B.

BACHELOR. The first degree taken at the universities in the arts and sciences, as bachelor of arts, & c. It is called, in Latin, Baccalaureus, from bacalus, or bacillus, a staff, because a staff was given, by way of distinction, into the hands of those who had completed their studies. Some, however, have derived the word from baccalaura, others from bas chevalier, as designating young squires who aspire to the knighthood. (Dupin.) But the derivation. of the word is uncertain.

BACK−BOND. A bond given by one to a surety, to* indemnify such surety in case of loss. In Scotland, a back−bond is an instrument which, in conjunction with another which gives an absolute disposition, constitutes a trust. A declaration of trust.

BACK−WATER. That water in a stream which, in consequence of some obstruction below, is detained or checked in its course, or reflows.

2. Every riparian owner is entitled to the benefit of the water in its natural state. Whenever, therefore, the owner of land dams or impedes the water in such a manner as to back it on his neighbor above, he is liable to an action; for no one has a right to alter the level of the water, either where it enters, or where it leaves his property. 9 Co. 59; 1 B. & Ald. 258; 1 Wils. R. 178; 6 East, R. 203; 1 S. & Stu. 190.; 4 Day, R. 244; 7 Cowen, R. 266; 1 Rawle, R. 218; 5 N. R. Rep. 232; 9 Mass. R. 316; 7 Pick. R. 198; 4 Mason, R. 400; 1 Rawle, R. 27; 2 John. Ch. R. 162, 463; 1 Coxe's. R. 460. Vide, Dam; Inundation; Water−course; and 5 Ohio R. 322.

BACKING, crim. law practice. Backing a warrant occurs whenever it becomes necessary to execute it out of the jurisdiction of the magistrate who granted it; as when an offender escapes out of the county in which he committed the offence with which he is charged, into another county. In such a case, a magistrate of the county in which the offender may, be found, endorses, or writes his name on the back of the warrant, and thereby gives authority to execute it within his jurisdiction. This is called backing the warrant. This may be from county to county, if necessary.

BACKSIDE, estates. In England this term was formerly used in conveyances and even in pleadings, and is still, adhered to with reference to ancient descriptions in deeds, in continuing the transfer of the same. property. It imports a yard at the back part of, or behind a house, and belonging thereto: but although formerly used in pleadings, it is now unusual to adopt it, and the word yard is preferred. 1 Chitty's Pr. 177; 2 Ld. Raym. 1399.

BADGE. A mark or sign worn by some persons, or placed upon certain things for the purpose of designation. Some public officers, as watchmen, policemen, and the like, are required to wear badges that they may be readily known. It is used figuratively when we say, possession of personal property by the seller, is. a badge of fraud.

BAGGAGE. Such articles as are carried by a traveller; luggage. Every thing which a passenger, carries, with him is not baggage. Large sums of money, for example, carried in a travelling trunk, will not be considered baggage, so as to render the carrier responsible. 9 Wend. R. 85. But a watch deposited in his trunk is part of his baggage. 10 Ohio R. 145. See, as to what is baggage, 6 Hill, R. 586 5 Rawle, 188, 189; 1 Pick. 50.

2. In general a common carrier of passengers is responsible for baggage, if lost, though no distinct price be paid for transporting it, it being included in the passenger's fare. Id. The carrier's responsibility for the baggage begins as soon as it has been delivered to him, or to his servants, or to some other person authorized by him to receive it. Then the delivery is complete. The risk and responsibility of the carrier is at an end as soon as he has delivered the baggage to the owner or his agent; and if an offer to deliver it be made at a proper time, the carrier will be discharged from responsibility, us 'such yet, if the baggage remain in his custody afterwards, he will hold as, bailee, and be responsible for it according to the terms of such bailment ana, R. 92. Vide Common Carriers

3. By the act of congress of March 2, 1799, sect. 46, 1 Story's L. U. S. 612, it is declared that all wearing apparel and other personal baggage, &c., of persons who shall arrive in the United States, shall be free and exempted from duty.

BAIL, practice, contracts. By bail is understood sureties, given according to law, to insure the appearance of a party in court. The persons who become surety are called bail. Sometimes the term is applied, with a want of exactness, to the security given by a defendant, in order to obtain a stay of execution, after judgment, in civil cases., Bail is either civil or criminal.

2.− 1. Civil bail is that which is entered in civil cases, and is common or special bail below or bail above.

3. Common bail is a formal entry of fictitious sureties in the proper office of the court, which is called filing. common bail to the action. It is in the same form as special bail, but differs from it in this, that the sureties are merely fictitious, as John Doe and Richard Roe: it has, consequently, none of, the incidents of special bail. It is

allowed to the defendant only when he has been discharged from arrest without bail, and it is necessary in such cases to perfect the appearance of the defendant. Steph. Pl. 56, 7; Grah. Pr. 155; Highm. on Bail 13.

4. Special bail is an undertaking by one or more persons for another, before some officer or court properly authorized for that purpose, that he shall appear at a certain time and place, to answer a certain charge to be exhibited against him. The essential qualification to enable a person to become bail, are that he must be, 1. a freeholder or housekeeper; 2. liable to the ordinary process of the court 3. capable of entering into a contract; and 4. able to pay the amount for which he becomes responsible.

1. He must be a freeholder or housekeeper. (q. v.) 2 Chit. R. 96; 5 Taunt. 174; Lofft, 148 3 Petersd. Ab. 104.

2. He must be subject to the ordinary process of the court; and a person privileged from arrest, either permanently or temporarily, will not be taken. 4 Taunt. 249; 1 D. & R. 127; 2 Marsh. 232.

3. He must be competent to enter into a contract; a feme covert, an infant, or a person non compos mentis, cannot therefore become bail.

4. He must be able to pay the amount for which he becomes responsible. But it is immaterial whether his property consists of real or personal estate, provided it be his own, in his own right; 3 Peterd. Ab. 196; 2 Chit. Rep. 97; 11 Price, 158; and be liable to the ordinary process of the law; 4 Burr. 2526; though this rule is not invariably adhered to, for when part of the property consisted of a ship, shortly expected, bail was permitted to justify in respect of such property. 1 Chit. R. 286, n. As to the persons who cannot be received because they are not responsible, see 1 Chit. R. 9, 116; 2 Chit. R. 77, 8; Lofft, 72, 184; 3 Petersd. Ab. 112; 1 Chit. R. 309, n.

5. Bail below. This is bail given to the sheriff in civil cases, when the defendant is arrested on bailable process; which is done by giving him a bail bond; it is so called to distinguish it from bail above. (q. v.) The sheriff is bound to admit a man to bail, provided good and sufficient sureties be tendered, but not otherwise. Stat. 23 H. VI. C. 9, A. D. 1444; 4 Anne, c. 16, _20; B. N. P. 224; 2 Term Rep., 560. The sheriff, is not, however, bound−to demand bail, and may, at his risk, permit the defendant to be at liberty, provided he will appear, that is, enter bail above, or surrender himself in proper time. 1 Sell. Pr. 126, et seq. The undertaking of bail below is, that the defendant will appear or put in bail to the action on the return day of
the writ.

6. Bail above, is putting in bail to the action, which is an appearance of the defendant. Bail above are bound either to satisfy the plaintiff his debt and costs, or to surrender the defendant into custody, provided judgment should be against him and he should fail to do so. Sell. Pr. 137.

7. It is a general rule that the defendant having been held to bail, in civil cases, cannot be held a second time for the same cause of action. Tidd' s Pr. 184 Grah. Pr. 98; Troub. & Hal. 44; 1 Yeates, 206 8 Ves. Jur. 594. See Auter action Pendent; Lis pendens.

8. − 2. Bail in criminal cases is defined to be a delivery or bailment of a person to sureties, upon their giving, together with himself, sufficient security for his appearance, he being supposed to be in their friendly custody, instead of going to prison.

9. The Constitution of the United States directs that "excessive bail shall not be required." Amend. art. 8.

10. By the acts of congress of September, 24, 1789, s. 33, and March 2, 1793, s. 4, authority is given to take bail for any crime or offence against the United States, except where the punishment is death, to any justice or judge of the United States, or to any chancellor, judge of the supreme or superior court, or first judge of any court of common pleas, or mayor of any city of any state, or to any justice of the peace or other magistrate of any state, where the offender may be found the recognizance tal,−en by any of the persons authorized, is to be returned to the court having cognizance of the offence.

11. When the punishment by the laws of the United States is death, bail can be taken only by the supreme or circuit court, or by a judge of the district court of the United States. If the person committed by a justice of the supreme court, or by the judge of a district court, for an offence not punishable with death, shall, after commitment, offer bail, any judge of the supreme or superior court of law, of any state, (there being no judge of the United States in the district to take such bail,) way admit such person to bail.

12. Justices of the peace have in general power to take bail of persons accused; and, when they have such authority they are required to take such bail There are many cases, however, under the laws of the several states, as well as under the laws of the United States,, as above mentioned, where justices of the peace cannot take bail, but must commit; and, if the accused offers bail, it must be taken by a judge or other,, officer lawfully authorized.

13. In Pennsylvania, for example, in cases of murder, or when the defendant is charged with the stealing of any

horse, mare, or gelding, on the direct testimony of one witness; or shall be taken having possession of such horse, mare, or gelding, a justice of the peace cannot admit the party to bail. 1 Smith's L. of Pa. 581.

14. In all cases where the party is admitted to bail, the recognizance is to be returned to the court having jurisdict on of the offence charged. Vide Act of God. Arrest; Auter action pendent; Deat Lis pendens.

BAIL BOND, practice, contracts. A specialty by which the defendant and other persons, usually not less than two, though the sheriff may take only one, become bound to the sheriff in a penalty equal to that for which bail is demanded, conditioned for the due appearance of such defendant to the legal process therein described, and by which the sheriff has been commanded to arrest him. It is only where the defendant is arrested or in the custody of the sheriff, under other than final process, that the sheriff can take such bond. On this bond being tendered to him, which he is compelled to take if the sureties are good, he must discharge the defendant. Stat. 23 H. VI. c. 9.

2. With some exceptions, as for example, where the defendant surrenders; 5 T. R. 754; 7 T. R. 123; 1 East, 387; 1 Bos. & Pull. 326; nothing can be a performance of the condition of the bail bond, but putting in bail to the action. 5 Burr. 2683.

3. The plaintiff has a right to demand from the sheriff an assignment of such bond, so that he may sue it for his own benefit. 4 Ann. c. 16, _20; Wats. on Sheriff, 99; 1 Sell. Pr. 126, 174. For the general requisites of a bail bond, see 1 T. R. 422; 2 T. R. 569 15 East. 320; 2 Wils. 69; 6 T. R. 702; 9 East, 55; . D. & R. 215; 4 M. & S. 338; 1 Moore, R. 514; 6 Moore, R. 264 East, 568; Hurls. on Bonds, 56; U. S. Dig. Bail V.

BAIL PIECE. A certificate given by a judge or the clerk of the court, or other person authorized to keep the record, in which it is certified that A B, the bail, became bail, for C D, the defendant, in a certain sum, and in a particular case. It was the practice formerly, to write these certificates upon small pieces of parchment, in the following form: (See 3 Bl. Com. Appendix.)

In the Court of _____, of the Term of _____, in the year of our Lord, _____, _____City and County of _____, ss. Theunis Thew is delivered to bail upon the taking of his body, to Jacobus
Vanzant, of the city of_____, merchant, and to John Doe, of the same city, yeoman. SMITH, JR. At the suit of Attorney for Deft. PHILIP CARSWELL. Taken and acknowledged the ____ day of _____, A. D. _____, before me. D. H.

2. As the bail is supposed to have the custody of the defendant, when he is armed with this process, he may arrest the latter, though he is out of the jurisdiction of the court in which he became bail, and even in a different state. 1 Baldw. 578; 3 Com. 84, 421; 2 Yeates, 263 8 pick. 138; 7 John. 145; 3 Day, 485. The bail may take him even while attending court as a suitor, or any time, even on Sunday. 4 Yeates, 123; 4 Conn. 170. He may break even an outer door to seize him; and command the assistance of the sheriff or other officers; 8 Pick. 138; and depute his power to others.. 1 John. Cas. 413; 8 Pick. 140. See 1 Serg. & R. 311.

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

BAILABLE PROCESS. Is that process by which an officer is required to arrest a person, and afterwards to take bail for his appearance. A capias ad respondendum is bailable, but a capias ad satisfaciendum is not.

BAILEE, contracts. One to whom goods are bailed.

2. His duties are to act in good faith he is bound to use extraordinary diligence in those contracts or bailments, where he alone receives the benefit, as in loans; he must observe ordinary diligence of those bailments, which are beneficial to both parties, as hiring; and he will be responsible for gross negligence in those bailments which are only for the benefit of the bailor, is deposit and mandate. Story's Bailm. _17, 18, 19. He is bound to return the property as soon as the purpose for which it was bailed shall have been accomplished.

3. He has generally a right to retain and use the thing bailed, according to the contract, until the object of the bailment shall have been accomplished.

4. A bailee with a mere naked authority, having a right to remuneration for his trouble, but coupled with no other interest, may support trespass for any injury, amounting to a trespass, done while he was in the actual possession of the thing. 4 Bouv. Inst. n. 3608.

BAILIFF, account render. A bailiff is a person who has, by delivery, the custody and administration of lands or goods for the benefit of the owner or bailor, and is liable to render an account thereof. Co. Lit. 271; 2 Leon. 245; 1 Mall . Ent. 65. The word is derived from the old French word bailler, to bail, that is, to deliver. Originally, the

word implied the delivery of real estate, as of land, woods, a house, a part of the fish in a pond; Owen, 20; 2 Leon. 194; Keilw. 114 a, b; 37 Ed. III. 7; 10 H. VII. 7, 30; but was afterwards extended to goods and chattels. Every bailiff is a ,receiver, but every receiver is not a bailiff. Hence it is a good plea that the defendant never was receiver, but as bailiff. 18 Ed. III. 16. See Cro. Eliz. 82−3; 2 Anders. 62−3, 96−7 F. N. B. 134 F; 8 Co. 48 a, b.

2. From a bailiff is required administration, care, management, skill. He is, therefore, entitled to allowance for the expense of administration, and for all things done in his office, according to his own judgment, without the special direction of his principal, and also for casual things done in the common course of business: 1 Mall. Ent. 65, (4) 11; 1 Rolle, Ab. 125, 1, 7; Co. Lit. 89 a; Com. Dig. E 12 Bro. Ab. Acc. 18 Lucas, Rep. 23 but not for things foreign to his office. Bro. Ab. Acc .26, 88; Plowd. 282b, 14; Com. Dig. Acc. E13; Co. Lit. 172; 1 Mall. Ent. 65, (4) 4. Whereas, a mere receiver, or a receiver who is not also a bailiff, is not entitled to allowance for any expenses. Bro. Ab. Acc. 18; 1 Mall. Ent. 66, (4) 10; 1 Roll. Ab. 118; Com. Dig. E 13; 1 Dall. 340.

3. A bailiff may appear and plead for his principal in an assize; " and his plea com− mences " thus, " J. S., bailiff of T. N., comes " &c., not " T. N., by his bailiff, J. S., comes," &c. 2 Inst. 415; Keilw. 117 b. As to what matters he may plead, see 2 Inst. 414.

BAILIFF, office. Magistrates who for merly administered justice in the parliaments or courts of France, answering to the English sheriffs as mentioned by Bracton. There are still bailiffs of particular towns in England as the bailiff of Dover Castle, &c., otherwise bailiffs are now only officers or stewards, &c. as Bailiffs of liberties, appointed by every lord within his liberty, to serve writs, &c. Bailiff errent or itenerant, appointed to go about the country for the same purpose. Sheriff ’s bailies, sheriff’s officers to execute writs; these are also called bound bailiffs because they are usually bound in a bond to the sheriff for the due exeecution of their office. Bailiffs of court baron, to summon the court, &c. Bailffs of hushandry, appointed by private persons to collect their rents and manage their estates. Water bailiffs, officers in port towns for searching ships, gathering tolls, &c. Bac. Ab. h. t.

BAILMENT, contracts. This word is derived from the French, bailler, to deliver. 2 Bl. Com. 451; Jones’ Bailm. 90 Story on Bailm. c. 1, _2. It is a compendious expression, to signify a contract resulting from delivery. It has been defined to be a delivery of goods on a condition, express or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purposes for which they are bailed shall be answered. 1 Jones’ Bailm. 1. Or it is a delivery of goods in trust, on a contract either expressed or implied, that the trust shall be duly executed, and the goods redelivered, as soon as the time or use for which they were bailed shall have elapsed or be performed. Jones’ Bailm. 117.

2. Each of these definitions, says Judge Story, seems redundant and inaccurate if it be the proper office of a definition to include those things only which belong to the genus or class. Both these definitions suppose that the goods are to be restored or redelivered; but in a bailment for sale, as upon a consignment to a factor, no redelivery is contemplated between the parties. In some cases, no use is contemplated by the bailee, in others, it is of the essence of the contract: in some cases time is material to terminAte the contract; in others, time is necessary to give a new accessorial right. Story,on Bailm. c. 1, _2.

3. Mr. Justice Blackstone has defined a bailment to be a delivery of goods in trust, upon contract, either expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 Bl. Com. 451. And in another place, as the delivery of goods to another person for a particular use. 2 Bl. Com. 395. Vide Kent’s Comm. Lect. 40, 437.

4. Mr. Justice Story says, that a bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. Story on Bailm. c. 1, _2. This corresponds very nearly with the definition of Merlin. Vide Repertoire, mot Bail.

5. Bailments are divisible into three kinds: 1. Those in which the trust is for the benefit of the bailor, as deposits and mandates. 2. Those in which the trust is for the benefit of the bailee, as gratuitous loans for use. 3. Those in which the trust is for the benefit of both parties, as pledges or pawns, and hiring and letting to hire. See Deposit; Hire; Loans; mandates and Pledges.

6. Sir William Jones has divided bailments into five sorts, namely: 1. Depositum, or deposit. 2. Mandatum, or commission without recompense. 3. Commodatum, or loan for use, without pay. 4. Pignori acceptum, or pawn. 5. Locatum, or hiring, which is always with reward. This last is subdivided into, 1. Locatio rei, or biring, by which the hirer gains a temporary use of the thing. 2. Locatio operis faciendi, when something is to be done to the thing delivered. 3. Locatio operis mercium vehendarum, when the thing is merely to be carried from one place to another. See these several words. As to the obligations and duties of bailees in general, see Diligence, and Story

on Bailm. c. 1; Chit. on Cont. 141; 3 John. R. 170; 17 Mass. R. 479; 5 Day, 15; 1 Conn. Rep. 487; 10 Johns. R. 1, 471; 12 Johns. R. 144, 232; 11 Johns. R. 107; 15 Johns. R. 39; 2 John. C. R. 100; 2 Caines' Cas. 189; 19 Johns. R. 44; 14 John. R. 175; 2 Halst. 108; 2 South. 738; 2 Harr. & M'Hen. 453; 1 Rand. 3; 2 Hawks, 145; 1 Murphy, 417; 1 Hayw. 14; 1 Rep. Con. Ct. 121, 186; 2 Rep. Con. Ct. 239; 1 Bay, 101; 2 Nott & M'Cord, 88, 489; 1 Browne, 43, 176; 2 Binn. 72; 4 Binn. 127; 5 Binn. 457; 6 Binn. 129; 6 Serg. & Rawle, 439; 8 Serg. & Rawle, 500, 533; 14 Serg. & R. 275; Bac. Ab. h. t.; 1 Bouv. Inst. n. 978−1099.

BAILOR, contracts. He who bails a thing to another.

2. The bailor must act with good faith towards the bailee; Story's Bailm. _74, 76, 77; permit him to enjoy the thing bailed according to contract; and, in some bailments, as hiring, warrant the title and possession of the thing hired, and probably, to keep it in suitable order and repair for the purpose of the bailment. Id. _Vide Inst. lib. 3, tit. 25.

BAILIWICK. The district over which a sheriff has jurisdiction; it signifies also the same as county, the sheriff's bailiwick extending over the county.

2. In England, it signifies generally that liberty which is exempted from the sheriff of the county over which the lord of the liberty appoints a bailiff. Vide Wood's Inst. 206.

BAIR−MAN, Scottish law. A poor insolvent debtor left bare.

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

BALANCE, com. law. The amount which remains due by one of two persons, who have been dealing together, to the other, after the settlement of their accounts.

2. In the case of mutual debts, the balance only can be recovered by the assignee of an insolvent, or the executor of a deceased person. But this mutuality must have existed at the time of the assignment by the insolvent, or at the death of the testator.

3. The term general balance is 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. R. 268.

BALANCE SHEET. A statement made by merchants and others to show the true state of a particular business. A balance sheet should exhibit all the balances of debits and credits, also the value of merchandize, and the result of the whole. Vide Bilan.

BALANCE OF TRADE, Com. law. The difference between the exports and importations, between two countries. The balance of trade is against that country which has imported more than it has exported, for which it is debtor to the other country.

BALIVA. A bailiwick or jurisdiction.

BALIVO AMOVENDO, Eng. practice. A writ to remove a bailiff out of his office.

BALLASTAGE, mar. law. A toll paid for the privilege, of taking up ballast from the bottom of the port. This arises from the property in the soil. 2 Chit. Com. Law, 16.

BALLOT, government. A diminutive ball, i. e. a little ball used in giving votes; the act itself of giving votes. A little ball or ticket used in voting privately, and, for that purpose, put, into a box, (commonly called a ballot−box,) or into some other contrivance.

BALNEARII, civil law. Stealers of the clothes of person who were washing in the public baths. Dig. 47, 17; 4 Bl. Com. 239; Calviui Lex. Jurid.

BAN, A proclamation, or public notice any summons or edict by which a thing is forbidden or commanded. Vide Bans of Matrimony; Proclamation; Cowell's Interp.

BANC or BANK. The first of these is a French word signifying bench, pronounced improperly bank. 1. The seat of judgment, as banc le roy, the king's bench banc le common pleas, the bench of common pleas.

2. The meeting of all the judges or such as may form a quorum, as, the court sit in banc. Cowell's Interp.

BANCO. A commercial term, adopted from the Italian, used to distinguish bank money from the common currency; as $1000,

BANDIT. A man outlawed; one who is said to be under ban.

BANE. This word was formerly used to signify a malefactor. Bract. 1. 2, t. 8, c. 1.

BANISHMENT, crim. 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. Vide 4 Dall. 14. Deportation; Relegation.

BANK, com. law. 1. A place for the deposit of money. 2. An institution, generally incorporated, authorized to receive deposits of money, to lend money, and to issue promissory notes, usually known by the name of bank notes. 3. Banks are said to be of three kinds, viz : of deposit, of discount, and of circulation; they generally perform all these operatious. Vide Metc. & Perk. Dig. Banks and Banking.

BANKBOOK ,commerce. A book which persons dealing with a bank keep, in which the officers of the bank enter the amount of money deposited by them, and all notes or bills deposited by them, or discounted for their use.

BANK NOTE, contracts. A bank note resembles a common promissory note, (q. v.) issued by a bank or corporation authorized to act as a bank. It is in fact a promissory note, but such notes are not, for many purposes, to be considered as mere securities for money; but are treated as money, in the ordinary course and transactions of business, by the general consent of mankind and, on payment of them, when a receipt is required, the receipts are always given as for money, not as for securities or notes. 1 Burr. R. 457; 12 John. R. 200; 1 John. Ch. R. 231; 9 John. R. 120; 19 John. 144; 1 Sch. & Lef. 318, 319; 11 Ves. 662; 1 Roper, Leg. 3; 1 Ham. R. 189, 524; 15 Pick. 177; 5 G. & John. 58; 3 Hawks, 328; 5 J. J. Marsh. 643.

2. Bank notes are assignable by delivery. Rep. Temp. Hard. 53 9 East, R. 48; 4 East, R. 510 Dougl. 236. The holder of a bank note is prima facie entitled to prompt payment of it, and cannot be affected by the fraud of any former holder in obtaining it, unless evidence be given to bring it home to his privity. 1 Burr. 452; 4 Rawle, 185 13 East, R. 135 Dane's Ab. Index, h. t.; Pow. on Mortg. lndex, h. t. U. S. Dig. h. t. Vide Bouv. Inst. Index, h. t. Note; Promissory note; Reissuable note.

3. They cannot be taken in execution. Cunning. on Bills, 537; Hardw. Cases, 53; 1 Arch. Pr. 268 1 Wils. Rep. 9 Cro. Eliz. 746, pl. 25

BANK STOCK. The capital of a bank. It is usually divided in shares of a certain amount. This stock is generally transferable on the bools of the bank, and considered as personal property. Vide Stock.

BANKER, com. law. A banker is one engaged in the business of receiving other persons money in deposit, to be returned on demand discounting other persons' notes, and issuing his own for circulation. One who performs the business usually transacted by a bank. Private bankers are generally not permitted.

