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

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

B. D. S. A. Business and Defense Services Administration.

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. L. S. Bureau of Labor Statistics.

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.

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*.

BACK-SEAT DRIVER. A highly nervous passenger whether sitting in rear or by driver, who by unwarranted advice and warnings interferes in careful operation of automobile. *Winters v. York Motor Express Co.*, 116 Pa.Super. 421, 176 A. 812, 815.

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

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. *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. *Davis v. Pennsylvania Co. for Insurances on Lives and Granting Annuities*, 337 Pa. 456, 12 A.2d 66, 68. Defective, faulty, inferior, or imperfect. *Kniffley v. Reid*, 152 S.W. 2d 615, 616, 287 Ky. 212. 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.

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. *State v. Griffin*, 100 S.C. 331, 84 S.E. 876, 877; *Penn Mut. L. Ins. Co. v. Mechanics' Savings Bank & Trust Co.*, C.C.A.Tenn., 73 F. 653, 19 C.C.A. 316, 38 L.R.A. 33, 70; *Spiegel v. Beacon Participations*, 297 Mass. 398, 8 N.E.2d 895, 907.

BAD MOTIVE. Intentionally doing a wrongful act knowing at the time that it is wrongful. *Luhmann v. Schaefer*, Mo.App., 142 S.W.2d 1088, 1090; *Davis v. Nash Central Motors*, Mo.App., 332 S.W. 2d 475, 480.

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; *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 Pa. 147, 148. A circumstance which does not alone prove fraud, but which warrants inference of fraud, especially where there is a concurrence of many such badges. *Brennecke v. Riemann, Mo.*, 102 S.W.2d 874, 877, 109 A.L.R. 1214.

Recognized "badges of fraud" include fictitious consideration, false statements as to consideration, transactions different from usual course of doing business, transfer of all of a debtor's property, insolvency, confidential relationship of parties, and transfers in anticipation of suit or execution. *Hendrix v. Goldman, Mo.*, 92 S.W.2d 733, 736.

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

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reference to the immediate necessities or ultimate purpose of the journey. *Texas & P. Ry. Co. v. Bryant*, Tex.Civ.App., 11 S.W.2d 659, 660

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. 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.

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.*, 171 N.Y.S. 321, 322, 104 Misc. 79; 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. A closed car in a passenger train used to transport the property of the passengers. *Ward v. Gulf, M. & N. R. Co.*, 23 Tenn.App. 533, 134 S.W.2d 917.

BAGGAGE CAR SERVICE. A service rendered in such car in connection with the transportation of passengers by a passenger train movement or its equivalent. *Ward v. Gulf, M. & N. R. Co.*, 23 Tenn.App. 533, 134 S.W.2d 917, 923.

BAHADUM. A chest or coffer. *Fleta*.

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

To 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.

To procure release of one charged with an offense by insuring his future attendance in court and compelling him to remain within jurisdiction of court. *Manning v. State ex rel. Williams*, 190 Okl. 65, 120 P.2d 980, 981.

The object of "bail" in civil cases is either directly or indirectly to secure payment of a debt or performance of other civil duties, while in criminal cases object is to secure appearance of principal before the court when his presence is needed. *Johnson v. Shaffer*, 64 Ohio App. 236, 28 N.E.2d 765, 767. 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.

—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.

Its purpose is to secure the presence of the one charged in court when his presence is required in order to answer to the charge. *State v. Clark*, 234 Iowa 338, 11 N.W.2d 722. 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. 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. *Holthouse; 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; *Worthen v. Prescott*, 60 Vt. 68, 11 Atl. 690.

—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

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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. McGonagal*, 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 translatif 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. *Hotels Statler Co. v. Saifer*, 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; *Smith v. State*, 78 Okl.Cr. 375, 148 P.2d 206, 208.

BAILEE POLICIES. Floating policies which cover goods while in possession of warehouse without particular description in the policy. *Gillespie v. Federal Compress & Warehouse Co.*, 265 S.W.2d 21, 27, 37 Tenn.App. 476.

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.

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*, 18 N.E. 537, 46 Ohio St. 66, 15 Am.St.Rep. 552.

—**Bailiff-errant.** A bailiff's deputy.

—**Bailiffs of franchises.** In English law. Officers who perform the duties of sheriffs within liberties

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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. A bailivia.

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 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. Fulcher v. State, 32 Tex.Cr.R. 621, 25 S.W. 625.

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 direction, or kept until reclaimed. In re George L. Nadell & Co., 294 Mich. 150, 292 N.W. 684, 686. 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. Hardin v. Grant, Tex.Civ.App., 54 S.W.2d 189, 190; Hogan v. O'Brien, 206 N.Y.S. 831, 833, 123 Misc. 865. The term "bailment" is derived from the French word "bailler," meaning "to deliver." It imports a delivery of personal property by one person to another in trust for a specific purpose, with a contract, expressed or implied, that the trust shall be faithfully executed and the property returned or duly accounted for when the specific purpose is accomplished or kept until bailor claims it. Commonwealth v. Polk, 256 Ky. 100, 75 S.W.2d 761, 764.

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.

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.

—**Bailment for mutual benefit.** One in which the parties contemplate some price or compensation in return for benefits flowing from the bailment, necessarily involving an express or implied agreement or undertaking to that effect. Armored Car Service, Inc. v. First Nat. Bank of

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Miami, Fla.App., 114 So.2d 431, 434. For example, delivery of automobile to one who, for a consideration, undertakes to repair it. Fox Chevrolet Sales, Inc. v. Middleton, to Use of Farm Bureau Mut. Auto. Ins. Co., 99 A.2d 731, 732, 203 Md. 158, 43 A.L.R.2d 399.

—**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. 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. 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.

—**Bailment lease.** A legal method by which one desiring to purchase an article but unable to pay therefor at the time, may secure possession thereof with the right to use and enjoy it as long as he pays stipulated rentals and becomes absolute owner after completing such installment payments, on payment of an additional sum which may be nominal. In re Robinson, D.C.Pa., 40 F. Supp. 320, 322, 323.

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 re-vested 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.

—**Debt.** The distinction between an obligation to restore the specific thing received, or of returning others of equal value, is the distinction between a "bailment" and a "debt." Alamitos Land Co. v. Texas Co., 11 Cal.App.2d 614, 54 P.2d 489, 491.

—**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. Austin v. Seligman, C.C.N.Y., 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. Simmons v. Shaft, 91 Kan. 553, 138 P. 614, 615.

—**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. Sturm v. Boker, 14 S.Ct. 99, 150 U.S. 312, 37 L.Ed. 1093; Borman v. U. S., C.C.A.N.Y., 262 F. 26, 29.

Conditional sale. Contemplates that at some time the title shall pass to the purchaser and that he shall pay the purchase price, while a "bailment" contemplates that the title shall not pass to the bailee, but remain in the bailor, and that the property shall be returned to the bailor. Vermont Acceptance Corporation v. Wiltshire, 103 Vt. 219, 153 A. 199, 200, 73 A.L.R. 792.

—**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; McIntyre v. Smith, 154 Md. 660, 141 A. 405, 410.

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 relic. 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 busi-

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ness, such as doing shop service in putting bread in boxes. *Futopolus v. Midland Casualty Co.*, 174 Wis. 208, 182 N.W. 845, 847.

BAKERY. Any place used for the purpose of mixing, compounding, or baking for sale or for purposes of a restaurant, bakery or hotel, any bread, biscuit, pretzels, crackers, buns, rolls, macaroni, cake, pies, or any food products of which flour or meal is a principal ingredient. *Continental Baking Co. v. Campbell*, 176 Okl. 218, 55 P.2d 114, 116.

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.Ark., 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. *Thillman v. Shadrick*, 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.

Often used in the sense of residue or remainder, and, in a general sense, may be defined as what remains or is left over. *Commercial Discount Co. v. Holland*, 107 Cal.App. 83, 289 P. 906, 908.

—**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.

—**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.

A standard package of merchantable lint cotton, separated from the seed by the first process of a cotton gin, weighing approximately 500 pounds, and classifiable under one of the recognized market grades. *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.

BALIVO AMOVENDO. See *Ballivo Amovendo*.

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

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 bail. 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.

BALLOON MORTGAGE. A mortgage providing for specific payments at stated regular intervals, and final payment of more than twice any of the periodic payments. Bellman v. Yarmark Enterprises, Inc., Fla.App., 180 So.2d 663, 665.

BALLOT. Derived from ballotta, a round bullet, a voice or lot, means act of voting, usually in secret, by balls or by written or printed tickets or slips of paper; the system of voting by balls or tickets, or by any device for casting or recording votes, as by voting machine. Norris v. Mayor and City Council of Baltimore, 192 A. 531, 535, 172 Md. 667. Also piece of paper on which the voter gives expression to his choice. Sawyer Stores v. Mitchell, 103 Mont. 148, 62 P.2d 342, 348.

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. Denny v. Pratt, 104 Conn. 396, 133 A. 107, 108.

Used as a symbol of secrecy, while "viva voce" is used as a symbol of publicity. Day v. Walker, 124 Neb. 500, 247 N.W. 350, 351.

The whole amount of votes cast.

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.

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

BALNEARI. 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. Cowell. 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.

French Law

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

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.

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BANCI NARRATORES. In old English law. Advocates; counors; 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. Also a small tract of land on opposite side of river from country to which it belongs, and so existing by virtue of an avulsive change in the river. San Lorenzo Title & Improvement Co. v. City Mortgage Co., Tex.Civ.App., 48 S.W.2d 310, 314. See, also, 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*. Viner, 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. l. 1, t. 8, c. 1.

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

BANERET, or BANNERET. In English law. A knight made in the field, by the ceremony of cutting off the point of his standard, and making it, as it were, a banner. Knights so made are accounted so honorable that they are allowed to display their arms in the royal army, as barons do, and may bear arms with supporters. They 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 Bl.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. Cooper v. Telfair, 4 Dall. 14, 1 L.Ed. 721; People v. Potter, 1 Park.Cr.R. (N.Y.) 54. 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 Bl.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. 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; Horton v. Niagara, Lockport & Ontario Power Co., 247 N.Y.S. 741, 745, 231 App.Div. 386. 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 particular 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, 139 P. 943, 946, 40 Okl. 479. 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,

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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. *State v. Wagner*, 202 Iowa, 739, 210 N.W. 901, 902; *People v. Bartow*, 6 Cow.N.Y. 290; *Dearborn v. Northwestern Savings Bank*, 42 Ohio St. 617; *In re Prudence Co.*, D.C.N.Y., 10 F.Supp. 33, 36.

An institution, usually incorporated with power to issue its promissory notes intended to circulate as money (known as bank notes); or to receive the money of others on general deposit, to form a joint fund that shall be used by the institution, for its own benefit, for one or more of the purposes of making temporary loans and discounts; of dealing in notes, foreign and domestic bills of exchange, coin, bullion, credits, and the remission of money; or with both these powers, and with the privileges, in addition to these basic powers, of receiving special deposits and making collections for the holders of negotiable paper, if the institution sees fit to engage in such business. *State of Kansas ex rel. Boynton v. Hayes*, C.C.A.Kan., 62 F.2d 597, 600. 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*, C.C.A. N.Y., 101 F. 75, 41 C.C.A. 205; *Wells, Fargo & Co. v. Northern Pac. R. Co.*, C.C.Or., 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.*, 118 N.E. 568, 569, 187 Ind. 307; *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 passbook. *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 cashier. A chief executive officer and general agent through whom financial operations of bank are conducted. *Hamilton Nat. Bank of Chattanooga, Tenn., v. Lerman*, 229 Ala. 363, 157 So. 75.

—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 depositor. One who delivers to or leaves with a bank a sum of money subject to his order. *Wharton v. Poughkeepsie Sav. Bank*, 31 N.Y.S.2d 311, 313, 262 App.Div. 598.

—Bank draft. A check, draft, or other order for payment of money, drawn by an authorized officer of a bank upon either his own bank or some other bank in which funds of his bank are deposited. *Polotsky v. Artisans Sav. Bank, Del.*, 180 A. 791, 792, 7 W.W.Harr. 142.

—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. See, also, Banker's note.

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.

—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.

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

—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. *Millikan v. Security Trust Co.*, 187 Ind. 307, 118 N.E. 568, 569.

—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

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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; 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.

BANK HOLIDAY OF 1933. Presidential Proclamations No. 2039, issued March 6, 1933, and No. 2040, issued March 9, 1933, temporarily suspended banking transactions by member banks of the Federal Reserve System. Normal banking functions were resumed on March 13, subject to certain restrictions. The first proclamation, it was held, had no authority in law until the passage on March 9, 1933, of a ratifying act (12 U.S.C.A. § 95b). Anthony v. Bank of Wiggins, 183 Miss. 885, 184 So. 626. The present law forbids member banks of the Federal Reserve System to transact banking business, except under regulations of the Secretary of the Treasury, during an emergency proclaimed by the President. 12 U.S.C.A. § 95.

BANK NIGHT. A device by which a theater provides a registration book which any person over eighteen years of age, whether a patron of the theater or not, may sign. The book is placed in the lobby or outside the doors of the theater and no charge is made for registration nor need one who does so buy a ticket to the theater. A number is given to each name. On stated occasions, the numbers representing all the names registered are placed in a container on the stage of the theater and one number is drawn. The name of the person having that registration number is announced both inside and outside the theater and on coming forward within a certain time, he receives a sum of money which the theater provides from its own funds. If the person whose number is drawn is outside the theater, he is permitted to enter and claim the award without paying the admission. If he does not come forward within the time set, the money is added to the sum to be awarded on the next bank night. Under the plan, various safeguards are thrown about the operation to insure fairness in the allotment of the money. State v. Dorau, 124 Conn. 160, 198 A. 573, 574. If not a *lottery*, a bank night is at least a *gift enterprise*. Barker v. State, 56 Ga. App. 705, 193 S.E. 605, 609. But it is generally considered to be a *lottery*. State ex rel. Hunter v. Fox Beatrice Theatre Corporation, 133 Neb. 392, 275 N.W. 605, 606; Furst v. A. & G. Amusement Co., 128 N.J.L. 311, 25 A.2d 892, 893; Commonwealth v. Lund, 142 Pa.Super. 208, 15 A.2d 839, 846.

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. U.S.Rev.Stat. § 5133 (12 USCA § 21); Veazie Bank v. Fenno, 8 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, 19 S.Ct. 628, 174 U.S. 125, 43 L.Ed 920.

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.Mo., 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. 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

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. 138, 156, 7 S.Ct. 826, 30 L.Ed. 895; *In re Prudence Co.*, D. C.N.Y., 10 F.Supp. 33, 36.

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, 291 S.W. 17, 18, 50 A.L.R. 1337; *State of Kansas ex rel. Boynton v. Hayes*, C.C.A.Kan., 62 F.2d 597, 600.

BANKING A DEAL. Means making to one who wishes to consummate a deal a loan of money on collateral for a consideration which may consist of interest, a fee, or a part of the securities or property involved in the deal. *Cray, McFawn & Co. v. Hegarty, Conroy & Co.*, D.C.N.Y., 27 F.Supp. 93, 99.

BANKING GAME. Gambling game at which money is bet or hazarded. *State v. Singley*, 195 La. 519, 197 So. 218, 219.

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; *Shor v. McGregor*, C.C.A.Tex., 108 F.2d 421, 423. 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. 529; 2 Kent, 390; *McCormick v. Pickering*, 4 N.Y. 283. 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. For "Examination of bankrupt", see Examination.

The term includes one against whom involuntary petition has been filed. *United States v. Agresti*, C.C.A.N.Y., 130 F.2d 152, 153, 154.

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 for benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts. *Campbell v. Alleghany Corporation*, C.C. A.Md., 75 F.2d 947, 951.

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. Hazlehursts*, 4 N.J.Law, 192, 7 Am.Dec. 582; *Adams v. Storey*, 1 Paine, 79, 1 Fed.Cas. 142; *Kunzler v. Kohaus*, 5 Hill (N.Y.) 317.

The only substantial difference between a strictly bankrupt law and an insolvent law lies in the circumstance that the former affords relief upon the application of the creditor, and the latter upon the application of the debtor. *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*, C.C.A.Wis., 70 Fed. 468, 17 C.C.A. 203, 30 L.R.A. 513.

It constitutes a branch of equity jurisprudence. In *re Flour Mills of America*, D.C.Mo., 27 F.Supp. 559, 560. Its purpose is to secure finally to creditors distribution of value of at least part of debtor's assets and to bankrupt discharge from his debts, to end that creditors may be paid as much as may be and that bankrupt may have new start in life. *In re Jones*, D.C.Mo., 10 F.Supp. 165, 167.

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

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. Steps in administration of estate in bankruptcy court within summary jurisdiction of bankruptcy court. (Bankr. Act, § 24a, b, 11 U.S.C.A. § 47(a) (b). *Childs v. Ultramares Corporation*, C.C.A. N.Y., 40 F.2d 474, 477.

Controversies Arising in Bankruptcy Proceedings. See Proceedings in bankruptcy.

Extension. See Extension.

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.Iowa, 96 F. 600; *Metsker v. Bonebrake*, 2 Sup.Ct. 351, 108 U.S. 66, 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.

Bankruptcy Rule

Allows claim only for amount of debt, less value of security. In *re Baker*, 333 Pa. 273, 3 A.2d 785, 786.

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.

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. Lat. 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.

BANNITIO. Banishment; expulsion by a ban or public proclamation. *Adams Gloss*.

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 banns 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 parti-

BAR

tion 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, hence 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 at *nisi prius*. So the "case at bar" is the case now before the court and under its consideration; the case being tried or argued.

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.

A barrier or counter over which liquors and food are passed to customers, hence the portion of the room behind the counter where the liquors for sale are kept. *Hinton v. State*, 137 Tex.Cr.R. 352, 129 S.W.2d 670, 673.

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 Coos 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 integration.** See Integrated Bar.

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

BAR ROOM. A place where intoxicating liquors are sold to be drunk on the same premises. *City of Spokane v. Baughman*, 103 P. 14, 17, 54 Wash. 315.

A room containing a bar or counter at which liquors are sold, or a room with a bar where liquors and refreshments are served. *Mustard v. Elwood*, C.C.A.Alaska, 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.

BARAT. See Berat.

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 watchtower.

BARBITTS. L. Fr. (Modern Fr. *brebis*.) Sheep.

BARE. Naked; without a covering; unaccompanied.

BARE OR MERE LICENSEE. One whose presence on premises is merely tolerated; while a "licensee" or "invitee" is one who is on the premises by invitation, express or implied. *Chicago, R. I. & P. Ry. Co. v. McCleary*, 175 Okl. 347, 53 P.2d 555, 557.

BARE PATENT LICENSE. A grant of authority to make, use or vend patented product throughout the United States or in a given part thereof, with no right of exclusion. 35 U.S.C.A. § 47. *Innis, Speiden & Co. v. Food Machinery Corporation*, D. C.Del., 2 F.R.D. 261, 263.

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. *Bank v. Archer*, 16 Miss. 192.

As a verb, 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. That kind of fraud often perpetrated upon young, inexperienced, or ignorant people. *Provident Life & Trust Co. v. Fletcher*, C.C.A.N.Y., 258 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 consideration, by way of sale. *Shep.Touch. (by Preston,)* 221.

A contract or bargain by the owner of land, in consideration of money or its equivalent paid, to sell land to another person, called the "bargainee," whereupon a use arises in favor of the latter, to whom the seisin is transferred by force of the statute of uses. *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.

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.

BARGAIN OR CONTRACT IN RESTRAINT OF TRADE. Any bargain or contract which purports to limit in any way right of either party to work or to do business. *Stoia v. Miskinis*, 298 Mich. 105, 298 N.W. 469, 474.

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. Name originally applied to a small sailing vessel but afterwards came into general use for a flat bottomed boat used for carrying goods on inland waterways. Barges are usually towed or fitted with some kind of engine. *The Sakito Maru*, D.C.Cal., 41 *F.Supp.* 769, 778.

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. *Washington v. Arizona*, 46 *Ariz.* 446, 52 P.2d 476, 478.

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*, 22 *Ky.L.Rep.* 472, 57 S. W. 614, 615.

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

BARO

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 COURT. See Court-Baron.

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*," (*fœmina viro cooperta*;) and her state of marriage is called her "*coverture*." Cummings v. Everett, 82 Me. 260, 19 A. 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 "Barretty." The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. 4 Bla.Com. 134; State v. Batson, 220 N.C. 411, 17 S.E.2d 511, 512, 513.

Common barratry is the practice of exciting groundless judicial proceedings. Pen.Code Cal. § 158; 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. Hansen v. Barnard, C.C.A.N.Y., 270 F. 163, 166.

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.

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." 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.

BASE

Common Barretor

One who frequently excites and stirs up groundless suits and quarrels, either at law or otherwise. *State v. Batson*, 220 N.C. 411, 17 S.E.2d 511, 512, 513.

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; *Crowley v. City of Raymond*, 198 Wash. 432, 88 P.2d 858, 859.

BARRIER. A fence. *Page Steel & Wire Co. v. Smith Bros. Hardware Co.*, C.C.A.Ohio, 64 F.2d 512.

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.

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. *Finker v. Boyer*, 331 Mo. 1242, 56 S.W.2d 372.

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. In a sale there is a fixed price; in a barter there is not. *Speigle v. Meredith*, 4 Biss. 120, Fed.Cas.No.13,227.

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.

—**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. 93; *Scobey v. Beckman*, 111 Ind.App. 574, 41 N.E.2d 847, 850.

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*, 128 N.E. 321, 322, 294 Ill. 126; sometimes called a conditional fee; *Citizens' Electric Co. v. Susquehanna Boom Co.*, 113 A. 559, 561, 270 Pa. 517; a determinable fee; *Penick v. Atkinson*, 77 S.E. 1055, 1057, 139 Ga. 649, 46 L.R.A.,N.S., 284, Ann.Cas.1914B, 842; or a qualified fee; In *re Douglass' Estate*, 143 N.W. 299, 302, 94 Neb. 280, Ann.Cas.1914D, 447. *Burche v. Neal*, 149 S.E. 611, 612, 107 W.Va. 559.

BASE

—**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.

BASE, n. Bottom, foundation, groundwork, that on which a thing rests. Webster.

The locality on which a military or naval force relies for supplies or from which it initiates operations. Webster. For example: air base; military base; marine base; naval base; submarine base.

—**Base Hospital.** See Hospital.

—**Air Base.** A military or naval establishment forming a center of supporting activities for the military or naval air arm; a training center for air corps personnel; a place where equipment and supplies of the air corps are kept. The term is included in the word *fort*. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816.

—**Submarine Base.** A naval base for the housing, repair and maintenance of submarines, for keeping supplies; a place where personnel is trained; a place from which operations are initiated.

BASED UPON. Means an initial or starting point for calculation. State ex rel. Snidow v. State Board of Equalization, 93 Mont. 19, 17 P.2d 68.

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.

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.

BASIC OR PIONEER PATENT. One discovered in new field and recognized by scientific world or industry as startling, unexpected, and unprophe- sied. Northwest Engineering Corporation v. Key- stone Driller Co., C.C.A.Wis., 70 F.2d 13, 16.

