

## B

**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," "bail 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.

**B—S—.** Designation of statements of another as b—s— carried the implications that they were absurd and fanciful. *People v. Nitti*, 312 Ill. 73, 143 N. E. 448, 456.

**BABBITT.** To line or furnish with "babbitt metal," which is a soft white anti-friction metal, of varying compositions, or any of several alloys similarly used. *Ingersol v. National Sash & Door Factory*, 134 La. 19, 63 So. 609, 610.

**"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.** One who has taken the first degree (baccalaureate) in the liberal arts and sciences, or in law, medicine, or divinity, in a college or university.

A man who has never been married.

A kind of inferior knight; an esquire.

**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. This custom prevails in England, Scotland, and some of the United States. 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 CARRY.** In forest law, the crime of having, on the back, game unlawfully killed. See *Backbear*.

**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 So. 101; *Gaines v. Galbraeth*, 14 Lea (Tenn.) 363.

**BACKADATION.** See *Backwardation*.

**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** (also *Backberende*). 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.** A bond of indemnification given to a surety.

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. *Gondas v. Gondas*, 99 N. J. Eq. 473, 134 A. 615, 617.

**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** (also called *Backadation*). 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.

**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; *Webster v. North Poudre Irr. Co.*, 74 Colo. 565, 223 P. 36. Water caused to flow backward from a steam-vessel by reason of the action of its wheels or screw.

**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.** Vicious, evil, wanting in good qualities; the reverse of good. See *Riddell v. Thayer*, 127 Mass. 487; *Tobias v. Harland*, 4 Wend. (N. Y.) 537. Rev. St. § 4568 (46 USCA § 665) providing for compensation for seaman when food on voyage was "bad in quality" or unfit for use contemplates more than poor cooking or seasoning of good food. The *Edward R. West* (D. C.) 212 F. 287, 289.

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

**BAD BEHAVIOR.** Where a judgment in a criminal case has been suspended on condition of good behavior, the term "good behavior" means conduct that is authorized by law, and "bad behavior" means conduct such as the law will punish. *State v. Hardin*, 183 N. C. 815, 112 S. E. 593, 594.

**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. 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 (Comp. Laws 1913, § 5165).

**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. Quoted with approval in *State v. Griffin*, 100 S. C. 331, 84 S. E. 876, 877. Also

see *Shaw v. Union Escrow & Realty Co.*, 53 Cal. App. 66, 200 P. 25, 26; *Browning v. Fidelity Trust Co.* (C. C. A.) 250 F. 321, 324; *Twitshell v. Nelson*, 131 Minn. 375, 155 N. W. 621, 624; *Hilgenberg v. Northrup*, 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 So. 66, 61 L. R. A. 274; *Harris v. Harris*, 70 Pa. 174; *Penn Mut. L. Ins. Co. v. Trust Co.*, 73 F. 653, 19 C. C. A. 316, 38 L. R. A. 33, 70; *Insurance Co. v. Edwards*, 74 Ga. 230. The "bad faith" referred to in section 63 of the Negotiable Instruments Law, is bad faith in fact, derived by inference of fact, as distinguished from inference of law, and the substantial equivalent of fraud. *Gigoux v. Moore*, 105 Kan. 361, 184 P. 637, 640. Guilty knowledge and willful ignorance alike involve the result of "bad faith." *Hankins v. Farmers' & Merchants' Bank*, 69 Okl. 136, 170 P. 890, 891, 892; *Hess v. Iowa Bankers' Mortgage Co.*, 198 Iowa, 1365, 201 N. W. 91, 92; *Gerseta Corporation v. Wessex-Campbell Silk Co.* (C. C. A.) 2 F.(2d) 236, 238.

**BAD PLACE.** Under a contract requiring the employer to timber all bad places in the mine unless caused by the miner's negligence, a "bad place" was a place in the roof which could not be made reasonably safe by the ordinary propping usually done by the miner himself. *W. G. Duncan Coal Co. v. Thompson's Adm'r*, 157 Ky. 304, 162 S. W. 1139, 1140.

**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. 378, 36 N. Y. S. 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 A. 994; *Phelps v. Samson*, 113 Iowa, 145, 84 N. W. 1051. It is a suspicious circumstance that overhangs a transaction, or appears on the face of the papers, *Toone v. Walker*, 115 Okl. 289, 243 P. 147, 148; such as exaggerating the consideration, *Quealy Land & Live Stock Co. v. George*, 36 Wyo. 268, 254 P. 130, 132, or the pendency of suit against debtor at time of sale, *McLain v. Georgia State Bank*, 164 Ga. 699, 139 S. E. 527, 528. It is a badge of fraud for an insolvent debtor, or one who is very considerably indebted, to make a trans-

fer of his property. *Griggs v. Crane's Trustee*, 179 Ky. 48, 200 S. W. 317, 319.

**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*. An uncertain quantity of goods and merchandise, from three to four hundred. *Jacob*.

**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 parvâ bagâ*. 1 Madd. Ch. 4.

**BAGAVEL.** The citizens of Exeter had granted to them by charter from Edward I. the collection of a certain tribute or toll upon all manner of wares brought to that city to be sold, toward the paving of the streets, repairing of the walls, and maintenance of the city, which was commonly called bagavel, bethugavel and chippinggavel. *Antiq. of Exeter*.

**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. It 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; *Glovinsky v. Steamship Co.*, 6 Misc. 388, 26 N. Y. S. 751; *Mauritz v. Railroad Co.* (C. C.) 23 Fed. 771; *Dexter v. Railroad Co.*, 42 N. Y. 326, 1 Am. Rep. 527; *Story*, *Bailm.* § 499; *Landesman-Hirschheimer Co. v. Louisville & N. R. Co.*, 178 Ky. 712, 199 S. W. 1050, L. R. A. 1918C, 105; 5 R. C. L. 158; *Gibbons v. Chicago, B. & Q. Ry. Co.*, 98 Neb. 696, 154 N. W. 226, 227; *Schaff v. Gibson* (Tex. Civ. App.) 258 S. W. 595, 598; *Sherman v. Pullman Co.*, 79 Misc. 52, 139 N. Y. S. 51, 52; *Strome v. Lusk* (Mo. App.) 180 S. W. 27, 28. Thus, jewelry suitable to the condition in life of the passenger and intended for personal use on the journey is "baggage." *Missouri Pac. R. Co. v. Pugh*, 157 Ark. 383, 248 S. W. 897; 4 *Bingh.* 218; *McGill v. Rowand*, 3 Pa. 451, 45 Am. Dec. 654; *Borden v. New York Cent. R. Co.*, 98 Misc. 574, 162 N. Y. S. 1099, 1102. But it is not baggage where carried by a traveler for the use of another or for the purpose of business or sale. *Illinois Cent. R. Co. v. Fontaine*, 217 Ky. 211, 289 S. W. 263, 266, 52 A. L. R. 1064; *Nevins v. Steamboat Co.*, 4 *Bosw.*

(N. Y.) 225; *Metz v. R. Co.*, 85 Cal. 329, 24 P. 610, 9 L. R. A. 431, 20 Am. St. Rep. 228; *Humphreys v. Perry*, 148 U. S. 627, 13 S. Ct. 711, 37 L. Ed. 587. A multitude of objects have been held to be baggage; *e. g.*, razors in a trunk checked by a male passenger, *San Antonio & A. P. Ry. Co. v. Green* (Tex. Civ. App.) 170 S. W. 110, 111, and a thimble carried in her trunk by the mother of two small children, *Louisville & N. R. Co. v. Hestle*, 200 Ala. 137, 75 So. 885, 887. Other articles have been held not to be baggage, such as stocks and bonds, *Jandorf v. Pullman Co.*, 104 Misc. 79, 171 N. Y. S. 321, 322; a gun and gun case, not connected with the purpose of the trip, *House v. Chicago & N. W. Ry. Co.*, 32 S. D. 209, 142 N. W. 736, 738; and an article for use in housekeeping after the end of a passenger's journey, *Louisville & N. R. Co. v. Fletcher*, 194 Ala. 257, 69 So. 634, 635.

**BAGGAGE CAR.** This term, as used in the Full Crew Law, may include a combined baggage and passenger car, notwithstanding the fact that it carries no baggageman for a portion of the train's run and is locked during such period. *Pennsylvania R. Co. v. Public Service Commission*, 67 Pa. Super. Ct. 569, 573.

**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.

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 (*Code* 1928, § 3361).

To deliver the defendant to persons who, in the manner prescribed by law, become security for his appearance in 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.

In its more ancient signification, the word includes the delivery of property, real or personal, by one person to another.

**BAIL, n.** The surety or 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.

—**Bail above or bail to the action.** See Special bail, *infra*.

—**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 below, or bail to the sheriff.** See Bail to the sheriff or bail below, *infra*.

—**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.

An obligation signed by the accused with sureties, conditioned that the same shall be void on the performance by the accused of such acts as he is required to perform. *State v. Wilson*, 265 Mo. 1, 175 S. W. 603, 605. In criminal cases, a bail bond is a contract under seal, which, from its nature, requires sureties or bail, and therefore differs from a "recognizance," which is a debt or obligation of record, acknowledged before some court or magistrate authorized to take it, with condition to do some particular act, and which need not be executed by the parties. *State v. Bradsher*, 189 N. C. 401, 127 S. E. 349, 351, 38 A. L. R. 1102; *National Surety Co. v. Nazzaro*, 233 Mass. 74, 123 N. E. 346. See, also, *Ewing v. United States (C. C. A.)* 240 F. 241, 246. But under the law of Connecticut, "recognizance" and "bail" are interchangeable. *National Surety Co. v. Nazzaro*, 239 Mass. 341, 132 N. E. 49, 50.

—**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. *Holt-house*; *Wharton, Law Dict.* 2d Lond. ed. It has been abolished.

—**Bail dock.** Formerly at the Old Bailey, in London, a small room taken from one of the corners of the court, and left open at the top, in which certain malefactors were placed during trial. *Cent. Dict.*

—**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 meantime.

—**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; 1 Sellon, Pr. 139.

—**Bail to the action or bail above.** Special bail (*q. v.*).

—**Bail to the sheriff or bail below.** 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. Sureties who bind themselves to the sheriff to secure the defendant's appearance, or his putting in bail to the action on the return-day of the writ.

"Bail to the sheriff was originally designed to temporarily liberate the defendant from close custody, and to place means in the sheriff's hands to insure the defendant's appearance to answer at the return of the writ. \* \* \* The appearance which was contemplated was not, however, necessarily an actual appearance in person, but by putting in new bail, called bail to the action, special bail, or bail above. This special bail, or bail above, was by recognizance, which was matter of record, and an act of appearance, and by it the bail were bound that if the defendant should be condemned he should pay or render himself a prisoner, and if he did not, that they would pay the condemnation. The undertaking of the bail to the sheriff, or bail below, was wholly different, and was adapted to the specific exigency. It was in the form of a bond to the sheriff, and was conditioned for the defendant's appearance at the return of the writ, which meant putting in and perfecting bail above." *De Myer v. McGonegal*, 32 Mich. 120, 124.

—**Civil bail.** That taken in civil actions.

—**Common bail.** Fictitious sureties formally entered in the proper office of the court. See *Bail common*, *supra*.

—**Special bail.** Responsible sureties who undertake as bail above. 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; *Sellon*, Pr. 137. See *Bail to the sheriff or bail below*, *supra*.

—**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, and who originally, as a mark of their purpose, wore straw in their shoes.

**BAIL.** Fr. In French and Canadian law. A lease of lands. See Merlin, Répert. *Bail*.

—**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 translativ of property, and the rent is essentially redeemable. *Clark's Heirs v. Christ's Church*, 4 La. 286; *Poth. Bail à Rente*, 1, 3.

—**Bail emphyteotique.** An emphyteutic lease; a lease for a term of years with a right to prolong indefinitely; practically equivalent to an alienation. 5 Low. C. 381; 6 Low. C. 58. See *Emphyteusis*.

**BAILABLE.** Capable of being bailed; admitting of bail; authorizing or requiring bail.

**BAILABLE ACTION.** One in which the defendant is entitled to be discharged from arrest only upon giving bond to answer.

**BAILABLE OFFENSE.** One for which the prisoner may be admitted to bail.

**BAILABLE PROCESS.** Such as requires the officer to take bail, after arresting the defendant. That under which the sheriff is directed to arrest the defendant and is required by law to discharge him upon his tendering suitable bail as security for his appearance. A *capias ad respondendum* is bailable; not so a *capias ad satisfaciendum*.

**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; *E. R. Parker Motor Co. v. Spiegel*, 33 Ga. App. 795, 127 S. E. 797, 798; *Hotels Statler Co. v. Safer*, 103 Ohio St. 638, 134 N. E. 460, 462, 22 A. L. R. 1190. A species of agent to whom something movable is committed in trust for another. *Cowart v. State*, 16 Ala. App. 119, 75 So. 711, 713; *People v. Riccardi*, 50 Cal. App. 427, 195 P. 448, 449.

As used in some embezzlement statutes, the word "bailee" does not include all bailments, but only

those for the sole benefit of the bailor, where there is a fiduciary relation between the parties. *Johnson v. State*, 71 Tex. Cr. R. 206, 159 S. W. 849, 850.

**BAILIE.** In the Scotch law. (1) A magistrate having inferior criminal and civil jurisdiction, similar to that of an alderman, (*q. v.*); (2) an officer appointed to confer infeoffment, (*q. v.*); a bailiff, (*q. v.*); a server of writs. *Bell*.

**BAILIFF.** One 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.

A court attendant, sometimes called a tipstaff.

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 acting in a ministerial capacity 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.

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.

#### In General

—**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.

## BAILIVIA.

### In Old Law

A bailiff's jurisdiction, a bailiwick; the same as *bailium*. Spelman. See Bailiwick.

### 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 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.

A liberty or exclusive jurisdiction which was exempted from the sheriff of the county, and over which the lord appointed a bailiff, with such powers within his precinct as the under-sheriff exercised under the sheriff of the county. Whishaw, Lex.

**BAILLEUR DE FONDS.** In Canadian Law. The unpaid vendor of real estate. 1 Low. C. 1, 6; 9 Low. C. 497.

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

**BAILMENT.** A delivery of something of a personal nature by one party to another, to be held according to the purpose or object of the delivery, and to be returned or delivered over when that purpose is accomplished. Prof. Joel Parker, MS. Lect. Harvard Law School, 1851. Adopted in Hogan v. O'Brien, 206 N. Y. S. 831, 833, 123 Misc. 865.

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.

The transfer of the possession of personal property without the transfer of ownership for the ac-

complishment of a certain purpose. Essex v. Fife, 67 Okl. 55, 168 P. 814.

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.

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.

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; D. M. Ferry & Co. v. Forquer, 61 Mont. 336, 202 P. 193, 195, 29 A. L. R. 642.

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; Zetterstrom v. Thomas, 92 Conn. 702, 104 A. 237, 1 A. L. R. 392; Samples v. Geary (Mo. App.) 292 S. W. 1036, 1067; Tashima v. People, 58 Colo. 98, 144 P. 200, 201.

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.

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; Lord v. Oklahoma State Fair Ass'n, 95 Okl. 294, 219 P. 713, 718; Firestone Tire & Rubber Co. v. Cross (C. C. A.) 17 F.(2d) 417, 418.

According to Story, the contract does not necessarily imply an undertaking to redeliver the goods. On the other hand, Blackstone, although his definition does not include the return, speaks of it in all his examples of bailments as a duty of the bailee; and Kent says that the application of the term to cases in which no return or redelivery to the owner or his agent is contemplated, is extending the definition of the term beyond its ordinary acceptation in English law. A consignment to a factor would be a bailment for sale, according to Story; while according to Kent it would not.

## 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 subdivided 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 as being a better general division for practical purposes, 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.

#### Bailments as Distinguished from Other Transactions

—**Chattel mortgages.** A radical distinction between a bailment and a chattel mortgage is that, by a mortgage, the title is transferred to the mortgagee, subject to be revested by performance of the condition, but, in case of a bailment, the bailor retains the title and parts with the possession for a special purpose. *Walker v. Staples*, 5 Allen (Mass.) 34.

—**Exchanges.** An agreement by which A is to let B have a horse, in consideration that B will let A have another horse, creates an exchange, not a bailment. *King v. Fuller*, 3 Cal. (N. Y.) 152; *Austin v. Seligman*, 21 Blatchf. 506, 18 Fed. 519.

—**Partnerships.** Where animals are delivered to be taken care of for a certain time, and at the expiration of that time the same number of animals is to be returned, and any increase is to be enjoyed by both parties, there is a bailment, not a partnership. *Robinson v. Haas*, 40 Cal. 474; *Simmons v. Shaft*, 91 Kan. 553, 138 P. 614, 615. See, also, *Ward v. Thompson*, Fed. Cas. No. 17,162.

—**Sales.** The test of a bailment is that the identical thing is to be returned in the same or in some altered form; 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 S. Ct. 99, 37 L. Ed. 1093.

This distinction or test is recognized in *Lafin & R. Powder Co. v. Burkhardt*, 97 U. S. 116, 24 L. Ed. 973; *Walker v. Butterick*, 105 Mass. 237; *Middleton v. Stone*, 111 Pa. 589, 4 A. 523; *In re Ballard* (D. C.) 279 F. 574, 585; *Mitchell v. Eagle Creek Oil Co.* (Tex. Civ. App.) 275 S. W. 211, 212; *Finch v. McClellan*, 77 Ind. App. 533, 130 N. E. 13, 15; *Borman v. U. S.* (C. C. A.) 262 F. 26, 29.

A "sale" contemplates that, at some time, the title shall pass to the vendee, and that, at some time and in some manner, he shall pay the purchase price, whereas a "bailment" contemplates that the title shall not pass to the bailee, but remain in the bailor, and that the property shall return to the bailor, or be disposed of as he may direct. *Norris v. Boston Music Co.*, 129 Minn. 193, 151 N. W. 971, 972, L. R. A. 1917B, 615; *In re Tansill* (D. C.) 17 F. (2d) 413, 414.

The principal test by which to determine whether a contract creates a bailment, or is a sale on credit,

is whether there was a binding promise by the person to whom the possession was given to pay for the article. *People v. Baker*, 64 Cal. App. 336, 221 P. 654, 656; *Miles v. Sabin*, 90 Or. 129, 175 P. 863, 864; *In re Thomas* (D. C.) 231 F. 513, 516; *Botkin v. State*, 16 Okl. Cr. 610, 185 P. 835, 838; *Randolph & Co. v. Columbia Graphophone Co.*, 45 App. D. C. 146, 152.

For cases involving the deposit of wheat in elevators, see *Zuber v. Minshall*, 123 Kan. 595, 256 P. 806, 807; *Kansas Flour Mills Co. v. Board of Com'rs of Harper County*, 124 Kan. 312, 259 P. 795, 796, 54 A. L. R. 1164; *Finch v. McClellan*, 77 Ind. App. 533, 130 N. E. 13, 16; *Burke v. Boulder Milling & Elevator Co.*, 77 Colo. 230, 235 P. 574, 575.

—**Trusts.** The passing of the legal title from the owner to the party to whom personal property is delivered distinguishes a "trust" from a bailment. *National Cattle Loan Co. v. Ward*, 113 Tex. 312, 255 S. W. 160, 164.

#### In General

—**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. Under Pennsylvania law, it is essential to the validity of a "bailment" for hire or use that there be a term for which the chattel is to remain in the possession of the bailee, an agreed rental, and an agreement, express or implied, for redelivery of the article to the bailor in the same or in an altered form, and the subject-matter of the bailment must be a chattel. *Duhrkop Oven Co. v. Tormay* (C. C. A.) 9 F. (2d) 281, 282.

—**Actual bailment.** One which exists where there is either (a) an "actual delivery," consisting in giving to the bailee or his agent the real possession of the chattel, or (b) a "constructive delivery," consisting of any of those acts which, although not truly comprising real possession of the goods transferred, have been held by legal construction equivalent to acts of real delivery. *Gilson v. Pennsylvania R. Co.*, 86 N. J. Law, 446, 92 A. 59, 60; *Wentworth v. Riggs*, 159 App. Div. 899, 143 N. Y. S. 955, 956.

—**Constructive bailment.** One arising where the person having possession of a chattel holds it under such circumstances that the law imposes upon him the obligation to deliver it to another. *Gilson v. Pennsylvania R. Co.*, 86 N. J. Law, 446, 92 A. 59, 60; *Hope v. Costello*, 222 Mo. App. 187, 297 S. W. 100, 103; *Wentworth v. Riggs*, 159 App. Div. 899, 143 N. Y. S. 955, 956. See, also, *Involuntary bailment*, *infra*.

—**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.

—**Involuntary bailment.** One arising by the accidental leaving of personal property in the possession of any person without negligence on the part of its owner. *Grossman Co. v. White*, 52 Okl. 117, 152 P. 816, 817. A "bailment" is created by the element of lawful possession and the duty to act for the thing as the property of another, whether such possession is based on contract in the ordinary sense or not. *Foulke v. New York Consol. R. Co.*, 228 N. Y. 269, 127 N. E. 237, 239, 9 A. L. R. 1384. See Constructive bailment, *supra*.

—**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 So. 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; *Story*, *Bailm.* §§ 74, 388.

**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 fivepence.

**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 relict. See *Legitim*.

**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*.

**BAIT.** To attack with violence; to provoke and harass. 2 A. & E. *Encyc.* 63; L. R. 9 Q. B. 380.

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

**BAKER.** In its ordinary use respecting a bakery business, a generic term including in its scope different services connected with the bakery business, such as doing shop service in putting bread in boxes. *Futopolus v. Midland Casualty Co.*, 174 Wis. 208, 182 N. W. 845, 847.

**BAKERY SHOP.** A term which, when used in an agreement restricting the right to maintain such a shop, may contemplate not only the acts in making the bread and selling it, but of selling the product manufactured by others, either in a shop especially set up for that purpose or through a place where other articles of commerce are sold, or peddling it

without having an established place. *Kuhns v. Loetzbie*, 58 Pa. Super. Ct. 148, 153.

**BAKING POWDER.** A mixture in dry form of certain alkali and acid substances, combined with a filler; when moistened and heated, as in baking dough, a chemical reaction occurs, liberating carbonic gas, which "raises" or leavens the bread. *Royal Baking Powder Co. v. Emerson (C. C. A.)* 270 F. 429, 436.

**BALÆNA.** 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; *Prynne*, *Ann. Reg.* 127.

**BALANCE.** An equality between the sums total of the two sides of an account, or the excess on either side. *Jones v. Marrs*, 114 Tex. 62, 263 S. W. 570, 574. 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. Shadrack*, 69 Md. 528, 16 Atl. 138.

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.

The term is also used, with more frequency than propriety, to signify residue or remainder; as when a will speaks of the "balance" of an estate. *Bunnell v. Beam*, 86 N. J. Eq. 101, 97 A. 494, 495; *In re Plumly's Estate*, 261 Pa. 432, 104 A. 670; *Guerin v. Guerin*, 270 Ill. 239, 110 N. E. 402, 405; *Jordan v. Ringstaff*, 213 Ala. 512, 105 So. 641, 642; *Rice v. Rice*, 12 Del. Ch. 245, 111 A. 439, 440; *Arvin v. Smith's Ex'rs*, 142 Va. 680, 128 S. E. 252, 255; *Crocker v. Crocker*, 230 Mass. 478, 120 N. E. 110, 111, 5 A. L. R. 1617; *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 of convenience.** A term descriptive of a rule for determining in a doubtful case what decree should be made; for example, whether an injunction should be granted. *Cohen v. City of Houston (Tex. Civ. App.)* 176 S. W. 809, 814. It pertains to a test to determine what order will with the least inconvenience to either party assure the victorious one the fruits of his decree. *Town of Williams v. Iowa Falls Electric Co.*, 185 Iowa, 493, 170 N. W. 815.

—**Balance of power.** In international law. A distribution and an opposition of forces, forming one system, so that no state shall be in a position, either alone or united with others, to impose its will on any other state or interfere with its independence. *Ortolan*.



—**Balance sheet.** A statement made by merchants and others to show the true state of a particular business.

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 P. 779.

—**Balanced draft.** This term, when used in a patent claim with reference to a furnace, was held to mean that the plus, or over-atmospheric pressure in the ash pit was exactly equal to the minus pressure or partial vacuum in the flue. *Engineer Co. v. Hotel Astor* (D. C.) 226 F. 779.

—**General balance.** Sometimes used to signify the difference which is due to a party claiming a lien on goods in his hands for work or labor done, or money expended in relation to those and other goods of the debtor. 3 B. & P. 485; 3 Esp. 268; *McWilliams v. Allan*, 45 Mo. 573.

—**Net balance.** In commercial usage, the balance of the proceeds, as from a sale of stock, after deducting the expenses incident to the sale. *Evans v. Waln*, 71 Pa. 74.

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

**BALCONIES.** Small galleries of wood or stone on the outside of houses. In London, the erection of them is regulated 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. It is a distinct parcel or quantity of cotton packed together in a particular form. *Houssels v. Coe & Hampton* (Tex. Civ. App.) 159 S. W. 864, 865. Compare *Bonham v. Railroad Co.*, 16 S. C. 634.

A "bale of cotton," as the term is used in the commercial and business world, means a standard package of merchantable lint cotton, separated from the seed by the first process of a cotton gin, weighing approximately 600 pounds, and classifiable

under one of the recognized market grades. *Chicago, R. I. & P. Ry. Co. v. Cleveland*, 61 Okl. 64, 160 P. 323, 330; *Wichita Falls Compress Co. v. W. L. Moody & Co.* (Tex. Civ. App.) 154 S. W. 1032, 1045.

**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.** (Spelled also *Balliva*; equivalent to *Balivatus*, *Balivia*). L. Lat. In old English law. A bailiwick; the jurisdiction of a sheriff; the whole district within which the trust of the sheriff was to be executed. *Cowell*; 3 Bla. Com. 283.

**BALL-HOOTING.** In lumbering, a term designating a process of sliding log down a mountain side. *Bradford v. English*, 190 N. C. 742, 130 S. E. 705.

**BALLAST.** That which is used for trimming a ship to bring it down to a draft of water proper and safe for sailing. *Great Western Ins. Co. v. Thwing*, 13 Wall. 674, 20 L. Ed. 607.

There is considerable analogy between *ballast* and *dunnage*. *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. This arises from the property in the soil. 2 Chitty, *Comm. Law* 16.

**BALLIUM.** A fortress or bulwark; also ball. *Cunningham*.

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

**BALLOON.** See *Aeronaut*; *Aeronautics*; *Aircraft*.

**BALLOT.** Originally, a ball used in voting; hence, a piece of paper, or other thing used for the same purpose. See (as to cases involving voting machines) *Spickerman v. Goddard*, 182 Ind. 523, 107 N. E. 2, L. R. A. 1915C, 513; *State v. Keating*, 53 Mont. 371, 163 P. 1156, 1157. The instrument by which a voter expresses his choice between candidates or a question. *City of Wellsville v. Connor*, 91 Ohio St. 28, 109 N. E. 526, 527.

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, or containing a particular question of administration or public policy on which the voter is asked to express his views. 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 A. 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; *Bauer v. Board of Election Com'rs of Wayne County*, 174 Mich. 485, 141 N. W. 122, 123; *Denny v. Pratt*, 104 Conn. 396, 133 A. 107, 108.

The act of voting by balls or tickets.  
The whole amount of votes cast.

A single piece of paper containing the names of the candidates and the offices for which they are running. *People v. Holden*, 23 Cal. 136; *Dennen v. Jastro*, 23 Cal. App. 264, 137 P. 1069, 1070.

A ballot is a ticket folded in such a manner that nothing written or printed thereon can be seen.

"Vote" may be interchangeable with "ballot." *State v. Doughty*, 134 Ark. 435, 204 S. W. 968, 970. But the terms are distinguishable, in that "ballot" is the instrument by which a voter expresses his choice between candidates, or in respect to propositions, while his "vote" is the choice or election as expressed by his ballot. *Board of Education of Oklahoma City v. Woodworth*, 214 P. 1077, 1079, 89 Okl. 192; *Martin v. Fullam*, 90 Vt. 163, 97 A. 442, 445; *Straughan v. Meyers*, 268 Mo. 530, 187 S. W. 1159, 1162.

**Joint Ballot**

In parliamentary practice, 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.

**Official Ballot**

Depending on its use in local statutes, this term has a varied meaning. It may refer to a ballot which has been furnished by the clerk; *Cain v. Garvey* (Tex. Civ. App.) 187 S. W. 1111, 1116; or it may contemplate that a ballot must have been printed under the supervision of a designated member of the electoral board, sealed by the board, and by resolution declared to be one of the official ballots for the election to be held; *Xippas v. Commonwealth*, 141 Va. 497, 126 S. E. 207, 209.

**Mutilated Ballot**

One from which the name of the candidate is cut out. *Murray v. Waite*, 113 Me. 485, 94 A. 943, 945, Ann. Cas. 1918A, 1128. One which is destitute or deprived of some essential or valuable part; greatly shortened. *Stubbs v. Moursund* (Tex. Civ. App.) 222 S. W. 632, 634. Under an Oklahoma statute, any ballot on which a voter has marked or written with the intention of distinguishing it, becomes mutilated. *Moss v. Hunt*, 47 Okl. 1, 145 P. 760, 761.

**BALLOT-BOX.** A case usually 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 fœtus, 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.**

**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.

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

An open field; the outskirts of a village.

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

**In French Law**

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

**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.; 1 Low. C. 31; 3 Low. C. 1.

**BANC.** Bench; the place where a court permanently or regularly sits; the seat of judgment; as, *banc le roy*, the king's bench; *banc le common pleas*, the bench of common pleas.

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. Cowell.

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

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

**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.

Often used for the court itself; thus, the English court of common pleas was formerly called *Bancus*. Vher, Abr. Courts (M).

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*. Cowell; Spelman.

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

**BANCUS REGINÆ.** 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.

#### In Banco Regis

In or before the court of king's bench.

**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. 1. 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 were sometimes called "*veaxillarii*." Wharton.