2. The business of bankers is generally performed through the medium of incorporated banks.

3. A banker may be declared a bankrupt by adverse proceedings against him. Act of Congress of 19th Aug. 1841. See 1 Atk. 218; 2 H. Bl. 235; 1 Mont. B. L. 12.

4. Among the ancient Romans there were bankers called argentarii, whose office was to keep registers of contracts between individuals, either to loan money, or in relation to sales and stipulations. These bankers frequently agreed with the creditor to pay him the debt due to him by the debtor. Calvini Lex. Jurid.

BANKERS' NOTE, contracts. In England a distinction is made between bank notes, (q. v.) and bankers' notes. The latter are promissory notes, and resemble bank notes in every respect, except that they are given by persons acting as private bankers. 6 Mod. 29; 3 Chit. Com. Law, 590; 1 Leigh's N. P. 338.

BANKRUPT. A person who has done, or suffered some act to be done, which is by law declared an act of bankruptcy; in such case he may be declared a bankrupt.

2. It is proper to notice that there is much difference between a bankrupt and an insolvent. A man may be a bankrupt, and yet be perfectly solvent; that is, eventually able to pay all his debts or, he may be insolvent, and, in consequence of not having done, or suffered, an act of bankruptcy. He may not be a bankrupt. Again, the bankrupt laws are intended mainly to secure creditors from waste, extravagance, and mismanagement, by seizing the property out of the hands of the debtors, and placing it in the custody of the law; whereas the insolvent laws only relieve a man from imprisonment for debt after he has assigned his property for the benefit of his creditors. Both under bankrupt and insolvent laws the debtor is required to surrender his property, for the benefit of his creditors. Bankrupt laws discharge the person from imprisonment, and his property, acquired after his discharge, from all liabilities for his debts insolvent laws simply discharge the debtor from imprisonment, or liability to be imprisoned, but his after−acquired property may be taken in satisfaction of his former debts. 2 Bell, Com. B. 6, part 1, c. 1, p. 162; 3 Am. Jur. 218.

BANKRUPTCY. The state or condition of a bankrupt.

2. Bankrupt laws are an encroacbment upon the common law. The first in England was the stat. 34 and 35 H. VIII., c. 4, although the word bankrupt appears only in the title, not in the body of the act. The stat. 13 Eliz. c. 7, is the first that defines the term bankrupt, and discriminates bankruptcy from mere insolvency. Out of a great number of bankrupt laws passed from time to time, the most considerable are the statutes 13 Eliz. c. 7; 1 James I.,

c. 19 21 James I., c. 19 5 Geo. II., c. 30. A careful consideration of these statutes is sufficient to give am adequate idea of the system of bankruptcy in England. See Burgess on Insolvency, 202−230.

3. The Constitution of the United States, art. 1, s. 8, authorizes congress "to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States." With the exception of a short interval during which bankrupt laws existed in this country, this power lay dormant till the passage of the act of 1841, since repealed.

4. Any one of the states may pass a bankrupt law, but no state bankrupt or insolvent law can be permitted to impair the obligation of contracts; nor can the several states pass laws conflicting with an act of congress on this subject 4 Wheat. and the bankrupt laws of a state cannot affect the rights of citizens of another state. 12 Wheat. It. 213. Vide 3 Story on the Const. _1100 to 1110 2 Kent, Com. 321 Serg. on Const. Law, 322 Rawle on the Const. c. 9 6 Pet. R. 348 Bouv. Inst. Index, h. t. Vide Bankrupt.

BANKS OF RIVERS, estates. By this term is understood what retains the river in its natural channel, when there is the greatest flow of water.

2. The owner of the bank of a stream, not navigable, his in general the right to the middle of the stream. Vide Riparian Proprietor.

3. When by imperceptible increase the banks on one side extend into the river, this addition is called alluvion. (q. v.) When the increase is caused by the sudden transfer of a mass of earth or soil from the opposite bank, it is called an increase by avulsion. (q. v.)

BANNITUS. One outlawed or banished. See Calvini Lex.

BANS OF MATRIMONY. The giving public notice or making proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract, to the end that persons objecting to the same, may have an opportunity to declare such objections before the marriage is solemnized. Poth. Du Mariage, partie 2, c. 2. Vide Ban.

BAR, actions. A perpetual destruction or temporary taking away of the action of the plaintiff. In ancient authors it is called exceptio peremptorid. Co. Litt. 303 b Steph. Pl. Appx. xxviii. Loisel (Institutes Coutumieres, vol. ii. p. 204) says, "Exceptions (in pleas) have been called bars by our ancient practitioners, because, being opposed, they arrest the party who has sued out the process, as in war (une barriere) a barrier arrests an enemy; and as there have always been in our tribunals bars to separate the advocates from the judges, the place where the advocates stand (pour parler) when they speak, has been called for that reason (barreau) the bar."

2. When a person is bound in any action, real or personal, by judgment on demurrer, confession or verdict, he is barred, i. e. debarred, as to that or any other action of the like nature or degree, for the same thing, forever; for expedit reipublicae ut sit finis litim.

3. But there is a difference between real and personal actions.

4. In personal actions, as in debt or account, the bar is perpetual, inasmuch as the plaintiff cannot have an action of a higher nature, and therefore in such actions he has generally no remedy, but by bringing a writ of error. Doct. Plac. 65; 6 Co. 7, 8 4 East, 507, 508.

5. But if the defendant be barred in a real action, by judgment on a verdict, demurrer or confession, &c., he may still have an action of a higher nature, and try the same right again. Lawes, Pl. 39, 40. See generally, Bac. Ab. Abatement, N; Plea in bar. Also the case of Outram v. Morewood, 3 East, Rep. 346−366; a leading case on this subject.

BAR, practice. A place in a court where the counsellors and advocates stand to make their addresses to the court and jury; it is so called because formerly it was closed with a bar. Figuratively the counsellors and attorneys at law are called the bar of Philadelphia, the New York bar.

2. A place in a court having criminal jurisdiction, to which prisoners are called to plead to the indictment, is also called, the bar. Vide Merl. Repert. mot Barreau, and Dupin, Profession d'Avocat, tom. i. p. 451, for some eloquent advice to gentlemen of the bar.

BAR, contracts. An obstacle or opposition. 2. Some bars arise from circumstances, and others from persons. Kindred within the prohibited degree, for example, is a bar to a marriage between the persons related; but the fact that A is married, and cannot therefore marry B, is a circumstance which operates as a bar as long as it subsists; for without it the parties might marry.

BAR FEE, Eng. law. A fee taken time out of mind by the sheriff for every prisoner who is acquitted. Bac. Ab. Extortion.

BARBICAN. An ancient word to signify a watch−tower. Barbicanage was money given for the support of a barbican.

BARGAIN AND SALE, conveyancing, contracts. A contract in writing to convey lands to another person; or rather it is the sale of a use therein. In strictness it is not an absolute conveyance of the seizin, as a feoffment. Watk. Prin. Conv. by Preston, 190, 191. The consideration must be of money or money's worth. Id. 237.

2. In consequence of this conveyance a use arises to a bargainee, and the statute 27 Henry VIII. immediately transfers theÿ20legal estate and possession to him.

3. A bargain and sale, may be in fee, for life, or for years.

4. The proper and technical words of this conveyance are bargain and sale, but any other words that would have been sufficient to raise a use, upon a valuable consideration, before the statute, are now sufficient to constitute a good bargain and sale. Proper words of limitation must, however, be inserted. Cruise Dig. tit. 32, c. 9; Bac. Ab. h. t. Com. Dig. h. t.; and the cases there cited; Nels. Ab. h. t. 2 Bl. Com. 338.

5. This is the most common mode of conveyance in the United States. 4 Kent, Com. 483; 3 Pick. R. 529; 3 N. H. Rep. 260; 6 Harr. & John. 465; 3 Wash. C. C. Rep. 376; 4 Mass. R. 66; 4 Yeates, R. 295; 1 Yeates, R. 828; 3 John. R. 388; 4 Cowen's R. 325; 10 John. R. 456, 505; 3 N. H. Rep. 261; 14 John. R. 126; 2 Harr. & John. 230; 2 Bouv. Inst. n. 207 7 8.

BARGAINEE. A person to whom a bargain is made; one who receives the advantages of a bargain.

BARGAINOR. A person who makes a a bargain, and who becomes bound to perform it.

BARGEMEN. Persons who own and keep a barge for the purpose of carrying the goods of all. such other persons who may desire to employ them. They are liable as common, carriers. Story, Bailm. 496.

BARLEYCORN. A lineal measure, containing one−third of an inch. Dane's Ab. c. 211, a. 13, s. 9. The barleycorn was the first measure, with its division and multiples, of all our measures of length, superfices, and capacity. Id. c. 211, a. 1 2, s. 2.

BARN, estates. A building on a farm used to receive the crop, the stabling of animals, and other purposes.

2. The grant or demise of a barn, without words superadded to extend its meaning, would pass no more than the barn itself, and as much land as would be
necessary for its complete enjoyment. 4 Serg. & Rawle, 342.

BARON. This word has but one signification in American law, namely, hushand: we use baron and feme, for hushand and wife. And in this sense it is going out of use.

2. In England, and perhaps some other countries, baron is a title of honor; it is the first degree of nobility below a viscount. Vide Com. Dig. Baron and Feme; Bac. Ab. Baron and Feme; and the articles. Hushand; Marriage; Wife.

3. In the laws of the middle ages, baron or bers, (baro) signifes a great vassal; lord of a fief and tenant immediately from the king: and the words baronage, barnage and berner, signify collectively the vassals composing the court of the king; as Le roi et son barnage, The king and his court. See Spelman's Glossary, verb. Baro.

BARONS OF EXCHEQUER, Eng. law. The name given to the five judges of the Exchequer formerly these were baros of the realm, but now they are chosen from
persons learned in the law.

BARRACK. By this term, as used in Pennsylvania, is understood an erection of upright posts supporting a sliding roof, usually of thatch. 5 Whart. R. 429.

BARRATOR, crimes. One who has been guilty of the offence of barratry.

BARRATRY, crimes. In old law French barat, baraterie, signifying robbery, deceit, fraud. In modern usage it may be defined as the habitual moving, exciting, and maintaining suits and quarrels, either at law or otherwise. 1 Inst. 368; 1 Hawk. 243.

2. A man cannot be indicted as a common barrator in respect of any number of false and groundless actions brought in his own right, nor for a single act in right of another; for that would not make him a common barrator.

3. Barratry, in this sense, is different from maintenance (q. v.) and champerty. (q. v.)

4. An attorney cannot be indicted for this crime, merely for maintaining another in a groundless action. Vide 15 Mass. R. 229 1 Bailey's R. 379; 11 Pick. R. 432; 13 Pick. R. 362; 9 Cowen, R. 587; Bac. Ab. h. t.; Hawk. P. C. B. 1, c. 21; Roll. Ab. 335; Co. Litt. 368; 3 Inst. 175.

BARRATRY, maritime law, crimes. A fraudulent act of the master or mariners, committed contrary to their duty as such, to the prejudice of the owners of the ship. Emer. tom. 1, p. 366; Merlin, Repert. h. t.; Roccus, h. t.; 2

Marsh. Insur. 515; 8 East, R. 138, 139. As to what will amount to barratry, see Abbott on Shipp. 167, n. 1; 2 Wash. C. C. R. 61; 9 East, R. 126; 1 Str. 581; 2 Ld. Raym. 1349; 1 Term R. 127; 6 Id. 379; 8 Id. 320; 2 Cain. R. 67, 222; 3 Cain. R. 1; 1 John. R. 229; 8 John. R. 209, n. 2d edit.; 5 Day. R. 1; 11 John. R. 40; 13 John. R, 451; 2 Binn. R. 274; 2 Dall. R. 137; 8 Cran. R. 39; 3 Wheat. R. 168; 4 Dall. R. 294; 1 Yeates, 114.

2. The act of Congress of April, 30, 1790, s. 8, 1 Story's Laws U. S. 84, punishes with death as piracy, "any captain or mariner of any ship or other vessel who shall piratically and feloniously run away with such ship or vessel, or any goods or merchandize to the value of fifty dollars; or yield up such ship or vessel to any pirate or if any such seamen shall lay violent hands upon his commander, thereby to binder or prevent his fighting in defence of his ship, or goods, committed to his trust, or shall make a revolt in the said ship."

BARREL. A measure of capacity, equal to tliirty−six gallons.

BARREN MONEY, civil law. This term is used to denote money which bears no interest.

BARRENNESS. The incapacity to produce a child. This, when arising from impotence, is a cause for dissolving a marriage. 1 Fodere, Med. Leg. _254.

BARRISTER, English law. A counsellor admitted to plead at the bar.

2. Ouster barrister, is one who pleads ouster or without the bar.

3. Inner barrister, a serjeant or king's counsel who pleads within the bar.

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

5. Barristers are called apprentices, apprentitii ad legem, being looked upon as learners, and not qualified until they obtain the degree of serjeant. Edmund Plowden, the author of the Commentaries, a volume of elaborate reports in the reigns of Edward VI., Mary, Philip and Mary, and Elizabeth, describes himself as an apprentice of the common law.

BARTER. A contract by which the parties exchange goods for goods. To complete the contract the goods must be delivered, for without a delivery, the right of property is not changed.

2. This contract differs from a sale in this, that barter is always of goods for goods, whereas a sale is an exchange of goods for money. In the former there never is a price fixed, in the latter a price is indispensable. All the differences which may be pointed out betwen these two contracts, are comprised in this; it is its necessary consequence. When the contract is an exchange of goods on one side, and on the other side the consideration is partly goods and partly money, the contract is not a barter, but a sale. See Price; Sale.

3. If an insurance be made upon returns from a country where trade is carried on by barter, the valuation of the goods in return shall be made on the cost of those given in barter, adding all charges. Wesk. on Ins. 42. See 3 Camp. 351 Cowp. 818; 1 Dougl. 24, n.; 1 N. R. 151 Tropl. de l'Echange.

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

BASE. Something low; inferior. This word is frequently used in composition; as base court, base estate, base fee, &c.

BASE COURT. An inferior court, one not of record. Not used.

BASE ESTATE, English law. The estate which base tenants had in their lands. Base tenants were a degree above villeins, the latter being compelled to perform all the commands of their lords; the former did not hold their lands by the performance of such commands. See Kitch. 41.

BASE FEE, English law. A tenure in fee at the will of the lord. This was distinguished from socage free tenure. See Co. Litt. 1, 18.

BASILICA, civil law. This is derived from a Greek word, which signifies imperial constitutions. The emperor Basilius, finding the Corpus Juris Civilis of Justinian too long and obscure, resolved to abridge it, and under his auspices the work proceeded to the fortieth book, which, at his death, remained unfinished. His son and successor, Leo, the philosopher, continued the work, and published it in sixty books, about the year 880. Constantine Porphyro−genitus, younger brother of Leo, revised the work, re−arranged it, and republished it, Anno Domini, 910. From that time the laws of Justinian ceased to have any force in the eastern empire, and the Basilica were the foundation of the law observed there till Constantine XIII, the last of the Greek emperors, under whom, in 1453, Constantinople was taken by Mahomet the Turk, who put an end to the empire and its laws. Histoire de la Jurisprudence Etienne, Intr. a 1'etude du Droit Romain, _LIII. The Basilica were written in Greek. They were translated into Latin by J. Cujas (Cujacius) Professor of Law in the University of Bourges, and published at Lyons, 22d of January, 1566, in one vol. fo.

BASTARD. A word derived from bas or bast, signifying abject, low, base; and aerd, nature. Minshew, Co. Lit. 244; a. Enfant de bas, a child of low birth. Dupin. According to Blackstone, 1 Com. 454, a bastard in the law sense of the word, is a person not only begotten, but born out of lawful matrimony. This definition does not appear to be complete, inasmuch as it does not embrace the case of a person who is the issue of an illicit connection, during the coverture of his mother. The common law, says the Mirror, only taketh him to be a son whom the marriage proveth to be so. Horne's Mirror, c. 2, _7; see Glanv. lib 8, cap. 13 Bract. 63, a. b.; 2 Salk. 427;, 8 East, 204. A bastard may be perbaps defined to be one who is born of an illicit union, and before the lawful marriage of his parents.

2. A man is a bastard if born, first) before the marriage of his parents; but although he may have been begotten while his parents were single, yet if they afterwards marry, and he is born during the coverture, he is legitimate. 1 Bl. Com. 455, 6. Secondly, if born during the coverture, under circumstances which render it impossible that the hushand of his mother can be his father. 6 Binn. 283; 1 Browne's R. Appx. xlvii.; 4 T. R. 356; Str. 940 Id. 51 8 East, 193; Hardin's R. 479. It seems by the Gardner peerage case, reported by Dennis Le Marebant, esquire, that strong moral improbability that the hushand is not the father, is sufficient to bastardize the issue. Bac. Ab. tit. Bastardy, A, last ed. Thirdly, if born beyond a competent time after the coverture has determined. Stark. Ev. part 4, p. 221, n. a Co. Litt. 123, b, by Hargrave & Butler in the note. See Gestation.

3. The principal right which bastard children have, is that of maintenance from their parents. 1 Bl. Com. 458; Code Civ. of Lo. 254 to 262. To protect the public from their support, the law compels the putative father to maintain his bastard children. See Bastardy; Putative father.

4. Considered as nullius filius, a bastard has no inheritable blood in him, and therefore no estate can descend. to him; but he may take by testment, if properly described, after he has obtained a name by reputation. 1 Rop. Lew. 76, 266; Com. Dig. Descent, C, l2; Ie. Bastard, E; Co. Lit. 123, a; Id. 3, a; 1 T. R. 96 Doug. 548 3 Dana, R. 233; 4 Pick. R. 93; 4 Desaus. 434. But this hard rule has been somewhat mitigated in some of the states, where, by statute, various inheritable qualities have been conferred upon bastards. See 5 Conn. 228; 1 Dev. Eq. R. 345; 2 Root, 280; 5 Wheat.. 207; 3 H. & M. 229, n;
5 Call. 143; 3 Dana, 233.

5. Bastards can acquire the rights of legitimate children only by an act of the legislature. 1 Bl. Com. 460; 4 Inst. 36.

6. By the laws of Louisiana, a bastard is one who is born of an illicit union. Civ. Code of Lo. art. 27, 199. There are two sorts of illegitimate cbildren; first, those who are born of two persons, who, at the moment such children were conceived, might have legally contracted marriage with each other; and, secondly, those who are born from persons, to whose marriage there existed at the time, some legal impediment. Id. art. 200. An adulterous bastard is one produced by an unlawful connexion between two persons, who, at the time he was conceived, were, either of them, or both, connected by marriage with some other person or persons. Id. art. 201. Incestuous bastards are those who are produced by the illegal connexion of two persons who are relations within the degrees prohibited by law. Id. art. 202.

7. Bastards, generally speaking, belong to no family, and have no relations; accordingly they are not subject to paternal authority, even when they have been acknowledged. See 11 East, 7, n. Nevertheless, fathers and mothers owe alimony. to their children when they are in need. Id. art. 254, 256. Alimony is due to bastards, though they be adulterous or incestuous, by the mother and her ascendants. Id. art. 262.

8. Children born out of marriage, except those who are born from an incestuous or adulterous connexion, may be legitimated by the subsequent marriage of their father and mother, whenever the latter have legally acknowledged them for their children, either before the marriage or by the contract of marriage itself. Every other mode of legitimating children is abolished. Id. art. 217. Legitimation may even be extended to deceased children who have left issue, and in that ease, it enures to the benefit of that issue. Id. art. 218. Children legitimated by a subsequent marriage, have the same rights as if born during the marriage. Id. art. 219. See, generally, Vin. Abr. Bastards Bac. Abr. Bastard; Com. Dig. Bastard; Metc. & Perk. Dig. h. t.; the various other American Digests, h. t.; Harr. Dig. h. t.; 1 Bl. Com. 454 to 460; Co. Litt. 3, b.; Bouv. Inst. Index, h. t., And Access; Bastardy; Gestation; Natural Children.

BASTARD EIGNE', Eng. law. Elder bastard. By the old English law, when, a man had a bastard son, and he afterwards married the mother, and by her had a legitimate son, the first was called a bastard eigne, or, as it is now spelled, aine, and the second son was called puisne, or since born, or sometimes he was called mulier puisne. See

Mulier; Eigne, 2 Bl. Com. 248.

BASTARDY, crim. law. The offence of begetting a bastard child.

BASTARDY, persons. The state or condition of a bastard. The law presumes every child legitimate, when born of a woman in a state of wedlock, and casts the onus probandi (q. v.) on the party wlio affirms the bastardy. Stark. Ev. h. t.

BASTON. An old French word, which signifies a staff, or club, In some old English statutes the servants or officers of the wardens of the Fleet are so called, because they attended the king's courts with a red staff. Vide Tipstaff.

BATTEL, in French Bataille; Old English law. An ancient and barbarous mode of trial, by Bingle combat, called wager of battel, where, in appeals of felony, the appellee might fight with the appellant to prove his innocence. It was also used in affairs of chivalry or honor, and upon civil cases upon certain issues. Co. Litt. 294. Till lately it disgraced the English code. This mode of trial was abolished in England by stat. 59 Geo.,III. c. 46.

2. This mode of trial was not peculiar to England. The emperor Otho, A. D. 983, held a diet at Verona, at which several sovereigns and great lords of Italy, Germany and France were present. In order to put a stop to the frequent perjuries in judicial trials, this diet substituted in all cases, even in those which followed the course of the Roman law, proof by combat for proof by oath. Henrion de Pansey, Auth. Judic. Introd. c. 3; and for a detailed account of this mode of trial see Herb. Antiq. of the Inns of Court, 119−145.

BATTERY. It is proposed to consider, 1. What is a battery; 2. When a battery, may be justified.

2. _1. A battery is the unlawful touching the person of another by the aggressor himself, or any other substance put in motion by him. 1 Saund. 29, b. n. 1; Id. 13 & 14, n. 3. It must be either wilfully committed, or proceed from want of due care. Str. 596; Hob. 134; Plowd. 19 3 Wend. 391. Hence an injury, be it never so small, done to the person of another, in an angry, spiteful, rude or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him, are batteries in the eye of the law. 1 Hawk. P. C. 263. See 1 Selw. N. P. 33, 4. And any thing attached to the person partakes of its inviolability if, therefore, A strikes a cane in the hands of B, it is a battery. 1 Dall. 1 14 1 Ch. Pr. 37; 1 Penn. R. 380; 1 Hill's R. 46; 4 Wash. C. C. R. 534 . 1 Baldw. R. 600.

3. − _2. A battery may be justified, 1. on the ground of the parental relation 2. in the exercise of an office; 3. under process of a court of justice or other legal tribunal 4. in aid of an authority in law; and lastly, as a necessary means of defence.

4. First. As a salutary mode of correction. For example: a parent may correct his child, a master his apprentice, a schoolmaster his scholar; 24 Edw. IV.; Easter, 17, p. 6 and a superior officer, one under his command. Keilw. pl. 120, p. 136 Bull. N. P. 19 Bee, 161; 1 Bay, 3; 14 John. R. 119 15 Mass. 365; and vide Cowp. 173; 15 Mass. 347.

5. − 2. As a means to preserve the peace; and therefore if the plaintiff assaults or is fighting with another, the defendant may lay hands upon him, and restrain him until his anger is cooled; but he cannot strike him in order to protect 'the party assailed, as he way in self−defence. 2 Roll. Abr. 359, E, pl. 3.

6. − 3. Watchmen may arrest, and detain in prison for examination, persons walking in the streets by might, whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. 3 Taunt. 14.

7. − 4. Any person has a right to arrest another to prevent a felony.

8. − 5. Any one may arrest another upon suspicion of felony, provided a felony has actually been committed and there is reasonable ground for suspecting the person arrested to be the criminal, and that the party making the arrest, himself entertained the suspicion.

9. − 6. Any private individual may arrest a felon. Hale's P. C. 89.

10. − 7. It is lawful for every man to lay hands on another to preserve public decorum; as to turn him out of church, and to prevent him from disturbing the congregation or a funeral ceremony. 1 Mod. 168; and see 1 Lev. 196; 2 Keb. 124. But a request to desist should be first made, unless the urgent necessity of the case dispenses with it.

11. Secondly. A battery may be justified in the exercise of an office. 1. A constable may freshly arrest one who, in, his view, has committed a breach of the peace, and carry him before a magistrate. But if an offence has been committed out of the constable's sight, he cannot arrest, unless it amounts to a felony; 1 Brownl. 198 or a felony is likely to ensue. Cro. Eliz. 375.

12. − 2. A justice of the peace may generally do all acts which a constable has authority to perform hence he

may freshly arrest one who, in his view has broken the peace; or he may order a constable at the moment to take him up. Kielw. 41.