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

BASILICA. The name given to a compilation of Roman and Greek law, prepared about A.D. 880 by the Emperor Basilius, and published by his successor, Leo the Philosopher. It was written in Greek, was mainly an abridgment of Justinian's *Corpus Juris*, and comprised sixty books, only a portion of which are extant. It remained the law of the Eastern Empire until the fall of Constanti- nople, in 1453.

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

BASIN. When speaking of a large river, ordinari- ly means or includes the entire area drained by the main stream and its tributaries. City of Tulsa v. Peacock, 181 Okl. 383, 74 P.2d 359, 360.

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. Fundamental principle; groundwork; support; foundation; the foundation or ground- work of anything; that upon which anything may rest or the principal component parts of a thing. Tolmie v. San Diego Fruit & Produce Co., 57 Idaho 631, 68 P.2d 61, 64. 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 institu- ted in 1302. It judged all civil and criminal mat- ters that arose among the clerks and all actions brought against them. Hist. for Ready Reference.

BASSA, BASSO, or BASSUS. L. Lat. Low. Ad- ams Gloss.

BASSA TENURA. See Base Fee.

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

BASSET. A card game resembling faro. It was invented in Venice, and was widely popular in Europe from about 1650 to 1800.

BASTARD. An illegitimate child; a child born of an unlawful intercourse, and before the lawful marriage of its parents. Pettus v. Dawson, 82 Tex. 18, 17 S.W. 714.

A child born after marriage, but under circum- stances which render it impossible that the hus- band of his mother can be his father. State v. Coliton, 73 N.D. 582, 17 N.W.2d 546, 548, 549, 156 A.L.R. 1403.

BATTURE

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. 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.

Such children as are not born either in lawful wedlock or within a competent time after its determination. In re Paterson's Estate, 34 Cal.App.2d 305, 93 P.2d 825, 827.

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

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.

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, ainé, 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.

It is of a special character in nature of civil action. In re Mitchell, 189 Okl. 51, 113 P.2d 979, 980.

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 of the Bath.

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. Goodrum v. State, 60 Ga. 511.

A willful and unlawful use of force or violence upon the person of another. Long v. Rogers, 17 Ala. 540. 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; Commonwealth v. Remley, 257 Ky. 209, 77 S.W.2d 784. The consummation of an unlawful assault. State v. Hamburg, Del., 143 A. 47, 48. 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. Booher v. Trainer, 172 Mo.App. 376, 157 S.W. 848, 850; Commonwealth v. Gregory, 132 Pa. Super. 507, 1 A.2d 501, 503.

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." Harris v. State, 15 Okl.Cr. 369, 177 P. 122, 123.

A surgical operation is a technical "battery" regardless of its result, and is excusable only when there is express or implied consent by the patient. Bonner v. Moran, 126 F.2d 121, 122, 75 U.S.App.D.C. 156, 139 A.L.R. 1366.

—**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

BATTURE

as the land on the outside of the bank. *Conkey v. Knudsen*, 143 Neb. 5, 8 N.W.2d 538, 541.

In this latter sense it is synonymous with "alluvion." It means, in common-law language, land formed by accretion. *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 Boeuf 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. *United States v. Aluminum Co. of America*, D.C.N.Y., 44 F.Supp. 97, 109.

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. 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; but need not be inhabited or resorted to by more than one woman for purpose of prostitution. *Trent v. Commonwealth*, 181 Va. 338, 25 S.E.2d 350, 351.

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 fore-bay.)

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. *Mayo v. New York Cent. R. Co.*, 263 N.Y. 277, 189 N.E. 217, 218.

BAYGALL. A low-lying wet land matter with vegetable fibres and often with gallberry and other thick-growing bushes. *McNeal v. Carter*, 191 Ga. 441, 12 S.E.2d 332, 333.

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. *Hieronimus v. Moran*, 272 Ill. 254, 111 N.E. 1022, 1023.

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.

In common parlance designates that portion of shore consisting generally of sand and pebbles, resulting usually from the action of water, as distinct from the upland, to which it often extends above normal high-water mark. *Borden v. Town of Westport*, 112 Conn. 152, 151 A. 512, 515.

Beach is synonymous with "shore," "strand," or "flats." *Littlefield v. Littlefield*, 28 Me. 180.

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; to render, to manage, or direct, or to conduct; to carry on, or maintain;

to be answerable for, and to defray. *Teeter v. Mid-West Enterprise Co.*, 174 Okl. 644, 52 P.2d 810, 812.

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. *Ayette 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. *Miller v. People's Sav. Bank*, 193 Mo.App. 498, 186 S.W. 547, 550.

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 S.Ct. 564, 568, 27 L. Ed. 298.

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; *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. *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. *Cowell*; *Co.* 2d Inst. 122; *Crabb, Eng.Law* 150.

BEAUTY CULTURE. Generally, the means employed to improve personal appearance, is an occupation operating directly on the person. *Hoff v. State*, Del.Super., 197 A. 75, 78, 81.

BECAUSE OF. For. *Kelly v. State Personnel Board of California*, 31 Cal.App.2d 443, 88 P.2d 264, 266.

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." *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.

Soil only which the water occupies sufficiently long and continuously to wrest it from vegetation

BED

and destroy its value for agricultural purposes. State ex rel. O'Connor v. Sorenson, 271 N.W. 234, 236, 222 Iowa 1248.

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

That portion of its soil which is alternately covered and left bare as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean state during an entire year. Maurais v. State, 142 Tex. 559, 180 S.W.2d 144, 147.

Area extending between the opposing banks measured from the foot of the banks from the top of the water at its ordinary stage, including sand bars which may exist between the foot of said banks as thus defined. Town of Refugio v. Heard, Tex.Civ.App., 95 S.W.2d 1008, 1010.

It includes the lands below ordinary high water mark. United States v. Chicago, M., St. P. & P. R. Co., 61 S.Ct. 772, 775, 312 U.S. 592, 313 U.S. 543, 85 L.Ed. 1064.

Bed of navigable lake extends to high water mark. Miami Corporation v. State, 186 La. 784, 173 So. 315.

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 house-keepers. Cowell. See Bidal.

BEDDING. Covers practically everything, that is to say, mattresses, springs, cots, couches, quilts, cushions, and also the bed itself. Baltimore Bedding Corporation v. Moses, 182 Md. 229, 34 A.2d 338, 340.

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. 234b; Cowell.

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

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

BEDLAM. A corruption of *Bethlehem*. The hospital of St. Mary of Bethlehem in London, originally a priory, founded about 1247, but used from about 1400 as an asylum for the insane.

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.Md., 260 F. 486, 487.

In its ordinary sense, it denotes a beverage which is intoxicating; 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. Maier v. State, 2 Tex.Civ.App. 296, 21 S.W. 974.

But also held that "liquor," in common parlance, does not ordinarily mean "beer." Lea v. State, 181 S.W.2d 351, 353, 181 Tenn. 378.

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.

When used as a preposition, does not indicate a period of time as do the prepositions "for," "during," and "throughout," but merely an event or act preceding in time, or earlier than, or previously to, the time mentioned. First Nat. Corporation v. Perrine, 43 P.2d 1073, 1077, 99 Mont. 454.

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

BELLIGERENTS

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; to start; to institute; to initiate; to commence. People ex rel. Northchester Corporation v. Miller, 31 N.Y.S.2d 586, 587, 263 App.Div. 83.

BEGOTTEN. "To be begotten" means the same as "begotten," embracing all those whom the parent shall have begotten during his life, *quos procreaverit*. Cox v. Newby, 85 S.E. 369, 370, 101 S.C. 193. 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., C.C.A.III., 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. 693; 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; Schneiderman v. United States, Cal., 63 S.Ct. 1333, 1340, 320 U.S. 118, 87 L.Ed. 1796.

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.

BEING STRUCK. Collision, or striking together of two objects, one of which may be stationary. Davilla v. Liberty Life Ins. Co., 114 Cal.App. 308, 299 P. 831, 834.

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.

Latrobe v. J. H. Cross Co., D.C.Pa., 29 F.2d 210, 212. A conclusion arrived at from external sources after weighing probability. Ex parte State ex rel. Attorney General, 100 So. 312, 313, 211 Ala. 1.

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.

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.N.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.

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. Brooks v. Sessions, 47 Ga.App. 554, 171 S.E. 222, 224.

"Suspicion" is weaker than "belief," since suspicion requires no real foundation for its existence, while "belief" is necessarily based on at least assumed facts. Pen. Code, § 836, subd. 3. Cook v. Singer Sewing Mach. Co., 32 P.2d 430, 431, 138 Cal.App. 418.

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. Moore, Int. Law Dig. I, 196; Dana's Wheaton, note 15, page 35; In re Jones, 71 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 belligerent; 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.N.Y., 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. See Ex parte Toscano, D.C.Cal., 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

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; *People ex rel. Gill v. Lake Forest University*, 367 Ill. 103, 10 N.E.2d 667, 671; and (2) less than ownership, *i. e.*, less than an unqualified and absolute title, such as the absolute right of user. *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.

When used in public and private statutes, and especially when used in reference to inhabitancy, the poor, etc., designates the place of a person's legal settlement, and not merely his place of residence. *City of Bridgeport v. Town of Greenwich*, 165 A. 797, 116 Conn. 537.

BELONGING. That which is connected with a principal or greater thing; an appendage, an appurtenance; also ownership. *Church of the Holy Faith v. State Tax Commission*, 39 N.M. 403, 48 P.2d 777, 779.

BELONGINGS. That which belongs to one; property; possessions;—a term properly used to express ownership. In a will. *Ford's Adm'r v. Wade's Adm'r*, 242 Ky. 18, 45 S.W.2d 818, 820.

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

Preliminary; auxiliary or instrumental.

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

BENCH. A seat of judgment or tribunal for the administration of justice; the seat occupied by judges in courts; also the court itself, 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 LEGISLATION. See *Judge-made law* under the title Judge.

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. 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. This term is applied both to estates (as a "beneficial interest") and to persons (as "the beneficial owner"). *Kolb v. Landes*, 277 Ill. 440, 115 N.E. 539, 541; *In re Williams' Will*, 50 Mont. 142, 145 P. 957, 959.

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. *Lafferty v. Supreme Council Catholic Mut. Ben. Ass'n*, 259 Pa. 452, 103 A. 280, 281; but also held to include incorporated organizations. *State v. Texas*

BENEFICIUM

Mut. Life Ins. Co. of Texas, Tex.Civ.App., 51 S.W. 2d 405, 410.

Another name for a "benefit society;" "benevolent society," and "fraternal" or "friendly society." State v. Texas Mut. Life Ins. Co. of Texas, Tex.Civ.App., 51 S.W.2d 405, 410.

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. People v. Schaefer, 266 Ill. 334, 107 N.E. 617, 619; Christiansen v. Department of Social Security, 15 Wash.2d 465, 131 P.2d 189, 191, 192.

When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his own use or benefit, and not as holder of title for use and benefit of another. People v. Northern Trust Co., 330 Ill. 238, 161 N.E. 525, 528.

BENEFICIAL POWER. In New York law and practice. A power which has for its object the donee of the power, and which is to be executed solely for his benefit; as distinguished from a trust power, which has for its object a person other than the donee, and is to be executed solely for the benefit of such person. Jennings v. Conboy, 73 N.Y. 234; In re New York Life Ins. & Trust Co., Sur., 139 N.Y.S. 695, 705; People, by Van Schaick v. New York Title & Mortgage Co., 270 N.Y.S. 473, 150 Misc. 488.

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.

Such right to enjoyment of property where legal title is in one person while right to such use or interest is in another. Christiansen v. Department of Social Security, 15 Wash.2d 465, 131 P.2d 189, 191.

BENEFICIARY. One for whose benefit a trust is created; a *cestui que trust*. 195 N.E. 557, 564, 97 A.L.R. 1170. 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. Parrott Estate Co. v. McLaughlin, D.C.Cal., 12 F.Supp. 23, 25; Odom v. Prudential Ins. Co. of America, 173 Or. 435, 145 P.2d 480, 482. One receiving benefit or advantage, or one who is in receipt of benefits, profits, or advantage. Bauer v. Myers, C.C.A.Kan., 244 F. 902, 908. For "Favored Beneficiary," see that title.

BENEFICIARY ASSOCIATION. See Beneficial or Benevolent 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 with benefit of inventory. Succession of Galiano, La.App., 195 So. 377, 379.

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 (*q. v.*).

—**Beneficium competentiae.** 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

—**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 INVITO NON DATUR. A privilege or benefit is not granted against one's will. Adams Gloss.

BENEFICIUM NON DATUM NISI PROPTER OFFICIUM. Hob. 148. A remuneration [is] not given, unless on account of a duty performed.

BENEFICIUM NON DATUR NISI OFFICII CAUSA. A benefice is not granted except on account or in consideration of duty. Adams Gloss.

BENEFICIUM PRINCIPIS DEBET ESSE MANSURUM. The benefaction of a prince ought to be lasting. Adams Gloss.

BENEFIT. Advantage; profit; fruit; privilege; advantage. Fitch v. Bates, 11 Barb. (N.Y.) 473; Ferrigno v. Keasbey, 93 Conn. 445, 106 A. 445, 447; In re Krause's Estate, 173 Wash. 1, 21 P.2d 268; a pecuniary advantage or profit; gain; account; interest; the whole benefit and entire beneficial interest. Bird v. Newcomb, 170 Va. 208, 196 S.E. 605, 608.

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. Irving v. Irwin, 24 P.2d 215, 216, 133 Cal. App. 374. Woolum v. Sizemore, 267 Ky. 384, 102 S.W.2d 323, 324.

"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. Hooper v. Merchants' Bank & Trust Co., 130 S.E. 49, 52, 190 N. C. 423.

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 property similarly situated with reference to the work or improve-

ment in question; while special benefits are such as accrue directly and solely to the owner of the land in question and not to others. Brand v. Union Elevated R. Co., 101 N.E. 247, 249, 258 Ill. 133, 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, 180 Ind. 49, 102 N.E. 273.

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.

Also a term usually applied to policies issued by fraternal and beneficiary societies. Chandler v. New York Life Ins. Co., 194 Ark. 6, 104 S.W.2d 1060, 1061.

BENEFIT OF BARGAIN RULE. Under such rule a defrauded purchaser may recover the difference between the real and the represented value of the property purchased regardless of the fact that the actual loss suffered might have been less. Stewart v. Potter, 44 N.M. 460, 104 P.2d 736, 739.

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 compurga-

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tors, 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, c. 9, § 31, 1 Stat. 119, 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, 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. *Sheppard v. State*, 165 Ga. 460, 141 S.E. 196, 198.

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 OF ORDER. See *Beneficium Ordinis*.

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 A. 1112.

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. Also beneficent; doing well.

It is a broader term than "charity" which it includes, and with which it is frequently used synonymously. "Charity" in its legal sense implies giving without consideration or expectation of return, and "benevolence" applies to any act which is prompted by or has for its object the well-being of others. *State v. Texas Mut. Life Ins. Co.* of Texas, Tex.Civ.App., 51 S.W.2d 405, 410.

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.

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. *Suter v. Hilliard*, 132 Mass. 413, 42 Am.Rep. 444;

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;

BENEVOLENT ASSOCIATIONS. Those having a philanthropic or charitable purpose, as distinguished from such as are conducted for profit; specifically, "benefit associations" or "beneficial associations." *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. *Society of Helpers of Holy Souls v. Law*, 267 Mo. 667, 186 S.W. 718, 725; with respect to exemption from succession tax. *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.

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BENEVOLENT SOCIETY. Benevolent association. Spring Park Ass'n v. Rosedale Park Amusement Co., 216 Ala. 549, 114 So. 43, 44. 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. 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. 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. 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.

BENZINE. A crude petroleum distillate. George K. Hale Mfg. Co. v. Hafleigh & Co., C.C.A.Pa., 52 F.2d 714, 718.

BEQUEATH. To give personal property by will to another. Fielding v. Alkire, 124 Kan. 592, 261 P. 597, 599. It therefore is distinguishable from "devise," which is properly used of realty. Stubbs v. Abel, 114 Or. 610, 233 P. 852, 857; Fleck v. Harmstad, 155 A. 875, 876, 304 Pa. 302, 77 A.L.R. 874.

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. 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; In re Wood's Estate, 6 N.W.2d 846,

848, 232 Iowa 1004; Disposition of realty in will is termed "devise." Grand Island Trust Co. v. Snell, 249 N.W. 293, 125 Neb. 148.

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. 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.

Conditional Bequest

One the taking effect or continuing of which depends upon the happening or non-occurrence of a particular event. 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.

BERAT. Also *barat*. A warrant or patent of dignity or privilege given by an Oriental monarch. Cent. Dict.

BERBIAGE. A rent paid for the pasturing of sheep. Wharton.

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.

BERG. A rock (Cent. Dict.); a hill (Wharton); in South Africa, a mountain (Webster).

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.*).

BERIA, BERIE, or BERRY. A plain; a large open field. Wharton. See Berra.

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, 149 N.Y.S. 788, 789, 164 App.Div. 522.

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 *unciae*, or duodecimal parts, and amounting to two-thirds of the *as*. 2 Bl.Comm. 462 note *m*.

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

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

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

BESAYEL, Besaiel, Besayle. In old English law. A writ which lay where a great-grandfather died seized 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.

BESEECH. To entreat; to employ. Tiencken v. Zerst, 196 S.C. 438, 13 S.E.2d 483, 484.

BESOIN. Fr. Need. See Au Besoin.

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, 208 N.Y.S. 396, 400, 212 App.Div. 173.

BESSEMERIZING. A process by which copper relatively pure is obtained from matte. Peirce-Smith Converter Co. v. United Verde Copper Co., D.C.Del., 293 F. 108, 109.

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. 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.

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. See, also, Primary Evidence.

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. 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. 793, 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).

"Best evidence rule". Is that highest available degree of proof must be produced. Cheadle v. Bardwell, 95 Mont. 299, 26 P.2d 336. It means that no evidence which is merely substitutionary in its nature shall be received so long as original evidence can be had; Pettit v. Campbell, Tex.Civ. App., 149 S.W.2d 633, 635, 636; that contents of document must be proved by producing document itself. Nunan v. Timberlake, 85 F.2d 407, 410, 66 App.D.C. 150.

BESTIA. A beast, as a being without reason; —opposed to man; while animal, a living being, includes man also. Adams Gloss., citing Just. Inst., 2, 1, 12.

BESTIAE CARUCAE. Beasts of the plow. Adams Gloss., citing Fleta, IV, c. 17, § 14.

BESTIALITY. A sexual connection between a human being and a brute of the opposite sex. State v. Poole, 122 P.2d 415, 416, 59 Ariz. 44.

At common law the term "crime against nature" embraced both "sodomy" and "bestiality", State v. Poole, 122 P.2d 415, 416, 59 Ariz. 44. 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 un-

BET

certain, or according as a question disputed between them is settled in one way or the other. *Coulter v. State*, 122 Tex.Cr.R. 9, 53 S.W.2d 477, 480.

A contract by which two or more parties agree that a sum of money, or other thing, shall be paid or delivered to one of them on the happening or not happening of an uncertain event. *Grooms v. Knox*, 25 Ala.App. 185, 142 So. 582.

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.

Bet and wager are synonymous terms. *Woodcock v. McQueen*, 11 Ind. 16; *Shumate v. Com.*, 15 Grat. (Va.) 660.

BETHLEHEM. See *Bedlam*.

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; *People v. Semmler*, 345 Ill. 272, 178 N.E. 100, 101.

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.

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., *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. 386, 30 C.C.A. 108.

BETWEEN. A space which separates. *Hobson v. Postal Telegraph-Cable Co.*, 161 Tenn. 419, 32 S.

W.2d 1046. Strictly applicable only with reference to two things, but this may be understood as including cases in which a number of things are discriminated collectively as two wholes, or as taken in pairs, or where one thing is set off against a number of others. In *re McShane's Will*, 286 N.Y.S. 680, 682, 158 Misc. 777. Sometimes used synonymously with "among". In *re Moore's Estate*, 157 Pa.Super. 296, 43 A.2d 359.

As a measure or indication of distance, this word has the effect of excluding the two termini. *Morris & E. R. Co. v. Central R. Co.*, 31 N.J.Law, 212.

If an act is to be done "between" two certain days, it must be performed before the commencement of the latter day. In computing the time in such a case, both the days named are to be excluded. *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.

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. *Burnstein v. U. S.*, C.C.A.Cal., 55 F.2d 599, 603. 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, *Falstaff Corporation v. Allen*, D.C.Mo., 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*, 133 Wash. 581, 234 P. 666. 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.

This term sometimes has a narrower meaning signifying a drink artificially prepared. *Climax Dairy Co. v. Mulder*, 78 Colo. 407, 242 P. 666, 669. *United States v. Robason*, D.C.Kan., 38 F.Supp. 991, 992.

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 A REASONABLE DOUBT. In evidence means fully satisfied, entirely convinced, satisfied to a moral certainty; *State v. Harris*, 28 S.E.2d 232, 237, 223 N.C. 697; and phrase is the equivalent of the words clear, precise and indubitable. *Ferguson Packing Co. v. Mihalic*, 99 Pa.Super. 158, 162.

An accused's guilt must be established "beyond a reasonable doubt," which means that facts proven must, by virtue of their probative force, establish guilt. *People ex rel. Schubert v. Pinder*, 9 N.Y.S.2d 311, 312, 170 Misc. 345.

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. The same construction has been given to it in Missouri. *Keeton's Heirs v. Keeton's Adm'r*, 20 Mo. 530. See Ang.Lim. §§ 200, 201.

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; *Pierston v. State*, 18 Tex.App. 558. To incline to one side. *Yarbrough v. Mallory*, 225 Ala. 579, 144 So. 447, 448. Condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in particular case. *Evans v. Superior Court in and for Los Angeles County*, 107 Cal.App. 372, 290 P. 662, 665.

As used in law regarding disqualification of judge, refers to mental attitude or disposition of the judge toward a party to the litigation, and not to any views that he may entertain regarding the subject matter involved. *State ex rel. Mitchell v. Sage Stores Co.*, 157 Kan. 622, 143 P.2d 652, 655.

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. *People v. Wells*, 100 Cal. 227, 34 P. 718.

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.N.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 depository 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 "house-warming," *i. e.*, a visit of friends to a person beginning to set up housekeeping. *Wharton*. See *Bed-Ale*.

"There was an antient Custom called a *Bid-Ale* * * * when any honest Man decayed in his Estate, was set up again by the liberal Benevolence and Contributions of Friends at a Feast, to which those Friends were bid or invited. It was most used in the West of England, and in some Counties called a *Help Ale*." *Brand's Pop. Antiq.* (1777), p. 339, *note*.

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

—**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, Confl.Laws*, § 13, note 1. *Castle v. Castle*, C.C.A.Hawaii, 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 SUCCESSIVE 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. *Scoggins v. State*, 32 Ark. 213; *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. *Farewell v. Commonwealth*, 189 S.E. 321, 323, 167 Va. 475.