A degree of honor next after a baron's, when conferred by the king; otherwise, it ranks after a baronet. 1 Bla. Comm. 403.

**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 synonymous with exilement and imports a compulsory loss of one's country. 3 P. Wms. 38.

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.

**BANISTER AND RAILING.** These words, in the New York Tenement House Law, § 35, mean a balustrade, consisting of balusters or supports, upon which is placed a railing commonly placed on the outer or open edge of a stairway. Cahill v. Kleinberg, 233 N. Y. 255, 135 N. E. 323.

**BANK.** A bench or seat; the bench of justice; 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, and other law points, as distinguished from the sitting of a single judge at the assises or at *nisi prius* and from trials at bar to determine facts. 3 Bla. Comm. 28, n. But in this sense, *banc* is perhaps the more usual form of the word. "Sitting *in bank*" is also described as an official meeting of four of the judges of a common-law court. Wharton, Lex.

*Bank le Roy.* The king's bench. Finch, 198.

An acclivity; an elevation or mound of earth, especially that which borders the sides of a water course.

The land adjacent to a river. Graham v. Knight (Tex. Civ. App.) 240 S. W. 981, 983.

That part of a stream which retains the water. Dawson County v. Phelps County, 94 Neb. 112, 142 N. W. 697, 699.

The elevation of land which confines the waters of a stream in their natural channel when they rise the highest and do not overflow the banks. Department of Health of New Jersey v. Chemical Co. of America, 90 N. J. Eq. 425, 107 A. 164, 166; State v. Richardson, 140 La. 329, 72 So. 984, 986; Richards v. Page Inv. Co., 112 Or. 507, 228 P. 937, 942. Compare Wrathall v. Miller, 51 Utah, 218, 169 P. 946, 947.

A water-washed and relatively permanent elevation or acclivity at the outer line of a river bed which separates the bed from the adjacent upland, and serves to confine the waters within the bed and to preserve the course of the river. State of Oklahoma v. State of Texas, 43 S. Ct. 221, 260 U. S. 606, 67 L. Ed. 428; Motl v. Boyd, 116 Tex. 82, 286 S. W. 458, 467.

The land lying between the edge of the water of a stream at its ordinary low stage and the line which the edge of the water reaches in its ordinary high stage. Wemple v. Eastham, 150 La. 247, 90 So. 637, 638.

An elevation of land which confines the waters of a stream when they rise out of the bed. Neither the line of ordinary high-water mark, nor of ordinary low-water mark, nor of a middle stage of water can be assumed as the line dividing the bed from the banks. Banks are fast land, on which vegetation appropriate to such land in the particu-

lar locality grows wherever the bank is not too steep to permit such growth, and bed is soil of a different character, and having no vegetation, or only such as exists, when commonly submerged in water. *State v. Nolegs*, 40 Okl. 479, 139 P. 943, 946.

On the borders of navigable streams, where there are levees established according to law, the levees form the "banks of the river." *Ward v. Board of Levee Com'rs of Orleans Levee Dist.*, 152 La. 158, 92 So. 769, 772.

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. See *State v. Wagner*, 202 Iowa, 739, 210 N. W. 901, 902; *Dunn v. State*, 13 Ga. App. 314, 79 S. E. 170, 172; *Rominger v. Keyes*, 73 Ind. 375; *People v. R. Co.*, 12 Mich. 389, 86 Am. Dec. 64; *People v. Bartow*, 6 Cow. (N. Y.) 290; *Dearborn v. Northwestern Savings Bank*, 42 Ohio St. 617.

Speaking generally, a "bank" is a moneyed institution to facilitate the borrowing, lending, and caring for money. *Smith v. Kansas City Title & Trust Co.*, 41 S. Ct. 243, 249, 255 U. S. 180, 65 L. Ed. 577.

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 generally denominated a "banker." *Hobbs v. Bank*, 101 Fed. 75, 41 C. C. A. 205; *Kiggins v. Munday*, 19 Wash. 233, 52 P. 855; *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 F. 469.

The house or place where the business of banking is carried on.

Banks in the commercial sense are of three kinds, viz.: (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; *Millikan v. Security Trust Co.*, 187 Ind. 307, 118 N. E. 568, 569; *Rev. St. U. S. § 3407* (12 USCA § 561).

**—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.** Same as bank note. *Eastman v. Com.*, 4 Gray (Mass.) 416. See Bank note, *infra*.

**—Bank book.** A book kept by a customer of a bank, showing the state of his account with it. See Pass-book.

**—Bank charges.** This term in an action on a bill of exchange is equivalent to expenses of noting and may be especially endorsed as a liquidated demand; [1893] 1 Q. B. 318.

**—Bank check.** See Check.

**—Bank credit.** A credit with a bank by which, on proper security given to the bank, a person receives liberty to draw to a certain extent agreed upon. In Scotland also called a cash account. *Cent. Dict.*

**—Bank in failing condition.** Under some statutes, an insolvent bank. *Hanson v. State*, 160 Ark. 329, 254 S. W. 691, 694.

**—Bank note.** A promissory note issued by a bank or banker authorized to do so, payable to bearer on demand, and intended 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; *Lummus Cotton Gin Co. v. Walker*, 195 Ala. 552, 70 So. 754, 755. In the early history of banks, their notes were generally denominated bills of credit. *Briscoe v. Bank of the Commonwealth of Kentucky*, 11 Pet. 257, 9 L. Ed. 709. See, also, Banker's note.

**—Bank of circulation.** One which issues bank notes payable to bearer. *Dunn v. State*, 13 Ga. App. 314, 79 S. E. 170, 171. See Bank of issue, *infra*.

**—Bank of deposit.** A savings bank or any other bank which receives money on deposit. *Dunn v. State*, 13 Ga. App. 314, 79 S. E. 170, 171.

**—Bank of discount.** One which lends money on collateral or by means of discounts of commercial paper. *Dunn v. State*, 13 Ga. App. 314, 79 S. E. 170, 171.

**—Bank of issue.** One which, pursuant to authority conferred by its charter, issues its own notes intended to circulate as money. *Dearborn v. Northwestern Savings Bank*, 42 Ohio St. 617; *Bank v. Gruber*, 87 Pa. 471, 30 Am. Rep. 378; *Millikan v. Security Trust Co.*, 187 Ind. 307, 118 N. E. 568, 569.

**—Bank stock.** Shares in the capital of a bank; shares in the property of a bank. In England the term is applied chiefly to the stock of the Bank of England.

**—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; Williams v. Johnson, 50 Mont. 7, 144 P. 768, 770, Ann. Cas. 1916D, 595; Bulakowski v. Philadelphia Sav. Fund Soc., 270 Pa. 538, 113 A. 553, 554. They differ from the ordinary banks of discount and deposit in not being engaged in business for profit. Commercial Trust Co. of New Jersey v. Hudson County Board of Taxation, 86 N. J. Law, 424, 92 A. 263, 265.

**BANKABLE PAPER.** In mercantile law. Notes, checks, bank bills, drafts, and other securities for money, received as cash by the banks. The term does not necessarily mean discountable paper, but paper of such high credit that, if the time of payment was reasonable and the banks had loanable funds, they would ordinarily discount it. Edward P. Allis Co. v. Madison Electric Light, Heat & Power Co., 9 S. D. 459, 70 N. W. 650, 652.

National bank notes are received as bankable money without regard to the locality of the bank issuing them. See U. S. Rev. Stat. § 5133 (12 USCA § 21); Veazie Bank v. Fenno, 3 Wall. 533, 19 L. Ed. 482.

**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.

An individual is not engaged in the banking business merely because he does some of the things which are frequently or usually done by banks; thus, a dealer in foreign exchange and foreign money is not necessarily a banker, and does not necessarily perform a banking function. Wedesweiler v. Brundage, 297 Ill. 223, 130 N. E. 520. See, also,

People v. Young, 207 N. Y. 522, 101 N. E. 451, 453 (holding that an unincorporated association engaged in making salary loans, etc., was not a banker).

#### Individual Banker

Under some statutes, an individual banker, as distinguished from a "private banker" (*q. v.*), is a person who, having complied with the statutory requirements, has received authority from the state to engage in the business of banking, while a private banker is a person engaged in banking without having any special privileges or authority from the state. Perkins v. Smith, 116 N. Y. 441, 23 N. E. 21.

#### Private Banker

One who carries on the business of banking without being incorporated. State of Missouri v. Angle (C. C. A.) 236 F. 644, 650; Herzog v. Transatlantic Trust Co. (Sup.) 172 N. Y. S. 394, 395. One who carries on the business of banking by receiving money on deposit with or without interest, by buying and selling bills of exchange, promissory notes, gold or silver coin, bullion, uncurrent money, bonds or stock, or other securities, and by loaning money without being incorporated. Rev. St. Mo. 1909, § 1116 (repealed by Laws 1915, p. 102); State ex rel. Barker v. Sage, 267 Mo. 493, 184 S. W. 984, 988. See Individual banker, *supra*.

**BANKER'S ACCEPTANCE.** A draft or bill of exchange of which the acceptor is a bank or banker engaged generally in the business of granting bankers' acceptance credits. Atterbury v. Bank of Washington Heights of City of New York, 241 N. Y. 231, 149 N. E. 841, 843.

**BANKER'S LIEN.** A lien which a banker has by virtue of which he can appropriate any money or property in his possession belonging to a customer to the extinguishment of any matured debt of such customer to the bank, provided such property or money has not been charged, with the knowledge of the bank, with the subservience of a special burden or purpose, or does not constitute a trust fund of which the banker has notice. American Surety Co. of New York v. Bank of Italy, 63 Cal. App. 149, 218 P. 466, 468.

**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. 6 Mod. 29; 3 Chit. Comm. Law 590.

**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.

The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. *Mercantile Bank v. New York*, 121 U. S. 133, 156, 7 S. Ct. 826, 30 L. Ed. 895; *First Nat. Bank v. Dawson County*, 66 Mont. 321, 213 P. 1097, 1103.

Having a place of business where deposits are received and paid out on checks and where money is loaned on security is the substance of the "business of banking." *Marvin v. Kentucky Title Trust Co.*, 218 Ky. 135, 201 S. W. 17, 18, 50 A. L. R. 1337; *Warren v. Shook*, 91 U. S. 704, 23 L. Ed. 421. See, also, *Old Colony Trust Co. v. Malley* (D. C.) 238 F. 903, 911.

**BANKING HOURS.** A term which, in addition to the regular hours, includes time to allow presentment, after closing, to the bank returning a check, if such presentment is necessary in fact. *Columbia-Knickerbocker Trust Co. v. Miller*, 156 App. Div. 810, 142 N. Y. S. 440, 445.

**BANKRUPT.** Originally and strictly, 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.

In the English law there were two characteristics which distinguished bankrupts from insolvents: the former must have been a trader and the object of the proceedings against, not by, him. As used in American law, the distinction between a bankrupt and an insolvent is not generally regarded. *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L. Ed. 523; 2 Kent, 390; *McCormick v. Pickering*, 4 N. Y. 233. On the continent of Europe, however, the distinction still exists. *Holtz. Enc. voc. sig. Bankerott.*

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 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. See *Bankruptcy Act July 1, 1898*, c. 541, § 1, 30 Stat. 544 (11 USCA § 1).

**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, 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 disregarded. A bankrupt law, moreover, 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 possibly 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. 532; *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. *Martin v. Berry*, 37 Cal. 222.

**BANKRUPTCY.** 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. C. 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.

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. 1457.

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.

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.

#### 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.

#### Bankruptcy Proceedings

This 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. See, also, Proceedings in bankruptcy.

#### Controversies Arising in Bankruptcy Proceedings

See Proceedings in bankruptcy.

#### Involuntary Bankruptcy

See Voluntary bankruptcy, *infra*.

#### Voluntary Bankruptcy

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.

See Bankrupt; Bankrupt Law.

**BANLEUCA.** (Same as the French *banlieue*). 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.** In French and Canadian law. The same as *banleuca* (*q. v.*).

**BANNER.** A small flag bearing a device or symbol and intended to be carried or waved. L. R. 2 P. C. 387. The term includes a canvas, parti-colored or bearing party words and stretched across a street. 4 O'M. & H. 179.

**BANNERET.** See Baneret.

BL.LAW DICT. (3D ED.)—13

**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 MOLENDINUM.** To summon tenants to serve at the lord's courts, to bring corn to be ground at his mill.

**BANNITUS.** See Banni.

**BANNS OF MATRIMONY.** Public notice or proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract. Cowell; 1 Bla. Comm. 439; Pothier, *Du Mariage* p. 2, c. 2.

Such announcement is 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.

**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.** See Banns of Matrimony.

**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.** 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-barristers 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.

A particular part of the court-room; for

example, the place where prisoners stand at their trial, whence the expression "prisoner at the bar."

The court, in its strictest sense, sitting in full term. 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 *à nisi prius*. So the "case at bar" is the case now before the court and under its consideration; the case being tried or argued.

In another sense, the whole body of attorneys and counsellors, or the members of the legal profession, collectively, who 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.

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

In the law of contracts, an impediment, 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."

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.

In pleading, a special plea, constituting a sufficient answer to an action at law; 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." It may be further described as a plea or peremptory exception of a defendant to destroy the plaintiff's action. *City of San Antonio v. Johnson* (Tex. Civ. App.) 186 S. W. 866. See Plea in bar.

**BAR ASSOCIATION.** An association of members of the bar. Such associations have been organized in most states. The first was in Mississippi in 1825, but it is not known to have had a continued existence. An association of Grafton and Coös counties in New Hampshire had an existence before 1800, and probably a more or less continuous life since then, having finally merged into a state association. Similar associations exist in many of the counties in various states.

**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.

**BAR ROOM.** A place where intoxicating liquors are sold to be drunk on the same premises. *Christopher v. Charles Blum Co.*, 82 So. 765, 766, 78 Fla. 240; *City of Spokane v.*

*Baughman*, 103 P. 14, 17, 54 Wash. 315; also so defined in Act Congress March 3, 1893, 27 Stat. 563, quoted in *Army & Navy Club v. District of Columbia*, 8 App. Cas. 544, 550.

A room containing a bar or counter at which liquors are sold, or a room with a bar where liquors and refreshments are served. *Town of Leesburg v. Putnam*, 103 Ga. 110, 29 S. E. 602, 603, 68 Am. St. Rep. 80; *Mustard v. Elwood* (C. C. A.) 223 F. 225, 226.

The words "bar" and "bar room" have a more restrictive meaning than "saloon," and mean a place from which intoxicating liquors are to be sold. *Greil Bros. Co. v. Mabson*, 179 Ala. 444, 60 So. 876, 877, 43 L. R. A. (N. S.) 664.

**BAR SINISTER.** A term popularly though erroneously used for *baton*, a mark of illegitimacy. Webster.

**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 baractat.** He is guilty of barratry who for money sells justice. Bell. (This maxim, however, is one pertaining more to the meaning of "barratry" as used in Scotch law than to its common-law meaning. See Barratry.)

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

**BARBAROUS.** As used in a divorce statute, it implies a merciless and savage disposition, taking pleasure in suffering, without pity, and with an evil and malicious will. *Hansell v. Hansell*, 15 Pa. Co. Ct. R., 514, 515.

**BARBER.** One who makes a business of shaving and trimming beards and cutting and dressing hair. *Dellacorte v. Gentile*, 98 N. J. Eq. 194, 129 A. 739, 740.

The term has been held to include a woman, who, being employed in a beauty parlor serving women customers exclusively, cut a woman's hair in the style of bobbed hair. *State v. Leftwich*, 142 Wash. 329, 253 P. 448, 449, 59 A. L. R. 539. But it has also been thought that the proprietor of a "hairdressing and beauty parlor," the important features of whose business included cutting hair, massaging, clipping hair with barber clippers, singeing the hair, giving tonics, shampooing, and manicuring, but not shaving the face, was not a "barber" within a statute subjecting barbers to examination and regulation. *Keith v. State Barber Board*, 112 Kan. 834, 212 P. 871, 872, 31 A. L. R. 432.

In England in former times, barbers also practiced surgery and dentistry, but by 32 Hen. VIII, c. 42, barbers, although they were thereby incorporated with the surgeons of London, were not to practice surgery, except the drawing of teeth.

**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.** Naked; without a covering; unaccompanied.

**BARE LICENSEE.** One who is such by mere tolerance or acquiescence, and not by express invitation. *Chesapeake & O. Ry. Co. v. Farrow's Adm'x*, 106 Va. 137, 55 S. E. 569.

**BARE TRUSTEE.** One whose trust is to convey, and the time has arrived for a conveyance by him; or a trustee to whose 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. *Christie v. Ovington*, 1 Ch. Div. 279, 281.

**BAREBONES PARLIAMENT.** A parliament summoned by Cromwell in 1653.

**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.

As a verb, "bargain" means to sell for cash, or on terms, rather than to trade or exchange. In *re Wellings' Estate*, 197 Cal. 189, 240 P. 21, 24.

"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.

—**Bargain money.** These words in a contract for the sale of land have much the same significance as earnest money. *Morgan v. Forbes*, 236 Mass. 480, 128 N. E. 792, 793.

—**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. See *Edler v. Frazier*, 174 Iowa, 46, 156 N. W. 182, 187. "Catching bargain" describes that kind of fraud often perpetrated upon young, inexperienced, or ignorant people. *Provident Life & Trust Co. v. Fletcher* (C. C. A.) 253 F. 583, 586.

See Unconscionable Bargain.

**BARGAIN AND SALE.** In conveyancing. The transferring of the property of a thing from one to another, upon valuable consider-

ation, 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; *Bisp. Eq.* 419; *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; *Laing v. McClung*, 103 W. Va. 341, 137 S. E. 744, 745.

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. (N. Y.) 484, 3 Am. Dec. 517; *Lynch v. Livingston*, 8 Barb. (N. Y.) 463. See 2 Washb. R. P. 620; *Shepp. Touchst.* 222.

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.

**BARGAINEE.** The grantee of an estate in a deed of bargain and sale. The party to a bargain to whom the subject-matter of the bargain or thing bargained for is to go.

**BARGAINOR.** The person who makes a bargain. The party to a bargain who is to receive the consideration and perform the contract by delivery of the subject-matter.

**BARGE.** A lighter or a flat bottom boat for loading or unloading ships. A lighter having no means of self-propulsion, and able to make progress only by being towed. *Commonwealth v. Breakwater Co.*, 100 N. E. 1034, 1037, 214 Mass. 10. A scow. *The Scow No. 15*, 88 F. 305. The term may also include a steam pleasure yacht under a statute pertaining to the liability of vessel owners. *The Mamie* (D. C.) 5 F. 813; *Id.* (C. C.) 8 F. 367.

**BARK.** It 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.

**BARN.** A covered building for securing productions of the earth. *State v. Laughlin*, 53

N. C. 354, 355. It may be both a cornhouse and a stable; *State v. Smith*, 28 Iowa, 565, 568; and has been used interchangeably with stable; *Saylor v. Commonwealth* (Ky.) 57 S. W. 614, 615. The term has been held to include a garage within the meaning of a restrictive building covenant. *Beach v. Jenkins*, 159 N. Y. S. 652, 657, 174 App. Div. 813; *Wilmot v. Gandy*, 203 N. Y. S. 535, 536, 122 Misc. 571; *Williams v. Carr*, 213 Mo. App. 223, 248 S. W. 625, 627. But there are also holdings to the contrary, especially where the garage is not a wholly detached structure, but is merely an addition to the dwelling, or is constructed up against it. See *Wilmot v. Gandy*, 203 N. Y. S. 535, 537, 122 Misc. 571; *Bassett v. Pepe*, 94 Conn. 631, 110 A. 56, 57; *Riverbank Improvement Co. v. Bancroft*, 209 Mass. 217, 95 N. E. 216, 34 L. R. A. (N. S.) 730; *Courtney v. Hunter*, 159 Ga. 321, 125 S. E. 714, 715.

**BARNARD'S INN.** An inn of chancery. See Inns of Chancery.

**BARO.** In old law, a man, whether slave or free. In later usage, a freeman or freedman; a strong man; a good soldier; a hired soldier; a vassal; a baron; a feudal tenant or client.

A man of dignity and rank; a knight.

A magnate in the church.

A judge in the exchequer (*baro scaccarii*). The first-born child.

A husband.

The word is said by Spelman to have been used more frequently in the last sense; Spelman, Gloss.

**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. The lowest title in Great Britain.

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.

The term has essentially the same meanings as *Baro* (q. v.).

**BARON ET FEME.** Man and woman; husband and wife. Spelman, Gloss.; 1 Bla. Comm. 442. A wife being under the protection and influence of her *baron*, lord, or husband, is styled a "*feme-covert*," (*fæmina 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. See Cinque Ports.

**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.

**BARONES SCACCARII.** See Barons of the Exchequer.

**BARONET.** An English name or hereditary title of dignity or rank (but not a title of nobility, being next below that of baron), established in 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; 2 Holdsw. Hist. Eng. L. 159.

In Scotland, a large freehold estate, even though the proprietor is not a baron. See Barony of Land, *infra*.

**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 commits barratry. See Barretor.

**BARRATROUS.** Fraudulent; having the character of barratry.

**BARRATRY.**

#### In Criminal Law

Also spelled "Barrety." The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. 4 Bla. Com. 134; Co. Litt. 368. See 1 Cowp. 154, by Lord Mansfield; *State v. Simpson*, 1 Bail. (S. C.) 379; *Com. v. Mohn*, 52 Pa. 243, 91 Am. Dec. 153; *Voorhees v. Dorr*, 51 Barb. (N. Y.) 580.

Common barratry is the practice of exciting groundless judicial proceedings. Pen. Code Cal. § 153; *Lucas v. Pico*, 55 Cal. 128; *Com. v. McCulloch*, 15 Mass. 229; *Ex parte McCloskey*, 82 Tex. Cr. R. 531, 199 S. W. 1101, 1102.

#### 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; 2 Ld. Raym. 349; *McIntire v. Bowne*, 1 Johns. (N. Y.) 229; *Brown v. U. S.*, 8 Cranch, 139, 3 L. Ed. 504;

**Brown v. Ins. Co.**, 5 Day (Conn.) 1, 5 Am. Dec. 123; **Hughes v. Ins. Co.**, 3 Wheat. 163, 4 L. Ed. 357; **Crousillat v. Ball**, 4 Dall. (Pa.) 294, 1 L. Ed. 840, 2 Am. Dec. 375; 5 B. & Ald. 597; **Hutchins v. Ford**, 82 Me. 363, 19 Atl. 832; **Hansen v. Barnard** (C. C. A.) 270 F. 163, 166.

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 Scotch Law

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

See Champerty.

**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, 34 S. W. 45, 477.

**BARREL.** A measure of capacity, equal (in England) to 36 imperial gallons. The standard United States measure, except as to barrels of petroleum, equals 31½ gallons. **Pope v. Joschke** (Tex. Civ. App.) 228 S. W. 986, 987.

In agricultural and mercantile parlance, as also in the inspection laws, the term 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.

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

**BARRENESS.** Sterility; the incapacity to bear children.

**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.

#### 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.

**BARRETRY.** In criminal law. The act or offense of a barretor, (*q. v.*); usually called "common barretry." 4 Steph. Comm. 262. See Barratry.

**BARRICADE.** An obstruction or block to prevent passage. **Schawe v. Leyendecker** (Tex. Civ. App.) 269 S. W. 864, 866.

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

**BARRISTER.** In English law. An advocate; a counsellor learned in the law who has been admitted to plead at the bar, and who is engaged in conducting the trial or argument of causes.

A barrister is 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.

See King's Counsel.

#### Inner Barrister

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

#### 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.**

#### Outer or Utter Barrister

One who pleads "outer" or without the bar. Such barristers were so called because they sat "uttermost on the forms of the benchers which they call the bar." 29 L. Q. R. 25. They are distinguished from benchers, or those who have been readers, and are allowed to plead within the bar, as are the king's counsel.

#### Utter Barrister

The same as "Outer barrister," *supra*.

#### Vacation Barrister

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

**BART.** The usual abbreviation for *Baronet* (*q. v.*).

**BARTER.** A contract by which parties exchange goods or commodities for other goods. It differs from *sale*, in this: that in the latter transaction goods or property are always exchanged for money. **Guerreiro v. Peile**, 3 Barn. & Ald. 617; **Cooper v. State**, 37 Ark. 418; **Meyer v. Rousseau**, 47 Ark. 460, 2 S. W. 112. And in a sale there is a fixed price; in a barter there is not. See **Benj. Sales** 1; **Speigle v. Meredith**, 4 Biss. 120, Fed. Cas.

No. 13,227; *Com. v. Davis*, 12 Bush (Ky.) 241; *Cooper v. State*, 37 Ark. 418; *Mathews v. Holloway*, 83 Fla. 30, 90 So. 924; *Boonville Milling Co. v. Roth*, 73 Ind. App. 427, 127 N. E. 823, 825; *Jones v. State*, 108 Miss. 530, 66 So. 987, L. R. A. 1915C, 648.

This term is not applied to contracts concerning land, but to such only as relate to goods and chattels. *Speigle v. Meredith*, 4 Biss. 123, Fed. Cas. No. 13,227.

It sometimes signifies a corrupt transaction. *In re Troy*, 43 R. I. 279, 111 A. 723, 724.

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

Sometimes it is used for the manor house itself; and in some places for out houses and fold yards. In the statute 2 & 3 Edw. 6, c. 12, Barton lands and demesne lands are used as synonymous. Cowell.

**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; Kennett, *Paroch. Ant.*; Blount.

**BAS VILLE.** In French law. The suburbs of a town.

**BASAL FRACTURE.** A fracture of the skull beginning at the base of the skull to the rear and left extending to the top of the skull. *Marland Refining Co. v. McClung*, 102 Okl. 56, 226 P. 312, 313.

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

As used in engineering or mechanics, it has no invariable meaning. *Benjamin Electric Mfg. Co. v. Northwestern Electric Equipment Co.* (C. C. A.) 251 F. 288, 290.

—**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; *Cohens v. Virginia*, 6 Wheat. 333, 5 L. Ed. 257.

—**Base court.** In English law. An inferior court, that is, not of record, as the court baron. *Cunningham*; *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. 98; *Camp Meeting Ass'n v.*

*East Lyme*, 54 Conn. 152, 5 A. 849. It is a fee for the reason that it may last forever if the contingency does not happen, but debased because its duration depends upon collateral circumstances which qualify it. *McIntyre v. Dietrich*, 294 Ill. 126, 128 N. E. 321, 322. It is sometimes called also a conditional fee; *Citizens' Electric Co. v. Susquehanna Boom Co.*, 270 Pa. 517, 113 A. 559, 561; a determinable fee; *Penick v. Atkinson*, 139 Ga. 649, 77 S. E. 1055, 1057, 46 L. R. A. (N. S.) 284, Ann. Cas. 1914B, 842; or a qualified fee; *In re Douglass' Estate*, 94 Neb. 280, 143 N. W. 299, 302, Ann. Cas. 1914D, 447.

—**Base infettment.** 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 Bla. Comm. 62; 1 Washb. R. P. 25.

—**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.

**BASEBALL.** A game of skill within the criminal offense of betting on such a game. *Mace v. State*, 58 Ark. 79, 22 S. W. 1108. When played by professionals for profit, it is a performance of worldly employment and business within the Sunday Law of Pennsylvania. *Commonwealth v. American Baseball Club of Philadelphia*, 290 Pa. 136, 138 A. 497, 53 A. L. R. 1027. And where professional baseball players and umpires engaged in a free Sunday game, they were held to have violated a statute prohibiting laboring at any trade or calling on Sunday. *Crook v. Commonwealth*, 147 Va. 593, 136 S. E. 565, 50 A. L. R. 1043. But it has also been held that a baseball exhibition, although made for money, is not trade or commerce in the commonly accepted use of those words. *Federal Base Ball Club of Baltimore v. National League of Professional Base Ball Clubs*, 259 U. S. 200, 42 S. Ct. 465, 66 L. Ed. 898, 26 L. R. A. 357.

**BASEMENT.** A floor partly beneath the surface of the ground but distinguished from a cellar by being well lighted and fitted for living purposes. In England the ground floor of a city house.

**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 Basilus, 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 portion 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. 286, 26 Fed. Cas. 1,310.

**BASIS.** Foundation, or groundwork; the principal component parts of a thing. *State v. Kansas City & M. Ry. & Bridge Co.*, 106 Ark. 248, 153 S. W. 614, 616.

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

**BASOCHE.** Fr. An association of the "Clercs du Parlement" of Paris, supposed to have been instituted in 1302. It judged all civil and criminal matters that arose among the clerks and all actions brought against them. *Hist. for Ready Reference.*

**BASSA TENURA.** See Base Fee.

**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 before the lawful marriage of its parents. *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; *Nich. Adult. Bast.* 249; *Hall v. Com.*, *Hard. (Ky.)* 479; *Patterson v. Gaines*, 6 How. 550, 12 L. Ed. 553; 2 M. & K. 349; *State v. Britt*, 78 N. C. 439; *Herring v. Goodson*, 43 Miss. 392; *Bussom v. Forsyth*, 32 N. J. Eq. 277; *Kleinert v. Ehlers*, 38 Pa. 439; *Caujolle v. Ferrié*, 23 N. Y. 90. A child is not a bastard if born after marriage, although begotten before. 1 Bla. Com. 455, 456; 8 East, 210; *State v. Herman*, 35 N. C. 502.

One begotten and born out of lawful wedlock. 2 Kent, Comm. 208; *Ng Suey Hi v. Weedin* (C. C. A.) 21 F.(2d) 801, 802; *Ex parte Newsome*, 212 Ala. 168, 102 So. 216, 218.

This definition, which is substantially the same as Blackstone's, is open to the objection that it does not include with sufficient certainty those cases where children are born during wedlock but are not the children of the mother's husband.

One born of an illicit union. *Civ. Code La. arts. 27, 197.*

A child born out of wedlock, whose parents do not subsequently intermarry, or a child the issue of adulterous intercourse of the wife during wedlock. *Code Ga. 1882, § 1797* (*Civ. Code 1926, § 3026*).