13. Thirdly. A battery may be justified under the process of a court of justice, or of a magistrate having competent jurisdiction. See 16 Mass. 450; 13 Mass. 342.

14. Fourthly. A battery may be justified in aid of an authority in law. Every person is empowered to restrain breaches of the peace, by virtue of the authority vested in him by the law.

15. Lastly. A battery may be justified as a necessary means of defence. 1. Against the plaintiffs assaults in the following instances: In defence of himself, his wife, 3 Salk. 46, his child, and his servant. Ow. 150; sed vide 1 Salk. 407. So, likewise, the wife may justify a battery in defending her hushand; Ld. Raym. 62; the child its parent; 3 Salk. 46; and the servant his master. In these situations, the party need not wait until a blow has been given, for then he might come too late, and be disabled from warding off a second stroke, or from protecting the person assailed. Care, however, must be taken, that the battery do not exceed the bounds of necessary defence and protection; for it is only permitted as a means to avert an impending evil, which might otherwise overwhelm the party, and not as a punishment or retaliation for the injurious attempt. Str. 953. The degree of force necessary to repel an assault will naturally depend upon, and be proportioned to, the violence of the assailant; but with this limitation any degree is justifiable. Ld. Raym. 177; 2 Salk. 642.

16. − 2. A battery may likewise be justified in the necessary defence of one's property; if the plaintiff is in the act of entering peaceably upon the defendant's land, or having entered, is discovered, not committing violence, a request to depart is necessary in the first instance; 2 Salk. 641; and if the plaintiff refuses, the defendant may then, and not till then, gently lay hands upon the plaintiff to remove him from the close and for this purpose may use, if necessary, any degree of force short of striking the plaintiff, as by thrusting him off. Skinn. 228. If the plaintiff resists, the defendant may oppose force to force. 8 T. R. 78. But if the plaintiff is in the act of forcibly entering upon the land, or having entered, is discovered subverting the soil, cutting down a tree or the like, 2 Salk. 641, a previous request is unnecessary, and the defendant may immediately lay hands upon the plaintiff. 8 T. R. 78. A man may justify a battery in defence of his personal property, without a previous request, if another forcibly attempt to take away such property. 2 Salk. 641. Vide Rudeness; Wantonness.

BATTURE. An elevation of the bed of a river under the surface of the water; but it is sometimes used to signify the same elevation when it has risen above the surface. 6 M. R. 19, 216. The term battures is applied, principally, to certain portions of the bed of the river Mississippi, which are left dry when the water is low, and are covered again, either in whole or in part by the annual swells. The word battures, in French, signifies shoals or shallows, where there is not water enough for a ship to float. They are otherwise called basses or brisans. Neuman's Marine Pocket Dict.; Dict. de Trevoux.

BAWDY−HOUSE, crim. law. A house of ill−fame, (q. v.) kept for the resort and unlawful commerce of lewd people of both sexes.

2. Such a house is a common nuisance, as it endangers the public peace by drawing together dissolute and debauched persons; and tends to corrupt both sexes by an open profession of lewdness. 1 Russ. on Cr.; 299: Bac. Ab. Nuisances, A; Hawk. B. 1, c. 74, _1−5.

3. The keeper of such a house may be indicted for the nuisance; and a married woman, because such houses are generally kept by the female sex, may be indicted with her hushand for keeping such a house. 1 Salk. 383; vide Dane's Ab. Index, h. t. One who assists in establishing a bawdyhouse is guilty of a misdemeanor. 2 B. Monroe, 417.

BAY. Is an enclosure to keep in the water for the supply of a mill or other contrivance, so that the water may be able to, drive the wheels of such mill. Stat. 27 Eliz. c. 19.

2. A large open water or harbor where ships may ride, is also called a bay; as, the Chesapeake Bay, the, Bay of New York.

BEACH. The sea shore. (q. v.)

BEACON. A signal erected as a sea mark for the use of mariners; also, to give warning of the approach of an enemy. 1 Com. Dig. 259; 5 Com. Dig. 173.

TO BEAR DATE. In the description of a paper in a declaration, to say it bears date such a day, is to aver that such date is upon it; and if, on being produced, it is dated at another day, the variance will be fatal. But if it be averred it was made on such a day, and upon its production it bears date on another day, it will not be a variance, because it might have been made one day and dated another. 3 Burr. 904.

BEADLE. Eng. law. A messenger or apparitor of a court, who cites persons to appear to what is alleged against them, is so called.

BEARER. One who bears or carries a thing.

2. If a bill or note be made payable to bearer, it will pass by delivery only, without endorsement; and whoever fairly acquires a right to it, may maintain an action against the drawer or acceptor.

3. It has been decided that the bearer of a bank note, payable to bearer, is not an assignee of a chose in action within the 11th section of the judiciary act of, 1789, c. 20, limiting the jurisdiction of the circuit court. 3 Mason, R. 308.

4. Bills payable to bearer are contra−distinguished from those payable to order, which can be transferred only by endorsement and delivery.

5. Bills payable to fictitious payees, are considered as bills payable to, bearer.

BEARERS, Eng. crim. law. Such as bear down or oppress others; maintainers. In Ruffhead's Statutes it is employed to translate the French word emparnours, which signifies, according to Kelham, undertakers of suits. 4 Ed. III. c. 11. This word is no longer used in this sense.

BEARING DATE. These words are frequently used in conveyancing and in pleading; as, for example, a certain indenture bearing date the first day of January, 1851, which signifies not that the indenture was made on that day, but simply that such date has been put to it.

2. When in a declaration the plaintiff alleges that the defendant made his promissory note on such a day, he will not be considered as having alleged it bore date on that day, so as to cause a variance between the declaration and the note produced bearing a different date. 2 Greenl. Ev. _1610; 2 Dowl. & L. 759.

BEAU PLEADER, Eng. law. Fair pleading. See Stultiloquium.

2. This is the name of a writ upon the statute of Marlbridge, 52 H. III. c. 11, which 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. Now Nat. Br. 596 2 Inst. 122; Termes de la Le 2 Reeves' Hist. Eng. Law, 70 Cowel; Crabb's Hist. of the Eng. Law, 150. The explanations given of this term are not very satisfactory.

BEDEL, Eng. law. A cryer or messenger of a court, who cites men to appear and answer. There are also inferior officers of a parish or liberty who bear this name.

BEE. The name of a well known insect.

2. Bees are considered ferae naturae while unreclaimed; and they are not more subjects of property while in their natural state, than the birds which have their nests on the tree of an individual. 3 Binn. R. 546 5 Sm. & Marsh. 333. This agrees with the Roman law. Inst. 2 1, 14; Dig. 41, 1, 5, 2; 7 Johns. Rep. 16; 2 Bl. Com. 392 Bro. Ab. Propertie, 37; Coop. Justin. 458.

3. In New York it has been decided that bees in a tree belong, to the owner of the soil, while unreclaimed. When they have been reclaimed, and the owner can identify them, they belong to him, and not to the owner of the soil. 15 Wend. R. 550. See 1 Cowen, R. 243.

BEGGAR. One who obtains his livelihood by asking alms. The laws of several of the states punish begging as an offence.

BEHAVIOUR. In old English, haviour without the prefix be. It is the manner of having, holding, or keeping one's self or the carriage of one's self with respect to propriety, morals, and the requirements of law. Surety to be of −good behaviour is a larger requirement than surety to keep the peace. Dalton, c. 122; 4 Burn's J. 355.

BEHOOF. As a word of discourse, Signifies need, (egestas, necessitas, indigentia.) It comes from behoove, (Sax. behoven,) to need or have need of. In a secondary sense, which is the law sense of the word, it signifies use, service, profit, advantage, (interesse, opus.) It occurs in conveyances of land in fee simple.

BELIEF. The conviction of the mind, arising from evidence received, or from information derived, not from actual perception by our senses, but from. the relation or information of others who have had the means of acquiring actual knowledge of the facts and in whose qualifications for acquiring that knowledge, and retaining it, and afterwards in communicating it, we can place confidence. " Without recurring to the books of metaphysicians' "says Chief Justice Tilghman, 4 Serg. & Rawle, 137, "let any man of plain common sense, examine the operations of, his own mind, he will assuredly find that on different subjects his belief is different. I have a firm belief that, the moon revolves round the earth. I may believe, too, that there are mountains and valleys in the moon; but this

belief is not so strong, because the evidence is weaker." Vide 1 Stark. Ev. 41; 2 Pow. Mortg. 555; 1 Ves. 95; 12 Ves. 80; 1 P. A. Browne's R 258; 1 Stark. Ev. 127; Dyer, 53; 2 Hawk. c. 46, s. 167; 3 Wil. 1, s. 427; 2 Bl. R. 881; Leach, 270; 8 Watts, R. 406; 1 Greenl. Ev. _7−13, a.

BELOW. Lower in place, beneath, not so high as some other thing spoken of, of tacitly referred to.

2. The court below is an inferior court, whose, proceedings may be examined on error by a superior court, which is called the court above.

3. Bail below is that given to the sheriff in bailable actions, which is so called to distinguish it from bail to t−he action, which is called bail above. See Above; Bail above; Bail below.

BENCH. Latin Bancus, used for tribunal. In England there are two courts to which this word is applied. Bancus Regius, King's Bench Bancus Communis, Com−
mon Bench or Pleas. The jus banci, says Spelman, properly belongs to the king's judges, who administer justice in the last resort. The judges of the inferior courts, as of the barons, are deemed to, judge plano pede, and are such as are called in the civil law pedanei judices, or by the Greeks Xauaidixastai, that is, humi judicantes. The Greeks called the seats of their higher judges Bumata, and of their inferior judges Bathra. The Romans used the word sellae and tribunalia, to designate the seats of their higher judges, and subsellia, to designate those of the lower. See Spelman's Gloss. (ad verb.) Bancus; also, 1 Reeves Hist. Eng. Law, 40, 4to ed., and postea Curia Regis.

BENCH WARRANT, crim. law. The name of a process sometimes given to an attachment issued by order of a criminal court, against an individual for some contempt, or for the purpose of arresting a person accused; the latter is seldom granted unless when a true bill has been found.

BENCHER, English law. A bencher is a senior in the inns of court, entrusted
with their government and direction.

BENEFICE, eccles. law. In its most extended sense, any ecclesiastical preferment or dignity; but in its more limited sense, it is applied only to rectories and vicarages.

BENEFICIA. In the early feudal times, grants were made to continue only during the pleasure of the grantor, which were called munera, (q. v.) but soon afterwards these grants were made for life, and then they assumed the name of beneficia. Dalr. Feud. Pr. 199. Pomponius Laetus, as cited by Hotoman, De Feudis, ca. 2, says, " That it was an ancient custom, revived by the emperor Constantine, to give lands and villas to those generals, prefects, and tribunes, who had grown old in enlarging the empire, to supply their necessities as long as they lived, which they called. parochial parishes, &c. But, between (feuda) fiefs or feuds, and (parochias) parishes, there was this difference, that the latter were given to old men, veterans, &c., who, as they had deserved well of the republic, sustained the rest of their life (publico beneficio) by the public benefaction; or, if any war afterwards arose, they were called out, not so much as soldiers, as leaders, (majistri militum.) Feuds, (feuda,) on the other hand, were usually given to robust young men who could sustain the labors of war. In later times, the word parochia was appropriated exclusively to ecclesiastical persons, while the word beneficium (militare) continued to be used in reference to military fiefs or fees.

BENEFICIAL. Of advantage, profit or interest; as the wife has a beneficial interest in property held by a trustee for her. Vide Cestui que trust.

BENEFICIAL INTEREST. That right which a person has in a contract made with another; as if A makes a contract with B that he will pay C a certain sum of money, B has the legal interest in the contract, and C the beneficial interest. Hamm. on Part. 6, 7, 25 2 Bulst. 70.

BENEFICIARY. This term is frequently used as synonymous with the technical phrase cestui que trust. (q. v.)

BENEFICIO PRIMO ECCLESIASTICO HABENDO, Eng. eccl. law. A writ directed from the king to the chancellor, commanding him to bestow the benefice which shall first fall in the king's gift, above or under a certain value, upon a particular and certain person.

BENEFICIUM COMPETENTIAE. The right which an insolvent debtor had, among the Romans, on making session of his property for the benefit of his creditors, to retain what was required for him to live honestly according to his condition. 7 Toull. n. 258.

BENEFIT. This word is used in the same sense as gain (q. v.) and profits. (q. v.) 20 Toull. n. 199.

BENEFIT OF CESSION, 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. Proced. Civ. 5eme part., c. 2, _1. This was something like a discharge under the insolvent laws, which releases the person of the debtor, but not the goods he may acquire afterwards. See Bankrupt; Cessio Bo. Insolvent.

BENEFIT OF CLERGY, English law. An exemption of the punishment of death which the laws impose on the commission of certain crimes, on the culprit demanding it. By modern statute's, benefit of clergy was rather a substitution of a more mild punishment for the punishment of death.

2. It was lately granted, not only to the clergy, as was formerly the case, but to all persons. The benefit of clergy seems never to have been extended to the crime of high treason, nor to have embraced misdemeanors inferior to felony. Vide 1 Chit. Cr. Law, 667 to 668 4 Bl. Com. ch. 28. But this privilege improperly given to the clergy, because they had more learning than others) is now abolished by stat. 7 Geo. IV. c. 28, s. 6.

3. By the Act of Congress of April 30, 1790, it is provided, _30, that the benefit of clergy shall not be used or allowed, upon conviction of any crime, for which, by any statute of the United States, the punishment is, or shall be declared to be, death.

BENEFIT OF DISCUSSION, 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. See Civil Code of Lo. art. 3014 to 3020, and Discussion.

BENEFIT OF DIVISION. In the civil law, which, in this respect, has been adopted in Louisiana, although, when there are several sureties, each one is bound for the whole debt, yet when one of them is sued alone, he has a right to have the debt apportioned among all the solvent sureties on the same obligation, so that he shall be compelled to pay his own share only. This is called the benefit of division. Civil Code of Lo. art. 3014 to 3020. See 2 Bouv. Inst. n. 1414.

BENEFIT OF INVENTORY, civil law. The benefit of inventory is 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, in causing an inventory of these effects within the time and manner proscribed by law. Civil Code of Louis. art. 1025. Vide Poth. Traits des Successions, c. 3, s. 3, a. 2.

BENEVOLENCE, duty. The doing a kind action to another, from mere good will, without any legal obligation. It is a moral duty only, and it cannot be enforeed by law. A good wan is benevolent to the poor, but no law can compel him to be so.

BENEVOLENCE, English law. An aid given by the subjects to the king under a pretended gratuity, but in realty it was an extortion and imposition.

TO BEQUEATH. To give personal property by will to another.

BEQUEST. A gift by last will or testament; a legacy. (q. v.) This word is sometimes, though improperly used, as synonymous with devise. There is, however, a distinction between them. A bequest is applied, more properly, to a gift by will of a legacy, that is, of personal property; devise is properly a gift by testament of real property. Vide Devise.

BESAILE or BESAYLE, domestic relations. The grea−grandfather, proavus. 1 Bl. Com. 186. Vide dile.

BEST EVIDENCE. Means the best evideince of which the nature of the case admits, not the highest or strongest evidence which the nature of the thing to be proved admits of: e. g. a copy of a deed is not the best evidence; the deed itself is better. Gilb. Ev. 15; 3 Campb.. 236; 2 Starkey, 473 2 Campb. 605; 1 Esp. 127.

2. The rule requiring the best evidence to be produced, is to be understood of the best legal evidence. 2 Serg. & R. 34; 3 Bl. Com. 368, note 10, by Christian. It is relaxed in some cases, as, e. g. where the words or the act of the opposite party avow the fact to be proved. A tavern keeper's sign avows his occupation; taking of tithes avows the clerical character; so, addressing one as The Reverend T. S." 2 Serg. & R. 440 1 Saund. on Plead. & Evid. 49.

BETROTHMENT. A contract between a man and a woman, by which they agree that at a future, time they will marry together.

2. The requisites of this contract are 1. That it be reciprocal. 2. That the parties be able to contract.

3. The contract must be mutual; the Promise of the one must be the consideration for the promise of the other. It must be obligatory on both parties at the same instant, so that each may have an action upon it, or it will bind neither. 1 Salk. 24, Carth. 467; 5 Mod. 411; 1 Freem. 95; 3 Keb. 148; Co. Lit. 79 a, b.

4. The parties must be able to contract. if either be married at the time of betrothment, the contract is void; but the married party cannot take advantage of his own wrong, and set up a marriage or previous engageinent, as an answer to the action for the breach of the contract, because this disability proceeds from the defendant's own act. Raym. 387 3 Just. 89; I Sid. 112 1 Bl. Com. 438.

5. The performance of this engagement or completion of the marriage, must be performed within a reasonable time. Either party may, therefore, call upon the other to fulfil the engagement, and in case of refusal or neglect to

do so, within a reasonable time after request made, may treat the betrothment as at an end, and bring action for the breach of the contract. 2 C. & P. 631.

6. For a breach of the betrothment, without a just cause, an action on the case may be maintained for the recovery of damages. See Affiance; Promise of Marriage.

BETTER EQUITY. In England this term has lately been adopted. In the case of Foster v. Blackston, the master of the rolls said, be could no where find in the authorities what in terms was a better equity, but on a reference to all the cases, he considered it might be thus defined: If a prior incumbrancer did not take a security which effectually protected him against any subsequent dealing to his prejudice, by the party who had the legal estate, a second incumbrancer, taking a security which in its nature afforded him that protection, had what might properly be called a better equity. 1 Ch. Pr. 470, note. Vide 4 Rawle, R. 144 3 Bouv. Inst. n. 2462.

BETTERMENTS. Improvement's made to an estate. It signifies such improvements as have been made to the estate which render it better than mere repairs. See 2 Fairf. 482; 9 Shepl. 110; 10 Shepl. 192; 13 Ohio, R. 308; 10 Yerg. Verm. 533; 17 Verm. 109.

BEYOND SEA. This phrase is used in the acts of limitations of several of the states, in imitation of the phraseology of the English statute of limitations. In Pennsylvania, the term has been construed to signify out of the United States. 9 S. & R. 288; 2 Dall. R. 217; 1 Yeates, R. 329. In Georgia, it is equivalent to without the limits of the state; 3 Wheat. R. 541; and the same construction prevails in Maryland; 1 Har. & John. 350; 1 Harr. & M'H. 89; in South Carolina; 2 McCord, Rep. 331; and in Massachusetts. 3 Mass. R. 271; 1 Pick. R. 263. Vide Kirby, R. 299; 3 Bibb. R. 510; 3 Litt. R. 48; 1 John. Cas. 76. Within the four seas, infra quatuor maria, and beyond the four seas, extra quatuor maria, in English law books signify within and without the kingdom of England, or the jurisdiction of the king of England. Co. Lit. 244 a; 1 Bl. Com. 457.

BIAS. A particular influential power which sways the judgment; the inclination or propensity of the mind towards a particular object.

2. Justice requires that the judge should have no bias for or against any individual; and that his mind should be perfectly free to act as the law requires.

3. There is, however, one kind of bias which the courts suffer to influence them in their judgments it is a bias favorable to a class of cases, or persons, as distinguished from an individual case or person. A few examples will explain this. A bias is felt on account of convenience. 1 Ves. sen. 13, 14; 3 Atk. 524. It is also felt in favor of the heir at law, as when there is an heir on one side and a mere volunteer on the other. Willes, R. 570 1 W. Bl. 256; Amb. R. 645; 1 Ball & B. 309 1 Wils. R. 310 3 Atk. 747 Id. 222. On the other hand, the court leans against double portions for children; M'Clell. R. 356; 13 Price, R. 599 against double provisions, and double satisfactions; 3 Atk. R. 421 and against forfeitures. 3 T. R. 172. Vide, generally, 1 Burr. 419 1 Bos. & Pull. 614; 3 Bos. & Pull. 456 Ves. jr. 648 Jacob, Rep. 115; 1 Turn. & R. 350.

BID, contracts. A bid is an offer to pay a specified price for an article about to be sold at auction. The bidder has a right to withdraw his bid at any time before it is accepted, which acceptance is generally manifested by knocking down the hammer. 3 T. R. 148; Hardin's Rep. 181; Sugd. Vend. 29; Babington on Auct. 30, 42; or the bid may be withdrawn by implication. 6 Penn. St. R. 486; 8, Id. 408. Vide 0ffer.

BIDDER, contracts. One who makes an offer to pay a certain price for an article which is for sale.

2. The term is applied more particularly to a person who offers a price for goods or other property, while up for sale at an auction. The bidder is required to act in good faith, and any combination between him and others, to prevent a fair competition, would avoid the sale made to himself.

3. But there is nothing illegal in two or more persons agreeing together to purchase a property at sheriff's sale, fixing a certain price which they are. willing to give, and appointing one of their number to be the bidder. 6 Watts & Serg. 122.

4. Till the bid is accepted, the bidder may retract it. Vide articles, Auction and Bid; 3 John. Cas. 29 6 John. R. 194; 8 John. R. 444 1 Fonbl. Eq. b. 1, c. 4, _4, note (x).

BIENS. A French word, which signifies property. In law, it means property of every description, except estates of freehold and inheritance. Dane's Ab. c. 133, a, 3 Com. Dig. h. t.; Co. Litt. 118, b; Sugd. Vend. 495.

2. In the French law, this term includes all kinds of property, real and personal. Biens are divided into biens meubles, movable or personal property; and biens immeubles, immovable property or real estate. This distinction between movable and immovable property, is, however, recognized by them, and gives rise in the civil, as well as in the common law, to many important distinctions as to rights and remedies. Story, Confl. of Laws, _13, note 1.

BIGAMUS, Canon law, Latin. One guilty of bigamy.

BIGAMY, crim. law, domestic relations. The wilful contracting of a second marriage when the contracting party knows that the first is still subsisting; or it is the state of a man who has two wives, or of a woman who has two hushands living at the same time. When the man has more than two wives, or the woman more than two hushands living at the same time, then the party is said to have committed polygamy, but the name of bigamy is more frequently given to this offence in legal proceedings. 1 Russ. on Cr. 187.

2. In England this crime is punishable by the stat. 1 Jac. 1, c. 11, which makes the offence felony but it exempts from punishment the party whose hushand or wife shall continue to remain absent for seven years before the second marriage, without being heard from, and persons who shall have been legally divorced. The statutory provisions in the U. S. against bigamy or polygamy, are in general similar to, and copied from the statute of 1 Jac. 1, c. 11, excepting as to the punishment. The several exceptions to this statute are also nearly the same in the American statutes, but the punishment of the offence is different in many of the states. 2 Kent, Com. 69; vide Bac. Ab. h. t.; Com. Dig. Justices, _5; Merlin, Repert. mot Bigamie; Code, lib. 9, tit. 9, 1. 18; and lib. 5, tit. 5, 1. 2.

3. According to the canonists, bigamy is three−fold, viz.: (vera, interpretative, et similitudinaria,) real, interpretative and similitudinary. The first consisted in marrying two wives successively, (virgins they may be,) or in once marrying a widow; the second consisted, not in a repeated marriage, but in marrying (v. g. meretricem vel ab alio corruptam) a harlot; the third arose from two marriages indeed, but the one metaphorical or spiritual, the other carnal. This last was confined to persons initiated in sacred orders, or under the vow Of continence. Deferriere's Tract, Juris Canon. tit. xxi. See also Bac. Abr. h. t.; 6 Decret, 1. 12. Also Marriage.

BILAN. A book in which bankers, merchants and traders write a statement of all they owe and all that is due to them. This term is used in the French law, and in the state of Louisiana. 5 N. S; 158. A balance sheet. See 3 N. S. 446, 504.

BILATERAL CONTRACT, civil law. A contract in which both the contracting parties are bound to fulfil obligations reciprocally towards each other; Lec. Elem. _781; as a contract of sale, where one becomes bound to deliver the, thing sold, and the other to pay the price of it. Vide Contract; Synallagmatic contract.

BILINGUIS, English law. One who uses two tongues or languages. Formerly a jury, part Englishmen and part foreigners, to give a verdict between an Englishman and a foreigner. Vide Medietas Linguae, Plowd. 2. It is abolished in Pennsylvania. Act April 14, 1834, _149.

BILL, legislation. An instrument drawn or presented by a member or committee to a legislative body for its approbation and enactment. After it has gone through both houses and received the constitutional sanction of the chief magistrate, where such approbation is requisite, it becomes a law. See Meigs, R. 237.

BILL, chancery practice. A complaint in writing addressed to the chancellor, containing the names of the parties to the suit, both complainant and defendant, a statement of the facts on which the complainant relies, and the allegations which he makes, with an averment that the acts complained of are contrary to equity , and a prayer for relief and proper process. Its office in a chancery suit, is the same as a declaration in an action at law, a libel in a court of admiralty or an allegation in, the spiritual courts.

