea of detraction, when used towards the Supreme Being, as "calumny" usually carries the same idea when applied to an individual. It is a willful and malicious attempt to lessen men's reverence of God by denying His existence, or His attributes as an intelligent creator, governor, and judge of men, and to prevent their having confidence in Him as such. *Com. v. Kneeland*, 20 Pick. (Mass.) 211, 212.

The use of this word is, in modern law exclusively confined to sacred subjects; but *blasphemia* and *blasphemare* were anciently used to signify the reviling by one person of another. *Nov. 77, c. 1, § 1*; Spelman.

BLEES. In old English law. Grain; particularly corn.

BLENCH, BLENCH HOLDING. See **BLANCH HOLDING.**

BLENDED FUND. In England, where a testator directs his real and personal estate to be sold, and disposes of the proceeds as forming one aggregate, this is called a "blended fund."

BLIND. One who is deprived of the sense or faculty of sight. See *Pol. Code Cal.* 1903, § 2241.

BLINKS. In old English law. Boughs broken down from trees and thrown in a way where deer are likely to pass. Jacob

BLOCK. A square or portion of a city or town inclosed by streets, whether partially or wholly occupied by buildings or containing only vacant lots. *Ottawa v. Barney*, 10 Kan. 270; *Fraser v. Ott*, 95 Cal. 661, 30 Pac. 793; *State v. Deffes*, 44 La. Ann. 164, 10 South. 597; *Todd v. Railroad Co.*, 78 Ill. 530; *Harrison v. People*, 195 Ill. 466, 63 N. E. 191.

BLOCK OF SURVEYS. In Pennsylvania land law. Any considerable body of contiguous tracts surveyed in the name of the same warrantee, without regard to the manner in which they were originally located; a body of contiguous tracts located by exterior lines, but not separated from each other by interior lines. *Morrison v. Seaman*, 183 Pa. 74, 38 Atl. 710; *Ferguson v. Bloom*, 144 Pa. 549, 23 Atl. 49.

BLOCKADE. In international law. A marine investment or beleaguering of a town or harbor. A sort of circumvallation round a place by which all foreign connection and correspondence is, as far as human power can effect it, to be cut off. 1 C. Rob. Adm. 151. It is not necessary, however, that the place should be invested by land, as well as by sea, in order to constitute a legal blockade; and, if a place be blockaded by sea only, it is no violation of belligerent rights for the neutral to carry on commerce with it by inland communications. 1 Kent, Comm. 147.

The actual investment of a port or place by a hostile force fully competent, under ordinary circumstances, to cut off all communication therewith, so arranged or disposed as to be able to apply its force to every point of practicable access or approach to the port or place so invested. *Bouvier*; *The Olinde Rodrigues* (D. C.) 91 Fed. 274; *Id.*, 174 U. S. 510, 19 Sup. Ct. 851, 43 L. Ed. 1065; *U. S. v. The William Arthur*, 28 Fed. Cas. 624; *The Peterhoff*, 5 Wall. 50, 18 L. Ed. 564; *Grinnan v. Edwards*, 21 W. Va. 347.

It is called a "blockade *de facto*" when the usual notice of the blockade has not been given to the neutral powers by the government causing the investment, in consequence of which the blockading squadron has to warn off all approaching vessels.

—**Paper blockade.** The state of a line of coast proclaimed to be under blockade in time of war, when the naval force on watch is not sufficient to repel a real attempt to enter.—

Public blockade. A blockade which is not only established in fact, but is notified, by the government directing it, to other governments; as distinguished from a *simple* blockade, which may be established by a naval officer acting upon his own discretion or under direction of superiors, without governmental notification. *The Circassian*, 2 Wall. 150, 17 L. Ed. 796.—**Simple blockade.** One established by a naval commander acting on his own discretion and responsibility, or under the direction of a superior officer, but without governmental orders or notification. *The Circassian*, 2 Wall. 150, 17 L. Ed. 796.

BLOOD. Kindred; consanguinity; family relationship; relation by descent from a

common ancestor. One person is "of the blood" of another when they are related by lineal descent or collateral kinship. *Miller v. Speer*, 38 N. J. Eq. 572; *Delaplaine v. Jones*, 8 N. J. Law, 346; *Leigh v. Leigh*, 15 Ves. 108; *Cummings v. Cummings*, 146 Mass. 501, 16 N. E. 401; *Swasey v. Jaques*, 144 Mass. 135, 10 N. E. 758, 59 Am. Rep. 65.

—**Half-blood.** A term denoting the degree of relationship which exists between those who have the same father or the same mother, but not both parents in common.—**Mixed blood.** A person is "of mixed blood" who is descended from ancestors of different races or nationalities; but particularly, in the United States, the term denotes a person one of whose parents (or more remote ancestors) was a negro. See *Hopkins v. Bowers*, 111 N. C. 175, 16 S. E. 1.—**Whole blood.** Kinship by descent from the same father and mother; as distinguished from *half* blood, which is the relationship of those who have one parent in common, but not both.

BLOOD MONEY. A weregild, or pecuniary mulct paid by a slayer to the relatives of his victim.

Also used, in a popular sense, as descriptive of money paid by way of reward for the apprehension and conviction of a person charged with a capital crime.

BLOOD STAINS, TESTS FOR. See PRECIPITIN TEST.

BLOODWIT. An amercement for bloodshed. Cowell.

The privilege of taking such amercements. Skene.

A privilege or exemption from paying a fine or amercement assessed for bloodshed. Cowell.

BLOODY HAND. In forest law. The having the hands or other parts bloody, which, in a person caught trespassing in the forest against venison, was one of the four kinds of circumstantial evidence of his having killed deer, although he was not found in the act of chasing or hunting. Manwood.

BLUE LAWS. A supposititious code of severe laws for the regulation of religious and personal conduct in the colonies of Connecticut and New Haven; hence any rigid Sunday laws or religious regulations. The assertion by some writers of the existence of the blue laws has no other basis than the adoption, by the first authorities of the New Haven colony, of the Scriptures as their code of law and government, and their strict application of Mosaic principles. Century Dict.

BOARD. A committee of persons organized under authority of law in order to exercise certain authorities, have oversight or control of certain matters, or discharge certain functions of a magisterial, representative, or fiduciary character. Thus, "board

of aldermen," "board of health," "board of directors," "board of works."

Also lodging, food, entertainment, furnished to a guest at an inn or boarding-house.

—Board of aldermen. The governing body of a municipal corporation. *Oliver v. Jersey City*, 63 N. J. Law, 96, 42 Atl. 782. See **ALDERMEN**.—**Board of audit.** A tribunal provided by statute in some states, to adjust and settle the accounts of municipal corporations. *Osterhoudt v. Rigney*, 98 N. Y. 222.—**Board of civil authority.** In Vermont, in the case of a city this term includes the mayor and aldermen and justices residing therein; in the case of a town, the selectmen and town clerk and the justices residing therein; in the case of a village, the trustees or bailiffs and the justices residing therein. Vt. St. 1894, 19, 59.—**Board of directors.** The governing body of a private corporation, generally selected from among the stockholders and constituting in effect a committee of their number or board of trustees for their interests.—**Board of equalization.** See **EQUALIZATION**.—**Board of fire underwriters.** As these exist in many cities, they are unincorporated voluntary associations composed exclusively of persons engaged in the business of fire insurance, having for their object consolidation and co-operation in matters affecting the business, such as the writing of uniform policies and the maintenance of uniform rates. *Childs v. Insurance Co.*, 66 Minn. 393, 69 N. W. 141, 35 L. R. A. 99.—**Board of health.** A board or commission created by the sovereign authority or by municipalities, invested with certain powers and charged with certain duties in relation to the preservation and improvement of the public health. General boards of health are usually charged with general and advisory duties, with the collection of vital statistics, the investigation of sanitary conditions, and the methods of dealing with epidemic and other diseases, the quarantine laws, etc. Such are the national board of health, created by act of congress of March 3, 1879, (20 St. at Large, 484,) and the state boards of health created by the legislatures of most of the states. Local boards of health are charged with more direct and immediate means of securing the public health, and exercise inquisitorial and executive powers in relation to sanitary regulations, offensive nuisances, markets, adulteration of food, slaughterhouses, drains and sewers, and similar subjects. Such boards are constituted in most American cities either by general law, by their charters, or by municipal ordinance, and in England by the statutes, 11 & 12 Vict. c. 63, and 21 & 22 Vict. c. 98, and other acts amending the same. See *Gaines v. Waters*, 64 Ark. 609, 44 S. W. 353.—**Board of pardons.** A board created by law in some states, whose function is to investigate all applications for executive clemency and to make reports and recommendations thereon to the governor.—**Board of supervisors.** Under the system obtaining in some of the northern states, this name is given to an organized committee, or body of officials, composed of delegates from the several townships in a county, constituting part of the county government, and having special charge of the revenues of the county.—**Board of trade.** An organization of the principal merchants, manufacturers, tradesmen, etc., of a city, for the purpose of furthering its commercial interests, encouraging the establishment of manufactures, promoting trade, securing or improving shipping facilities, and generally advancing the prosperity of the place as an industrial and commercial community. In England, one of the administrative departments of government, being a committee of the privy council which is appointed for the consideration of matters relating to trade and foreign plantations.—**Board of works.** The name of a board of officers appointed for

the better local management of the English metropolis. They have the care and management of all grounds and gardens dedicated to the use of the inhabitants in the metropolis; also the superintendence of the drainage; also the regulation of the street traffic, and, generally, of the buildings of the metropolis. *Brown*.

BOARDER. One who, being the inhabitant of a place, makes a special contract with another person for food with or without lodging. *Berkshire Woollen Co. v. Proctor*, 7 Cush. (Mass.) 424.

One who has food and lodging in the house or with the family of another for an agreed price, and usually under a contract intended to continue for a considerable period of time. *Ullman v. State*, 1 Tex. App. 220, 28 Am. Rep. 405; *Ambler v. Skinner*, 7 Rob. (N. Y.) 561.

The distinction between a guest and a boarder is this: The guest comes and remains without any bargain for time, and may go away when he pleases, paying only for the actual entertainment he receives; and the fact that he may have remained a long time in the inn, in this way, does not make him a boarder, instead of a guest. *Stewart v. McCready*, 24 How. Prac. (N. Y.) 62.

BOARDING-HOUSE. A boarding-house is not in common parlance, or in legal meaning, every private house where one or more boarders are kept occasionally only and upon special considerations. But it is a *quasi* public house, where boarders are generally and habitually kept, and which is held out and known as a place of entertainment of that kind. *Cady v. McDowell*, 1 Lans. (N. Y.) 486.

A boarding-house is not an inn, the distinction being that a boarder is received into a house by a voluntary contract, whereas an innkeeper, in the absence of any reasonable or lawful excuse, is bound to receive a guest when he presents himself. 2 El. & Bl. 144.

The distinction between a boarding-house and an inn is that in a boarding-house the guest is under an express contract, at a certain rate for a certain period of time, while in an inn there is no express agreement; the guest, being on his way, is entertained from day to day, according to his business, upon an implied contract. *Willard v. Reinhardt*, 2 El. D. Smith (N. Y.) 148.

BOAT. A small open vessel, or watercraft, usually moved by oars or rowing. It is commonly distinguished in law from a ship or vessel, by being of smaller size and without a deck. *U. S. v. Open Boat*, 5 Mason, 120, 137, Fed. Cas. No. 15,967.

BOATABLE. A term applied in some states to minor rivers and streams capable of being navigated in small boats, skiffs, or launches, though not by steam or sailing vessels. *New England Trout, etc., Club v. Mathew*, 63 Vt. 338, 35 Atl. 323, 33 L. R. A. 569.

BOC. In Saxon law. A book or writing; a deed or charter. *Boc land*, deed or char-

ter land. *Land boc*, a writing for conveying land; a deed or charter; a land-book.

—**Boc horde**. A place where books, writings, or evidences were kept. Cowell.—**Boc land**. In Saxon law. Allodial lands held by deed or other written evidence of title.

BOCERAS. Sax. A scribe, notary, or chancellor among the Saxons.

BODILY. Pertaining to or concerning the body; of or belonging to the body or the physical constitution; not mental but corporeal. *Electric R. Co. v. Lauer*, 21 Ind. App. 466, 52 N. E. 703.

—**Bodily harm**. Any touching of the person of another against his will with physical force, in an intentional, hostile, and aggressive manner, or a projecting of such force against his person. *People v. Moore*, 50 Hun, 356, 3 N. Y. Supp. 159.—**Bodily heirs**. Heirs begotten or borne by the person referred to; lineal descendants. This term is equivalent to "heirs of the body." *Turner v. Hause*, 199 Ill. 464, 65 N. E. 445; *Craig v. Ambrose*, 80 Ga. 134, 4 S. E. 1; *Rigter v. Forrester*, 1 Bush (Ky.) 278.—**Bodily injury**. Any physical or corporeal injury; not necessarily restricted to injury to the trunk or main part of the body as distinguished from the head or limbs. *Quirk v. Siegel-Cooper Co.*, 43 App. Div. 464, 60 N. Y. Supp. 223.

