WORDS AND PHRASES LEGALLY DEFINED

Volume 5: S-Z

Words and Phrases

Legally Defined

SECOND EDITION

under the General Editorship of

John B. Saunders

of Lincoln's Inn, Barrister-at-Law

VOLUME 5

S—Z

LONDON

Butterworths

1970

ENGLAND: BUTTERWORTH & CO. (PUBLISHERS) LTD.
LONDON: 88 KINGSWAY, WC2B 6AB

AUSTRALIA: BUTTERWORTHS PTY. LTD.
SYDNEY: 586 PACIFIC HIGHWAY, CHATSWOOD, NSW 2067
MELBOURNE: 343 LITTLE COLLINS STREET, 3000
BRISBANE: 240 QUEEN STREET, 4000

CANADA: BUTTERWORTH & CO. (CANADA) LTD.
TORONTO: 2265 MIDLAND AVENUE,
SCARBOROUGH M1P 4S1

NEW ZEALAND: BUTTERWORTHS OF NEW ZEALAND LTD.
WELLINGTON 1: T & W YOUNG BUILDING,
77–85 CUSTOMHOUSE QUAY,
CPO BOX 472

SOUTH AFRICA: BUTTERWORTH & CO. (SOUTH AFRICA) (PTY.) LTD.
DURBAN: 152–154 GALE STREET

U.S.A.: BUTTERWORTH & CO. (PUBLISHERS) INC.
BOSTON: 19 CUMMINGS PARK, WOBURN, MASS. 01801

Reprinted 1974
Reprinted 1978

Standard Book Number for complete set of volumes: 406 08030 5
for this volume: 406 08035 6

Printed in Great Britain by The Whitefriars Press Ltd.,
London and Tonbridge

Overseas Revising Editors

AUSTRALIA

Dr. G. de Q. WALKER, LL.B., S.J.D.
Barrister-at-Law

CANADA

GERALD D. SANAGAN, Q.C., M.A.
of the Ontario Bar

NEW ZEALAND

CLARENCE NOEL IRVINE, LL.B.
Barrister of the Supreme Court of New Zealand

Managing Editor

C. C. BANWELL

S

SACRILEGE

[This is no longer a statutory offence in England. Under the Brawling Act 1553 it was an offence to break down or deface any altar, crucifix or cross in any church, churchyard or chapel. This Act was repealed by the Criminal Law Act 1967.

Under the Larceny Act 1916 it was the offence of sacrilege to break and enter any place of divine worship and to commit an arrestable offence therein, or similarly to break out of such a place after committing such an offence. This Act too has been repealed, by the Theft Act 1968, under which there is now no separate offence of sacrilege.]

SAFE

[Section 10 (1) of the Factory and Workshop Act 1901 (repealed; see now Factories Act 1961, s. 14) enacted that all dangerous parts of machinery in a factory must either be securely fenced, or be in such position or of such construction as to be equally "safe" to every person employed or working in the factory as it would be if it were securely fenced.] "It is true—indeed, it is quite obvious—that the legislature is dealing with dangerous parts of machinery, but its object is not to leave them dangerous. On the contrary, its object is, under stringent penalties, to make them safe. And it is to be observed that the words are 'securely fenced', not 'somewhat securely fenced', and a little later the word employed is 'safe', not 'moderately safe'. 'Safe' means 'actually safe', and this actual safety is to be procured (*a*) by secure fencing, or (*b*) by safe position, or (*c*) by safe construction." *Sowter* v. *Steel Barrel Co., Ltd.* (1935), 154 L. T. 85, D. C., *per* Lord Hewart, C.J., at p. 87.

[By the terms of a charterparty, the charterers had the right to order a ship to load at two "safe" berths or loading places.] "There can, I think, be no question as to the meaning of the word 'safe' when used in the contexts now being considered. A place will not be safe unless in the relevant period of time the particular ship can reach it, remain in it, and return from it, without, in the absence of some abnormal occurrence, being exposed to danger." *Compania Naviera Maropan S.A.* v. *Bowaters Lloyd Pulp & Paper Mills, Ltd.*, [1955] 2 All E. R. 241, *per* Morris, L.J., at p. 255; see also [1955] 2 Q. B. 68.