2. A bill usually consists of nine parts. 1. The address, which must be to the chancellor, court or judge acting as such. 2. The second part consists of the names of the plaintiffs and their descriptions; but the description of the parties in this part of the bill does not, it seems, constitute a sufficient averment, so as to put that fact in issue. 2. Ves. & Bea. 327. 3. The third part is called the premises or stating part of the bill, and contains the plaintiff's case. 4. In the fourth place is a general charge of confederacy. 5. The fifth part consists of allegations of the defendant's pretences, and charges in evidence of them. 6. The sixth part contains the clause of jurisdiction and in averment that the acts complained of are contrary to equity. 7. The seventh part consists of a prayer that the parties answer the premises, which is usually termed the interrogatory part. 8. The prayer for relief sought forms the eighth part. And, 9. The ninth part is a prayer for process. 2 Mad. Ch. 166; Blake's Ch. P. 35; 1 Mitf. Pl. 41. The facts contained in the bill, as far as known to the complainant, must, in some cases, be sworn to be true; and such as are not known to him, he must swear he believes to be true; and it must be signed by counsel; 2 Madd. Ch. Pr. 167; Story, Eq. Pl. _26 to 47; and for cases requiring an affidavit, see, 3 Brow. Chan. Cas. 12, 24, 463; Bunb. 35; 2 Brow. 11 1 Fow. Proc. 256 Mitf. Pl. 51; 2 P. Wms. 451; 3 Id. 77; 1 Atk. 450; 3 Id. 17, 132; 3 Atk. 132 Preced. in Ch. 332 Barton's Equity, 48 n. 1, 53 n. 1, 56 n. 1 2 Brow. Ch. Cas. 281, 319; 4 Id. 480

3. Bills may be divided into three classes, namely: 1. Original bills. 2. Bills not original. 3. Bills in the nature of original bills.

4. − 1. An original bill is one which prays the decree of the court, touching some right claimed by the person exhibiting the bill, in opposition to some right claimed by the person against whom the bill is exhibited. Hinde, 19; Coop. Eq. Pl. 43. Original bills always relate to some matter not before litigated in the court by the same persons, and standing in the same interests. Mitf. Eq. Pl. by Jeremy, 34; Story, Eq. Pl., _16. They may be divided into those which pray relief, and those which do not pray relief.

5. − 1st. Original bills praying relief are of three kinds. First. Bills Praying the decree or order of the court, touching some right claimed by the party exhibiting the bill, in opposition to some right, real or supposed, claimed by the party against whom the bill is exhibited, or touching some wrong done in violation of the plaintiff's right. Mitf. Eq. Pl. 32.

6. − Secondly. A bill of interpleader, is one in which the person exhibiting it claims no right in opposition to the rights claimed by the person against whom the bill is exhibited, but prays the decree of the court touching the rights of those persons, for the safety of the person exhibiting the bill. Hinde, 20; Coop. Eq. Pl. 43; Mitf. Pl. 32. The Practical Register defines it to be a bill exhibited by a third person, who, not knowing to whom he ought of right to render a debt or duty, or pay his rent, fears he may be hurt by some of the claimants, and therefore prays be may interplead, so that the court may judge to whom the thing belongs, and he be thereby safe on the payment. Pr. Reg. 78; Harr. Ch. Pr. 45; Edw. Inj. 393; 2 Paige, 199 Id. 570; 6 John. Ch. R. 445.

7. The interpleader has been compared to the intervention (q. v.) of the civil law. Gilb. For. Rom. 47. But there is a striking difference between them. The tertius in our interpleader in equity, professes to have no interest in the subject, and calls upon the parties who allege they have, to come forward and discuss their claims: the tertius of the civil law, on the other hand, asserts a right himself in the 'Subject, which two persons are at the time actually contesting, and insists upon his right to join in the discussion. A bill of interpleader may be filed, though the party has not been sued at law, or has been sued by one only of the conflicting claimants, or though the claim of one of the defendants is actionable at law, and the other in equity. 6 Johns. Chan. R. 445. The requisites of a bill of this kind are, 1. It must admit the want of interest in the plaintiff in the subject matter of dispute. 2. The plaintiff must annex an affidavit that there is no collusion between him and either of the parties. 3. The bill must contain an offer to bring the money into court, when there is any due; the want of which is a ground of demurrer, unless the money has actually been paid into court. Mitf. Eq. Pl. 49; Coop. Eq. Pl. 49; Barton, Suit in Eq. 47, note 1. 4. The plaintiff should state his own rights, and thereby negative any interest in the thing in controversy; and also should state the several claims of the opposite parties; a neglect on this subject is good cause of demurrer. Mitf. Eq. Pl. by Jeremy, 142; 2 Story on Eq. _821; Story, Eq. Pl. 292. 5. The bill should also show that there are persons in esse capable of interpleading, and setting up opposite claims. Coop. Eq. Pl. 46; 1 Mont. Eq. Pl. 234; Story, Eq. Pl. _295; Story on Eq. _821; 1 Ves. 248. 6. The bill should pray that the defendants set forth their several titles, and interplead, settle, and adjust their demands between themselves. The bill also generally prays an injunction to restrain the proceedings of the claimants, or either of them, at law; and, in this case, the bill should offer to bring the money into court and the court will not in general act upon this part of the prayer, unless the money be actually brought into court. 4 Paige's R. 384 6 John. Ch. R. 445.

8. Thirdly. A bill of certiorari, is one praying the writ of certiorari to remove a cause from an inferior court of equity. Coop. El q. 44. The requisites of this bill are that it state, 1st. the proceedings in the inferior court; 2d. the incompetency of such court, by suggesting that the cause is out of its jurisdiction; or that the witnesses live out of its jurisdiction; or are not able, by age or infirmity, or the distance of the place, to follow the suit there or that, for some other cause, justice is not likely to be done−,
3d. the bill must pray a writ of certiorari, to certify and remove the record and the cause to the superior court. Wyatt, Pr. Reg. 82; Harr. Ch. Pr. 49; Story, Eq. Pl. _298. This bill is seldom used in the United States.

9. − 2d. Original bills not praying relief are of two kinds. First,. Bills to secure evidence, which are bills to perpetuate the testimony of witnesses or bills to examine witnesses de bene esse. These will be separately considered.

10. − 1. A bill to perpetuate the testimony of witnesses, is one which prays leave to examine them, and states that the witnesses are old, infirm, or sick, or going beyond the jurisdiction of the court, whereby the party is in danger of losing the benefit of their testimony. Hinde, 20. It does not pray for relief. Coop. Eq. Pl. 44.

11. In order to maintain such a bill, it is requisite to state on its face all the material facts to support the jurisdiction. It must state, 1. the subject−matter toucbing which the plaintiff is desirous of giving evidence. Rep. Temp. Finch, 391; 4 Madd. R. 8, 10. 2. It must show that the plaintiff has some interest in the subject−matter,

which may be endangered if the testimony in support of it be lost; and a mere expectancy, however strong, is not sufficient. 6 Ves. 260 1 Vern. 105; 15 Ves. 136; Mitf. Eq. Pl. by Jeremy, 51 Coop. Eq. Pl., 52. 3. It must state that the defendant has, or pretends to have, or that he claims an interest to contest the title of the plaintiff in the subject−matter of the proposed testimony. Coop. Pl. 56; Story, Eq. Pl. _302. 4. It must exhibit some ground of necessity for perpetuating the evidence. Story, Eq. Pl. _303 Mitf. Eq. Pl. by Jeremy, 52, 148 and note y; Coop. Eq. Pl. 53. 5. The right of which the bill is brought to perpetuate the evidence or testimony, should be described with reasonable certainty in the bill, so as to point the proper interrogations on both sides to the true merits of the controversy. 1 Vern. 312; Coop. Eq. Pl. 56. 6. It should pray leave to examine the witnesses touching the matter stated, to the end that their testimony maybe preserved and perpetuated. Mitf. Pl

52. A bill to perpetuate testimony differs from a bill to take testimony de bene esse, in this, that the latter is sustainable only when there is a suit already depending, while the former can be maintained only when no present suit can be brought at law by the party seeking the aid of a court to try his right. Story, Eq. Pl. _307. The canonists had a similar rule. According to the canon law, witnesses could be examined before any action was commenced, for fear that their evidence might be lost. x, cap. 5 Boehmer, n. 5 8 Toull. n. 23.

12. − 2. Bill to take testimony de bene esse. This bill, the name of which is sufficiently descriptive of its object, is frequently confounded with a bill to perpetuate testimony; but although it bears a close analogy to it, ,it is very different. Bills to perpetuate testimony can be maintained only, when no present suit can be maintained at law by the party seeking the aid of the court to try his right; whereas bills to take testimony de bene esse, are sustainable only in aid of a suit already depending. 1 Sim. & Stu. 83. The latter may be brought by a person who is in possession, or out of possession; and whether he be plaintiff or defendant in the action at law. Story, Eq Pl. _307 and 303, note; Story on Eq. 1813, note 3. In many respects the rules which regulate the framing of bills to perpetuate testimony, are applicable to bills to take testimony ae bene esse.

13. − Secondly. A bill of discovery, emphatically so called, is one which prays for the discovery of facts resting within the knowledge of the person against whom the bill is exhibited, or of deeds, writings, or other things in his custody or power. Hinde, 20; Blake’s Ch. Pr. 37. Every bill, except the bill of certiorari, may in truth, be considered a bill of discovery, for every bill seeks a disclosure of circumstances relative to the plaintiff’s case; but that usually and emphatically distinguished by this appellation is a bill for the discovery of facts, resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power, and seeking no relief in consequence of the discovery.

14. This bill is commonly used in aid of the jurisdiction of some other court as to enable the plaintiff Ito prosecute or defend an action at law. Mitf. Pl. 52. "The plaintiff, in this species of bill, must be entitled to the discovery he seeks, and shall only have a discovery of what is necessary for his own title, as of deeds he claims under, and not to pry into that of the defendant. 2 Ves. 445. See Blake’s Ch. Pr. 45 Mitf. Pl. 52 Coop. Eq. Pl. 58 1 Madd. Ch. Pr. 196 Hare on Disc. passim Wagr. on Disc. passim.

15. The action ad exhibendum, in the Roman law, was not unlike a bill of discovery. Its object was to force the party against whom it was instituted, to exhibit a thing or a title in his power. It was always preparatory to another, which was always a real action in the sense of the word in the Roman law. See Action ad exhibendum; Merlin, Questions de Droit, tome i. 84.

16. − II . Bills not original. These are either in addition to, or a continuance of an original bill, or both. Mitf. c. 1, s . 2; Story, Eq. Pl. _388; .4 Bouv. Inst. n. 4100.

17. − 1st. Of the first class are, 1. A supplemental bill. This bill is occasioned by some defect in a suit already instituted, whereby the parties cannot obtain complete justice, to which otherwise the case by their bill would have entitled them. It is used for the purpose of supplying some irregularity discovered in the formation of the original bill, or some of the proceedings there upon; or some defect in a suit, arising from events happening since the points in the original were at issue, which give an interest toÿ20persons not parties to the suit. Blake’s Ch. Pr. 50. See 3 Johns. Ch. R. 423.

18. It is proper to consider more minutely 1. in what cases such a bill may be filed; 2. its particular requisites.

19.− 1. A supplemental bill may be filed, 1st. whenever the imperfection in the original bill arises from the omission of some material fact, which existed before the filing of the bill, but the time has passed in which it can be introduced into the bill by amendment,, Mitf. Eq. Pl. 55, 61, 325 but leave of court must be obtained, before a bill which seeks to change the original structure of the bill, and to introduce a new and different case, can be filed. 2d. When a party necessary to the proceedings has been omitted, and cannot be admitted by an amendment. Mitf.

Eq. Pl. 61 6 Madd. R. 369; 4 John. Ch. R. 605. 3d. When, after the court has decided upon the suit as framed, it appears necessary to bring some other matter before the court to obtain the full effect of the decision; or before a decision has been obtained, but after the parties are at issue upon the points in the original bill, and witnesses have been examined, (in which case, an amendment is not in general permitted,) some other point appears necessary to be made, or some additional discovery is found requisite. Mitf. Eq. Pl. by Jeremy, 55; Coop Eq. Pl. 73; 3 Atk. R. 110; 12 Paige, R. 200. 4th. When new events or new matters have occurred since the filing of the bill; Coop. Eq. Pl. 74; these events or matters, however, are confined to such as refer to and support the rights and interests already mentioned in the bill. Story, Eq. Pl. _336.

20. − 2. The supplemental bill must state the original bill, and the proceedings thereon and when it is occasioned by an event which has occurred subsequently to the original bill, it must state that event, and the consequent alteration with regard to the parties. In general, the supplemental bill must pray that all defendants appear and answer the charges it contains. Mitf. Eq. Pl. by Jeremy, 75 Story, Eq. Pl. _343.

21. − 2. A bill of revivor, which is a continuance of the original bill, when by death some party to it has become incapable of prosecuting or defending a suit, or a female plaintiff has by marriage incapacitated herself from suing alone. Mitf. Pl. 33, 70; 2 Madd. Ch. Pr. 526. See 3 Johns. Ch. R. 60: Story, Eq. Pl. _354, et. seq.

22. − 3. A bill of revivor and supplement. This is a compound of a supple−mental 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. 5 Johns. Ch R. 334; Mitf. Pl. 32, 74.

23. − 2d. Among the second class may be placed, 1. A cross bill. This is one which is brought by a defendant in a suit against the plaintiff, respecting the matter in question in that bill. Coop. Eq. Pl. 85 Mitf. Pl. 75.

24. A bill of this kind is usually brought to obtain, either a necessary discovery, or full relief to all the parties. It frequently happens, and particularlly if any questions arises between two defendants to a bill, that the court cannot make a complete decree without a cross bill, or cross bills to
bring every matter in dispute completely before the court, litigated by the proper parties, and upon proper proofs. In this case it becomes necessary for some one of the defendants to the original bill to file a bill against the plaintiff and other defendants in that bill, or some of them, and bring the litigated point properly before the court.

25. A cross bill should state the original bill, and the proceedings thereon, and the rights of the party exhibiting the bill which are necessary to be made the subject of a cross litigation, or the grounds on which he resists the claims of the plaintiff in the original bill, if that is the object of the new
bill.

26. A cross bill may be filed to answer the purpose of a plea puis darrein continuance at the common law. For example, where, pending a suit, and after replication and issue joined, the defendant having obtained a release and attempted to prove it viva voce at the bearing, it was determined that the release not being in issue in the cause, the court could not try the facts, or direct a trial at law for that purpose, and that a new bill must be filed to put the release in issue. Mitf. Pl. 75, 76 Coop. Eq. Pl. 85; 1 Harr. Ch. Pr. 135.

27. A cross bill must be brought before publication is passed on the first bill, 1 Johns. Ch. R. 62, and not after, except the plaintiff in the cross bill go to the hearing on the depositions already published; because of the danger of perjury and subornation, if the parties should, after publication of the former depositions, examine witnesses, de novo, to the same matter before examined into. 7 Johns. Ch. Rep. 250; Nels. Ch. R. 103.

28. − 2. A bill of review. Bills of review are in the nature of writs of error. They are brought to have decrees of the court reviewed, altered, or reversed, and there are two sorts of these bills. The first is brought where the decree has been signed and enrolled and the second, where the decree has not been signed and enrolled. 1 Ch. Cas. 54; 3 P. Wms. 371. The first of these is called, by way of preeminence, a bill of review; while the other is distinguished by the appellation of a bill in the nature of a bill of review, or a supplemental bill iii the nature of a bill of review. Coop. Eq. Pl. 88; 2 Madd. Ch. Pr. 537.

29. A bill of review must be either for error in point of law; 2 Johns. C. R. 488; Coop. Eq. Pl. 89; or for some new matter of fact, relevant to the case, discovered since publication passed in the cause; and which could not, with reasonable diligence, have been discovered before. 2 Johns. C. R. 488; Coop. Eq. Pl. 94. See 3 Johns. R. 124,

30. − 3. Bill to impeach a decree on the ground of fraud. When a decree has been obtained by fraud, it may be impeached by original bill, without leave of court. As the principal point in issue, is the fraud in obtaining it, it must be established before the propriety of the decree can be investigated, and the fraud must be distinctly stated

in the bill. The prayer must necessarily be varied according to the nature of the fraud used, and the extent of its operation in obtaining an improper decision of the court. When the decree to set aside a fraudulent decree has been obtained, the court will restore the parties to their former situation, whatever their rights may be. Mitf. Eq. Pl. 84; Sto. Eq. Pl. _426.

31. − 4. Bill to suspend a decree. The operation of a decree may be suspended under special circumstances, or avoided by matter subsequent to the decrees upon a new bill for that purpose. See 1 Ch. Cas. 3, 61 2 Ch . Cal 8 Mitf. Eq. Pl. 85 , 86.

32. − 5. Bill to carry a decree into execution. This is 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. Hinde, 68; 1 Harr. Ch. 148.

33. − 6. Bills partaking of the qualities of some one or more of other bills. These are,

34. First. Bill in the nature of a bill of revivor. A bill in the nature of a bill of revivor, is one which is filed when the death of a party, whose interest is not determined by his death, is attended with such a transmission of his interest, that the title to it, as well as the person entitled, may be litigated in the court of chancery, as in the case of a devise of real estate, the suit is not permitted to be continued by bill of revivor. 1 Ch. Cas. 123; Id. 174; 3 Ch. Rep. 39; Mosely, R. 44. In such cases an original bill, upon which the title may be litigated, must be filed, and this bill will have so far the effect of a bill of revivor, that if the, title of the representative by the act of the deceased party is established, the same benefit may be had of the proceedings upon the former bill, as if the suit had been continued by bill of revivor. 1 Vern. 427; 2 Vern. 548 Id. 672; 2 Bro. P. C. 529; 1 Eq. Cas. Ab. 83; Mitf. Pl. 66, 67.

35. Secondly. Bill in the nature. of a supplemental bill. An original bill in the nature of a supplemental bill, is one filed when the interest of the plaintiff or defendant, suing or defending, wholly determines, and the same property becomes vested in another person not claiming under him. Hinde, 71; Blake’s Ch. Pr. 38. The principal difference between this and a supplemental bill, seems to be, that a supplemental bill is applicable to such cases only, where the same parties or the same interests remain before the court; whereas, an original bill in the nature of a supplemental bill, is properly applicable where new parties, with new interests, arising from events occurring since the institution of the suit, are brought before the court. Coop. Eq. Pl. 75; Story, Eq. Pl. _345.

36. Thirdly. Bill in the nature of a bill of review. A bill in the nature of a bill of review, is one brought by a person not bound by a decree, praying that the same may be examined and reversed; as where a decree is made against a person who has no interest at all in the matter in dispute, or had not an interest sufficient to render the decree against him binding upon some person claiming after him. Relief may be obtained against error in the decree, by a bill in the nature of a bill of review. This bill in its frame resembles a bill of review, except that instead of praying that the former decree may be reviewed and reversed, it prays that the cause may be heard with respect to the new matter made the subject of the supplemental bill, at the same time that it is reheard upon the original bill; and that the plaintiff may have such relief as the nature of the case made by the supplemental bill may require. 1 Harr. Ch. P. 145.

37. There are also bills which derive their names from the object which the complainant has in view. These will be separately considered.

38.− 1. Bill of foreclosure. A bill of foreclosure is one 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. As to the persons who are to be made parties to a bill of foreclosure, see Story, Eq. Pl. _199−202.

39. − 2. Bill of information. A bill of information is a bill instituted in behalf of the state, or those whose rights are the object of its care and protection. It is commenced by information exhibited in the name of the attorney−general, and differs from other bills little more than in name. If the suit immediately concerns the right of the state, the information is generally
exhibited without a relator. If it does not immediately concern those rights, it is conducted at the instance and under the immediate direction of, some person whose name is inserted in the information, and is termed the relator; the officers of the state, in such or the like cases, are not further concerned than as they are instructed and advised by those whose rights the state is called upon to protect and establish. Blake’s Ch. Pl. 50; see Harr. Ch. Pr. 151.

40. − 3. Bill to marshal assets. A bill to marshal assets is one filed in favor of simple contract creditors, and of

legatees, devisees, and heirs, but not in favor of next of kin, to prevent specialty. creditors from exhausting the personal estate. See Marshaling of Assets.

41. − 4. Bill to marshal securities. A bill to marshal securities is one which is filed against a party who has two funds by which his debt is secured, by a person having an interest in only one of those funds. As if A has two mortgages and B has but one, B has a right to throw A upon the security which B cannot touch. 2 Atk. 446; see 8 Ves. 388, 395. This last case contains a luminous exposition in all its bearings. In Pennsylvania, and perhaps in some other states, the object of this bill is reached by subrogation, (q. v.) that is, by substituting the creditor, having but one fund to resort to, to the rights of the other creditor, in respect to the other fund.

42. − 5. Bill for a new trial. This is a bill filed in a court of equity praying for an injunction after judgment at law, when there is any fact, which renders it against conscience to execute such judgment, and of which the injured party could not avail himself in a court of law−, or, if he could, was prevented by fraud or accident, unmixed with any fault or negligence of himself or his agents. Mitf. Pl. by Jer. 131; 2 Story Eq. _887. Of late years bills of this description are not countenanced. Id.ÿ201 John. Ch. R. 432 6 John. Ch. R. 479.

43. − 6. Bill of peace. A bill of peace is one which is filed when a person has a right which may be controverted by various persons, at different times, and by different actions. In such a case the court will prevent a multiplicity of suits, by directing an issue to determine the right, and ultimately grant an injunction. 1 Madd. Ch. Pr. 166; 1 Harr. Ch. Pr. 104; Blake's Ch. Pr. 48; 2 Story, Eq. Jur. _852 to 860; Jeremy on Eq. Jurisd. 343 2 John. Ch. R. 281; 8
Cranch, R. 426.

44. There is another class of cases in which a bill of peace is now ordinarily applied; namely, when the plaintiff, after repeated and satisfactory trials, has established his right at law, and is still in danger of new attempts to controvert it. In order to quiet the possession of the plaintiff, and to suppress future litigation, courts of equity, under such circumstances, will interfere, and grant a perpetual injunction. 3 John. R. 529; 8 Cranch, R. 462; Mit. Pl. by Jeremy, 143; 2 John. Ch. R. 281; Ed. on Inj. 356.

45. − 7. Bill quia timet. A bill quia timet, is one which is filed when a person is entitled to property of a personal nature after another's death, and has reason to apprehend it may be destroyed by the present possessor; or when he is apprehensive of being subjected to a future inconvenience, probable or even possible to happen or be occasioned by the neglect, inadvertance, or culpability of another. Upon a proper case being made out, the court will, in one case, secure the property for the use of the party (which is the object of the bill) by compelling the person in possession of it, to give a proper security against any subsequent disposition or wilful destruction and in the other case, they will quiet the party's apprehension of future inconvenience, by removing the causes which may lead to it. 1 Harr. Ch. Pr. 107; 1 Madd. Ch. Pr. 218: Blake's Ch. Pr. 37, 47; 2 Story, Eq. Jur. _825 to 851. Vide, generally, Bouv. Inst. Index, h. t.

BILL, merc. law. An account containing the items of goods sold, or of work done by one person against another. It differs from an account stated (q. v.) in this, that the latter is a bill approved and sanctioned by the debtor, whereas a bill is made out by the creditor alone.

BILL OF ADVENTURE, com. law, contracts. A writing signed by a merchant, to testify that the goods shipped on board a certain vessel belong to another person who is to take the hazard, the subscriber signing only to oblige himself to account to him, for the proceeds.

BILL OP ATTAINDER, legislation, punishment. An act of the legislature by which one or more persons are declared to be attainted, and their property confiscated.

2. The Constitution of the United States declares that no state shall pass any bill of attainder.

3. During the revolutionary war, bills of attainder, and ox post facto acts of confiscation, were passed to a wide extent. The evils resulting from them, in times of more cool reflection, were discovered to have far outweighed any imagined good. Story on Const. _1367. Vide Attainder; Bill of Pains and Penalties.

BILL−BOOK, commerce, accounts. One in in which an account is kept of promissory notes, bills of exchange, and other bills payable or receivable: it ought to contain all that a man issues or receives. The book should show the date of the bill, the term it has to run before it becomes due, the names of all the parties to it, and the time of its becoming due, together with the amount for which it was given.

BILL OF CONFORITY. The name of a bill 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 0F COST, practice. A statement of the items which form the total amount of the costs of a suit or action. This is demandable as a matter of right before the payment of the costs.