The term also includes a child born of parents while in a state of slavery, inasmuch as the parents were under disability to contract marriage. *Cole v. Taylor*, 132 Tenn. 92, 177 S. W. 61, 65; *Timmins v. Lacy*, 30 Tex. 115.

In Louisiana, "bastards," as distinguished from "natural children," are illegitimate children who have not been acknowledged by their parents. "Natural children" are those who have been acknowledged by both or either of their parents. *Briggs v. McLaughlin*, 134 La. 133, 63 So. 851, 852.

—**Bastard eigné.** 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 eigné, or, as it is now spelled, afné, and the second son was called puisné, or since born, or sometimes he was called mulier puisné. 2 Bla. Comm. 248.

—**Special bastard.** One born of parents before marriage, the parents afterward intermarrying. 3 Bl. Comm. 335. By the civil and Scotch law, as well as by the statute law prevailing in over half of the states of the Union, the child would then be legitimated.

**BASTARDA.** A female bastard. *Calvinus, Lex.; 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 non potest habere hæredem 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.

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

**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. See Justices of Trail-Baston.

**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. Battel; the trial by combat or *duellum*.

**BATH, KNIGHTS OF THE.** See Knights.

**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. See Wager of Battel.

**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 A. 209, 298; Hunt v. People, 53 Ill. App. 112; Perkins v. Stein, 94 Ky. 433, 22 S. W. 649, 20 L. R. A. 861.

A willful and unlawful use of force or violence upon the person of another. Pen. Code Cal. § 242; Pen. Code Dak. § 306 (Comp. Laws N. D. 1913, § 9546); Clark, Cr. L. 199; Long v. Rogers, 17 Ala. 540; Pike v. Hanson, 9 N. H. 491.

An unlawful touching of the person of another by the aggressor himself, or any other substance put in motion by him. Kirland v. State, 43 Ind. 153, 13 Am. Rep. 386.

The slightest touching of another, or of his clothes or anything else attached to his person, if done in a rude, insolent, or angry manner. Crosswhite v. Barnes, 139 Va. 471, 124 S. E. 242, 244, 40 A. L. R. 54; State v. Foster, 156 La. 891, 101 So. 253, 257; Singer Sewing Mach. Co. v. Methvin, 184 Ala. 554, 63 So. 997, 1000; State v. Staw, 97 N. J. Law, 349, 116 A. 425; Raefeldt v. Koenig, 152 Wis. 459, 140 N. W. 56, 58, L. R. A. 1918E, 1052; State v. Hemphill, 162 N. C. 632, 78 S. E. 167, 168, 45 L. R. A. (N. S.) 455; Booher v. Trainer, 172 Mo. App. 376, 157 S. W. 848, 850; Goodrum v. State, 60 Ga. 511.

The actual offer to use force to the injury of another person is *assault*; the use of it is *battery*, which always includes an assault; hence the two terms are commonly combined in the term "assault and battery." McGlone v. Hauger, 56 Ind. App. 243, 104 N. E. 116, 121; Harris v. State, 15 Okl. Cr. 369, 177 P. 122, 123; State v. Staw, 97 N. J. Law, 349, 116 A. 425; State v. Lichter, 102 A. 529, 530, 7 Boyce (Del.) 117; Anderson v. Crawford (C. C. A.) 265 F. 504, 506; Johnson v. Sampson, 167 Minn. 203, 208 N. W. 814, 815, 46 A. L. R. 772.

As to acts constituting assault and battery, see Smith v. Kahn (Sup.) 141 N. Y. S. 520; Timmons v.

Kenrick, 53 Ind. App. 490, 102 N. E. 52; State v. Lehman, 131 Minn. 427, 155 N. W. 399, 400, Ann. Cas. 1917D, 615; State v. Stafford, 113 N. C. 635, 18 S. E. 256; Hively v. Higgs, 120 Or. 588, 253 P. 363, 365, 53 A. L. R. 1052; State v. Sudderth, 134 N. C. 753, 114 S. E. 823, 829, 27 A. L. R. 1180.

### Assault and Battery of a High and Aggravated Nature

An unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of deadly weapon, great disparity between the ages and physical conditions of the parties, or the purposeful infliction of shame and disgrace. State v. Jones, 133 S. C. 167, 130 S. E. 747, 751.

#### Simple Battery

One not accompanied by circumstances of aggravation, or not resulting in grievous bodily injury.

**BATTONIER.** In French and Canadian law. A member of the bar selected as the head of the bar.

**BATTURE.** According to Richelet and the French Academy, a marine term, used to denote a bottom of sand, stone, or rock, mixed together, and rising towards the surface of the water; as a technical word and also in common parlance, an elevation of the bed of a river, under the surface of the water. The term is, however, sometimes 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. Morgan v. Livingston, 6 Mart. (O. S.) (La.) 111; State v. Richardson, 140 La. 329, 72 So. 984, 987. In this latter sense it is synonymous with "alluvion." It means, in common-law language, land formed by accretion. Hollingsworth v. Chaffe, 33 La. Ann. 551; New Orleans v. Morris, 3 Woods, 117, Fed. Cas. No. 10,183; Leonard v. Baton Rouge, 4 So. 243, 39 La. Ann. 275; Municipality No. 2 v. Orleans Cotton Press, 18 La. 123, 36 Am. Dec. 624; Producers' Oil Co. v. Hanszen, 132 La. 691, 61 So. 754.

The term is used in Louisiana, and is applied principally to certain portions of the bed of the Mississippi river which are uncovered at time of low water but are covered annually at time of ordinary high water. Boyce Cottonseed Oil Mfg. Co. v. Board of Com'rs of Red River, Atchafalaya & Bayou Beuf Levee Dist., 160 La. 727, 107 So. 506, 508.

**BAUXITE.** An earth containing aluminum in sufficient quantities to make it worth working for the extraction of alumina. American Bauxite Co. v. Board of Equalization of Saline County, 119 Ark. 362, 177 S. W. 1151, 1152.

**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 ill fame; 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; *State v. Evans*, 27 N. C. 603; *State v. Badda*, 97 W. Va. 417, 125 S. E. 159, 160; *Thaler v. U. S. (C. C. A.)* 261 F. 746, 749. An assignation house. *State v. Bragg (Mo. App.)* 220 S. W. 25, 26. A disorderly house. *Putman v. State*, 9 Okl. Cr. 535, 132 P. 916, 921, 46 L. R. A. (N. S.) 593.

To constitute a bawdy-house, the house must be "resorted to" or "frequented," that is to say, used a number of times, by lewd people of both sexes. *State v. Seba (Mo. App.)* 200 S. W. 300.

**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.* (This is generally called a forebay.)

A bending or curving of the shore of the sea or of a lake, so as to form a more or less inclosed body of water. *State v. Town of Gilmanton*, 14 N. H. 477. An opening into the land, or an arm of the sea, 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; *Ocean Industries v. Superior Court of California*, in and for Santa Cruz County, 200 Cal. App. 235, 252 P. 722, 724.

**BAY WINDOW.** A window projecting from the wall of a building so as to form a recess or bay within, and, properly speaking, rising from the ground or basement, with straight sides only; but the term is also ordinarily applied to such projecting windows with curved sides, properly called bow windows, and also to projecting windows supported from the building, above the ground, properly called oriel windows. See *Hieronimus v. Moran*, 272 Ill. 254, 111 N. E. 1022, 1023; *Commonwealth v. Harris*, 10 Wkly. Notes Cas. (Pa.) 10; *Com. v. Reimer*, 39 Leg. Int. (Pa.) 108; *Appeal of Reimer*, 100 Pa. 182, 45 Am. Rep. 373.

**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; *East Hampton v. Kirk*, 6 Hun (N. Y.) 257; 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; *Hodge v. Boothby*, 48 Me. 68.

Beach is synonymous with "shore," "strand," or "fiats." *Doane v. Willcutt*, 5 Gray (Mass.) 323, 335, 66 Am. Dec. 369; *Littlefield v. Littlefield*, 28 Me. 180; *Cutts v. Hussey*, 15 Me. 237.

The term may also include the sandy shore above mean high water which is washed by storms and exceptionally high tides. *Newkirk v. Sherwood*, 94 A. 982, 984, 89 Conn. 598.

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

See *Foreshore*; *Sea-Shore*.

#### Public Beach

One left by the state or others claiming it open to the common use of the public, which the unorganized public and each of its members have a right to use while it remains such. *Brower v. Wakeman*, 88 Conn. 8, 89 A. 913, 914.

**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. *Comyns, Dig. Navigation (H).*

**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*. See, also, *Bedel*.

**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. See *Stevenson v. Mellor*, 252 Pa. 219, 97 A. 393, 394.

**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 bears, carries, or holds a thing. Defined by the Negotiable Instruments Act as the person in possession of a bill

or note which is payable to bearer. *Doherty v. First Nat. Bank of Louisville*, 170 Ky. 810, 186 S. W. 937, 938; *Miller v. People's Sav. Bank*, 193 Mo. App. 498, 186 S. W. 547, 550; *Capitol Hill State Bank v. Rawlins Nat. Bank of Rawlins*, 24 Wyo. 423, 160 P. 1171, 1179, 11 A. L. R. 937; *Masterson v. Ginners Mut. Underwriters' Ass'n of Texas* (Tex. Com. App.) 235 S. W. 1081, 1083. 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. Perrine*, 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. Such as bear down or oppress others; maintainers. Cowell.

**BEARING DATE.** Disclosing a date on its face; having a certain date. Words frequently used in pleading and conveyancing to introduce the date which has been put upon an instrument. See 2 Greenl. Ev. § 160; 2 Dowl. & L. 759.

**BEAST.** An animal; a domestic animal; a quadruped, such as may be used for food or in labor or for sport; *e. g.*, a cow; *Taylor v. State*, 6 Humph. (Tenn.) 285; a horse; *Winfrey v. Zimmerman*, 8 Bush (Ky.) 587; and a hog; *State v. Enslow*, 10 Iowa, 115; but a dog was held not to be; *U. S. v. Gideon*, 1 Minn. 292 (Gil. 226); but see *Morewood v. Wakefield*, 133 Mass. 241.

**BEASTS OF THE CHASE.** In English law. Properly, the buck, doe, fox, martin, and roe, but in a common and legal sense extending likewise to all the beasts of the forest, which beside the others are reckoned to be the hind, hare, bear, and wolf, and, in a word, all wild beasts of venery or hunting. Co. Litt. 233; 2 Bla. Comm. 39.

**BEASTS OF THE FOREST.** In English law. The hart, hind, hare, boar, and wolf. Co. Litt. 233a. See *Beasts of the Chase*.

**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 Bla. 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.** To strike or hit repeatedly, as with blows. *Regina v. Hale*, 2 Car. & K. 327; *Com. v. McClellan*, 101 Mass. 35; *State v. Harrigan*, 4 Pennewill (Del.) 129, 55 A. 5; *Com. v. McClellan*, 101 Mass. 35.

In the criminal law and the law of torts,

with reference to assault and battery, the term includes any unlawful physical violence offered to another. See *Battery*.

To beat, in a legal sense, is not merely to whip, wound, or hurt, but includes any unlawful imposition of the hand or arm. *Goodrum v. State*, 60 Ga. 511; *Yarbrough v. State*, 17 Ga. App. 828, 88 S. E. 710, 711.

**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; *Eaton v. State*, 20 Ala. App. 110, 101 So. 94, 95.

**BEATING OF THE BOUNDS.** An ancient custom in England by which, once a year, the minister, etc., of a parish walked about its boundaries to preserve a recollection of them. Cent. Dict. (Perambulation).

**BEAUPLEADER** (L. Fr. fair pleading). A writ of prohibition directed to the sheriff or another, directing him not to take a fine for beaupleader.

There was anciently a fine imposed called a fine for beaupleader, which is explained by Coke to have been originally imposed for bad pleading. *Coke*, 2d Inst. 123. The statute of Marlebridge (52 Hen. III.) c. 11, enacts, that neither in the circuit of justices, nor in counties, hundreds, or courts-baron, any fines shall be taken for *fair pleading*; namely, for not pleading fairly or aptly to the purpose. Upon this statute this writ was ordained, directed to the sheriff, bailiff, or him who shall demand the fine; and it is a prohibition or command not to do it. *New Nat. Brev.* 596; *Fitzh. N. B.* 270 a; *Hall Hist. Comm. Law*, c. 7; 2 *Reeve, Eng. Law* 70; *Com. Dig. Prerogative* (D, 51, 52); *Cowell*; *Co.* 2d Inst. 122; *Crabb, Eng. Law* 150.

**BECAUSE OF EMPLOYMENT.** In this phrase as used in the Workmen's Compensation Act, excepting an employer from liability for the willful act of a third person directed against an employee because of his employment, the words "because of" are not synonymous with "caused by" but with "on account of," or "by reason of." *Pinkerton Nat. Detective Agency v. Walker*, 157 Ga. 548, 122 S. E. 202, 35 A. L. R. 557; *Saucier's Case*, 122 Me. 325, 119 A. 860, 861.

**BECOME.** To pass from one state to another; to enter into some state or condition.

Hence one who is a member of a particular organization at the time of the enactment of a statute making it a felony to "become" a member of such an organization cannot be said to be within the purview of the act. *State v. Laundry*, 103 Or. 443, 204 P. 958, 963.

**BED.** 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 char-



acter, 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 F. 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.

The land that is covered by the water in its ordinary low stage. *Wemple v. Eastham*, 150 La. 247, 90 So. 637, 638.

The portion of soil which is alternately covered and left bare as the stream may decrease and diminish in water supply, and which is adequate to contain it at average and mean stage during the entire year without reference to freshets or drouths. *Motl v. Boyd*, 116 Tex. 82, 286 S. W. 458, 467.

Also, 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.

**BED-ALE or BID-ALE.** A friendly assignation for neighbors to meet and drink at the house of newly married persons or other poor people and then for the guests to contribute to the housekeepers. *Cowell*.

**BEDHOUSE.** A hospital or almshouse for bedesmen or poor people who prayed for their founders and benefactors. *Cunningham*.

**BEDEL.** In English law. A crier or messenger of court, who summons men to appear and answer therein. *Cowell*. A herald to make public proclamations. *Cent. Dict.*

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

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

An inferior officer in a parish or liberty, or in an institution, such as the Blue Coat School in London.

A subordinate officer of a university who walked with a mace before one of the officers on ceremonial occasions and performed other minor duties ordinarily. See *Beadle*.

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

**BEDEWERI.** Those which we now call *banditti*; profligate and excommunicated persons. *Cunningham*.

**BEEF.** Used frequently to mean an animal of the cow species and not beef prepared for market. A beef or one beef is an expression frequently used to designate an animal fit for

use as beef, instead of designating it as a steer, a heifer, an ox, or a cow. *Davis v. State*, 40 Tex. 135.

**BEER.** A liquor compounded of malt and hops, differing from ales, not so much in its ingredients as in its processes of fermentation.

A brewed liquor made of grain, especially barley, flavored with hops, which has undergone fermentation and contains alcohol. *State v. Lynch*, 5 Boyce (Del.) 569, 96 A. 32.

An alcoholic beverage resulting from the fermentation of cereals or other starchy substances. *U. S. v. Standard Brewery (D. C.)* 260 F. 486, 487.

In its ordinary sense, it denotes a beverage which is intoxicating; *State v. Li Fleri*, 6 Boyce (Del.) 597, 102 A. 77; *Moffitt v. People*, 59 Colo. 406, 149 P. 104, 107; *Hoskins v. Commonwealth*, 171 Ky. 204, 188 S. W. 348, 349; 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.

Any liquor, whether intoxicating or not, made by the usual process of making beer, although fermentation is arrested to reduce the percentage of alcohol. *Brown v. State*, 17 Ariz. 314, 152 P. 578, 582.

**BEER-HOUSE; BEER-SHOP.** 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. *State v. Murnane*, 172 Minn. 401, 215 N. W. 863.

Thus, an acknowledgment made to an officer over a telephone wire by one who is not present with the officer, is not an acknowledgment "before" the officer. *Hutchinson v. State*, 79 Fla. 157, 84 So. 151, 154.

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; but see *Ardery v. Dunn*, 181 Ind. 225, 104 N. E. 299.

**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.

**BEGET.** See Begotten.

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

**BEGIN.** To originate; to come into existence. As to the meaning of the words "begin operations" as used in mining or oil leases, see *Cox v. Miller*, 206 Mo. App. 576, 227 S. W. 652, 653; *McCallister v. Texas Co.* (Tex. Civ. App.) 223 S. W. 859, 861; *Cromwell v. Lewis*, 98 Okl. 53, 223 P. 671, 672. See, also, *Begun*.

**BEGOTTEN.** "To be begotten" means the same as "begotten," embracing all those whom the parent shall have begotten during his life, *quos procreaverit*. 1 Maule & S. 135; *Wager v. Wager*, 1 Serg. & R. (Pa.) 377; *Cox v. Newby*, 101 S. C. 193, 85 S. E. 369, 370. The term is peculiarly and chiefly applicable to a father. *Swain v. Bowers*, 91 Ind. App. 307, 158 N. E. 598, 601.

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

**BEGUN.** In a statute providing that nothing contained in it should affect prosecutions "begun" under any existing act, the word "begun" means both those which have already been begun and those which may hereafter be begun. *Lang v. U. S.*, 133 F. 201, 66 C. C. A. 255.

**BEHALF.** Benefit, support, defence, or advantage.

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. 633; 18 Q. B. 512.

**BEHAVIOR.** Manner of having, holding, or keeping one's self; 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 a larger requirement than surety to keep the peace. *Dalton*, c. 122; 4 Burns, Just. 355. See *Good Behavior*.

**BEHETRIA.** In Spanish law. Lands situated in districts and manors in which 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 *Deceit*; *Evidence*.

A conclusion arrived at from external sources after weighing probability. *Webb v. State*, 19 Okl. Cr. 450, 200 P. 719, 720. See, also, *Ex parte State ex rel. Attorney General*, 211 Ala. 1, 100 So. 312, 313.

Conviction of the mind, arising not from actual perception or knowledge, but by way of inference, or from evidence received or information derived from others.

Belief may evidently be stronger or weaker according to the weight of evidence adduced in favor of the proposition to which belief is granted or refused; *Thompson v. White*, 4 Serg. & R. (Pa.) 137; 1 Greenl. Ev. §§ 7-13. See 1 *Stark*. Ev. 41; 2 *Powell*, *Mortg.* 555; 1 *Ves. Ch.* 95; 12 *id.* 80; *Dy.* 53; 2 *W. Bla.* 881; *Carmalt v. Post*, 8 *Watts* (Pa.) 406; *Ben-nifield v. Hypres*, 38 *Ind.* 504; *Hatch v. Carpenter*, 9 *Gray* (Mass.) 274; *Humphreys v. McCall*, 9 *Cal.* 62, 70 *Am. Dec.* 621; *Ventress v. Smith*, 10 *Pet.* 171, 9 *L. Ed.* 382. Belief admits of all degrees, from the slightest suspicion to full assurance. *Maxwell Ice Co. v. Brackett, Shaw & Lunt Co.*, 80 *N. H.* 236, 116 *A.* 34, 36; *Montgomery v. Commonwealth*, 189 *Ky.* 306, 224 *S. W.* 878.

A conviction of the truth of a given proposition or an alleged fact resting upon grounds insufficient to constitute positive knowledge. *Boone v. Merchants' & Farmers' Bank* (D. C.) 285 *F.* 183, 191.

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.

Although "belief" as sometimes used is tantamount to knowledge; *State v. Van Treese*, 193 *Iowa*, 984, 200 *N. W.* 570; the terms are distinguishable; *Francken v. State*, 190 *Wis.* 424, 209 *N. W.* 766, 769.

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*.

**BELLIGERENCY.** In international law. The status of *de facto* statehood attributed to a body of insurgents, by which their hostilities are legalized.

Before they can be recognized as belligerents they must have some sort of political organization and be carrying on what in international law is regarded as legal war. There must be an armed struggle between two political bodies, each of which exercises *de facto* authority over persons within a determined territory, and commands an army which is prepared to observe the ordinary laws of war. See *Moore*, *Int. Law Dig.* I, 196; *Dana's Wheaton*, note 15, page 35; *Moore I*, 242; *Hall*, 6th *Ed.* 31-42; *Hershey*, 118-123; *Waldes v. Basch*, 109 *Misc.* 306, 179 *N. Y. S.* 713, 191 *App. Div.* 904, 181 *N. Y. S.* 958; *In re Jones*, 17 *W. Va.* 567, 77 *S. E.* 1029, 45 *L. R. A.* (N. S.) 1030, *Ann. Cas.* 1914C, 31.

Quality of being belligerent; status of a belliger-

ent; act or state of waging war; warfare. Webster's New Int. Dict.

**BELLIGERENT.** In international law. As an adjective, it means engaged in lawful war. As a noun, it designates 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 F. 412; Johnson v. Jones, 44 Ill. 151, 92 Am. Dec. 159.

**BELLIGERENTS.** A body of insurgents who by reason of their temporary organized government are regarded as conducting lawful hostilities. Also, militia, corps of volunteers, and others, who although not part of the regular army of the state, are regarded as lawful combatants provided they observe the laws of war; 4 H. C. 1907, arts. 1, 2. See *Ex parte Toscano* (D. C.) 208 F. 938. See, also, *Belligerency*.

**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. 558, Fed. Cas. No. 7,533. The right to all captures vests primarily in the sovereign. A fundamental maxim of public law. Cited 2 Russ. & M. 56.

**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.

**BELONG.** To appertain to; to be the property of. Property "belonging" to a person has two general meanings: (1) ownership; *Cate v. Merrill*, 116 Me. 432, 102 A. 235, 236; *Commonwealth v. Wilson*, 141 Va. 116, 126 S. E. 220, 221; and (2) less than ownership, *i. e.*, less than an unqualified and absolute title, such as the absolute right of user. *Baltimore Dry Docks & Shipbuilding Co. v. New York & P. R. S. S. Co.* (C. C. A.) 262 F. 485, 488; *Blaine County Bank v. Noble*, 55 Okl. 361, 155 P. 532, 534; *City and County of San Francisco v. McGovern*, 28 Cal. App. 491, 152 P. 980, 984.

A road may be said with perfect propriety to belong to a man who has the right to use it as of right although the soil does not belong to him; 31 L. J. Ex. 227.

It may also signify a legal residence. Thus, the town to which a slave belongs is that alone in which he has a legal settlement. *Columbia v. Williams*, 3 Conn. 467.

**BELONGINGS.** That which belongs to one; property; possessions;—a term properly used to express ownership. In *re Churchfield's Will*, 99 Misc. 682, 165 N. Y. S. 1073, 1074.

**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; auxilliary 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, or the aggregate of the judges composing a court, as in the phrase "before the full bench."

The judges taken collectively, as distinguished from counsellors and advocates, who are called the bar.

The term, indicating originally the seat of the judges, came to denote the body of judges taken collectively, and also the tribunal itself, as the King's Bench.

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. *Oxford v. Berry*, 204 Mich. 197, 170 N. W. 83, 87.

**BENCHERS.** In English law. Seniors in the Inns of Court, intrusted with their government, and usually, but not necessarily, king'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 acceptance, 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 feudal tenure. 3 Steph. Comm. 77, note, *i*; 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"). See Kolb v. Landes, 277 Ill. 440, 115 N. E. 539, 541; In re Williams' Will, 50 Mont. 142, 145 P. 957, 959.

**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. See People v. Schaefer, 107 N. E. 617, 619, 266 Ill. 334; Cazzani v. Title Guarantee & Trust Co., 161 N. Y. S. 884, 885, 175 App. Div. 369.

**BENEFICIAL OR BENEVOLENT ASSOCIATION.** A voluntary association for mutual assistance in time of need and sickness, and for the care of families of deceased members. Niblack, Ben. Soc. and Accid. Ins.; Hanson v. Chicago, B. & Q. R. Co., 32 Wyo. 337, 232 P. 1101, 1102; Lafferty v. Supreme Council Catholic Mut. Ben. Ass'n, 259 Pa. 452, 103 A. 280, 281.

Another name for a "benefit society." See Benefit Societies.

**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 distin-

guished 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; In re New York Life Ins. & Trust Co. (Sur.) 139 N. Y. S. 695, 705. 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. As to beneficial use of water or water appropriations, see Kersensbrock v. Boyes, 95 Neb. 407, 145 N. W. 837, 838; Turner v. East Side Canal & Irrigation Co., 169 Cal. 652, 147 P. 579, 582; United States v. Utah Power & Light Co. (D. C.) 208 F. 821, 822.

**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. § 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 (Vernon's Ann. Civ. St. art. 4716); Markland v. Modern Woodmen of America (Mo. App.) 210 S. W. 921; Women's Catholic Order of Foresters v. Heffernan, 283 Ill. 429, 119 N. E. 426, 427; Grand Lodge, A. O. U. W. of Maine, v. Conner, 116 Me. 224, 100 A. 1022, 1024.

One receiving benefit or advantage, or one who is in receipt of benefits, profits, or advantage. Bauer v. Myers (C. C. A.) 244 F. 902, 908.

**BENEFICIARY ASSOCIATION.** See Beneficial Association.

**BENEFICIARY HEIR.** In the law of Louisiana. One who has accepted the succession under the benefit of an inventory regularly made. Civ. Code La. art. 883. Also one who may accept the succession. Succession of Gusman, 36 La. Ann. 299.

**BENEFICIO PRIMA, or PRIMO [ECCLESIASTICO 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 *i*; Spelman. It originally meant a "benefaction" from the king, usually to a noble.

**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.

**In General**

—**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.

A defendant's privilege of being condemned only in an amount which he could pay without being reduced to a state of destitution. Sand. Justinian iv. vi. 37.

—**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; La. Civ. Code, arts. 3045-3051.

—**Beneficium inventarii.** See Benefit of Inventory.

—**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; fruit; 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 A. 435, 79 Am. St. Rep.

729; Ferrigno v. Keasbey, 93 Conn. 445, 106 A. 445, 447. It has a broader meaning than "support." Weston v. Second Orthodox Congregational Church, 77 N. H. 576, 95 A. 146, 148.

In the Workmen's Compensation Act, the term "benefits" is used of an award to be granted when an injury results in death, and is distinguished from "compensation," which is to be granted when an injury results in incapacity or disability. Di Cicco v. Industrial Commission of Ohio, 11 Ohio App. 271, 273.

**In Contracts**

When it is said that a valuable consideration for a promise may consist of a benefit to the promisor, "benefit" means that the promisor has, in return for his promise, acquired some legal right to which he would not otherwise have been entitled. Harp v. Hamilton (Tex. Civ. App.) 177 S. W. 565, 566; Wallace v. Cook, 190 Ky. 262, 227 S. W. 279, 281. "Benefit" is not limited to pecuniary gains, nor to any particular kind of advantage; it refers to what is advantageous, whatever promotes prosperity or happiness, what enhances the value of the property or rights of citizens as contradistinguished from what is injurious. National Surety Co. v. Jarrett, 95 W. Va. 420, 121 S. E. 291, 295. See, also, Hooper v. Merchants' Bank & Trust Co., 190 N. C. 423, 130 S. E. 49, 52.

**In 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 properly 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; McGibson v. Roane County Court, 95 W. Va. 338, 121 S. E. 99, 103; Brand v. Union Elevated R. Co., 258 Ill. 133, 101 N. E. 247, 249, Ann. Cas. 1914B, 473, L. R. A. 1918A, 878.

**In Taxation**

With reference to an assessment for a drainage ditch, a benefit is anything that will make land more valuable for tillage or more desirable for a residence or more valuable in the general market. Watson v. Armstrong, 102 N. E. 273, 180 Ind. 49.

**BENEFIT ASSOCIATION.** See Benefit Societies.

**BENEFIT BUILDING SOCIETY.** The original name for what is now more commonly called a "building society" (*q. v.*).

**BENEFIT CERTIFICATE.** A written obligation to pay the person therein named the amount specified upon the conditions therein stipulated. *Green v. Grand United Order of Odd Fellows* (Tex. Civ. App.) 163 S. W. 1068, 1070.

**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, § 31 (18 USCA § 542 note), 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 COUNSEL.** The guaranty of "benefit of counsel" to accused, given in the Georgia Bill of Rights of Const. art. 1, § 1, par. 5 (Civ. Code 1910, § 6361; Civ. Code 1926, § 6361), means more than the mere appointment by the court of counsel to represent the accused and implies also that such counsel be given a reasonable time for preparation to properly represent the accused at the trial. *Reliford v. State*, 140 Ga. 777, 79 S. E. 1128, 1129.

**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. 3045-3051*. 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 of a kind or helpful action towards another, under no obligation except an ethical one.

The love of humanity; the desire to promote its prosperity or happiness. The term includes acts of well-wishing towards others, for the promotion of general happiness, and plans actuated by love of others and a desire for their well-being. *In re Peabody's Estate*, 208 N. Y. S. 664, 671, 124 Misc. 338.

It 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. "Benevolence" is a much broader term than "charity." *In re Johnson's Estate*, 100 Or. 142, 196 P. 385, 390; *In re Altman's Estate*, 149 N. Y. S. 601, 605, 87 Misc. 255.

But the terms are sometimes used synonymously. *Saltonstall v. Sanders*, 11 Allen (Mass.) 446; *Susman v. Young Men's Christian Ass'n of Seattle*, 101 Wash. 487, 172 P. 554, 556.

In public law. Nominally a voluntary gratuity given by subjects to their king, but in

reality a tax or forced loan. *Cowell*; 1 Bla. Comm. 140; 4 *id.* 436.

**BENEVOLENT.** Philanthropic; humane; having a desire or purpose to do good to men; intended for the conferring of benefits, rather than for gain or profit; loving others and actively desirous of their well being. In *re Altman's Estate*, 149 N. Y. S. 601, 605, 87 Misc. 255.