BODMERIE, BODEMERIE, BODDERMEREY. Belg. and Germ. Bottomry, (*q. v.*)

BODY. A person. Used of a natural body, or of an artificial one created by law, as a corporation.

Also the main part of any instrument; in deeds it is spoken of as distinguished from the recitals and other introductory parts and signatures; in *affidavits*, from the title and jurat.

The main part of the human body; the trunk. *Sanchez v. People*, 22 N. Y. 149; *State v. Edmundson*, 64 Mo. 402; *Walker v. State*, 34 Fla. 167, 16 South. 80, 43 Am. St. Rep. 186.

BODY CORPORATE. A corporation.

BODY OF A COUNTY. A county at large, as distinguished from any particular place within it. A county considered as a territorial whole. *State v. Arthur*, 39 Iowa, 632; *People v. Dunn*, 31 App. Div. 139, 52 N. Y. Supp. 963.

BODY OF AN INSTRUMENT. The main and operative part; the substantive provisions, as distinguished from the recitals, title, jurat, etc.

BODY OF LAWS. An organized and systematic collection of rules of jurisprudence; as, particularly, the body of the civil law, or *corpus juris civilis*.

BODY POLITIC. A term applied to a corporation, which is usually designated as a "body corporate and politic."

The term is particularly appropriate to a

public corporation invested with powers and duties of government. It is often used, in a rather loose way, to designate the state or nation or sovereign power, or the government of a county or municipality, without distinctly connoting any express and individual corporate character. *Munn v. Illinois*, 94 U. S. 124, 24 L. Ed. 77; *Coyle v. McIntire*, 7 Houst. (Del.) 44, 30 Atl. 723, 40 Am. St. Rep. 109; *Warner v. Beers*, 23 Wend. (N. Y.) 122; *People v. Morris*, 13 Wend. (N. Y.) 334.

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

BOIS, or BOYS. L. Fr. Wood; timber; brush.

BOLHAGIUM, or BOLDAGIUM. A little house or cottage. Blount.

BOLT. The desertion by one or more persons from the political party to which he or they belong; the permanent withdrawal before adjournment of a portion of the delegates to a political convention. Rap. & L.

BOLTING. In English practice. A term formerly used in the English inns of court, but more particularly at Gray's Inn, signifying the private arguing of cases, as distinguished from *mooting*, which was a more formal and public mode of argument. Cowell; Tomlins; Holthouse.

BOMBAY REGULATIONS. Regulations passed for the presidency of Bombay, and the territories subordinate thereto. They were passed by the governors in council of Bombay until the year 1834, when the power of local legislation ceased, and the acts relating thereto were thenceforth passed by the governor general of India in council. Mozley & Whitley.

BON. Fr. In old French law. A royal order or check on the treasury, invented by Francis I. *Bon pour mille livres*, good for a thousand livres. Step. Lect. 387.

In modern law. The name of a clause (*bon pour* —, good for so much) added to a cedula or promise, where it is not in the handwriting of the signer, containing the amount of the sum which he obliges himself to pay. Poth. Obl. part 4, ch. 1, art. 2, § 1.

BONA. Lat. *n.* Goods; property; possessions. In the Roman law, this term was used to designate all species of property, real, personal, and mixed, but was more strictly applied to real estate. In modern civil law, it includes both personal property (technically so called) and chattels real, thus corresponding to the French *biens*. In the common law, its use was confined to the de-

scription of movable goods. *Tisdale v. Harris*, 20 Pick. (Mass.) 13; *Penniman v. French*, 17 Pick. (Mass.) 404, 28 Am. Dec. 309.

—**Bona confiscata.** Goods confiscated or forfeited to the imperial fisc or treasury. 1 Bl. Comm. 299.—**Bona et catalla.** Goods and chattels. Movable property. This expression includes all personal things that belong to a man. 16 Mees. & W. 68.—**Bona felonum.** In English law. Goods of felons; the goods of one convicted of felony. 5 Coke, 110.—**Bona forisfacta.** Goods forfeited.—**Bona fugitivorum.** In English law. Goods of fugitives; the proper goods of him who flies for felony. 5 Coke, 109b.—**Bona mobilia.** In the civil law. Movables. Those things which move themselves or can be transported from one place to another, and not permanently attached to a farm, heritage, or building.—**Bona notabilia.** In English probate law. Notable goods; property worthy of notice, or of sufficient value to be accounted for, that is, amounting to £5. Where a decedent leaves goods of sufficient amount (*bona notabilia*) in different dioceses, administration is granted by the metropolitan, to prevent the confusion arising from the appointment of many different administrators. 2 Bl. Comm. 509; Rolle, Abr. 908. *Moore v. Jordan*, 36 Kan. 271, 13 Pac. 337, 69 Am. Rep. 550.—**Bona paraphernalia.** In the civil law. The separate property of a married woman other than that which is included in her dowry; more particularly, her clothing, jewels, and ornaments. *Whiton v. Snyder*, 88 N. Y. 308.—**Bona peritura.** Goods of a perishable nature; such goods as an executor or trustee must use diligence in disposing of and converting them into money.—**Bona utlagatorum.** Goods of outlaws; goods belonging to persons outlawed.—**Bona vacantia.** Vacant, unclaimed, or stray goods. Those things in which nobody claims a property, and which belong to the crown, by virtue of its prerogative. 1 Bl. Comm. 298.—**Bona waviata.** In English law. Waived goods; goods stolen and waived, that is, thrown away by the thief in his flight, for fear of being apprehended, or to facilitate his escape; and which go to the sovereign. 5 Coke, 109b; 1 Bl. Comm. 296.

BONA. Lat. *adj.* Good. Used in numerous legal phrases of which the following are the principal:

—**Bona fides.** Good faith; integrity of dealing; honesty; sincerity; the opposite of *mala fides* and of *dolus malus*.—**Bona gestura.** Good abearance or behavior.—**Bona gratia.** In the Roman law. By mutual consent; voluntarily. A term applied to a species of divorce where the parties separated by mutual consent; or where the parties renounced their marital engagements without assigning any cause, or upon mere pretexts. *Tayl. Civil Law*, 361, 362; *Calvin*.—**Bona memoria.** Good memory. Generally used in the phrase *sane mentis et bonae memoriae*, of sound mind and good memory, as descriptive of the mental capacity of a testator.—**Bona patria.** In the Scotch law. An assize or jury of good neighbors. *Bell*.

BONA FIDE. In or with good faith; honestly, openly, and sincerely; without deceit or fraud.

Truly; actually; without simulation or pretense.

Innocently; in the attitude of trust and confidence; without notice of fraud, etc.

The phrase "*bona fide*" is often used ambiguously; thus, the expression "a *bona fide* holder for value" may either mean a holder for real value, as opposed to a holder for pretended

value, or it may mean a holder for real value without notice of any fraud, etc. *Byles, Bills*, 121.

—**Bona fide purchaser.** A purchaser for a valuable consideration paid or parted with in the belief that the vendor had a right to sell, and without any suspicious circumstances to put him on inquiry. *Merritt v. Railroad Co.*, 12 Barb. (N. Y.) 605. One who acts without covin, fraud, or collusion; one who, in the commission of or connivance at no fraud, pays full price for the property, and in good faith, honestly, and in fair dealing buys and goes into possession. *Sanders v. McAfee*, 42 Ga. 250. A *bona fide* purchaser is one who buys property of another without notice that some third person has a right to, or interest in, such property, and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of such other in the property. *Spicer v. Waters*, 65 Barb. (N. Y.) 231.

Bona fide possessor facit fructus consumptos suos. By good faith a possessor makes the fruits consumed his own. *Tray. Lat. Max.* 57.

Bona fides exigit ut quod convenit fiat. Good faith demands that what is agreed upon shall be done. *Dig.* 19, 20, 21; *Id.* 19, 1, 50; *Id.* 50, 8, 2, 13.

Bona fides non patitur ut his idem exigatur. Good faith does not allow us to demand twice the payment of the same thing. *Dig.* 50, 17, 57; *Broom, Max.* 338, note; *Perine v. Dunn*, 4 Johns. Ch. (N. Y.) 143.

BONÆ FIDEI. In the civil law. Of good faith; in good faith. This is a more frequent form than *bona fide*.

—**Bona fidei contracts.** In civil and Scotch law. Those contracts in which equity may interpose to correct inequalities, and to adjust all matters according to the plain intention of the parties. 1 Kames, Eq. 200.—**Bona fidei emptor.** A purchaser in good faith. One who either was ignorant that the thing he bought belonged to another or supposed that the seller had a right to sell it. *Dig.* 50, 16, 109. See *Id.* 6, 2, 7, 11.—**Bona fidei possessor.** A possessor in good faith. One who believes that no other person has a better right to the possession than himself. *Mackeld. Rom. Law*, § 243.

Bona fidei possessor in id tantum quod sese pervenerit tenetur. A possessor in good faith is only liable for that which he himself has obtained. 2 Inst. 285.

BOND, n. A contract by specialty to pay a certain sum of money; being a deed or instrument under seal, by which the maker or obligor promises, and thereto binds himself, his heirs, executors, and administrators, to pay a designated sum of money to another; usually with a clause to the effect that upon performance of a certain condition (as to pay another and smaller sum) the obligation shall be void. *U. S. v. Rundle*, 100 Fed. 403, 40 C. C. A. 450; *Turck v. Mining Co.*, 8 Colo. 113, 5 Pac. 838; *Boyd v. Boyd*, 2 Nott & McC. (S. C.) 126.

The word "bond" shall embrace every written undertaking for the payment of money or ac-

knowledge of being bound for money, conditioned to be void on the performance of any duty, or the occurrence of anything therein expressed, and subscribed and delivered by the party making it, to take effect as his obligation, whether it be sealed or unsealed; and, when a bond is required by law, an undertaking in writing without seal shall be sufficient. Rev. Code Miss. 1880, § 19.

The word "bond" has with us a definite legal signification. It has a clause, with a sum fixed as a penalty, binding the parties to pay the same, conditioned, however, that the payment of the penalty may be avoided by the performance by some one or more of the parties of certain acts. In re Fitch, 3 Redf. Sur. (N. Y.) 459.

Bonds are either single (simple) or double, (conditional.) A *single* bond is one in which the obligor binds himself, his heirs, etc., to pay a certain sum of money to another person at a specified day. A *double* (or conditional) bond is one to which a condition is added that if the obligor does or forbears from doing some act the obligation shall be void. Formerly such a condition was sometimes contained in a separate instrument, and was then called a "defeasance."

The term is also used to denote debentures or certificates of indebtedness issued by public and private corporations, governments, and municipalities, as security for the repayment of money loaned to them. Thus, "railway aid bonds" are bonds issued by municipal corporations to aid in the construction of railroads likely to benefit them, and exchanged for the company's stock.

In old Scotch law. A bond-man; a slave. Skene.

—**Bond and disposition in security.** In Scotch law. A bond and mortgage on land.—**Bond and mortgage.** A species of security, consisting of a bond conditioned for the repayment of a loan of money, and a mortgage of realty to secure the performance of the stipulations of the bond. Meigs v. Bunting, 141 Pa. 233, 21 Atl. 588, 23 Am. St. Rep. 273.—**Bond creditor.** A creditor whose debt is secured by a bond.—**Bond for title.** An obligation accompanying an executory contract for the sale of land, binding the vendor to make good title upon the performance of the conditions which entitle the vendee to demand a conveyance. White v. Stokes, 67 Ark. 184, 53 S. W. 1060.—**Bond tenants.** In English law. Copyholders and customary tenants are sometimes so called. 2 Bl. Comm. 148.—**Official bond.** A bond given by a public officer, conditioned that he shall well and faithfully perform all the duties of the office. The term is sometimes made to include the bonds of executors, guardians, trustees, etc.—**Simple bond.** At common law, a bond without penalty; a bond for the payment of a definite sum of money to a named obligee on demand or on a day certain. Burnside v. Wand, 170 Mo. 531, 71 S. W. 337, 62 L. R. A. 427.—**Single bond.** A deed whereby the obligor obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to the obligee at a day named, without terms of defeasance.

BOND, v. To give bond for, as for duties on goods; to secure payment of duties, by giving bond. *Bonded*, secured by bond. Bonded goods are those for the duties on which bonds are given.

BONDAGE. Slavery; involuntary personal servitude; captivity. In old English law, villenage, villein tenure. 2 Bl. Comm. 92.