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.

BILANCIUS 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. *Montpellier Seminary v. Smith*, 69 Vt. 382, 38 A. 66. 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.*, 147 Md. 588, 128 A. 280, 282, 39 A.L.R. 1184. One containing mutual promises between parties; each party being both promisor and promisee. *Aden v. Dalton*, 341 Mo. 454, 107 S.W.2d 1070, 1073.

"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.

See, also, Contract.

BILBOES. A device used for punishment at sea, similar to the stocks (*q. v.*) on land.

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. Britton, c. 119.

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

BILL. A formal declaration, complaint, or statement of particular things in writing.

As a legal term, this word has many meanings and applications, the more important of which are enumerated below.

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

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

3. A formal written petition

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

—Bill of advocacy. In Scotch practice. A bill by which the judgment of an inferior court is appealed from, or brought under review of a superior. Bell.

—Bill of certiorari. A bill, the object of which is to remove a suit in equity from some inferior court to the court of chancery, or some other superior court of equity, on account of some alleged incompetency of the inferior court, or some injustice in its proceedings. Story, Eq.Pl. (5th Ed.) § 298.

—Bill of evidence. Stenographer's transcript of testimony heard at trial and may be considered on appeal as bill of exceptions. *Spencer v. Commonwealth*, 250 Ky. 370, 63 S.W.2d 288.

—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. *Buessel v. U. S.*, C.C.A.Conn., 258 Fla. 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; It is only that part of the proceedings not embraced in the judgment roll. When the ends of justice require it, the terms "bill of exceptions" and "statement of case" are regarded as synonymous; *Shawnee Commercial College v. Aydelotte*, 38 P.2d 579, 581, 170 Okl. 15.

"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*, 173 Ky. 165, 190 S.W. 715, 719.

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

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relief as the circumstances demand. *Sharon v. Sharon*, 67 Cal. 185, 7 P. 456.

—**Bill for a new trial.** A bill in equity in which the specific relief asked is an injunction against the execution of a judgment rendered at law, and a new trial in the action on account of some fact which would render it inequitable to enforce the judgment, but which was not available to the party on the trial at law, or which he was prevented from presenting by fraud or accident, without concurrent fraud or negligence on his own part.

—**Bill for foreclosure.** One which is filed by a mortgagee against the mortgagor, for the purpose of having the estate sold, thereby to obtain the sum mortgaged on the premises, with interest and costs. 1 Madd.Ch.Pr. 528.

—**Bill for fraud.** The object and effect of it, even if the fraud consists of want of notice, are to vacate the former decree, not to retry the case. *Caldwell v. Huffstutter*, 173 Tenn. 225, 116 S.W.2d 1017, 1019.

—**Bill in aid of execution.** A bill to set aside encumbrances or conveyances therein specified as fraudulent. *Pape v. Pareti*, 42 N.E.2d 361, 364, 315 Ill.App. 1; *Dean v. Torrence*, 299 N.W. 793, 796, 299 Mich. 24.

—**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 proceeding by a party against an adversary for discovery of facts within adversary's knowledge, or discovery of documents, writings, or other things within his possession or power, to be used either offensively or defensively in a pending or contemplated action. *Dallas Joint Stock Land Bank v. Rawlins*, Tex.Civ.App., 129 S.W.2d 485, 486; *First Nat. Bank v. Dade-Broward Co.*, 171 So. 510, 125 Fla. 594.

In aid of action at law is equitable remedy to enable litigant to obtain, prior to trial, such information as is in exclusive possession of adverse party and is necessary to establishment of complainant's case. *Yorkshire Worsted Mills v. National Transit Co.*, 325 Pa. 427, 190 A. 897, 898.

—**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. 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. *Republic Casualty Co. v. Fischmann*, 99 N.J.Eq. 758, 134 A. 179, 180.

—**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. *Smith v. Cretors*, 164 N.W. 338, 340, 181 Iowa 189.

—**Bill of review.** One which is brought to have a decree of the court reviewed, corrected, or reversed. *Dodge v. Northrop*, 85 Mich. 243, 43 N.W. 505. It is in the nature of a writ of error. *Rubin v. Midlinsky*, 327 Ill. 89, 158 N.E. 395.

It is equitable procedure to procure explanation, alteration, or reversal of final decree by court which rendered it. *People v. Sterling*, 357 Ill. 354, 192 N.E. 229, 234.

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*, 159 Iowa 481, 141 N.W. 319, 321.

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*, 276 Ill. 47, 114 N.E. 592, 593. Such bills are peculiar to courts of equity at common law. *Satterwhite v. State*, 149 Ark. 147, 231 S.W. 886, 887.

—**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. *Brooks v. Laurent*, C.C.A. Fla., 98 F. 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. *Westcott. 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. *Bisp.Eq. § 568; 2 Story, Eq.Jur. § 826.*

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. *De Carli v. O'Brien*, 41 P.2d 411, 416, 150 Or. 35, 97 A.L.R. 693.

—**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; *Maguire v. City of Macomb*, 293 Ill. 441, 127 N.E. 682, 686.

—**Bill to suspend a decree.** One brought to avoid or suspend a decree under special circumstances.

—**Bill to take testimony de bene esse.** One which is brought to take the testimony of witnesses to a fact material to the prosecution of a suit at law which is actually commenced, where there is good cause to fear that the testimony may otherwise be lost before the time of trial. *2 Story, Eq.Jur. § 1813, n.*

—**Cross-bill.** One which is brought by a defendant in a suit against a plaintiff in or against other defendants in the same suit, or against both, touch-

ing the matters in question in the original bill. *Story, Eq.Pl. § 389; Mitf.Eq.Pl. 80.*

It 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. *Kidder v. Barr*, 35 N. H. 251; *Blythe v. Hinckley*, C.C.Cal., 84 F. 234. 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. *Landon v. Public Utilities Commission of Kansas*, D.C.Kan., 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.Wash., 5 F.(2d) 393. 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.N.Y., 226 F. 135, 137. Also a special act passed by a legislative body in the exercise of a *quasi* judicial power. *Scudder v. Smith*, 331 Pa. 165, 200 A. 601, 604.

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*, 262 Ill. 578, 105 N.E. 1, 4. An *act* is the appropriate term for it, after it has been acted on by, and passed by, the legislature. *Herbring v. Brown*, 92 Or. 176, 180 P. 328, 330. 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." *People v. Chautauqua County*, 43 N.Y. 17.

—**Private bill office.** See Private.

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—**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. Hamill v. Hawks, C.C.A.Okl., 58 F.2d 41, 47. That portion of Constitution guaranteeing rights and privileges to the individual. Brown v. State, 219 Ind. 251, 37 N.E.2d 73, 77, 137 A.L.R. 679.

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.

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 Traction Co., Tex.Civ.App., 155 S.W. 688, 690.

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.Mich., 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.N.Y., 20 Fed. 510.

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., 179 N.C. 310, 102 S.E. 392, 393; Rudin v. King-Richardson Co., 143 N.E. 198, 201, 311 Ill. 513. It is receipt for goods, contract for their carriage, and is documentary evidence of title to goods. Schwab v. Erie R. Co., 293 N.Y.S. 842, 846, 161 Misc. 743.

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.

An *order* bill of lading is one in which it is stated that goods are consigned to order of any person named therein. 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

—**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. *Wilson v. Voche*, 172 S.E. 672, 48 Ga.App. 173. An instrument by which, in particular, the property in ships and vessels is conveyed. *Young v. Stone*, 70 N.Y.S. 558, 61 App.Div. 364. 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*, 137 Va. 714, 120 S.E. 321, 322.

—**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. *Miami Coal Co. v. Fox*, 203 Ind. 99, 176 N.E. 11, 16, 79 A.L.R. 333.

—**Bill rendered.** A bill of items rendered by a creditor to his debtor; an "account rendered," as distinguished from "an account stated." *Hill v. Hatch*, 11 Me. 455.

—**Grand bill of sale.** In English law. The name of an instrument used for the transfer of a ship while she is at sea. An expression which is understood to refer to the instrument whereby a ship was originally transferred from the builder to the owner, or first purchaser. 3 Kent, Comm. 133.

9. In the law of negotiable instruments

A promissory obligation for the payment of money.

Standing alone or without qualifying words, the term is understood to mean a bank note, United States treasury note, or other piece of paper circulating as money. *Green v. State*, 28 Tex.App. 493, 13 S.W. 785.

—**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. *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 at 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; Sometimes called a "trade acceptance." *Jones v. Revere Preserving Co.*, 247 Mass. 225, 142 N.E. 70, 71.

A "check" differs from a "bill of exchange" in that it is always drawn on a deposit whereas a bill is not. *Wilson v. Buchenau*, D.C.Cal., 43 F.Supp. 272, 275.

—**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.

—**Foreign bill of exchange.** A bill of exchange drawn in one state or country, upon a foreign state or country. See Story, Bills, § 22; 3 Kent, Comm. 94, note.

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.

—**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.

10. In maritime law

The term is applied to contracts of various sorts, but chiefly to bills of lading and to bills of adventure.

—**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.

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. *State v. Ray, Rice (S.C.) 4, 33 Am.Dec. 90.* See *Presentment*.

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."

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.* It is neither a pleading nor proof of the facts therein contained, *Nilson v. Ebey Land Co., 90 Wash. 295, 155 P. 1036,* and is not for the purpose of discovering evidence, nor to find what plaintiff knows, but what he claims, *Intermountain Ass'n of Credit Men v. Milwaukee Mechanics' Ins. Co., 44 Idaho 491, 253 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, 163 Ky. 48, 173 S.W. 171, 173.* *People v. Bain, 359 Ill. 455, 195 N.E. 42.*

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*.

For Exchequer Bills, see that title.

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, 159 Ga. 217, 125 S.E. 462, 463*; *Cochrane v. McDermott Advertising Agency, 6 Ala.App. 121, 60 So. 421, 422.*

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

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billiard tables with pockets. *Village of Atwood v. Otter*, 296 Ill. 70, 129 N.E. 573, 578.

BILLY. A small bludgeon that may be carried in the pocket; a club; especially, a policeman's club. *Cent. Dict.*; *Webster*, *New Intl. Dict.*

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. *Stone v. Bradbury*, 14 Me. 193.

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.

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. *Seiderman v. Herman Perla Inc.*, 268 N.Y. 188, 197 N.E. 190, 191.

A verbal contract of insurance in present, 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.*, 243 N.Y. 266, 153 N.E. 70, 71. *Carew, Shaw & Bernasconi v. General Casualty Co. of America*, 189 Wash. 329, 65 P.2d 689, 695.

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.N.Y.*, 246 F. 759, 760.

BINDING INSTRUCTION. One in which jury is told if they find certain conditions to be true to find for plaintiff or defendant, as case might be. *Scott-Burr Stores Corporation v. Foster*, 197 Ark. 232, 122 S.W.2d 165, 169.

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. 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; *Seiderman v. Herman Perla, Inc.*, 268 N.Y. 188, 197 N.E. 190, 191.

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. *Giglio 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.

BISSEXTILE

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.

BITING RULE. When first taker of conveyed property under writing submitted for construction is initially conveyed a fee title, it is then incompetent and invalid to modify, qualify, or reduce thereafter the apparent fee title of the first taker so as to reduce it to a life estate, and any gift over after death of first taker is void. Hanks v. McDanell, 210 S.W.2d 784, 786, 307 Ky. 243, 17 A.L.R.2d 1.

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 petroleum, and light volatile naphthas. Western Willite Co. v. Trinidad Asphalt Mfg. Co., C.C.A.Mo., 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, 3 S.Ct. 18, 109 U.S. 3, 27 L.Ed. 835.

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

BLACK LIQUOR. A term used in the paper pulp industry. It denotes a residual liquor coming from the digesters in which wood chips are cooked. Babcock & Wilcox Co. v. North Carolina Pulp Co., D.C.Del., 35 F.Supp. 215, 221.

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., 187 N.Y.S. 258, 195 App.Div. 947.

BLACK MUSLIM. An organization of American Negroes, founded in Detroit in 1930 by an American Negro calling himself Mohammad Elijah. To the traditional Koran the founders added the doctrine of Black Supremacy and proclaimed the desirability of maintaining (or regaining) the purity of the black race. 62 Col.L.Rev. 1488 (1962); 75 Harv.L.Rev. 837 (1962); State v. Cabbage (Del.), 210 A.2d 555 (1965).

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 Black-mail.

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.

BLACKJACK. A short bludgeon consisting of a heavy head, as of metal, on an elastic shaft or with a flexible handle; a bludgeon-like weapon consisting of a lead slug attached to a leather thong; a small leather-covered club or billy weighted at the head and having an elastic shaft. 5 Words and Phrases, Perm. Ed.

As a card game, another name for *vingt-et-un* (twenty-one); also, a variety of hearts in which the jack of spades counts as ten hearts. Webster, New Intl. Dict.

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. 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 influential 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. Mitchell v. Sharon, C.C.Cal., 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 cornmonger; 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

BLANKET

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. See Insurance—Blanket Policy.

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; *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 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. Practice or occupation of rending heavy masses, especially of rock, by means of explosives, as in oil well drilling, quarrying, etc. *Seismic Explorations v. Dobray*, Tex.Civ.App., 169 S.W.2d 739, 742.

BLEACHERS. A relatively low-priced seat for a spectator at sports or games, or the section or structure (originally roofless) containing such seats. *Lowden v. Jefferson County Excise Board*, 122 P.2d 991, 992, 190 Okl. 276; *Zeitz v. Coopers-town Baseball Centennial*, N.Y.Sup., 29 N.Y.S.2d 56, 57.

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."

BLENDED PRICE. As applied to milk, a price paid to producers based upon a pool average weighted by the volume of milk disposed of, according to different types of utilization. *Queensboro Farm Products v. State*, 24 N.Y.S.2d 413, 417, 175 Misc. 574.

BLETA. An old name for peat or combustible earth dug up and dried for burning. Wharton.

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*, 221 Ky. 546, 299 S.W. 170, 171. 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*, 64 Colo. 461, 172 P. 422, 423.

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. A "tippling-house." *Calhoun v. Bell*, 136 La. 149, 66 So. 761, 762, Ann.Cas.1916D, 1165.

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'Erien*, Mo.App., 240 S.W. 481, 483.

BLINDCRAFT. A natural descriptive term identifying in a broad sense work of the blind, conveying the idea of the blind performing deftly at any of the various skills or trades to which their talents are applied or leaving the suggestion of dexterity and skill of the blind as well as their handiwork itself. *San Francisco Ass'n for Blind v. Industrial Aid for Blind*, D.C.Mo., 58 F.Supp. 995, 1001.

BLOOD

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. Also used synonymous with "square." Weeks v. Hetland, 202 N.W. 807, 812, 813, 52 N.D. 351. 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. Okl., 15 F.2d 960, 963. It must be surrounded on at least three sides by streets, which must be marked on the ground, and not simply indicated as such on a plat. Seested v. Dickey, 318 Mo. 192, 300 S.W. 1088, 1098.

BLOCK BOOK SYSTEM. An abstract of property assessed for taxes and also of property unrendered and of which owners were unknown, together with maps and plats. Southern Surety Co. v. Laferty, Tex.Civ.App., 43 S.W.2d 460, 463.

BLOCK-BOOKING. The practice of licensing or offering for license one motion picture feature or group of features on condition that exhibitor will also license another feature or group of features released by distributor during a given period. U. S. v. Paramount Pictures, N.Y., 68 S.Ct. 915, 928, 334 U.S. 131, 92 L.Ed. 1260.

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.

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.S.C., 91 Fed. 274; Id., 19 S.Ct. 851, 174 U.S. 510, 43 L.Ed. 1065; 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.

BLOCKAGE. Recognition in the field of taxation of fact that in some instances a large block of stock cannot be marketed and turned into cash as readily as a few shares. Citizens Fidelity Bank & Trust Co. v. Reeves, Ky., 259 S.W.2d 432, 433.

BLOCKAGE RULE. Process of determining value of large blocks of corporate stock for gift and estate tax purposes, based on the postulate that a large block of stock cannot be marketed as readily and as advantageously in price as can a few shares. Montclair Trust Co. v. Zink, Prerog., 57 A.2d 372, 376, 380, 141 N.J.Eq. 401.

BLOCKHEAD. A term importing want of natural cleverness, and slowness and obstinacy of mind.

BLOOD. Kindred; consanguinity; family relationship; relation by descent from a common ancestor. Swasey v. Jaques, 144 Mass. 135, 10 N.E. 758, 59 Am.Rep. 65.

BLOOD

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*, 156 N.Y.S. 449, 452, 170 App.Div. 240.

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. *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. *Pedigo v. Com.*, 103 Ky. 41, 44 S.W. 143, 42 L.R.A. 432, 82 Am.St.Rep. 566.

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.

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. 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.Md., 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*, 220 N.Y. 123, 115 N.E. 515, 516. 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*, 16 Ga.App. 221, 84 S.E. 981, 983.

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.*, 148 Ark. 199, 230 S.W. 257, 258.

"Extension notes" in insurance parlance. *O'Dell v. American Nat. Ins. Co.*, Mo.App., 107 S.W.2d 108, 110.

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. *Dinsmore v. National Hardwood Co.*, 234 Mich. 436, 208 N.W. 701.

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*, 70 Or. 246, 141 P. 208, 210.

BLUMBA. A certifying metal tag attached to kosher meat. *People on Complaint of Waller v. Jacob Branfman & Son*, 263 N.Y.S. 629, 632, 147 Misc. 290.

BLUNDER. As applied in cases of ordinary negligence is the want of or absence of ordinary care, a failure to do what should have been done or the doing of that which should not have been done, resulting in the happening of an event or injury which could have and should have been foreseen and avoided by use of such care as a reasonably prudent person would have exercised under the

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same or similar circumstances. *Loyd v. Pierce*, Tex.Civ.App., 89 S.W.2d 1035, 1038.

BLUNDERBUSS. A firearm intended to shoot objects at close quarters, without exact aim. *Moline v. Kotch*, 213 Minn. 326, 6 N.W.2d 462.

BOARD. An official or representative body organized to perform a trust or to execute official or representative functions or having the management of a public office or department exercising administrative or governmental functions. *Commissioners of State Ins. Fund v. Dinowitz*, 39 N.Y. S.2d 34, 38, 179 Misc. 278.

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*, 79 Mont. 323, 256 P. 386.

"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*, 149 Tenn. 250, 259 S.W. 549.

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

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. *Oliver v. Jersey City*, 63 N.J.Law, 96, 42 A. 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.

Bank's "board of directors" within statute requiring their consent means all directors. *Code 1923*, § 3412. *McLemore v. State*, 26 Ala.App. 228, 157 So. 455, 457.

"Township board" and "board of directors" as interchangeable terms. *State ex rel. Kent v. Olenhouse*, 324 Mo. 49, 23 S.W.2d 83, 85.

BOARD OF EDUCATION. An agency of the state for government and management of a school district. *McCurdy v. Board of Education of City of Bloomington*, 359 Ill. 188, 194 N.E. 287. The agency to which state delegates power and duty of controlling schools in school district, *Charles B. Saxon, Inc., v. Board of Education of Union Free School Dist. No. 1 of Town of Catskill*, 168 Misc. 209, 4 N.Y.S.2d 757. Public municipal corporation, *Gustafson v. Wethersfield Tp. High School Dist.* 191, 319 Ill.App. 255, 49 N.E.2d 311, 312.

BOARD OF EQUALIZATION. See *Equalization*.

BOARD OF FIRE UNDERWRITERS. Unincorporated voluntary associations composed exclusively of persons engaged in business of fire insurance, for consolidation and co-operation in matters affecting the business. *Childs v. Insurance Co.*, 66 Minn. 393, 69 N.W. 141, 35 L.R.A. 99.

BOARD OF HEALTH. A board or commission with certain powers and duties relative to preservation and improvement of the public health. *Gaines v. Waters*, 64 Ark. 609, 44 S.W. 353. A term descriptive of an official body. *Fisher v. Kelly*, 289 N.Y. 161, 44 N.E.2d 413, 416. The "Department of Health" of a city having a commissioner of health as its single executive head, was a "Board of Health". *Fisher v. Kelly*, 264 App. Div. 596, 36 N.Y.S.2d 497, 499.

BOARD OF MEDICAL EXAMINERS. A board exercising certain powers in respect to licensing osteopathic physicians and surgeons. *Jordt v. California State Board of Education*, 35 Cal.App.2d 591, 96 P.2d 809, 811.

BOARD OF PARDONS. A board to investigate applications for executive clemency and to make reports and recommendations thereon to the governor.

BOARD OF PUBLIC WORKS. Common council of city in taking action respecting street improvements and making assessments. *City of Crown Point v. Newcomer*, 204 Ind. 589, 185 N.E. 440, 441.

BOARD OF REVIEW. A quasi judicial body to hear evidence tending to show errors in an assessment roll and to decide 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, made up of subordinates of the commissioner of immigration with administrative duties. *Pearson v. Williams*, 202 U.S. 281, 26 S.Ct. 608, 50 L.Ed. 1029.

BOARD OF SUPERVISORS. An organized committee, or body of officials, constituting part of the county government, with special charge of the county revenues.

BOARD OF THE TOWN. The board of education of a school district is a "board of the town."

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Charles B. Saxon, Inc., v. Board of Education of Union Free School Dist. No. 1 of Town of Catskill, 168 Misc. 209, 4 N.Y.S.2d 757.

BOARD OF TRADE. An organization for the advancement and protection of business interests. Retailers Credit Ass'n of Alameda County v. Commissioner of Internal Revenue, C.C.A.9, 90 F.2d 47, 51, 111 A.L.R. 152. An organization of merchants, manufacturers, etc., of a city, for furthering its commercial interests, advancing its prosperity, etc. In England, an administrative department of government, for the consideration of matters relating to trade and foreign plantations.

BOARD OF WORKS. A board for the better local management of the English metropolis having the care and management of grounds and gardens; the superintendence of drainage; the regulation of street traffic and of the buildings of the metropolis. Brown.

BOARDER. One who makes a special contract for food with or without lodging. Berkshire Woollen Co. v. Proctor, 7 Cush., Mass., 424; One who boards at a boarding house or school. Atlantic City v. Le Beck, 125 N.J.L. 373, 15 A.2d 653, 654. One who has food and lodging for an agreed price, usually under a contract intended to continue for a considerable period of time. Ullman v. State, 1 Tex.App. 220, 28 Am.Rep. 405.

A guest, as distinguished from boarder, comes and remains without any bargain for time, and may go away when he pleases. 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 house where the business of keeping boarders generally is carried on, and which is held out by the owner or keeper as a place where boarders are kept; one for the accommodation of those who enter under contract for entertainment at a certain rate for a certain period of time, as for a week or month, at a rate of compensation agreed on; a house kept principally for the residence of permanent boarders. Singelakis v. Davidson, 117 N.J.L. 332, 188 A. 443, 444. A sort of public house, partaking in some degree of the character of an inn or restaurant. Baddour v. City of Long Beach, 279 N.Y. 167, 18 N.E.2d 18, 21, 124 A.L.R. 1003. 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; Friedrich Music House v. Harris, 200 Mich. 421, 166 N.W. 869, L.R.A.1918D, 400.