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 A. 940; *Hays v. Harris*, 73 W. Va. 17, 80 S. E. 827, 830; In *re Watkins' Estate*, 194 N. Y. S. 342, 347, 118 Misc. 645. 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; *Busser v. Snyder*, 282 Pa. 440, 128 A. 80, 83, 37 A. L. R. 1515; *Smith v. Pond*, 90 N. J. Eq. 445, 107 A. 800, 801; *Pirkey v. Grubb's Ex'r*, 122 Va. 91, 94 S. E. 344, 347; In *re Dol's Estate*, 182 Cal. 159, 187 P. 428, 431.

**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 In *re Watkins' Estate*, 194 N. Y. S. 342, 347, 118 Misc. 645; *Methodist Episcopal Church Baraca Club v. City of Madison*, 167 Wis. 207, 167 N. W. 258, L. R. A. 1918D, 1124.

**BENEVOLENT CORPORATION.** One that ministers to all; the purpose may be anything that promotes the mental, physical, or spiritual welfare of man. In *re Rockefeller's Estate*, 165 N. Y. S. 154, 158, 177 App. Div. 786; *Society of Helpers of Holy Souls v. Law*, 267 Mo. 667, 186 S. W. 718, 725; *Corbin v. American Industrial Bank & Trust Co.*, 95 Conn. 50, 110 A. 459, 461. The term may include a corporation to which a bequest is made to be used in the improvement of the social, physical, and economic condition of the employees of a business corporation. In *re Altman's Estate*, 149 N. Y. S. 601, 605, 87 Misc. 255.

**BENEVOLENT SOCIETY.** See Benevolent associations, *supra*; *Spring Park Ass'n v. Rosedale Park Amusement Co.*, 216 Ala. 549, 114 So. 43, 44; *Town of Huntington v. Swedish Baptist Home of Rest of New York and Vicinity*, 90 Conn. 504, 97 A. 860, 861. In English law, "benevolent societies" are societies established and registered under the Friendly Societies Act, 1875, for any charitable or benevolent purposes.

**BENEVOLENTIA REGIS HABENDA.** The form in ancient fines and submissions to purchase the king's pardon and favor in order to be restored to place, title or estate. *Paroch. Antiq.* 172.

**BENHURST.** In Berkshire, a remedy for the inhabitants thereof to levy money recovered against them on the statute of hue and cry. 39 Eliz. c. 25.

**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; et verba intentioni, non e contra, debent inservire.** 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]; and words must be subject to the intention, not the intention to the words. *Co. Litt.* 36 a; *Broom*, Max. 540, 565, 645; 11 Q. B. 852, 856, 868, 870; 4 H. L. Cas. 556; 2 Bla. Com. 379; 1 Bulstr. 175; *Krider v. Lafferty*, 1 Whart. (Pa.) 315.

**Benignior sententia in verbis generalibus seu dubiis, est præferenda.** The more favorable construction is to be placed on general or doubtful expressions. 4 Co. 15; *Dig.* 50, 17, 192, 1; 2 Kent 557.

**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. It therefore is distinguishable from "devise," which is properly used of realty. *Stubbs v. Abel*, 114 Or. 610, 233 P. 852, 857; *Dantzler v. Riley*, 109 S. C. 44, 95 S. E. 132; *In re Lewis' Estate*, 39 Nev. 445, 159 P. 961, 963, 4 A. L. R. 241.

But if the context clearly shows the intention of the testator to use the word "bequeath" 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 P. 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; *Mockler v. Long*, 5 N. J. Misc. 937, 139 A. 47, 49; *In re Gracey's Estate*, 200 Cal. 482, 253 P. 921, 925; *Stubbs v. Abel*, 114 Or. 610, 233 P. 852, 859.

**BEQUEST.** A gift by will of personal property; a legacy. *In re Fratt's Estate*, 60 Mont. 526, 199 P. 711, 714; *Irwin v. Gavitt* (C. C. A.) 295 F. 84, 86; *Hobbs v. Brenneman*, 94 W. Va. 320, 118 S. E. 546, 549; *Plitt v. Yakel*, 129 Md. 464, 99 A. 669, 670.

The term does not mean a "gift" in the narrow sense of a voluntary act of charity or good will, but ordinarily means a testamentary disposition of the testator's personalty. *First Presbyterian Church of Mt. Vernon v. Dennis*, 178 Iowa, 1352, 161 N. W. 183, 185, L. R. A. 1917C, 1005. It is not necessarily limited to a gratuity, and may include a recompense. *Ream v. Bowers* (D. C.) 14 F.(2d) 993, 994; *U. S. v. Merriam*, 44 S. Ct. 69, 70, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

"Bequest" and "devise" are often used synonymously. *In re McGovern's Estate*, 77 Mont. 182, 250 P. 812, 817; *Neblett v. Smith*, 142 Va. 840, 128 S. E. 247, 251; *Brittain v. Farrington*, 318 Ill. 474, 149 N. E. 436, 489.

#### Conditional Bequest

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*, 3 Conn. 261, 2 A. 325, 5 A. 682; *Merrill v. College*, 74 Wis. 415, 43 N. W. 104.

#### Executory Bequest

The bequest of a future, deferred, or contingent interest in personalty.

#### Residuary Bequest

A gift of all the remainder of the testator's personal estate, after payment of debts and legacies, etc.

#### Specific Bequest

One whereby the testator gives to the legatee all his property of a certain class or kind; as all his pure personalty.

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

**BERCARIUS, or BERCATOR.** 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.

**BERGHMAYSTER.** 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 "barmote," (*q. v.*)

**BERM BANK.** A ledge at the bottom of a cutting or bank, as of a creek, to catch earth that may roll down the slope, or to strengthen the bank. *Miller v. State*, 164 App. Div. 522, 149 N. Y. S. 788, 789.

**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 (*q. v.*), 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 *uncia*, 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.



**BESIDES.** In addition to; moreover; also; likewise. *State v. State Road Commission*, 100 W. Va. 531, 131 S. E. 7, 10.

In provisions in a will for children "besides" an eldest son, no children take unless there be a son. 4 Dr. & War. 235.

**BESOT.** To stupefy, to make dull or senseless, to make to dote; and "to dote" is to be delirious, silly, or insane. *Gates v. Meredith*, 7 Ind. 440, 441.

**BESS.** A well-known contraction of "Elizabeth." *H. R. & C. Co. v. Smith*, 212 App. Div. 173, 208 N. Y. S. 396, 400.

**BESSEMERIZING.** A process by which copper relatively pure is obtained from matte. *Peirce-Smith Converter Co. v. United Verde Copper Co. (D. C.)* 293 F. 108, 109; *United Verde Copper Co. v. Peirce-Smith Converter Co. (C. C. A.)* 7 F.(2d) 13.

**BEST.** Of the highest quality; of the greatest usefulness for the purpose intended. For example:

The "best bid" of interest by a prospective depository of school funds would not necessarily be the highest bid, but, looking to the solvency of the bidder, the bond tendered, and all the circumstances surrounding the transaction, the safety and preservation of the school fund, the "best bid" might be the lowest bid. *Donna Independent School Dist. v. First State Bank of Donna (Tex. Civ. App.)* 227 S. W. 974, 975.

Where one covenants to use his "best endeavors," there is no breach if he is prevented by causes wholly beyond his control and without any default on his part. 7 H. & N. 92.

The "best interests" of a child whose custody is in question has reference more particularly to the moral welfare than to mere comforts, benefits, or advantages that wealth can give. *Jones v. Moore*, 61 Utah, 383, 213 P. 191, 194. Similarly, under a testamentary trust to promote the best interests of sewing girls, the words "best interests" include not only the relief of poverty and distress, but may comprehend whatever aids to their welfare and advancement, and enables them to establish themselves in life. *Bowditch v. Attorney General*, 241 Mass. 163, 134 N. E. 796, 800, 28 A.L.R. 713. The "best interests" of an estate mean the greatest or most advantage or usefulness to such estate. *Stockyards Nat. Bank of South Omaha v. Bragg*, 67 Utah, 60, 245 P. 966, 971.

A contract to erect a building of the "best lumber" means the best lumber of which buildings are ordinarily constructed at that place. *McIntire v. Barnes*, 4 Col. 285. But a contract for future delivery of the "best marketable corn" requires delivery of the best grade of corn generally or usually dealt with in the markets of the country, and not merely in the markets in the immediate vicinity where delivery was to be made. *Yontz v. McVean*, 202 Mo. App. 377, 217 S. W. 1000, 1002.

**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, not the highest or strongest evidence which the nature of the

thing to be proved admits of. A written instrument is itself always regarded as the primary or best possible evidence of its existence 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. 786, 6 C. C. A. 121; *Manhattan Malting Co. v. Sweteland*, 14 Mont. 269, 36 P. 84.

"Best evidence" or "primary evidence" includes the best evidence which is available to a party and procurable under the existing situation, and all evidence falling short of such standard, and which in its nature suggests there is better evidence of the same fact, is "secondary evidence." *Best v. Equitable Life Assur. Soc. (Mo. App.)* 299 S. W. 118, 120.

The best evidence of a fact is the testimony of a person who knows. *State v. Normandale*, 154 La. 523, 97 So. 798, 799 (mother could testify to the date of her daughter's birth, as against an objection that the baptismal certificate or the registry was the best evidence).

**BESTIALITY.** A sexual connection between a human being and a brute of the opposite sex.

Both bestiality and sodomy may be embraced by the term "crime against nature," as felony embraces murder, larceny, etc., though the term "crime against nature" (*q. v.*) is perhaps 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. See Sodomy.

**BESTOW.** To give, grant, confer, or impart; not necessarily limited in meaning to "devise." *Tillett v. Nixon*, 180 N. C. 195, 104 S. E. 352, 355.

**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. A contract with a merchant for holding a trade-increasing contest for prizes, whereby the contest promoter agreed that, if a certain per cent. of the year's sales did not amount to the face of the note given by the merchant, he would pay the deficiency in cash, did not amount to a "bet" or "wager," within the prohibition of St. 1917, § 4538 (St. 1931, § 348.16). *Steven v. Freund*, 169 Wis. 68, 171 N. W. 300, 301.

The wager of money or property on an incident by which one or both parties stand to win or lose by chance. *Gilbert v. Berkheiser*, 157 Minn. 491, 196 N. W. 653; *Commonwealth v. Sullivan*, 218 Mass. 281, 105 N. E.

895, Ann. Cas. 1916B, 98; *Carpenter v. Beal-McDonnell & Co.* (D. C.) 222 F. 453, 460.

In a "bet" or "wager" money belongs to the persons posting it, each of whom has a chance to win it, but, in the case of a "purse" or "premium," money belongs to the person offering it, who has no chance to win it, but is certain to lose it. *Toomey v. Penwell*, 76 Mont. 166, 245 P. 943, 945, 45 A. L. R. 993 (horse race, run for a reward offered by fair association, held not a gambling transaction).

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. (Va.) 660.

**BETTING BOOK.** A book kept for registering bets on the result of a race as operated on race track. In a broader sense, the "betting book" is that book which enables the professional bettor to carry on his business, and to promote a race, and it includes the book, the making book and the bookmaker. *State v. Austin*, 142 La. 384, 76 So. 809, 810.

**BETRAYAL.** A "betrayal," as of a professional secret on the part of a physician, signifies a wrongful disclosure in violation of the trust imposed by the patient. *Simonsen v. Swenson*, 104 Neb. 224, 177 N. W. 831, 832, 9 A. L. R. 1250.

**BETROTHED.** One who has exchanged promises to marry. The term may be synonymous with "intended wife." *Mace v. Grand Lodge*, A. O. U. W. of Massachusetts, 234 Mass. 299, 125 N. E. 569.

**BETROTHMENT, BETROTHAL.** 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 DESCRIBED.** More fully delineated or more fully pictured or painted. *Katzin v. Kruvant*, 99 N. J. Eq. 619, 133 A. 516, 517.

**BETTER EQUITY.** See Equity.

**BETTERMENT.** An improvement put upon an estate which enhances its value more than mere repairs. The improvement may be either temporary or permanent. *People v. Klee*, 282 Ill. 440, 118 N. E. 754, 757. 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. *Union St. Ry. v. City of New Bedford*, 253 Mass. 304, 149 N. E. 42, 44; *French v. New York*, 16 How. Prac. (N. Y.) 220; *Abell v. Brady*, 79 Md. 94, 28 A. 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 F. 336, 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; *Louisville & N. R. Co. v. Loyd*, 186 Ala. 119, 65 So. 153, 158. But see *Morris & E. R. Co. v. Central R. Co.*, 31 N. J. Law, 212. Similarly, a franchise to a street railway, requiring it to pave the space between the rails, did not require it to pave between double tracks nor to the ends of the ties. *Village of Grandville v. Grand Rapids, H. & C. R. R.*, 225 Mich. 587, 196 N. W. 351, 354, 36 A. L. R. 1464.

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; *Fry v. Hoffman*, 54 Ind. App. 434, 102 N. E. 167, 168; *Hodges v. Filstrup*, 94 Fla. 943, 114 So. 521, 522. But a clause in a contract of sale to the effect that the purchaser could require the vendor to repurchase between the fifth and sixth year from a certain date means during the sixth year. *Van Demark v. California Home Extension Ass'n*, 43 Cal. App. 685, 185 P. 866, 868.

"Between" properly indicates division in halves, and refers to two, and not more. *Branch v. De Wolf*, 38 R. I. 395, 95 A. 857, 861; *Roelfs' Cousins v. White*, 75 Or. 549, 147 P. 753, 754; *Rowley v. Currie*, 94 N. J. Eq. 606, 120 A. 653, 655. It is said, however, that such meaning is not commonly observed in ordinary writing and speech, *Rogers v. Smith*, 145 Ga. 234, 88 S. E. 963, 964, and the term may be equivalent to "among." This is often true in cases involving wills. In *re Mays' Estate*, 197 Mo. App. 555, 196 S. W. 1039, 1040; *Courtenay v. Courtenay*, 138 Md. 204, 113 A. 717, 718; In *re Fisk's Estate*, 182 Cal. 238, 187 P. 958.

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

**Between equal equities the law must prevail.** This is hardly of general application.

**BEVERAGE.** A liquor or liquid for drinking. *Commonwealth v. Sookey*, 236 Mass. 448, 128 N. E. 788, 11 A. L. R. 1230; *State v. McMa-*

hon (Iowa) 211 N. W. 409, 410. Especially pleasant or refreshing drink, or a habitual one. *Tennant v. F. C. Whitney & Sons*, 133 Wash. 581, 234 P. 666, 670. 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; *Falstaff Corporation v. Allen* (D. C.) 278 F. 643, 645; or from a liquid which it is possible to swallow, but which is not reasonably palatable or fit for drinking, *Tennant v. F. C. Whitney & Sons*, supra. Thus, it is held that pure alcohol is not a "beverage" but a violent irritant. *Chas. L. Joy & Co. v. Carlson*, 28 Idaho, 445, 154 P. 640, 641. And the mere fact that a person, in order to gratify an inordinate appetite for intoxicants, may drink poisonous or noxious compounds or mixtures containing alcohol is not evidence that they are capable of being used as a "beverage," *Simms v. State*, 29 Okl. Cr. 172, 233 P. 494, 495.

This term sometimes has a narrower meaning signifying a drink artificially prepared. *Climax Dairy Co. v. Mulder*, 78 Colo. 407, 242 P. 666, 669.

**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. *Pancoast'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 Admr.*, 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' Admr v. Foot's Admr.*, 2 McCord (S. C.) 231, 13 Am. Dec. 732; *Wakefield v. Smart*, 8 Ark. 483; *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; *Commonwealth Tobacco Co. v. Alliance Ins. Co.*, 238 Mass. 514, 131 N. E. 213, 214. "Bias" as applied to competency of jurors, is synonymous with partiality. *Smith v. Allbright* (Tex. Civ. App.) 279 S. W. 852, 855.

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; *Littrell v. State*, 22 Okl. Cr. 1, 209 P. 184, 186. "Prejudice" imports the formation of a fixed anticipatory judgment as contradistinguished from those opinions which may yield to evidence. *Temples v. Central of Georgia Ry. Co.*, 15 Ga. App. 115, 82 S. E. 777, 780.

*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. *Crawford & Moses' Dig.* (Ark.) § 3159; *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 P. 718.

As to the bias of judges, see *Saunders v. Piggly Wiggly Corporation* (D. C.) 1 F.(2d) 582, 584; *State v. Waterman*, 210 P. 208, 210, 36 Idaho, 259.

**BIBLE.** See Family Bible.

**BICAMERAL SYSTEM.** A term applied by Jeremy Bentham to the division of a legislative body into two chambers, as in the United States government.

**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 F. 59; *Payne v. Cave*, 3 Term, 149; *Eppes v. Railroad Co.*, 35 Ala. 56. See *Chilling a sale*.

An offer to perform a contract for work and labor or supplying materials at a specified price.

Similarly, an offer to do any of various other acts, as the payment by a bank of a particular rate of interest for the privilege of becoming a depositary of county funds. *Casey v. Independence County*, 109 Ark. 11, 159 S. W. 24, 25, Ann. Cas. 1915C, 1008. A "bid" for bonds is no more nor less than a proposition. *Joint School Dist. No. 132 in Major County*

and Alfalfa County v. Dabney, 127 Okl. 234, 260 P. 486, 491.

—**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 makes a bid. One who offers to pay a specified price for an article offered for sale at a public auction. *Webster v. French*, 11 Ill. 254. As to “Responsible bidder” see that title.

—**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.

—**Competitive bidding.** “Competitive bidding” means that the council must by due advertisement give opportunity for everyone to bid, but does not mean that more than one bid must be submitted. *Blanton v. Town of Wallins*, 218 Ky. 295, 291 S. W. 372, 375. The term means bidding upon the same undertaking, upon the same material items in the subject-matter, upon the same thing. *Leininger v. Ward*, 126 Okl. 114, 258 P. 863, 864.

—**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 “housewarming,” *i. e.*, a visit of friends to a person beginning to set up housekeeping. *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 P. 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. *Castle v. Castle* (C. C. A.) 267 F. 521, 523.

**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.

Used in ecclesiastical matters as a reason for denying benefit of the clergy. *Termes de la Ley*.

**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; *Allen v. State*, 17 Ga. App. 431, 87 S. E. 681, 682; *People v. Manfredonio*, 191 N. Y. S. 748, 117 Misc. 632, 39 N. Y. Cr. R. 41.

The state of a man who has two wives, or of a woman who has two husbands, living at the same time. *State v. Lindsey*, 26 N. M. 526, 194 P. 877.

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 criticized 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.

A contract executory on both sides, *National Surety Co. v. City of Atlanta*, 102 S. E. 175, 176, 24 Ga. App. 732, and one which includes both rights and duties on each side, *Crane Ice Cream Co. v. Terminal Freezing & Heating Co.*, 128 A. 280, 282, 147 Md. 588, 39 A. L. R. 1184.

**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 lingue*." 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 statement 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, interdict, 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 Brev. (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 advocation.** 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; Fidelity & Deposit Co. of Maryland v. Manatee County, 83 So. 268, 269, 78 Fla. 470; Buessel v. United States (C. C. A.) 258 F. 811, 815. It is designed to preserve and make a part of the record proceedings not otherwise of record. Yott v. Yott, 100 N. E. 902, 903, 257 Ill. 419; Hinton Milling Co. v. New River Milling Co., 88 S. E. 1079, 1082, 78 W. Va. 314. It is only that part of the proceedings not embraced in the judgment roll. Nave v. Central Life Ins., 238 P. 424, 113 Okl. 76. When the ends of justice require it, the terms "bill of exceptions" and "statement of case" are regarded as synonymous. Bell v. Fee Title Co., 231 P. 598, 599, 69 Cal. App. 437.

"Bill of exceptions" and "transcripts of evidence," however, are clearly distinguishable. The latter may contain no objection or exception, and nothing other than the evidence introduced on the trial; the former is, strictly speaking, only a record which points out alleged errors committed below in relation to evidence as well as other things. Broadway & Newport Bridge Co. v. Commonwealth, 190 S. W. 715, 719, 173 Ky. 165.

**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 injunc-

tion 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. 528.

—**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 in nature of interpleader.** See Bill of Interpleader.

—**Bill of conformity.** One filed 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 F. 253; State

v. Savings Co., 28 Or. 410, 43 P. 162; Campbell v. Knight, 92 Fla. 246, 109 So. 577, 579.

—**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 A. 400; Wakeman v. Kingsland, 46 N. J. Eq. 113, 18 A. 680; Gibson v. Goldthwaite, 7 Ala. 281, 42 Am. Dec. 592; Lowry v. Downing Mfg. Co., 74 So. 525, 526, 73 Fla. 535; Republic Casualty Co. v. Fischmann, 134 A. 179, 180, 99 N. J. Eq. 758.

The only distinction between a "bill of interpleader" and a bill in the nature of interpleader is that in the latter the plaintiff may claim an interest, while in the former he cannot. Winemiller v. Stewart, 257 P. 288, 289, 125 Okl. 230.

—**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. Chicago Auditorium Ass'n v. Cramer (D. C.) 8 F.(2d) 998, 1004; Smith v. Cretors, 164 N. W. 338, 340, 181 Iowa 189; 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 review.** One which is brought to have a decree of the court reviewed, corrected, or reversed. Dodge v. Northrop, 48 N. W. 505, 85 Mich. 243. It is in the nature of a writ of error. Rubin v. Midlinsky, 158 N. E. 395, 327 Ill. 89.

The object of a "bill of review" and of a bill in nature of a bill of review in the old chancery practice was to procure a reversal, modification, or explanation of a decree in a former suit. Barz v. Sawyer, 141 N. W. 319, 321, 159 Iowa, 481.

A "bill of review," or a bill in the nature of a

bill of review, are of three classes; those for error appearing on the face of the record, those for newly discovered evidence, and those for fraud impeaching the original transaction. *Moore v. Shook*, 114 N. E. 592, 593, 276 Ill. 47. Such bills are peculiar to courts of equity at common law. *Satterwhite v. State*, 231 S. W. 886, 887, 149 Ark. 147.

—**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 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; *Chicago Auditorium Ass'n v. Cramer* (D. C.) 8 F.(2d) 998, 1005.

—**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 quiet possession and title.** Also called a bill to remove a cloud on title (q. v.), and though sometimes classed with bills *quia timet* or for the cancellation of void instruments, they may be resorted to in other cases when the complainant's title is clear and there is a cloud to be removed; *Mellen v. Iron Works*, 131 U. S. 352, 9 Sup. Ct. 781, 33 L. Ed. 178; *Emig v. Frank P. Miller Corporation*, 214 N. W. 144, 145, 238 Mich. 695; *Johnston v. Kramer Bros. & Co.* (D. C.) 203

F. 733, 742; *Alberts v. Steiner*, 211 N. W. 46, 48, 237 Mich. 143; *Maguire v. City of Macomb*, 127 N. E. 682, 686, 293 Ill. 441.

—**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.

—**Class bill.** A taxpayer's bill to enjoin a borough from borrowing money for street improvements is essentially a "class bill," and can be filed only by the common consent of all the taxpayers of the borough. *Schlanger v. Borough of West Berwick*, 104 A. 764, 261 Pa. 605.

—**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; *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 notice, it is called a "cross" or "counter" bill or note. See, generally, *Lovett v. Lovett*, 93 Fla. 611, 112 So. 768, 777; *Lovell v. Latham & Co.* (D. C.) 211 F. 374, 378; *Atlanta Northern Ry. Co. v. Harris*, 93 S. E. 210, 212, 147 Ga. 214; *Smith v. Weeks*, 147 N. E. 676, 678, 252 Mass. 244; *McDowell v. Hunt Contracting Co.*, 181 S. W. 680, 681, 133 Tenn. 437; *Magruder v. Hattiesburg Trust & Banking Co.*, 67 So. 485, 488, 108 Miss. 857; *Brundage v. Knox*, 117 N. E. 123, 132, 279 Ill. 450; *Landon v. Public Utilities Commission of Kansas* (D. C.) 234 F. 152, 167.

—**Supplemental bill.** A bill to bring before the court matters arising after the filing of the original bill or not then known to complainant. *Puget Sound Power & Light Co. v. City of Seattle* (C. C. A.) 5 F.(2d) 393, mod (D. C.) 300 F. 441, 443. See **Bill in nature of a supplemental bill.**



### 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. *Hubbard v. Lowe* (D. C.) 226 F. 135, 137. The word "bill" may mean the bill as it is first introduced in one of the houses of the legislature, or it may refer to it at any time in any of its stages until finally passed. *People v. Brady*, 105 N. E. 1, 4, 262 Ill. 578. An *act* is the appropriate term for it, after it has been acted on by, and passed by, the legislature. *Herbring v. Brown*, 180 P. 328, 330, 92 Or. 176; *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 A. 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.** One dealing only with a matter of private personal or local interest. *Lowell, Gov. of Eng.* 266. 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.** See *Private*.

—**Private member's bill.** One of a public nature introduced by a private member;—distinguished from a private bill, which is one dealing only with a matter of private personal or local interest. *Lowell, Gov. of Eng.* 266.

### 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. 284; *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. See *Bill penal*. *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." Bonds with conditions have superseded such bills in modern practice. They are sometimes called bills obligatory, and are properly so called; but every bill obligatory is not a bill penal. *Comyns, Dig. Obligations, D*; *Cro. Car.* 515. See 2 *Ventr.* 106, 198.

—**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.

A "bill single" under seal of the obligor was technically distinct from a promissory note, although identical in form, so that a declaration on one was not supported by proof of the other; but this law of variance has been abrogated by Code 1907, § 4963, declaring that the validity and negotiable character of an instrument are not affected by the fact that it bears a seal. *Long v. Gwin*, 80 So. 440, 441, 202 Ala. 353.

### 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.

Accounts for goods sold, services rendered, or work done. *Newman v. San Antonio Trac-tion Co.* (Tex. Civ. App.) 155 S. W. 688, 690.

As used in a lease providing that all "bills" of whatever nature should be chargeable against lessee, taxes were not necessarily included in term "bills" which would more appropriately include assessments for street and sidewalk improvements. *McClure Realty & Investment Co. v. Eubanks*, 129 S. E. 669, 34 Ga. App. 391.

As a verb, as generally and customarily used in commercial transactions, "bill" is synonymous with "charge" or "invoice." *George M. Jones Co. v. Canadian Nat. R. Co.* (D. C.) 14 F.(2d) 852, 855.

—**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. 596, 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. See Civil Code Cal. § 2126a; *Aman v. Dover & Southbound R. Co.*, 102 S. E. 392, 393, 179 N. C. 310; *Hines v. Scott*, 248 S. W. 663, 664, 112 Tex. 506; *Swift v. Davis*, 193 N. Y. S. 848, 849, 118 Misc. 205; *L. L. Cohen & Co. v. Davis*, 142 N. E. 75, 77, 247 Mass. 259; *Omaha Elevator Co. v. Chicago, B. & Q. R. Co.*, 178 N. W. 211, 213, 104 Neb. 566; *Bank of Taiwan v. Union Nat. Bank of Philadelphia* (C. C. A.) 1 F.(2d) 65, 67; *Wichita Falls Motor Co. v. Kerr S. S. Co.*, 107 So. 777, 778, 160 La. 992; *Rudin v. King-Richardson Co.*, 143 N. E. 198, 201, 311 Ill. 513.

A *clean* bill of lading is one which contains nothing in the margin qualifying the words in the bill of lading itself. 61 Law T. 330; *Creery v. Holly*, 14 Wend. (N. Y.) 26; *Sayward v. Stevens*, 3 Gray (Mass.) 97; *The Governor Carey*, 2 Hask. 487, Fed. Cas. No. 5,645a; *The Sarnia* (C. C. A.) 278 F. 459, certiorari denied *Sarnia S. S. Co. v. De Vas-*

*concellos*, 258 U. S. 625, 42 S. Ct. 382, 66 L. Ed. 797.

An *order* bill of lading is one in which it is stated that goods are consigned to order of any person named therein. *Atlantic Coast Line R. Co. v. Roe*, 91 Fla. 762, 109 So. 205, 207. See, also, *F. L. Shaw Co. v. Coleman* (Tex. Civ. App.) 236 S. W. 178, 180.

A *straight* bill of lading is one in which it is stated that goods are consigned to a specified person. *Atlantic Coast Line R. Co. v. Roe*, 91 Fla. 762, 109 So. 205, 207.

A *through* bill of lading is one by which a railroad contracts to transport over its own line for a certain distance carloads of merchandise or stock, there to deliver the same to its connecting lines to be transported to the place of destination at a fixed rate per carload for the whole distance. *Gulf, C. & S. F. R. Co. v. Vaughn*, 4 Willson, Ct. App. Tex. § 182, 16 S. W. 775.

—**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, formerly limited to one under seal, by which one person assigns or transfers his right to or interest in goods and personal chattels to another. *Hull v. Ray*, 80 Cal. App. 284, 251 P. 810, 812; *Manufacturers' Finance Co. v. Boyd*, 122 S. E. 496, 497, 128 S. C. 339; *Shemwell v. People*, 161 P. 157, 160, 62 Colo. 146. A "bill of sale" of personal property intended as security for a debt has been held not to be a mortgage. *Cogan v. Ward*, 102 N. E. 336, 338, 215 Mass. 13 (under recording statute). But see *Perdue v. Griffin*, 122 S. E. 713, 32 Ga. App. 100. An instrument by which, in particular, the property in ships and vessels is conveyed. *Putnam v. McDonald*, 72 Vt. 4, 47 A. 159; *Young v. Stone*, 61 App. Div. 364, 70 N. Y. S. 558. See Grand bill of sale, *infra*.

—**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. See *West Virginia Pulp & Paper Co. v. Karnes*, 120 S. E. 321, 322, 137 Va. 714.

—**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 ren-

dered," 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 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.

—**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.

An unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or a fixed or determinable future time a sum certain in money to order or to bearer. *Clayton Town-Site Co. v. Clayton Drug Co.*, 147 P. 460, 20 N. M. 185; *Smythe v. Sanders*, 101 So. 435, 436, 136 Misc. 382; Code Ga. 1926, § 4294 (126). Sometimes called a "trade acceptance." *Jones v. Revere Preserving Co.*, 142 N. E. 70, 71, 247 Mass. 225.

—**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. See, also, Inland bill of exchange, *infra*.