BONDED WAREHOUSE. See WAREHOUSE SYSTEM.

BONDSMAN. A surety; one who has entered into a bond as surety. The word seems to apply especially to the sureties upon the bonds of officers, trustees, etc., while *bail* should be reserved for the sureties on recognizances and bail-bonds. Haberstick v. Elliott, 189 Ill. 70, 59 N. E. 557.

BONES GENTS. L. Fr. In old English law. Good men, (of the jury.)

BONI HOMINES. In old European law. Good men; a name given in early European jurisprudence to the tenants of the lord, who judged each other in the lord's courts. 3 Bl. Comm. 349.

Boni iudicis est ampliare jurisdictionem. It is the part of a good judge to enlarge (or use liberally) his remedial authority or jurisdiction. Ch. Prec. 329; 1 Wils. 284.

Boni iudicis est ampliare justitiam. It is the duty of a good judge to enlarge or extend justice. 1 Burr. 304.

Boni iudicis est iudicium sine dilatione mandare executioni. It is the duty of a good judge to cause judgment to be executed without delay. Co. Litt. 289.

Boni iudicis est lites dirimere, ne lis ex lite oritur, et interest reipublicæ ut sint fines litium. It is the duty of a good judge to prevent litigations, that suit may not grow out of suit, and it concerns the welfare of a state that an end be put to litigation. 4 Coke, 15b; 5 Coke, 31a.

BONIS CEDERE. In the civil law. To make a transfer or surrender of property, as a debtor did to his creditors. Cod. 7, 71.

BONIS NON AMOVENDIS. A writ addressed to the sheriff, when a writ of error has been brought, commanding that the person against whom judgment has been obtained be not suffered to remove his goods till the error be tried and determined. Reg. Orig. 131.

BONIFICATION. The remission of a tax, particularly on goods intended for export, being a special advantage extended by government in aid of trade and manufactures, and having the same effect as a bonus or drawback. It is a device resorted to for enabling a commodity affected by taxes to

be exported and sold in the foreign market on the same terms as if it had not been taxed. *U. S. v. Passavant*, 169 U. S. 16, 18 Sup. Ct. 219, 42 L. Ed. 644; *Downs v. U. S.*, 113 Fed. 148, 51 C. C. A. 100.

BONITARIAN OWNERSHIP. In Roman law. A species of equitable title to things, as distinguished from a title acquired according to the strict forms of the municipal law; the property of a Roman citizen in a subject capable of quiritary property, acquired by a title not known to the civil law, but introduced by the prætor, and protected by his *imperium* or supreme executive power, *e. g.*, where *res mancipi* had been transferred by mere tradition. Poste's *Gaius Inst.* 187. See **QUIBITARIAN OWNERSHIP**.

BONO ET MALO. A special writ of jail delivery, which formerly issued of course for each particular prisoner. 4 Bl. Comm. 270.

Bonum defendentis ex integra causa; malum ex quolibet defectu. The success of a defendant depends on a perfect case; his loss arises from some defect. 11 Coke, 68a.

Bonum necessarium extra terminos necessitatis non est bonum. A good thing required by necessity is not good beyond the limits of such necessity. Hob. 144.

BONUS. A gratuity. A premium paid to a grantor or vendor.

An extra consideration given for what is received.

Any premium or advantage; an occasional extra dividend.

A premium paid by a company for a charter or other franchises.

"A definite sum to be paid at one time, for a loan of money for a specified period, distinct from and independently of the interest." *Association v. Wilcox*, 24 Conn. 147.

A bonus is not a gift or gratuity, but a sum paid for services, or upon some other consideration, but in addition to or in excess of that which would ordinarily be given. *Kenicott v. Wayne County*, 16 Wall. 452, 21 L. Ed. 319.

Bonus iudex secundum æquum et bonum iudicat, et æquitatem stricto juri præfert. A good judge decides according to what is just and good, and prefers equity to strict law. Co. Litt. 34.

BOOK. 1. A general designation applied to any literary composition which is printed, but appropriated to a printed composition bound in a volume. *Scoville v. Toland*, 21 Fed. Cas. 864.

2. A bound volume consisting of sheets of paper, not printed, but containing manu-

script entries; such as a merchant's account-books, dockets of courts, etc.

3. A name often given to the largest subdivisions of a treatise or other literary composition.

4. In practice, the name of "book" is given to several of the more important papers prepared in the progress of a cause, though entirely written, and not at all in the book form; such as demurrer-books, error-books, paper-books, etc.

In copyright law, the meaning of the term is more extensive than in popular usage, for it may include a pamphlet, a magazine, a collection of blank forms, or a single sheet of music or of ordinary printing. *U. S. v. Bennett*, 24 Fed. Cas. 1,093; *Stowe v. Thomas*, 23 Fed. Cas. 207; *White v. Geroch*, 2 Barn. & Ald. 301; *Brightley v. Littleton (C. C.)* 37 Fed. 104; *Holmes v. Hurst*, 174 U. S. 82, 19 Sup. Ct. 606, 43 L. Ed. 904; *Clementi v. Goulding*, 11 East, 244; *Clayton v. Stone*, 5 Fed. Cas. 999.

—Book account. A detailed statement, kept in writing in a book, in the nature of debits and credits between persons, arising out of contract or some fiduciary relation; an account or record of debit and credit kept in a book. *Taylor v. Horst*, 52 Minn. 300, 54 N. W. 734; *Stieglitz v. Mercantile Co.*, 76 Mo. App. 280; *Kennedy v. Ankrim, Tapp. (Ohio)* 40.—**Book debt.** In Pennsylvania practice. The act of 28th March, 1895, § 2, in using the words, "book debt" and "book entries," refers to their usual signification, which includes goods sold and delivered, and work, labor, and services performed, the evidence of which, on the part of the plaintiff, consists of entries in an original book, such as is competent to go to a jury, were the issue trying before them. *Hamill v. O'Donnell*, 2 Miles (Pa.) 102.—**Book of acts.** A term applied to the records of a surrogate's court. 8 East, 187.—**Book of adjournal.** In Scotch law. The original records of criminal trials in the court of justiciary.—**Book of original entries.** A book in which a merchant keeps his accounts generally and enters therein from day to day a record of his transactions. *McKnight v. Newell*, 207 Pa. 562, 57 Atl. 39. A book kept for the purpose of charging goods sold and delivered, in which the entries are made contemporaneously with the delivery of the goods, and by the person whose duty it was for the time being to make them. *Laird v. Campbell*, 100 Pa. 165; *Ingraham v. Bockius*, 9 Serg. & R. (Pa.) 285, 11 Am. Dec. 730; *Smith v. Sanford*, 12 Pick. (Mass.) 140, 22 Am. Dec. 415; *Breinig v. Meitzler*, 23 Pa. 156. Distinguished from such books as a ledger, into which entries are posted from the book of original entries.—**Book of rates.** An account or enumeration of the duties or tariffs authorized by parliament. 1 Bl. Comm. 316.—**Book of responses.** In Scotch law. An account which the directors of the chancery kept to enter all non-entry and relief duties payable by heirs who take precepts from chancery.—**Bookland.** In English law. Land, also called "charter-land," which was held by deed under certain rents and free services, and differed in nothing from free socage land. 2 Bl. Comm. 90.—**Books.** All the volumes which contain authentic reports of decisions in English courts, from the earliest times to the present, are called, *par excellence*, "The Books." Wharton.—**Books of account.** The books in which merchants, traders, and business men generally keep their accounts. *Parris v. Bellows*, 52 Vt. 351; *Com. v. Williams*, 9 Metc. (Mass.)

273; *Wilson v. Wilson*, 6 N. J. Law, 96; *Security Co. v. Graybeal*, 85 Iowa, 543, 52 N. W. 497, 39 Am. St. Rep. 311; *Colbert v. Piercy*, 25 N. C. 80.

BOOM. An inclosure formed upon the surface of a stream or other body of water, by means of piers and a chain of spars, for the purpose of collecting or storing logs or timber. *Powers' Appeal*, 125 Pa. 175, 17 Atl. 254, 11 Am. St. Rep. 882; *Lumber Co. v. Green*, 76 Mich. 320, 43 N. W. 576; *Gasper v. Heimbach*, 59 Minn. 102, 60 N. W. 1080; *Boom Corp. v. Whiting*, 29 Me. 123.

BOOM COMPANY. A company formed for the purpose of improving streams for the floating of logs, by means of booms and other contrivances, and for the purpose of running, driving, booming, and rafting logs.

BOOMAGE. A charge on logs for the use of a boom in collecting, storing, or rafting them. *Lumber Co. v. Thompson*, 83 Miss. 499, 35 South. 828. A right of entry on riparian lands for the purpose of fastening booms and boom sticks. *Farrand v. Clarke*, 63 Minn. 181, 65 N. W. 361.

BOON DAYS. In English law. Certain days in the year (sometimes called "due days") on which tenants in copyhold were obliged to perform corporal services for the lord. *Whishaw*.

BOOT, or BOTE. An old Saxon word, equivalent to "estovers."

BOOTING, or BOTING, CORN. Certain rent corn, anciently so called. *Cowell*.

BOOTY. Property captured from the enemy in war, on land, as distinguished from "prize," which is a capture of such property on the sea. *U. S. v. Bales of Cotton*, 28 Fed. Cas. 302; *Coolidge v. Guthrie*, 6 Fed. Cas. 461.

BORD. An old Saxon word, signifying a cottage; a house; a table.

BORDAGE. In old English law. A species of base tenure, by which certain lands (termed "bord lands") were anciently held in England, the tenants being termed "*bordarii*," the service was that of keeping the lord in small provisions.

BORDARIA. A cottage.

BORDARII, or BORDIMANNI. In old English law. Tenants of a less servile condition than the *villani*, who had a bord or cottage, with a small parcel of land, allowed to them, on condition they should supply the lord with poultry and eggs, and other small provisions for his board or entertainment. *Spelman*.

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BORD-BRIGCH. In Saxon law. A breach or violation of suretyship; pledge-breach, or breach of mutual fidelity.

BORDER WARRANT. A process granted by a judge ordinary, on either side of the border between England and Scotland, for arresting the person or effects of a person living on the opposite side, until he find security, *judicio sisti*. *Bell*.

BORDEREAU. In French law. A note enumerating the purchases and sales which may have been made by a broker or stockbroker. This name is also given to the statement given to a banker with bills for discount or coupons to receive. *Arg. Fr. Merc. Law*, 547.

BORD-HALFPENNY. A customary small toll paid to the lord of a town for setting up boards, tables, booths, etc., in fairs or markets.

BORLANDS. The demesnes which the lords keep in their hands for the maintenance of their board or table. *Cowell*.

Also lands held in bordage. Lands which the lord gave to tenants on condition of their supplying his table with small provisions, poultry, eggs, etc.

BORDLODE. A service anciently required of tenants to carry timber out of the woods of the lord to his house; or it is said to be the quantity of food or provision which the *bordarii* or bordmen paid for their bordlands. *Jacob*.

BORDSERVICE. A tenure of bordlands.

BOREL-FOLK. Country people; derived from the French *bourre*, (Lat. *flocus*.) a lock of wool, because they covered their heads with such stuff. *Blount*.

BORG. In Saxon law. A pledge, pledge giver, or surety. The name given among the Saxons to the head of each family composing a tithing or decennary, each being the pledge for the good conduct of the others. Also the contract or engagement of suretyship; and the pledge giver.

BORGBRICHE. A breach or violation of suretyship, or of mutual fidelity. *Jacob*.

BORGESMON. In Saxon law. The name given to the head of each family composing a tithing.

BORGH OF HAMHALD. In old Scotch law. A pledge or surety given by the seller of goods to the buyer, to make the goods forthcoming as his own proper goods, and to warrant the same to him. *Skene*.

BOROUGH. In English law. A town, a walled town. Co. Litt. 108b. A town of note or importance; a fortified town. Cowell. An ancient town. Litt. 164. A corporate town that is not a city. Cowell. An ancient town, corporate or not, that sends burgesses to parliament. Co. Litt. 109a; 1 Bl. Comm. 114, 115. A city or other town sending burgesses to parliament. 1 Steph. Comm. 116. A town or place organized for local government.

A parliamentary borough is a town which returns one or more members to parliament.

In Scotch law. A corporate body erected by the charter of the sovereign, consisting of the inhabitants of the territory erected into the borough. Bell.

In American law. In Pennsylvania, the term denotes a part of a township having a charter for municipal purposes; and the same is true of Connecticut. Southport v. Ogden, 23 Conn. 128. See, also, 1 Dill. Mun. Corp. § 41, n.

"Borough" and "village" are duplicate or cumulative names of the same thing; proof of either will sustain a charge in an indictment employing the other term. Brown v. State, 18 Ohio St. 496.