A house occupied for carrying on the business of keeping boarders, although while prosecuting the business and as a means of prosecuting it, the occupant and his wife and children live in the house. Trainor v. Le Beck, 101 N.J.Eq. 823, 139 A. 16, 17. A boarding-house and an inn or hotel differs in, that in a boarding-house the guest is under an express contract, while in an inn there is no express agreement. Willard v. Reinhardt, 2 E. D. Smith, N. Y., 148; McIntosh v. Schops, 92 Or. 307, 180 P. 593. An innkeeper is also bound to receive a guest when he presents himself. 2 El. & Bl. 144; McClaugherty v. Cline, 128 Tenn. 605, 163 S.W. 801. 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, 117 Kan. 656, 232 P. 1044, 1046. 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.

BOARIUS, adj. Lat. Relating to neat cattle. See Bovarius.

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. The Saxon, D.C.S.C., 269 F. 639, 641. But "boat" and "vessel" are often used synonymously. Southern Pac. Co. v. Jensen, 244 U.S. 205, 37 S.Ct. 524, 527, 61 L.Ed. 1086, L.R.A. 1918C, 451. 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 row-boats). The verb "boat" means to go in a boat. Chappell v. Commercial Casualty Ins. Co., 120 W.Va. 262, 197 S.E. 723, 724.

International rule that sailing vessels shall keep out of way of sailing vessels or boats fishing with nets or lines or trawls does not apply to craft 55 feet long equipped with machinery powerful enough to handle a trawl which would ordinarily be decked over, would have living accommodations for crew, etc. International Rules, art. 26, 33 U.S.C.A. § 111. The Virginia and Joan, C.C.A.Mass., 86 F.2d 259, 261. Seaplanes equipped with pontoons or hulls having hydroplaning surfaces are "hydroplane boats" though provided with wings. Fauber v. United States, Ct. Cl., 37 F.Supp. 415, 435.

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 high way. Boutwell v. Champlain Realty Co., 89 Vt. 80, 94 A. 108, 111, Ann.Cas.1918A, 726.

BOATING. Conveyance by a boat, of whatever kind, of persons or freight. Bosworth v. Nelson, 172 Ga. 612, 158 S.E. 306, 307.

BOATSWAIN. A seaman who superintends the work of the crew. South Atlantic S. S. Co. of Delaware v. Munkacsy, Del., 7 W.W.Harr. 580, 187 A. 600, 604. The foreman of sailors. McCauley v. Pacific Atlantic S. S. Co., 167 Or. 80, 115 P.2d 307, 308.

BOB-TAIL DRIVER. A person collecting and delivering laundry without being subject to complete control of employer. Ring v. City Dry Cleaners, Fla., 152 Fla. 622, 12 So.2d 593, 594.

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.

BOBTAILS. Persons who conduct stores or establishments of their own where patrons may bring articles to be laundered. Schwartz v. Laundry & Linen Supply Drivers' Union, Local 187, 339 Pa. 353, 14 A.2d 438, 439.

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

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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; *Provident Life & Accident Ins. Co. v. Campbell*, 18 Tenn. App. 452, 79 S.W.2d 296.

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; Syphilis and insanity caused by syphilis. *Magill v. Travelers Ins. Co.*, C.C.A.Mo., 133 F.2d 709, 712.

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. Any impairment of physical condition of another's body or physical pain or illness, but does not include minute disturbance of nerve centers caused by fear, shock or other emotions. *Clark v. Associated Retail Creditmen of Washington*, 70 App.D.C. 183, 105 F.2d 62, 64.

Bodily Heirs

Heirs begotten or borne by the person referred to; lineal descendants. *Turner v. Hause*, 199 Ill. 464, 65 N.E. 445; *Righter v. Forrester*, 1 Bush, Ky., 278.

Progeny or issue, including children, grandchildren, and other lineal descendants. *Matthews v. Matthews*, 214 N.C. 204, 198 S.E. 663, 665. Children synonymous. *Murdock v. Deal*, 208 N.C. 754, 182 S.E. 466. Heirs of body synonymous, *Williamson v. Cox*, 218 N.C. 177, 10 S.E.2d 662, 666. Adopted child as included in words "bodily heirs", *Leeper v. Leeper*, 347 Mo. 442, 147 S.W.2d 660, 663, 133 A.L.R. 586. Words of limitation, *Kinnaird v. Farmers' & Merchants' Bank*, 249 Ky. 661, 61 S.W.2d 291.

Bodily Infirmity

A settled disease or ailment that would probably result to some degree in general impairment of physical health and vigor. *Travelers' Ins. Co. of Hartford, Conn., v. Byers*, 123 Cal.App. 473, 11 P.2d 444, 446; *Ross v. First American Ins. Co.*, 125 Neb. 329, 250 N.W. 75, 79. An ailment or disorder of an established and settled character. *Maremont v. Lawyers Mut. Ben. Ass'n*, 294 Ill. App. 605, 13 N.E.2d 849; *Ross v. First American Ins. Co.*, 125 Neb. 329, 250 N.W. 75, 79; something that amounts to inroad on physical health or impairment of bodily or mental powers. *McClure v. World Ins. Co.*, 126 Neb. 676, 254 N.W. 393; *Gyulai v. Prudential Ins. Co. of America*, 135 Pa. Super. 73, 4 A.2d 824, 826.

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. *State Life Ins. Co. v. Allison*, C.C.A.Ala., 269 F. 93, 94, 14 A.L.R. 412; *Ross v. International Travelers Ass'n*, Tex.Civ.App., 283 S.W. 621. A physical injury only. *United States Fidelity & Guaranty Co. v. Shrigley*, D.C.Ark., 26 F.Supp. 625, 628. A cut, bruise, or wound. *Chase v. Business Men's Assur. Co. of America*, C.C.A.Utah, 51 F.2d 34, 36. A localized abnormal condition of the living body. *King v. Travelers Ins. Co.*, 123 Conn. 1, 192 A. 311. An injury caused by external violence. *Erannaker v. Prudential Ins. Co. of America*, 236 Mo.App. 239, 150 S.W.2d 498, 502. *Burns v. Employers' Liability Assur. Corporation, Limited*, of London, England, 134 Ohio St. 222, 16 N.E.2d 316, 321, 117 A.L.R. 733.

"Bodily injuries" and "personal injuries" are not synonymous. *Malone v. Costa*, 151 Fla. 144, 9 So.2d 275, 277. "Bodily injury" and "personal injury" may be used as equivalent terms. *Cormier v. Hudson*, 284 Mass. 231, 187 N.E. 625, 626. *American Fidelity & Casualty Co. v. Mahon*, 170 Md. 573, 185 A. 330, 332, 105 A.L.R. 1200.

Bodily Member

An ear is not embraced in the term "member". *Lumbermens Mut. Casualty Co. v. Cook*, 69 Ga. App. 131, 25 S.E.2d 67, 71.

Great Bodily Harm

An injury of a greater and more serious kind than battery. *Shires v. Boggess*, 72 W.Va. 109, 77 S.E. 542, 545. Equivalent to "maim." *State v. Foster*, 281 Mo. 618, 220 S.W. 958, 959.

Great Bodily Injury

An injury 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. *Walker v. State*, 34 Fla. 167, 16 So. 80, 43 Am.St. Rep. 186. The term may, however, embrace all members of the person, *Louisville Ry. Co. v. Veith*, 157 Ky. 424, 163 S.W. 217; 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.*).

A cement mixer assembled on a truck, *Consolidated Rock Products Co. v. Carter*, 54 Cal.App.2d 519, 129 P.2d

BODY

455, 457. The Workmen's Benefit Fund of the United States of America. In re Workmen's Benefit Fund of United States, 38 N.Y.S.2d 429, 431, 265 App.Div. 176.

BODY CORPORATE. A corporation public or private.

School districts, *Commonwealth v. School Dist. of Pittsburgh*, Allegheny County, 343 Pa. 394, 23 A.2d 496. State Building Commission, *Utah State Building Commission, for Use and Benefit of Mountain States Supply Co., v. Great American Indemnity Co.*, 105 Utah 11, 140 P.2d 763, 767.

BODY EXECUTION. An "execution" for confinement of defendant, *Hershey v. People*, 91 Colo. 113, 12 P.2d 345, 347.

A "body execution" is an "execution" which directs that, in accordance with the provisions therein set forth, the body of the defendant therein named be committed to jail. Ex parte *Thompson*, 111 Vt. 7, 9 A.2d 107, 110.

BODY HEIRS. Sometimes words of purchase. *Brown v. Boone*, 129 Kan. 786, 284 P. 436, 437.

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.

BODY OF THE OFFENSE. When applied to any particular offense, means that the particular crime charged has actually been committed by some one. *Barrett v. State*, 57 Okl. 259, 47 P.2d 613, 617.

BODY POLITIC OR CORPORATE. A social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good, *Uricich v. Kolesar*, 54 Ohio App. 309, 7 N.E.2d 413, 414. A term applied to a corporation. *County. Bazzoli v. Larson*, 40 Ohio App. 321, 178 N.E. 331, 332; *Lindburg v. Bennett*, 117 Neb. 66, 219 N.W. 851, 855. Municipality. *Middle-States Utilities Co. v. City of Osceola*, 1 N.W.2d 643, 645, 231 Iowa 462; *Lindburg v. Bennett*, 117 Neb. 66, 219 N.W. 851, 855. School district. *Patrick v. Maybank*, 198 S.C. 262, 17 S.E.2d 530, 534.

State or nation or public associations, *Utah State Building Commission, for Use and Benefit of Mountain States Supply Co., v. Great American Indemnity Co.*, 105 Utah 11, 140 P.2d 763, 767.

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.*, 144 Tenn. 469, 234 S.W. 323, 324, nor the whistle pipe above the whistle valve,

Norfolk & W. Ry. Co. v. Royal Indemnity Co., D.C.Pa., 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 U.S.C.A. § 23, a locomotive cab is an appurtenance to the boiler, *Brown v. Lehigh Valley R. Co.*, 108 Misc. 384, 177 N.Y.S. 618, 619; and a bell ringer is a part or appurtenance of a locomotive and tender, *Hines v. Smith*, C.C.A.Ill., 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*, 129 Miss. 315, 92 So. 161, 162.

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*, 55 Okl. 93, 154 P. 1171, 1172. A localized inflammatory swelling of the skin. *Beck v. State*, 29 Ala.App. 410, 197 So. 42, 43.

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*, 255 U.S. 252, 41 S.Ct. 269, 270, 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. 387.

In modern law. The name of a clause (*bon pour* ———, good for so much) added to a cedula or promise, where it is not in the handwriting of

BONA FIDE

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.

Bona Confiscata

Goods confiscated or forfeited to the imperial *fisc* or treasury. 1 Bl.Comm. 299.

Bona et Catalla

Goods and chattles. 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.Haw., 267 F. 521, 522.

Bona Mobilia

In the civil law. Movables. *Castle v. Castle*, C.C.A.Haw., 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

Notable goods; property worthy of notice, or of sufficient value to be accounted for. 2 Bl.Comm. 509; *Rolle*, Abr. 908. *Moore v. Jordan*, 36 Kan. 271, 13 P. 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 waived, that is, thrown away by the thief in his flight, for fear of being apprehended, or to facilitate his escape; and which go to the sovereign. 5 Coke, 109b; 1 Bl.Comm. 296.

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

Bona Fides

Good faith; integrity of dealing; honesty; sincerity; the opposite of *mala fides* and of *dolus malus*.

Bona Gestura

Good abearance or behavior.

Bona Gratia

In the Roman law. By mutual consent; voluntarily. A term applied to a species of divorce where the parties separated by mutual consent; or where the parties renounced their marital engagements without assigning any cause, or upon mere pretexts. *Tayl. Civil Law*, 361 362; *Calvin*.

Bona Memoria

Good memory. Generally used in the phrase *sanæ mentis et bonæ memoriæ*, 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.Conn., 7 F.2d 51, 53; *Fairfield Holding Corporation v. Souther*, 258 Mass. 540, 155 N.E. 639, 640. Truly; actually; without simulation or pretense. Innocently; in the attitude of trust and confidence; without notice of fraud, etc. Real, actual, genuine, and not feigned. *Bridgeport Mortgage & Realty Corporation v. Whitlock*, 128 Conn. 57, 20 A.2d 414, 416.

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 Contract Carriers

Genuine contract carriers without deceit or fraud. *Infantino v. Pennsylvania Public Utility Commission*, 146 Pa.Super. 245, 22 A.2d 108, 109; *Puhl v. Pennsylvania Public Utility Commission*, 139 Pa.Super. 152, 11 A.2d 508, 511.

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. "Holder in due course" as equivalent for expression "bona fide holder for value without notice." *Drumm Const. Co. v. Forbes*, 305 Ill. 303, 137 N.E. 225, 226, 26 A.L.R. 764; *Bank of California v. National City Co.*, 138 Wash. 517, 244 P. 690, 691; *Bruce v. Citizens' Nat. Bank of Lineville*, 185 Ala. 221, 64 So. 82, 84; *Weller v. Meadows*, Mo.App., 272 S.W. 85, 90. One who receives negotiable paper in payment of antecedent obligations without notice of prior equities. *W. Horace Williams Co. v. Vandaveer*, *Brown & Stoy*, Tex.Civ.App., 84 S.W.2d 333, 340.

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*, 243 Pa. 469, 90 A. 127, 129.

Bona Fide Mortgagee

Essential elements of status are good faith, valuable consideration, and absence of notice. *Companaro v. Gondolfo*, C.C.A.N.J., 60 F.2d 451, 452. To constitute "bona fide mortgagee" there must be an absence of notice and payment of, or fixed liability for the consideration. *Cambridge Production Credit Ass'n v. Patrick*, 140 Ohio St. 521, 45 N.E.2d 751, 755, 144 A.L.R. 523.

BONA FIDE

Bona Fide Operation

Substantial, as distinguished from incidental, sporadic, or infrequent service. *Goncz v. Interstate Commerce Commission*, D.C.Mass., 48 F.Supp. 286, 288.

Bona Fide Possessor

One who not only supposes himself to be the true proprietor of the land, but who is ignorant that his title is contested by some other person claiming a better right to it. *Whitehead v. Barker*, 288 Mich. 19, 284 N.W. 629, 631.

Bona Fide Possessor Facit Fructus Consumptos Suos

By good faith a possessor makes the fruits consumed his own. *Tray*. Lat. Max. 57.

Bona Fide Purchaser

A purchaser in good faith for valuable consideration and without notice. *Neal v. Holt*, Tex.Civ.App., 69 S.W.2d 603, 609. 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. One who at time of purchase advances a new consideration, surrenders some security, or does some other act which leaves him in a worse position if his purchase should be set aside. *Kelly v. Grainey*, 113 Mont. 520, 129 P.2d 619, 626. Title, possession, and want of notice, either actual or constructive, as the essential factors. *Taylor v. Lindenmann*, 211 Iowa, 1122, 235 N.W. 310, 312. Payment of consideration prior to notice of adverse claim as essential. *The J. Oswald Boyd*, D.C.Mich., 53 F.Supp. 103, 106. Payment of valuable consideration, good faith, absence of purpose to take unfair advantage of third persons, and absence of actual or constructive notice of outstanding rights of others as the essential elements. *Luschen v. Stanton*, 192 Okl. 454, 137 P.2d 567, 570. "Innocent purchaser for value" and "bona fide purchaser" as synonymous. *Felts v. Whitaker*, Tex. Civ.App., 129 S.W.2d 682, 690.

Bona Fide Residence

Residence with domiciliary intent, i. e., a home in which the party actually lives. *Alburger v. Alburger*, 138 Pa.Super. 339, 10 A.2d 888, 890.

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.

BONÆ FIDEI NON CONGRUIT DE APICIBUS JURIS DISPUTARE. It is unbecoming to (or incompatible with) good faith to discuss (insist upon) the extreme subtleties of the law. A maxim which may be more freely rendered as meaning, "To insist on extreme subtleties of law is an encouragement to fraud." *Adams*. Gloss.

BONA FIDES NON PATITUR UT BIS IDEM EXIGATUR. Good faith does not allow us to demand twice the payment of the same thing. *Dig.* 50, 17, 57; *Broom*, Max. 338, note; *Perine v. Dunn*, 4 Johns.Ch., N.Y., 143.

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

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.

BONANZA. Enormous profit for miner in placer mine. *Ballagh v. Williams*, 50 Cal.App.2d 10, 122 P.2d 343, 344.

BOND. A certificate or evidence of a debt. *State v. Merchants Nat. Bank of Mobile*, 230 Ala. 661, 162 So. 270; *First State Bank of Kansas City v. Bone*, 122 Kan. 493, 252 P. 250, 254. A contract. *Cusack v. McGrain*, 136 Ohio St. 27, 23 N.E.2d 633, 635. A debt on which interest is paid. *Commissioner of Internal Revenue v. H. P. Hood & Sons*, C.C.A.1, 141 F.2d 467, 469. A deed whereby the obligor obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another at a day appointed. *Gural v. Engle*, 128 N.J.L. 252, 25 A.2d 257, 260; *Commonwealth, for Use of Fayette County v. Perry*, 330 Pa. 355, 199 A. 204, 206. A mere promise to pay. *Deppe v. Lufkin*, C.C.A.Mass., 116 F.2d 483, 486. A specialty or sealed instrument and not merely a written instrument. *Forrest v. Hawkins*, 169 Va. 470, 194 S.E. 721, 722. A written obligation. *Davis v. Phipps*, 191 Ark. 298, 85 S.W.2d 1020, 1023, 100 A.L.R. 1110; *Covington Virginian v. Woods*, 182 Va. 538, 29 S.E.2d 406; *Code Miss.*1930, § 1365. An instrument which is not necessarily under seal. *Carson, Pirie, Scott & Co. v. Duffy-Powers, Inc.*, D.C.N.Y., 9 F.Supp. 199, 201; *Code Miss.*1930, § 1365. An instrument with 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. Any contractual funding device. *Leon County v. State*, 122 Fla. 505, 165 So. 666. Debentures. *First State Bank of Kansas City v. Bone*, 122 Kan. 493, 252 P. 250, 254. Obligation to pay interest embodied in bonds as included in word "bonds." *Eisiminger v. Elliott*, Colo., 103 Colo. 216, 84 P.2d 823, 825.

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

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."

BONDAGE

Word "bond" in a statute means negotiable bonds. Royal Oak Drain. Dist., Oakland County v. Keefe, C.C.A. Ohio, 87 F.2d 786. Word "bonds" in statute held applicable to a single bond. Lien Law N.Y. § 231. In re Downtown Athletic Club of New York City, D.C.N.Y., 18 F.Supp. 712, 715.

As a verb, to place under the conditions of a bond; specif.: to convert into a debt secured by bonds. State ex rel. Pittman Bros. Const. Co. v. Watson, 199 La. 623, 6 So.2d 709, 712. 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.

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 A. 588, 23 Am.St. Rep. 273.

A bond and mortgage are distinct and separate securities. In re Maroney's Estate, 311 Pa. 336, 166 A. 914, 915. "Bond" is primarily contract to pay while "mortgage" is separate contract to secure payment. Mendelson v. Realty Mortg. Corporation, 257 Mich. 442, 241 N.W. 154, 155.

Investment in certificates of participation in bonds and mortgages as within statute authorizing investment in "bonds and mortgages". In re Smith, 279 N.Y. 479, 18 N.E.2d 666, 670.

Bond Creditor

A creditor whose debt is secured by a bond.

Bond for Deed

An agreement to make title in the future or an executory or incomplete sale. Ingram v. Smith, 62 Ga.App. 335, 7 S.E.2d 922, 926. An agreement to buy and sell real estate on small monthly payments. Galverina v. Ben L. Lewis Corporation, La.App., 165 So. 29.

Bond for Title

An agreement to make title in the future or an executory or incomplete sale. Ingram v. Smith, 62 Ga.App. 335, 7 S.E.2d 922, 926. White v. Stokes, 67 Ark. 184, 53 S.W. 1060. In re Phoenix Planing Mill, D.C.Ga., 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 Issue

Delivery of instruments as covered by term. Vans Agnew v. Fort Myers Drainage Dist., C.C.A.Fla., 69 F.2d 244, 245.

Bond of Indebtedness

Instruments containing promise to pay sum certain under seal and issued in series in nature of corporate securities. Bellefield Co. v. Heiner, D.C.Pa., 26 F.2d 292, 293. A temporary bond in registered form issued by public service corporation. Wisconsin Public Service Corporation v. United States, D.C.Wis., 40 F.Supp. 327, 330.

Bond of Such Ordinary

Bond that the ordinary gives for the faithful performance of duties as clerk. Jones v. Reed, 58 Ga.App. 72, 197 S.E. 665, 668.

Bond Tenants

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

Bond with Surety

Bond executed without surety but accompanied by certified check as substitute. Clinch Valley Lumber Corporation v. Hagan Estates, Inc., 167 Va. 1, 187 S.E. 440, 441.

Bonds of State or Public Corporation

State's or city's general obligation bonds. City of Los Angeles v. Agardy, 1 Cal.2d 76, 33 P.2d 834, 835.

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Claim Bond

Primarily in nature of forthcoming bond. Sanders v. Farrier, Tex.Civ.App., 271 S.W.2d 293, 298.

Corporate Bonds

See Corporate Bonds.

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 on which interest is payable only when earned and after payment of interest upon prior mortgages.

Indemnity Bond

See Indemnity Bond.

Liability Bond

One which is intended to protect the assured from liability for damages or to protect the persons damaged by injuries occasioned by the assured as specified, when such liability should accrue, and be imposed by law, as by a court, as distinguished from an indemnity bond, whose purpose is only to indemnify the assured against actual loss by way of reimbursement for moneys paid or which must be paid. Fenton v. Poston, 114 Wash. 217, 195 P. 31, 33.

Lloyd's Bond

A bond issued for work done or goods delivered and bearing interest.

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

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.

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

BONDED

BONDED INDEBTEDNESS. Indebtedness lawfully contracted for corporate purposes, payable from taxes on all property within municipality. *Bolton v. Wharton*, 163 S.C. 242, 161 S.E. 454, 460.

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. Elliott*, 189 Ill. 70, 59 N.E. 557.

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

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

BONI JUDICIS EST AMPLIARE JURISDICTIONEM. It is the part of a good judge to enlarge (or use liberally) his remedial authority or jurisdiction. 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 JUDICIUM 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 LITUM. 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, 15*b*; 5 Coke, 31*a*.

BONIFICATION. The remission of a tax, particularly on goods intended for export, having the same effect as a bonus or drawback. A device enabling a commodity to be exported and sold in the foreign market as if it had not been taxed. *U. S. v. Passavant*, 169 U.S. 16, 18 S.Ct. 219, 42 L. Ed. 644.

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, 68*a*.