—**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.

—**Inland bill of exchange.** One of which the drawer and drawee are residents of the same state or country. *Miller v. American Gold Mining Co.*, 3 Alaska, 1. See Domestic bill of exchange, *supra*.

#### 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 accountable 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 appeal.** An ancient, but now abolished, method of criminal prosecution. See Battel.

—**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. See Presentment.

## 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. It is designed to aid the defendant in interposing the proper answer and in preparing for trial, by giving him detailed information regarding the cause of action stated in the complaint. Wetmore v. Goodwin Film & Camera Co. (D. C.) 226 F. 352, 353; Forbes v. Benson (R. I.) 103 A. 228; Cuthbert v. Rodger, 222 N. Y. S. 109, 110, 129 Misc. 584. It is neither a pleading nor proof of the facts therein con-

tained, Nilson v. Ebey Land Co., 155 P. 1036, 90 Wash. 295, and is not for the purpose of discovering evidence, nor to find what plaintiff knows, but what he claims, Inter-mountain Ass'n of Credit Men v. Milwaukee Mechanics' Ins. Co., 44 Idaho 491, 258 P. 362, 363. A bill of particulars is not designed to uphold an insufficient indictment, but to give accused fair notice of what he is called on to defend. Clary v. Commonwealth, 173 S. W. 171, 173, 163 Ky. 48.

## 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.

**BILL OF MORTALITY.** A written statement or account of the number of deaths which have occurred in a certain district within a given time.

**BILLA.** L. Lat. A bill; an original bill.

**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.

**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.

**BILLBOARD.** An erection annexed to the land in the nature of a fence for the purpose of posting advertising bills and posters. Randall v. Atlanta Advertising Service, 125 S. E. 462, 463, 159 Ga. 217; Cochrane v. McDermott Advertising Agency, 60 So. 421, 422, 6 Ala. App. 121. Billboards come within the purview of a deed forbidding use of lot for business purposes. Starck v. Foley, 272 S. W. 890, 209 Ky. 332, 41 A. L. R. 756.

**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.

**BILLIARD TABLES.** This term includes "pool tables" as used in statutes, since "pool tables" are billiard tables with pockets. *Town of Eros v. Powell*, 137 La. 342, 68 So. 632, 635; *Village of Atwood v. Otter*, 296 Ill. 70, 129 N. E. 573, 578.

**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 A. 583. In a deed describing the lands conveyed as "binding the lands" of another, the term quoted was equivalent to the call for another tract. *Bachelor v. Norris*, 166 N. C. 506, 82 S. E. 839, 840.

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

**BINDER.** The memorandum of an agreement for insurance, intended to give temporary protection pending investigation of the risk and issuance of a formal policy, *Lea v. Atlantic Fire Ins. Co.*, 168 N. C. 478, 84 S. E. 813, 815; *Brown v. North River Ins. Co. of New York*, 144 La. 504, 80 So. 674, 678. A verbal contract of insurance in presenti, of which the insurance agent makes a memorandum, temporary in its nature, *Norwich Union Fire Ins. Society v. Dalton* (Tex. Civ. App.) 175 S. W. 459, 460; thus constituting a short method of issuing a temporary policy to continue until execution of the formal one, *Sherri v. National Surety Co.*, 153 N. E. 70, 71, 243 N. Y. 266.

A "binder" as used in marine insurance is an application for insurance made on behalf of the proposed insured and approved by the insurer or his agent. *Muller v. Globe & Rutgers Fire Ins. Co. of City of New York* (C. C. A.) 246 F. 759, 760.

**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.

**BINDING RECEIPT OR SLIP.** A "binding receipt" or "binding slip" is a limited acceptance of an application for insurance given by an authorized agent pending the ascertainment of the company's willingness to assume the burden of the proposed risk, the effect of which is to protect the applicant until the company acts upon the application, and, if it declines to accept the burden, the binding effect of the slip ceases eo instante. *Hallauer v. Fire Ass'n of Philadelphia*, 83 W. Va. 401, 98 S. E. 441, 443; *Lea v. Atlantic Fire Ins. Co.*, 168 N. C. 478, 84 S. E. 813, 815. See *Binder*.

**BINOCULAR VISION.** The vision of the two eyes acting together, used in determining depth, width, distance, and comparative placing of different objects; distinguished from "field vision," meaning the general vision used in catching in sight, and following and locating objects. *Turpin v. St. Regis Paper Co.*, 199 App. Div. 64, 192 N. Y. S. 85, 87; *Gigleo v. Dorfman & Kimiavsky*, 106 Conn. 401, 138 A. 448, 450.

**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 dat qui cito dat.* He pays twice who pays promptly.

*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 (also BESAILE, BESAYEL, BESAIEL, BESAYLE).** 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.

**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.

**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.

**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.

By statute 21 Hen. III., the 28th and 29th of February count together as one day. This statute is in force in some of the United States. *Porter v. Holloway*, 43 Ind. 35; *Harker v. Addis*, 4 Pa. 515.

**BITCH.** A female dog, wolf or fox. An opprobrious name for a woman. *State v. Harwell*, 129 N. C. 550, 40 S. E. 48. It has been held, however, that when applied to a woman, it does not, in its common acceptation, import whoredom in any of its forms, and therefore is not slanderous, *Schurick v. Kollman*, 50 Ind. 336; and that it does not amount to a charge of a crime or want of chastity, *Sturdivant v. Duke*, 155 Ky. 100, 159 S. W. 621, 48 L. R. A. (N. S.) 615.

**BITULITHIC.** Designating a kind of paving the main body of which consists of broken stone cemented together with bitumen or asphalt. *Washburn v. Board of Com'rs of Shawnee County*, 103 Kan. 169, 172 P. 997, 998. Bituminous macadam means bitulithic pavement. *Washburn v. Board of Com'rs of Shawnee County*, 103 Kan. 169, 172 P. 997, 998. See Bitumen.

**BITUMEN.** Mineral pitch; black, tarry substance used in cements, in construction of pavements, etc., and by extension, the term includes any one of natural hydrocarbons, including hard, solid, brittle varieties called asphalt, semi-solid maltha and mineral tars, oily petroleums, and light volatile naphthas. *Western Willite Co. v. Trinidad Asphalt Mfg. Co.* (C. C. A.) 16 F.(2d) 446, 448.

**BITUMINOUS COAL.** Bituminous coal is much less hard than anthracite; it is dusty and dirty and is commonly termed "soft coal." Bituminous coal burns with more or less smoke while anthracite coal burns with practically no smoke. As the fuel ratio of bituminous coal rises the coal is more soft; as the

fuel ratio of anthracite coal rises the coal is more hard. *Commonwealth v. Hudson Coal Co.*, 287 Pa. 64, 134 A. 413, 414. See Anthracite coal.

**BITUMINOUS MACADAM.** Bitulithic pavement. *Washburn v. Board of Com'rs of Shawnee County*, 103 Kan. 169, 172 P. 997, 998. See Bitulithic.

**BLACK ACRE and WHITE ACRE.** Fictitious names used by the old writers to distinguish one parcel of land from another, to avoid ambiguity, as well as the inconvenience of a fuller description.

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

**BLACK MAT CABARETTA.** A cross between a goatskin and a skin of some other animal. *J. H. Stockamore Leather Co. v. Duane Shoe Co.*, 195 App. Div. 947, 187 N. Y. S. 258.

**BLACK PERSON.** "Black person," occurring in Constitution and laws, must be taken in its generic sense as contradistinguished from white. *Rice v. Gong Lum*, 139 Miss. 760, 104 So. 105, 109.

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

**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. During the session of Parliament he attends on the peers, summons the Commons to the House of Lords; and to his custody all peers impeached for any crime or contempt are first committed.

**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.

In a later case it has been thought that "blackleg" ordinarily means a swindler, but does not mean a "scab" or strike breaker, and that its use may be libelous per se. *United Mine Workers of America v. Cromer*, 159 Ky. 605, 167 S. W. 891, 892.

**BLACKLIST.** 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 "blacklists" 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. Quoted and relied on in *Dick v. Northern Pac. Ry. Co.*, 86 Wash. 211, 150 P. 8, 12, Ann. Cas. 1917A, 638, holding that this word is a generic term having no such well-defined meaning in law as to make its use in a pleading a definite charge of any specific misconduct against a person so charged. And see *Cleary v. Great Northern Ry. Co.*, 147 Minn. 403, 180 N. W. 545, 546; *Masters v. Lee*, 39 Neb. 574, 58 N. W. 222; *Mattison v. Railway Co.*, 2 Ohio N. P. 279.

**BLACKMAIL.** In one of its original meanings, this term denoted a tribute paid by English dwellers along the Scottish border to in-

fluential chieftains of Scotland, as a condition of securing immunity from raids of marauders and border thieves.

Also, rents payable in cattle, grain, work, and the like. Such rents were called "blackmail," (*reditus nigri*), in distinction from white rents, (*blanche firmes*), which were rents paid in silver. See *Black rents*.

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.) 234, 17 Abb. Prac. 221; *Life Ass'n v. Boogher*, 3 Mo. App. 173; *Hess v. Sparks*, 44 Kan. 465, 24 P. 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 F. 424; *In re Mills*, 104 Wash. 278, 176 P. 556, 562. "Blackmail" has a broader meaning than the New York statutory crime of blackmail, and denotes extortion in any mode by means of intimidation, as the extortion of money by threats of accusation or exposure, or of unfavorable criticism in the press. *Guenther v. Ridgway Co.*, 156 N. Y. S. 534, 535, 170 App. Div. 725.

**BLACKSMITH SHOP.** A place to which the people of a community resort for the purpose of having machinery and tools repaired and iron work done. *State v. Shumaker*, 103 Kan. 741, 175 P. 978, 979.

**BLADA.** In old English law. Growing crops of grain of any kind. *Spelman*. All manner of annual grain. *Cowell*. Harvested grain. *Bract*. 217b; *Reg. Orig.* 94b, 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.** In tariff acts: A heavy cover for a bed or a horse, with a thick, soft nap on both sides. *Riley & Co. v. U. S.*, 8 Ct. Cust. App. 116, 118.

**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 A. 738.

**BLANKS.** A kind of white money, (value 8d.,) 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.

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 offense of blasphemy under Rev. St. c. 126, § 30 (Rev. St. 1930, ch. 135, § 34), may be committed either by using profanely insolent and reproachful language against God, or by contumeliously reproaching Him, His creation, government, final judgment of the world, Jesus Christ, the Holy Ghost, or the Holy Scriptures as contained in the canonical books of the Old and New Testament, or by exposing any of these enumerated Beings or Scriptures to contempt and ridicule. *State v. Mockus*, 120 Me. 84, 113 A. 39, 42, 14 A. L. R. 871.

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.

**BLASTING.** A mode of rending rock and other solid substances by means of explosives.

**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.** The condition of one who is deprived of the faculty of seeing.

A voter is not "blind" within the meaning of Ky. St. § 1475, authorizing clerk to mark ballot for blind person, if he has left his spectacles at home, but a



person so devoid of sight that he cannot see pencil mark made by clerk is "blind." *Smith v. Jones*, 239 S. W. 170, 171, 221 Ky. 546. One who by accident lost all vision except enough to enable him to recognize a form without distinguishing its outlines is "blind" within the Workmen's Compensation Act. *Industrial Commission of Colorado v. Johnson*, 172 P. 422, 423, 64 Colo. 461. For other cases, see *Total*.

**BLIND CAR.** On railroads, one on which there is neither steps nor platform at the ends. *Helm v. Hines*, 109 Kan. 48, 196 P. 426.

**BLIND CORNER.** One where the building extends to the property line. *Mobile Light & R. Co. v. Gadik*, 211 Ala. 582, 100 So. 837, 838.

**BLIND NAILING.** "Blind nailing," in a contract relating to the interior finish of a house, means driving the nails in with a nail set, and concealing them with putty and paint. *Sterling Engineering and Construction Co. v. Berg*, 161 Wis. 280, 152 N. W. 851, 852.

**BLIND TIGER.** A place where intoxicants are sold on the sly, and contrary to the law. *Town of Ruston v. Fountain*, 118 La. 53, 42 So. 644; *City of Shreveport v. Maroun*, 134 La. 490, 64 So. 388, 389. Defined by statute in Louisiana as any place in those subdivisions of the state, where prohibition obtains, in which liquor is kept for sale, exchange, or habitual giving away in connection with any business conducted at such place. *City of Shreveport v. Knowles*, 136 La. 770, 67 So. 824, 825. A "tippling-house." *Calhoun v. Bell*, 136 La. 149, 66 So. 761, 762, *Ann. Cas.* 1916D, 1165.

It is no defense to a proceeding brought under Georgia statutes to abate and enjoin a "blind tiger" as a nuisance, that the sale of spirituous, malt, or intoxicating liquor was in open violation of law. *Thompson v. H. H. Simmons & Co.*, 78 S. E. 419, 139 Ga. 845.

**BLIND WAGON.** A "blind wagon," such as one used for moving furniture and the like, is one without the name or address of the owner of it thereon. *Mike Berniger Moving Co. v. O'Brien* (Mo. App.) 240 S. W. 481, 483.

**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 So. 597; *Todd v. Railroad Co.*, 78 Ill. 530; *Harrison v. People*, 195 Ill. 466, 63 N. E. 191; *City of Mobile v. Chapman*, 202 Ala. 194, 79 So. 566, 571; *Commerce Trust Co. v. Blakeley*, 274 Mo. 52, 202 S. W. 402, 404. The platted portion of a city surrounded by streets. *Cravens v. Putnam*, 101 Kan. 161, 165 P. 801, 802. The term need not, however, be limited to blocks platted as such, but may mean an area bounded on all sides by streets or avenues. *St.*

*Louis-San Francisco R. Co. v. City of Tulsa*, Okl. (C. C. A.) 15 F.(2d) 960, 963; *Commerce Trust Co. v. Keck*, 283 Mo. 209, 223 S. W. 1057, 1061 (irregular parallelograms). Yet two blocks each, bounded by a street, do not necessarily, when thrown together by the vacation of a street, constitute a single block to be included as such within an assessment district. *Missouri, K. & T. Ry. Co. v. City of Tulsa*, 45 Okl. 382, 145 P. 398, 401.

"Block" is often synonymous with "square." *Weeks v. Hetland*, 52 N. D. 351, 202 N. W. 807, 812, 813. As a measure of length, "block" denotes the length of one side of such a square. *Skolnick v. Orth*, 84 Misc. 71, 145 N. Y. S. 961, 962. Sometimes it means both sides of a street measured from one intersecting street to the next. *Chamberlain v. Roberts*, 81 Colo. 23, 253 P. 27. And on occasion it may be construed not to extend between two streets that completely cross the street in question, but to stop at a street running into it though not across it. *Wise v. City of Chicago*, 183 Ill. App. 215, 216.

Under a statute providing that territory sought to be excluded from a new county must be in one block, the word "block" implies the thought of solidity or compactness, and the territory sought to be excluded must be in some regular and compact form. *State v. Moulton*, 57 Mont. 414, 189 P. 59, 61.

**BLOCK-HOLER.** One who follows up the miner to blast or throw down large rocks left in the process of mining in a "stope." *Mesich v. Tamarack Mining Co.*, 184 Mich. 363, 151 N. W. 564, 566.

**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 A. 710; *Ferguson v. Bloom*, 144 Pa. 549, 23 A. 49.

**BLOCK TO BLOCK RULE.** The "block to block rule" for assessing the benefits for the opening of a new street is, the assessment against the lots in each block of the cost of acquiring the lands in that block. *In re St. Raymona Ave. in City of New York*, 162 N. Y. S. 185, 188, 175 App. Div. 518.

**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. 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.

#### Pacific Blockade

A means of coercion short of war, usually adopted by the joint action of several nations. An instance of it occurred when Great Britain and Germany united to prevent the slave traffic and stop the importation of arms on the east coast of Africa. *Snow*, Int. Law 79. In 1827 Greece was blockaded by France, Russia, and Great Britain; in 1850 the Greek ports were blockaded by Great Britain, and again in 1855 by the combined fleets of the five Great Powers. In 1887 the Institute of International Law unanimously declared in favor of the legality of pacific blockade, subject to certain conditions. See 21 L. Mag. & Rev. 285; 2 *Oppen*. §§ 40-49.

#### 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.

**BLOCKHEAD.** A term importing want of natural cleverness, and slowness and obstinacy of mind. The business of keeping a restaurant is not such that the restaurant keeper is presumptively damaged in his business reputation by having this term applied to him. *Block v. Gehring Pub. Co.*, 180 N. Y. S. 194, 195.

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

mon ancestor. One person is "of the blood" of another when they are related by lineal descent or collateral kinship. Quoted with approval in *Howe v. Howe*, 94 Kan. 67, 145 P. 873, 874. And see *Allen v. Peddler*, 119 Kan. 773, 241 P. 696, 697; *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. A person may be said to be "of the blood" of another who has any, however small a portion, of the blood derived from a common ancestor, *Miller v. Grimes*, 262 Pa. 226, 105 A. 92, thus including half blood as well as whole blood, *Gardner's Estate v. Gardner*, 42 Utah, 40, 129 P. 360, 361. All persons are of the blood of an ancestor who may, in the absence of other and nearer heirs, take by descent from that ancestor. *Cornell v. Child*, 170 App. Div. 240, 156 N. Y. S. 449, 452.

#### 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; *U. S. v. First Nat. Bank of Detroit, Minn.*, 234 U. S. 245, 34 S. Ct. 846, 848, 58 L. Ed. 1298.

#### 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 FEUD.** Avenging the slaughter of kin on the person who slaughtered him, or on his belongings. Whether the Teutonic or the Anglo-Saxon law had a legal right of blood feud has been disputed, but in Alfred's day it was unlawful to begin a feud until an attempt had been made to exact the price of the life (*weregild, q. v.*).

**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*.

**BLOODHOUNDS.** Dogs remarkable for their sense of smell and ability to follow a scent or track a human being. It has been held that to permit evidence that a hound has tracked an alleged criminal, it must be shown that it

had been trained in that work; *Pedigo v. Com.*, 103 Ky. 41, 44 S. W. 143, 42 L. R. A. 432, 82 Am. St. Rep. 566.

**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.

**BLOWING WATER.** "Blowing water" by a ship is throwing water in the hold back and forth and forcing it through crevices in the ceiling and coming in contact with the cargo. *The Charles Rohde* (D. C.) 8 F.(2d) 506.

**BLUDGEON.** Part of a boy's baseball bat, the upper end of which had been broken off, has been held to be a bludgeon within a statute relating to the carrying of any concealed instrument. *People v. McPherson*, 115 N. E. 515, 516, 220 N. Y. 123. Contra as to an iron bar, twenty inches long and three-eighths to one-half inch in diameter. *People v. Visarities*, 222 N. Y. S. 401, 403, 220 App. Div. 657.

**BLUE.** As applied to a cow, generally denoting either a modified shade of black, or black with white intermingled, or dark gray, dove, or slate color, which, in contrast with some decided color or with white, suggests and somewhat resembles blue. *Graham v. State*, 84 S. E. 981, 983, 16 Ga. App. 221.

**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.*

**BLUE NOTES.** Notes accepted by a life insurance company for the amount of premiums on the policy, which provide for the continuance of the policy in force until the due date of the notes. *Robnett v. Cotton States Life Ins. Co.*, 230 S. W. 257, 258, 148 Ark. 199.

**BLUE SKY LAW.** A popular name for acts providing for the regulation and supervision of investment companies, for the protection of the community from investing in fraudulent companies. A law intended to stop the sale of stock in fly by night concerns, visionary oil wells, distant gold mines, and other like

fraudulent exploitations. *Brock v. Hines*, 223 P. 654, 656, 97 Okl. 147; *Dinsmore v. National Hardwood Co.*, 208 N. W. 701, 234 Mich. 436.

**BLUFF.** A high, steep bank, as by a river, the sea, a ravine, or a plain, or a bank or headland with a broad, steep face. *Columbia City Land Co. v. Ruhl*, 141 P. 208, 210, 70 Or. 246.

**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.

When used with reference to prisoners, as a basis for the sheriff's fee, board may be equivalent to "necessary food." *Pacific Coal Co. v. Silver Bow County*, 256 P. 386, 79 Mont. 323.

"Board," as a verb, means to receive food for a reasonable compensation, either with or without lodging. In *re Doubleday*, 159 N. Y. S. 947, 949, 173 App. Div. 739; *Wofford v. Hooper*, 259 S. W. 549, 149 Tenn. 250; *State v. Drummond*, 160 S. W. 1082, 1083, 128 Tenn. 271; *Castleberry v. Tyler Commercial College* (Tex. Civ. App.) 217 S. W. 1112 (business college students required to "board" in approved homes must take lodging as well as food).

To "board" a train may mean simply to "enter" it. *St. Louis, I. M. & S. Ry. Co. v. Williams*, 175 S. W. 411, 412, 117 Ark. 329.

**BOARD MEASURE.** This term, in a contract of sale of lumber for a specified price per thousand feet, literally implies a measurement of lumber having the dimensions of length, width, and thickness, according to the number of cubic inches; but it may be subject to explanation according to the particular circumstances. *Paepcke-Leicht Lumber Co. v. Talley*, 106 Ark. 400, 153 S. W. 833, 836.

**BOARD OF ALDERMEN.** The governing body of a municipal corporation. *State v. Waterman*, 111 A. 623, 624, 95 Conn. 414; *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 (G. L. 70).

**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 ordinances, 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 REVIEW.** A "board of review" is not an assessing body, but is a quasi judicial body whose duty it is to hear evidence tending to show errors in an assessment roll, and to decide on such evidence whether the assessor's valuation is correct. *State v. Williams*, 160 Wis. 648, 152 N. W. 450, 451.

**BOARD OF SPECIAL INQUIRY.** An instrument of executive power, not a court, made up of the immigrant officials in the service, subordinates of the commissioner of immigration, whose duties are declared to be administrative. Its decisions are not binding upon

the Secretary of Commerce. *Pearson v. Williams*, 202 U. S. 281, 26 S. Ct. 608, 50 L. Ed. 1029.

**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. Compare *Semple School for Girls v. Yielding*, 16 Ala. App. 584, 80 So. 153, 161. See *Board*.

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; In re *Doubleday*, 173 App. Div. 739, 159 N. Y. S. 947, 949.

**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; *State v. McRae*, 170 N. C. 712, 86 S. E. 1039; *Friedrich Music House v. Harris*, 200 Mich. 421, 166 N. W. 869, L. R. A. 1918D, 400.

The distinction between a "boarding-house" and a private dwelling house is whether the house is occupied as a home for the occupant and his wife and child, or whether he occupied it as a place for carrying on the business of keeping boarders, although while prosecuting the business and as a means of prosecuting it, he and his wife and children live in the house also. Neither the size of the house nor the number of the boarders is of importance except as evidence that may have weight in determining which is the principal use for which the building is occupied. *Trainor v. Le Beck*, 101 N. J. Eq. 823, 139 A. 16, 17.

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; *McClagherty v. Cline*, 128 Tenn. 605, 163 S. W. 801.

The distinction between a boarding-house and an inn or hotel 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 E. D. Smith (N. Y.) 148; *McIntosh v. Schops*, 92 Or. 307, 180 P. 593. A "boarding-house" is also less public in character. *State v. Brown*, 112 Kan. 814, 212 P. 663, 664, 31 A. L. R. 338. See, also, *Talbott v. Southern Seminary*, 131 Va. 576, 109 S. E. 440, 19 A. L. R. 534. A "rooming house" differs from a "boarding-house" only in that the latter furnishes meals. *City of Independence v. Richardson*, 232 P. 1044, 1046, 117 Kan. 656. A boarding school, however, is not a boarding-house within a lien statute. *Talbott v. Southern Seminary*, 131 Va. 576, 109 S. E. 440, 441, 19 A. L. R. 534.

**BOAT.** A small open vessel, or water craft, 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; *The Saxon* (D. C.) 269 F. 639, 641. But "boat" and "vessel" are often used synonymously. *R. R. Ricou & Sons Co. v. Fairbanks, Morse & Co.* (C. C. A.) 11 F.(2d) 103, 104; *Southern Pac. Co. v. Jensen*, 244 U. S. 205, 37 S. Ct. 524, 527, 61 L. Ed. 1086, L. R. A. 1918C, 451, Ann. Cas. 1917E, 900. And see *State v. Hutchins*, 79 N. H. 132, 105 A. 519, 521, 2 A. L. R. 1685 ("boats and rafts" held broad enough to cover all water craft, not merely small rowboats).

**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. Mather*, 68 Vt. 338, 35 A. 323, 33 L. R. A. 569. A "boatable stream" is one of common passage as a highway. *Boutwell v. Champlain Realty Co.*, 89 Vt. 80, 94 A. 108, 111, Ann. Cas. 1918A, 726.

**BOBTAILED CABOOSE.** One with a door in the front end and without any platform. *St. Louis Southwestern Ry. Co. of Texas v. Johnson* (Tex. Civ. App.) 249 S. W. 1092.

**BOC.** In Saxon law. A book or writing; a deed or charter. *Boc land*, deed or charter land. *Land boc*, a writing for conveying land; a deed or charter; a land-book. The *land-bocs*, or evidences of title, corresponding to modern deeds, were destroyed by William the Conqueror.

**BOC HORDE.** A place where books, writings, or evidences were kept, generally in monasteries. 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. But under a health insurance policy the words "bodily disease or illness" have been held to embrace insanity. *American Nat. Ins. Co. v. Denman* (Tex. Civ. App.) 260 S. W. 226, 227.

—**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. See Great bodily harm, *infra*.

—**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; *Righter 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. 228; *State Life Ins. Co. v. Allison* (C. C. A.) 269 F. 93, 94, 14 A. L. R. 412; *Ross v. International Travelers Ass'n* (Tex. Civ. App.) 283 S. W. 621. A "bodily injury" to a wife, for which she and her husband may recover, does not include the husband's financial loss or loss of consortium. *Williams v. Nelson*, 228 Mass. 191, 117 N. E. 189, 191, Ann. Cas. 1918D, 538.

—**Great bodily harm.** These words usually imply an injury of a greater and more serious

kind than battery. *Shires v. Boggess*, 72 W. Va. 109, 77 S. E. 542, 545. They have been held equivalent to "maim." *State v. Foster*, 281 Mo. 618, 220 S. W. 958, 959.

—Great bodily injury. An injury to the person of a more grave and serious character than an ordinary battery, but one which cannot be definitely defined. *State v. Ockij*, 165 Iowa, 237, 145 N. W. 486, 487; *Hallett v. State*, 109 Neb. 311, 190 N. W. 862, 863.

**BODMERIE, BODEMERIE, BODDEMEREY.** 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.

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. The term may, however, embrace all members of the person, *Louisville Ry. Co. v. Veith*, 163 S. W. 217, 157 Ky. 424; including the head, *Franklin v. State*, 33 Ohio Cir. Ct. R. 21, 22.

Also the main part of an 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.

A collection of laws; that is, the embodiment of the laws in one connected statement or collection, called a "body of laws" (*q. v.*).

**BODY CORPORATE.** A corporation. An early and correct term to apply to a corporation. *Co. Litt.* 250 *a.*

**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. 968.

**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.** The collective body of a nation or state as politically organized or as exercising political functions. *People v. Snyder*, 117 N. E. 119, 122, 279 Ill. 435.

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 individ-

ual corporate character. *Munn v. Illinois*, 94 U. S. 124, 24 L. Ed. 77; *Coyle v. McIntire*, 7 Houst. (Del.) 44, 30 Atl. 728, 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.

**BOILER.** Insurance policies defining a boiler as a receptacle in which steam is generated, including the stop valve nearest the boiler, have been held not to include a nipple screwed into the outlet of the stop valve, *Cambria Coal Mining Co. v. Travelers' Indemnity Co.*, 234 S. W. 323, 324, 144 Tenn. 469; nor the whistle pipe above the whistle valve, *Norfolk & W. Ry. Co. v. Royal Indemnity Co.* (D. C.) 257 F. 849, 850; nor damage by gas explosion in fire box and chimney, *Hartford Steam Boiler Inspection & Insurance Co. v. Kleinman* (Tex. Civ. App.) 293 S. W. 894, 895.

Under the Boiler Inspection Act Feb. 17, 1911, § 2 (45 USCA § 23), a locomotive cab is an appurtenance to the boiler, *Brown v. Lehigh Valley R. Co.*, 177 N. Y. S. 618, 619, 108 Misc. 384; and a bell ringer is a part or appurtenance of a locomotive and tender, *Hines v. Smith* (C. C. A.) 275 F. 766, 767; but not a so-called trail car similar to a flat car, used exclusively in switching cars or trains onto a transfer boat, for the purpose of preventing the great weight of the locomotive from being placed on the apron or approaches of the transfer boat, *Alabama & V. Ry. Co. v. Ware*, 92 So. 161, 162, 129 Miss. 315.

**BOILS.** A policy, providing for the payment of indemnity in the event the insured suffered from "boils," is clear and explicit, and does not cover disability occasioned by a disease designated as "ischio-rectal abscess." *Midland Casualty Co. v. Mason*, 154 P. 1171, 1172, 55 Okl. 93.

**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.*

A mass or block of wood from which anything may be cut or formed. *St. Louis, I. M. & S. R. Co. v. J. F. Hasty & Sons*, 41 S. Ct. 269, 270, 255 U. S. 252, 65 L. Ed. 614.

**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. 337.

**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 (q. v.)*. In the common law, its use was confined to the description 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 catala.** 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 immobilia.** Lands. *Castle v. Castle* (C. C. A.) 267 F. 521, 522.

—**Bona mobilia.** In the civil law. Movables. *Castle v. Castle* (C. C. A.) 267 F. 521, 522. 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. This value has varied at different periods, but was

finally established at £5, in 1608. 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, 59 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. 303.

—**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 belonged, under the common law, to the finder, except in certain instances, when they were the property of the king. 1 Bl. Comm. 298.