-Borough courts. In English law. Private and limited tribunals, held by prescription, charter, or act of parliament, in particular districts for the convenience of the inhabitants, that they may prosecute small suits and receive justice at home.—**Borough English.** A custom prevalent in some parts of England, by which the youngest son inherits the estate in preference to his older brothers. 1 Bl. Comm. 75.

-Borough fund. In English law. The revenues of a municipal borough derived from the rents and produce of the land, houses, and stocks belonging to the borough in its corporate capacity, and supplemented where necessary by a borough rate.—**Borough-heads.** Borough-holders, bors-holders, or burs-holders.—**Borough-reeve.** The chief municipal officer in towns unincorporated before the municipal corporations act, (5 & 6 Wm. IV. c. 76).—**Borough sessions.** Courts of limited criminal jurisdiction, established in English boroughs under the municipal corporations act.—**Pocket borough.** A term formerly used in English politics to describe a borough entitled to send a representative to parliament, in which a single individual, either as the principal landlord or by reason of other predominating influence, could entirely control the election and insure the return of the candidate whom he should nominate.

BORROW. To solicit and receive from another any article of property or thing of value with the intention and promise to repay or return it or its equivalent. Strictly speaking, borrowing implies a gratuitous loan; if any price or consideration is to be paid for the use of the property, it is "hiring." But money may be "borrowed" on an agreement to pay interest for its use. Neel v. State, 33 Tex. Cr. R. 408, 26 S. W. 726; Kent v. Mining Co., 78 N. Y. 177; Legal Tender Cases, 110 U. S. 421, 4 Sup. Ct. 122, 28 L. Ed. 204.

This word is often used in the sense of returning the thing borrowed *in specie*, as to bor-

row a book or any other thing to be returned again. But it is evident that where money is borrowed, the identical money loaned is not to be returned, because, if this were so, the borrower would derive no benefit from the loan. In the broad sense of the term, it means a contract for the use of money. State v. School Dist., 13 Neb. 83, 12 N. W. 812; Railroad Co. v. Stichter, 11 Wkly. Notes Cas. (Pa.) 325.

BORROWE. In old Scotch law. A pledge.

BORSHOLDER. In Saxon law. The borough's ealder, or headborough, supposed to be in the discreetest man in the borough, town, or tithing.

BOSCAGE. In English law. The food which wood and trees yield to cattle; browse-wood, mast, etc. Spelman.

An ancient duty of wind-fallen wood in the forest. Manwood.

BOSCARIA. Wood-houses, or ox-houses.

BOSCUS. Wood; growing wood of any kind, large or small, timber or coppice. Cowell; Jacob.

BOTE. In old English law. A recompense or compensation, or profit or advantage. Also reparation or amends for any damage done. Necessaries for the maintenance and carrying on of husbandry. An allowance; the ancient name for estovers.

House-bote is a sufficient allowance of wood from off the estate to repair or burn in the house, and sometimes termed "fire-bote;" *plow-bote* and *cart-bote* are wood to be employed in making and repairing all instruments of husbandry; and *hay-bote* or *hedge-bote* is wood for repairing of hays, hedges, or fences. The word also signifies reparation for any damage or injury done, as *man-bote*, which was a compensation or amends for a man slain, etc.

BOTELESS. In old English law. Without amends; without the privilege of making satisfaction for a crime by a pecuniary payment; without relief or remedy. Cowell.

BOTHA. In old English law. A booth, stall, or tent to stand in, in fairs or markets. Cowell.

BOTHAGIUM, or BOOTHAGE. Customary dues paid to the lord of a manor or soil, for the pitching or standing of booths in fairs or markets.

BOTHNA, or BUTHNA. In old Scotch law. A park where cattle are inclosed and fed. Bothna also signifies a barony, lordship, etc. Skene.

BOTTOMAGE. L. Fr. Bottomry.

BOTTOMRY. In maritime law. A contract in the nature of a mortgage, by which the owner of a ship borrows money for the use, equipment, or repair of the vessel, and

for a definite term, and pledges the ship (or the keel or *bottom* of the ship, *pars pro toto*) as a security for its repayment, with maritime or extraordinary interest on account of the marine risks to be borne by the lender; it being stipulated that if the ship be lost in the course of the specified voyage, or during the limited time, by any of the perils enumerated in the contract, the lender shall also lose his money. The *Draco*, 2 Sumn. 157, Fed. Cas. No. 4,057; *White v. Cole*, 24 Wend. (N. Y.) 126; *Carrington v. The Pratt*, 18 How. 63, 15 L. Ed. 267; *The Dora* (D. C.) 34 Fed. 343; *Jennings v. Insurance Co.*, 4 Bin. (Pa.) 244, 5 Am. Dec. 404; *Braynard v. Hoppock*, 7 Bosw. (N. Y.) 157.

Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period. Civ. Code Cal. § 3017; Civ. Code Dak. § 1783.

When the loan is not made upon the ship, but on the goods laden on board, and which are to be sold or exchanged in the course of the voyage, the borrower's personal responsibility is deemed the principal security for the performance of the contract, which is therefore called "*respondentia*," which see. And in a loan upon *respondentia* the lender must be paid his principal and interest though the ship perish, provided the goods are saved. In most other respects the contracts of *bottomry* and of *respondentia* stand substantially upon the same footing. *Bouvier*.

BOTTOMRY BOND. The instrument embodying the contract or agreement of bottomry.

The true definition of a bottomry bond, in the sense of the general maritime law, and independent of the peculiar regulations of the positive codes of different commercial nations, is that it is a contract for a loan of money on the bottom of the ship, at an extraordinary interest, upon maritime risks, to be borne by the lender for a voyage, or for a definite period. The *Draco*, 2 Sumn. 157, Fed. Cas. No. 4,057; *Cole v. White*, 26 Wend. (N. Y.) 515; *Greely v. Smith*, 10 Fed. Cas. 1077; *The Grapeshot*, 9 Wall. 135, 19 L. Ed. 651.

BOUCHE. Fr. The mouth. An allowance of provision. *Avoir bouche à court*; to have an allowance at court; to be in ordinary at court; to have meat and drink scot-free there. *Blount*; *Cowell*.

BOUCHE OF COURT, or BUDGE OF COURT. A certain allowance of provision from the king to his knights and servants, who attended him on any military expedition.

BOUGH OF A TREE. In feudal law. A symbol which gave seisin of land, to hold of the donor *in capite*.

BOUGHT AND SOLD NOTES. When a broker is employed to buy and sell goods, he is accustomed to give to the buyer a note of the sale, commonly called a "sold note," and to the seller a like note, commonly called a "bought note," in his own name, as

agent of each, and thereby they are respectively bound, if he has not exceeded his authority. *Saladin v. Mitchell*, 45 Ill. 83; *Keim v. Lindley* (N. J. Ch.) 30 Atl. 1070.

BOULEVARD. The word "boulevard," which originally indicated a bulwark or rampart, and was afterwards applied to a public walk or road on the site of a demolished fortification, is now employed in the same sense as public drive. A park is a piece of ground adapted and set apart for purposes of ornament, exercise, and amusement. It is not a street or road, though carriages may pass through it.

So a boulevard or public drive is adapted and set apart for purposes of ornament, exercise, and amusement. It is not technically a street, avenue, or highway, though a carriage-way over it is a chief feature. *People v. Green*, 52 How. Prac. (N. Y.) 445; *Howe v. Lowell*, 171 Mass. 575, 51 N. E. 536; *Park Com'rs v. Farber*, 171 Ill. 146, 49 N. E. 427.

BOUND. As an adjective, denotes the condition of being constrained by the obligations of a bond or a covenant. In the law of shipping, "bound to" or "bound for" denotes that the vessel spoken of is intended or designed to make a voyage to the place named.

As a noun, the term denotes a limit or boundary, or a line inclosing or marking off a tract of land. In the familiar phrase "metes and bounds," the former term properly denotes the measured distances, and the latter the natural or artificial marks which indicate their beginning and ending. A distinction is sometimes taken between "bound" and "boundary," to the effect that, while the former signifies the limit itself, (and may be an imaginary line,) the latter designates a visible mark which indicates the limit. But no such distinction is commonly observed.

BOUND BAILIFFS. In English law. Sheriffs' officers are so called, from their being usually bound to the sheriff in an obligation with sureties, for the due execution of their office. 1 Bl. Comm. 345, 346.

BOUNDARY. By boundary is understood, in general, every separation, natural or artificial, which marks the confines or line of division of two contiguous estates. Trees or hedges may be planted, ditches may be dug, walls or inclosures may be erected, to serve as boundaries. But we most usually understand by boundaries stones or pieces of wood inserted in the earth on the confines of the two estates. Civ. Code La. art. 826.

Boundaries are either natural or artificial. Of the former kind are water-courses, growing trees, beds of rock, and the like. Artificial boundaries are landmarks or signs erected by the hand of man, as a pole, stake, pile of stones, etc.

—**Natural boundary.** Any formation or product of nature (as opposed to structures or erec-

tions made by man) which may serve to define and fix one or more of the lines inclosing an estate or piece of property, such as a water-course, a line of growing trees, a bluff or mountain chain, or the like. See *Peuker v. Canter*, 32 Kan. 363, 63 Pac. 617; *Stapleford v. Brinson*, 24 N. C. 311; *Eureka Mining, etc., Co. v. Way*, 11 Nev. 171.—**Private boundary.** An artificial boundary, consisting of some monument or landmark set up by the hand of man to mark the beginning or direction of a boundary line of lands.—**Public boundary.** A natural boundary; a natural object or landmark used as a boundary of a tract of land, or as a beginning point for a boundary line.

BOUNDED TREE. A tree marking or standing at the corner of a field or estate.

BOUNDERS. In American law. Visible marks or objects at the ends of the lines drawn in surveys of land, showing the courses and distances. *Burrill*.

BOUNDS. In the English law of mines, the trespass committed by a person who excavates minerals under-ground beyond the boundary of his land is called "working out of bounds."

BOUNTY. A gratuity, or an unusual or additional benefit conferred upon, or compensation paid to, a class of persons. *Iowa v. McFarland*, 110 U. S. 471, 4 Sup. Ct. 210, 28 L. Ed. 198.

A premium given or offered to induce men to enlist into the public service. The term is applicable only to the payment made to the enlisted man, as the inducement for his service, and not to a premium paid to the man through whose intervention, and by whose procurement, the recruit is obtained and mustered. *Abbe v. Allen*, 39 How. Prac. (N. Y.) 488.

It is not easy to discriminate between bounty, reward, and bonus. The former is the appropriate term, however, where the services or action of many persons are desired, and each who acts upon the offer may entitle himself to the promised gratuity, without prejudice from or to the claims of others; while reward is more proper in the case of a single service, which can be only once performed, and therefore will be earned only by the person or co-operative persons who succeed while others fail. Thus, bounties are offered to all who will enlist in the army or navy; to all who will engage in certain fisheries which government desire to encourage; to all who kill dangerous beasts or noxious creatures. A reward is offered for rescuing a person from a wreck or fire; for detecting and arresting an offender; for finding a lost chattel. *Kircher v. Murray*, (C. C.) 54 Fed. 624; *Ingram v. Colgan*, 106 Cal. 113, 38 Pac. 315, 28 L. R. A. 187, 46 Am. St. Rep. 221.

Bonus, as compared with bounty, suggests the idea of a gratuity to induce a money transaction between individuals; a percentage or gift, upon a loan or transfer of property, or a surrender of a right. *Abbott*.

—**Bounty lands.** Portions of the public domain given to soldiers for military services, by way of bounty.—**Bounty of Queen Anne.** A name given to a royal charter, which was confirmed by 2 Anne, c. 11, whereby all the revenue of first-fruits and tenths was vested in trustees, to form a perpetual fund for the augmentation

of poor ecclesiastical livings. *Wharton*.—**Military bounty land.** Land granted by various laws of the United States, by way of bounty, to soldiers for services rendered in the army; being given in lieu of a money payment.

BOURG. In old French law. An assemblage of houses surrounded with walls; a fortified town or village.

In old English law. A borough, a village.

BOURGEOIS. In old French law. The inhabitant of a *bourg*, (q. v.)

A person entitled to the privileges of a municipal corporation; a burgess.

BOURSE. Fr. An exchange; a stock-exchange.

BOURSE DE COMMERCE. In the French law. An aggregation, sanctioned by government, of merchants, captains of vessels, exchange agents, and courtiers, the two latter being nominated by the government, in each city which has a *bourse*. *Brown*.

BOUSSOLE. In French marine law. A compass; the mariner's compass.

BOUWERYE. Dutch. In old New York law. A farm; a farm on which the farmer's family resided.