BILL OF CREDIT. It is provided by the Constitution of the United States, art. 1, s. 10, that no state shall " emit bills of credit, or make anything but gold and silver coin a tender in payment or debts." Such bills of credit are declared to mean promissory notes or bills issued exclusively on the credit of the. state, and for the payment of which the faith of the state only is pledged. The prohibition, therefore, does not apply to the notes of a state bank, drawn on the credit of a particular fund set apart for the purpose. 2 M'Cord's R. 12; 2 Pet. R. 818; 11 Pet. R. 257. Bills of credit may be defined to be paper issued and intended to circulate through the community for its ordinary purposes, as money redeemable at a future day. 4 Pet. U. S. R. 410; 1 Kent, Com. 407 4 Dall. R. xxiii.; Story, Const. __ 1362 to 1364 1 Scam. R. 87, 526.

2. This phrase is used in another sense among merchants it is a letter sent by an agent or other person to a merchant, desiring him to give credit to the bearer for goods or money. Com. Dig. Merchant, F 3; 5 Sm. & Marsh. 491; R. M. Charlt. 151; 4 Pike, R. 44; 3 Burr. Rep. 1667.

BILL OP DEBT, BILL OBLIGATORY, contracts. When a merchant by his writing acknowledges himself in debt to another, in a certain sum to be paid on a certain day and subscribes it at a day and place certain. It may be under seal or not. Com. Dig. Merchant, F 2.

BILL OF EXCEPTION, practice. The statement in writing, of the objection made by a party in a cause, to the decision of the court on a point of law, which, in confirmation of its accuracy, is signed and sealed by the judge, or court who made the decision. The object of the bill of exceptions is to put the question of law on record, for the information of the court of error having cognizance of such cause.

2. The bill of exception is authorized by the statute of Westminster 2, 13 Ed. I. c. 31, the principles of which have, been adopted in all the states of the Union. It is thereby enacted, "when one impleaded before any of the justices, alleges an exception praying they will allow it, and if they will not, if he that alleges the exception writes the same, and requires 'that the justices will put their seals, the justices shall do so, and if one will not, another ,shall; and if, upon complaint made of the justice, the king cause the record to come before him, and the exception be not found in the roll, and the plaintiff show the written exception, with the seal of the justices thereto put, the justice shall be commande to appear at a certain day, either to confess or deny his seal, and if he cannot deny his seal, they shall proceed to judgment according to the exception, as it ought to be allowed or disallowed." The statute extends to both plaintiff and defendant. Vide the, form of confessing a bill of exceptions, Burr. 1692. And for precedents see Bull. N. P. 317; Brownlow's Entries; Latine Redivio, 129; Trials per pais, 222, 3; 4 Yeates, 317, 18; 2 Yeates, 295, 6. 485, 6; 1 Morgan's Vade Mecum, 471−5. Bills of exception differ materially from special verdicts; 2 Bin. 92; and from the opinions of the court filed in the cause. 10 S. & R. 114, 15.

3. Here will be considered, 1 the cases in which a bill of exceptions may be had; 2. the time of making the exception; 3. the form of the bill; 4. the effect of the bill.

4. − 1. In general a bill of exception can be had only in a civil case. When in the course of the trial of a cause, the judge, either in his charge to the jury, or in deciding an interlocutory question, mistakes the law, or is supposed by the counsel on either. side, to have mistaken the law, the counsel against whom the decision is made may tender an exception to his opinion, and require him to seal a bill of exceptions. 3 Bl. Com. 372. See Salk. 284, pl. 16 7 Serg. & Rawle, 178; 10 Id. 114, 115 Whart. Dig. Error, D, E 1 Cowen, 622; 2 Caines, 168; 2 Cowen, 479 5, Cowen, 243 3 Cranch, 298 4 Cranch, 62; 6 Cranch, 226; 17 Johns. R. 218; 3 Wend. 418 9 Wend. 674. In criminal cases, the judges, it seems, are not required to seal a bill of exceptions. 1 Chit. Cr. Law, 622; 13 John. R. 90; 1 Virg. Cas. 264; 2 Watts, R. 285; 2 Sumn. R. 19. In New York, it is provided by statute, that on the trial of any indictment, exceptions to any decision of the court may be made by the defendant, in the same cases and manner provided by law in civil cases and a bill thereof shall be settled, signed and sealed, and filed with the clerk of the court. But such bill of exception shall not stay or delay the rendering of judgment, except in some specified cases. Grah. Pr. 768, note.. Statutory provisions have been made in several other states authorizing the taking of exceptions in criminal cases. 2 Virg. Cas. 60 and note 14 Pick. R. 370; 4 Ham. R. 348; 6 Ham. R. 16
7 Ham. R. 214; 1 Leigh, R. 598; 14 Wend. 546. See also 1 Halst. R. 405; 2 Penn. R. 637.

5. − 2. The bill of exceptions must be tendered at the time the decision complained of is made or if the exception be to the charge of the court, it must be made before the jury have given their verdict. 8 S. & R. 216 4 Dall. 249; S. C. 1 Binn. 38; 6 John. 279; 1 John. 312; 5 Watts, R. 69; 10 John. R. 312; 5 Monr. R. 177; 7 Wend. R. 34; 7 S.

& R. 219; 11 S. & R. 267 4 Pet. R. 102; Ala. R. 66; 1 Monr. 215 11 Pet. R. 185; 6 Cowen, R. 189. In practice, however, the, point is merely noted, at the time, and the bill is afterwards settled. 8 S. & R. 216; 11 S. & R. 270; Trials per pais, 467; Salk. 288; Sir T. Ray. 405 Bull. N. P. 315−16; Jacob's Law Dict. They may be sealed by the judge after the record has been removed by a writ of error, and after the expiration of his office. Fitz. N. B. 21 N, note.

6. − 3. The bill of exception must be signed by the judge who tried the cause; which is to be done upon notice of the time and place, when and where it is to be done. 3 Cowen, 32; 8 Cowen, 766; Bull. N. P. 316 3 Bl. Com. 372. When the bill of exception is sealed, both parties are concluded by lit. 3 Dall. 38; Bull. N. P. 316.

7.− 4. The bill of exceptions, being part of the record, is evidence between the parties, as to the facts therein stated. 3 Burr. 1765. No notice can be taken of objections or exceptions not appearing on the bill. 8 East, 280; 3 Dall. 38, 422, n.; 2 Binn. 168. Vide, generally, Dunlap's Pr.; Grah. Pr.; Tidd's Pr.; Chit. Pr.; Penna. Pr.; Archibold's Pr. Sellon's Pr.; in their several indexes, h. t.; Steph. Pl. 111; Bac. Ab. h. t.; 1 Phil. Ev. 214; 12 Vin. Ab. 262; Code of Pract. of Louisiana, art. 487, 8, 9; 6 Watts & Serg, 386, 397; 3 Bouv. Inst. n. 3228−32.

BILL OF EXCHANGE, contracts. A bill of exchange is defined to be an open letter of request from, and order by, one person on another, to pay a sum of money therein mentioned to a third person, on demand, or at a future time therein specified. 2 Bl. Com. 466; Bayl. on Bills, 1; Chit. Bills, 1; 1 H. Bl. 586; 1 B. & P. 291, 654; Selw. N. P. 285. Leigh's N. P. 335; Byles on Bills, 1; 1 Bouv. Inst. n. 895.

2. The subject will be considered with reference, 1 . to the parties to a bill; 2. the form; 3. their different kinds 4. the indorsement and transfer; 5. the acceptance 6. the protest.

3. − _1. The parties to a bill of exchange are the drawer, (q. v.) or he who makes the order; the drawee, (q. v.) or the person to whom it is addressed; the acceptor, (q. v.) or he who accepts −the bill; the payee, (q. v.) or the party to whom, or in whose favor the bill is made. The indorser, (q. v.) is he who writes his name on the back of a bill; the indorsee, (q. v.) is one to whom a bill is transferred by indorsement; and the holder, (q. v.) is in general any one of the parties who is in possession of the bill, and entitled to receive the money therein mentioned.

4. Some of the parties are sometimes fictitious persons. When a bill is made payable to a fictitious person, and indorsed in the name of the fictitious payee, it is in effect a bill to bearer, and a bona fide holder, ignorant of that fact, may recover on it, against all prior parties, who were privy to the transaction. 2 H. Bl. 178, 288; 3 T. R. 174, 182, 481; 1 Camp. 130; 19 Ves. 311. In a case where the drawer and payee were fictitious persons, the acceptor was held liable to a bona fide holder. 10 B. & C. 468; S. C. 11 E. C. L. R. 116. Vide, as to parties to a bill, Chit. Bills, 15 to 76, (ed. of 1836.)

5. − _2. The form of the bill. 1. The general requisites of a bill of exchange, are, 1st. that it be in writing. R. T. Hardw. 2; 2 Stra. 955; 1 Pardess. 344−5.

6.− 2d. That it be for the payment of money, and not for the payment of merchandise. 5 T. R. 485; 3 Wils. 213; 2 Bla. Rep. 782; 1 Burr. 325; 1 Dowl. & Ry. N. P. C. 33; 1 Bibb's R. 502; 3 Marsh. (Kty.) R. 184; 6 Cowen, 108; 1 Caines, R. 381; 4 Mass. 245; 10 S. & R. 64; 14 Pet. R. 293; 1, M'Cord, 115; 2 Nott & M'Cord, 519; 9 Watts, R. 102. But see 9 John. R. 120; and 19 John. R. 144, where it was held that a note payable in bank bills was a good negotiable note.

7. − 3d. That the money be payable at all events, not depending on any contingency, either with regard to the fund out of which payment is to be made, or the parties by or to whom payment is to be made. 8 Mod. 363; 4 Vin. Ab. 240, pl. 16; 1 Burr. 323; 4 Dougl. 9; 4 Ves. 372; Russ. & Ry. C. C. 193; 4 Wend. R. 576; 2 Barn. & Ald. 417.

8. − 2. The particular requisites of a bill of exchange. It is proper here to remark that no particular form or set of words is necessary to be adopted. An order " to deliver money," or a promise that " A B shall receive money," or a promise " to be accountable" or " responsible" for it, have been severally held to be sufficient for a bill or note. 2 Ld. Raym. 1396; 8 Mod, 364.

9. The several parts of a bill of exchange are, 1st. that it be properly dated as to place

10.− 2d. That it be properly dated as to the time of making. As the time a bill, becomes due is generally regulated by the time when it was made, the date of the instrument ought to be clearly expressed. Beawes, pl. 3 1 B . & C. 398; 2 Pardess. n. 333.

11. − 3d. The superscription of the sum for which the bill is payable is not indispensable, but if it be not mentioned in the bill, the superscription will aid. the omission. 2 East, P. C. 951.

12. − 4th. The time of payment ought to be expressed in the bill; if no time be mentioned, it is considered as payable on demand. 7 T. R. 427; 2 Barn. & C. 157.

13. − 5th. Although it is proper for the drawer to name the place of payment, either in the body or subscription of the bill, it is not essential; and it is the common practice for the drawer merely to write the address of the drawee, without pointing out any, place of payment; in such case the bill is considered payable, and to be presented at the residence of the drawee, where the bill was made, or to him personally any where. 2 Pardess. n. 337 10 B. & C. 4; Moody & M. 381; 4 Car. & Paine, 35. It is at the option of the drawer whether or not to prescribe a particular place of payment, and make the payment there part of the contract. Beawes, pl. 8. The drawee, unless restricted by the drawer, may also fix a place of payment by his acceptance. Chit. Bills, 172.

14. − 6th. There must be an order or request to pay and that must be a matter of right, and not of favor. Mood. & M. 171. But it seems that civility in the terms of request cannot alter the legal effect of the instrument. "il vous plair a de payer," is, in France, the proper language of a bill. Pailliet, Manuel de Droit Francais, 841. The word pay is not indispensable, tor the word deliver is equally operative. Ld. Raym. 1397.

15. − 7th. Foreign bills of exchange consist, generally, of several parts; a party who has engaged to deliver a foreign bill, is bound to deliver as many parts as may be requested. 2 Pardess. n. 342. The several parts of a bill of exchange are called a set; each part should contain a condition that it shall be paid, provided the others remain unpaid. Id. The whole set make but one bill.

16. − 8th. The bill ought to specify to whom it is to be paid. 2 Pardess. n. 338; 1 H. Bl. 608; Russ. & Ry. C. C. 195. When the name of the payee is in blank, and the bill has been negotiated by indorsement, the holder may fill the blank with his own name. 2 M. & S. 90; 4 Camp. 97. It may, however, be drawn payable to bearer, and then it is assignable by delivery. 3 Burr. 1526.

17. − 9th. To make a bill negotiable, it must be made payable to order, or bearer, or there must be other operative and equivlent words of transfer. Beawes, pl. 3; Selw. N. P. 303, n. 16; Salk. 133. if, however, it is not intended to make the bill negotiable, these words need not be inserted, and the instrument will, nevertheless, be valid as a bill of exchange. 6 T. R. 123; 6 Taunt. 328; Russ. & Ry. C. C. 300; 3 Caines' R. 137; 9 John. It. 217. In France, a bill must be made payable to order. Code de Com. art. 110; 2 Pardess. n. 339.

18. − 10th. The sum for which the bill is drawn, must be clearly expressed in the body of it, in writing at length. The sum must be fixed and certain, and not contingent. 2 Stark. R. 375. And it may be in the money of any country. Payment of part of the bill, the residue being unpaid, cannot be indorsed. The, contract is indivisible, and the acceptor would thereby be compelled to make two payments instead of one. But when part of a bill has been paid the residue may be assigned, since then it becomes a contract for the residue only. 12 Mod. 213; 1 Salk. 65; Ld. Ray. 360.

19. − 11th. It is usual to insert the words, value received, but it is. implied that every bill and indorsement has been made for value received, as much as if it had been expressed in totidem verbis. 3 M. & S. 352; Bayl. 40, n. 83.

20. − 12th. It is usual, when the drawer of the bill is debtor to the drawee, to insert in the bill these words: " and put it to my account but when the drawee, or the person to whom it is directed, is debtor to the drawer, then he inserts these words : "and put it to your account;" and, sometimes, where a third person is debtor to the drawee, it may be expressed thus: "and put it to the account of A B;" Marius, 27;. C, om. Dig. Merchant, F 5; R. T. Hardw. 1, 2, 3; but it is altogether unnecessary to insert any of these words. 1 B. & C. 398; S. C. 8 E. C. L. R. 108.

21. − 13th. When the drawer is desirous to inform the drawee that he has drawn a bill, he inserts in it the words, "as per advice;" but when he wishes the bill paid without any advice from him, he writes, "without further advice." In the former case the drawee is not authorized to pay the bill till he has received the advice; in the latter he may pay before he has received advice.

22. − 14th. The drawee must either subscribe the bill, or, it seems, his name may be simply inserted in the body of the instrument. Beawes, pl. 3; Ld. Raym. 1376 1 Stra. 609.

23. − 15th. The bill being a letter of request from the maker to a third person, should be addressed to that person by the Christian name and surname, or by the full style of their firm. 2 Pardess. n. 335 Beawes, pl. 3; Chit. Bills, 186, 7.

24. − 16th. The place of payment should be stated in the bill.

25. − 17th. As a matter of precaution, the drawer of a foreign bin may, in order to prevent expenses, require the holder to apply to a third person, named in the bill for that purpose, when the drawee refuses to accept the bill. This requisition is usually in these words, placed in a corner, under the drawee's address: " Au besoin chez Messrs. − at −," in other words, ((In case of need apply to Messrs. at −. "

26. − 18th. The drawer may also add a request or direction, that in case the bill should not be honored by the drawee, it shall be returned without protest or without expense, by subscribing the words, " retour sans protet," or " sans frais;" in. this case the omission of the holder to protest, having been induced by the drawer, he, and perhaps the indorsers, cannot resist the payment on that account, and thus the expense is avoided. Chit. Bills, 188.

27. − 19th. The drawer may also limit the amount of damages, by making a memorandum on the bill, that they shall be a definite sum; as, for example: "In case of non−acceptance or uon−payment, re−exchange and expenses not to, exceed dollars." Id.

28. − _3. Bills of, exchange are either foreign or inland. Foreign, when drawn by a person out of, on another in, the United States, or vice versa; or by a person in a foreign country, on another person in another foreign country; or by a person in one state, on another in another of the United States. , 2 Pet. R. 589 .; 10 Pet. R. 572; 12 Pick. 483 15 Wend. 527; 3 Marsh. (Kty.) R. 488 1. Rep. Const.; Ct. 100 4 Leigh's R. 37 4 Wash. C. C. Rep. 148; 1 Whart. Dig. tit. Bills of Exchange, pl. 78. But see 5 John. R. 384, where it is said by Van Ness, Justice, that a bill drawn in the United States, upon any place within the United States, is an inland bill.

29. An inland bill is one drawn by a person in a state, on another in the same state. The principal difference between foreign and inland bills is, that the former must be protested, and the latter need not. 6 Mod. 29; 2 B. & A. 656; Chit Bills, (ed. of 1836,) p. 14. The English rule requiring protest and notice of non−acceptance of foreign bills, has been adopted and followed as the true rule of mercantile law, in the states of Massachusetts, Connecticut) New York, Maryland, and South Carolina. 3 Mass. Rep. 557; 1 Day's R. 11; 3 John. Rep. 202; 4 John. R. 144; 1 Bay's Rep. 468; 1 Harr. & John. 187. But the supreme court of the United States, in Brown v. Berry, 3 Dall. R. 365, and in Clark v. Russel, cited in 6 Serg. & Rawle, 358, held, that in an action on a foreign bill of exchange, after a protest for non−payment, protest for non−acceptance, or notice of non−acceptance need not be shown, inasmuch as they were not required by the custom of merchants in this country; and those decisions have been followed in Pennsylvania. 6 Serg. & Rawle, 356. It becomes a little difficult, therefore, to know what is the true rule of the law−merchant in the United States, on this point, after such contrary decisions." 3 Kent's Com. 95. As to what will be considered a foreign or an inland bill, when part of the bill is made in one place and part in another, see 1 M. & S. 87; Gow. R. 56; S. c. 5 E. C. L. R. 460; 8 Taunt., 679; 4 E. C. L. R. 245; 5 Taunt. 529; 1 E. C. L. R. 179.

30. − _4. The indorsement. Vide articles Indorsement; Indorser; Indorsee.

31. − _5. The acceptance. Vide article, Acceptance.

32. − _6. The protest. Vide article, Protest. Vide, generally, Chitty on Bills; Bayley on Bills; Byles on Bills; Marius on Bills; Kyd on Bills; Cunningham on Bills; Pothier, h. t.; Pardess. Index, Lettre de Change; 4 Vin. Ab. 238; Bac. Ab. Merchant and Merchandise, M.; Com. Digest, Merchant; Dane's Ab. Index, h. t.; 1 Sup: to Ves. Jr. 86, 514; Smith on Mer. Law, Book 3, c. 1; Bouv. Inst. Index,.h. t.

BILL OF GROSS ADVENTURE. A phrase used in French maritime law; it comprehends every instrument of writing which contains a contract of bottomry, respondentia, and every species of maritime loan. We have no word of similar import. Hall on Mar. Loans, 182, n. See Bottomry; Gross adventure; Respondentia.

BILL OF HEALTH; commercial law. A certificate, properly authenticated, that a certain ship or vessel therein named, comes from a place where no contagious distempers prevail, and that none of the crew at the time of her departure were infected with any such distemper.

2. It is generally found on board of ships coming from the Levant, or from the coast of Barbary, where the plague so frequently prevails. 1 Marsh. on Ins. 408. The bill of health is necessary whenever a ship sails from a suspected port; or when it is required at the port of destination. Holt's R. 167; 1 Bell's Com. 553, 5th ed.

3. In Scotland the name of bill of health, has been given to an application.made by an imprisoned debtor for relief under the Act of Sederunt. When the want of health of the prisoner requires it, the prisoner is indulged, under proper regulations, with such a degree of liberty as may be necessary to restore him. 2 Bell's Com. 549, 5th ed.

BILL OF INDICTMENT. A written accusation of one or more persons, of a crime or misdemeanor, lawfully presented to a grand jury, convoked, to consider whether there is sufficient evidence of the charge contained therein to put the accused on trial. It is returned to the court with an indorsement of true bill (q. v.) when the grand jury are satisfied that the accused ought to be tried; or ignoramus, when they are ignorant of any just cause to put the accused upon hi.% trial.

BILL, contracts. A bill or obligation, (which are the same thing, except that in English it iis commonly called

bill, but in Latin obligatio, obligation,) is a deed whereby the obligor acknowledges himself to owe unto the obligee a certain sum of money or some other thing, in which, besides the names of the parties, are to be considered the sum or thing due, the time, place, and manner of payment or delivery thereof. It may be indented, or poll, and with or without a penalty. West's Symboleography s. 100, 101, and the various forms there given.

BILL OF LADING, contracts and commercial law. A memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order, on board of his ship or vessel, therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in like good order, (the dangers of the seas excepted,) at the place therein appointed for the delivery of the same, to the consignee therein named or to his assigns, he or they paying freight for the same. 1 T. R. 745; Bac. Abr. Merchant L Com. Dig. Merchant E 8. b; Abbott on Ship. 216 1 Marsh. on Ins. 407; Code de Com. art. 281. Or it is the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight. Per Lord Loughborougb, 1 H. Bl. 359.

2. A bill of lading ought to contain the name of the consignor; the name of the consignee the name of the master of the vessel; the name of the vessel; the place of departure and destination; the price of the freight; and in the margin, the marks and numbers of the things shipped. Code de Com. art. 281; Jacobsen's Sea Laws.

3. It is usually made in three original's, or parts. One of them is commonly sent to the consignee on board with the goods; another is sent to him by mail or some other conveyance; and the third is retained by the merchant or shipper. The master should also take care to have another part for his own use. Abbotton Ship. 217.

4. The bill of lading is assignable, and the assignee is entitled to the goods, subject, however, to the shipper's right, in some cases, of stoppage in transitu. See In transitu; Stoppage in transitu. Abbott on Shipping. 331; Bac. Ab. Merchant, L; 1 Bell's Com. 542, 5th ed.

BILLS OF MORTALITY. Accounts of births and deaths which have occurred in a certain district, during a definite space of time.

BILL OBLIGATORY. An instrument in common use and too well known to be misunderstood. It is a bond without condition, sometimes called a single bill, and differs in nothing from a promissory note, but the seal which is affixed to it. 2 Serg. & Rawle, 115. See Read's Pleaders' Assistant, 256, for a declaration setting forth such a bill. Also West's Symboleography, s. 100, 101, for the forms both with and without a penalty.

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 high offences, Such as; treason and felony, without any conviction in the ordinary course of judicial proceedings. 2 Wood. Law Lect. 625. It differs from a bill of attainder in this, that the punishment inflicted by the latter is death.

2. The Constitution of the United States Provides that "no bill of attainder shall be passed." It has been judicially said by the supreme court of the United States, that " a bill of attainder may affect the life of an individual, or i− nay confiscate his property, or both." 6 Cranch, R. 138. in the sense of the constitution, then, it seems that bills of attainder include bills of pains and penalties. Story, Const. _1338. Vide Attainder; Bills of Attainder.

BILL OP PARCELS, merc. law. An account containing in detail the names of the items which compose a parcel or package of goods; it is usually transmitted with the goods to the purchaser, in order that if any mistake have been made, it may be corrected.

BILL OF PARTICULARS, practice. A detailed informal statement of a plaintiff is cause of action, or of the defendants's set−off.

2. In all actions in which the plaintiff declares generally, without specifying his cause of action, a judge upon application will order him to give the defendant a bill of the particulars, and in the meantime stay, proceedings. 3 John. R. 248. And when the defendant gives notice or pleads a set−off, he will be required to give a bill of the particulars of his set−off, on failure of which he will be precluded from giving any evidence in support of it at the trial. The object in both cases is to prevent surprise and procure a fair trial. 1 Phil. Ev. 152; 3 Stark Ev. 1055. The bill of particulars is an account of the items of the demand, and states in what manner they arose. Mete. & Perk. Dig. h. t. For forms, see Lee's Dict. of Pr., Particulars of demand.

BILL PENAL, contracts. A written obligation, by which a debtor acknowledges himself indebted in a certain sum, may one hundred dollars, and for the payment of the debt binds himself in a larger sum, say two hundred dollars. Bills penal do not frequently occur in modern practice; bonds, with conditions, have superseded them. Steph. on Pl. 265, note. See 2 Vent. 198. Bills−penal are sometimes called bills obligatory. Cro. Car. 515; 2 Vent.

106. But a bill obligatory is not necessarily a bill penal. Com. Dig. Obligations, D.

BILL OF PRIVILEGE, Eng. law. A process issued out of the court against an attorney, who is privileged from arrest, instead of process demanding bail. 3 Bl. Com. 289.

BILL OF PROOF. In the mayor's court, London, the claim made by a third person to the subject−matter in dispute between two others in a suit there, is called bill of Proof. It is somewhat similar to an intervention. (q. v.) 3 Chit. Com. Law, 633; 2 Chit. Pr. 492; 1 Marsh, R. 233.