—**Bona waviata.** In English law. Waived goods; goods stolen and *waved*, 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 *sana mentis et bone memorie*, 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. *M. Lowenstein & Sons v. British-American Mfg. Co.* (C. C. A.) 7 F.(2d) 51, 53; *Fairfield Holding Corporation v. Souther*, 155 N. E. 639, 640, 258 Mass. 540.

Truly; actually; without simulation or pretense.

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

See *Bonæ fidei*.

The phrase "*bona fide*" is sometimes used ambiguously; thus, the expression "*bona fide* holder for value" (see that title, *infra*) 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 holder for value.** An innocent or "bona fide holder for value" of negotiable paper is one who has taken it in good faith for a valuable consideration in the ordinary course of business and when it was not overdue. *McCament v. McCament* (Tex. Civ. App.) 187 S. W. 1096, 1099. Negotiable Instruments Act, § 52, in using the term "holder in due course," used it as equivalent for the expression "bona fide holder for value without notice," and the act does not change the common-law rule as to who is a bona fide holder, except, perhaps, by eliminating the requirement that the transfer must be in the regular course of business. *Drumm Const. Co. v. Forbes*, 137 N. E. 225, 226, 305 Ill. 303, 26 A. L. R. 764; *Bank of California v. National City Co.*, 244 P. 690, 691, 138 Wash. 517; *Bruce v. Citizens' Nat. Bank of Linville*, 64 So. 82, 84, 185 Ala. 221; *Weller v. Meadows* (Mo. App.) 272 S. W. 85, 90.

—**Bona fide judgment creditor.** One who in good faith, without fraud or collusion, recovers a judgment for money honestly due him. *Rochester Trust Co. v. White*, 90 A. 127, 129, 243 Pa. 469.

—**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; *Beam v. Farmers' & Merchants' Bank*, 249 P. 325, 326, 121 Okl. 164; *Moore v. De Bernardi*, 220 P. 544, 547, 47 Nev. 33; *Mayes v. Thompson*, 91 So. 275, 276, 128 Miss. 561; *Miller v. Vanicek*, 184 N. W. 132, 133, 106 Neb. 661; *Richlands Brick Corp. v. Hurst Hardware Co.*, 92 S. E. 685, 80 W. Va. 476; *Gleaton v. Wright*, 100 S. E. 72, 73, 149 Ga. 220.

**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.* 333, note; *Perine v. Dunn*, 4 Johns. Ch. (N. Y.) 143.

**BONÆ FIDEI.** In the civil law. Of good faith; in good faith.

**BONÆ 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.

**BONÆ 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.

**BONÆ 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.

**Bonæ fidei possessor in id tantum quod sese pervenerit tenetur.** A possessor in good faith is liable only for that which he himself has obtained (or that which has come to him). 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 acknowledgment 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. *Code Miss.* 1930, § 1365.

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. And see *Stifel Estate Co. v. Cella*, 220 Mo. App. 657, 291 S. W. 515, 518.

There is no distinction between a "recognizance" and a "bond"; a "recognizance" being an acknowledgment of record of a pre-existing debt owing by the cognizors to the state as principal. *State v. Price*, 129 P. 940, 941, 88 Kan. 724. And an "undertaking," unlike a "bond," need not be signed by the principal. *Fleischner v. Florey*, 111 Or. 35, 224 P. 831, 832.

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 or evidences of indebtedness issued by individuals, partnerships, public and private corporations, municipalities, and governments, as security for the repayment of money loaned to them. *First State Bank of Kansas City v. Bone*, 122 Kan. 493, 252 P. 250, 254. 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.

But it has been held that certificates of indebtedness issued by a drainage district are not "bonds" in a technical sense because not payable by taxation in the strict sense of that term. *Jackson v. Breeland*, 103 S. C. 184, 88 S. E. 123, 130. Similarly, securities issued by a corporation, which were payable only out of the assets of the corporation after its other obligations were paid, though designated as "bonds," were more like preferred stock. In re *Collier's Estate*, 182 N. Y. S. 93, 94, 112 Misc. 70; In re *Fechheimer Fishel Co.*, 212 F. 357, 360, 129 C. C. A. 33. See, also, *State v. Pasco Reclamation Co.*, 90 Wash. 606, 156 P. 834, 835, holding that a "warrant" of a municipality is a general order, payable when the funds are found, which lacks the stable quality of a definite time of payment peculiar to a "bond" or note. Accord: *Marshall v. State*, 88 Fla. 329, 102 So. 650, 651.

#### In Old Scotch Law

A bond-man; a slave. *Skene*.

#### In General

—**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. An agreement by the owner of land to convey in the event the obligee shall comply with certain terms on his part. In re *Phoenix Planing Mill* (D. C.) 250 F. 899, 903. It is not a conveyance of legal title but only a contract to convey and may ripen into an equitable title upon payment of the consideration. *Faddell v. Taylor* (Tex. Com. App.) 239 S. W. 931, 932.

—**Bond tenants.** In English law. Copyholders and customary tenants are sometimes so called. 2 Bl. Comm. 148.

—**Claim bond.** "Claim bond" is primarily in nature of forthcoming bond, and liability can be predicated thereon when court adjudges failure of claimant in trial of right of property to establish his right to it. *Sanders v. Farrier* (Tex. Civ. App.) 271 S. W. 293, 298.

—**Forthcoming bond.** A bond conditioned that a certain article shall be forthcoming at a certain time or when called for. See *Claim bond*.

—**General mortgage bond.** A bond secured upon an entire corporate property, parts of which are subject to one or more prior mortgages.

—**Heritable bond.** In Scotch law, a bond for a sum of money to which is joined a conveyance of land or of heritage, to be held by the creditor in security of the debt.

—**Income bonds.** Bonds of a corporation the interest of which is payable only when earned and after payment of interest upon prior mortgages.

—**Lloyd's bond.** A bond issued for work done or goods delivered and bearing interest. This was a device of an English barrister named Lloyd, by which railway and other companies did, in fact, increase their indebtedness without technically violating their charter provisions prohibiting the increase of debt.

—**Municipal bond.** See *Municipal bonds*.

—**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.

—**Railroad aid bonds.** Bonds issued by municipal corporations to aid in the construction of railways.

—**Redelivery bond.** A statutory bond given by a person in whose possession attached property is found in order to regain possession of the property; it provides that the property or its appraised value in money shall be forthcoming to answer the judgment

of the court. *Burnham-Munger-Root Dry Goods Co. v. Strahl*, 166 N. W. 266, 102 Neb. 142.

—**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.

—**Straw bond.** A bond upon which is used either the names of fictitious persons or those unable to pay the sum guaranteed; generally applied to insufficient bail bonds, improperly taken, and designated by the term "straw bail."

**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, villeinage, villein tenure. 2 Bl. Comm. 92.

A term which has not obtained a juridical use distinct from the vernacular, in which it is either taken as a synonym with *slavery*, or as applicable to any kind of personal servitude which is involuntary in its continuation.

**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. *Haberstich v. Eliott*, 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 judicis 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; Broom, Max. 79, 80, 82; 9 M. & W. 818; 1 C. B. N. S. 255; 4 Bingham, N. C. 233; 4 Scott N. R. 229.

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

**Boni judicis 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 judicis 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.

**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 F. 148, 51 C. C. A. 100.

**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.

**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 Quiritarian 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 premium paid to a grantor or vendor.

An extra consideration given for what is received. Something given in addition to what is ordinarily received by, or strictly due, the recipient. *Jones v. Webb*, 195 Cal. 83, 231 P. 560, 561; *Hopper v. Brodie*, 134 Md. 290, 106 A. 700, 704.

Any premium or advantage; an occasion-

al extra dividend. An allowance in addition to what is stipulated. *Scott v. J. F. Duthie & Co.*, 125 Wash. 470, 216 P. 853, 28 A. L. R. 328. A "bonus" offered to employees is not a gift or gratuity, but an offer on the part of the employer in order to procure efficient and faithful service. *Roberts v. Mays Mills*, 114 S. E. 530, 532, 184 N. C. 406, 28 A. L. R. 333; *Johnson v. Fuller & Johnson Mfg. Co.*, 183 Wis. 68, 197 N. W. 241, 245; *Duffy Bros. v. Bing & Bing*, 217 App. Div. 10, 215 N. Y. S. 755, 758.

A premium paid by a company for a charter or other franchises; in such case it is clearly distinguished from a tax; *Baltimore & O. R. Co. v. Maryland*, 21 Wall. 456, 22 L. Ed. 678; *Com. v. Transp. Co.*, 107 Pa. 112.

"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, 471, 21 L. Ed. 319. Followed in *Payne v. U. S.*, 269 F. 871, 873, 50 App. D. C. 219.

But the word "bonus" may in its natural import imply a gift or gratuity. *California Trona Co. v. Wilkinson*, 20 Cal. App. 694, 130 P. 190, 194; *Carson v. Olcott*, 105 Or. 259, 209 P. 610, 611.

No distinction may be made between a soldier's "bonus" given for past service and a "pension," the one being a reward for past military services payable at once, and the other such a reward payable in installments. *People v. Westchester County Nat. Bank of Peekskill*, 231 N. Y. 465, 132 N. E. 241, 243, 15 A. L. R. 1344.

**BONUS STOCK.** Technically, stock issued to the purchasers of bonds as an inducement to them to purchase bonds or loan money. *California Trona Co. v. Wilkinson*, 20 Cal. App. 694, 130 P. 190, 194.

**Bonus judex 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.

**BOODLE.** Usually applied to designate the money held to be paid or paid as a bribe for corrupt official action. *Byrnes v. Mathews*, 12 N. Y. St. Rep. 74, 83; *Boehmer v. Detroit Free Press Co.*, 94 Mich. 7, 9, 53 N. W. 822, 823, 34 Am. St. Rep. 318.

**BOODLING.** In the slang of the day, corrupt legislative practices and corrupt influences affecting legislation. *Julian v. Kansas City Starr*, 209 Mo. 35, 107 S. W. 496, 501.

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

A manuscript may, under some circumstances, be regarded as a "book"; *In re Beecher's Estate*, 17 Pa. C. C. R. 161; 3 L. J. Ch. 105.

A bound volume consisting of sheets of paper, not printed, but containing manuscript entries; such as a merchant's account-books, dockets of courts, etc.

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

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; *M. Witmark & Sons v. Standard Music Roll Co.*, 221 F. 376, 380, 137 C. C. A. 184.

See Bookmaking.

**—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. Ankrum, Tapp. (Ohio)* 40; *Wright v. Loaiza*, 171 P. 311, 177 Cal. 605.

**—Book debt.** In Pennsylvania practice. The act of 28th March, 1835, § 2 (12 PS § 761), 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. *Navarre v. Honea*, 139 P. 310, 313, 40 Okl. 480; *United Grocery Co. v. J. M. Dannelly & Son*, 77 S. E. 706, 93 S. C. 580, Ann. Cas. 1914D, 489; *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. But see *Cassil v. Carter*, 223 P. 685, 686, 98 Okl. 49. Workmen's slips for repairs done on automobiles, although not bound in book form, are admissible as books of original entry. *H. W. Emeny Auto Co. v. Neiderhauser*, 157 N. W. 143, 144, 175 Iowa 219.

—**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.

—**Book value.** The value of the stock as shown by the assets and liabilities as carried on the books. *Lane v. Barnard*, 173 N. Y. S. 714, 716, 185 App. Div. 754. The "book value" of the capital stock of a banking corporation is reached by extending all the assets as they appear on the corporate books, and deducting all the liabilities and other matters required to be deducted, and taking the balance as a measure of value. The books are all of the books of the bank and are not merely the ledger. *Elhard v. Rott*, 162 N. W. 302, 36 N. D. 221; *Gurley v. Woodbury*, 97 S. E. 754, 756, 177 N. C. 70.

—**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.

Generally, words "documents" and "papers" refer to particular instruments and writings bearing upon specific transactions, whereas "books of accounts" and "records" have reference to serial, continuous, and more permanent memorials of concern's business and affairs. *Cudahy Packing Co. v. U. S. (C. C. A.)* 15 F.(2d) 133, 136. Pad slips, cash register items, and adding machine slips, however, when pinned together and preserved, satisfied a provision of an insurance policy requiring the keeping of books, though they were not technically "books

of account." *Home Ins. Co. v. Flewellen* (Tex. Civ. App.) 221 S. W. 630, 631.

—**Books of corporations.** Under a statute giving stockholders right of inspection and examination, "books, records, and papers" of corporations are used interchangeably; books including records, records including books, and each including contracts or other documents. *Birmingham News v. State*, 93 So. 25, 26, 207 Ala. 440.

—**Office book.** See Office.

—**Reference books.** Books to refer to, a reference library being defined as a library for public reference, where the books are not allowed to be taken out or put in. *State v. Innes*, 130 P. 677, 679, 89 Kan. 168.

**BOOKED.** Engaged, destined, bound to promise or pledge oneself to make an engagement. *Mente & Co. v. Heller*, 123 A. 755, 756, 99 N. J. Law, 475.

**BOOKING CONTRACT.** In theatrical usage, a contract made by agents who procure contracts for appearance of acts and actors in theaters. *Hart v. B. F. Keith Vaudeville Exchange (C. C. A.)* 12 F.(2d) 341, 342, 47 A. L. R. 775.

**BOOKMAKING.** Originally, the collection of sheets of paper or other substances on which entries could be made, either written or printed. *People ex rel. Lichtenstein v. Langan*, 89 N. E. 921, 922, 196 N. Y. 260, 25 L. R. A. (N. S.) 479, 17 Ann. Cas. 1081.

The term now commonly denotes the recording or registering of bets or wagers on any trial or contest of speed or power of endurance of man or beast, or selling pools. *Murphy v. Board of Police (N. Y.)* 11 Abb. (N. C.) 337, 338, 63 How. Prac. 396, 399; *New York v. Bennett (C. C.)* 113 Fed. 515, 516. Specifically, "bookmaking" is a species of betting on horse races. *Ex parte Hernan*, 77 S. W. 225, 226, 45 Tex. Cr. R. 343; *Ullman v. St. Louis Fair Ass'n*, 66 S. W. 949, 951, 167 Mo. 273. It is called "bookmaking" because the bets are booked or a record kept of them in a book. *Spies v. Rosenstock*, 39 Atl. 268, 269, 87 Md. 14. Hence, a blackboard on which the names of horses and the terms were written, and numbered tickets issued to betters, did not constitute a book. *State v. Oldham*, 98 S. W. 497, 503, 200 Mo. 538. But compare *People v. Solomon*, 160 N. Y. S. 942, 944, 174 App. Div. 144.

**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. Spars or logs and chains or other fixtures used to keep

them in place, extending wholly or partly across a body of water to obstruct floating objects. *Rollins v. Clay*, 33 Me. 132, 138.

**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. Whislaw.

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

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

**BOOTLEGGER.** A seller of whisky. *Medlock v. State*, 185 S. W. 566, 568, 79 Tex. Cr. R. 322. One engaged in the unlawful sale of intoxicating liquor. *Johnson v. Commonwealth*, 222 S. W. 106, 111, 188 Ky. 391; *Hathaway v. Benton*, 154 N. W. 474, 476, 172 Iowa, 299; *State v. Goforth*, 216 P. 882, 883, 126 Wash. 56. A person who sells intoxicating liquors on the sly, not from a particular business location, but carrying his wares in his bootleg, in his pockets, or keeping them in some fitting hole-in-the-wall of easy access to himself and hard of discovery to officers of law. *Knothe v. State*, 115 Neb. 119, 211 N. W. 619, 621; *Scriven v. City of Lebanon*, 162 P. 307, 309, 99 Kan. 602, L. R. A. 1917C, 460.

**BOOTLEGGING.** A popular designation for the use, possession, or transportation of liquor in violation of the law, *Commonwealth v. Cicere*, 128 A. 446, 448, 282 Pa. 492, importing the peddling and illegal sales of intoxicating liquor, *Lamar v. State*, 130 N. E. 114, 190 Ind. 235.

**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.

**BOOZE.** Intoxicating liquor. *Tennant v. F. C. Whitney & Sons*, 234 P. 666, 669, 133 Wash. 581.

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

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

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

**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.

**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. A detailed statement of account; a summary of an instrument.

**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.

**BORLLODE.** 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. *floccus*), 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 given.

**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.

**BORN.** It is now settled that a child *en ventre sa mère*, for all purposes for his own benefit, is considered as absolutely born. *Swift v. Duffield*, 5 Serg. & R. (Pa.) 40; *Merrill v. Winchester*, 113 A. 261, 264, 120 Me. 203. If an infant is born dead or at such an early stage of pregnancy as to be unable to live, it is to be considered as never born. *Marsellis v. Thalhimer*, 2 Paige, Ch. (N. Y.) 35.

**BORN ALIVE.** Where child, although it never cried, breathed and its heart beat some minutes, it was "born alive." *Sanford v. Getman*, 206 N. Y. S. 865, 124 Misc. 80. A child never heard to cry, but whose heart beats could be heard, though no respiration could be induced, was "born alive." In re Union Trust Co., 151 N. Y. S. 246, 253, 89 Misc. 69.

## 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 its more modern English acceptation, "borough" denotes a town or city organized for purposes of government.

It is impossible to reconcile the meanings of this word given by the various authors cited, except upon the supposition of a change of requirements necessary to constitute a borough at different periods. Many causes, in no two cases quite alike, went to make up the peculiar community which the 13th Century recognized as a borough.

### 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 and New Jersey. *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.

A "borough," within Const. Cal. art. 11, § 8, authorizing the division of a city into boroughs, is one of the units composing a territorial fraction of a city, and having certain powers with reference to local concerns. *Croze v. City of Los Angeles*, 167 P. 386, 387, 175 Cal. 774.

### In General

—**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.

The custom is said by Blackstone to have been derived from the Saxons, and to have been so called in distinction from the Norman rule of descent; 2 Bla. Comm. 83.

—**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." *Carter-Mullaly Transfer Co. v. Angell* (Tex. Civ. App.) 181 S. W. 237, 238. 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, 23 L. Ed. 204.

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

borrow 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. 88, 12 N. W. 812; *Railroad Co. v. Stichter*, 11 Wkly. Notes Cas. (Pa.) 325. The term "borrowed" may also be used with reference to other things, such as wheat, to express the idea of receiving something from another for one's own use, to appropriate. *Finch v. McClellan*, 130 N. E. 13, 15, 77 Ind. App. 533.

The right to borrow money as applied to a municipal corporation is a power to create indebtedness and procure for its payment funds from others to be paid at a future date. *Jones v. Board of Education of Guilford County*, 117 S. E. 37, 40, 185 N. C. 303.

The word "loan" is the correlative of "borrow," the one implying the other. *U. S. v. Warn* (D. C.) 295 F. 328, 330. The terms "loan" and "borrow," however, when used in connection with the act on the part of an automobile owner in lending the machine and his chauffeur to relatives, do not imply that the owner surrenders control over the chauffeur during the period of the loan, as regards the owner's responsibility for a collision. *Hooper v. Brawner*, 129 A. 672, 677, 148 Md. 417. Compare *Henderson v. State*, 78 So. 427, 428, 75 Fla. 464, holding that an indictment alleging that defendant "did borrow" a shotgun sufficiently alleged that defendant received the shotgun into his possession.

**BORROW PIT.** A pit adjacent to a fill or embankment from which material is taken for the purpose of making the fill or constructing and maintaining the embankment. *Haynes v. Jones*, 110 N. E. 469, 470, 91 Ohio St. 197.

**BORROWE.** In old Scotch law. A pledge.

**BORROWER.** He to whom a thing is lent at his request.

Under a usury statute, the word may include one having the use of money by the forbearance of his creditor, or any person who secures the use of money in any way upon an agreed consideration exceeding 8 per cent. of the principal. *Law, Clark & Co. v. Mitchell*, 76 So. 923, 924, 200 Ala. 565.

**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; browsewood, 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, BOT.** 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. The common word to *boot* comes from this word.

*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*.

**BOTH.** This word is peculiarly appropriate to express the thought of all of two, and the word "all" indicates every one of a class, etc., though it be limited to only two. *United States v. Bachman* (D. C.) 246 F. 1009, 1011. See *All*.

**Both law and equity favor the diligent creditor.**

**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*.

**BOTTOM LAND.** The term "bottom land," as used in a contract to convey means low land formed by alluvial deposits along the river, low-lying ground, a dale, valley, or intervalle, but does not mean the bed of the river or creek. *Lexington & E. Ry. Co. v. Williams*, 209 S. W. 59, 62, 183 Ky. 343.

**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.

The contract of bottomry is usually in form a bond (termed a bottomry bond, *q. v.*), conditioned for the repayment of the money lent, with the interest agreed upon, if the ship safely accomplishes the specified voyage or completes in safety the period limited by the contract.

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.

**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 scotfree 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.** The word "bought" implies a completed transaction, a vesting of the right of

title to and possession of the property sold, *Bull v. Morrison* (Tex. Civ. App.) 241 S. W. 561, 562, and also imports a valuable consideration, *Grimes v. State*, 32 Ga. App. 541, 123 S. E. 918.

**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 A. 1063, 1070; *Avondale Mills v. Benchley Bros.*, 244 Mass. 153, 138 N. E. 586, 589.

**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; *City of St. Louis v. Breuer* (Mo. Sup.) 223 S. W. 108, 110. But "street" and "boulevard" may be interchangeable, depending on the context. *City of Fargo v. Gearey*, 33 N. D. 64, 156 N. W. 552, 555. See, also, Avenue.

A "boulevard" is a street of special width, given a parklike appearance by reserving spaces for trees, flowers, etc., and not used for heavy teaming; or one specially designed for pleasure walking or driving. *Newbold v. Brotzge*, 209 Ky. 218, 272 S. W. 755, 756; *Bouis v. City of Baltimore*, 138 Md. 284, 113 A. 852, 855; *Chaplin v. Kansas City*, 259 Mo. 479, 168 S. W. 763, 765.

**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. *U. S. v. Bengochea* (C. C. A.) 279 F. 537, 541.

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 form-



er 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.

#### Case of Boundary

A "case of boundary" within Rev. St. Tex. 1911, art. 1591 (Vernon's Rev. Civ. St. art. 1821), making judgments of the Courts of Civil Appeals conclusive, is one where the location of the boundary is the determining question of the entire case. *West Lumber Co. v. Goodrich* (Tex. Com. App.) 223 S. W. 183, 191; *Maxfield v. E. L. Sterling & Sons*, 110 Tex. 212, 217 S. W. 937.

#### Natural Boundary

Any formation or product of nature (as opposed to structures or erections 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*, 62 Kan. 363, 63 P. 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.** The external or limiting lines, either real or imaginary, of any object or space; that which limits or circumscribes. *Stone v. Waukegan* (C. C. A.) 205 F. 495, 496.

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 S. Ct. 210, 28 L. Ed. 198; *In re Hoag* (D. C.) 227 F. 478, 479.

An amount appropriated by Congress to repay the city of Memphis for the rental value of land taken for a navy yard during the Civil War is not a gift or bounty, but is in the nature of a debt. *Moyers v. City of Memphis*, 135 Tenn. 263, 186 S. W. 105, 113, Ann. Cas. 1918C, 854.

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 first 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 F. 624; *Ingram v. Colgan*, 106 Cal. 113, 38 P. 315, 23 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. See 43 USCA § 791.

—**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*.

#### 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.

One of those constituting the middle classes, who have property, but who do not belong to the class of capitalists or proletariat. *People v. Gitlow*, 234 N. Y. 132, 136 N. E. 317, 322.

**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 (also BOUWMASTER).** 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. See Carucata.

**BOVINE.** From the Latin "bos," meaning cow or bull. "Neat cattle" are animals belonging to the genus "bos," a term not embracing horses, sheep, goats, or swine. "Cattle" as generally used in the Western States means "neat cattle" straight-backed, domesticated animals of the bovine genus regardless of sex. It includes cows, bulls, and steers, but not horses, mares, geldings, colts, mules, jacks, or jennies, goats, hogs, sheep, shoats, or pigs. *State v. District Court of Fifth Judicial Dist. in and for Nye County*, 174 P. 1023, 1025, 42 Nev. 218.

**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. *Crompt. Jur.* 201.

**BOWIE KNIFE.** This term as defined by Pen. Code Tex. 1911, art. 1027 (Vernon's Ann. P. C. art. 1161), includes a knife in a scabbard with a blade nine inches long and a handle four or five inches long, described as a butcher knife. *Mireles v. State*, 192 S. W. 241, 242, 80 Tex. Cr. R. 648.

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

**BOX DOLLY.** A vehicle which has but one wheel, a wide cylindrical drum in the center of it, and is shaped like a box, the lower part of which extends down as far as the axis of the drum. *The Rosalie Mahony* (D. C.) 218 F. 695, 697.

**BOX STEP.** A part of a tread in a ledge consisting of risers and treads, which, being a passenger car step, is ordinarily termed a platform step, is sometimes known as a "box step." *Hill v. Minneapolis, St. Paul, & S. S. M. Ry. Co.*, 200 N. W. 485, 486, 160 Minn. 484.

**BOX STRAPPING.** Metal strips intended to reinforce the ends of heavy wooden packing cases to prevent them from breaking open. *Stanley Works v. Twisted Wire & Steel Co.* (C. C. A.) 256 F. 98, 99.

**BOXING OF PINE TREES.** The words "boxing of pine trees," within the meaning of an Alabama statute relating to unlawful entry upon land to box pine trees for the purpose of obtaining crude turpentine, etc., cannot be said to be equivalent to "hanging of cups upon timber." *Howard v. State*, 81 So. 345, 346, 17 Ala. App. 9.

**BOY.** A provision by a testator directing his "boys" to sell his farm and divide the proceeds among "the boys," in the absence of some other controlling factor, will be construed to refer to the male children. *Hinerman v. Hinerman*, 101 S. E. 789, 790, 85 W. Va. 349.

**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. Quoted in *Dick v. Northern Pac. Ry. Co.*, 150 P. 8, 12, 86 Wash. 211, Ann. Cas. 1917A, 633, the court saying: "We believe that, so far as the word has a fixed meaning, this definition expresses it." And see *Hailey v. Brooks* (Tex. Civ. App.) 191 S. W. 781, 783; *Hoban v. Dempsey*, 104 N. E. 717, 718, 217 Mass. 166, L. R. A. 1915A, 1217, Ann. Cas. 1915C, 810; *Steffes v. Motion Picture Mach. Operators' Union*, 161 N. W. 524, 136 Minn. 200; *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. The word "boycott" does not necessarily import illegality. *Gill Engraving Co. v. Doerr* (D. C.) 214 F. 111, 118.

A "boycott" is a combination to cause a loss to one person by coercing others to withdraw from him their business intercourse, by threats that unless the others do so, the combination will cause similar loss to them. *Hall v. Johnson*, 87 Or. 21, 169 P. 515, 516, Ann. Cas. 1918E, 49; *Clarkson v. Laiblan*, 178 Mo. App. 708, 161 S. W. 660, 663.

#### Primary Boycott

That which occurs when an organized union of employees, by concerted action, ceases dealing, either socially or in a business way, with a former employer. *Pierce v. Stablen's Union, Local No. 8760*, 103 P. 325, 327, 156 Cal. 70.

#### Secondary Boycott

A combination not merely to refrain from dealing with a person or to advise or by peaceful means persuade his customers to refrain, but to exercise coercive pressure on such customers, actual or prospective, in order to cause them to withhold or withdraw their patronage, through fear of loss or damage to themselves. *Duplex Printing Press Co. v. Deering*, 41 S. Ct. 172, 176, 254 U. S. 443, 65 L. Ed. 349, 16 A. L. R. 196; *Pierce v. Stablen's Union, Local No. 8760*, 103 Pac. 325, 156 Cal. 70. An act which, when committed in concert with others, under certain circumstances, may cause such injury to the public, or be so useless or unfair that these conditions will be decisive as to whether such act is permissible or forbidden, is a "secondary boycott," and must be held to be an unlawful interference with trade and commerce. *Justin Seubert, Inc., v. Reiff*, 164 N. Y. S. 522, 526, 98 Misc. 402. The picketing of a non-union barber shop by placing a man on the sidewalk in front of the entrance wearing a placard that the shop was unfair to organized labor was an attempted boycott, both primary and secondary, the purpose of the secondary boycott being to bring to bear a duress upon the customers of the person under attack by threatening them directly or indirectly with a boycott if they persist in trading with such a person. *Ellis v. Journeyman Barbers' International Union of America, Local Union No. 52*, 191 N. W. 111, 112, 194 Iowa, 1179, 32 A. L. R. 756.

**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. Called also *abogado*.

**BRACHIUM MARIS.** An arm of the sea.

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

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

**BRAKE.** An effective "brake" consists of two members, called the "brake pair," consisting

of the "brake shoe," which is the movable member, and the "brake drum," or the stationary member. *Davis Sewing Mach. Co. v. New Departure Mfg. Co. (C. C. A.)* 217 F. 775, 780.

**BRANCH.** An offshoot, lateral extension, or subdivision. Any member or part of a body or system; a department. *Stevens v. Board of Water Com'rs of City of Hartford*, 128 A. 713, 716, 102 Conn. 218; *Northern Indiana Land Co. v. Carlin*, 127 N. E. 197, 201, 189 Ind. 324.

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 A RIVER.** "Branch." as distinguished from a channel of a river, may have two or more separate channels; "channel" meaning primarily the bed. *United States v. Hutchings (D. C.)* 252 F. 841, 844.

**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; *Petterson 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, nor 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. And see *Miles v. Vermont Fruit Co.*, 124 A. 559, 563, 98 Vt. 1.

**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.

It is also used with reference to the marking of cattle for the purpose of identification.

**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.

**BRASS KNUCKLES** or **KNUCKS.** A weapon worn on the hand for the purposes of offense or defense, so made that in hitting with the fist considerable damage is inflicted. It is called "brass knuckles" because it was originally made of brass. The term is now used as the name of the weapon without reference to the metal of which it is made; *Patterson v. State*, 3 Lea (Tenn.) 575.

**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 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-fulfilment of an obligation, contract, or duty.