BOUWMEESTER. Dutch. In old New York law. A farmer.

BOVATA TERRÆ. As much land as one ox can cultivate. Said by some to be thirteen, by others eighteen, acres in extent. *Skene; Spelman; Co. Litt. 5a*.

BOW-BEARER. An under-officer of the forest, whose duty it was to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented, without any concealment, in the next court of attachment, etc. *Crump. Jur. 201*.

BOWYERS. Manufacturers of bows and shafts. An ancient company of the city of London.

BOYCOTT. A conspiracy formed and intended directly or indirectly to prevent the carrying on of any lawful business, or to injure the business of any one by wrongfully preventing those who would be customers from buying anything from or employing the representatives of said business, by threats, intimidation, or other forcible means. *Gray v. Building Trades Council*, 91 Minn. 171, 97 N. W. 663, 63 L. R. A. 753, 103 Am. St. Rep. 477; *State v. Glidden*, 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23; *In re Crump*, 84 Va.

927, 6 S. E. 620, 10 Am. St. Rep. 895; Oxley Stave Co. v. International Union (C. C.) 72 Fed. 699; Casey v. Typographical Union (C. C.) 45 Fed. 135, 12 L. R. A. 193; Davis v. Starrett, 97 Me. 568, 55 Atl. 516; Barr v. Essex Trades Council, 53 N. J. Eq. 101, 30 Atl. 881; Park v. Druggists' Ass'n, 175 N. Y. 1, 67 N. E. 136, 62 L. R. A. 632, 96 Am. St. Rep. 578.

BOZERO. In Spanish law. An advocate; one who pleads the causes of others, or his own, before courts of justice, either as plaintiff or defendant.

BRACHIUM MARIS. An arm of the sea.

BRACINUM. A brewing; the whole quantity of ale brewed at one time, for which *tolsestor* was paid in some manors. *Brecina*, a brew-house.

BRAHMIN, BRAHMAN, or BRAMIN. In Hindu law. A divine; a priest; the first Hindu caste.

BRANCH. An offshoot, lateral extension, or subdivision.

A branch of a family stock is a group of persons, related among themselves by descent from a common ancestor, and related to the main stock by the fact that that common ancestor descends from the original founder or progenitor.

—**Branch of the sea.** This term, as used at common law, included rivers in which the tide ebbed and flowed. *Arnold v. Mundy*, 6 N. J. Law, 86, 10 Am. Dec. 356.—**Branch pilot.** One possessing a license, commission, or certificate of competency issued by the proper authority and usually after an examination. *U. S. v. Forbes*, 25 Fed. Cas. 1141; *Peterson v. State* (Tex. Cr. App.) 58 S. W. 100; *Dean v. Healy*, 66 Ga. 503; *State v. Follett*, 33 La. Ann. 228.—**Branch railroad.** A lateral extension of a main line; a road connected with or issuing from a main line, but not a mere incident of it and not a mere spur or side-track, not one constructed simply to facilitate the business of the chief railway, but designed to have a business of its own in the transportation of persons and property to and from places not reached by the principal line. *Akers v. Canal Co.*, 43 N. J. Law, 110; *Biles v. Railroad Co.*, 5 Wash. 509, 32 Pac. 211; *Grennan v. McGregor*, 78 Cal. 258, 20 Pac. 559; *Newhall v. Railroad Co.*, 14 Ill. 274; *Blanton v. Railroad Co.*, 86 Va. 618, 10 S. E. 925.

BRAND. To stamp; to mark, either with a hot iron or with a stencil plate. *Dibble v. Hathaway*, 11 Hun (N. Y.) 575.

BRANDING. An ancient mode of punishment by inflicting a mark on an offender with a hot iron. It is generally disused in civil law, but is a recognized punishment for some military offenses.

BRANKS. An instrument formerly used in some parts of England for the correction of scolds; a scolding bridle. It inclosed the

head and a sharp piece of iron entered the mouth and restrained the tongue.

BRASIATOR. A maltster, a brewer.

BRASIUM. Malt

BRAWL. A clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace.

In English law, specifically, a noisy quarrel or other uproarious conduct creating a disturbance in a church or churchyard. 4 Bl. Comm. 146; 4 Steph. Comm. 253.

The popular meanings of the words "brawls" and "tumults" are substantially the same and identical. They are correlative terms, the one employed to express the meaning of the other, and are so defined by approved lexicographers. Legally, they mean the same kind of disturbance to the public peace, produced by the same class of agents, and can be well comprehended to define one and the same offense. *State v. Perkins*, 42 N. H. 464.

BREACH. The breaking or violating of a law, right, or duty, either by commission or omission.

In contracts. The violation or non-fulfillment of an obligation, contract, or duty.

A *continuing* breach occurs where the state of affairs, or the specific act, constituting the breach, endures for a considerable period of time, or is repeated at short intervals. A *constructive* breach of contract takes place when the party bound to perform disables himself from performance by some act, or declares, before the time comes, that he will not perform.

In pleading. This name is sometimes given to that part of the declaration which alleges the violation of the defendant's promise or duty, immediately preceding the *ad damnum* clause.

—**Breach of close.** The unlawful or unwarrantable entry on another person's soil, land, or close. 3 Bl. Comm. 209.—**Breach of covenant.** The nonperformance of any covenant agreed to be performed, or the doing of any act covenanted not to be done. *Holthouse*.—**Breach of duty.** In a general sense, any violation or omission of a legal or moral duty. More particularly, the neglect or failure to fulfill in a just and proper manner the duties of an office or fiduciary employment.—**Breach of pound.** The breaking any pound or place where cattle or goods distrained are deposited, in order to take them back. 3 Bl. Comm. 146.

—**Breach of prison.** The offense of actually and forcibly breaking a prison or gaol, with intent to escape. 4 Chit. Bl. 130, notes; 4 Steph. Comm. 255. The escape from custody of a person lawfully arrested on criminal process.—**Breach of privilege.** An act or default in violation of the privilege of either house of parliament, of congress, or of a state legislature.—**Breach of promise.** Violation of a promise; chiefly used as an elliptical expression for "breach of promise of marriage."

—**Breach of the peace.** A violation of the public tranquillity and order. The offense of breaking or disturbing the public peace by any riotous, forcible, or unlawful proceeding. 4 Bl. Comm. 142, *et seq.*; *People v. Bartz*, 53 Mich. 493, 19 N. W. 161; *State v. White*, 18 R. I. 473, 28 Atl. 968; *People v. Wallace*, 85 App. Div. 170, 83 N. Y. Supp. 130; *Scougale v. Sweet*, 124 Mich. 311, 82 N. W. 1061. A

constructive breach of the peace is an unlawful act which, though wanting the elements of actual violence or injury to any person, is yet inconsistent with the peaceable and orderly conduct of society. Various kinds of misdemeanors are included in this general designation, such as sending challenges to fight, going armed in public without lawful reason and in a threatening manner, etc. An **apprehended breach of the peace** is caused by the conduct of a man who threatens another with violence or physical injury, or who goes about in public with dangerous and unusual weapons in a threatening or alarming manner, or who publishes an aggravated libel upon another, etc.—**Breach of trust.** Any act done by a trustee contrary to the terms of his trust, or in excess of his authority and to the detriment of the trust; or the wrongful omission by a trustee of any act required of him by the terms of the trust. Also the wrongful misappropriation by a trustee of any fund or property which had been lawfully committed to him in a fiduciary character.—**Breach of warranty.** In real property law and the law of insurance. The failure or falsehood of an affirmative promise or statement, or the non-performance of an executory stipulation. *Hendricks v. Insurance Co.*, 8 Johns. (N. Y.) 13; *Fitzgerald v. Ben. Ass'n*, 39 App. Div. 251, 56 N. Y. Supp. 1005; *Stewart v. Drake*, 9 N. J. Law, 139.

BREAD ACTS. Laws providing for the sustenance of persons kept in prison for debt.

BREAKING. Forcibly separating, parting, disintegrating, or piercing any solid substance. In the law as to housebreaking and burglary, it means the tearing away or removal of any part of a house or of the locks, latches, or other fastenings intended to secure it, or otherwise exerting force to gain an entrance, with the intent to commit a felony; or violently or forcibly breaking out of a house, after having unlawfully entered it, in the attempt to escape. *Gaddie v. Com.*, 117 Ky. 468, 78 S. W. 163, 111 Am. St. Rep. 259; *Sims v. State*, 136 Ind. 358, 36 N. E. 278; *Melton v. State*, 24 Tex. App. 287, 6 S. W. 303; *Mathews v. State*, 36 Tex. 675; *Carter v. State*, 68 Ala. 98; *State v. Newbegin*, 25 Me. 503; *McCourt v. People*, 64 N. Y. 585.

In the law of burglary, "constructive" breaking, as distinguished from actual, forcible breaking, may be classed under the following heads: (1) Entries obtained by threats; (2) when, in consequence of violence done or threatened in order to obtain entry, the owner, with a view more effectually to repel it, opens the door and sallies out and the felon enters; (3) when entrance is obtained by procuring the service of some intermediate person, such as a servant, to remove the fastening; (4) when some process of law is fraudulently resorted to for the purpose of obtaining an entrance; (5) when some trick is resorted to to induce the owner to remove the fastenings and open the door. *State v. Henry*, 31 N. C. 468; *Clarke v. Com.*, 25 Grat. (Va.) 912; *Ducher v. State*, 18 Ohio, 317; *Johnston v. Com.*, 85 Pa. 64, 27 Am. Rep. 622; *Nicholls v. State*, 68 Wis. 416, 32 N. W. 543, 60 Am. Rep. 870.

—**Breaking a case.** The expression by the judges of a court, to one another, of their views of a case, in order to ascertain how far they are agreed, and as preliminary to the formal delivery of their opinions. "We are breaking the case, that we may show what is in doubt with any of us." *Holt, C. J.*, addressing *Dolbin, J.*, 1 Show. 423.—**Breaking bulk.** The

offense committed by a bailee (particularly a carrier) in opening or unpacking the chest, parcel, or case containing goods intrusted to his care, and removing the goods and converting them to his own use.—**Breaking doors.** Forcibly removing the fastenings of a house, so that a person may enter.—**Breaking jail.** The act of a prisoner in effecting his escape from a place of lawful confinement. *Escape*, while denoting the offense of the prisoner in unlawfully leaving the jail, may also connote the fault or negligence of the sheriff or keeper, and hence is of wider significance than "breaking jail" or "prison-breach."—**Breaking of arrestment.** In Scotch law. The contempt of the law committed by an arrestee who disregards the arrestment used in his hands, and pays the sum or delivers the goods arrested to the debtor. The breaker is liable to the arrestee in damages. See ARRESTMENT.

BREAST OF THE COURT. A metaphorical expression, signifying the conscience, discretion, or recollection of the judge. During the term of a court, the record is said to remain "in the breast of the judges of the court and in their remembrance." *Co. Litt.* 260a; 3 Bl. Comm. 407.

BREATH. In medical jurisprudence. The air expelled from the lungs at each expiration.

BREDWITE. In Saxon and old English law. A fine, penalty, or amercement imposed for defaults in the assise of bread. *Cowell.*

BREHON. In old Irish law. A judge. 1 Bl. Comm. 100. *Brehons*, (*breitheamhuin*), judges.

BREHON LAW. The name given to the ancient system of law of Ireland as it existed at the time of its conquest by Henry II.; and derived from the title of the judges, who were denominated "Brehons."

BRENAGIUM. A payment in bran, which tenants anciently made to feed their lords' hounds.

BREPHTROPHI. In the civil law. Persons appointed to take care of houses destined to receive foundlings.

BRETHREN. This word, in a will, may include sisters, as well as brothers, of the person indicated; it is not necessarily limited to the masculine gender. *Terry v. Brunson*, 1 Rich. Eq. (S. C.) 78.

BRETTS AND SCOTTS, LAWS OF THE. A code or system of laws in use among the Celtic tribes of Scotland down to the beginning of the fourteenth century, and then abolished by Edward I. of England.

BRETTWALDA. In Saxon law. The ruler of the Saxon heptarchy.

BREVE. L. Lat. A writ. An original writ. A writ or precept of the king issuing out of his courts.

A writ by which a person is summoned or attached to answer an action, complaint, etc., or whereby anything is commanded to be done in the courts, in order to justice, etc. It is called "*breve*," from the brevity of it, and is addressed either to the defendant himself, or to the chancellors, judges, sheriffs, or other officers. Skene.