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 consideration or premium paid by a company for a charter or other franchise or privilege. *Com. v. Transp. Co.*, 107 Pa. 112; for privilege of carrying on corporate business, *United Gas Improvement Co. v. Burnet*, C.C.A.3, 64 F.2d 957, 958. A consideration for what is received, and advantage or benefit given in return for a benefit received, or an inducement for conferring a benefit. *Church v. Winship*, 175 La. 816, 144 So. 585, 586. "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 gratuity to which the recipient has no right to make a demand. *Walling v. Plymouth Mfg. Corporation*, C.C.A.Ind., 139 F.2d 178, 182. A premium or extra or irregular remuneration in consideration of offices performed or to encourage their performance. *Willkie v. Commissioner of Internal Revenue*, C.C.A.6, 127 F.2d 953, 956. A premium paid to a grantor or vendor. An advance royalty. *Sneed v. Commissioner of Internal Revenue*, C.C.A.Tex., 119 F.2d 767, 770. An "arbitrary award" given without reference to qualifications for position. *Thomas v. Kern*, 280 N.Y. 236, 20 N.E.2d 738, 740. "An extra consideration given for what is received, or something given in addition to what is ordinarily received by, or strictly due, the recipient. *La Juett v. Coty Mach. Co.*, 153 Misc. 410, 275 N.Y.S. 822. An increase in salary or wages in contracts of employment. *Attorney General v. City of Woburn*, 317 Mass. 465, 58 N.E.2d 746, 747. An offer to employees to procure efficient and faithful service. *Roberts v. Mays Mills*, 184 N.C. 406, 114 S.E. 530, 532, 28 A.L.R. 338; *Duffy Bros. v. Bing & Bing*, 217 App. Div. 10, 215 N.Y.S. 755, 758. Any premium or advantage. Consideration or down payment for mineral lease or transfer of oil lands. *State Nat. Bank of Corpus Christi v. Morgan*, Tex.Civ.App., 123 S.W.2d 1036, 1038; *In re Levy*, 185 Okl. 477, 94 P.2d 537, 539; Gift in recognition of officer's past successful direction of corporate affairs. *Thomas v. Commissioner of Internal Revenue*, C.C.A.La., 135 F.2d 378, 379. "Interest" for the purpose of the usury law. *Bowen v. Mt. Vernon Sav. Bank*, 70 App.D.C. 273, 105 F.2d 796, 797.

BOOK

The word "bonus" may in its natural import imply a gift or gratuity. *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 JUDEX SECUNDUM ÆQUUM ET BONUM JUDICAT, 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.

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.

BONY. Slate and other refuse from mine. *Maksimshuk v. Union Collieries Co.*, 128 Pa.Super. 86, 193 A. 669, 671, 672, 673.

BOODLE. Usually applied to designate the money held to be paid or paid as a bribe for corrupt official action. *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 Star Co.*, 209 Mo. 35, 107 S.W. 496, 501.

BOOK. An assembly or concourse of ideas expressed in words. *U. S. v. One Obscene Book Entitled "Married Love"*, D.C.N.Y., 48 F.2d 821, 823. A literary composition which is printed; a printed composition bound in a volume. *Scoville v. Toland*, 21 Fed.Cas. 864. The largest subdivisions of a treatise or other literary composition.

A bound volume consisting of sheets of paper, not printed, containing manuscript entries; such as a merchant's account-books, dockets of courts, etc. A manuscript as a "book". *In re Beecher's Estate*, 17 Pa.C.C.R. 161; 8 L.J.Ch. 105. "Financial statement" of bank "book". *State v. Cloutier*, 181 La. 222, 159 So. 330.

Minute book of bank as "book." *Lewis v. U. S.*, C.C.A. Okl., 22 F.2d 760, 764. 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. Photographs as books. *Marietta Mfg. Co. v. Hedges-Walsh-Weidner Co.*, 9 W.W.Harr. 511, 2 A.2d 922, 927. Records made on loose sheets as book. *Town of Bennington v. Booth*, 101 Vt. 24, 140 A. 157, 159, 57 A.L.R. 156. X-ray pictures as books. *Whetsel v. Shaw*, 343 Pa. 182, 22 A.2d 751, 753.

In copyright law, the term 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; *M. Witmark & Sons v. Standard Music Roll Co.*, N.J., 221 F. 376, 380, 137 C.C.A. 184. A term which distinguishes writings from such other copyrightable subjects. *Sebring Pottery Co. v. Steubenville Pottery Co.*, D.C.Ohio, 9 F.Supp. 384, 386.

Book Account

A detailed statement, in the nature of debits and credits between persons; an account or record of debit and credit kept in a book. *Taylor v. Horst*, 52 Minn. 300, 54 N.W. 734; *Wright v. Loaiza*, 177 Cal. 605, 171 P. 311. A book

in which a detailed history of business transactions is entered; a record of goods sold or services rendered; a statement in detail of the transactions between parties. *Tillson v. Peters*, 41 Cal.App.2d 671, 107 P.2d 434, 438.

Entire account between parties at time action is commenced. *Gardner v. Rutherford*, 57 Cal.App.2d 874, 136 P.2d 48, 52. Entries on loose pages. *Foothill Ditch Co. v. Wallace Ranch Water Co.*, 25 Cal.App.2d 555, 78 P.2d 215, 220.

Book Debt

The words "book debt" include goods sold and delivered, and work, labor, and services performed, the evidence of which consists of entries in an original book. *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 enters from day to day a record of his transactions. *McKnight v. Newell*, 207 Pa. 562, 57 A. 39. A book kept for charging goods sold and delivered, in which the entries are made contemporaneously with the delivery of the goods. *United Grocery Co. v. J. M. Dannelly & Son*, 93 S.C. 580, 77 S.E. 706, Ann.Cas. 1914D, 489. A book in which a detailed history of business transactions is entered. *Nicola v. U. S.*, C.C.A.Pa., 72 F.2d 780, 783.

Distinguished from such books as a ledger. But see *Cassil v. Carter*, 98 Okl. 49, 223 P. 685, 686. Workmen's slips for repairs done on automobiles, although not bound in book form. *H. W. Emeny Auto Co. v. Neiderhauser*, 175 Iowa 219, 157 N.W. 143, 144.

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

As applied to stock, the value shown by deducting liabilities and other matters required to be deducted from assets, *Elhard v. Rott*, 36 N.D. 221, 162 N.W. 302; *Gurley v. Woodbury*, 177 N.C. 70, 97 S.E. 754, 756; the value determined by net profits or deficit, *Davis v. Coshnear*, 129 Me. 334, 151 A. 725, 727. The value found by adding to par value the plus value of surplus, *In re Fisher's Estate*, 344 Pa. 607, 26 A.2d 192, 196. As applied to finance, the value of anything as shown in books of account. *Davis v. Coshnear*, 129 Me. 334, 151 A. 725, 727.

BOOK

"Book value" of a business is based upon actual costs of a stock of merchandise and accounts on hand less depreciation. *Mills v. Rich*, 249 Mich. 489, 229 N.W. 462, 463. "Book value" of building and loan stock is proportionate amount of net assets applicable. *Thirteenth Ward Building & Loan Ass'n of Newark v. Weissberg*, 115 N.J.Eq. 487, 170 A. 662, 665, 98 A.L.R. 134.

Bookland

In English law. Land, also called "charterland," 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

Books in which merchants, traders, and business men generally keep their accounts. *Colbert v. Piercy*, 25 N.C. 80. Entries made in the regular course of business. *Nicola v. U. S.*, C.C.A.Pa., 72 F.2d 780, 783. Entries on loose leaves or cards. 12 Okl.St. Ann. § 501. *Maney v. Cherry*, 170 Okl. 469, 41 P.2d 82, 83. Serial, continuous, and permanent memorials of business and affairs. *Cudahy Packing Co. v. U. S.*, C.C.A.Ill., 15 F.2d 133, 136. *Broderick v. Adamson*, 159 Misc. 634, 288 N.Y.S. 688, 696.

Pad slips, cash register items, and adding machine slips, pinned together and preserved. *Home Ins. Co. v. Flewelen*, Tex.Civ.App., 221 S.W. 630, 631. A diary. *State v. Coffey*, 8 Wash.2d 504, 112 P.2d 989, 991. A ledger of accounts. In re *Anderson*, D.C.N.Y., 35 F.Supp. 717, 719. A memorandum. *Brett v. Dean*, 239 Ala. 675, 196 So. 881, 883. A pay-roll book. *Hirsch v. Automatic Canteen Co. of America*, 296 Ill.App. 47, 15 N.E.2d 888.

Books of Bank

Stock books of bank. *Broderick v. Adamson*, 159 Misc. 634, 288 N.Y.S. 688, 696.

Books of Corporations

"Books, records, and papers" of corporations as interchangeable terms. *Birmingham News v. State*, 207 Ala. 440, 93 So. 25, 26. Whatever is kept as written evidence of official doings and business transactions. *First Nat. Bank of Colorado Springs v. Holt*, Mo.App., 158 S.W.2d 229, 231.

Books of Tax Receiver

Tax digests, copies of which must be placed in hands of state revenue commissioner, tax collector, etc. *Cady v. State*, 198 Ga. 99, 31 S.E.2d 38, 43.

Face of Book

See Face of Book.

Office Book

See Office.

Reference Books

Books to refer to. *State v. Innes*, 89 Kan. 168, 130 P. 677, 679.

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

BOOKING CONTRACT. 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.N.Y., 12 F.2d 341, 342, 47 A.L.R. 775.

BOOKMAKER. A professional betting man, especially one connected with the turf. *City of Portland v. Duntley*, Or., 203 P.2d 640, 644.

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*, 196 N.Y. 260, 89 N.E. 921, 922, 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 or selling pools. *People of State of New York v. Bennett*, C.C.N.Y., 113 Fed. 515, 516. A species of betting on horse races. *Ex parte Hernan*, 45 Tex.Cr.R. 343, 77 S.W. 225, 226. The bets are booked or a record kept of them in a book. *Spies v. Rosenstock*, 87 Md. 14, 39 A. 268, 269.

BOOKMAKING ESTABLISHMENT. Where wagers are made on horse races being run at tracks in various parts of United States. *Albright v. Karston*, 206 Ark. 307, 176 S.W.2d 421, 422.

BOOM. An inclosure formed by piers and a chain of spars to collect or store logs or timber. *Powers' Appeal*, 125 Pa. 175, 17 A. 254, 11 Am.St.Rep. 882; *Gasper v. Heimbach*, 59 Minn. 102, 60 N.W. 1080. Spars or logs and chains or other fixtures used to keep them in place. *Rollins v. Clay*, 33 Me. 132, 138.

BOOM COMPANY. A company formed to improve streams for floating of logs by booms and other contrivances, and to run, drive, boom and raft logs.

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

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

BOOSTED FIRE. A fire wherein some inflammable substance other than that of which the building was constructed or which it contained contributed to its burning and spreading. *State v. Lytle*, 214 Minn. 171, 7 N.W.2d 305, 309.

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

BOOTHAGE. See Bothagium.

BORN

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

BOOTLEGGER. A seller of whisky. *Medlock v. State*, 79 Tex.Cr.R. 322, 185 S.W. 566, 568. One engaged in unlawful disposition of liquor. *Hathaway v. Benton*, 172 Iowa 299, 154 N.W. 474, 476. One who sells liquor on the sly. *Knothe v. State*, 115 Neb. 119, 211 N.W. 619, 621.

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

BOOTSTRAP DOCTRINE. The decision of a court on a special as well as a general appearance that it has jurisdiction is not subject of collateral attack but is *res judicata*. *Peri v. Groves*, 183 Misc. 579, 50 N.Y.S.2d 300, 308.

BOOTY. Property captured from the enemy in war, on land. *U. S. v. Bales of Cotton*, 28 Fed. Cas. 302.

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

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 "bord lands" were anciently held in England; 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, on condition they should supply the lord with small provisions. *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.

BORDLANDS. 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 supplying him with small provisions, etc.

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

BORDSERVICE. A tenure of bordlands.

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

BORG. In Saxon law. A pledge, pledge giver, or surety. The name given among the Saxons to the head of each family composing a tithing or decenary, 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. A child *en ventre sa mère*. *Merrill v. Winchester*, 120 Me. 203, 113 A. 261, 264. 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. Thalhimier*, 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*, 124 Misc. 80, 206 N.Y.S. 865. 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.*, 89 Misc. 69, 151 N.Y.S. 246, 253.

BORN OUT OF WEDLOCK. Children whose parents are not, and have not been, married to each other regardless of marital status of either parent with respect to another. *State v. Coliton*, 73 N.D. 582, 17 N.W.2d 546, 549, 552, 156 A.L.R. 1403.

BORN OUTSIDE THE UNITED STATES. Where, at time of birth of children born in the United States, their father was a duly accredited diplomatic representative of the French Republic to the United States, they became subject to the jurisdiction of France, and were "born outside of the United States" within the naturalization provisions of section 315 of the Nationality Act of 1940, 8 U.S.C.A. § 715. *In re Thenault*, D.C.D.C., 47 F. Supp. 952, 953.

BOROUGH

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. In its more modern English acceptation, a town or city or place organized for government.

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

In Scotch Law

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

In American Law

In Pennsylvania, Connecticut and New Jersey, a part of a township having a charter for municipal purposes. Southport v. Ogden, 23 Conn. 128. See, also, 1 Dill.Mun.Corp. § 41, n.

A territorial fraction of a city having certain powers with reference to local concerns. Crose v. City of Los Angeles, 175 Cal. 774, 167 P. 386, 387. "Village" and "borough" as duplicate or cumulative names of the same thing. Brown v. State, 18 Ohio St. 496.

Borough Courts

In English law. Private and limited tribunals, held by prescription, charter, or act of parliament, in particular districts for the convenience of the inhabitants, that they may prosecute small suits and receive justice at home.

Borough English

A custom prevalent in some parts of England, by which the youngest son inherits the estate in preference to his older brothers. 1 Bl.Comm. 75.

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 from rents and produce of its land, houses, and stocks 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 borough entitled to send a representative to parliament, in which a single individual could entirely control the election.

BORRASCA. Absence of profit, or not enough profit to pay the cost of operation, of a placer mine. Ballagh v. Williams, 50 Cal.App.2d 10, 122 P.2d 343, 344.

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. 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. Legal Tender Cases, 110 U.S. 421, 4 S.Ct. 122, 28 L.Ed. 204. Though the word is often used in the sense of returning the thing borrowed *in specie*, where money is borrowed, the identical money loaned is not to be returned. In a broad sense the term means a contract for the use of money. State v. School Dist., 13 Neb. 88, 12 N.W. 812. The term may be used to express the idea of receiving something from another for one's own use, to appropriate. Finch v. McClellan, 77 Ind. App. 533, 130 N.E. 13, 15. The word "loan" is the correlative of "borrow." U. S. v. Warn, D.C.Idaho, 295 F. 328, 330. The term when used in connection with lending an automobile chauffeur does not imply that the owner surrenders control over him. Hooper v. Brawner, 143 Md. 417, 129 A. 672, 677. Compare Henderson v. State, 75 Fla. 464, 78 So. 427, 428, holding that an indictment alleging that defendant "did borrow" a shotgun sufficiently alleged that defendant received the shotgun into his possession. The right to borrow money as applied to a municipal corporation is a power to create indebtedness. Jones v. Board of Education of Guilford County, 185 N.C. 303, 117 S.E. 37, 40.

Agreement by building and loan association, in purchasing residence property on which it had a first mortgage, to assume a second mortgage. Gardner v. Johns, 64 Ohio App. 229, 28 N.E.2d 691, 694.

"Borrow" has been held the reciprocal action with "to lend". Bank of United States v. Drapkin & Goldberg Const. Co., City Ct., N.Y., 11 N.Y.S.2d 334, 336. Dirt taken from plots of ground near sides of highway embankment. State v. Smith, 167 La. 301, 119 So. 56, 61. Earth brought from outside highway location and used for embankments. Barry v. Duffin, 290 Mass. 398, 195 N.E. 511, 514.

BORROW PIT. A pit or bank from which material is taken for use in filling or embanking. Haynes v. Jones, 91 Ohio St. 197, 110 N.E. 469, 470.

BORROWE. In old Scotch law. A pledge.

BORROWED CAPITAL. Moneys due by corporation to another corporation used as its capital. State v. Banana Selling Co., 185 La. 668, 170 So. 30, 32.

Amount standing on books to personal credit of stockholders credited without restriction or limitation on stockholders as to manner or time of payment to them of respective accounts. Weed & Bro. v. U. S., Ct.Cl., 38 F.2d 935, 940. Dividends declared by corporation but not paid during taxable year. Bulger Block Coal Co. v. U. S., Ct.Cl., 48 F.2d 675, 677; Southport Mill v. Commissioner of Internal Revenue, C.C.A.La., 26 F.2d 17. Payment of losses sustained by corporation by its principal stockholder. State v. Mayer Sugar & Molasses Co., 204 La. 742, 16 So.2d 251, 253.

BORROWED MONEY OR PROPERTY. Notes and bonds given in payment of assets. Coal Co. v. United States, C.C.A.W.Va., 137 F.2d 948, 953. Credit by bank to payee's account of amount of customer's notes taken in lieu of cash. Depart-

BOTTOMRY

ment of Treasury (Gross Income Tax Division) v. Advance Paint Co., 222 Ind. 294, 53 N.E.2d 59. Profits loaned by partners to partnership. Nye v. U. S., C.C.A.Mass., 84 F.2d 457, 462.

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

Under usury statute, one having the use of money by forbearance of his creditor, or any person who secures the use of money in any way upon an excessive consideration, Law, Clark & Co. v. Mitchell, 200 Ala. 565, 76 So. 923, 924; the party who is bound by original contract to pay loan, Faber v. Siegel, 286 N.Y.S. 974, 158 Misc. 722; the purchaser of land subject to usurious mortgage and subsequent mortgagees, Hatch v. Baker, 249 N.Y.S. 215, 217, 139 Misc. 717; the indorser of note who received no part of money advanced and who was mere surety, Faber v. Siegel, 286 N.Y.S. 974, 158 Misc. 722.

BORROWING POWER. Signifies only an unfunded indebtedness. Bond v. Cowan, 272 Mich. 296, 261 N.W. 331.

BORROWINGS. Checks by bank against second bank and honored while items deposited by former were in process of collection. Guaranty by bank of transaction where another bank issued letter of credit for first bank's customer. Indebtedness represented by notes given by bank when borrowing money. Overdrafts by bank maintaining checking account with another bank. Schramm v. Bank of California Nat. Ass'n, 143 Or. 546, 20 P.2d 1093, 1096.

BORSHOLDER. In Saxon law. The borough's ealder, or headborough.

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.

BOSTON CREAM PIE. Two layers of sponge cake with a layer of a sort of cream custard. Lohse v. Coffey, D.C.Mun.App., 32 A.2d 258, 259.

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.

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. The one and the other; the two without the exception of either. Lower Indian Creek Drainage and Levee Dist. of Cass County v. Vallery, 343 Ill. 49, 174 N.E. 842, 843. All of two, United States v. Bachman, D.C.Pa., 246 F. 1009, 1011. The term likewise has a meaning which excludes more than two mentioned subject matters. In re Turner's Estate, 171 Misc. 78, 11 N.Y. S.2d 800, 802.

"Either," may mean "both." Kibler v. Parker, 191 Ark. 475, 86 S.W.2d 925, 926.

Both Real and Personal

Use in will to indicate all of testatrix' property. Hoffman v. Hoffman, 61 Ohio App. 371, 22 N.E.2d 652, 654.

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.

BOTILER OF THE KING. An officer who provided the king's wines. By virtue of his office, he might choose, out of every ship laden with wines, one cask before the mast, and one behind. 25 Edw. III, st. 5, c. 21. Wharton. Cf. Butlerage.

BOTTELLARIA. A buttery or cellar, in which bottles or butts of wine and other liquors are deposited. Wharton.

BOTTLE. An open mouthed vessel, with a neck with an aperture which may be closed, capable of containing liquids. Fieldcrest Dairies v. City of Chicago, D.C.Ill., 35 F.Supp. 451, 452.

BOTTOM HOLE CONTRACT. When operator drills a well to a certain depth, the owners or persons for whom the well is drilled will pay a certain sum. Barnett v. Kemerer, 179 Okl. 588, 66 P.2d 1053, 1055.

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 intervale. Lexington & E. Ry. Co. v. Williams, 183 Ky. 343, 209 S.W. 59, 62.

BOTTOMAGE. L. Fr. Bottomry.

BOTTOMRY. In maritime law. A contract by which the owner of a ship borrows 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 security; it being stipulated that if the ship be lost in the specified voyage, or during the limited time, by any of the perils enumerated, the lender shall lose his money. Carrington v. The Pratt, 18 How. 63, 15 L.Ed. 267; Braynard v. Hoppock, 7 Bosw.N.Y. 157.

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 usually in form a bond.

BOTTOMRY

When the loan is not made on the ship, but on the goods 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*."

BOTTOMRY BOND. The instrument embodying the contract or agreement of bottomry. A contract for a loan 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 Grapeshot, 9 Wall. 135, 19 L.Ed. 651.

BOTULISM. Food poisoning caused by a toxin which is produced by Clostridium (bacillus) botulinum. Armour & Co. v. Leasure, 177 Md. 393, 9 A.2d 572, 575.

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. A note of the sale by a broker employed to buy and sell goods is called a "sold note," and a like note to the seller is called a "bought note." Avondale Mills v. Benchley Bros., 244 Mass. 153, 138 N.E. 586, 589.

BOULEVARD. The word originally indicated a bulwark or rampart, and afterwards applied to a public walk or road on the site of a demolished fortification, and is now employed in same sense as public drive. A street or highway with park-like appearance; or one specially designed for pleasure walking or driving. Newbold v. Brotzge, 209 Ky. 218, 272 S.W. 755, 756; Chaplin v. Kansas City, 259 Mo. 479, 168 S.W. 763, 765. A wide street, or a street encircling a town, with sides or center for shade trees, etc. State ex rel. Copland v. City of Toledo, 75 Ohio App. 378, 62 N.E.2d 256, 258. It is adapted and set apart for purposes of ornament, exercise, and amusement. See, also, Avenue. A "public way", City of Medford v. Metropolitan District Commission, 303 Mass. 537, 22 N.E.2d 110, 111.

It is not technically a street, avenue, or highway. Howe v. Lowell, 171 Mass. 575, 51 N.E. 536; Park Com'rs v. Farber, 171 Ill. 146, 49 N.E. 427. "Street" and "boulevard" may be interchangeable. City of Fargo v. Gearey, 33 N.D. 64, 156 N.W. 552, 555.

BOUNCEE. A term used to designate persons employed to preserve the peace in establishments

such as night clubs and other places of amusement where people indulge in dancing, drinking and in gambling. Moore v. Blanchard, La.App., 35 So.2d 667, 669.

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.Fla., 279 F. 537, 541.

"Bound" and "concluded" as synonymous. McKinnon v. Chenoweth, 176 Or. 74, 155 P.2d 944, 954.

As a *noun*, denotes a limit or boundary, or a line inclosing or marking off a tract of land. In the phrase "metes and bounds," denotes the natural or artificial marks which indicate their beginning and ending. "Bound" may signify the limit itself, and "boundary" designate a visible mark which indicates the limit. "Bound" and "duty" as synonymous. Essenpreis v. Elliott's Department Store Co., Mo.App., 37 S.W.2d 458, 462.