When, in anticipation of the time for performance, one definitely and specifically refuses to do something which he is obligated to do, so that it amounts to a refusal to go on with the contract. It may be treated as a breach by anticipation. *Friedman v. Katzner*, 114 A. 884, 886, 139 Md. 195. Thus, the conduct of a buyer in insisting on inspection contrary to the contract was an "anticipatory breach." *Estes v. Curtiss Aeroplane & Motor Corporation*, 182 N. Y. S. 25, 26, 191 App. Div. 719. An anticipatory breach will operate as a present breach only if accepted and acted upon by the other party, who may disregard it and await the appointed day. *Lewis v. Scoville*, 108 A. 501, 502, 94 Conn. 79; *Smith v. Georgia Loan Savings & Banking Co.*, 39 S. E. 410, 113 Ga. 975; *Byrd Printing Co. v. Whitaker Paper Co.*, 70 S. E. 798, 135 Ga. 865, Ann. Cas. 1912A, 182.

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 de-

clares, before the time comes, that he will not perform. *Jordan v. Madsen*, 69 Utah, 112, 252 P. 570, 573; *The Adamello* (D. C.) 19 F. (2d) 388, 389.

#### 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 CONTRACT.** The failure, without legal excuse, to perform any promise which forms the whole or part of a contract. *Friedman v. Katzner*, 114 A. 884, 886, 139 Md. 195.

**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. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence or arising through mere oversight or forgetfulness, is a breach of duty. *Hivick v. Hemme*, 247 P. 692, 693, 118 Okl. 167.

**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; *State v. Dean*, 126 S. E. 411, 412, 98 W. Va. 88; *State v. Mancini*, 101 A. 581, 583, 91 Vt. 507. "Breach of the peace" is a generic

term, *State v. Reichman*, 188 S. W. 225, 228, 135 Tenn. 653, Ann. Cas. 1918B, 889, and includes all violations of public peace or order and acts tending to a disturbance thereof, *City of St. Louis v. Slupsky*, 162 S. W. 155, 157, 254 Mo. 309, 49 L. R. A. (N. S.) 919; *State v. Hebert*, 246 P. 507, 508, 121 Kan. 329, 48 A. L. R. 81; *City of Plattsburg v. Smarr* (Mo. App.) 216 S. W. 538, 539; *Delk v. Commonwealth*, 178 S. W. 1129, 1130, 166 Ky. 39. One who commits a breach of the peace is guilty of disorderly conduct, but not all disorderly conduct is necessarily a "breach of the peace." *Garvin v. City of Waynesboro*, 84 S. E. 90, 91, 15 Ga. App. 633.

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. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence, or arising through mere oversight and forgetfulness, is a "breach of trust." The term, therefore, includes every omission and commission in carrying out the trust according to its terms, of care and diligence in protecting and investing the trust property, and of using perfect good faith. *H. B. Cartwright & Bro. v. United States Bank & Trust Co.*, 167 P. 436, 453, 23 N. M. 82; *National Surety Co. v. State*, 136 A. 274, 277, 152 Md. 71, 50 A. L. R. 308. See *Breach of duty*, supra.

**BREACH OF WARRANTY.** In real property law and the law of insurance. The failure or falsehood of an affirmative promise or statement, or the nonperformance 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. As used in the law of sales, "breach of warranty," unlike fraud, does not involve guilty knowledge, *Anglo-California Trust Co. v. Hall*, 211 P. 991, 993, 61 Utah, 223, and rests on contract,

*Oelwein Chemical Co. v. Baker*, 204 Iowa, 66, 214 N. W. 595, 596.

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

**BREAK.** "Break" may be used in a broad sense, as in seller's covenant in contract of sale of auto, to indicate a weakness, impairment, or destruction of parts, however caused. *American Locomotive Co. v. National Wholesale Grocery Co.*, 115 N. E. 404, 405, 226 Mass. 314, L. R. A. 1917D, 1125.

**BREAK A LEG.** Pertaining to a broken bone anywhere between ankle and hip, with possible exception of patella. *100% American Local Mut. Life & Accident Ass'n of El Paso v. Work* (Tex. Civ. App.) 289 S. W. 1020.

**BREAKDOWN SERVICE.** "Breakdown service" as applied to an electric public service corporation is primarily a service for emergency and is used in case the electric plant of the customer breaks down; it is also used when very little electricity is required, as upon holidays and Sundays, and also at the peak of the service when a maximum current is required during the day. *People ex rel. New York Edison Co. v. Public Service Commission for First Dist.*, 181 N. Y. S. 259, 261, 191 App. Div. 237.

**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. An information alleging a "breaking" of premises sufficiently implies necessary force. *State v. Stuart*, 316 Mo. 150, 289 S. W. 822, 824. See, also, *Palmer v. King*, 41 App. D. C. 419, 425. The slightest force is sufficient, as the lifting of a doorlatch, *Dennis v. State*, 158 S. W. 1008, 1010, 71 Tex. Cr. R. 162; or the raising of a window, *Hollis v. State*, 153 S. W. 853, 854, 69 Tex. Cr. R. 286; or the opening of a door that is partly shut (*State v. Lapoint*, 88 A. 523, 87 Vt. 115, 47 L. R. A. (N. S.) 717, Ann. Cas. 1916C, 318; *Gibson v. Commonwealth*, 265 S. W. 339, 345, 204 Ky. 748), or one that is fastened or locked, *Landry v. State*, 258 S. W. 172, 174, 96 Tex. Cr. R. 417; *People v. Toland*, 111 N. E. 760, 217 N. Y. 187, L. R. A. 1916E, 336, Ann. Cas. 1916B, 536; *Ashmon v. State*, 63 So. 754, 755, 9 Ala.

App. 29; *Norman v. State*, 69 So. 362, 364, 13 Ala. App. 337.

Breaking, as an element of the crime of burglary, may be either actual or constructive. *Davis v. Commonwealth*, 110 S. E. 356, 357, 132 Va. 521. "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. While entering a building by a chimney is a constructive breaking, this is on the ground that a chimney is as much closed as its nature permits. *State v. Hart*, 77 S. E. 862, 94 S. C. 214.

**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 arrester in damages. See *Arrestment*.

**BREAST OF THE COURT.** A metaphorical expression signifying the conscience, discre-

tion, 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.

When we say that the record is in the "breast of the court" to be changed during the term, we only mean that the proceedings attested by it have not yet obtained that irrevocable character which places them beyond the power of the court after the term. *Willson v. Ice*, 78 W. Va. 672, 90 S. E. 272, 275.

**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." Its existence has been traced from the earliest period of Irish history down to the time of the Anglo-Norman invasion.

**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.

**BRETHREN OF TRINITY HOUSE.** See *Elder Brethren*.

**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. It is used frequently in the plural (*brevia, q. v.*), especially in speaking of the different classes of writs.

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 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.

**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.

## 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.

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

**BREVIÀ ADVERSARIA.** Adversary writs; writs brought by an adversary to recover land. 6 Coke, 67.

**BREVIÀ AMICABILIA.** Amicable or friendly writs; writs brought by agreement or consent of the parties.

## BREVIÀ ET ROTULIS LIBERANDIS

**BREVIÀ 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, 58 Mo. 466.

**BREVIÀ DE CURSU.** Writs of course. Formal writs issuing as of course.

**BREVIÀ 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.

**BREVIÀ JUDICIALIA.** Judicial writs. Auxiliary writs issued from the court during the progress of an action, or in aid of the judgment.

**BREVIÀ 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.

**BREVIÀ SELECTA.** Choice or selected writs or processes. Often abbreviated to Brev. Sel.

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

**BREVIÀ 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.

**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. It is also known as *Lex Romana Visigothorum*. It became the principal, if not the only, representative of Roman law among the Franks.

**BREVIARIUM ANIANI.** Another name for the Brevarium 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. The name is usually applied to the famous brief of Mr. Murray (afterwards Lord Mansfield) for the complainant in the case of Penn v. Lord Baltimore, 1 Ves. 444.

**BREVIÀ 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 [26 USCA § 202]); 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 Cal. § 7; Pen. Code Tex. 1895, art. 144 (Vernon's Ann. Pen. Code art. 177); People v. Van de Carr, 84 N. Y. S. 461, 87 App. Div. 386; People v. Ward, 110 Cal. 369, 42 P. 894; Com. v. Headley, 111 Ky. 815, 64 S. W. 744; Williams v. State, 188 Ind. 283, 123 N. E. 209, 213. It is a gift, not necessarily of pecuniary value, bestowed for the purpose of influencing the conduct of the receiver, and must be of substantial and not mere imaginary value to him, or merely gratifying a wish or hope. People v. Hyde, 141 N. Y. S. 1089, 1093, 156 App. Div. 618.

**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; State v. Harrah, 101 W. Va. 300, 132 S. E. 654, 655. "Bribery," under the common law, is the giving or receiving anything of value, or any valuable service, intended to influence one in the discharge of a legal duty; gist of the offense being the tendency to pervert justice. People v. Peters, 265 Ill. 122, 106 N. E. 513, 515, Ann. Cas. 1916A, 813. And see State v. Farris (Mo. App.) 229 S. W. 1100, 1102.

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; In re Crum, 55 N. D. 876, 215 N. W. 682, 688, 55 A. L. R. 220; State v. Benson, 144 Wash. 170, 257 P. 236, 238; People v. Bilitzke, 174 Mich. 329, 140 N. W. 590, 591; State v. McGraw, 142 La. 417, 76 So. 822.

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 (Pen. Code 1926, § 270).

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; Board of Chosen Freeholders of Sussex County v. Strader, 18 N. J. Law, 108, 35 Am. Dec. 530; Bardwell v. Town of Jamaica, 15 Vt. 438; Mitchell County v. Dixon, 20 Ga. App. 21, 92 S. E. 405, 408; Dubourdieu v. Delaware Tp. of Wyandotte County, 106 Kan. 650, 189 P. 386, 388; Andrew B. Hendryx Co. v. City of New Haven, 104 Conn. 632, 134 A. 77, 79; 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; as well as approaches; 71 L. T. 430; McGee v. Jones County, 161 Iowa, 296, 142 N. W. 957, 959, 48 L. R. A. (N. S.) 141; Hannan, Hickey Bros. Const. Co. v. Chicago, B. & Q. R. Co. (Mo. App.) 247 S. W. 436, 439; In re Park Lane South in City of New York, 200 N. Y. S. 555, 557, 206 App. Div. 269; Yocom v. City of Sheridan, 68 Or. 232, 137 P. 222, 223; *contra*, under a statute, City of Stamford v. Town of Stamford, 100 Conn. 434, 124 A. 26, 27. The term likewise includes embankments; Morgan County v. Glass, 139 Ga. 415, 77 S. E. 583; culverts; Central Bridge & Const. Co. v. Saunders County, 106



Neb. 484, 184 N. W. 220, 223; *contra*, Village of Marissa v. Jones, 327 Ill. 180, 158 N. E. 389, 394; Williamson v. Hossley, 127 Miss. 505, 90 So. 184; viaducts; In re City of Boston, 221 Mass. 468, 109 N. E. 389, 392; Bailey v. City of Hermosa Beach, 183 Cal. 757, 192 P. 712, 713; but not a railway viaduct, designed only for the passage of engines and cars; Bridge Proprietors v. Land & Improvement Co., 1 Wall. 116, 17 L. Ed. 571; nor does the term include a drain under a bridge; Ellis v. Floyd County, 24 Ga. App. 717, 102 S. E. 181; nor a franchise or contract to build a bridge; New Orleans Pontchartrain Bridge Co. v. Louisiana Public Service Commission, 162 La. 874, 111 So. 265, 266.

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 So. 807; Everett v. Bailey, 150 Pa. 152, 24 A. 700; Rex v. Bucks County, 12 East, 204; Murphy v. Village of Ft. Edward, 79 Misc. 296, 140 N. Y. S. 885, 887. Rev. Codes Idaho, § 874 (Code 1932, § 39-101). Bonneville County v. Bingham County, 24 Idaho, 1, 132 P. 431, 433.

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. Such a bridge will not be considered a public bridge although it may be occasionally used by the public. Thompson v. R. Co., 3 Sandf. Ch. (N. Y.) 625; 1 Rolle, Abr. 368, *Bridges*, pl. 2; 2 Inst. 701; 1 Salk. 359.

**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.

—**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.

### 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 arguments 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. A "brief" is the vehicle of counsel to convey to the appellate court the essential facts of his client's case, a statement of the questions of law involved, the law he would have applied, and the application he desires made of it by the court. Bell v. Germain, 107 P. 630, 12 Cal. App. 375.

—**Printed brief.** Typewritten brief is a written and not a "printed brief." Waterman Lumber & Supply Co. v. Holmes (Tex. Civ. App.) 161 S. W. 70.

### 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.

**BRIEFLY.** Concisely; in a few words; pertaining to a short or abridged statement. *Bynton Real Estate Co. v. Woodbridge Tp.*, 109 A. 514, 515, 94 N. J. Law, 226.

**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. See *Bote*.

**BRINE.** A solution 4 per cent. salt is brine, within the meaning of the provision of paragraph 488, Free List, Tariff Act of 1913, for "fruits in brine." *Amerman & Patterson v. U. S.*, 12 Ct. Cust. App. 117, 118.

**BRING INTO.** To import, *U. S. v. Gully (D. C.)* 9 F.(2d) 959; to introduce, *Sturgeon v. State*, 154 P. 1050, 1055, 17 *Ariz.* 513, *L. R. A.* 1917B, 1230.

**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*, 108 U. S. 162, 2 Sup. Ct. 388, 27 L. Ed. 686; *Buecker v. Carr*, 60 N. J. Eq. 300, 47 Atl. 34; *Wall v. Chesapeake & O. Ry. Co.*, 125 N. E. 20, 23, 290 Ill. 227. "Brought" and "commenced" in statutes of limitations are commonly deemed to have been used interchangeably. *Hannaman v. Gordon (Tex. Com. App.)* 261 S. W. 1006, 1008. Under such statutes, the suit may be "brought," when the summons subsequently served is issued. *Mill Creek & Minehill Nav. & R. Co. v. United States (D. C.)* 246 F. 1013, 1016. Under a statute providing that no action shall be "brought or maintained" against a school district for noncontractual acts or omissions relating to athletic apparatus or playgrounds, "brought" applies to actions not yet instituted. *Bruenn v. North Yakima School Dist. No. 7, Yakima County*, 172 P. 569, 571, 101 Wash. 374.

**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 *naufraige*, (*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.

**BRITISH THERMAL UNIT.** The amount of heat required to raise a pound of water one degree Fahrenheit. *Oklahoma Natural Gas Co. v. Corporation Commission of Oklahoma*, 237 P. 838, 841, 111 Okl. 6; *Shawnee Gas & Electric Co. v. Corporation Commission of Oklahoma*, 237 P. 844, 111 Okl. 13.

**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; Payne v. Ponder*, 77 S. E. 32, 34, 139 Ga. 283. But the term "broker" is no longer limited, but extends to almost every branch of business, to realty as well as personalty. *Richmond Mortgage & Loan Corporation v. Rose*, 128 S. E. 604, 605, 142 Va. 342.

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; Gile v. Tsutakawa*, 187 P. 323, 326, 109 Wash. 366.

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; *McCornick & Co., Bankers, v. Tolmie Bros.*, 243 P. 355, 358, 42 Idaho, 1.

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; *San Jacinto Life Ins. Co. v. Brooks* (Tex. Civ. App.) 274 S. W. 648, 650.

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.

A "broker" is an agent acting under a limited authority usually authorized to buy or sell a particular thing in specified quantities. *Portsmouth Cotton Oil Refining Corp. v. Madrid Cotton Oil Co.*, 200 Ala. 634, 77 So. 8, 9.

As distinguished from a broker, a "middleman," in a real estate transaction, is employed merely to bring the parties together when each desires to exchange his property for that of the other, or where one desires to sell and the other to purchase; his services are not rendered as the agent of either party, and he may later receive a commission from both; but a "broker" is the agent of a party, employed to procure a customer or to effect the sale or exchange. *Tracey v. Blake*, 229 Mass. 57, 118 N. E. 271, 272.

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; *Lawrence Gas Co. v. Hawkeye Oil Co.*, 165 N. W. 445, 446, 182 Iowa, 179, 8 A. L. R. 192. Moreover, a factor has a special property in the goods. *Sutton & Cummins v. Kiel Cheese & Butter Co.*, 155 Ky. 465, 159 S. W. 950, 951.

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.

—**Money-broker**. A money-changer; a scrivener or jobber; one who lends or raises money to or for others.

—**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 S. Ct. 201, 37 L. Ed. 169; *Chadwick v. Collins*, 26 Pa. 139; *Brauckman v. Leighton*, 60 Mo. App. 42; *Abraham v. Wasaff*, 111 Okl. 138, 239 P. 138, 140; *Crews v. Sullivan*, 133 Va. 478, 113 S. E. 865, 866. A "real estate broker" is one employed in negotiating the sale, purchase, or exchange of lands on a commission contingent on success. *Oregon Home Builders v. Montgomery Inv. Co.*, 94 Or. 349, 184 P. 487, 491. To constitute one a "real estate broker" within statutes requiring a license to engage in such business, it is not sufficient that he make one or two sales, but it must be shown that he is engaged in the business to such an extent that it is his vocation or partial vocation. *Morris v. O'Neill*, 239 Mich. 663, 215 N. W. 8, 9; *Boggan v. Clark*, 141 Miss. 849, 105 So. 760, 761; *Killen v. Irmiter*, 233 Ill. App. 116, 119; *Kolb v. Burkhardt*, 148 Md. 539, 129 A. 670, 672.

—**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. The term "broker" applies as well to a broker on the Board of Trade as to one on the Stock Exchange. *Cutler v. Partridge*, 182 Ill. App. 350, 358.

**BROKERAGE**. The wages or commissions of a broker; also, his business or occupation.

**BROKERAGE CONTRACT**. A contract of agency, whereby broker is employed to make contracts of kind agreed upon in name and on behalf of his principal, and for which he is paid an agreed commission. *Nolen's Adm'r v. Robinson*, 213 Ky. 752, 281 S. W. 1034, 1036; *Spilo v. Baumann-McWhirter Chemical Co.* (Sup.) 157 N. Y. S. 521, 522; *Hardesty v. Martin Ebersbach Co.* (C. C. A.) 294 F. 5, 6.

**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. *Thaler v. U. S.* (C. C. A.) 261 F. 746, 749; *United States v. Casey* (D. C.) 247 F. 362, 364.

**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."

The phrase "brothers and sisters" as used in statutes of descent and in inheritance tax statutes is commonly construed to include half brothers and half sisters. *Thompson v. Smith*, 102 Okl. 150, 227 P. 77, 80; *People v. Elliff*, 74 Colo. 81, 219 P. 224, 225.

**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 So. 554. Two men are not brothers-in-law from the circumstance merely of having married sisters. *Cruce v. State*, 87 Fla. 406, 100 So. 264, 265.

**BROTHERHOOD AND GUESTLING, COURT OF.** The Brotherhood was a conference of seven towns (*i. e.*, the Cinque Ports and two other ancient towns) as to the provision of the necessary ships and as to arranging for the herring sale at Yarmouth, and for other such purposes. The Guestling was rather a wider meeting, at which not merely the Brotherhood, but deputies from other associated towns were present for the discussion of subjects of common interest to all.

**BROUGHT.** Taken; carried. This is the meaning of the word as used in Judicial Code § 41 (28 USCA § 102) providing that the trial of offenses on the high seas or elsewhere out of the jurisdiction of any particular state or district shall be in the district where the offender is found, or into which he is first brought. *United States v. Townsend* (D. C.) 219 F. 761, 762.

A writ of error is not "brought" until it is filed or lodged in the court, or with the clerk of the court, which rendered the judgment, *United States v. Alamogordo Lumber Co.* (C. C. A.) 202 F. 700, 703; *U. S. v. Shaffer* (D. C.) 278 F. 549, 551.

**BROUGHT TO THE ATTENTION OF.** Equivalent to the expression "made known to." *State v. Sullivan*, 159 La. 589, 105 So. 631, 636.

**BROUGHT TO TRIAL.** An action is not brought to trial until the trial is commenced. *Boyd v. Southern Pac. R. Co.*, 185 Cal. 344, 197 P. 58, 59; *Miller & Lux v. Superior Court of California in and for Merced County*, 192 Cal. 333, 219 P. 1006, 1009.

**BRUARIUM.** In old English law. A heath ground; ground where heath grows. *Spelman*.

**BRUGBOTE.** See *Brigbote*.

**BRUILLUS.** 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. See *Contusion*.

**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*.

**BRUSHING.** This term, as well as the expression "lifting bottom," is applied to digging of space in middle of bottom of mine entry or room neck in which to lay track. *Schillings v. Big Creek Coal Co.* (Mo.App.) 277 S. W. 964, 965.

**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 (1719), "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 beggared 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. *C. A. King & Co. v. Horton*, 116 Ohio St. 205, 156 N. E. 124, 126; *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; *State v. McGinnis*, 138 N. C. 724, 51 S. E. 50; *Gatewood v. North Carolina*, 203 U. S. 531, 27 Sup. Ct. 167, 51 L. Ed. 305; *Burns' Ann. St. Ind.* 1914, § 3837 (*Burns' Ind. St.* 1926, § 2691);

Sawers Grain Co. v. Teagarden, 84 Ind. App. 522, 148 N. E. 205, 208.

**BUCK'S EXTENSION PROCESS.** Some uniform, continuous force or pull applied to leg or foot below break to overcome natural contraction of muscles of thigh, which have a strong tendency to pull broken ends together and cause them to slip by each other, especially when break is oblique. Sweet v. Douge, 145 Wash. 142, 259 P. 25. See Counterextension.

**BUCKSTALL.** A toll, 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.

**BUFFER.** A contrivance to mitigate the shock by cars coming together rather than a safety appliance; an elastic apparatus for deadening the jar caused by the collision of bodies. George v. Atchison, T. & S. F. Ry. Co., 102 Kan. 774, 178 P. 403, 404.

**BUFFET.** A public place for lunch or light refreshments. McCormick v. Brennan, 224 Ill. App. 251, 254.

**BUG.** As applied to telegraph instruments, a generic name in common use, and has been for many years, among operators, to characterize vibrating horizontal arm for the semi-automatic production of code dots, as distinguished from the Morse key, requiring a separate motion of the operator's hand for each dot. Vibroplex Co. v. J. H. Bunnell & Co. (D. C.) 13 F.(2d) 528.

**BUGGERY.** A carnal copulation 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. This term is often used interchangeably with "sodomy"; but even when so used, it does not necessarily include the act called "fellatio" or "fellation." State v. Murry, 136 La. 253, 66 So. 963, 964. See Sodomy.

**BUILD.** To construct and raise anew. Attorney General ex rel. Gibson v. Board of Sup'rs of Montcalm County, 141 Mich. 590, 104 N. W. 792, 794 (quoting and adopting definition in State v. White, 16 R. I. 591, 18 A. 179, 1038). To form by uniting materials into a regular structure. In re Rutland Realty Co. (D. C.) 157 F. 296, 297; United States v. Blair (C. C.) 190 F. 372, 374.

The term may also be employed in the sense of obtain, secure, or acquire. Verner v. Muller, 89 S. C. 545, 72 S. E. 393; Nebraska Loan & Building Ass'n v. Perkins, 61 Neb. 254, 85 N. W. 67, 69.

"Build" is not synonymous with amend, repair, or maintain. State v. White, 16 R. I. 591, 18 Atl. 179; Hutchinson v. City of Olympia, 2 Wash. T. 314, 5 P. 606, 608; Moorhead v. Little Miami R. Co., 17 Ohio, 340, 353.

But it has been held that a grant of power to build a railroad, or a requirement that certain persons shall build bridges, may include the power or duty of maintenance or repair. Central R. Co. v. Collins, 40 Ga. 582, 624; Franklin County Com'rs v. White Water Valley Canal Co., 2 Ind. 162, 163.

**BUILDER.** One whose occupation is the building or erection of structures, the controlling and directing of construction, or the planning, constructing, remodeling and adapting to particular uses buildings and other structures. Turner v. Haar, 114 Mo. 335, 21 S. W. 737, 738. One who puts a structure into permanent form. Kansas City Southern Ry. Co. v. Wallace, 38 Okl. 233, 132 P. 908, 911, 46 L. R. A. (N. S.) 112. The term may be synonymous with "contractor." State v. Clark, 86 P. 1067, 43 Wash. 664. It may also designate a shipwright, a mason, etc., and likewise an architect. Savannah & C. R. Co. v. Callahan, 49 Ga. 506, 511. *Contra*, as to "architect," People ex rel. v. Lower, 251 Ill. 527, 96 N. E. 346, 347, 36 L. R. A. 1203.

**BUILDING.** Ordinarily, a structure or edifice inclosing a space within its walls, and usually, but not necessarily, covered with a roof. Small v. Parkway Auto Supplies, 258 Mass. 30, 154 N. E. 521, 522, 49 A. L. R. 1361; State v. Gates, 197 Iowa, 777, 197 N. W. 908; State v. Elliott, 198 Iowa, 71, 199 N. W. 270, 271.

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; State v. Crouse, 117 Me. 363, 104 A. 525, 526; Mecca Realty Co. v. Kellogg's Toasted Corn Flakes Co., 166 App. Div. 74, 151 N. Y. S. 750, 753; Sacks v. Legg, 219 Ill. App. 144, 147.

An edifice, erected by art, and fixed upon or over the soil, composed of brick, marble, wood, or other proper substance, connected together, and designed for use in the position in which it is so fixed. Cruise, Dig. tit. 1, s. 46; People ex rel. No. 176 West Eighty-Seventh St. Corporation v. Cantor, 107 Misc. 6, 176 N. Y. S. 593, 596; Rabb v. W. P. Ellison, Inc., 89 N. J. Law, 416, 99 A. 119, 120; Bruen v. People, 69 N. E. 24, 206 Ill. 417, 423.

The term generally, though not always, implies the idea of a habitation for the permanent use of man, or an erection connected with his permanent use. Rouse v. Catskill & N. Y. Steamboat Co., 13 N. Y. S. 126, 127, 35 N. Y. St. Rep. 491; Vallejo & N. R. Co. v. Reed Orchard Co., 169 Cal. 545, 147 P. 238, 253. It imports tangibility, Wells Fargo & Co. v. Jersey City (D. C.) 207 F. 871, 876, and may include the land on which it stands, as well as adjacent land, Thomas v. Long, 182 Iowa, 859, 186 N. W. 287, 288; City of Gainesville v. Brennan College, 150 Ga. 156, 103

S. E. 164, 166; *Baggett v. Georgia Conference Ass'n of Seventh Day Adventists*, 157 Ga. 488, 121 S. E. 838, 839; *S. F. Bowser & Co. v. Cain Auto Co.* (Tex. Civ. App.) 210 S. W. 554; *Dallas Land & Loan Co. v. Garrett* (Tex. Civ. App.) 276 S. W. 471, 473.

Whether a wide difference of meaning of the words "building," "improvement" and "structure" exists depends upon the context in connection with which they are used. They might mean the same thing, for, in a certain sense, a "building" is an "improvement" and also a "structure," and vice versa, an "improvement" or "structure" may be a "building." *Lanier v. Lovett*, 25 Ariz. 54, 213 P. 391, 394.

The word in its legal sense is ambiguous, and is susceptible of being construed, without violence, as including many different kinds of structures and edifices erected by man. *Great Eastern Casualty Co. v. Blackwelder*, 21 Ga. App. 586, 94 S. E. 843, 844. For illustrative cases, see *State v. Clark*, 221 Mo. App. 893, 288 S. W. 77, 78 (a dugout or artificial cave); *Bush v. Norman* (Mo. App.) 199 S. W. 721 (a silo); *Mecca Realty Co. v. Kellogg Toasted Corn Flakes Co.*, 148 N. Y. S. 1040, 85 Misc. 598; *Id.*, 151 N. Y. S. 750, 753, 166 App. Div. 74 (a sign); *State v. Lintner*, 19 S. D. 447, 104 N. W. 205 (a box car); *Adams v. State*, 13 Ala. App. 330, 69 So. 357, 359 (each room or apartment in a state capitol).

**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. (13 Pickle) 421, 37 S. W. 212, 213, 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; *Holt v. Aetna Building & Loan Ass'n*, 78 Okl. 307, 190 P. 872, 875; *Rhodes v. Missouri Savings & Loan Co.*, 173 Ill. 621, 50 N. E. 998, 1000, 43 L. R. A. 93; *In re National Bldg., Loan & Provident Ass'n*, 12 Del. Ch. 93, 107 A. 453, 455.

A private corporation designed for the purpose of accumulating into its treasury, by means of the gradual payment by its members of their stock subscriptions in periodical installments, a fund to be invested from time to time in advances made to such shareholders on their stock as may apply for this privilege on approved security, the borrowing members paying interest and a premium for this preference in securing an advancement over other members, and continuing to pay the regular installments on their stock in addition, all of which funds, together with payments made by the nonborrowing members, including fines, forfeitures, and other like revenues, go into the common fund until it, with the profits thereon, aggregates the face value of all the shares in the association, the legal effect of which is to extinguish the liability incurred for the loans and advancements, and to distribute to each nonborrowing member the par value of his stock. *Atlanta Loan & Saving Co. v. Norton*, 102 S. E. 536, 538, 149 Ga. 805; *Washington Nat. Building, Loan & Investment Ass'n v. Stanley*, 63 P. 489, 492, 38 Or. 319, 84 Am. St. Rep. 793; *Albany Mut. Bldg. Ass'n v. City of Laramie*, 10 Wyo. 54, 65 P. 1011, 1013. See, also, *Wilkinson v. Mutual Bldg. & Sav. Ass'n* (C. C. A.) 13 F.(2d) 997, 998; *First Nat. Bank v. Dawson County*, 68 Mont. 321, 213 P. 1097,

1102; *Herold v. Park View Building & Loan Ass'n* (C. C. A.) 210 F. 577, 582; *Lilley Building & Loan Co. v. Miller* (D. C.) 280 F. 143, 144.