BILL OF SUFFRANCE, Eng. law. The name of a license granted at the custom house to a merchant, authorizing him to trade from one English port to another without paying custom. Cunn. L. D.

BILL OF RIGHTS. English law. A statute passed in the reign of William and Mary, so called, because it declared the true rights of British subjects. W. & M. stat. 2, c. 2.

BILL OF SALE, Contracts. An agreement in writing, under seal, by which a man transfers the right or interest he has in goods and cbattels, to another. As the law imports a consideration when an agreement is made by deed, a bill of sale alters the property. Yelv. 196; Cro. Jac. 270 6 Co. 18.

2. The Act of Congress of January 14, 1793, 1 Story, L. U. S. 276, provides, that when any ship or vessel which shall have been registered pursuant to that act, or the act thereby partially repealed, shall in whole or in part be sold or transferred to a citizen of the United States, in every such sale or transfer, there shall be some instrument or writing in the nature of a bill of sale, which shall recite at length the certificate of registry; otherwise the said ship or vessel shall be incapable to be registered anew.

3. In England a distinction is made between a bill of sale for the transfer of a ship at sea, and one for the conveyance of a ship in the country; the former is called a grand bill of sale, the latter, simply, a bill of sale. In this country there does not appear to be such a distinction. 4 Mass. 661.

4. In general, the maritime law requires that the transfer of a ship should be evidenced by a bill of sale. 1 Mason, 306. But a contract to sell, accompanied by delivery of possession, is sufficient. 8 Pick. 86 16 Pick. 401; 16 Mass. 336; 7 John. 308. See 4 Mason, 515; 4 John. 54 16 Pet. 215; 2 Hall, 1; 1 Wash. C. C. 226.

BILL OF SIGHT, English commercial law. When a merchant i's ignorant of the real quantities or qualities of any goods consigned to him, so that he is unable to make a perfect entry of them, he is required to acquaint the collector or comptroller of the circumstances and such officer is authorized, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by bill of sight, for the packages, by the best description which can be given, and to grant a warrant that the same be landed and examined by the importer in presence of the officer; and within three days after the goods have been so landed, the importer is required to make a perfect entry. See stat. 3 & 4 Will. IV. c . 52, _24.

BILL, SINGLE, contracts. A writing by which one person or more, promises to another or others, to pay him or them a sum of money at a time therein specified, without any condition. It is usually under seal; and when so, it is sometimes, if not commonly, called a bill obligatory. (q. v.) 2 S. & R. 115.

2. It differs from a promissory note in this, that the latter is always payable to order; and from a bond, because that instrument has always a condition attached to it, on the performance of which it is satisfied. 5 Com. Dig. 194; 7 Com. 357.

BILL OF STORE, English commercial law. A license granted by custom house officers to merchants, to carry such stores and provisions as are necessary for a voyage, free of duty. See stat. 3 and 4 Will. IV., c. 5 2.

BILL, TRUE. A true bill is an indictment approved of by a grand jury. Vide Billa Vera; True Bill.

BILLS PAYABLE, COMMERCE. Engagements which a merchant has entered into in writing, and which he is to pay on their becoming due. Pard. n. 85.

BILLS RECEIVABLE, Commerce. Promissory notes, bills of exchange, bonds, and other evidences or securities which a merchant or trader holds, and which are payable to him. Pard. n. 85.

BILLA VERA, practice. When the proceedings of the courts were recorded in Latin, and the grand jury found a bill of indictment to be supported by the evidence, they indorsed on it billa vera; now they indorse in plain English " a true bill."

TO BIND, BINDING, contracts. These words are applied to the contract entered into, between a master and an apprentice the latter is said to be bound.

2. In order to make a good binding, the consent of the apprentice must be had, together with that of his father, next friend, or some one standing in loco parentis. Bac. Ab. Master and Servant, A; 8 John. 328; 2 Pen. 977; 2

Yerg. 546 1 Ashmead, 123; 10 Sergeant & Rawle, 416 1 Massachusetts, 172; 1 Vermont, 69. Whether a father has, by the common law, a right to bind out his child, during his minority without his consent, seems not to be settled. 2 Dall. 199; 7 Mass. 147; 1 Mason, 78; 1 Ashm. 267. Vide Apprentice; Father; Mother; Parent.

3. The words to bind or binding, are also used to signify that a thing is subject to an obligation, engagement or liability; as, the judgment binds such an estate. Vide Lien.

TO BIND, OR TO BIND OVER, crim. law. The act by which a magistrate or a court hold to bail a party, accused of a crime or misdemeanor.

2. A person accused may be bound over to appear at a court having jurisdiction of the offence charged, to answer; or he may be bound over to be of good behaviour, (q. v.) or to keep the peace. See Surety of the Peace.

3. On refusing to enter into the requisite recognizance, the accused may be committed to prison.

BIPARTITE. Of two parts. This term is used in conveyancing as, this indenture bipartite, between A, of the one part, and B, of the other part. But when there are only two parties, it is not necessary to use this word.

BIRRETUM or BIRRETUS. A cap or coif used formerly in England, by judges and sergeants at law. Spelm. h. t.; Cunn. Dict. Vide Coif.

BIRTH. The act of being wholly brought into the world. The whole body must be detached from that of the mother, in order to make the birth complete. 5 C. & P. 329; S. C. 24 E. C. L. R. 344 6 C. & P. 349; S. C. 25 E. C. L. R. 433.

2. But if a child be killed with design and maliciously after it has wholly come forth from the body of the mother, although still connected with her by means of the umbilical cord, it seems that such killing will be murder. 9 C. & P. 25 S . C. 38 E. C. L. R. 21; 7 C. & P. 814. Vide articles Breath; Dead Born; Gestation; Life; and 1 Beck' s Med. Jur. 478, et seq.; 1 Chit. Med. Jur. 438; 7 C. & P. 814; 1 Carr. & Marsh. 650; S. C. 41 E. C. L. R. 352; 9 C. & P. 25.

3. It seems that unless the cbild be born alive, it is not properly a birth, but a carriage. 1 Chit. Pr. 35, note z. But see Russ. & Ry. C. C. 336.

BISAILE, domestic relations. A corruption of the French word besaieul, the father of the grandfather or grandmother. In Latin he is called proavus. Inst. 3, 6, 3 Dig. 38, 10, 1, 5. Vide Aile.

BISHOP. An ecclesiastical officer, who is the chief of the clergy of his diocese, and is the archbishop's assistant. Happily for this country, these officers are not recognized by law. They derive all their authority from the churches over which they preside. Bishop's COURT, Eng. law. An ecclesiastical court held in the cathedral of each diocese, the judge of which is the bishop's chancellor.

BISHOPRICK, eccl. law. The extent of country over which a bishop has jurisdiction a see; a diocese. For their origin, see Francis Duarenus de sacris Eccles. Ministeriis ac beneficiis, lib. 1, cap. 7; Abbe Fleury, 2d Discourse on Ecclesiastical History, _v.

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. It is called bissextile, because in the Roman calendar it was fixed on the sixth day before the calends of March, (which answers to the 24th day of February,) and this day was counted twice; the first was called bissextus prior, and the other bissextus posterior, but the latter was properly called bissextile or intersalary day. Although the name bissextile is still retained in its obsolete import, we intercalate the 29th of February every fourth Year, which is called leap year; and for still greater accuracy, make only one leap year out of every four centenary years. The years 1700 and 1800 were not leap years, nor will the .year A. D. 1900 be reckoned as one, but the year A. D. 2000 will be a leap year or bissextile. For a learned account of the Julian and Gregorian calendars, see Histoire du Calendrier Romain, by Mons. Blondel; also, Savigny Dr. Rom. _192; and Brunacci's Tract on Navigation, 275, 6. BLACK ACT, English law. An act of parliament made in the 9 Geo. II., which tears this name, to punish certain marauders who committed great outrages, in disguise, and with black faces. See Charlt. R. 166.

BLACK BOOK OF THE ADMIRALTY. An ancient book compiled in the reign of Edw. III. It has always been deemed of the highest authority in matters concerning the admiralty. It contains the laws of Oleron, At large; a view of the crimes and offences cognizable in the admiralty; ordinances and commentaries on matters of prize and maritime torts, injuries and contracts, 2 Gall. R. 404.

BLACK BOOK OP THE EXCHEQUER. The name of a book kept in the English exchequer, containing a collection of treaties) conventions, charters, &c.

BLACK MAIL. When rents were reserved payable in work, grain, and the like, they were called reditus nigri, or black mail, to distinguish them from white rents or blanch farms, or such as were paid in money. Vide Alba firma.

BLANCH FIRMES. The same as white rent. (q. v.)

BLANK. A space left in writing to be filled, up with one or more words, in order to make sense. 1. In what cases the ambiguity occasioned by blanks not filled before execution of the writing may be explained 2. in what cases it cannot be explained.

2. − 1. When a blank is left in a written agreement which need not −have been reduced to writing, and would have been equally binding whether written or unwritten, it is presumed, in an action for the non−performance of the contract, parol evidence might be admitted to explain the blank. And where a written instrument, which was made professedly to record a fact, is produced as evidence of that fact which it purports to record, and a blank appears in a material part, the omission may be supplied by other proof. 1 Phil. Ev. 475 1 Wils. 215; 7 Verm. R. 522; 6 Verm. R. 411. Hence a blank left in an award for a name, was allowed to be supplied by parol proof. 2 Dall. 180. But where a creditor signs a deed of composition leaving the amount of his debt in blank, he binds himself to all existing debts. 1 B. & A. 101; S. C. 2 Stark. R. 195.

3. − 2. If a blank is left in a policy of insurance for the name of the place of destination of a ship, it will avoid the policy. Molloy, b. 2, c. 7, s. 14; Park, Ins. 22; Wesk. Ins. 42. A paper signed and sealed in blank, with verbal authority to. fill it up, which is afterwards done, is void, unless afterwards delivered or acknowledged and adopted. 1 Yerg. 69, 149; 1 Hill, 267 2 N. & M. 125; 2 Brock. 64; 2 Dev. 379 1 Ham. 368; 6 Gill & John. 250; but see contra, 17 S. & R. 438. Lines ought to be drawn wherever there are blanks, to prevent anything from being inserted afterwards. 2 Valin's Comm. 151.

4. When the filling up blanks after the execution of deeds and other writings will vitiate them or not, see 3 Vin. Abr. 268; Moore, 547; Cro. Eliz. 626; 1 Vent. 185; 2 Lev. 35; 2 Ch. R. 187; 1 Anst. 228; 5 Mass. 538; 4 Binn. 1; 9 Crancb, 28; Yelv. 96; 2 Show. 161; 1 Saund. Pl. & Ev. 77; 4 B. & A. 672; Com. Dig. Fait, F 1; 4 Bing. 123; 2 Hill. Ab. c. 25, _80; n. 33, _54−and 72; 1 Ohio, R. 368; 4 Binn. R. 1; 6 Cowen, 118; Wright, 176.

BLANK BAR, pleading. The same with that called a common bar, whicb, in an action of trespass, is put in to oblige the plaintiff to assign the certain' place where the trespass was committed. Cro. Jac. 594, pl. 16.

BLANK INDORSEMENT, contrad. An indorsement which does not mention the name of the person in whose favor it is made; it is usually made by writing the name of the indorser on the back of the bill. Chit. Bills, 170.

2. When a bill or note has been indorsed in blank, its negotiability cannot afterwards be restrained. 1 Esp. N. P. Cas. 180; 1 Bl. Rep. 295. As many persons as agree may join in suing on a bill when indorsed in blank; for although it was given to one alone, yet by allowing the others to join in the suit, he has 'Made them sharers in his rights. 8 Camp. N. P. Cas. 239. Vide Indorsement; Negotiable paper; Restrictive indorsement.

BLASPHEMY, crim. law. To attribute to God that which is contrary to his nature, and does not belong to him, and to deny what does or it is a false reflection uttered with a malicious, design of reviling God. Elym's Pref. to vol. 8, St. Tr.

2. This offence has been enlarged in Pennsylvania, and perhaps most of the states, by statutory provision. Vide Christianity; 11 Serg. & Rawle, 394. In England all blasphemies against God, the Christian religion, the Holy Scriptures, and malicious revilings of the established church, are punishable by indictment. 1 East, P. C. 3; 1 Russ. on Cr. 217.

3. In France, before the 25th of September, 1791, it was a blasphemy also to speak against the holy virgin and the saints, to deny one's faith, to speak with impiety of holy things, and to swear by things sacred. Merl. Rep. h. t. The law relating to blasphemy in that country was totally repealed by the code of 25th of September, 1791, and its present penal code, art. 262, enacts, that any person who, by words or gestures, shall commit any outrage upon objects of public worship, in the places designed or actually employed for the performance of its rites, or shall assault or insult the ministers of such worship in the exercise of their functions, shall be fined from sixteen to five hundred francs, and be imprisoned for a period not less than fifteen days nor more than six months.

4. The civil law forbad the crime of blasphemy; such, for example, as to swear by the hair or the head of God; and it punished its violation with death. Si enim contra homines factae blasphemiae impunitae non relinquuntur; multo magis qui ipsum Deum Blasphemant, digni sunt supplicia sustinere. Nov. 77, ch. 1, _1.

5. In Spain it is blasphemy not only to speak against God and his government, but to utter injuries against the Virgin Mary and the saints. Senen Villanova Y Manes, Materia Criminal, forense, Observ. 11, cap. 3, n

BLIND. One who is deprived of the faculty of seeing.

2. Persons who are blind may enter into contracts and make wills like others. Carth. 53; Barn. 19, 23; 3 Leigh, R. 32. When an attesting witness becomes blind, his handwriting may be proved as if he were dead. 1 Stark. Ev. 341. But before proving his handwriting the witness must be produced, if within the jurisdiction of the court, and examined. Ld. Raym. 734; 1 M. & Rob. 258; 2 M. & Rob. 262.

BLOCKADE, international law. The actual investment of a port or place by a hostile force fully competent 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.

2. It is proper here to consider, 1. by what authority a blockade can be established; 2. what force is sufficient to constitute a blockade; 3. the consequences of a violation of the blockade.

3. − 1. Natural sovereignty confers the right of declaring war, ana the right which nations at war have of destroying or capturing each other's citizens, subjects or goods, imposes on neutral nations the obligation not to interfere with the exercise of this right within the rules prescribed by the law of nations. A declaration of a siege or blockade is an act of sovereignty, 1 Rob. Rep. 146; but a direct declaration by the sovereign authority of the besieging belligerent is not always requisite; particularly when the blockade is on a distant station; for its officers may have power, either expressly or by implication, to institute such siege or blockade. 6 Rob. R. 367.

4. − 2. To be sufficient, the blockade must be effective, and made known. By the convention of the Baltic powers of 1780, and again in 1801, and by the ordinance of congress of 1781, it is required there should be a number of vessels stationed near enough to the port to make the entry apparently dangerous. The government of the United States has, uniformly insisted, that the blockade should be effective by the presence of a competent force, stationed and present, at or near the entrance of the port. 1 Kent, Com. 145, and the authorities by him cited; and see 1 Rob. R. 80; 4 Rob. R. 66; 1 Acton's R. 64, 5; and Lord Erskine's speech, 8th March, 1808, on the orders in council, 10 Cobber's Parl. Debates, 949, 950. But "it is not an accidental absence of the blockading force, nor the circumstance of being blown off by wind, (if the suspension and the− reason of the suspension are known,) that will be sufficient in law to remove a blockade." But negligence or remissness on the part of the cruizers stationed to maintain the blockade, may excuse persons, under circumstances, for violating the blockade. 3 Rob. R. 156 .) 1 Acton's R. 59. To involve a neutral in the consequences of violating a blockade, it is indispensable that he should have due notice of it: this information may be communicated to him in two ways; either actually, by a formal notice from the blockading power, or constructively by notice to his government, or by the notoriety of the fact. 6 Rob. R. 367; 2 Rob. R. 110; Id. 111, note; Id. 128; 1 Acton's R. 6 1.

4. − 3. In considering the consequences of the violation of a blockade, it is proper to take a view of what will amount to such a violation, and, then, of its effects. As all criminal acts require an intention to commit them, the party must intend to violate the blockade, or his acts will be perfectly innocent; but this intention will be judged of by the circumstances. This violation may be, either, by going into the place blockaded, or by coming out of it with a cargo laden after the commencement of the blockade. Also placing himself so near a blockaded port as to be in a condition to slip in without observation, is a violation of the blockade, and raises the presumption of a criminal intent. 6 Rob. R. 30, 101, 182; 7 John. R. 47; 1 Edw. R. 202; 4 Cranch, 185. The sailing for a blockaded port, knowing it to be blockaded, is, it seems, such an act as may charge the party with a breach of the blockade. 5 Cranch, 335 9 Cranch, 440, 446; 1 Kent, Com. 150. When the ship has contracted guilt by a breach of the blockade, she may be taken at any time before the end of her voyage, but the penalty travels no further than the end of her return voyage. 2 Rob. R. 128; 3 Rob. R. 147. When taken, the ship is confiscated; and the cargo is always, prima facie, implicated in the guilt of the owner or master of the ship and the burden of rebutting the presumption that the vessel was going in for the benefit of the cargo, and with the direction of the owners, rests with them. 1 Rob. R. 67, 130 3 Rob. R. 173 4 Rob. R. 93; 1 Edw. It 39. Vide, generally, 2 Bro. Civ. & Adm. Law, 314 Chit. Com. Law, Index, h. t.; Chit. Law of Nations, 128 to 147; 1 Kent's Com. 143 to 151; Marsh. Ins. Index, h. t.; Dane's Ab. Index, h. t.; Mann. Com. B. 3, c. 9.

BLOOD, kindred. This word, in the law sense, is used to signify relationship, stock, or family; as, of the blood of the ancestor. 1 Roper on Leg. 103; 1 Supp. to Ves. jr. 365. In a more extended sense, it means kindred generally. Bac. Max. Reg. 18.

2. Brothers and sisters are said to be of the whole blood, (q. v.) if they have the same father and mother of the half blood, (q. v.) if they have only one parent in common. 5 Whart. Rep. 477.

BLOTTER, mer. law. A book among merchants, in which entries of sales, &c. are first made.

2. This book, containing the original entries, is received in evidence, when supported by the oaths or affirmations of those who keep it. See Original entry.

BOARD. This word is used to designate all the magistrates of a city or borough, or all the managers or directors of any institution; as, the board of aldermen; the board of directors of the Bank of North America. The majority of the board have in general the power to perform the acts of the whole board, but sometimes they are restrained by their charters, and it requires a greater number to perform certain acts.

BOARD OF CIVIL AUTHORITY. A used in Vermont. This board is composed of the selectmen and justices of the peace of their respective towns. They are authorized to abate taxes, and the like.

BOCKLAND, Eng. law. The name of an ancient allodial tenure, which was exempt from feudal services. Bac. Ab. Gavelkind, A Spelman's English Works, vol. 2, 233.

BODY. A person.

2. In practice, when the sheriff returns cepi corpus to a capias, the plaintiff may obtain a rule, before special bail has been entered, to bring in the body and this must be done either by committing the defendant or entering special bail. See Dead Body.

BODY POLITIC, government, corporations. When applied to the government this phrase signifies the state.

2. As to the persons who compose the body politic, they take collectively the name, of people, or nation; and individually they are citizens, when considered in relation to their political rights, and subjects as being submitted to the laws of the state.

3. When it refers to corporations, the term body politic means that the members of such corporations shall be considered as an artificial person.

BOILARY. A term used to denote the water which arises from a salt well, belonging to one who has no right to the soil. Ejectment may be maintained for it. 2 Hill, Ab. c. 14, _5; Co. Litt. 4 b.

BONA, goods and chattels. In the Roman law, it signifies every kind of property, real, personal, and mixed, but chiefly it was applied to real estates; chattels being chiefly distinguished by the words, effects, movables, &c. Bona were, however, divided into bona mobilia, and bona immobilia. It is taken in the civil law in nearly the sense of biens (q. v.) in the French law.

BONA FIDE. In or with good faith.

2. The law requires all persons in their transactions to act with good faith and a contract where the parties have not acted bonafide is void at the pleasure of the innocent party. 8 John. R. 446; 12 John. R. 320; 2 John. Ch. R. 35. If a contract be made with good faith, subsequent fraudulent acts will not vitiate it; although such acts may raise a presumption of antecedent fraud, and thus become a means of proving the want of good faith in making the contract. 2 Miles' Rep. 229; and see also, Rob. Fraud. Conv. 33, 34; Inst. 2, 6 Dig. 41, 3, 10 and 44; Id. 41, 1, 48; Code, 7, 31; 9 Co. 11; Wingate's Maxims, max. 37; Lane, 47; Plowd. 473; 9 Pick. R. 265; 12 Pick. R. 545; 8 Conn. R. 336; 10 Conn. R. 30; 3 Watts, R. 25; 5 Wend. R. 20, 566. In the civil law these actions are called (actiones) bonae fidei, in which the judge has a. more unrestrained power (liberior potestas) of estamating how much one person ought to give to or do, for another; whereas, those actions are said to be stricti juris, in which the power of the judge is confined to the agreement of the parties. Examples of the foraier are the actions empti−venditi, locati−conducti, negitiorum gestorum, &c.; of the latter, the actions ex mutus, ex chirographo, ex stipilatu, ex indebito, actions proescriptis verbis, &c.

BONA GESTURA. Good behaviour.

BONA MOBILIA. Movable goods, personal property.

BONA NOTABILIA Engl. ecclesiastical law. Notable goods. When a person dies having at the time of his death, goods in any other diocese, beside's the goods in the diocese where he dies, amounting to the value of five pounds in the whole, he is said to have bona notabilia; in which case proof of his will, or granting letters of administration, belongs to the archbishop of the province. 1 Roll. Ab. 908; Toll. Ex. 51 Williams on Ex. Index, h. t.

BONA PERITURA. Perishable goods.

2. An executor, administrator, or trustee, is bound to use due diligence in disposing of perishable goods, such as fattened cattle, grain, fruit, or any other article which may be worse for keeping. Bac. Ab. Executors, &c. D; 11 Vin. Ab. 102; 1 Roll. Ab. 910; 5 Cro. Eliz.518; Godb.104; 3 Munf. R. 288; 1 Beat. R. 5,14; Dane's Ab. Index, h. t.

3. In Pennsylvania, when goods are attached, they may be sold by order of court, when they are of a perishable nature. Vide Wesk. on Ins. 390; Serg. on Attachm. Index.

BONA VACANTIA. Goods to which no one claims a property, as, shipwrecks, treasure trove, &c.; vacant goods.

BONA WAVIATA. Goods waived or thrown away by a thief, in his flight, for fear of being apprehended.

BOND, contract. An obligation or bond is 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. But see 2 Shepl. 185. If this be all, the bond is called a single one, simplex obligatio; but there is generally a condition added, that if the obligor pays a smaller sum, or does, or omits to do some particular act, the obligation shall be void. 2 Bl. Com. 840. The word bond ex vi termini imports a sealed instrument. 2 S. & R. 502; 1 Bald. R. 129; 2 Porter, R. 19; 1 Blackf. R. 241; Harp. R. 434; 6 Verm. R. 40. See Condition; Interest of money; Penalty. It is proposed to consider: 1. The form of a bond, namely, the words by which it may be made, and the ceremonies required. 2. The condition. 3. The performance or discharge.

2.−I. 1. There must be parties to a bond, an obligor and obligee : for where a bond was made with condition that the obligor should pay twenty pounds to such person or persons; as E. H. should, by her last will and testament in writing, name and appoint the same to be paid, and E. H. did not appoint any person to, whom the same should be paid, it was held that the money was not payable to the executors of E. H. Hob. 9. No particular form of words are essential to create an obligation, but any words which declare the intention of the parties, and denote that one is bound to the other, will be sufficient, provided the ceremonies mentioned below have been observed. Shep. Touch. 367−8; Bac. Abr. Obligations, B; Com. Dig. Obligations, B 1.

3. − 2. It must be in writing, on paper or parchment, and if it be made on other materials it is void. Bac. Abr. Obligations, A.

4. − 3. It must be sealed, though it is not necessary that it should be mentioned in the writing that it is sealed. As to what is a sufficient sealing, see the above case, and the word Seal.

5. − 4. It must be delivered by the party whose bond it is, to the other. Bac. Abr. Obligations, C. But the delivery and acceptance may be by attorney. The date is not considered of the substance of a deed, and therefore a bond which either has no date or an impossible one is still good, provided the real day of its being dated or given, that is, delivered, can be proved. 2 Bl. Com. 304; Com. Dig. Fait, B 3; 3 Call, 309. See Date.

6. − II. The condition is either for the payment of money, or for the performance of something else. In the latter case, if the condition be against some rule of law merely, positively impossible at the time of making it, uncertain or insensible, the condition alone is void, and the bond shall stand single and unconditional; for it is the folly of the obligor to enter into such an obligation, from which he can never be released. If it be to do a thing malum in se, the obligation itself is void, the whole contract being unlawful. 2 Bl. Com. 340; Bac. Abr. Conditions, K, L; Com. Dig. Conditions, D 1, D 2, D 3, D 7, D 8.