—**Breve de recto.** A writ of right, or license for a person ejected out of an estate, to sue for the possession of it.—**Breve innominatum.** A writ making only a general complaint, without the details or particulars of the cause of action.—**Breve nominatum.** A named writ. A writ stating the circumstances or details of the cause of action, with the time, place, and demand, very particularly.—**Breve originale.** An original writ; a writ which gave *origin* and commencement to a suit.—**Breve perquirere.** To purchase a writ or license of trial in the king's courts by the plaintiff.—**Breve testatum.** A written memorandum introduced to perpetuate the tenor of the conveyance and investiture of lands. 2 Bl. Comm. 307. In Scotch law. A similar memorandum made out at the time of the transfer, attested by the *pares curiæ* and by the seal of the superior. Bell.

Breve ita dicitur, quia rem de qua agitur, et intentionem petentis, paucis verbis breviter enarrat. A writ is so called because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief. 2 Inst. 39.

Breve judiciale debet sequi suum originale, et accessorium suum principale. Jenk. Cent. 292. A judicial writ ought to follow its original, and an accessory its principal.

Breve judiciale non cadit pro defectu formæ. Jenk. Cent. 43. A judicial writ fails not through defect of form.

BREVET. In military law. A commission by which an officer is promoted to the next higher rank, but without conferring a right to a corresponding increase of pay.

In French law. A privilege or warrant granted by the government to a private person, authorizing him to take a special benefit or exercise an exclusive privilege. Thus a *brevet d'invention* is a patent for an invention.

BREVIATA. Lat. Writs. The plural of *breve*, which see.

—**Brevia adversaria.** Adversary writs; writs brought by an adversary to recover land. 6 Coke, 67.—**Brevia amabilia.** Amicable or friendly writs; writs brought by agreement or consent of the parties.—**Brevia anticipantia.** At common law. Anticipating or preventive writs. Six were included in this category, viz.: Writ of *mesne*; *warrantia chartæ*; *monstraverunt*; *audita querela*; *curia claudenda*; and *ne injuste vexes*. Peters v. Linenschmidt, 53 Mo. 466.—**Brevia de cursu.** Writs of course. Formal writs issuing as of

course.—**Brevia formata.** Certain writs of approved and established form which were granted of course in actions to which they were applicable, and which could not be changed but by consent of the great council of the realm. Bract fol. 413b.—**Brevia judicialia.** Judicial writs. Auxiliary writs issued from the court during the progress of an action, or in aid of the judgment.—**Brevia magistralia.** Writs occasionally issued by the *masters* or clerks of chancery, the form of which was varied to suit the circumstances of each case. Bract fol. 413b.—**Brevia selecta.** Choice or selected writs or processes. Often abbreviated to Brev. Sel.—**Brevia testata.** The name of the short memoranda early used to show grants of lands out of which the deeds now in use have grown. Jacob.

Brevia, tam originalia quam judicialia, patiuntur Anglica nomina. 10 Coke, 132. Writs, as well original as judicial, bear English names.

BREVIARIUM ALARICIANUM. A compilation of Roman law made by order of Alaric II., king of the Visigoths, in Spain, and published for the use of his Roman subjects in the year 506.

BREVIARIUM ANIANI. Another name for the *Breviarium Alaricianum*, (*q. v.*) Anian was the referendary or chancellor of Alaric, and was commanded by the latter to authenticate, by his signature, the copies of the *breviary* sent to the *comites*. Mackeld. Rom. Law, § 68.

BREVIATE. A brief; brief statement, epitome, or abstract. A short statement of contents, accompanying a bill in parliament. Holthouse.

BREVIBUS ET ROTULIS LIBERANDIS. A writ or mandate to a sheriff to deliver to his successor the county, and appurtenances, with the rolls, briefs, remembrance, and all other things belonging to his office. Reg. Orig. 295.

BREWER. One who manufactures fermented liquors of any name or description, for sale, from malt, wholly or in part, or from any substitute therefor. Act July 13, 1866, § 9, (14 St. at Large, 117.) U. S. v. Dooley, 25 Fed. Cas. 890; U. S. v. Wittig, 28 Fed. Cas. 745.

BRIBE. Any valuable thing given or promised, or any preferment, advantage, privilege, or emolument, given or promised corruptly and against the law, as an inducement to any person acting in an official or public capacity to violate or forbear from his duty, or to improperly influence his behavior in the performance of such duty.

The term "bribe" signifies any money, goods, right in action, property, thing of value, or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence unlawfully the person to

whom it is given, in his action, vote, or opinion, in any public or official capacity. Pen. Code Dak. § 774. Pen. Code Cal. 1903, § 7; Pen. Code Tex. 1895, art. 144; *People v. Van de Carr*, 87 App. Div. 386, 84 N. Y. Supp. 461; *People v. Ward*, 110 Cal. 369, 42 Pac. 894; *Com. v. Headley*, 111 Ky. 815, 64 S. W. 744.

BRIBERY. In criminal law. The receiving or offering any undue reward by or to any person whomsoever, whose ordinary profession or business relates to the administration of public justice, in order to influence his behavior in office, and to incline him to act contrary to his duty and the known rules of honesty and integrity. *Hall v. Marshall*, 80 Ky. 552; *Walsh v. People*, 65 Ill. 65, 16 Am. Rep. 569; *Com. v. Murray*, 135 Mass. 530; *Hutchinson v. State*, 36 Tex. 294.

The term "bribery" now extends further, and includes the offense of giving a bribe to many other classes of officers; it applies both to the actor and receiver, and extends to voters, cabinet ministers, legislators, sheriffs, and other classes. 2 Whart. Crim. Law, § 1858.

The offense of taking any undue reward by a judge, juror, or other person concerned in the administration of justice, or by a public officer, to influence his behavior in his office. 4 Bl. Comm. 139, and note.

Bribery is the giving or receiving any undue reward to influence the behavior of the person receiving such reward in the discharge of his duty, in any office of government or of justice. Code Ga. 1882, § 4469.

The crime of offering any undue reward or remuneration to any public officer of the crown, or other person intrusted with a public duty, with a view to influence his behavior in the discharge of his duty. The taking such reward is as much bribery as the offering it. It also sometimes signifies the taking or giving a reward for public office. The offense is not confined, as some have supposed, to judicial officers. Brown.

BRIBERY AT ELECTIONS. The offense committed by one who gives or promises or offers money or any valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, or as a reward to the voter for having voted in a particular way or abstained from voting.

BRIBOUR. One that pilfers other men's goods; a thief.

BRICOLIS. An engine by which walls were beaten down. Blount.

BRIDEWELL. In England. A house of correction.

BRIDGE. A structure erected over a river, creek, stream, ditch, ravine, or other place, to facilitate the passage thereof; including by the term both arches and abutments. *Bridge Co. v. Railroad Co.*, 17 Conn.

56, 42 Am. Dec. 716; *Proprietors of Bridges v. Land Imp. Co.*, 13 N. J. Eq. 511; *Rusch v. Davenport*, 6 Iowa, 455; *Whitall v. Gloucester County*, 40 N. J. Law, 305.

A building of stone or wood erected across a river, for the common ease and benefit of travelers. Jacob.

Bridges are either public or private. Public bridges are such as form a part of the highway, common, according to their character as foot, horse, or carriage bridges, to the public generally, with or without toll. *State v. Street*, 117 Ala. 203, 23 South. 807; *Everett v. Bailey*, 150 Pa. 152, 24 Atl. 700; *Rex v. Bucks County*, 12 East, 204.

A private bridge is one which is not open to the use of the public generally, and does not form part of the highway, but is reserved for the use of those who erected it, or their successors, and their licensees. *Rex v. Bucks County*, 12 East, 192.

BRIDGE-MASTERS. Persons chosen by the citizens, to have the care and supervision of bridges, and having certain fees and profits belonging to their office, as in the case of London Bridge.

BRIDLE ROAD. In the location of a private way laid out by the selectmen, and accepted by the town, a description of it as a "bridle road" does not confine the right of way to a particular class of animals or special mode of use. *Flagg v. Flagg*, 16 Gray (Mass.) 175.

BRIEF. In general. A written document; a letter; a writing in the form of a letter. A summary, abstract, or epitome. A condensed statement of some larger document, or of a series of papers, facts, or propositions.

An epitome or condensed summary of the facts and circumstances, or propositions of law, constituting the case proposed to be set up by either party to an action about to be tried or argued.

In English practice. A document prepared by the attorney, and given to the barrister, before the trial of a cause, for the instruction and guidance of the latter. It contains, in general, all the information necessary to enable the barrister to successfully conduct their client's case in court, such as a statement of the facts, a summary of the pleadings, the names of the witnesses, and an outline of the evidence expected from them, and any suggestions arising out of the peculiarities of the case.

In American practice. A written or printed document, prepared by counsel to serve as the basis for an argument upon a cause in an appellate court, and usually filed for the information of the court. It embodies the points of law which the counsel desires to establish, together with the argu-

ments and authorities upon which he rests his contention.

A brief, within a rule of court requiring counsel to furnish briefs, before argument, implies some kind of statement of the case for the information of the court. *Gardner v. Stover*, 43 Ind. 356.

In Scotch law. Brief is used in the sense of "writ," and this seems to be the sense in which the word is used in very many of the ancient writers.

In ecclesiastical law. A papal rescript sealed with wax. See BULL.

—**Brief a l'evesque.** A writ to the bishop which, in *quare impedit*, shall go to remove an incumbent, unless he recover or be presented *pendente lite*. 1 Keb. 386.—**Brief of title.** In practice. A methodical epitome of all the patents, conveyances, incumbrances, liens, court proceedings, and other matters affecting the title to a certain portion of real estate.—**Brief out of the chancery.** In Scotch law. A writ issued in the name of the sovereign in the election of tutors to minors, the cognoscing of lunatics or of idiots, and the ascertaining the widow's terce; and sometimes in dividing the property belonging to heirs-portioners. In these cases only briefs are now in use. Bell.—**Brief papal.** In ecclesiastical law. The pope's letter upon matters of discipline.

BRIEVE. In Scotch law. A writ. 1 Kames, Eq. 146.

BRIGA. In old European law. Strife, contention, litigation, controversy.

BRIGANDINE. A coat of mail or ancient armour, consisting of numerous jointed scale-like plates, very pliant and easy for the body, mentioned in 4 & 5 P. & M. c. 2.

BRIGBOTE. In Saxon and old English law. A tribute or contribution towards the repairing of bridges.

BRING SUIT. To "bring" an action or suit has a settled customary meaning at law, and refers to the initiation of legal proceedings in a suit. A suit is "brought" at the time it is commenced. *Hames v. Judd* (Com. Pl.) 9 N. Y. Supp. 743; *Rawle v. Phelps*, 20 Fed. Cas. 321; *Goldenberg v. Murphy*, 109 U. S. 162, 2 Sup. Ct. 388, 27 L. Ed. 686; *Buecker v. Carr*, 60 N. J. Eq. 300, 47 Atl. 34.

BRINGING MONEY INTO COURT. The act of depositing money in the custody of a court or of its clerk or marshal, for the purpose of satisfying a debt or duty, or to await the result of an interpleader. *Dirks v. Juel*, 59 Neb. 353, 80 N. W. 1045.

BRIS. In French maritime law. Literally, breaking; wreck. Distinguished from *nauffrage*, (q. v.)

BRISTOL BARGAIN. In English law. A contract by which A. lends B. £1,000 on good security, and it is agreed that £500, together with interest, shall be paid at a time

stated; and, as to the other £500, that B., in consideration thereof, shall pay to A. £100 *per annum* for seven years. *Wharton*.

BRITISH COLUMBIA. The territory on the north-west coast of North America, once known by the designation of "New Caledonia." Its government is provided for by 21 & 22 Vict. c. 99. Vancouver Island is united to it by the 29 & 30 Vict. c. 67. See 33 & 34 Vict. c. 66.

BROCAGE. The wages, commission, or pay of a broker, (also called "brokerage.") Also the avocation or business of a broker.

BROCARD. In old English law. A legal maxim. "Brocardica Juris," the title of a small book of legal maxims, published at Paris, 1508.

BROCARIUS, BROCATOR. In old English and Scotch law. A broker; a middleman between buyer and seller; the agent of both transacting parties. Bell; Cowell.

BROCELLA. In old English law. A wood, a thicket or covert of bushes and brushwood. Cowell; Blount.

BROKEN STOWAGE. In maritime law. That space in a ship which is not filled by her cargo.

BROKER. An agent employed to make bargains and contracts between other persons, in matters of trade, commerce, or navigation, for a compensation commonly called "brokerage." Story, Ag. § 28.

Those who are engaged for others in the negotiation of contracts relative to property, with the custody of which they have no concern. Paley, Prin. & Ag. 13.

The *broker* or *intermediary* is he who is employed to negotiate a matter between two parties, and who, for that reason, is considered as the mandatary of both. Civil Code La. art. 3016.