**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 LINE.** As used in a city charter authorizing the establishment of a "building line" along boulevards, the term means a mark of division or demarkation; an outline or contour; a limit or boundary;—not a straight line. *City of St. Louis v. Handlan*, 242 Mo. 88, 145 S. W. 421, 422, 423. As to the meaning of the term in town and city plats, see *Eckhart v. Irons*, 128 Ill. 568, 20 N. E. 687, 689, 690; *Simpson v. Mikkelsen*, 196 Ill. 575, 63 N. E. 1036, 1037.

**BUILDING PERMIT.** A permit which a city, when authorized by its charter to control the construction and repair of all houses, may require to be obtained from it as a prerequisite to the erection of a building. *Fellows v. City of Charleston*, 62 W. Va. 665, 59 S. E. 623, 13 L. R. A. (N. S.) 737, 125 Am. St. Rep. 990, 13 Ann. Cas. 1185; *Commissioners of Easton v. Covey*, 74 Md. 262, 22 A. 266; *Bos-tock v. Sams*, 95 Md. 400, 52 A. 665, 59 L. R. A. 282, 93 Am. St. Rep. 394.

**BUILDING SITE.** As used in a building contract, providing for filling of the "building site" to grade, that term contemplated the entire lot, and not that limited spot on which the building was to be erected. *Myevre v. Liberty Realty & Securities Co.*, 156 La. 496, 100 So. 694, 696.

**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. See *Texas & P. Ry. Co. v. Gate City Fertilizer Co.* (Tex. Civ. App.) 176 S. W. 868, 869.

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.*

When used in relation to sale of goods by sample, "bulk" means the whole quantity of goods sold, which is supposed to be fairly represented by the sample. *American Paper Products Co. v. Morton Salt Co.* (Mo. App.) 279 S. W. 761, 763. This is the meaning which the word has as used in Uniform Sales Act Pa. § 14 (P. L. c. 543; 69 PS § 123). *F. A. D. Andrea, Inc., v. Dodge* (C. C. A.) 15 F. (2d) 1003, 1005.

**BULK SALES ACTS.** A generic term descriptive of a class of statutes designed to prevent the defrauding of creditors by the secret sale in bulk of substantially all of a merchant's stock of goods. The general scheme of these statutes is to declare such bulk sales fraudulent and void as to creditors of the vendor, or presumptively so, unless specified formalities are observed. *A. J. Long Cigar & Grocery Co. v. Harvey*, 33 Ga. App. 236, 125 S. E. 870.

**BULK WINDOWS.** "Bulk windows" include show windows as well as bay windows, sometimes called "bow windows," within a statute conferring on cities the power to regulate certain obstructions in the street. *City of Baltimore v. Nirdlinger*, 131 Md. 600, 102 A. 1014, 1019.

**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.

There are three kinds of apostolical rescripts—the *brief*, the *signature*, and the *bull*; which last is most commonly used in legal matters.

This is also a cant term of the Stock Exchange, meaning one who speculates for a rise in the market.

**BULL-HEADED.** Headstrong, obstinate, stupidly stubborn. *Enloe v. Southern Ry. Co.*, 179 N. C. 83, 101 S. E. 556, 558.

**BULL PEN.** A certain place of confinement at a penitentiary. *State v. Kelley*, 118 Or. 397, 247 P. 146, 148.

**BULLA.** A seal used by the Roman emperors, during the lower empire; it was of four kinds,—gold, silver, wax, and lead.

**BULLET.** Synonymous with "shot," meaning a projectile, particularly a solid ball or bullet that is not intended to fit the bore of a piece. *Green v. Commonwealth*, 122 Va. 862, 94 S. E. 940, 941.

**BULLETIN.** An officially published notice or announcement concerning the progress of matters of public importance. In France, the registry of the laws.

BL.LAW DICT. (3D ED.)—17

**BULLETIN DES LOIS.** In France, the official sheet which publishes the laws and decrees; this publication constitutes the promulgation of the law or decree.

**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 So. 938; *Counsel v. Min. Co.*, 5 Daly (N. Y.) 77.

**BULLION FUND.** A fund of public money maintained in connection with the mints, for the purpose of purchasing precious metals for coinage, and also of enabling the mint to make returns of coins to private depositors of bullion without waiting until such bullion is actually coined.

**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.*).

**BUNCO GAME.** Any trick, artifice, or cunning calculated to win confidence and to deceive, whether by conversation, conduct, or suggestion. *State v. Ferrato*, 72 Wash. 112, 129 P. 898, 899.

**BUNDA.** In old English law. A bound, boundary, border, or limit (*terminus, times*).

**BUNDLE, v.** To sleep on the same bed without undressing; applied to the custom of a man and woman, especially lovers, thus sleeping. *A. & E. Ency.* This custom is adverted to in *Seagar v. Slingerland*, 2 Caines (N. Y.) 219, and *Hollis v. Wells*, 3 Clark (Pa.) 169.

**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. Buoys are regulated by federal legislation; see 33 USCA § 734.

**BURDEN.** A burden, as on interstate commerce, means anything that imposes either a restrictive or onerous load upon such commerce. *State of Missouri v. Kansas Natural Gas Co.* (D. C.) 282 F. 341, 345.

Where the Railroad Commission ordered construction of a viaduct carrying a street over railroad tracks, construction and operation of street car tracks on the viaduct was not an "additional burden," and did not entitle abutting owners to damages. In eminent

domain or condemnation proceedings see *Henry v. City of La Crosse*, 165 Wis. 625, 162 N. W. 174, 176; *In re Ely Ave. in City of New York*, 150 N. Y. S. 698, 701, 88 Misc. 320.

**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," *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. 366; *Gibbs v. Bank*, 123 Iowa, 736, 99 N. W. 703, or with expressions referring to a similar idea, such as the "burden of evidence," *Hyer v. C. E. Holmes & Co.*, 12 Ga. App. 837, 79 S. E. 58, 60, or "the burden of proceeding," *Mason v. Geist* (Mo. App.) 263 S. W. 236, 237, or the burden of going forward with the evidence, *First Nat. Bank v. Ford*, 30 Wyo. 110, 216 P. 691, 694, 31 A. L. R. 1441.

It is frequently said, however, to have two distinct meanings: (1) the duty of producing evidence as the case progresses, and (2) the duty to establish the truth of the claim by preponderance of the evidence, and though the former may pass from party to party, the latter rests throughout upon the party asserting the affirmative of the issue. *Sellers v. Kincaid*, 303 Ill. 216, 135 N. E. 429, 433; *Hansen v. Oregon-Washington R. & Nav. Co.*, 97 Or. 190, 188 P. 963, 969; *Stofer v. Dunham* (Mo. App.) 208 S. W. 641, 644; *Moore v. Williams*, 111 Neb. 342, 196 N. W. 695, 698; *In re Gedney's Will* (Sur.) 142 N. Y. S. 157, 161; *North Memphis Sav. Bank v. Union Bridge & Construction Co.*, 138 Tenn. 161, 196 S. W. 492, 498; *Sanderhofner v. Calmenson*, 170 Minn. 69, 212 N. W. 9, 11; *Giblin v. Dudley Hardware Co.*, 44 R. I. 371, 117 A. 418, 419. Again "burden of proof" is sometimes used to refer merely to the rule of practice fixing the order of proof, as distinguished from the "preponderance of the evidence" meaning the weight of evidence. *Welch v. Creech*, 88 Wash. 429, 153 P. 355, 358, L. R. A. 1918A, 353; *Thompson v. Dyson*, 120 Kan. 591, 244 P. 867, 868.

**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.

As applied to a division of an administrative department, the term may include the operating force. *People v. Coffin*, 202 Ill. App. 100, aff 117 N. E. 85, 279 Ill. 401.

A division of a department; a "department" being one of separate divisions or branches of state or municipal administration. *In re McLaughlin*, 210 N. Y. S. 68, 72, 124 Misc. 766.

**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 co-ordinate 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 remarkable 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.* 109a; 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.

In Connecticut boroughs the *board of burgesses* corresponds to the township board or



board of trustees in some other states, or to the common council of a city. Cent. Dict.

**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 ENGLAYS.** 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 nighttime with intent to commit a felony. *Wilson v. State*, 34 Ohio St. 200; *O'Connor v. Press Pub. Co.*, 34 Misc. 564, 70 N. Y. Supp. 367. See Burglary.

**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 nighttime, with intent to commit a felony therein, whether the felony be actually committed or not. *Sodors v. State*, 195 S. W. 1146, 1147, 81 Tex. Cr. R. 506; *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. 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; *Gibson v. Commonwealth*, 265 S. W. 339, 344, 204 Ky. 748; *Order of Commercial Travelers of America v. Williams (C. C.)* 11 F.(2d) 577, 46 A. L. R. 1081; *State v. Puckett*, 78 S. E. 737, 95 S. C. 114, 46 L. R. A. (N. S.) 999; *State v. Allen*, 119 S. E. 504, 506, 186 N. C. 302; *State v. Hodgdon*, 94 A. 301, 302, 89 Vt. 148; *Downs v. New Jersey Fidelity & Plate Glass Ins. Co. of Newark*, 103 A. 205, 206, 91 N. J. Law, 523, L. R. A. 1913D, 513.

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, railroad car, mine, or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary." Pen. Code Cal. § 459; *State v. Lissota*, 95 So. 388, 389, 153 La. 24; *People v. Mendelson*, 106 N. E. 249, 251, 264 Ill. 453, L. R. A. 1915C, 627; *State v. Dunlap*, 103 N. J. Law, 209, 136 A. 510.

See Breaking.

**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.

**BURGWAR.** A burgess (*q. v.*).

**BURH.** A fastness. The hill-top that has been fortified as a burh. Very often it has given its name to a neighboring village; it is the future *borough*. The entrenchment around a great man's house was a burh. See Maitland, *Domesday and Beyond*, 183.

**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. See the reference thereto in 4 Redf. Sur. (N. Y.) 540. 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!"

**BURLAW COURTS.** Courts consisting of neighbors selected by common consent to act as judges in determining disputes between neighbor and neighbor.

**BURLAWS.** In Scotch law. Laws made by neighbors elected by common consent in the burlaw courts. Skene.

**BURN, n.** A hurt, injury, or effect caused by burning. Webster, Dict.

A "first-degree burn" varies from redness to a blister. A "second-degree burn" results where the skin is charred or killed. *Murphy v. Ludowici Gas & Oil Co.*, 96 Kan. 321, 150 P. 581, 582.

**BURN, v.** To consume with fire. See *Hiatt v. Travelers' Ins. Co.*, 197 N. W. 3, 4, 197 Iowa, 153, 33 A. L. R. 655; *Pacific Creosoting Co. v. Thames & Mersey Marine Ins. Co. (D. C.)* 210 F. 958, 959.

The verb "to burn," in an indictment for arson, is to be taken in its common meaning of "to con-

sume with fire." *Hester v. State*, 17 Ga. 130. To constitute the "burning" which is essential to the crime of arson, it is not necessary that the building should be consumed or materially injured. It is sufficient if fire is actually communicated to any part thereof, however small. *State v. Mutschler*, 55 N. D. 120, 212 N. W. 832, 833.

**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. This practice was finally abolished by Stat. 19 Geo. III. c. 74; though before that time the burning was often done with a cold iron.

**BURNT COTTON.** Cotton which has been on fire, and which has not been subsequently repicked and rebaled. *Southern Ry. Co. v. Pettit (C. C. A.)* 257 F. 663, 664.

**BURROCHIU.** 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; *Flint v. Stone Tracy Co.*, 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389, Ann. Cas. 1912B, 1312; *Conhaim Holding Co. v. Willcuts (D. C.)* 21 F.(2d) 91, 92; *Feitelberg v. Matuson*, 208 N. Y. S. 786, 790, 124 Misc. 595; *Down v. Comstock*, 149 N. E. 507, 510, 318 Ill. 445; *McCullough v. Harshman*, 226 P. 555, 556, 99 Okl. 262.

That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit. *Curley v. New England Trust Co.*, 109 N. E. 171, 174, 221 Mass. 384; *Smallwood v. Jeter*, 244 P. 149, 153, 42 Idaho, 169; *Herald v. Glendale Lodge No. 1289. B. P. O. E. of United States*, 189 P. 329, 331, 46 Cal. App. 325; *Three Forks Coal Co. v. U. S. (D. C.)* 9 F.(2d) 946, 948; *R. J. Reynolds Tobacco Co. v. City of Lexington*, 205 S. W. 592, 593, 181 Ky. 503.

"Business" is often synonymous with calling, occupation, or trade. *Gray v. Board of County Com'rs of Sedgwick County*, 165 P. 867, 868, 101 Kan. 195, L. R. A. 1918F, 182; *Griffin v. Russell*, 87 S. E. 10, 11, 144 Ga. 275, L. R. A. 1916F, 216, Ann. Cas. 1917D, 994; and it is so used in Workmen's Compensation Act, providing that the act shall not apply to "persons whose employment at the time of the injury is but casual, and not in the usual course of the trade, business, profession, or occupation of the employer," *State v. District Court of Douglas County*, 164 N. W. 366, 368, 138 Minn. 103; *Kaplan v. Gaskill*, 187 N. W. 943, 946, 108 Neb. 455.

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. But see *Industrial Commission v. Hammond*, 236 P. 1006, 1008, 77 Colo. 414.

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.

As used in a will giving the testator's "business" to persons named, the term may be equivocal, and may mean property, or simply good will. In *re Weber's Estate*, 261 Pa. 561, 104 A. 735, 737. It has been held not to include notes, in *re Rogers' Estate*, 91 N. J. Eq. 294, 109 A. 16, nor to include coal on hand or a bank account kept in connection with the business, but that it did include the leasehold, wagons, horses, and other equipment, *Coyle v. Donaldson*, 90 N. J. Eq. 122, 105 A. 605, 607.

There is, however, a clear distinction between "business" and "property," as generally used in taxing and other statutes. *Sullivan v. Associated Billposters and Distributors of United States and Canada (C. C. A.)* 6 F.(2d) 1000, 1010, 42 A. L. R. 503.

—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).

In respect to the time of presentment and demand of bills and notes, business hours generally range through the whole day down to the hours of rest in the evening, except when the paper is payable at a bank or by a banker; *Cayuga County Bank v. Hunt*, 2 Hill (N. Y.) 635. See *Flint v. Rogers*, 15 Me. 67; *Lunt v. Adams*, 17 Me. 230.

An order allowing a stockholder to examine the books of a corporation "during business hours" does not mean that such examination be carried on throughout the entire business day, nor in the nighttime. *Breslauer v. S. Franklin & Co.*, 205 Ill. App. 372, 374.

—**Business of the community.** A business in which a husband is engaged is prima facie the business of the community. *Bird v. Steele*, 132 P. 724, 725, 74 Wash. 68.

—**Business situs.** A situs acquired for tax purposes by one who has carried on a business in the state more or less permanent in its nature. *Endicott, Johnson & Co. v. Multnomah County*, 190 P. 1109, 1111, 96 Or. 679. A situs arising when notes, mortgages, tax sale certificates and the like are brought into the state for something more than a temporary purpose, and are devoted to some business use there and thus become incorporated with the property of the state for revenue purposes. *Honest v. Gann*, 244 P. 233, 235, 120 Kan. 365; *Lockwood v. Blodgett*, 138 A. 520, 525, 106 Conn. 525.

—**Business trust.** As distinguished from a joint-stock company, a pure "business trust" is one in which the managers are principals, and the shareholders are cestuis que trust. *Betts v. Hackathorn*, 252 S. W. 602, 604, 159 Ark. 621, 31 A. L. R. 847.

—**Private business.** A "private business or enterprise" is one in which an individual or individuals, an association, copartnership, or private corporation have invested capital, time, attention, labor, and intelligence for the purpose of creating and conducting such business, for the sole purpose that those who make such contributions may, from the conducting and operating of it, make, gain, and acquire a financial profit for their exclusive benefit, improvement, and enjoyment, and exclusively for their own private purposes and use. *Green v. Frazier*, 176 N. W. 11, 17, 44 N. D. 395.

—**Public business.** An element of "public business" prescribed by Comp. St. Okl. 1921, § 11032 (St. 1931, § 12805), relating to regulation by Corporation Commission, is that the business by its nature must be such that the public must use the same, or the commodities bought and sold in such manner as to affect the community at large as to supply, price, etc.,

and such public business may exist whether or not the Corporation Commission or district court was ever resorted to. *Consumers' Light & Power Co. v. Phipps*, 251 P. 63, 64, 120 Okl. 223.

**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.

**BUT.** Except, except that, on the contrary, or, and also, yet, still. *State v. Marsh*, 187 N. W. 810, 812, 108 Neb. 267; *Rickman v. Commonwealth*, 243 S. W. 929, 195 Ky. 715; *Foreman v. School Dist. No. 25 of Columbia County*, 159 P. 1155, 1156, 81 Or. 587; *Spria v. Frenkel*, 97 So. 104, 105, 210 Ala. 27.

**BUTCHER.** This term includes the occupation of a retail meat dealer, *Provo City v. Provo Meat & Packing Co.*, 49 Utah, 528, 165 P. 477, 479, Ann. Cas. 1918D, 530, but not that of a corporation operating packing houses in various cities and maintaining a distributing house, where it sold sausage, cheese, canned meats, etc., but no fresh meat, *Morris & Co. v. Commonwealth*, 116 Va. 912, 83 S. E. 408, 410.

**BUTLERAGE.** A privilege formerly allowed to the king's butler, to take a certain part of every cask of wine imported by an alien; the part of the cask thus taken.

Called also prisage; 2 Bulstr. 254. Anciently, it might be taken also of wine imported by a subject. 1 Bla. Com. 315; *Termes de la Ley*; Cowell.

**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.

**BUTTER.** A dairy product "manufactured exclusively from pure, unadulterated milk or cream, or both, with or without salt or coloring matter." Agricultural Law N. Y. (Consol. Laws, c. 1) § 30; Agriculture and Markets Law (Consol. Laws, c. 69) § 46; *Pardy v. Boomhower Grocery Co.*, 178 App. Div. 347, 164 N. Y. S. 775, 776.

**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 similarly unplowed pieces on the sides. Burrill; Cowell.

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.

The angles or points where these lines change their direction. Cowell; Spelman, Gloss. See Abuttsals.

**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. To obtain something for a price, usually money. In re Troy, 43 R. I. 279, 111 A. 723, 724.

**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 and by 32 Hen. VIII. c. 9. This rule has been generally adopted in the United States, and is affirmed by statute in some states; 3 Washb. R. P. \*596. *Hinman v. Hinman*, 4 Conn. 575; *Helms v. May*, 29 Ga. 124; *Webb v. Thompson*, 23 Ind. 432; *Wash v. McBrayer*, 1 Dana (Ky.) 566; *Brinley v. Whiting*, 5 Pick. (Mass.) 356; *Bush v. Cooper*, 26 Miss. 599, 59 Am. Dec. 270; *Dame v. Wingate*, 12 N. H. 291; *Thurman v. Cameron*, 24 Wend. (N. Y.) 87; *Hoyle v. Logan*, 15 N. C. 495; *Selleck v. Starr*, 6 Vt. 198. But in other states, such a purchase is valid. *Petrow v. Merriwether*, 53 Ill. 279; *Cresson v. Miller*, 2 Watts (Pa.) 272; *Hall's Lessee v. Ashby*, 9 Ohio, 96, 34 Am. Dec. 424; *Stewart v. McSweeney*, 14 Wis. 471; *Poyas v. Wilkins*, 12 Rich. (S. C.) 420; *Crane v. Reeder*, 21 Mich. 82, 4 Am. Rep. 430.

**BY.** Near, beside, passing in presence; it also may be used as exclusive. A contract to complete work *by* a certain time, may mean that it shall be done before that time, *Rankin v. Woodworth*, 3 Pen. & W. (Pa.) 48; or on or before the time, *J. C. Engelman Land Co. v. La Blanco Agr. Co.* (Tex. Civ. App.) 220 S. W. 653, 655. "By" a given time commonly means "not later than" such time. *Fanta v. Maddex*, 80 Cal. App. 513, 252 P. 630, 633; *Scheuer &*

*Tiegs v. Benedict*, 173 Wis. 241, 181 N. W. 129, 12 A. L. R. 1166; *Engelman Land Co. v. La Blanco Agr. Co.* (Tex. Com. App.) 239 S. W. 937, 940, 21 A. L. R. 1535.

"By," 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; *Wilson v. Inloes*, 6 Gill (Md.) 121.

"By" also means through the means, act, or instrumentality of. *Carroll v. Industrial Commission of Colorado*, 69 Colo. 473, 195 P. 1097, 19 A. L. R. 107.

**By an acquittance for the last payment all other arrearages are discharged.** *Noy*, 40.

**BY-BIDDER.** One employed by the seller or his agent to bid on property with no purpose to become a purchaser, so that bidding thereon may be stimulated in others who are bidding in good faith. *Osborn v. Apperson Lodge, Free and Accepted Masons*, No. 195, of Louisa, Ky., 281 S. W. 500, 502, 213 Ky. 533, 46 A. L. R. 117; *Veazie v. Williams*, 8 How. 134, 12 L. Ed. 1018.

**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; 3 Bla. Comm. 285, 286. See *Harkness v. Harkness*, 5 Hill (N. Y.) 213. The usual course of commencing an action in the King's Bench was by a bill of Middlesex. In an action commenced *by bill* it is not necessary to notice the form or nature of the action. 1 Chit. Pl. 283.

**BY ESTIMATION.** In conveyancing. A term used to indicate that the quantity of land as stated is estimated only, not exactly measured; it 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. It is said that the meaning of these words has never been precisely ascertained by judicial decision. See *Sugden, Vend.* 231; *Noble v. Goo-gins*, 99 Mass. 234.

**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-LAW MEN.** In English law. The chief men of a town, representing the inhabitants. In an ancient deed, certain parties are described as "yeomen and *by-law men*." 6 Q. B. 60.

They appear to have been men appointed for some purpose of limited authority by the

other inhabitants, under by-laws of the corporation appointing.

**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. 73, 50 Atl. 760, 56 L. R. A. 184; *Dairy Ass'n v. Webb*, 40 App. Div. 49, 57 N. Y. Supp. 572. A "by-law" of a private corporation is a permanent rule of action adopted by the stockholders, in accordance with which the corporate affairs are to be conducted. *Griffith v. Klamath Water Users' Ass'n*, 68 Or. 402, 137 P. 226, 227; *Cummings v. State*, 47 Okl. 627, 149 P. 864, 866, L. R. A. 1915E, 774.

"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. See *Kilgour v. Gratto*, 112 N. E. 489, 490, 224 Mass. 78. 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.

In England the term *by-law* includes any order, rule or regulation made by any local authority or statutory corporation subordinate to Parliament; 1 *Odgers*, C. L. 91.

**BY-PASSING.** As used in a contract for the construction of a subway, requiring the by-passing of all gas pipes whose service cannot be temporarily dispensed with, "by-passing" means the temporary cutting out of the gas mains under the street and laying of substituted temporary overhead gas pipes until all danger in using the original pipes is passed. *Degnon Contracting Co. v. City of New York*, 196 N. Y. S. 63, 64, 202 App. Div. 390.

**BY REASON OF.** Because of. *Freeman v. Bennett* (Tex. Civ. App.) 195 S. W. 238, 241. By means, acts, or instrumentality of. *State v. Kaufman*, 50 S. D. 645, 211 N. W. 691, 692.

**BY THE BY** (also *Bye*). 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. It is no longer allowed; *Archbold*, New Pr. 293.

**BY VIRTUE OF.** Because of, through, or in pursuance of. *State ex rel. and to Use of Jasper County v. Gass*, 317 Mo. 744, 296 S. W. 431, 432. Money received by an officer by virtue of his office is money which that officer received under the law of his office, and not in violation thereof. *Hollingsworth v. State*, 73 Fla. 44, 75 So. 612, 614.

**BYE-BIL-WUFFA.** In Hindu law. A deed of mortgage or conditional sale.

**BYRLAWS.** See *Burlaws*.

**BYROAD.** The statute law of New Jersey recognizes three different kinds of roads: A public road, a private road, and a byroad. A byroad is a road used by the inhabitants, and recognized by statute, but not laid out. Such roads are often called "driftways." 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.

**BYSTANDER.** One who stands near; a chance looker-on; hence one who has no concern with the business being transacted. *Baker v. State*, 187 S. W. 949, 952, 79 Tex. Cr. R. 510.

Under statutes relating to summoning of bystanders to complete jury panel, "bystanders" may be held to mean qualified talesmen summoned by sheriff from county at large. *Commonwealth v. Sacco*, 151 N. E. 839, 847, 255 Mass. 369. The term means qualified electors, not necessarily persons present in court. *Bennett v. State*, 257 S. W. 372, 373, 161 Ark. 496; *Rogers v. State*, 201 S. W. 845, 846, 133 Ark. 85.

Under statutes authorizing "bystanders" to certify bill of exceptions, parties to the suit and their attorneys, *Walker v. State*, 227 S. W. 308, 312, 88 Tex. Cr. R. 389; and also witnesses in the case, *McConnell v. McCord*, 281 S. W. 384, 170 Ark. 839, as well as persons not present at the trial, are not bystanders, *Buck v. St. Louis Union Trust Co.*, 185 S. W. 208, 211, 267 Mo. 644. Though jurors are not "bystanders" in the ordinary meaning of that term, they can sign a bystanders' bill of exceptions to acts and comments by the court and the argument of attorneys thereon. *Alamo Iron Works v. Prado* (Tex. Civ. App.) 220 S. W. 282, 291.

## C

**C.** The third letter of the alphabet. It was used among the Romans to denote condemnation, being the initial letter of *condemno*, I condemn. Tayl. Civil Law, 192.

The initial letter of the word "*Code*," used by some writers in citing the Code of Justinian. Tayl. Civil Law, 24.

C, as the third letter of the alphabet, is used as a numeral, in like manner with that use of A and B (*q. v.*). The letter is also used to designate the *third* of a series of propositions, sections, etc.

It is used as an abbreviation of many words of which it is the initial letter; such as cases, civil, circuit, code, common, court, criminal, chancellor, crown.

**C.—CT.—CTS.** These abbreviations stand for "cent" or "cents," and any one of them, placed at the top or head of a column of figures, sufficiently indicates the denomination of the figures below. Jackson v. Cummings, 15 Ill. 453; Hunt v. Smith, 9 Kan. 137; Linck v. Litchfield, 141 Ill. 469, 31 N. E. 123.

**C. A. V.** An abbreviation for *curia advisari vult*, the court will be advised, will consider, will deliberate.

**C. B.** In reports and legal documents, an abbreviation for common bench. Also an abbreviation for chief baron.

**C. C.** Various terms or phrases may be denoted by this abbreviation; such as circuit court, (or city or county court;) criminal cases, (or crown or civil or chancery cases;) civil code; chief commissioner; and *cepi corpus*, I have taken his body.

**C. C.; B. B.** I have taken his body; bail bond entered. See *Capias ad Respondendum*.

**C. C. P.** An abbreviation for Code of Civil Procedure; also for court of common pleas.

**C. C. & C.** I have taken his body and he is held.

**C. F. & I.** Also written "c. f. i." Letters used in contracts for *cost, freight and insurance*, indicating that the price fixed covers not only cost but freight and insurance to be paid by the seller; Benj. Sales, § 887; L. R. 8 Ex. 179; L. R. 5 H. L. 395, 406; 7 H. & N. 574; Mee v. McNider, 109 N. Y. 500, 502, 17 N. E. 424; White v. Schweitzer, 132 N. Y. S. 644, 646, 147 App. Div. 544.

**C. I. F.** Also written "c. i. f." These letters in contracts of sale indicate, as does the expression "c. f. i." or "C. F. & I." (*q. v.*), that the price fixed covers the cost of goods, insurance, and freight. Seaver v. Lindsay Light Co., 182 N. Y. S. 30, 33, 111 Misc. 553; Cohen v. Wood & Selick, 212 N. Y. S. 31, 35, 214 App. Div. 175; National Wholesale Gro-

cery Co. v. Mann, 146 N. E. 791, 793, 251 Mass. 238; Setton v. Eberle-Albrecht Flour Co. (C. C. A.) 258 F. 905; A. Klipstein & Co. v. Dilsizian (C. C. A.) 273 F. 473, 475; Northern Grain Warehouse Co. v. Northwest Trading Co., 201 P. 903, 904, 117 Wash. 422; Staackman, Horschitz & Co. v. Cary, 197 Ill. App. 601, 605.

**C. J.** An abbreviation for chief justice; also for circuit judge.

**C. L.** An abbreviation for civil law.

**C. L. P.** Common law procedure, in reference to the English acts so entitled.

**C. O. D.** "Collect on delivery." These letters are not cabalistic, but have a determinate meaning. They import the carrier's liability to return to the consignor either the goods or the charges. U. S. Exp. Co. v. Keefer, 59 Ind. 267; Fleming v. Com., 130 Pa. 138, 18 Atl. 622; Express Co. v. Wolf, 79 Ill. 434; State v. Intoxicating Liquors, 73 Me. 278; American Merchants' Union Exp. Co. v. Schier, 55 Ill. 140; Collender v. Dinsmore, 55 N. Y. 206, 14 Am. Rep. 224; Danciger v. American Express Co., 179 S. W. 797, 798, 192 Mo. App. 172. The carrier accepts a check instead of cash at its own peril. Joseph Mogul, Inc., v. C. Lewis Lavine, Inc., 221 N. Y. S. 391, 393, 220 App. Div. 287.

**C. P.** An abbreviation for common pleas.

**C. R.** An abbreviation for *curia regis*; also for chancery reports.

**C. T. A.** An abbreviation for *cum testamento annexo*, in describing a species of administration.

**CA. SA.** An abbreviation of *capias ad satisfaciendum, q. v.*

**CABAL.** A small association for the purpose of intrigue; an intrigue. This name was given to that ministry in the reign of Charles II, formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word "cabal;" hence the appellation. Hume, Hist. Eng. ix. 69.

**CABALIST.** In French commercial law. A factor or broker.

**CABALLARIA.** Pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service.

**CABALLERIA.** In Spanish law. An allotment of land acquired by conquest, to a horse soldier. A quantity of land, varying in ex-