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. Every separation, natural or artificial, which marks the confines or line of division of two contiguous estates. Civ.Code La. art. 826. Limits or marks of enclosures if possession be without title, or the boundaries or limits stated in title deed if possession be under a title. Snelling v. Adair, 196 La. 624, 199 So. 782, 787.

"At the entrance" and "at the boundary" as synonymous. McGough v. Hendrickson, 58 Cal.App.2d 60, 136 P. 2d 110, 114. Banks or confines at ordinary high water as boundary of water course. Beck v. Kulesza, 4 W.W.Harr., Del., 559, 156 A. 346, 349. Meander line as "boundary". United States v. Elliott, C.C.A.Okl., 131 F.2d 720, 724.

Boundary Suit

Trespass to try title in which every matter in dispute would be determined by determination of boundary line. Southern Pine Lumber Co. v. Whiteman, Tex.Civ.App., 104 S.W.2d 635, 637.

Case of Boundary

One where the location of the boundary is the determining question of the entire case. West Lumber Co. v. Goodrich, 113 T. 14, 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 which may serve to define and fix one or more of the lines inclosing an estate or piece of property. See Peuker v. Canter, 62 Kan. 363, 63 P. 617.

Private Boundary

An artificial boundary set up to mark the beginning or direction of a boundary line.

Public Boundary

A natural boundary; a natural object or landmark used as a boundary 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. 7, 205 F. 495, 496.

Contract as meant by "bounds". *City of Elkins v. Stickley*, 114 W.Va. 103, 170 S.E. 902, 903. Edges of road as "bounds of the highway". *Decker v. Roberts*, 126 Conn. 478, 12 A.2d 541, 543. Trespass committed by a person who excavates minerals under-ground beyond boundary of his land as "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. N.Y., 227 F. 478, 479. A premium given or offered to enlisted men to induce enlistment into public service. *Abbe v. Allen*, 39 How.Prac., N.Y., 488.

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

Bounty is the appropriate term where services or action of many persons are desired, and each who acts upon the offer may entitle himself to the promised gratuity. 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. *Ingram v. Colgan*, 106 Cal. 113, 38 P. 315, 28 L.R.A. 187, 46 Am.St.Rep. 221. Bonus, suggests the idea of a gratuity to induce a money transaction between individuals. Abbott.

Bounty Lands

Portions of the public domain given or donated as a bounty for services rendered, chiefly for military service. See 43 U.S.C.A. § 791.

Bounty of Queen Ann

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.

BOURDON TUBE. A pressure-responsive device comprising a hollow tubular member. *James P. Marsh Corporation v. United States Gauge Co.*, D. C.Ill., 42 F.Supp. 998, 1001.

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. The inhabitant of a *bourg*. A person entitled to the privileges of a municipal corporation; a burgess. A member of the middle classes. *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.

BOVARIUS, adj. Lat. Relating to horned cattle. The Forum Bovarium was the cattle market at Rome, near the Circus Maximus. It had a large brazen statue of an ox.

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"; 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*, 42 Nev. 218, 174 P. 1023, 1025.

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. A long knife shaped like a dagger but having only one edge. *Knox v. State*, 157 Tenn. 120, 6 S.W.2d 318, 319. A butcher knife, *Mireles v. State*, 80 Tex.Cr.R. 648, 192 S.W. 241, 242; a "dirk," *Bivens v. State*, 133 Tex.Cr.R. 604, 113 S.W.2d 921.

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

BOX. A construction of permanent, fixed dimensions and size. *Lyon, Inc., v. Clayton & Lambert Mfg. Co.*, D.C.Del., 13 F.Supp. 331, 333.

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.Wash., 218 F. 695, 697.

BOX STEP. A passenger car step. *Hill v. Minneapolis, St. Paul, & S. S. M. Ry. Co.*, 160 Minn. 484, 200 N.W. 485, 486.

BOX

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.N.Y., 256 F. 98, 99.

BOXED WEIGHT BASIS. According to weight at time of packing and after wrapping. *Swift & Co. v. Wallace*, C.C.A.7, 105 F.2d 848, 861.

BOXING BOUT. A contest of skill between two participants. *Fischer v. City of Cleveland*, 42 Ohio App. 75, 181 N.E. 668, 670.

BOXING OF PINE TREES. As equivalent to "hanging of cups upon timber." *Howard v. State*, 17 Ala.App. 9, 81 So. 345, 346.

BOY. Legitimate child. In re *Dragoni*, 53 Wyo. 143, 79 P.2d 465, 468. Male child. *Hinerman v. Hinerman*, 85 W.Va. 349, 101 S.E. 789, 790.

BOYCOTT. A conspiracy or confederation to prevent the carrying on of business, or to injure the business of any one by preventing potential customers from doing business with him or employing the representatives of said business, by threats, intimidation, coercion, etc. *Dick v. Northern Pac. Ry. Co.*, 86 Wash. 211, 150 P. 8, 12, Ann.Cas.1917A, 638; *Hailey v. Brooks*, Tex.Civ.App., 191 S.W. 781, 783.

Intimidation and coercion as essential elements. *Smythe Neon Sign Co. v. Local Union No. 405 of International Brotherhood of Electrical Workers of Cedar Rapids*, 226 Iowa 191, 284 N.W. 126, 130. Labor union members' voluntary determination to refrain from working in erection of materials not bearing union label. *Frank Schmidt Planing Mill Co. v. Mueller*, Mo.App., 154 S.W.2d 610, 614, 615. Labor union's promulgation of rule prohibiting members from handling and erecting work not bearing union label. *Crescent Planing Mill Co. v. Mueller*, 234 Mo.App. 1243, 123 S.W.2d 193, 196. The word does not necessarily import illegality. *Smythe Neon Sign Co. v. Local Union No. 405 of International Brotherhood of Electrical Workers of Cedar Rapids*, 226 Iowa 191, 284 N.W. 126, 130.

Primary Boycott

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

Secondary Boycott

A combination to exercise coercive pressure on customers, actual or prospective, to cause them to withhold or withdraw their patronage. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 41 S. Ct. 172, 176, 65 L.Ed. 349, 16 A.L.R. 196. An act which, when committed in concert, 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. *Justin Seubert, Inc. v. Reiff*, 98 Misc. 402, 164 N. Y.S. 522, 526.

BOYD RULE. In a corporate reorganization, no junior security may be given participation without providing a new consideration therefor, unless all securities senior to it have received full equivalent of their rights against the estate. *Phelan v.*

Middle States Oil Corp., D.C.N.Y., 124 F.Supp. 728, 781.

BOYLE'S LAW. The principle that as the pressure of gas increases at a fixed temperature, the volume decreases in inverse proportion, or the product of the pressure and volume is a constant quantity. *Huntington Development & Gas Co. v. Topping*, 115 W.Va. 364, 176 S.E. 424, 425.

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*.

BRABANT. A variety of the old coin known as a crocard. See *Crockards*.

BRABANTER. A mercenary soldier or bandit who figured in the Anglo-French wars of the 11th and 13th centuries, and who came from the old duchy of Brabant, now partly comprised in the provinces of Brabant in Belgium and of North Brabant in the Netherlands. Cent. Dict.

BRACERY. The statute of 32 Hen. VIII, c. 9, to prevent the buying and selling of pretended rights or titles, is commonly called "the Bill of Bracery and buying of titles." *Cain v. Monroe*, 23 Ga. 82, 86, 89, 94; *Webb v. Camp*, 26 Ga. 354, 357. See *Buying Titles*.

BRACHIUM MARIS. An arm of the sea.

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

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

BRAIN INJURY. A "concussion" as "brain injury". *Le Francois v. Hobart College*, Sup., 31 N.Y.S.2d 200, 204.

BRAKE. An effective "brake" consists of the "brake shoe," and the "brake drum." *Davis Sewing Mach. Co. v. New Departure Mfg. Co.*, C.C.A. Ohio, 217 F. 775, 780.

BRANCH. An offshoot, lateral extension, or subdivision. Any member or part of a body or system; a department. *Northern Indiana Land Co. v. Carlin*, 139 Ind. 324, 127 N.E. 197, 201.

A branch of a family stock is a group of persons related 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. Certificate given by the Trinity House to pilots who have passed an examination. *Houston Pilots v. Goodwin*, Tex.Civ.App., 178 S.W.2d 308, 311. "Group", "wing", "faction", "party" or "section" and "branch" as synonymous. In re *McKean's Estate*, 152 Pa.Super. 613, 33 A.2d 51, 52.

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.Okl., 252 F. 841, 844.

BREACH

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. *Dean v. Healy*, 66 Ga. 503; *State v. Follett*, 33 La. Ann. 228. Holder of certificate given by the Trinity House to pilots who have passed an examination. *Houston Pilots v. Goodwin*, Tex.Civ.App., 178 S.W.2d 308, 311.

BRANCH RAILROAD. A lateral extension of a main line; a road connected with or issuing from a main line. *Biles v. Railroad Co.*, 5 Wash. 509, 32 Pac. 211; *Blanton v. Railroad Co.*, 86 Va. 618, 10 S.E. 925. Feeder lines, *Union Pac. R. Co. v. Anderson*, 167 Or. 687, 120 P.2d 578, 588.

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.*, 98 Vt. 1, 124 A. 559, 563.

BRANDING. An ancient mode of punishment by inflicting a mark on an offender with a hot iron. A recognized punishment for some military offenses. Marking of cattle for the purpose of identification.

BRANDY. Product from distilling wine or the fermented juice of any fruit. *Chicago, B. & Q. R. Co. v. California Wine Co.*, 313 Ill.App. 498, 40 N.E.2d 624, 627.

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

BRASIATOR. A maltster, a brewer.

BRASIAM. 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 B.Comm. 146; 4 Steph.Comm. 253.

"Tumults" and "brawls" as substantially identical. *State v. Perkins*, 42 N.H. 464.

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

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.

Expenditure by administrator of proceeds of policy pending appeal from award of proceeds to administrator as "breach" of obligation of faithful administration. *State ex rel. and to Use of Gnekow v. United States Fidelity & Guaranty Co.*, 349 Mo. 528, 163 S.W.2d 86, 90.

BREACH OF CLOSE. The unlawful or unwarrantable entry on another person's soil, land, or close. 3 Bl.Comm. 209.

BREACH OF CONTRACT. Failure, without legal excuse, to perform any promise which forms the whole or part of a contract. *Friedman v. Katzner*, 139 Md. 195, 114 A. 884, 886. Prevention or hindrance by party to contract of any occurrence or performance requisite under the contract for the creation or continuance of a right in favor of the other party or the discharge of a duty by him. *Sharp v. Williams*, 141 Fla. 1, 192 So. 476, 480. Unequivocal, distinct and absolute refusal to perform agreement. *R. T. Clark & Co. v. Miller*, 154 Miss. 233, 122 So. 475, 481. Violation of obligation. *Russell v. Stephens*, 191 Wash. 314, 71 P.2d 30, 31.

Anticipatory Breach

A breach committed before there is a present duty of performance, and is the outcome of words evincing intention to refuse performance in the future. *King Features Syndicate v. Valley Broadcasting Co.*, D.C.Tex., 42 F.Supp. 107, 108.

Acquiescence by other party as necessary, *Cerruti v. Burdick*, 130 Conn. 284, 33 A.2d 333, 335. Clear and unequivocal, renunciation of contract and refusal to perform as essential. *Kimel v. Missouri State Life Ins. Co.*, C.C.A. Kan., 71 F.2d 921, 923. Party to contract putting it out of his power to perform as breach, *Assembly, Inc. v. Giller*, 134 Misc. 657, 236 N.Y.S. 308, 313. Positive statement that promisor will not or cannot substantially perform contractual duties as breach, *Hawkinson v. Johnston*, C.C.A. Mo., 122 F.2d 724, 729, 730.

Bankruptcy as "anticipatory breach", *In re Robertson*, D.C.Ark., 41 F.Supp. 665, 668.

Doctrine is that party denying liability destroys contract so far as able. *Pollack v. Pollack*, Tex.Com.App., 46 S.W.2d 292, 293.

Continuing Breach

Such 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.

Constructive Breach

Such breach takes place when the party bound to perform disables himself from performance by some act, or declares, before the time comes, that he will not perform. *Jordan v. Madsen*, 69 Utah, 112, 252 P. 570, 573; *The Adamello*, D.C.Va., 19 F.2d 388, 389.

BREACH OF COVENANT. The nonperformance of any covenant agreed to be performed, or the doing of any act covenanted not to be done. *Holt-house*.

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*, 118 Okl. 167, 247 P. 692, 693.

BREACH

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 or disturbance 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. "Breach of the peace" is a generic term, State v. Reichman, 135 Tenn. 653, 188 S.W. 225, 228, 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, 254 Mo. 309, 162 S.W. 155, 157, 49 L.R.A.,N.S., 919. 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, 15 Ga.App. 633, 84 S.E. 90, 91; City of Seattle v. Franklin, 191 Wash. 297, 70 P.2d 1049, 1051.

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. 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., 23 N.M. 82, 167 P. 436, 453. A violation by the trustee of any duty which he owes to the beneficiary. Bruun v. Hanson, C.C.A.Idaho, 103 F.2d 685, 699.

BREACH OF TRUST WITH FRAUDULENT INTENT. Larceny after trust. State v. Owings, 205 S.C. 314, 31 S.E.2d 906, 907.

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. Stewart v. Drake, 9 N.J.Law, 139. Failure of insured to disclose trivial and temporary disorders. Franklin Life Ins. Co. v. Critz, C.C.A.Miss., 109 F.2d 417. 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. Falsity of statements incorporated into fidelity bond. City Bank & Trust Co. v. Commercial Casualty Co., La.App., 176 So. 27, 30.

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., 226 Mass. 314, 115 N.E. 404, 405, 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.

BREAK AND TAKE. Sale of merchandise or amusement where customer pays for a chattel and a chance for another unpaid for chattel, the ticket being the opportunity for fortuitous selection of a differentiated article. Minter v. Federal Trade Commission, C.C.A.3, 102 F.2d 69, 73.

BREAKAGE. Odd cents retained by race track promoter out of amounts due on wagers. Wise v. Delaware Steeplechase & Race Ass'n, Del.Super., 2 Terry 182, 18 A.2d 419, 421, 423.

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., 191 App.Div. 237, 181 N.Y.S. 259, 261.

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. Sims v. State, 136 Ind. 358, 36 N.E. 278; Melton v. State, 24 Tex.App. 287, 6 S.W. 303. Actual "breaking" involves application of some force. Rains v. Commonwealth, 293 Ky. 429, 169 S.W.2d 41, 44, the action of accused must have been such as would, without additional effort, have made an entry possible. Armour v. State, 72 Okl.Cr. 44, 112 P.2d 1116, 1119, but there is no requirement that there be shown violence, a latch lifted, or a

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bolt drawn. *People v. Viola*, 264 App.Div. 38, 34 N.Y.S.2d 1018, 1020. The term in indictment, information or instruction implies force. *State v. Stuart*, 316 Mo. 150, 289 S.W. 822, 824; *Humphrey v. State*, 110 Tex.Cr.R. 62, 7 S.W.2d 576, 577; *McFarland v. Commonwealth*, 227 Ky. 411, 13 S.W.2d 277, 278. The slightest force is sufficient, as the lifting or opening of a latch, *Dennis v. State*, 71 Tex.Cr.R. 162, 158 S.W. 1008, 1010; *State v. Gendusa*, 193 La. 59, 190 So. 332, 339; or the raising of a window, *Hollis v. State*, 69 Tex.Cr.R. 286, 153 S.W. 853, 854; *State v. Chappell*, 185 S.C. 111, 193 S.E. 924, 925; or the opening of a door, *State v. Lapoint*, 87 Vt. 115, 88 A. 523, 47 L.R.A.N.S., 717; *Gibson v. Commonwealth*, 204 Ky. 704, 265 S.W. 339, 345; *Yeargin v. State*, 54 Okl.Cr. 34, 14 P.2d 431, 432; *Kidd v. Commonwealth*, 273 Ky. 300, 116 S.W.2d 636, 638; or the opening of unfastened transom. *State v. Chappell*, 185 S.C. 111, 193 S.E. 924; or entry with a key or by manipulating hasp from outside, *McGilveray v. State*, 111 Tex.Cr.R. 256, 12 S.W.2d 585; or turning of knob of door, *State v. Edell*, 7 W.W.Harr. Del., 404, 183 A. 630. But entry by open door, window, or other opening does not constitute "breaking", *George v. State*, 183 Miss. 327, 184 So. 67, 68. Breaking lock securing pump handle on gasoline tank releasing handle is sufficient "breaking". *Chaney v. State*, 25 Ala.App. 141, 142 So. 103.

As an element of the crime of burglary breaking may be either actual or constructive. *Davis v. Commonwealth*, 132 Va. 521, 110 S.E. 356. Entering a building by a chimney is a constructive breaking. *State v. Hart*, 94 S.C. 214, 77 S.E. 862.

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 A CLOSE. An unlawful entry upon land. *Littleton v. Roberts*, 181 S.C. 303, 187 S.E. 349, 350.

Wrongdoer need only set in motion some dangerous agency which in itself, though quite distant from wrongdoer, inflicts wrong. *Western Union Telegraph Co. v. Bush*, 191 Ark. 1085, 89 S.W.2d 723, 725, 103 A.L.R. 367.

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 INTO. Breaking with burglarious intent. *State v. Hefflin*, 338 Mo. 236, 89 S.W.2d 938, 946, 103 A.L.R. 1301.

BREAKING JAIL. The act of a prisoner in effecting his escape from a place of lawful confinement.

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, discretion, or recollection of the judge.

During the term of a court, the record is said to remain "in the breast of the judges of the court and in their

remembrance." *Co.Litt. 260a*; 3 Bl.Comm. 407. 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.

BREATHING. Expansion and contraction, under the influence of changing temperatures, of materials used in cables for transmission of high-tension electric currents. *Electric Cable Joint Co. v. Brooklyn Edison Co.*, N.Y., 292 U.S. 69, 54 S.Ct. 586, 587, 78 L.Ed. 1131.

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

BREED. Produce (offspring) by hatching or gestation; to hatch. *Miller Hatcheries v. Boyer*, C.C.A.Iowa, 131 F.2d 283, 287.

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.

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

BREPHOTROPHI. 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. 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. *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

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 *parēs 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.

BREVIÆ. Lat. The plural of *breve*.

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

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

BREVIÆ 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.

BREVIÆ DE CURSU. Writs of course. Formal writs issuing as of course.

BREVIÆ 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.

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

BREVIÆ 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.

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

BREVIÆ, TAM ORIGINALIA QUAM JUDICIALIA, PATIUNTUR ANGLICA NOMINA. 10 Coke, 132. Writs, as well original as judicial, bear English names.

BREVIÆ 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.

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

BREWER. One who manufactures fermented liquors, for sale, from malt, wholly or in part, or from any substitute therefor. U. S. v. Wittig, 28 Fed.Cas. 745.

BRIBE. Anything of value; any gift, advantage or emolument; any price, reward or favor. State v. Douglas, 70 S.D. 203, 16 N.W.2d 489, 496. Any money, goods, right in action, property, thing of value, or any preferment, advantage, privilege or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of person in any public or official capacity. People v. Van de Carr, 87 App.Div. 386, 84 N.Y.S. 461; People v. Ward, 110 Cal. 369, 42 P. 894; Williams v. State, 188 Ind. 283, 123 N.E. 209, 213. It is a

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gift, not necessarily of pecuniary value, bestowed to influence the conduct of the receiver, and must be of substantial value to him. *People v. Hyde*, 156 App.Div. 618, 141 N.Y.S. 1089, 1093.

Payment of corporate funds by director and executive officer of the corporation to officials of labor union to prevent ruinous strikes which union officials were under no legal duty to call as "bribe". *Hornstein v. Paramount Pictures, Sup.*, 37 N.Y.S.2d 404, 412.

BRIBERY. The offering, giving, receiving, or soliciting of any thing of value to influence action as official or in discharge of legal or public duty. *Allen v. State*, 63 Okl.Cr. 16, 72 P.2d 516, 519. The corrupt tendering or receiving of a price for official action. *State v. London*, 194 Wash. 458, 78 P.2d 548, 554, 115 A.L.R. 1255. The receiving or offering any undue reward by or to any person concerned in the administration of public justice or a public officer to influence his behavior in office. *Walsh v. People*, 65 Ill. 65, 16 Am.Rep. 569; *State v. Harrah*, 101 W.Va. 300, 132 S.E. 654, 655, 4 Bl.Comm. 139, and note. The taking or giving a reward for public office. *Brown*.

Acceptance by public officer of compensation for doing legal duty, *Ex parte Montgomery*, 244 Ala. 91, 12 So.2d 314, 317; agreement by public official to refrain from performing official act or to corruptly perform act contrary to rules of honesty essential, *Selvidge v. State*, 126 Tex.Cr.R. 489, 72 S.W.2d 1079, 1080; Attempt to bribe officer engaged in making an unlawful arrest, *Sugarman v. State*, 173 Md. 52, 195 A. 324, 326; Attempted bribery as included in term, *Coleman v. State ex rel. Mitchell*, 132 Fla. 845, 182 So. 627, 628; *Coleman v. State ex rel. Mitchell*, 132 Fla. 845, 182 So. 627, 628; "extortion" and "bribery" mutually exclusive, *People v. Feld*, 262 App.Div. 909, 28 N.Y.S.2d 796, 797; involuntary payments insufficient, *Hornstein v. Paramount Pictures, Sup.*, 37 N.Y.S.2d 404, 413; unlawful concert of one or more persons acting with one or more other persons essential, *People v. Keyes*, Cal.Sup., 284 P. 1105; voluntary giving of something of value to influence performance of official duty as essence, *Hornstein v. Paramount Pictures, Sup.*, 37 N.Y.S.2d 404, 413.

At common law, the gist of the offense was the tendency to prevent justice, *People v. Peters*, 265 Ill. 122, 106 N.E. 513, 515, Ann.Cas.1916A, 813; the offering, giving, receiving or soliciting of anything of value to influence action as a public official, *Coleman v. State ex rel. Mitchell*, Fla., 182 So. 627, 628; corrupt agreement induced by offer of reward, *Osborn v. State*, 160 Tenn. 594, 28 S.W.2d 47, 48; The term now extends to many classes of officers and is not confined to judicial 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. McGraw*, 142 La. 417, 76 So. 822. All persons whose official conduct is connected with the administration of the government are subjects, *Commonwealth v. Benedict*, 114 Pa.Super. 183, 173 A. 850, 851; persons acting under color of title to office, though not an officer de jure, are subjects, *Ex parte Covell*, 63 Okl. 256, 74 P.2d 626, 631; but it has also been held that the person charged to have been bribed must be an officer, de facto or de jure, or among the governmental administrative personnel. *State v. London*, 194 Wash. 458, 78 P.2d 548, 115 A.L.R. 1255.