7. − III. 1. When, by the condition of an obligation, the act to be done to the obligee is of its own nature transitory, as payment of money, delivery of charters, or the like, and no time is limited, it ought to be performed in convenient time. 6 Co. 31 Co. Lit. 208; Roll. Abr. 436.

8. − 2. A payment before the day is good; Co. Lit. 212, a; or before action brought. 10 Mass. 419; 11 Mass. 217.

9.−3. If the condition be to do a thing within a certain time, it may be performed the last da of the time appointed. Bac. Abr. Conditions, P 3.

10. − 4. If the condition be to do an act, without limiting any time, he who has the benefit may do it at what time he pleases. Com. Dig. Conditions, G 3.

11. − 5. When the place where the act to be performed is agreed upon, the party who is to perform it, is not obliged to seek the opposite party elsewhere; nor is he to whom it is to be performed bound to accept of the performance in another place. Roll. 445, 446 Com. Dig. Conditions, G 9 Bac. Abr. Conditions, P 4. See Performance.

12. − 6. For what amounts to a breach of a condition in a bond see Bac. Abr. Conditions, 0; Com. Dig. Conditions, M; and this Dict. tit. Breach.

BOND TENANT, Eng. law. Copyholders and customary tenants are sometimes so called. Calth. on Copyh. 51, 54.

BONDAGE. Slavery.

BONIS NON AMOVENDIS. The name of 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.

BONO ET MALO. The name of a special writ of jail delivery, which formerly issued of course for each particular prisoner. 4 Bl. Com. 270.

BONUS, contrads. A premium paid to a grantor or vendor; as, e. g. the bank paid a bonus to the state for its charter. A consideration given for what is received.

BOOK. A general name given to every literary composition which is printed; but appropriately to a printed composition bound in a volume.

2. The copyright, (q. v.) or exclusive right to print and publish a book, may be secured to the author and his assigns for the term of twenty−eight years; and, if the author be living, and a citizen of the United States, or resident therein, the same right shall be continued to him for the further term of fourteen years, by complying with the conditions of the act of Congress; one of which is, that he shall, within three months after publication, deliver, or cause to be delivered, a copy of the same to the clerk of the said district. Act of February 3, 1831. 4 Sharsw. cont. of Story's L. U. S. 2223.

BOOK−LAND, English law. Land, also called charter−land, which was held by deed under certain rents and fee services, and differed in nothing from free socage land. 2 Bl. Com. 90. See 2 Spelman's English Works, 233, tit. Of Ancient Deeds and Charters.

BOOKS, commerce, accounts. Merchants, traders, and other persons, who are desirous of understanding their affairs, and of explaining them when necessary, keep, 1. a day book; 2. a journal; 3. a ledger; 4. a letter book; 5. an invoice book; 6. a cash book; 7. a bill book; 8. a bank book; and 9. a cheek book. The reader is referred to these several articles. Commercial books are kept by single or by double entry.

BOOTY, war. The capture of personal property by a public enemy on land, in contradistinction to prize, which is a capture of such property by such an enemy, on the sea.

2. After booty has been in complete possession of the enemy for twenty−four hours, it becomes absolutely his, without any right of postliminy in favor of the original owner, particularly when it has passed, bona fide, into the hands of a neutral. 1 Kent, Com. 110.

3. The right to the booty, Pothier says, belongs to the sovereign but sometimes the right of the sovereign, or the public, is transferred to the soldiers, to encourage them. Tr. du Droit de Propriete, part 1, c. 2, art. 1, _2; Burl. Nat. and Pol. Law, vol. ii. part 4, o. 7, n. 12.

BOROUGH. An incorporated town; so called in the charter. It is less than a city. 1 Mann. & Gran. 1; 39 E. C. L. R. 323.

BOROUGH ENGLISH, English law. This, as the name imports, relates exclusively to the English law.

2. It is a custom, in many ancient boroughs, by which the youngest son succeeds to the burgage tenement on the death of the father. 2 Bl. Com. 83.

3. In some parts of France, there was a custom by which the youngest son was entitled to an advantage over the other children in the estate of their father. iller. Rep. mot Mainete.

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

2. The contract of loan confers rights, and imposes duties on the borrower' 1. In general, he has the right to use the thing borrowed, during the time and for the purpose intended between the parties; the right of using the thing bailed, is strictly confined to the use, expressed or implied, in the particular transaction, and by any excess, the borrower will make himself responsible. Jones' Bailment, 58 6 Mass. R. 104; Cro. Jac. 244; 2 Ld. Raym. 909; Ayl. Pand. B. 4, t. 16, p. 517; Domat, B. 1, t. 5, _2, n. 10, 11, 12; Dio. 13, 6, 18 Poth. Pret a Usage, c. 2, _1, n. 22; 2 Bulst. 306; Ersk. Pr. Laws of ScotI. B. 3, t. 1, _9; 1 Const. Rep. So. Car. 121 Bracton, Lib. 3, c. 2, _l, p. 99. The loan is considered strietly personal, unless, from other circumstances, a different intention may be presumed. 1 Mod. Rep. 210; S. C. 3 Salk. 271.

3. − 2. The borrower is bound to take extraordinary care of the thing borrowed; to use it according to the intention of the lender, to restore it in proper time; to restore it in a proper condition. Of these, in their order.

4. − 1. The loan being gratuitous, the borrower is bound to extraordinary diligence, and is responsible for slight neglect in relation to the thing loaned. 2 Ld. Raym. 909, 916 Jones on Bailm. 65; 1 Dane's Abr. c. 17, art. 12; Dig. 44, 73 1, 4; Poth. Pret. a Usage, c. 2, _2, art. 21, n. 48.

5. − 2. The use is to be according to the condition of the loan; if there is an excess in the nature, time, manner, or quantity of the use, beyond what may be inferred to be within the intention of the parties, the borrower will be

responsible, not only for any damages occasioned by the excess, but even for losses by accidents, which could not be foreseen or guarded against. 2 Ld. Raym. 909; Jones on Bailm. 68, 69.

6. − 3. The borrower is bound to make a return of the thing loaned, at the time, in the place, and in the manner contemplated by the contract.. Domat, Liv. 1, t. 5, _1, n. 11; Dig. 13, 6, 5, 17. If tho borrower does not return the thing at the proper time, he is deemed to be in default, and is geneally responsible for all injuries, even for accidents. Jones on Bailm. 70; Pothier, Pret a Usage , ch. 2, _3, art. 2, n. 60; Civil Code Of Louis. art. 2870; Code Civil, art. 1881; Ersk. Inst. B. 3, t. 1, _22 Ersk. Pr. Laws of Scotl. B. 3, t. 1, _9.

7. − 4. As to the condition in which the thing is to be restored. The borrower not being liable for any loss or deterioration of the thing, unless caused by his own neglect of duty, it follows, that it is sufficient if he returns it in the proper manner, and at the proper time, however much it may be deteriorated from accidental or other causes, not connected with any such neglect. Story on Bailm. eh. 4, _268. See, generally, Story on Bailm. oh. 4; Poth. Pret A Usage; 2 Kent, Com. 446−449; Vin. Abr. Bailment, B 6; Bac. Abr. Bailment; Civil Code of Louis. art. 2869−2876; 1 Bouv. Inst. n. 1078−1090. Vide Lender.

BOSCAGE, Eng. law. That food which wood and trees yield to cattle.

BOTE, contracts A recompense, satisfaction, amends, profit or advantage : hence came the word man−bote, denoting a compensation for a man slain; house−bote, cart−bote, plough−bote, signify that a tenant is privileged to cut wood for these uses. 2 Bl. Com. 35; Woodf. L. & T. 232.

BOTELESS, or bootless. Without recompense, reward or satisfaction made unprofitable or without success.

BOTTOMRY, maritime law. A contract, in nature of a mortgage of a ship, on which the owner borrows money to enable him to fit out the ship, or to purchase a cargo, for a voyage proposed: and he pledges the keel or bottom of the ship, pars pro toto, as a security for the repayment; and it is stipulated that if the ship should be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender also shall lose his money but if the ship should arrive in safety, then he shall receive back his principal, and also the interest agreed upon, which is generally called marine interest, however this may exceed the legal rate of interest. Not only the ship and tackle, if they arrive safe, but also the person of the borrower, is liable for the money lent and the marine interest. See 2 Bl. Com. 458; Marsh. Ins. B. 21 c. 1; Ord. Louis XIV. B. 3, tit. 5; Laws of Wishuy, art. 45 Code de Com. B. 2, tit. 9.

2. The contract of bottomry should specify the principal lent, and the rate of marine interest agreed upon; the subject on which the loan is effected the names of the vessel and of the master those of the lender and borrower whether the loan be for an entire voyage; for what voyage and for what space of time; and the period of re−payment. Code de Com. art. 311 Marsh. Ins. B. 2.

3. Bottomry differs materially from a simple loan. In a loan, the money is at the risk of the borrower, and must be paid at all events. But in bottomry, the money is at the risk of the lender during the voyage. Upon a loan, only legal interest can be received; but upon bottomry, any interest may be legally reserved which the parties agree upon. See, generally, Metc. & Perk. Dig. h. t.; Marsh. lnst. B. 2; Bac. Abr. Merchant, K; Com. Dig. Merchant. E 4; 3 Mass. 443; 8 Mass. 340; 4 Binn. 244; 4 Cranch, 328; 3 John. R. 352 2 Johns. Cas. 250; 1 Binn. 405; 8 Cranch, 41 8; 1 Wheat. 96; 2 Dall. 194. See also this Dict. tit. Respondentia; Vin. Abr. Bottomry Bonds 1 Bouv. Inst. n. 1246−57.

BOUGHT NOTE, contracts. An instrument in writing, given by a broker to the seller of merchandise, in which it is stated that the goods therein mentioned have been sold for him. There appears, however, some confusion in the books, on the subject of these notes sometimes they are called sold notes. 2 B. & Ald. 144 Blackb. on Sales, 89.

2. This note is signed in the broker's name, as agent of the buyer and seller; and, if he has not exceeded his authority, the parties are thereby respectively bound. 1 Bell's Com. (5th ed.) 435; Holt's C. 170; Story on Agency, _28; 9 B. & Cr. 78; 17 E. C. L. R. 335; 5 B. & Ad. 521; 1 N. R. 252; 1 Moo. & R. 368; Moo. & M. 43; 22 E. C. L. R. 243; 2 M. & W. 440; Moo. & M. 43; 6 A. & E. 486; 33 E. C. L. R. 122; 16 East, 62 Gow, R. 74; 1 Camp. R. 385; 4 Taunt. 209; 7 Ves. 265. Vide Sold Note.

BOUND BAILIFFS. Sheriff's officers, who serve writs and make arrests; they are so called because they are bound to the sheriff for the due execution of their office. 1 Bl. Com. 345.

BOUNDARY, estates. By this term is understood in general, every separation, natural or artificial, which marks the confines or line of division of two contiguous estates. 3 Toull. n. 171.

2. Boundary also signifies stones or other materials inserted in the earth on the confines of two estates.

3. Boundaries are either natural or artificial. A river or other stream is a natural boundary, and in that case the centre of the stream is the line. 20 John. R. 91; 12 John. R. 252; 1 Rand. R. 417; 1 Halst. R. 1; 2 N. H. Rep. 369; 6

Cowen, R. 579; 4 Pick. 268; 3 Randolph's R. 33 4 Mason's R. 349−397.

4. An artificial boundary is one made by man.

5. The description of land, in a deed, by specific boundaries, is conclusive as to the quantity; and if the quantity be expressed as a part of the description, it will be inoperative, and it is immaterial whether the quantity contained within the specific boundaries, be greater or less than that expressed; 5 Mass. 357; 1 Caines' R. 493; 2 John. R. 27; 15 John. 471; 17 John. R. 146; Id. 29; 6 Cranch, 237; 4 Hen. & Munf. 125; 2 Bay, R. 515; and the same rule is applicable, although neither the courses and distances, nor the estimated contents, correspond with such specific boundaries; 6 Mass. 131; 11 Mass. 193; 2 Mass. 380; 5 Mass. 497; but these rules do not apply in cases where adherence to them would be plainly absurd. 17 Mass. 207. Vide 17 S. & R. 104; 2 Mer. R. 507; 1 Swanst. 9; 4 Ves. 180; 1 Stark. Ev. 169; 1 Phil. Ev. Index, h. t.; Chit. Pr. Index, h. t.; 1 Supp. to Ves. jr. 276; 2 Hill. Ab. c. 24, _209, and Index, h. t.

6. When a boundary, fixed and by mutual consent, has been permitted to stand for twenty−one years, it cannot afterwards be disturbed. In accordance with this rule, it has been decided, that where town lots have been occupied up to a line fence between them, for more than twenty−one years, each party gained an incontrovertible right to the line thus established, and this whether either party knew of the adverse claim or not; and whether either party has more or less ground than was originally in the lot he owns. 9 Watts, R. 565. See Hov. Fr. c. 8, p. 239 to 243; 3 Sum. R 170 Poth. Contr. de Societe, prem. app. n. 231.

7. Boundaries are frequently marked by partition fences, ditches, hedges, trees, &c. When such a fence is built by one of the owners of the land, on his own premises, it belongs to him exclusively; when built by both at joint expense, each is the owner of that part on his own land. 5 Taunt. 20. When the boundary is a hedge and a single ditch, it is presumed to belong to him on whose side the hedge is, because he who dug the ditch is presumed to have thrown the earth upon his own land, which was alone lawful to do, and that the hedge was planted, as is usual, on the top of the bank thus raised. 3 Taunt. 138. But if there is a ditch on each side of the hedge, or no ditch at all, the hedge is presumed to be the common property of both proprietors. Arch. N. P. 328; 2 Greenl. Ev. _617. A tree growing in the boundary line is the joint property of both owners of the land. 12 N. H. Rep. 454.

8. Disputes arising from a confusion of boundaries may be generally settled by an action at law. But courts of equity will entertain a bill for the settlement of boundaries, when the rights of one of the parties may be established upon equitable grounds. 4 Bouv. Inst. n. 3923.

BOUNTY. A sum of money or other thing, given, generally by' the government, to certain persons, for some service they have done or are about to do to the public. As bounty upon the culture of silk; the bounty given to an enlisted soldier; and the like. It cliffers from a reward, which is generally applied to particular cases; and from a payment, as there is no contract on the part of the receiver of the bounty.

BOVATA TERRAE. As much land as one ox can plough.

BRANCH. This is a metaphorical expression, which designates, in the genealogy of a numerous family, a portion of that family which has sprang from the same root or stock; these latter expressions, like the first, are also metaphorical.

2. The whole of a genealogy is often called the genealogical tree; and sometimes it is made to take the form of a tree, which is in the first place divided into as many branches as there are children, afterwards into as many branches as there are grand−children, then of great grandchildren, &c. If, for example, it be desired to have a genealogical tree of Peter's family, Peter will be made the trunk of the tree; if he has had two children, John and James, their names will be written on the first two branches; which will themelves shoot out as many smaller branches as John and James have children; from these other's proceed, till the whole family is represented on the tree; thus the origin, the application, and the use of the word branch in genealogy will be at once perceived.

BRANCHES. Those solid parts of trees which grow above the trunk.

2. In general the owner of a tree is the owner of the branches; but when they grow beyond his line, and extend over the adjoining estate, the proprietor of the latter may cut them off as far as they grow over his land. Rolle's R. 394.; 3 Bulst. 198. But as this nuisance is one of omission, and, as in the case of such nuisances, it is requisite to give notice before abating them, it would be more prudent, and perhaps necessary, to give notice to the owner of the tree to remove such nuisance. 1 Chit. Pr. 649, 650, 652. See Root; Tree.

TO BRAND. An ancient mode of punishment, which was to inflict a mark on an offender with a hot iron. This barbarous punishment has been generally disused.

BRANDY. A spirituous liquor made of wine by distillation. See stat. 22 Car. H. c. 4.

BREACH, contract, torts. The violation of an obligation, engagement or duty; as a breach of covenant is the non−performance or violation of a covenant; the breach of a promise is non−performance of a promise; the breach of a duty, is the refusal or neglect to execute an office or public trust, according to law.

2. Breaches of a contract are single or continuing breaches. The former are those which are committed at one single time. Skin. 367; Carth. 289. A continuing breach is one committed at different times, as, if a covenant to repair be broken at one time, and the same covenant be again broken, it is a continuing breach. Moore, 242; 1 Leon. 62; 1 Salk. 141; Holt, 178; Lord Raym. 1125. When a covenant running with the land is assigned after a single breach, the right of action for such breach does not pass to the assignee but if it be assigned after the commencement of a continuing breach, the right of action then vests in such assignee. Cro. Eliz. 863; 8 Taunt. 227;, 2 Moore, 164; 1 Leon. 62.

3. In general the remedy for breaches of contracts, or quasi contracts, is by a civil action.

BREACH OF THE PEACE. A violation of public order; the offence of disturbing the public peace. One guilty of this offence may be held to bail for his good behaviour. An act of public indecorum is also a breach of the peace. The remedy for this offence is by indictment. Vide Pace,

BREACH OF PRISON. An unlawful escape out of prison. This is of itself a misdemeanor. 1 Russ. Cr. 378; 4 Bl. Com. 129 2 Hawk. P. C. c. 18, s. 1 7 Conn. 752. The remedy for this offence is by indictment. See Escape.

BREACH OF TRUST. The wilful misappropriation, by a trustee, of a thing which had been lawfully delivered to him in confidence.

2. The distinction between larceny and a breach of trust is to be found chiefly in the terms or way in which the thing was taken originally into the party's possession; and the rule seems to be, that whenever the article is obtained upon a fair contract, not for a mere temporary purpose, or by one who is in the. employment of the deliverer, then the subsequent misappropriation is to be considered as an act of breach of trust. This rule is, however, subject to many nice distinctions. 15 S. & R. 93, 97. It has been adjudged that when the owner of goods parts with the possession for a particular purpose, and the person who receives them avowedly for that purpose, has at the time a fraudulent intention to make use of the possession as the weans of converting
the goods to his own use, and does so convert them, it is larceny; but if the owner partwith the property, although fraudulent means have been used to obtain it, the, act of conversion is not larceny. Id. Alis. Princ. c. 12, p. 354.

3. In the Year Book, 21 H. VII. 14, the distinction is thus stated: Pigot. If I deliver a jewel or money to my servant to keep, and he flees or goes from me with the jewel, is it felony ? Cutler said, Yes : for so long as he is with me or in my house, that which I have delivered to him is adjudged to be in my possession; as my butler, who has my plate in keeping, if he flees with it, it is felony. Same law; if he who keeps my horse goes away with, him: The reason is, they are always in my possession. But if I deliver a horse to my servant to ride to market or the fair and he flee with him, it is no felony; for e comes lawfully to the possession of the horse by delivery. And so it is, if I give him a jewel to carry to London, or to pay one, or to buy a thing, and he flee with it, it is not felony : for it is out of my possession, and he comes lawfully to it. Pigot. It can well be: for the master in these cases has an action against him, viz., Detinue, or Account. See this point fully discussed in Stamf. P. C. lib. 1; Larceny, c. 15, p. 25. Also, 13 Ed. IV. fo. 9; 52 H. III. 7; 21 H. VII. 15.

BREACH. pleading. That part of the declaration in which the violation of the
defendant's contract is stated.

2. It is usual in assumpsit to introduce the statement of the particular breach, with the allegation that the defendant, contriving and fraudulently intending craftily and subtilely to deceive and defraud the plaintiff, neglected and refused to perform, or performed the particular act contrary to the previous stipulation. ?

3. In debt, the breach or cause of action. complained of must proceed only for the non−payment of money previously alleged to be payable; and such breach is nearly similar, whether the action be in debt on simple contract, specially, record or statute, and is usually of the following form: " Yet the said defendant, although often requested so to, do, hath not as yet paid the said sum of ____ dollars, above demanded, nor any part thereof, to the said plaintiff, but bath hitherto wholly neglected and refused so to do, to the damage of the said plaintiff _____ dollars, and therefore he brings suit," &c.

4. The breach must obviously be governed by the nature of the stipulation; it ought to be assigned in the words of the contract, either negatively or affirmatively, or in words which are co−extensive with its import and effect. Com. Dig. Pleader, C 45 to 49; 2 Saund. 181, b, c; 6 Cranch, 127; and see 5 John. R. 168; 8 John. R. 111; 7 John. R. 376; 4 Dall. 436; 2 Hen. & Munf. 446.

5. When the contract is in the disjunctive, as, on a promise to deliver a horse by a particular day, or pay a sum of money, the breach ought to be assigned that the defendant did not do the one act nor the other. 1 Sid. 440; Hardr. 320; Com. Dig. Pleader, C.

BREAKING. Parting or dividing by force and violence a solid substance, or piercing, penetrating, or bursting through the same.

2. In cases of burglary and house−breaking, the removal, of any part of the house, or of the fastenings provided to secure it, with violence and a felonious intent, is called a breaking.

3. The breaking is actual, as in the above case; or constructive, as when the burglar or house−breaker gains an entry by fraud, conspiracy or threats. 2 Russ. on Cr. 2; 2 Chit. Cr. Law, 1092; 1 Hale, P. C. 553; Alis. Prin. 282, 291. In England it has been decided that if the sash of a window be partly open, but not sufficiently so to admit a person, the raising of it so as to admit a person is not a breaking of the house. 1 Moody, Cr. Cas. 178. No reasons are assigned. It is difficult to conceive, if this case be law, what further opening will amount to a breaking. But see 1 Moody, Cr. Cas. 327, 377; and Burglary.

BREAKING DOORS. The act of forcibly removing the fastenings of a house, so that a person may enter.

2. It is a maxim that every man's house is his castle, and it is protected from every unlawful invasion. An officer having a lawful process, of a criminal nature, authorizing him to do so, may break an outer door, if upon making a demand of admittance it is refused. The house may also be broken open for the purpose of executing a writ of habere facias possessionem. 5 Co. 93; Bac. Ab. Sheriff, N 3.

3. The house protects the owner from the service of all civil process in the first instance, but not, if once lawfully arrested, he takes refuge in his own house; in that case the officer may pursue him, and break open any door for the Purpose. Foster, 320; 1 Rolle's R. 138 Cro. Jac. 555. Vide Door; House.

BREATH, med. juris. The air expelled from the chest at each expiration.

2. Breathing, though a usual sign of life, is not conclusive that a child was wholly born alive, as breathing may take place before the whole delivery of the mother is complete. 5 Carr. & Payn, 329; S. C. 24 E. C. L. R. 344. Vide Birth; Life; Infanticide.

BREPHOTROPHI, civil law. Persons appointed to take care of houses destined to receive foundlings. Clef des Lois Rom. mot Administrateurs.

BREVE, practice. A writ in which the cause of action is briefly stated, hence its name. Fleta, lib. 2, c. 13, _25; Co. Lit. 73 b.

2. Writs are distributed into several classes. Some are called brevia formata, others brevia de cursu, brevia judicialia, or brevia magistralia. There is a further distinction with respect to real actions into brevia nominata and innominata. The former, says Bacon, contain the time, place and demand very particularly; and therefore by such writ several lands by several titles cannot be demanded by the same writ. The latter contain only a general complaint, without expressing time, damages, &c., as in trespass quare clausum fregit, &o., and therefore several lands coming to the demandant by several titles may be demanded in such writ. F. N. B. 209; 8 Co. 87; Kielw. 105; Dy. 145; 2 Brownl. 274; Bac. Ab. Actions in General, C. See Innominate contracts.

BREVE DE RECTO. A writ of right. (q. v.)

BREVE TESTATUM, feudal law. A declaration by a superior lord to his vassal, made in the presence of the pares curias, by which he gave his consent to the grant of land, was so called. Ersk. Inst. B. 2, tit. 3, s. 17. This was made in writing, and had the operation of a deed. Dalr. Feud. Pr. 239.

BREVET. In France, a brevet is a warrant granted by the government to authorize an individual to do something for his own benefit, as a brevet d'invention, is a patent to secure a man a right as inventor.

2. In our army, it signifies a commission conferring on an officer a degree of rank immediately above the one which he holds in his particular regiment, without, however conveying a right to receive a corresponding pay.

BREVIA, writs. They were called brevia, because of the brevity in which the cause of action was stated in them.

BREVIA ANTICIPANTIA. This name is given to a number of writs, which are also called writs of prevention. See Quia Ti. met.

BREVIA FORMATA, Eng law. The collection of writs found in the Registrum Brevium was so called. The author of Fleta says, these writs were formed upon their cases. They were different from the writs de cursu, which were approved by the council of the whole realm, and could not be changed without the will of the same. Fleta, lib. 2, c. 13, _2. See 17 S. & R. 194−5, and authorities there cited.