One whose business is to negotiate purchases or sales of stocks, exchange, bullion, coined money, bank-notes, promissory notes, or other securities, for himself or for others. Ordinarily, the term "broker" is applied to one acting for others; but the part of the definition which speaks of purchases and sales for himself is equally important as that which speaks of sales and purchases for others. *Warren v. Shook*, 91 U. S. 710, 23 L. Ed. 421.

A broker is a mere negotiator between other parties, and does not act in his own name, but in the name of those who employ him. *Henderson v. State*, 50 Ind. 234.

Brokers are persons whose business it is to bring buyer and seller together; they need have nothing to do with negotiating the bargain. *Keys v. Johnson*, 68 Pa. 42.

The difference between a *factor* or commission merchant and a *broker* is this: A factor

may buy and sell in his own name, and he has the goods in his possession; while a broker, as such, cannot ordinarily buy or sell in his own name, and has no possession of the goods sold. *Slack v. Tucker*, 23 Wall. 321, 330, 23 L. Ed. 143.

The legal distinction between a broker and a factor is that the factor is intrusted with the property the subject of the agency; the broker is only employed to make a bargain in relation to it. *Perkins v. State*, 50 Ala. 154, 156.

Brokers are of many kinds, the most important being enumerated and defined as follows:

Exchange brokers, who negotiate foreign bills of exchange.

Insurance brokers, who procure insurances for those who employ them and negotiate between the party seeking insurance and the companies or their agents.

Merchandise brokers, who buy and sell goods and negotiate between buyer and seller, but without having the custody of the property.

Note brokers, who negotiate the discount or sale of commercial paper.

Pawnbrokers, who lend money on goods deposited with them in pledge, taking high rates of interest.

Real-estate brokers, who procure the purchase or sale of land, acting as intermediary between vendor and purchaser to bring them together and arrange terms; and who negotiate loans on real-estate security, manage and lease estates, etc. *Latta v. Kilbourn*, 150 U. S. 524, 14 Sup. Ct. 201, 37 L. Ed. 169; *Chadwick v. Collins*, 26 Pa. 139; *Brauckman v. Leighton*, 60 Mo. App. 42.

Ship-brokers, who transact business between the owners of ships and freighters or charterers, and negotiate the sale of vessels.

Stock-brokers, who are employed to buy and sell for their principals all kinds of stocks, corporation bonds, debentures, shares in companies, government securities, municipal bonds, etc.

Money-broker. A money-changer; a scrivener or jobber; one who lends or raises money to or for others.

BROKERAGE. The wages or commissions of a broker; also, his business or occupation.

BROSSUS. Bruised, or injured with blows, wounds, or other casualty. Cowell.

BROTHEL. A bawdy-house; a house of ill fame; a common habitation of prostitutes.

BROTHER. One person is a brother "of the whole blood" to another, the former being a male, when both are born from the same father and mother. He is a brother "of the half blood" to that other (or half-brother) when the two are born to the same

father by different mothers or by the same mother to different fathers.

In the civil law, the following distinctions are observed: Two brothers who descend from the same father, but by different mothers, are called "consanguine" brothers. If they have the same mother, but are begotten by different fathers, they are called "uterine" brothers. If they have both the same father and mother, they are denominated brothers "germane."

BROTHER-IN-LAW. A wife's brother or a sister's husband. There is not any relationship, but only affinity, between brothers-in-law. *Farmers' L. & T. Co. v. Iowa Water Co. (C. C.)* 80 Fed. 469. See *State v. Foster*, 112 La. 533, 36 South. 554.

BRUARIUM. In old English law. A heath ground; ground where heath grows. Spelman.

BRUGBOTE. See BRIGBOTE.

BRULLUS. In old English law. A wood or grove; a thicket or clump of trees in a park or forest. Cowell.

BRUISE. In medical jurisprudence. A contusion; an injury upon the flesh of a person with a blunt or heavy instrument, without solution of continuity, or without breaking the skin. *Shaddock v. Road Co.*, 79 Mich. 7, 44 N. W. 158; *State v. Owen*, 5 N. C. 452, 4 Am. Dec. 571.

BRUKBARN. In old Swedish law. The child of a woman conceiving after a rape, which was made legitimate. Literally, the child of a struggle. Burrill.

BRUTUM FULMEN. An empty noise; an empty threat.

BUBBLE. An extravagant or unsubstantial project for extensive operations in business or commerce, generally founded on a fictitious or exaggerated prospectus, to ensnare unwary investors. Companies formed on such a basis or for such purposes are called "bubble companies." The term is chiefly used in England.

BUBBLE ACT. The statute 6 Geo. I. c. 18, "for restraining several extravagant and unwarrantable practices herein mentioned," was so called. It prescribed penalties for the formation of companies with little or no capital, with the intention, by means of alluring advertisements, of obtaining money from the public by the sale of shares. Such undertakings were then commonly called "bubbles." This legislation was prompted by the collapse of the "South Sea Project," which, as Blackstone says, "had pegged half the nation." It was mostly repealed by the statute 6 Geo. IV. c. 91.

BUCKET SHOP. An office or place (other than a regularly incorporated or licensed

exchange) where information is posted as to the fluctuating prices of stocks, grain, cotton, or other commodities, and where persons lay wagers on the rise and fall of such prices under the pretence of buying and selling such commodities. *Bryant v. W. U. Tel. Co.* (C. C.) 17 Fed. 828; *Fortenbury v. State*, 47 Ark. 188, 1 S. W. 58; *Connor v. Black*, 119 Mo. 126, 24 S. W. 184; *Smith v. W. U. Tel. Co.*, 84 Ky. 664, 2 S. W. 483; *Bates' Ann. St. Ohio*, 1904, § 6934a.

BUCKSTALL. A toil, net, or snare, to take deer. 4 Inst. 306.

BUDGET. A name given in England to the statement annually presented to parliament by the chancellor of the exchequer, containing the estimates of the national revenue and expenditure.

BUGGERY. A carnal topulation against nature; and this is either by the confusion of species,—that is to say, a man or a woman with a brute beast,—or of sexes, as a man with a man, or man unnaturally with a woman. 3 Inst. 58; 12 Coke, 36. *Ausman v. Veal*, 10 Ind. 356, 71 Am. Dec. 331; *Com. v. J.*, 21 Pa. Co. Ct. R. 626.

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. *Truesdell v. Gray*, 13 Gray (Mass.) 311; *State v. Moore*, 61 Mo. 276; *Clark v. State*, 69 Wis. 203, 33 N. W. 436, 2 Am. St. Rep. 732.

—**Building line.** See **LINE**.

BUILDING AND LOAN ASSOCIATION. An organization created for the purpose of accumulating a fund by the monthly subscriptions and savings of its members to assist them in building or purchasing for themselves dwellings or real estate by the loan to them of the requisite money from the funds of the association. *McCauley v. Association*, 97 Tenn. 421, 37 S. W. 212, 35 L. R. A. 244, 56 Am. St. Rep. 813; *Cook v. Association*, 104 Ga. 814, 30 S. E. 911; *Pfeister v. Association*, 19 W. Va. 693.

BUILDING LEASE. A lease of land for a long term of years, usually 99, at a rent called a "ground rent," the lessee covenanting to erect certain edifices thereon according to specification, and to maintain the same, etc., during the term.

BUILDING LIEN. The statutory lien of a material-man or contractor for the erection of a building. *Lumber Co. v. Holt*, 60 Neb. 80, 82 N. W. 112, 83 Am. St. Rep. 512; *June v. Doke*, 35 Tex. Civ. App. 240, 80 S. W. 406.

BUILDING SOCIETY. An association in which the subscriptions of the members

form a capital stock or fund out of which advances may be made to members desiring them, on mortgage security.

BUL. In the ancient Hebrew chronology, the eighth month of the ecclesiastical, and the second of the civil year. It has since been called "*Marshewan*," and answers to our October.

BULK. Unbroken packages. Merchandise which is neither counted, weighed, nor measured. C

Bulk is said of that which is neither counted, weighed, nor measured. A sale by the bulk is the sale of a quantity such as it is, without measuring, counting, or weighing. *Civil Code La. art. 3556, par. 6.* D

BULL. In ecclesiastical law. An instrument granted by the pope of Rome, and sealed with a seal of lead, containing some decree, commandment, or other public act, emanating from the pontiff. Bull, in this sense, corresponds with edict or letters patent from other governments. *Cowell*; 4 Bl. Comm. 110; 4 Steph. Comm. 177, 179. E

This is also a cant term of the Stock Exchange, meaning one who speculates for a rise in the market. F

BULLA. A seal used by the Roman emperors, during the lower empire; and which was of four kinds,—gold, silver, wax, and lead. G

BULLETIN. An officially published notice or announcement concerning the progress of matters of public importance. In France, the registry of the laws. H

—**Bulletin des lois.** In France, the official sheet which publishes the laws and decrees; this publication constitutes the promulgation of the law or decree. I

BULLION. Gold and silver intended to be coined. The term is usually applied to a quantity of these metals ready for the mint, but as yet lying in bars, plates, lumps, or other masses; but it may also include ornaments or dishes of gold and silver, or foreign coins not current as money, when intended to be descriptive of its adaptability to be coined, and not of other purposes to which it may be put. *Hope Min. Co. v. Kennon*, 3 Mont. 44; *Thalheim v. State*, 38 Fla. 169, 20 South. 938; *Counsel v. Min. Co.*, 5 Daly (N. Y.) 77. J

—**Bullion fund.** A fund of public money maintained in connection with the mints, for the purpose of purchasing precious metals for coinage. K

BUM-BAILIFF. A person employed to dun one for a debt; a bailiff employed to arrest a debtor. Probably a vulgar corruption of "bound-bailiff," (q. v.) L

BUNDA. In old English law. A bound, boundary, border, or limit, (*terminus, limes.*)

BUOY. In maritime law. A piece of wood or cork, or a barrel, raft, or other thing, made secure and floating upon a stream or bay, intended as a guide and warning to mariners, by marking a spot where the water is shallow, or where there is a reef or other danger to navigation, or to mark the course of a devious channel.

BURDEN OF PROOF. (Lat. *onus probandi.*) In the law of evidence. The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. *Willett v. Rich*, 142 Mass. 356, 7 N. E. 776, 56 Am. Rep. 684; *Wilder v. Cowles*, 100 Mass. 490; *People v. McCann*, 16 N. Y. 58, 69 Am. Dec. 642.

The term "burden of proof" is not to be confused with "*prima facie* case." When the party upon whom the burden of proof rests has made out a *prima facie* case, this will, in general, suffice to shift the burden. In other words, the former expression denotes the necessity of establishing the latter. *Kendall v. Brownson*, 47 N. H. 200; *Carver v. Carver*, 97 Ind. 511; *Heinemann v. Heard*, 62 N. Y. 455; *Feurt v. Ambrose*, 34 Mo. App. 866; *Gibbs v. Bank*, 123 Iowa, 736, 99 N. W. 703.

BUREAU. An office for the transaction of business. A name given to the several departments of the executive or administrative branch of government, or to their larger subdivisions. In *re Strawbridge*, 39 Ala. 375.

BUREAUCRACY. A system in which the business of government is carried on in departments, each under the control of a chief, in contradistinction from a system in which the officers of government have a coordinate authority.

BURG, BURGH. A term anciently applied to a castle or fortified place; a borough, (*q. v.*) *Spelman*.

BURGAGE. A name anciently given to a dwelling-house in a borough town. *Blount*.

BURGAGE-HOLDING. A tenure by which lands in royal boroughs in Scotland were held of the sovereign. The service was watching and warding, and was done by the burgesses within the territory of the borough, whether expressed in the charter or not.

BURGAGE-TENURE. In English law. One of the three species of free socage holdings; a tenure whereby houses and lands which were formerly the site of houses, in an ancient borough, are held of some lord by a certain rent. There are a great many customs affecting these tenures, the most re-

markable of which is the custom of Borough English. See *Litt.* § 162; 2 *Bl. Comm.* 82.

BURGATOR. One who breaks into houses or inclosed places, as distinguished from one who committed robbery in the open country. *Spelman*.

BURGBOTE. In old English law. A term applied to a contribution towards the repair of castles or walls of defense, or of a borough.

BURGENSES. In old English law. Inhabitants of a *burgus* or borough; burgesses. *Fleta*, lib. 5, c. 6, § 10.

BURGERISTH. A word used in Domesday, signifying a breach of the peace in a town. *Jacob*.

BURGESS. In English law. An inhabitant or freeman of a borough or town; a person duly and legally admitted a member of a municipal corporation. *Spelman*; 3 *Steph. Comm.* 188, 189.

A magistrate of a borough. *Blount*.

An elector or voter; a person legally qualified to vote at elections. The word in this sense is particularly defined by the statute 5 & 6 Wm. IV. c. 76, §§ 9, 13. 3 *Steph. Comm.* 192.