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, obstruction in highway or other place to facilitate the passage and for benefit of travelers.

The term includes both arches and abutments; *Bardwell v. Town of Jamaica*, 15 Vt. 438; *Andrew B. Hendryx Co. v. City of New Haven*, 104 Conn. 632, 134 A. 77, 79; 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; In re *Park Lane South in City of New York*, 206 App.Div. 269, 200 N.Y.S. 555, 557; *contra*, under a statute, *City of Stamford v. Town of Stamford*, 100 Conn. 434, 124 A. 26, 27. The term likewise includes fills or embankments, *Havird v. Richmond County*, 47 Ga.App. 580, 171 S.E. 220; *Morgan County v. Glass*, 139 Ga. 415, 77 S.E. 583; appurtenances necessary to its proper use, *Lumley v. Pollard*, 61 Ga.App. 681, 7 S.E.2d 308, 313; 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; viaducts; In re *City of Boston*, 221 Mass. 468, 109 N.E. 389, 392; 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; nor piping and water boxes and culverts for drainage purposes across public roads, *Montgomery County v. Seaboard Air Line Ry. Co.*, 41 Ga. App. 130, 152 S.E. 261, 262; nor flood walls, *Jefferson County Fiscal Court v. Jefferson County ex rel. Grauman*, 278 Ky. 68, 128 S.W.2d 230, 232, 233; nor an elevated roadway or causeway of reinforced concrete, resting upon concrete piers or columns. *Rumsey v. Department of Labor and Industries*, 192 Wash. 538, 74 P.2d 214, 216.

"Bridges" and "culverts" are not synonymous. *Protest of Evans*, 153 Okl. 191, 4 P.2d 1030, 1031.

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; *Bonneville County v. Bingham County*, 24 Idaho, 1, 132 P. 431, 433; they are bridges across a creek, river, or other natural body of water, etc., erected for the accommodation of the public, In re *Walnut St. Bridge in City of Des Moines*, 220 Iowa 55, 261 N.W. 781, 782. A private bridge is one which is not open to the use of the public generally, and does not form part of the highway. *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 OVER A PUBLIC WAY. A bridge upon which railroad runs above highway. *Boston & M. R. R. v. Worcester County Com'rs*, 300 Mass. 415, 15 N.E.2d 455, 457.

BRIDGE UNDER A PUBLIC WAY. A bridge for travelers to use as part of a highway crossing railroad over level thereof. *Boston & M. R. R. v. Worcester County Com'rs*, 300 Mass. 415, 15 N.E. 2d 455.

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

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

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, 12 Cal.App. 375, 107 P. 630. The brief of evidence in connection with an auditor's report is considered a "brief" though it may embody the stenographic report of the testimony in full. McKenzie v. Perdue, 67 Ga.App. 202, 19 S.E.2d 765, 774.

In Ecclesiastical law. A papal rescript sealed with wax. See Bull.

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 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.

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

A methodical epitome of all the patents, conveyances, incumbrances, liens, court proceedings, and other matters affecting the title to 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.

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.

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

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. To convey to the place where the speaker is or is to be, to bear from a more distant to a nearer place, to make to come, procure, produce, draw to, to convey, carry or conduct, move. Frederick v. Great Northern Ry. Co., 207 Wis. 234, 240 N.W. 387, 390. The doing of something effectual; the bringing of someone to account, or the accomplishment of some definite purpose. Landrum v. Fulton, 47 Ohio App. 376, 191 N.E. 917, 918.

BRING ABOUT. To procure, implies completion. Jackson v. Thompson, Tex.Civ.App., 74 S.W.2d 1055, 1057.

BRING INTO. To import, U. S. v. Gully, D.C.N. Y., 9 F.2d 959; to introduce, Sturgeon v. State, 17 Ariz. 513, 154 P. 1050, 1055, 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. Lake & Co. v. King County, 4 Wash.2d 651, 104 P.2d 599, 601. A suit is "brought" at the time it is commenced. Hames v. Judd, Com.Pl., 9 N.Y.Supp. 743, 30 St.R. 666, 16 Daly 110; 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. "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.Pa., 246 F. 1013, 1016. Under a statute providing that no action shall be "brought or maintained", "brought" applies to actions not yet instituted. Bruenn v. North Yakima School Dist. No. 7, Yakima County, 101 Wash. 374, 172 P. 569, 571. "Institute and prosecute" and "bring suit" as synonymous. Traders & General Ins. Co. v. Spillers, Tex.Civ.App., 88 S.W.2d 738, 740.

BROKER

BRING UP. Nurse, rear, and educate child until full age. In re Bamber's Estate, 147 Misc. 712, 265 N.Y.S. 798.

BRINGING ACTION TO TRIAL. Motion to reset case for trial as "bringing action to trial". Craghill v. Ford, 127 Cal.App. 661, 16 P.2d 343, 346.

BRINGING ERROR. Writ of error is considered as brought at time it is filed in court which renders judgment. Girard Fire & Marine Ins. Co. v. Commonwealth Building & Loan Ass'n, C.C.A. Tex., 32 F.2d 736.

BRINGING MONEY INTO COURT. The act of depositing money in the custody of a court or of its clerk or marshal, for the purpose of satisfying a debt or duty, or to await the result of an interpleader. Dirks v. Juel, 59 Neb. 353, 80 N.W. 1045.

BRIS. In French maritime law. Literally, breaking; wreck. Distinguished from *nauffrage*, (*q. v.*).

BRISTOL BARGAIN. In English law. A contract by which A. lends B. £1,000 on good security, and it is agreed that £500, together with interest, shall be paid at a time stated; and, as to the other £500, that B., in consideration thereof, shall pay to A. £100 *per annum* for seven years. Wharton.

BRITISH COLUMBIA. The territory on the north-west coast of North America, once known by the designation of "New Caledonia." Its government is provided for by 21 & 22 Vict. c. 99. Vancouver Island is united to it by the 29 & 30 Vict. c. 67. See 33 & 34 Vict. c. 66.

BRITISH SUBJECT. Any person owing permanent allegiance to crown. U. S. ex rel. Graber v. Karnuth, C.C.A.N.Y., 30 F.2d 242, 243.

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

BROAD INTERPRETATION. That interpretation of Constitution or statute which, brushing aside minor objections and trivial technicalities, effectuates intent of act. In re Senate Resolution No. 2 Concerning Constitutionality of House Bill No. 6, 94 Colo. 101, 31 P.2d 325, 332.

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. Impoverishment. Walsh v. Kennedy, 115 Mont. 551, 147 P.2d 425, 430.

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 for a compensation. Story, Ag. § 28; Payne v. Ponder, 139 Ga. 283, 77 S.E. 32, 34. A dealer in securities issued by others. White v. Financial Guarantee Corporation, 13 Cal.App.2d 93, 56 P.2d 550, 553. A middleman or negotiator between parties. San Jacinto Life Ins. Co. v. Brooks, Tex.Civ.App., 274 S.W. 648, 650; Messick v. Johnson, 155 Okl. 139, 8 P.2d 28, 30; Gile v. Tsutakawa, 109 Wash. 366, 187 P. 323, 326; Civil Code La. art. 3016. A person dealing with another for sale of property. Davis v. Chipman, 210 Cal. 609, 293 P. 40, 44. A person whose business it is to bring buyer and seller together. Keys v. Johnson, 68 Pa. 42. The term extends to almost every branch of business, to realty as well as personalty. Richmond Mortgage & Loan Corporation v. Rose, 142 Va. 342, 128 S.E. 604, 605.

A voyage is called a "broker" where no fish are caught on a fishing voyage or from some other reason there are no proceeds from a fish auction. The Dirigo First, D.C.Mass., 60 F.Supp. 675.

For distinction between "commission merchant" and "broker," see Commission Merchant. For "Factor" and "broker" as synonymous or distinguishable, see Factor.

Ordinarily, the term is applied to one acting for others but is applicable to one in business of negotiating purchases or sales for himself. McCornick & Co., Bankers, v. Tolmie Bros., 42 Idaho 1, 243 P. 355, 358; Johnson v. Winslow, 155 Misc. 170, 279 N.Y.S. 147.

A "broker" is an agent with special and limited authority. Stephenson v. Golden, 279 Mich. 710, 276 N.W. 849, 858; Portsmouth Cotton Oil Refining Corp. v. Madrid Cotton Oil Co., 200 Ala. 634, 77 So. 8, 9. A middleman, as distinguished from a broker, 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 and his services are not rendered as the agent of either party; 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.

Brokers are of many kinds, the most important being enumerated and defined as follows:

Exchange Broker

See Exchange Broker.

Merchandise Brokers

Buyers and sellers of goods and negotiators 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

Negotiators of the discount or sale of commercial paper.

BROKER

Pawnbrokers

Lenders of money on goods deposited with them in pledge, taking high rates of interest.

Real Estate Brokers

Persons who procure the purchase or sale of land, acting as intermediary between vendor and purchaser, 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; *Abraham v. Wasaff*, 111 Okl. 138, 239 P. 138, 140. A broker 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. A person engaged in 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; *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

Brokers employed to buy and sell for their principals stocks, bonds, government securities, 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; *Hardesty v. Martin Ebersbach Co.*, C.C.A.Ohio, 294 F. 5, 6. A unilateral contract wherein the principal makes an offer which is interpreted as promise to pay broker a commission in consideration of his producing a buyer ready, able, and willing to buy the property on the principal's terms. In *re Cowan's Estate, Sur.*, 13 N.Y.S.2d 374, 376.

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. *United States v. Casey*, D.C.Ohio, 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.

The term may embrace half brothers. *Thompson v. Smith*, 102 Okl. 150, 227 P. 77, 80; *Darson v. Moore*, 163 Miss. 705, 142 So. 447, 452. It may be deemed to embrace only a blood brother. *Dronay v. U. S.*, D.C.D.C., 59 F. Supp. 154, 155.

In the civil law, the following distinctions are observed: Two brothers who descend from the same father, but by different mothers, are called "consanguine" brothers. If they have the same mother, but are begotten by different fathers, they are called "uterine" brothers. If they have both the same father and mother, they are denominated brothers "germane."

BROTHER-IN-LAW. A wife's brother or a sister's husband. There is not any relationship, but only affinity, between brothers-in-law. *Farmers' L. & T. Co. v. Iowa Water Co.*, C.C., 80 Fed. 469. See *State v. Foster*, 112 La. 533, 36 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. *United States v. Townsend*, D.C.N.Y., 219 F. 761, 762. Past tense of "bring." *Frederick v. Great Northern Ry. Co.*, 207 Wis. 234, 240 N.W. 387, 390, 80 A.L.R. 984.

A proceeding is not "brought" as regards defendant until process has been issued from an appropriate court in good faith intending or making an effort to serve it. *City of Revere v. Special Judge of Dist. Court of Chelsea*, 262 Mass. 393, 160 N.E. 431, 433. 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. *U. S. v. Shaffer*, D.C.Wash., 278 F. 549, 551.

BROUGHT IN QUESTION UPON THE RECORD. The constitutionality of an act is "brought in question upon the record" when it is clearly questioned by the allegation of any pleading, or by any other formal objection filed in the case. *Brosco v. Frost*, 63 R.I. 1, 6 A.2d 705, 706.

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. *Miller & Lux v. Superior Court of California in and for Merced County*, 192 Cal. 333, 219 P. 1006, 1009.

BROWN DECREE. A decree which terminates marriage without specifying in whose favor issue as to grounds for divorce was decided. *Spector v. Spector*, 382 P.2d 659, 666, 94 Ariz. 175.

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

BRUGBOTE. See Brigbote.

BRULLUS. In old English law. A wood or grove; a thicket or clump of trees in a park or forest. *Cowell*.

BUILDER

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. 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. 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. A judgment void upon its face which is in legal effect no judgment at all, and by which no rights are divested, and from which none can be obtained, and neither binds nor bars anyone. *Dolbert v. Pratt-Hewitt Oil Corporation*, Tex.Civ.App., 179 S.W.2d 346, 348.

BS. Impurities in crude oil. *Crude Oil Contracting Co. v. Insurance Co. of North America*, C.C.A.Okla., 118 F.2d 476.

B.T.U. "British Thermal Units." *Bennett v. Piscitello*, 170 Misc. 177, 9 N.Y.S.2d 69, 71.

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," prompted by the collapse of the "South Sea Project." It was mostly repealed by the statute 6 Geo. IV. c. 91.

BUCK SWAMPER. An employee of lumber company to mark timber and brush in a wooded area to be cut later for the formation of a road. *Demasters v. State Compensation Com'r*, 112 W.Va. 498, 165 S.E. 667.

BUCKET SHOP. An office or place (other than a regularly incorporated or licensed exchange) where persons engage in pretended buying and selling of commodities. *Connor v. Black*, 119 Mo. 126, 24 S.W. 184; *Gatewood v. North Carolina*, 203 U.S. 531, 27 S.Ct. 167, 51 L.Ed. 305.

BUCKETING. Receipt of orders to purchase and sell stock without intention of executing orders and without execution of orders. *Kaiser v. Butchart*, 200 Minn. 545, 274 N.W. 680, 683, 113 A.L.R. 847.

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. *Sweet v. Douge*, 145 Wash. 142, 259 P. 25. See *Counterextension*.

BUCKSTALL. A toil, net, or snare, to take deer. 4 Inst. 306.

BUDGET. A balance sheet or statement of estimated receipts and expenditures. *Appalachian Electric Power Co. v. City of Huntington*, 115 W. Va. 588, 177 S.E. 431, 433; a plan or method whereby expenditures are controlled. *Kistler v. Carbon County*, 154 Pa.Super. 299, 35 A.2d 733, 735; An estimate. *Board of Sup'rs of Chesterfield County v. Chesterfield County School Board*, 182 Va. 266, 28 S.E.2d 698, 703.

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.

BUDGET SYSTEM. A system by which income and expenditure for definite period are balanced. *Rowe v. Stanley County*, 52 S.D. 516, 219 N.W. 122, 123.

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.

"Agency," "adjunct," "branch," "instrumentality," "dummy," "tool" and "buffer" as synonymous. *Lowendahl v. Baltimore & O. R. Co.*, 247 App.Div. 144, 287 N.Y.S. 62, 74.

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

BUG. Vibrating horizontal arm for the semi-automatic production of code dots, as distinguished from the Morse key. *Vibroplex Co. v. J. H. Bunnell & Co.*, D.C.N.Y., 13 F.2d 528.

BUGGERY. A carnal copulation against nature; a man or a woman with a brute beast, 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. To form by uniting materials into a regular structure. *United States v. Blair*, C.C.N.Y., 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.

"Build" is not synonymous with amend, repair, or maintain. *State v. White*, 16 R.I. 591, 18 A. 179; *Hutchinson v. City of Olympia*, 2 Wash.T. 314, 5 P. 606, 608. 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 di-

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recting 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. One who builds. *Hopkins v. Department of Labor and Industries*, 190 Wash. 251, 67 P.2d 872, 875. The term may be synonymous with "contractor." *State v. Clark*, 43 Wash. 664, 86 P. 1067. 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. An edifice. *State v. Ornelas*, 42 N.M. 17, 74 P.2d 723, 725; *People v. Chase*, 117 Cal.App.Supp. 775, 1 P.2d 60, 61; A structure. *State v. Ornelas*, 42 N.M. 17, 74 P.2d 723, 725. A fabric built or constructed. *State v. Ornelas*, 42 N.M. 17, 74 P.2d 723, 725. That which is built. *Brown v. Sikes*, 188 S.C. 288, 198 S.E. 854, 856; *People v. Chase*, 117 Cal.App.Supp. 775, 1 P.2d 60, 61.

A fabric or edifice designed to stand more or less permanently. *Brown v. Sikes*, 188 S.C. 288, 198 S.E. 854, 856; a fabric, structure, or edifice, designed for the habitation of men or animals or for the shelter of property. *People v. Gillespie*, 344 Ill. 290, 176 N.E. 316, 318. A structure or edifice erected by man, composed of stone, wood, brick, marble or other proper substance, and intended for use or convenience. *State v. Crouse*, 117 Me. 363, 104 A. 525, 526; *Sacks v. Legg*, 219 Ill.App. 144, 147; *Rabb v. W. P. Ellison, Inc.*, 89 N.J.Law, 416, 99 A. 119, 120. A structure or edifice inclosing a space within its walls, and usually, but not necessarily, covered with a roof. *State v. Elliott*, 198 Iowa 71, 199 N.W. 270, 271; *Netter v. Scholtz*, 282 Ky. 493, 138 S.W.2d 951, 953.

"Erecting" as synonym. *Board of Com'rs of Guadalupe County v. State*, 43 N.M. 409, 94 P.2d 515, 516, 520; "premises" as synonym. *Everett v. Patrons' & Farmers' Mut. Fire Ins. Co. of Jackson County*, 222 Mo.App. 1010, 7 S.W.2d 463, 468.

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; It imports tangibility, *Wells Fargo & Co. v. Jersey City, D.C.N.J.*, 207 F. 871, 876, and may include the land on which it stands, as well as adjacent land, *Thomas v. Long*, 182 Iowa, 859, 166 N.W. 287, 288; *Dallas Land & Loan Co. v. Garrett*, Tex.Civ.App., 276 S.W. 471, 473; *Freedman v. S. S. Kresge Co.*, 290 Mass. 114, 194 N.E. 829, 830. It includes many different kinds of structures and edifices. *Great Eastern Casualty Co. v. Blackwelder*, 21 Ga.App. 586, 94 S.E. 843, 844. The identity or difference of meaning of the words "building," "improvement" and "structure" depends upon context in connection with which they are used. *Lanier v. Lovett*, 25 Ariz. 54, 213 P. 391, 394.

A ship as building within gambling statute. *People v. Chase*, 117 Cal.App.Supp. 775, 1 P.2d 60, 61.

BUILDING A FIRE. "Kindling a fire" and "building a fire" are equivalent. *State v. Merrill*, 132 Me. 103, 167 A. 172, 173.

BUILDING AND LOAN ASSOCIATION. An organization for the purpose of accumulating a fund by 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. *McCauley v. Association*,

97 Tenn., 13 Pickle, 421, 37 S.W. 212, 213, 35 L.R.A. 244; *Rhodes v. Missouri Savings & Loan Co.*, 173 Ill. 621, 50 N.E. 998, 1000, 43 L.R.A. 93. A juristic person organized by government to accomplish certain ends, which may be public or quasi public. *Hopkins Federal Savings & Loan Ass'n v. Cleary*, Wis., 296 U.S. 315, 56 S.Ct. 235, 80 L.Ed. 251, 100 A.L.R. 1403. Quasi public corporations chartered to encourage thrift and promote ownership of homes. *Hopkins Federal Savings & Loan Ass'n v. Cleary*, Wis., 296 U.S. 315, 56 S.Ct. 235, 237, 241, 80 L.Ed. 251, 100 A.L.R. 1403.

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. *Washington Nat. Building, Loan & Investment Ass'n v. Stanley*, 38 Or. 319, 63 P. 489, 492, 84 Am.St.Rep. 793. See, also, *Wilkinson v. Mutual Bldg. & Sav. Ass'n, C.C.A. Wis.*, 13 F.2d 997, 998.

BUILDING IS COVERED. The words ordinarily mean that the property shall be insured in the standard form of insurance from that instant for a reasonable time until either the policy or policies can be written out, or their issuance approved or disapproved or some other temporary impediment to the complete formal contract of insurance can be removed. *Shumway v. Home Fire & Marine Ins. Co. of California*, 301 Mass. 391, 17 N.E.2d 212, 214.

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. *June v. Doke*, 35 Tex.Civ.App. 240, 80 S.W. 406.

BUILDING LINE. A line established by municipal authority, to secure uniformity of appearance in the streets of the city, drawn at a certain uniform distance from the curb or from the edge of the sidewalk, and parallel thereto, upon which the fronts of all buildings on that street must be placed, or beyond which they are not allowed to project. See *Tear v. Freebody*, 4 C.B.N.S., 263.

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 *Simpson v. Mikkelsen*, 196 Ill. 575, 63 N.E. 1036, 1037.

BUILDING LOAN AGREEMENT. An agreement by which one undertakes to advance to another

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money to be used primarily in erection of buildings. York Mortg. Corporation v. Clotar Const. Corporation, 254 N.Y. 128, 172 N.E. 265, 269.

BUILDING MATERIAL. Material used in construction work. Wood Preserving Corporation v. State Tax Commission, 235 Ala. 438, 179 So. 254, 255. Material essential to erection or construction of house or other structure, Mutual Lumber Co. v. Sheppard, Tex.Civ.App., 173 S.W.2d 494, 497, 498, 500.

BUILDING OR STRUCTURE USED AS CHURCH. A building wholly dedicated to purposes of religious worship. Miles v. McKinney, 174 Md. 551, 199 A. 540, 547, 117 A.L.R. 207.

BUILDING PERMIT. A permit to erect a building. Commissioners of Easton v. Covey, 74 Md. 262, 22 A. 266; Commonwealth v. Devlin, 305 Pa. 440, 158 A. 161, 163.

BUILDING RESTRICTIONS. Covenants creating easement running with land in each deed containing restrictions. Strauss v. J. C. Nichols Land Co., 327 Mo. 205, 37 S.W.2d 505, 508.

BUILDING SITE. As used in contract, for filling of the "building site" to grade, term contemplated the entire lot. 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 "*Marsh-avan*," 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 P.S. § 123, F. A. D. Andrea, Inc., v. Dodge, C.C.A.Pa., 15 F.2d 1003, 1005.

BULK SALES ACTS. A class of statutes designed to prevent the defrauding of creditors by secret sale in bulk of all or substantially all of a merchant's stock of goods. A. J. Long Cigar & Grocery Co. v. Harvey, 33 Ga.App. 236, 125 S.E. 870; Wolfe v. Bellfair Hat Co., Sup., 47 N.Y.S.2d 908, 910.

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 ob-

structions 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 AND BOAR. These animals, by the ancient custom of some places, were required to be kept by the parson for the use of his parishioners, in consideration of his having tithes of calves and pigs. 1 Rolle Abr. 559.

BULLDOZER. A blade, the arms of which are fastened to a tractor and hold the blade in front of the tractor. Eldredge v. Sargent, 150 Kan. 824, 96 P.2d 870, 871.

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.

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. Thalheim v. State, 38 Fla. 169, 20 So. 938. The term may import money. Emery Bird Thayer Dry Goods Co. v. Williams, C.C.A.Mo., 98 F.2d 166, 171.

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

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, limes*).

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. Sligerland*, 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 14 U.S.C.A. § 87.

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.Mo., 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 *In re Ely Ave.* in *City of New York*, 88 Misc. 320, 150 N.Y.S. 698, 701.

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; *People v. McCann*, 16 N.Y. 58, 69 Am. Dec. 642, 15 How.Pr. 503.

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, 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; *Stofer v. Dunham*, Mo.App., 208 S.W. 641, 644.

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. *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 their divisions. *In re Strawbridge*, 39 Ala. 375; *In re McLaughlin*, 124 Misc. 766, 210 N.Y.S. 68, 72.

As applied to a division of an administrative department, the term may include the operating force. *People v. Coffin*, 202 Ill.App. 100.