BREVIA JUDICIALIA. Subsidiary process issued pending a suit, or process issued in execution of the judgment.

They varied, says the author of Fleta, according to the variety of the pleadings of the parties and of their responses. Lib. 2. c. 13, _3; Co. Lit. 73 b, 54 b. Many of them, however, long since became fixed in their forms, beyond the power of the courts to alter them, unless authorized to do so by the legislature. See 1 Rawle, Rep. 52; Act of Pennsylvania, June. 16, 1836, __3, 4, 5.

BREVIA MAGISTRALIA. These were writs formed by the masters in chancery, pursuant to the stat. West. 2, c. 24. They vary according to the diversity of cases and complaints, of which, says the author of Fleta, some are personal, some real, some mixed, according as actions are diverse or various, because so many will be the forms of writs as there are kinds of actions. Fleta, lib. 2, c. 13, _4; Co. Lit. 73 b, 54 b.

BREVIARIUM. The name of a code of laws of Alaric II., king of the Visigoths.

BREVIBUS ET ROTULIS LIBERANDIS, Eng. law. A writ or mandate directed to a sheriff, commanding him to deliver to his successor the county and the appurtenances, with all the briefs, rolls, remembrances, and all other things belonging to his office.

BRIBE, crim. law. The gift or promise, which is accepted, of some advantage, as the inducement for some illegal act or omission; or of some illegal emolument, as a consideration, for preferring one person to another, in the performance of a legal act.

BRIBERY, crim. law. The receiving or offering any undue reward by or to any person whomsoever, whose ordinary profession or business relates to the administration of public justice, in order to influence his behaviour in office, and to incline him to act contrary to his duty and the known rules of honesty and integrity. 3 Inst. 149; 1 Hawk. P. C. 67, s. 2 4 Bl. Com. 139; 1 Russ. Cr. 156.

2. The term bribery extends now further, and includes the offence of giving a bribe to many other officers. The offence of the giver and of the receiver of the bribe has the same name. For the sake of distinction, that of the former, viz : the briber, might be properly denominated active. bribery; while that of the latter, viz : the person bribed, might be called passive bribery.

3. Bribery at elections for members of parliament, has always been a crime at common law, and punishable by indictment or information. It still remains so in England notwithstanding the stat. 24 Geo. H. c. 14 3 Burr. 1340, 1589. To constitute the offence, it is not necessary that the person bribed should, in fact, vote as solicited to do 3 Burr. 1236; or even that he should have a right to vote at all both are entirely immaterial. 3 Bur. 1590−1.

4. An attempt to bribe, though unsuccessful, has been holden to be criminal, and the offender may be indicted. 2 Dall. 384; 4 Burr. 2500 3 Inst. 147; 2 Campb. R. 229; 2 Wash. 88; 1 Virg. Cas. 138; 2 Virg. Cas. 460.

BRIBOUR. One that pilfers other men's goods; a thief. See 28 E. II., c. 1.

BRIDGE. A building constructed over a river, creek, or other stream, or ditch or other place, in order to facilitate the passage over the same. 3 Harr. 108.

2. Bridges are of several kinds, public and private. Public bridges may be divided into, 1st. Those which belong to the public; as state, county, or township bridges, over which all the people have a right to pass, with or without paying toll these are built by public authority at the public expense, either of the state itself, or a district or part of the state.

3. − 2d. Those which have been built by companies, or at the expense of private individuals, and over Which all the people have a right to pass, on the payment of a toll fixed by law. 3d. Those which have been built by private individuals and which have been dedicated to public uscs. 2 East, R. 356; 5 Burr. R. 2594; 2 Bl. R. 685 1 Camp. R. 262, n.; 2 M. & S. 262.

4. A private bridge is one erected for the use of one or more private persons; such a bridge will not be considered a public bridge, although it may be occasionally used by the public. 12 East, R. 203−4. Vide 7 Pick. R. 844; 11 Pet. R. 539; 7 N. H. Rcp. 59; 1 Pick. R. 432; 4 John. Ch. R. 150.

BRIEF, eccl. law. The name of a kind of papal rescript. Briefs are writings sealed with wax, and differ in this respect from bulls, (q. v.) which are scaled with lead. They are so called, because they usually are short compendious writings. Ayl. Parerg. 132. See Breve.

BRIEF, practice. An abridged statement of a party's case.

2. It should contain : 1st. A statement of the names of the parties, and of their residence and occupation, the character in which they sue and are sued, and wherefore they prosecute or resist the action. 2d. An abridgment of all the pleadings. 3d. A regular, chronological, and methodical statement of the facts in plain common language. 4th. A summary of the points or questions in issue, and of the proof which is to support such issues, mentioning specially the names of the witnesses by which the facts are to be proved, or if there be written evidence, an

abstract of such evidence. 5th. The personal character of the witnesses should be mentioned; whether the moral character is good or bad, whether they are naturally timid or over−zealous, whether firm or wavering. 6th. If known, the evidence of the opposite party, and such facts as are adapted to oppose, confute, or repel it. Perspicuity and conciseness are the most desirable qualities of a brief, but when the facts are material they cannot be too numerous when the argument is pertinent and weighty, it cannot be too extended.

3. Brief is also used in the sense of breve. (q. v.)

BRIEF OP TITLE, practice, conveyancing. An abridgment of all the patents, deeds, indentures, agreements, records, and papers relating to certain real estate.

2. In making a brief of title, the practitioner should be careful to place every deed and other paper in chronological order. The date of each deed; the names of the parties; the consideration; the description of the property; should be particularly, noticed, and all covenants should also be particularly inserted.

3. A vendor of an interest in realty ought to have his title investigated, abstracted, and evidence in proof of it ready to be produced and established before he sells; for if he sell with a confused title, or without being ready to produce deeds and vouchers, he must be at the expense of clearing it. 1 Chit. Pr. 304, 463.

BRINGING MONEY INTO COURT. The act of depositing money in the hands of the proper officer of the court, for the purpose of satisfying a debt or duty, or of an interpleader.

2. Whenever a tender of money is pleaded, and the debt is not discharged by the tender and refusal, money may be brought into court, without asking leave of the court; indeed, in such cases the money must be brought into court in order to have the benefit of the tender. In other cases, leave must be had, before the money can be brought into court.

3. In general, if the money brought into court is sufficient to satisfy the plaintiff ’s claim, he shall not recover costs. See Bac. Ab. Tender, &c.

BROCAGE, contracts. The wages or commissions of a broker his occupation is also sometimes called brocage. This word is also spelled brokerage.

BROKERAGE, contracts. The trade or occupation of a broker; the commissions paid to a broker for his services.

BROKERS, commerce. Those who are engaged for others, in the negotiation of contracts, relative to property, with the custody of which they have no concern. Paley on Agency, 13; see Com. Dig. Merchant, C.

2. A broker is, for some purposes, treated as the agent of both parties; but in the first place, he is deemed the agent only of the person by whom he is originally employed; and does not become the agent of the other until the bargain or contract has been definitely settled, as to the terms, between the principals. Paley on Ag. by Lloyd, 171, note p; 1 Y. &, J. 387.

3. There are several kinds of brokers, as, Exchange Brokers, such as negotiate in all matters of exchange with foreign countries.

4. Ship Brokers. Those who transact business between the owners of vessels, and the merchants who send cargoes.

5. Insurance Brokers. Those who manage the concerns both of the insurer and the insured.

6. Pawn Brokers. Those who lend money, upon goods, to necessitous people, at interest.

7. Stock Brokers. Those employed to buy and sell shares of stocks in corporations and companies. Vide Story on Ag. _28 to 32; T. L. h. t.; Maly. Lex Mer. 143; 2 H. Bl. 555; 4 Burr, R. 2103; 4 Kent, Com. 622, note d, 3d ed.; Liv. on Ag. Index, h. t.; Chit. Com. L. Index, h. t.; and articles Agency; dgent; Bought note; Factor; Sold note.

BROTHELS, crim. law. Bawdy−houses, the common habitations of prostitutes; such places have always been deemed common nuisances in the United States, and the keepers of them may be fined and imprisoned.

2. Till the time of Henry VIII, they were licensed in England, when that lascivious prince suppressed them. Vide 2 Inst. 205, 6; for the history of these pernicious places, see Merl. Rep. mot Bordel Parent Duchatellet, De la Prostitution dans la ville de Paris, c. 5, _1; Histoire de la Legislation sur les femmes publiques, & c., par M. Sabatier.

BROTHER, domest. relat. He who is born from the same father and mother with another, or from one of them only.

2. Brothers are of the whole blood, when they are born of the same father and mother, and of the half blood,

when they are the issue of one of them only.

3. In the civil law, when they are the children of the same father and mother, they are called brothers germain; when they descend from the same father, but not the same mother, they are consanguine brothers; when they are the issue of the same mother, but not the same father, they are uterine brothers. A half brother, is one who is born of the same father or mother, but not of both. One born of the same parents before they were married, a left−sided brother; and a bastard born of the same father or mother, is called a natural brother. Vide Blood; Half−blood; Line; and Merl. Repert. mot Frere; Dict. de Jurisp. mot Frere; Code, 3, 28, 27 Nov. 84, praef; Dane's Ab. Index, h. t.

BROTHER−IN−LAW, domestic relat. The brother of a wife, or the hushand of a sister. There is no relationship, in the former case, between the hushand and the brother−in−law, nor in the latter, between the brother and the hushand of the sister; there is only affinity between them. See Vaughan's Rep. 302, 329.

BRUISE, med. jurisp. An injury done with violence to the person, without breaking the skin; it is nearly synonymous with contusion. (q . v.) 1. Ch. Pr. 38; vide 4 Car. & P. 381, 487, 558, 565; Eng. C. L. Rep. 430, 526, 529. Vide Wound.

BUBBLE ACT, Eng. law. The name given to the statute 6 Geo. I., c. 18, which was passed in 1719, and was intended " for restraining several extravagant and unwarrantable practices therein mentioned." See 2 P. Wms. 219.

BUGGERY, crim. law. The detestable crime of having commerce contrary to the order of nature, by mankind with mankind, or with brute beasts, or by womankind with brute beasts. 3 Inst. 58; 12 Co. 36; Dane's Ab. Index, h. t.; Merl. Repert. mot Bestialie. This is a highly penal offence.

BUILDING, estates. An edifice erected by art, and fixed upon or over the soil, composed of stone, brick, marble, wood, or other proper substance, 'Connected together, and designed for use in the position in which it is so fixed. Every building is an accessory to the soil, and is, therefore, real estate: it belongs to the owner of the soil. Cruise, tit. 1, S. 46. Vide 1 Chit. Pr. 148, 171; Salk. 459; Hob. 131; 1 Mete. 258; Broom's Max. 172.

BULK, contracts. Said to be merchandise which is neither counted) weighed, nor measured.

2. A sale by bulk, is a sale of a quantity of goods,, such as they are, without measuring, counting, or weighing. Civ. Code of Louis. a. 3522, n. 6.

BULL, eccles. law. A letter from the pope of Rome, written on parchment, to which is attached a leaden seal, impressed with the images of Saint Peter and Saint Paul.

2. There are three kinds of apostolical rescripts, the brief, the signature, and the bull, which last is most commonly used in legal matters. Bulls may be compared to the edicts and letters−patent of secular princes: when the bull grants a favor, the seal is attached by means of silken strings; and when to direct execution to be performed, with flax cords. Bulls are written in Latin, in a round and Gothic hand. Ayl. Par. 132; Ayl. Pand. 21; Mer. Rep. h. t.

BULLETIN. An official account of public transactions on matters of importance. In France, it is the registry of the laws.

BULLION. In its usual acceptation, is uncoined gold or silver, in bars, plates, or other masses. 1 East, P. C. 188.

2. In the acts of Congress, the term is also applied to copper properly manufactured for the purpose of being coined into money. For the acts of Congress, authorizing the coinage of bullion for private individuals, see Act of April 2, 1792, s. 14, 1 Story, 230; Act of May 19, 1828, 4 Sharsw. cont. of Story's Laws U. S. 2120; Act of June 28, 1834, Id. 2376; Act of January 18, 1837, Id. 2522 to 2529. See, for the English law on the subject of crimes against bullion, 1 Hawk. P. C. 32 to 41.

BUOY. A piece of wood, or an empty barrel, floating on the water, to show the place where it is shallow, to indicate the danger there is to navigation. The act of Congress, approved the 28th September, 1850, enacts, " that all buoys along the coast, in bays, harbors, sounds, or channels, shall be colored and numbered, so that passing up the coast or sound, or entering the bay, harbor or channel, red buoys with even numbers, shall be passed on the starboard hand, black buoys, with uneven numbers, on the port hand, and buoys with red and black stripes on either hand. Buoys in channel ways to be colored with alternate white and black perpendicular stripes."

BURDEN OF PROOF. This phrase is employed to signify the duty of proving the facts in dispute on an issue raised between the parties in a cause.

2. The burden of proof always lies on the party who takes the affirmative in pleading. 1 Mass. 71, 335; 4 Mass. 593; 9 Pick. 39.

3. In criminal cases, as every man is presumed to be innocent until the contrary is proved, the burden of proof

rests on the prosecutor, unless a different provision is expressly made by statute. 12 Wheat. See Onus probandi.

BUREAU. A French word, which literally means a large writing table. It is used figuratively for the place where business is transacted: it has been borrowed by us, and used in nearly the same sense; as, the bureau of the secretary of state. Vide Merl. Repert. h. t.

BUREAUCRACY. The abuse of official influence in the affairs of government; corruption. This word has lately been adopted to signify that those persons who are employed in bureaus abuse their authority by intrigue to promote their own benefit, or that of friends, rather than the public good. The word is derived from the French.

BURGAGE, English law. A species of tenure in socage; it is where the king or other person is lord of an ancient borough, in which the tenements are held by a rent certain. 2 B1. Com. 82.

BURGESS. A magistrate of a borough; generally, the chief officer of the corporation, who performs, within the borough, the same kind of duties which a mayor does in a city. In England, the word is sometimes applied to all the inhabitants of a borough, who are called burgesses sometimes it signifies the representatives of a borough in parliament.

BURGH. A borough; (q. v.) a castle or town.

BURGLAR. One who commits a burglary. (q. v.)

BURGLARIOUSLY, pleadings. This is a technical word, which must be introduced into an indictment for burglary; no other word will answer the same purpose, nor will any circumlocution be sufficient. 4 Co. 39; 5 Co. 121; Cro. Eliz. 920; Bac. Ab. Indictment, G 1; Com. Dig. Indictment, G 6; 1 Chit. Cr. Law, 242.

BURGLARY, crim. law. The breaking and entering the house of another in the night time, with. intent to commit a felony therein, whether the felony be actually committed or not. 3 Inst. 63; 1 Hale, 549; 1 Hawk. c. 38, s. 1; 4 Bl. Com. 224; 2 East, P. C. C. 15, s. 1, p. 484; 2 Russell on Cr. 2; Roscoe, Cr. Ev. 252; Coxe, R. 441; 7 Mass. Rep. 247.

2. The circumstances to be considered are, 1. in what place the offence can be committed; 2. at what time 3. by what means; 4. with what intention.

3.− 1. In what place a burglary can be committed. It must, in general, be committed in a mansion house, actually occupied as a dwelling; but if it be left by the owner animo revertendi, though no person resides in it in his absence, it is still his mansion. Fost. 77; 3 Rawle, 207. The principal question, at the present day, is what is to be deemed a dwelling−house. 1 Leach, 185; 2 Leach, 771; Id. 876; 3 Inst. 64; 1 Leach, 305; 1 Hale, 558; Hawk. c. 38, s. 18; 1 Russ. on Cr. 16; 3 Berg. & Rawle, 199 4 John. R. 424 1 Nott & M'Cord, 583; 1 Hayw. 102, 242; Com. Dig. Justices, P 5; 2 East, P. C. 504.

4. − 2. At what time it must be committed. The offence must be committed in the night, for in the day time there can be no burglary. 4 Bl. Com. 224. For this purpose, it is deemed night when by the light of the sun a person cannot clearly discern the face or countenance of another 1 Hale, 550; 3 nst. 63. This rule, it is evident, does not apply to moonlight. 4 Bl. Com. 224; 2 Russ. on Cr. 32. The breaking and entering need not be done the same night 1 Russ. & Ry. 417; but it is necessary the breaking and entering should be in the night time, for if the breaking be in daylight and the entry in the night, or vice versa, it will not be burglary. 1 Hale, 551; 2 Russ. on Cr. 32. Vide Com. Dig. Justices, P 2; 2 Chit. Cr. Law, 1092.

5.−3. The means used. There must be both a breaking and an entry. First, of the breaking, which may be actual or constructive. An actual breaking tal−,es place when the burglar breaks or removes ally part of, the house, or the fastenings provided for it, with violence. Breaking a window, taking a pane of glass out, by breaking or bending the nails, or other fastenings, raising a latch where the door is not otherwise fastened; picking open a lock with a false key; putting back the lock of a door or the fastening of a window, with an instrument; turning the key when the door is locked in the inside, or unloosening any other fastening which the owner has provided, are several instances of actual breaking. According to the Scotch law, entering a house by means of the true key, while in the door, or when it had been stolen, is a breaking. Alis. Pr. Cr. Law, 284. Constructive breakings occur when the burglar gams an entry by fraud, conspiracy or threats. 2 Russ. on Cr. 22 Chit. Cr. Law, 1093. The breaking of an inner door of the house will be sufficient to constitute a burglary. 1 Hale, 553. Any, the least, entry, with the whole or any part of the body , hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, will be sufficient to constitute the offence. 3 Inst. 64; 4 Bl. Com. 227; Bac. Ab. Burglary, B Com. Dig. Justices, P 4. But the introduction of an instrument, in the act of breaking the house, will not be a sufficient entry, unless it be introduced for the purpose of committing a felony.

6. − 4. The intention. The intent of the breaking and entry must be felonious; if a felony however be committed,

the act will be prima facie evidence of an intent to commit it. If the breaking and entry be with an intention to commit a bare trespass, and nothing further is done, the offence will not be a burglary. 1 Hale, 560; East, P., C. 509, 514, 515; 2 Russ. on Cr. 33.

BURGOMASTER. In Germany this is, the title by which an officer who performs the duties of a mayor is, called.

BURIAL. The act of interring the dead.

2. No burial is lawful unless made in conformity with the local regulations; an when a dead body has been found, it cannot be lawfully buried until the coroner has holden an inquest over it. In England. it is the practice for coroners to issue warrants to bury, after a view. 2 Umf. Lex. Coron. 497, 498.

BURNING. Vide Accident; Arson; Fire, accidental.

BURYING−GROUND. A place appropriated for depositing the dead; a cemetery. In Massachusetts, burying−grounds cannot, be appropriated to roads without the consent of the owners. Massachusetts Revised St. 239.

BUSHEL, measure. The Winchester bushel, established by the 13 W. III. c. 5, A. D. 1701, was made the standard of grain; a cylindrical vessel, eighteen and a half inches in diameter, and eight inches deep inside, contains a bushel; the capacity is 2145.42 cubic inches. By law or usage it is established in most of the United States. The exceptions, as far as known, are Connecticut, where the bushel holds 2198 cubic inches Kentucky, 2150 2/3; Indiana, Ohio, Mississippi and Missouri, where it contains 2150.4 cubic inches. Dane's Ab. c. 211, a. 12, s. 4. See the whole subject discussed in report of the Secretary of State of the United States to the Senate, Feb. 22, 1821.

BUSINESS HOURS. The time of the day during which business is transacted. 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 it a bank or by a banker. 2 Hill, N. Y. R. 835. See 3 Shepl. 67; 5 Shepl. 230.

BUTT. A measure of capacity, equal to one hundred and eight gallons. See Measure.

BUTTS AND BOUNDS. This phrase is used to express the ends and boundaries of an estate. The word butt, being evidently derived from the, French bout, the
end; and bounds, from boundary.

TO BUY. To purchase. Vide Sale.

BUYER, contracts. A purchaser; (q. v.) a vendee.

BUYING OF TITLES. The purchase of the rights of a person to a piece of land when the seller is disseised.

2. When a deed is made by one who, though having a legal right to land, is at the time of the conveyance disseised, as a general rule of the common law, the sale is void; the law will not permit any person to sell a quarrel, or, as it is commonly termed, a pretended title. Such a conveyance is an offence at common law, and by a statute of Hen. VIII. This rule has been generally adopted in the United States, and is affirmed by express statute. In some of the states, it has been modified or abolished. It has been recognized in Massachusetts and Indiana. 1 Ind. R. 127. In Massacbusetts, there is no statute on the subject, but the act has always been unlawful. 5 Pick. R. 356. In Connecticut the seller and the buyer forfeit, each one half the value of the land. 4 Conn. 575. In New York, a person disseised cannot convey, except by way of mortgage. But the statute does not apply to judicial sales. 6 Wend. 224; see 4 Wend. 474; 2 John. Cas. 58; 3 Cow. 89; 5 Wend. 532; 5 Cow. 74; 13 John. 466; 8 Wend. 629; 7 Wend. 53, 152 11 Wend. 442; 13 John. 289. In North Carolina and South Carolina, a conveyance by a disseisee is illegal; the seller forfeits the land, and the buyer its value. In Kentucky such sale is void. 1 Dana, R. 566. But when the deeds were made since the passage of the statute of 1798, the grantee might, under that act, sue for land conveyed to him, which was adversely possessed by another, as the grantor might have done before. The statute rendered transfers valid to pass the title. 2 Litt. 393; 1 Wheat. 292; 2 Litt. 225; 3 Dana, 309. The statute of 1824, " to revive and amend the champerty and maintenance law," forbids the buying ot titles where there is an adverse possession. See 3 J. J. Marsh. 549; 2 Dana, 374; 6 J. J. Marsh. 490, 584. In Ohio, the purchase of land from one against whom a suit is pending for it, is void, except against himself, if he prevails. Walk. Intr. 297, 351, 352. In Pennsylvania. 2 Watts, R. 272 Illinois, 111. Rev. L. 130; Missouri, Misso. St. 119, a deed is valid, though there be an adverse possession. 2
Hill, Ab. c. 33, _42 to 52.

3. The Roman law forbade the sale of a right or thing in litigation. Code, 8. 37, 2.

BY ESTIMATION, contracts. In sales of land it not unfrequently occurs that the property is said to contain a

certain number of acres, by estimation, or so many acres, more or less. When these expressions are used, if the land fall short by a small quantity, the purchaser will receive no relief. In one case of this kind, the land fell short two−fifths, and the purchaser received no relief. 2 Freem. 106. Vide 1 Finch, 109 1 Call, R. 301; 6 Binn. Rep. 106 1 Serg. & Pawle, R. 166; 1 Yeates, R. 322 2 John. R. 37 5 John. R. 508; 15 John. R. 471; 1 Caines, R. 493; 3 Mass. Rep. 380; 5 Mass. R. 355; 1 Root: R. 528; 4 Hen. & Munf. 184. The meaning of these words has never been precisely ascertained by judicial decision. See Sugd. Vend. 231 to 236; Wolff, Inst. _658 and the cases cited under the articles Constitution; More or less; Subdivision.

BY−LAWS. Rules and ordinances made by a corporation for its own government.

2. The power to make by−laws is usually conferred by express terms of the charter creating the corporation, though, when not expressly granted, it is given by implication, and it is incident to the very existence of a corporation. When there is an express grant, limited to certain cases and for certain purposes, the corporate power of legislation is confined to the objects specified, all others being excluded by implication. 2 Kyd on Corp. 102; 2 P. Wms. 207; Ang. on Corp. 177. The power of making by−laws, is to be exercised by those persons in whom it is vested by the charter; but if that intrument is silent on that subject, it resides in the members of the corporation at large. Harris & Gill's R. 324; 4 Burr. 2515, 2521; 6 Bro. P. C. 519.

3. The constitution of the United States, and acts of congress made in conformity to it the constitution of the state in which a corporation is located, and acts of the legislature, constitutionally made, together with the common−law as there accepted, are of superior force to any by−law; and such by−law, when contrary to either of them, is therefore void, whether the charter authorizes the making of such by−law or not; because no legislature can grant power larger than they themselves possess. 7 Cowen's R. 585; Id. 604 5 Cowen's R. 538. Vide, generally, Aug. on Corp. ch. 9; Willc. on Corp. ch. 2, s. 3; Bac. Ab. h. t.; 4 Vin. Ab. 301 Dane's Ab. Index, h. t., Com. Dig. h. t.; and Id. vol. viii. h. t.

BY THE BYE, Eng. law. A declaration may be filed without a new process or writ, when the defendant is in court in another case, by the plaintiff in that case having filed common bail for him; the declaration thus filed is called a declaration by the bye. 1 Crompt. 96; Lee's Diet. of Pr. Declaration IV.

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