A representative of a borough or town, in parliament. *Co. Litt.* 109*a*; 1 *Bl. Comm.* 174.

In American law. The chief executive officer of a borough, bearing the same relation to its government and affairs that the *mayor* does to those of a city. So used in Pennsylvania.

BURGESS ROLL. A roll, required by the St. 5 & 6 Wm. IV. c. 76, to be kept in corporate towns or boroughs, of the names of burgesses entitled to certain new rights conferred by that act.

BURGH-BRECHE. A fine imposed on the community of a town, for a breach of the peace, etc.

BURGH ENGLISH. See *BOROUGH ENGLISH*.

BURGH ENGLOYS. Borough English, (*q. v.*)

BURGHMAILS. Yearly payments to the crown of Scotland, introduced by Malcolm III., and resembling the English fee-farm rents.

BURGHMOTE. In Saxon law. A court of justice held semi-annually by the bishop or lord in a *burg*, which the thanes were bound to attend without summons.

BURGLAR. One who commits burglary. One who breaks into a dwelling-house in the

night-time with intent to commit a felony. *Wilson v. State*, 34 Ohio St. 200; *O'Connor v. Press Pub. Co.*, 34 Misc. Rep. 564, 70 N. Y. Supp. 367.

BURGLARIOUSLY. In pleading. A technical word which must be introduced into an indictment for burglary at common law. *Lewis v. State*, 16 Conn. 34; *Reed v. State*, 14 Tex. App. 665.

BURGLARITER. L. Lat. (Burglariously.) In old criminal pleading. A necessary word in indictments for burglary.

BURGLARY. In criminal law. The breaking and entering the house of another in the night-time, with intent to commit a felony therein, whether the felony be actually committed or not. *Anderson v. State*, 48 Ala. 666, 17 Am. Rep. 36; *Benson v. McMahon*, 127 U. S. 457, 8 Sup. Ct. 1240, 32 L. Ed. 234; *Hunter v. State*, 29 Ind. 80; *State v. Petit*, 32 Wash. 129, 72 Pac. 1021; *State v. Langford*, 12 N. C. 253; *State v. McCall*, 4 Ala. 644, 39 Am. Dec. 314; *State v. Wilson*, 1 N. J. Law, 439, 1 Am. Dec. 216; *Com. v. Newell*, 7 Mass. 245.

The common-law definition has been much modified by statute in several of the states. For example: "Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary." Pen. Code Cal. § 459.

BURGOMASTER. The title given in Germany to the chief executive officer of a borough, town, or city; corresponding to our "mayor."

BURGUNDIAN LAW. See *LEX BURGUNDIONUM*.

BURGWHEAR. A burgess, (*q. v.*)

BURIAL. Sepulture; the act of interring dead human bodies. See *Lay v. State*, 12 Ind. App. 362, 39 N. E. 768; *In re Reformed*, etc., *Church*, 7 How. Prac. (N. Y.) 476; *Cemetery Ass'n v. Assessors*, 37 La. Ann. 35.

BURKING-BURKISM. Murder committed with the object of selling the cadaver for purposes of dissection, particularly and originally, by suffocating or strangling the victim.

So named from William Burke, a notorious practitioner of this crime, who was hanged at Edinburgh in 1829. It is said that the first instance of his name being thus used as a synonym for the form of death he had inflicted on others occurred when he himself was led to the gibbet, the crowd around the scaffold shouting "Burke him!"

BURLAWS. In Scotch law. Laws made by neighbors elected by common consent in the burlaw courts. *Skene*.

—**Burlaw courts.** Courts consisting of neighbors selected by common consent to act as judges in determining disputes between neighbor and neighbor.

BURN. To consume with fire. The verb "to burn," in an indictment for arson, is to be taken in its common meaning of "to consume with fire." *Hester v. State*, 17 Ga. 130.

BURNING FLUID. As used in policies of insurance, this term does not mean any fluid which will burn, but it means a recognized article of commerce, called by that name, and which is a different article from naphtha or kerosene. *Putnam v. Insurance Co. (C. C.)* 4 Fed. 764; *Wheeler v. Insurance Co.*, 6 Mo. App. 235; *Mark v. Insurance Co.*, 24 Hun (N. Y.) 569.

BURNING IN THE HAND. In old English criminal law, laymen, upon being accorded the benefit of clergy, were burned with a hot iron in the brawn of the left thumb, in order that, being thus marked, they could not again claim their clergy. 4 Bl. Comm. 367.

BURROCHIUM. A burroch, dam, or small wear over a river, where traps are laid for the taking of fish. *Cowell*.

BURROWMEALIS. In Scotch law. A term used to designate the rents paid into the king's private treasury by the burgesses or inhabitants of a borough.

BURSA. Lat. A purse.

BURSAR. A treasurer of a college.

BURSARIA. The exchequer of collegiate or conventual bodies; or the place of receiving, paying, and accounting by the bursars. Also stipendiary scholars, who live upon the burse, fund, or joint-stock of the college.

BURYING ALIVE. In English law. The ancient punishment of sodomites, and those who contracted with Jews. *Fleta*, lib. 1, c. 27, § 3.

BURYING-GROUND. A place set apart for the interment of the dead; a cemetery. *Appeal Tax Court v. Academy*, 50 Md. 353.

BUSCARL. In Saxon and old English law. Seamen or marines. *Spelman*.

BUSHEL. A dry measure, containing four pecks, eight gallons, or thirty-two quarts. But the dimensions of a bushel, and the weight of a bushel of grain, etc., vary in the different states in consequence of statutory enactments. *Richardson v. Spafford*, 13 Vt.

245; *Milk v. Christie*, 1 Hill (N. Y.) 106; *Hoekin v. Cooke*, 4 Term, 316.

BUSINESS. This word embraces everything about which a person can be employed. *People v. Com'rs of Taxes*, 23 N. Y. 242, 244.

That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit. The doing of a single act pertaining to a particular business will not be considered engaging in or carrying on the business; yet a series of such acts would be so considered. *Goddard v. Chaffee*, 2 Allen (Mass.) 395, 79 Am. Dec. 796; *Sterne v. State*, 20 Ala. 46.

Labor, business, and work are not synonyms. Labor may be business, but it is not necessarily so; and business is not always labor. Making an agreement for the sale of a chattel is not within a prohibition of labor upon Sunday, though it is (if by a merchant in his calling) within a prohibition upon business. *Bloom v. Richards*, 2 Ohio St. 387.

BUSINESS HOURS. Those hours of the day during which, in a given community, commercial, banking, professional, public, or other kinds of business are ordinarily carried on.

This phrase is declared to mean not the time during which a principal requires an employee's services, but the business hours of the community generally. *Derosia v. Railroad Co.*, 18 Minn. 133, (Gil. 119.)

BUSONES COMITATUS. In old English law. The barons of a county.

BUSSA. A term used in the old English law, to designate a large and clumsily constructed ship.

BUTLERAGE. A privilege formerly allowed to the king's butler, to take a certain part of every cask of wine imported by an alien.

BUTLER'S ORDINANCE. In English law. A law for the heir to punish waste in the life of the ancestor. "Though it be on record in the parliament book of Edward I., yet it never was a statute, nor ever so received; but only some constitution of the king's council, or lords in parliament, which never obtained the strength or force of an act of parliament." Hale, Hist. Eng. Law, p. 18.

BUTT. A measure of liquid capacity, equal to one hundred and eight gallons; also a measure of land.

BUTTALS. The bounding lines of land at the end; abuttals, which see.

BUTTED AND BOUNDED. A phrase sometimes used in conveyancing, to introduce the boundaries of lands. See **BUTTS AND BOUNDS**.

BUTTS. In old English law. Short pieces of land left unplowed at the ends of

fields, where the plow was turned about, (otherwise called "headlands,") as sidelings were similar unplowed pieces on the sides. Burrill.

Also a place where bowmen meet to shoot at a mark.

BUTTS AND BOUNDS. A phrase used in conveyancing, to describe the end lines or circumscribing lines of a certain piece of land. The phrase "metes and bounds" has the same meaning.

BUTTY. A local term in the north of England, for the associate or deputy of another; also of things used in common.

BUY. To acquire the ownership of property by giving an accepted price or consideration therefor; or by agreeing to do so; to acquire by the payment of a price or value; to purchase. Webster.

—Buy in. To purchase, at public sale, property which is one's own or which one has caused or procured to be sold.—**Buyer.** One who buys; a purchaser, particularly of chattels.—**Buying titles.** The purchase of the rights or claims to real estate of a person who is not in possession of the land or is disseised. Void, and an offense, at common law. *Whitaker v. Cone*, 2 Johns. Cas. (N. Y.) 59; *Brinley v. Whiting*, 5 Pick. (Mass.) 356.

BY. This word, when descriptively used in a grant, does not mean "in immediate contact with," but "near" to, the object to which it relates; and "near" is a relative term, meaning, when used in land patents, very unequal and different distances. *Wells v. Mfg. Co.*, 48 N. H. 491.

A contract to complete work by a certain time, means that it shall be done before that time. *Rankin v. Woodworth*, 3 Pen. & W. (Pa.) 48.

By an acquittance for the last payment all other arrearages are discharged. Noy, 40.

BY-BIDDING. See **BID**.

BY BILL, BY BILL WITHOUT WRIT. In practice. Terms anciently used to designate actions commenced by original bill, as distinguished from those commenced by original writ, and applied in modern practice to suits commenced by *capias ad respondendum*. 1 Arch. Pr. pp. 2, 337; *Harkness v. Harkness*, 5 Hill (N. Y.) 213.

BY ESTIMATION. In conveyancing. A term used to indicate that the quantity of land as stated is estimated only, not exactly measured; has the same meaning and effect as the phrase "more or less." *Tarbell v. Bowman*, 103 Mass. 341; *Mendenhall v. Steckel*, 47 Md. 453, 28 Am. Rep. 481; *Hays v. Hays*, 126 Ind. 92, 25 N. E. 600, 11 L. R. A. 376.

BY GOD AND MY COUNTRY. In old English criminal practice. The established

formula of reply by a prisoner, when arraigned at the bar, to the question, "Culprit, how wilt thou be tried?"

BY-LAWS. Regulations, ordinances, or rules enacted by a private corporation for its own government.

A by-law is a rule or law of a corporation, for its government, and is a legislative act, and the solemnities and sanction required by the charter must be observed. A resolution is not necessarily a by-law though a by-law may be in the form of a resolution. Peck v. Elliott, 79 Fed. 10, 24 C. C. A. 425, 38 L. R. A. 616; Mining Co. v. King, 94 Wis. 439, 69 N. W. 181, 36 L. R. A. 51; Bagley v. Oil Co., 201 Pa. 78, 50 Atl. 760, 56 L. R. A. 184; Dairy Ass'n v. Webb, 40 App. Div. 49, 57 N. Y. Supp. 572.

"That the reasonableness of a by-law of a corporation is a question of law, and not of fact, has always been the established rule; but in the case of State v. Overton, 24 N. J. Law, 435, 61 Am. Dec. 671, a distinction was taken in this respect between a by-law and a regulation, the validity of the former being a judicial question, while the latter was regarded as a matter *in pais*. But although, in one of the opinions read in the case referred to, the view was clearly expressed that the reasonableness of a corporate regulation was properly for the consideration of the jury, and not of the court, yet it was nevertheless stated that the point was not involved in the controversy then to be decided. There is no doubt that the rule thus intimated is in opposition to recent American authorities. Nor have I been able to find in the English books any such distinction as that above stated between a by-law and a regulation of a corporation." Compton v. Van Volkenburgh, 34 N. J. Law, 135.

The word has also been used to designate the local laws or municipal statutes of a city

or town. But of late the tendency is to employ the word "ordinance" exclusively for this class of enactments, reserving "by-law" for the rules adopted by private corporations.

BY LAW MEN. In English law. The chief men of a town, representing the inhabitants.

BY-ROAD. The statute law of New Jersey recognizes three different kinds of roads: A public road, a private road, and a by-road. A by-road is a road used by the inhabitants, and recognized by statute, but not laid out. Such roads are often called "drift-ways." They are roads of necessity in newly-settled countries. Van Blarcom v. Frike, 29 N. J. Law, 516. See, also, Stevens v. Allen, 29 N. J. Law, 68.

An obscure or neighborhood road in its earlier existence, not used to any great extent by the public, yet so far a public road that the public have of right free access to it at all times. Wood v. Hurd, 34 N. J. Law, 89.

BY THE BY. Incidentally; without new process. A term used in former English practice to denote the method of filing a declaration against a defendant who was already in the custody of the court at the suit of a different plaintiff or of the same plaintiff in another cause.

BYE-BIL-WUFFA. In Hindu law. A deed of mortgage or conditional sale.

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