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* cor-

BURN

responds 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 ENGLOYS. Borough English (*q. v.*).

BURGHMAILS. Yearly payments to the crown of Scotland, introduced by Malcolm III., and resembling the English fee-farm rents.

BURGHMOTE. In Saxon law. A court of justice held semi-annually by the bishop or lord in a *burg*, which the thanes were bound to attend without summons.

BURGLAR. One who commits burglary. One who breaks into a dwelling-house in the nighttime with intent to commit a felony. 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. 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. Soders v. State, 81 Tex.Cr.R. 506, 195 S.W. 1146, 1147; Hunter v. State, 29 Ind. 80; State v. Allen, 186 N.C. 302, 119 S.E. 504, 506; State v. Hodgdon, 89 Vt. 148, 94 A. 301, 302.

The common-law definition has been much modified by statute in several of the states. Pen.Code Cal. § 459; People v. Mendelson, 264 Ill. 453, 106 N.E. 249, 251, L.R.A. 1915C, 627; State v. Dunlap, 103 N.J.Law, 209, 136 A. 510; Burglary of private residence at night is "nighttime burglary" and not ordinary "burglary." Shaffer v. State, 137 Tex.Cr.R. 476, 132 S.W.2d 263. Commission in nighttime is not essential. People v. Glickman, 377 Ill. 360, 36 N.E.2d 720, 722, 723; State v. Williams, 189 La. 355, 179 So. 452. Entry in the nighttime without breaking, or breaking and entering in the daytime constitutes "burglary." State v. Williams, 189 La. 355, 179 So. 452.

Intended commission of some other offense is essential. Commonwealth v. Doran, 145 Pa.Super. 173, 20 A.2d 815, 816.

Entry into a house made in an unusual place with intent to commit a felony or theft is a "burglary by breaking." Harroll v. State, 135 Tex.Cr.R. 65, 117 S.W.2d 103.

See Breaking.

BURGLARY IN THE FIRST DEGREE. Unlawful and intentional breaking and unlawful and intentional entry in nighttime into dwelling house presently occupied, with intent to commit felony. State v. Madden, 212 N.C. 56, 192 S.E. 859, 860.

Burglary committed "between sunset and sunrise". People v. Helsley, 41 Cal.App.2d 935, 108 P.2d 97, 98.

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. Act of burying a deceased person, sepulture, interment, act of depositing a dead body in the earth, in a tomb or vault, or in the water; the act of interring the human dead. Brady v. Presnell, 204 N.C. 659, 169 S.E. 278, 280. See Lay v. State, 12 Ind.App. 362, 39 N.E. 768.

BURIAL INSURANCE. A contract based on legal consideration whereby obligor undertakes to furnish obligee or one of latter's relatives at death burial reasonably worth fixed sum. Sisson v. Prata Undertaking Co., 49 R.I. 132, 141 A. 76.

BURIAL PLACE. A portion of ground set apart for or occupied by grave, or as a grave or graveyard. Code 1932, § 9052. Leaphart v. Harmon, 186 S.C. 362, 195 S.E. 628, 629.

BURIAL PURPOSES. Continuing care, preservation, and ornamentation of the place of interment as included in term. People v. Rosehill Cemetery Co., 371 Ill. 510, 21 N.E.2d 766, 770.

BURKING, BURKISM. Murder committed with the object of selling the cadaver for purposes of dissection, particularly and originally, by suffocating or strangling the victim.

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.

BURLESQUE. A plotless musical entertainment consisting of a series of unrelated episodes and dances, all with the purpose of depicting or suggesting sexual subjects or objects. Bonserk Theatre Corporation v. Moss, Sup., 34 N.Y.S.2d 541, 549.

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 Iowa 153, 197 N.W. 3, 4, 33

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A.L.R. 655; *Pacific Creosoting Co. v. Thames & Mersey Marine Ins. Co.*, D.C.Wash., 210 F. 958, 959.

"Burning," outside of laboratories and certain workshops, is a process of oxidation, which, if sufficiently violent, heats the elements involved to incandescence, and, if combustible gases are given off, there is a flame. *Scully v. Bremer County Farmers' Mut. Fire Ins. Ass'n*, 215 Iowa 368, 245 N.W. 280, 282.

The verb "to burn," in an indictment for arson, is to be taken in its common meaning of "to consume with fire." *Hester v. State*, 17 Ga. 130. To constitute a "burning" essential to arson, there must be a wasting or destruction of the fibers or texture of the wood, no matter how small in extent. *People v. Oliff*, 361 Ill. 237, 197 N.E. 777, 780; it is not necessary that the building should be consumed or materially injured and 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; charring is burning. *State v. Pisanio*, 107 Conn. 630, 141 A. 660, 661.

BURNED OUT OF SIGHT. Merchandise is "burned out of sight" when burned to an ash or into such small particles that it might be washed away by water or swept into debris. *Hyland v. Millers Nat. Ins. Co.*, D.C.Cal., 58 F.2d 1003, 1007.

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.N.Y., 4 Fed. 764; *Wheeler v. Insurance Co.*, 6 Mo.App. 235.

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. Tenn., 257 F. 663, 664.

BURROCHUM. 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.

BUS. A vehicle which serves passenger public, but does not operate upon fixed tracks. *Patillo v. State*, 120 Tex.Cr.R. 568, 47 S.W.2d 847.

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; *Hockin v. Cooke*, 4 Term, 316.

BUSHIDO. *Jap.* The unwritten code of conduct of the *Samurai* demanding loyalty to superiors only, simplicity of living and military valor. Treachery and brutality against one's enemies, and self-sacrifice, blind loyalty and unquestioning obedience to one's superiors are cardinal characteristics of the code. 1945 Report of the Tenney Joint Fact-Finding Committee on Un-American Activities to the California Legislature, p. 49.

BUSINESS. The term "business" has no definite or legal meaning. *Connor v. City of University Park*, Tex.Civ.App., 142 S.W.2d 706, 715; it may be an uncertain one. In re *Frey's Will*, 154 Misc. 421, 277 N.Y.S. 269, 272.

The term may mean or embrace:

Activity, *Norman v. Southwestern R. Co.*, 42 Ga.App. 812, 157 S.E. 531, 533; In re *Frey's Will*, 277 N.Y.S. 269, 272, 154 Misc. 421; activity of some continuity, regularity and permanency, means of material being and livelihood, *Board of Sup'rs of Amherst County v. Boaz*, 176 Va. 126, 10 S.E.2d 498, 499. Activity or enterprise for gain, benefit, advantage or livelihood, *Union League Club v. Johnson*, Cal. App., 108 P.2d 487, 490. Activity which benefits corporation's organizers or members, *O'Neil v. United Producers & Consumers Co-op.*, 57 Ariz. 295, 113 P.2d 645, 648; affairs, *Sills v. Sorenson*, 192 Wash. 318, 73 P.2d 798, 802, *Industrial Fibre Co. v. State*, 31 Ohio App. 347, 166 N.E. 418, 419; any particular occupation or employment, *Industrial Fibre Co. v. State*, 31 Ohio App. 347, 166 N.E. 418, 419; automobile liability policy excepting liability to insured's chauffeurs while engaged in his "business," anything in which insured desired to concern himself, *Dickey v. General Accident Fire & Life Assur. Corporation Limited of Perth, Scotland*, 328 Pa. 541, 195 A. 875; barter, *Bulls v. National Mineral Co.*, 176 Okl. 193, 55 P.2d 449, 453; *businessness*, *Snell v. Commissioner of Internal Revenue*, C.C.A.Fla., 97 F.2d 891, 892; calling, *Gardner v. Trustees of Main St. M. E. Church of Ottumwa, Iowa*, 244 N.W. 667, 669, *Morgan v. Salt Lake City*, 78 Utah 403, 3 P.2d 510, 513; capacity by which results are reached, *Norman v. Southwestern R. Co.*, 42 Ga.App. 812, 157 S.E. 531, 533; In re *Frey's Will*, 277 N.Y.S. 269, 272, 154 Misc. 421; commercial or industrial establishment or enterprise, *Westor Theatres v. Warner Bros. Pictures*, D.C.N.J., 41 F.Supp. 757, 761; concern, *Industrial Fibre Co. v. State*, 31 Ohio App. 347, 166 N.E. 418, 419; constant or continuous or habitual employment or occupation, *Burk v. United States*, C.C.A.Ala., 134 F.2d 879, 881; efforts of men to improve their economic conditions and satisfy their desires, *People ex rel. Atty. Gen. v. Jersin*, 101 Colo. 406, 74 P.2d 668, 670; employment, *Industrial Fibre Co. v. State*, 31 Ohio App. 347, 166 N.E. 418, 419; employment, occupation, or profession engaged in for gain or livelihood, *Mergenthaler Linotype Co. v. McNamee*, 123 Neb. 71, 249 N.W. 92, 93; employment occupying substantial portion of time and attention, *Walsh v. Industrial Commission*, 345 Ill. 366, 178 N.E. 82, 83; energy by which results are reached, *Norman v. Southwestern R. Co.*, 42

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Ga.App. 812, 157 S.E. 531, 533; In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421; enterprise in which person engaged shows willingness to invest time and capital on future outcome, Doggett v. Burnet, 62 App.D.C. 103, 65 F.2d 191, 194; every legitimate avocation in life by which honest support for family may be obtained, Postal Savings & Loan Ass'n v. Powell, Tex.Civ.App., 47 S.W.2d 343, 352; every step in a long, complicated financial or commercial transaction, Business Management Corporation v. Department of Industrial Relations, Cal.App., 123 P.2d 142, 143; everything about which a person can be employed, Higgins v. Commissioner of Internal Revenue, 312 U.S. 212, 61 S.Ct. 475, 478, 85 L.Ed. 783; exchange of things of value, Wills v. National Mineral Co., 176 Okl. 193, 55 P.2d 449, 453; family car doctrine, any benefit which may inure to the owner, Donn v. Kunz, Ariz., 79 P.2d 965, 968; good will, In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421, In re Weber's Estate, 261 Pa. 561, 104 A. 735, 737; intercourse of a commercial character, Karnuth v. U. S., on Petition of Albro, for Cook, N. Y., 279 U.S. 231, 49 S.Ct. 274, 278, 73 L.Ed. 677; mercantile transactions in general, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; occupation, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419, Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510, 513; occupation connected with operation or details of barter, trade, industry or commerce, Bankers' Holding Corporation v. Maybury, 161 Wash. 681, 297 P. 740, 743, 75 A.L.R. 1237; occupation or duty which requires attention as a business, Taylor v. Seney, 52 Ohio App. 79, 3 N.E.2d 374, 376; opportunities, Norman v. Southwestern R. Co., 42 Ga.App. 812, 157 S.E. 531, 533, In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421; ordinary vocation, Ostlie v. H. F. Dirks & Son, 189 Minn. 34, 248 N.W. 283; professions, Connor v. City of University Park, Tex.Civ.App., 142 S.W.2d 706, 715; property, In re Frey's Will, 277 N.Y.S. 269, 272, 154 Misc. 421; In re Weber's Estate, 261 Pa. 561, 104 A. 735, 737; pursuit, Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510, 513; regular profession, trade or occupation, Bordo v. Grayek, 136 Pa.Super. 124, 7 A.2d 142, 144; right or occasion of making one's self busy, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; sale, Wills v. National Mineral Co., 176 Okl. 193, 55 P.2d 449, 453; that which habitually busies or occupies or engages the time, attention, labor, and effort of men as a principal serious concern or interest or for livelihood or profit, Curley v. New England Trust Co., 221 Mass. 384, 109 N.E. 171, 174, Massolini v. Driscoll, 114 Conn. 546, 159 A. 480, 482; trade, Connor v. City of University Park, Tex.Civ. App., 142 S.W.2d 706, 715, Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510, 513; transaction, Industrial Fibre Co. v. State, 31 Ohio App. 347, 166 N.E. 418, 419; occasional, single or isolated activities do not constitute business, Vandervort v. Industrial Commission of Wisconsin, 203 Wis. 362, 234 N.W. 492, 493; Goddard v. Chaffee, 2 Allen, Mass., 395, 79 Am.Dec. 796. But see Industrial Commission v. Hammond, 77 Colo. 414, 236 P. 1006, 1008.

Definition of "business" is not dependent on whether enterprise is profitable or has prospects of being profitable. Doggett v. Burnet, 62 App.D.C. 103, 65 F.2d 191, 193.

Labor, business, and work are not synonyms.

Business Affected with Public Interest

One so employed as to justify conclusion that it has been devoted to public use, and its use thereby in effect granted to public. Williams v. Standard Oil Co. of Louisiana, Tenn., 278 U.S. 235, 49 S.Ct. 115, 116, 73 L.Ed. 287, 60 A.L.R. 596.

Business Agent

Agent having some general supervision over general affairs. Rorick v. Stilwell, 101 Fla. 4, 133 So. 609, 615.

Business Compulsion

Species of duress. Marrazzo v. Orino, Wash., 194 Wash. 364, 78 P.2d 181, 186.

Business Corporation

A corporation organized for the purpose of carrying on a business for profit. City of St. Louis v. Smith, 325 Mo. 471, 30 S.W.2d 729, 731.

Business Course

A course such as is usually taught by business or commercial schools and colleges. Union Nat. Bank v. Kirby, 189 Ark. 369, 72 S.W.2d 229, 230.

Business Done in State

Business begun and completed or ended in state. Clark v. Atlantic Pipe Line Co., Tex.Civ.App., 134 S.W.2d 322, 328.

Business Enterprise

Investment of capital, labor and management in an undertaking for profit; one of the recognized attributes is centralized management and control. Helvering v. Jewel Mining Co., C.C.A.8, 126 F.2d 1011, 1015.

Business Gains

Gains from sale, exchange, or other disposition of property used in business. Fackler v. Commissioner of Internal Revenue, C.C.A.6, 133 F.2d 509, 512.

Business Hours

In general those hours during which persons in the community generally keep their places open for the transaction of business. Casaldue v. Diaz, C.C.A.Puerto Rico, 117 F.2d 915, 916.

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 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 League

An association is a business league if persons thereof have some common business interest. Underwriters' Laboratories v. Commissioner of Internal Revenue, C.C.A.7, 135 F.2d 371, 374.

Business Losses

Losses from sale, exchange, or other disposition of property used in trade or business. Fackler v. Commissioner of Internal Revenue, C.C.A.6, 133 F.2d 509, 512.

Business Name

Trade-name, business name and commercial name as synonymous. Plum v. Siekmann, 135 Neb. 101, 280 N.W. 264, 268.

Business of Peddling

Business of one relying on present solicitation of chance patrons for purchases of uncertain quantities and making concurring deliveries. National Baking Co. v. Zabel, 227 Wis. 93, 277 N.W. 691, 693.

BUSINESS

Business of Public Character

Business wherein person engaged expressly or impliedly holds himself out as engaged in business of supplying his product or service to public as a class or to limited portion of public. *Masgai v. Public Service Commission of Pennsylvania*, 124 Pa.Super. 370, 188 A. 599, 600.

Business of Same Nature

Business of like character. *Rahoutis v. Unemployment Compensation Commission*, 171 Or. 93, 136 P.2d 426, 434.

Business of Similar Nature

Business of analogous nature. *Bedford v. Johnson*, 102 Colo. 203, 78 P.2d 373, 376.

Business of the Community

A business in which a husband is engaged is prima facie the business of the community. *Bird v. Steele*, 74 Wash. 68, 132 P. 724, 725.

Business Pertaining to His Occupation

Duty pertaining to his occupation as synonym. *Doherty v. American Employers' Ins. Co. of Boston, Mass.*, 112 N.J.Law, 52, 169 A. 652, 653.

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*, 96 Or. 679, 190 P. 1109, 1111. 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. *Lockwood v. Blodgett*, 106 Conn. 525, 138 A. 520, 525. A situs arising where possession and control of property right has been localized in some independent business or investment away from owner's domicile so that its substantial use and value primarily attach to and become an asset of the outside business. *State v. Atlantic Oil Producing Co.*, 174 Okl. 61, 49 P.2d 534, 538.

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*, 159 Ark. 621, 252 S.W. 602, 604, 31 A.L.R. 847. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries. *Morriss v. Finkelstein, Mo.App.*, 127 S.W.2d 46, 49. A "Massachusetts trust" or "common law trust," In re *Conover's Estate*, 295 Ill.App. 443, 14 N.E.2d 980, 985.

Business Visitor

One who is invited or permitted to enter or remain upon the premises of another for a purpose

directly or indirectly connected with the business dealings between them, *Kurre v. Graham Ship by Truck Co.*, 136 Kan. 356, 15 P.2d 463, 465. One who comes on land at occupant's instance for purposes connected with purpose, business, or otherwise, for which occupant uses land, *Haefeli v. Woodrich Engineering Co.*, 255 N.Y. 442, 175 N.E. 123, 125.

Farming Business

See Farming Business.

Private Business or Enterprise

One in which capital, time, attention, labor, and intelligence have been invested for gain and profit for private benefit, purposes and use. *Green v. Frazier*, 44 N.D. 395, 176 N.W. 11, 17.

Public Business

An element 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. *Consumers' Light & Power Co. v. Phipps*, 120 Okl. 223, 251 P. 63, 64.

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*, 108 Neb. 267, 187 N.W. 810, 812; *Rickman v. Commonwealth*, 195 Ky. 715, 243 S.W. 929.

BUTANE. Highly explosive and inflammable substance. *Ohio Casualty Ins. Co. v. Callaway, D.C. Okl.*, 45 F.Supp. 586, 588.

BUTCHER. One who slaughters animals or dresses their flesh for market; a dealer in meat. *Broadway v. Cope*, 208 N.C. 85, 179 S.E. 452; *Provo City v. Provo Meat & Packing Co.*, 49 Utah 528, 165 P. 477, 479, Ann.Cas.1918D, 530.

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.

See, also, *Botiler of the King*.

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; abutments, which see.

BUTTE. A hill. *State v. Jefferson Island Salt Mining Co.*, 183 La. 304, 163 So. 145.

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. *Pardy v. Boomhower Grocery Co.*, 178 App.Div. 347, 164 N.Y.S. 775, 776; a product which should contain not less than 80 per centum by weight of milk fat. *U. S. v. Centralia Dairy Co.*, D.C.Wash., 60 F.2d 141, 142.

BUTTER FAT. The natural fat of milk. *Wiseman v. Affolter*, 192 Ark. 509, 92 S.W.2d 388, 389.

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 Abutments.

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. As applied to prohibition law, means to possess. *Slaughter v. State*, 23 Ala.App. 390, 128 So. 129.

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.

BUYER 60 CONTRACT. A contract wherein purchaser not wishing to pay for stock purchased outright buys it at a price in excess of the market and is allowed 60 days' time to pay for stock. *Herrlein v. Tocchini*, 128 Cal.App. 612, 18 P.2d 73, 75.

BUYING LONG. Purchase of stocks now with the expectation of selling them for a profit in the future. *Henderson v. Usher*, 125 Fla. 709, 170 So. 846, 851.

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; *Wash v. McBrayer*, 1 Dana, Ky., 566; *Bush v. Cooper*, 26 Miss. 599, 59 Am.Dec. 270. But in other states, such a purchase is valid. *Fetrow v. Merriwether*, 53 Ill. 279; *Hall's Lessee v. Ashby*, 9 Ohio, 96, 34 Am. Dec. 424.

See, also, Bracery.

BY. Before a certain time, *Rankin v. Woodworth*, 3 Pen. & W., Pa., 48. Beside. Close to. In. In close proximity. In consequence of. Not later than a certain time, *Fanta v. Maddex*, 80 Cal.App. 513, 252 P. 630, 633; *Scheuer & Tiego v. Benedict*, 173 Wis. 241, 181 N.W. 129, 12 A.L.R. 1166. On or before a certain time, *J. C. Engelman Land Co. v. La Blanco Agr. Co.*, Tex.Civ.App., 220 S.W. 653, 655. Through the means, act, agency or instrumentality of, *Carroll v. Industrial Commission of Colorado*, 69 Colo. 473, 195 P. 1097, 19 A.L.R. 107; *Stevenson v. Lee Moor Contracting Co.*, 45 N.M. 354, 115 P.2d 342, 349. To. Under. With. The word may be used as exclusive, use preceding signature as indicating signature officially, and not personally. *Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Wallace*, 346 Pa. 532, 31 A.2d 71, 77.

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., 213 Ky. 533, 281 S.W. 500, 502, 46 A.L.R. 117.

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 COLOR OF OFFICE. Acts done "by color of office" are where they are of such a nature that office gives no authority to do them. *State v. National Surety Co.*, 162 Tenn. 547, 39 S.W.2d 581, 583.

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

BY

the same meaning and effect as the phrase "more or less." *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. Googins*, 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. By statutory law, *Board of Education of Union Free School Dist. No. Six of Town of Greenburgh v. Town of Greenburgh*, 277 N.Y. 193, 13 N.E.2d 768, 770. By state-wide legislation, and not ordinance, *U. S. Fidelity & Guaranty Co. v. Guenther*, C.C.A.Ohio, 31 F.2d 919, 920.

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, rules or laws adopted by an association or corporation or the like for its government. The word has also been used to designate the local laws or municipal statutes of a city or town. See *Kilgour v. Gratto*, 224 Mass. 78, 112 N.E. 489, 490. 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.

A resolution is not necessarily a by-law though a by-law may be in the form of a resolution. *Peck v. Elliott*, C.C.A. Tenn., 24 C.C.A. 425, 79 Fed. 10, 38 L.R.A. 616; *Bagley v. Oil Co.*, 201 Pa. 78, 50 A. 760, 56 L.R.A. 184. Distinction between a by-law and a regulation, if any, discussed, *Compton v. Van Volkenburgh*, 34 N.J.Law, 135.

BY OPERATION OF LAW. Effected by some positive legal rule or amendment. *Terminals & Transportation Corporation v. State*, 169 Misc. 703, 8 N.Y.S.2d 282, 284.

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*, 202 App.Div. 390, 196 N.Y.S. 63, 64.

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. By force of, by authority of, by reason of. *Phillips v. Houston Nat. Bank, Houston, Tex.*, C.C.A.Tex., 108 F.2d 934, 936. 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.Y.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*, 79 Tex. Cr.R. 510, 187 S.W. 949, 952; One present but not taking part, looker-on, spectator, beholder, observer. *Music v. De Long*, 209 Iowa, 1068, 229 N.W. 673, 676.

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*, 255 Mass. 369, 151 N.E. 839, 847. The term means qualified electors, not necessarily persons present in court. *Bennett v. State*, 161 Ark. 496, 257 S.W. 372, 373.

Under statutes authorizing "bystanders" to certify bill of exceptions, parties to the suit and their attorneys, *Walker v. State*, 88 Tex.Cr.R. 389, 227 S.W. 308, 312; and also witnesses in the case, *McConnell v. McCord*, 170 Ark. 839, 281 S.W. 384, as well as persons not present at the trial, are not bystanders. *Buck v. St. Louis Union Trust Co.*, 267 Mo. 644, 185 S.W. 208, 211. 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.