Australia. — "By virtue of the contract of employment, an employer owes to his employees an implied contractual duty to have the premises, the appliances, and the system of working used for the purposes of the business in which they are employed as safe for them as the exercise of reasonable care can make them. . . . It is conceived that 'safe' in this connection means safe from all dangers so far as protection from such dangers is reasonably practicable and to be expected having regard to the nature of the employment . . . but that the employee is taken to accept the risk of all dangers which are obvious and inherent in the employment, and against which protection is impracticable and unnecessary." *Key* v. *Comr. for Railways*, [1941] N. S. W. S. R. 60, *per* Jordan, C.J., at p. 66.

Australia. — "In order to be safe machinery must according to some authorities be actually and not merely reasonably safe, or as safe as reasonably practicable, and such safety must be provided by secure fencing or in the alternative by safe position or construction: *Chasteney* v. *Michael Nairn & Co.* [[1937] 1 All E. R. 376, at p. 379]." *Inglis* v. *N.S.W. Fresh Food and Ice Co., Ltd.*, [1944] N. S. W. S. R. 87, *per* Davidson, J., at p. 101.

SAFE MEANS OF ACCESS

[Section 26 (1) of the Factories Act 1937 (repealed; see now Factories Act 1961, s. 29) provided that there should be "safe means of access" to every place at which any person had at any time to work.] "I have no doubt that this ladder was a 'means of access' from the floor of the paint shop to the top of the booth. Was it a 'safe' means of access? I agree . . . that 'safe' is the converse of 'dangerous'. It means safe for all contingencies that may reasonably be foreseen, unlikely as well as likely, possible as well as probable." *McCarthy* v. *Coldair*, [1951] 2 T. L. R. 1226, C. A., *per* Denning, L.J., at p. 1228.

[The question was the meaning of the words "safe means of access" in reg. 5 of the Building (Safety, Health and Welfare) Regulations 1948 (revoked; see now the Construction (Working Places) Regulations 1966).] "What . . . is the true meaning of the word 'safe'? It cannot mean 'absolutely safe' in the sense that it must be such means of access that no accident can occur. Indeed, that was not suggested by the plaintiff in this action. Mr. Martin Jukes, for the defendants, has referred me to two cases, unreported, where the words 'reasonably safe' were expressly or implicitly

used by the Judge in giving his judgment. The first of those was the Scottish case . . . where Lord Mackintosh in two passages refers to the duty there as a duty to provide reasonably safe means of access. In *Collins & Bailiss* v. *Western Aircraft*, heard on assize, Mr. Justice Oliver, at the end of his judgment, said: 'I think that the duckboard was a safe means of access. I cannot think that "safe" means "entirely safe". It must mean "safe for a man who is acting reasonably". I hold that the duckboard was a safe means of access so far as reasonably practicable.' It is urged upon me on behalf of the defendants that 'safe' means 'reasonably safe', bearing in mind the type of man who is going to use it, and it is pointed out, as is perfectly true, that steel erectors are used to heights far greater than the height in this case—that they climb, as one witness said, like cats about steelwork at great heights, often with no hand hold, and walk along the girders or sit astride of them and work their way along them regardless of the height at which the work is done. The evidence of the views of those people working in the business was all one way, that from a steel erector's point of view the job was being done in a perfectly safe way. As I have said, reference has been made to passages in decided cases where the duty is said to be one to provide reasonably safe means of access. For myself, with great deference, I get little help from adding the word 'reasonably'. It is not in the regulations. If it is used merely in contradistinction to 'absolutely safe', I can understand it; but if it is intended to mean 'safe for anybody acting reasonably', in the sense of taking full precautions for their own safety, I cannot agree with it. It seems to me that, as is well-known, these regulations are intended, among other things, to safeguard workmen against acts which, owing to the frailty of human nature, continually occur of carelessness or inadvertance, and whatever epithet one applies here to the word 'safe' I think it must mean a degree of safety which to some extent, at any rate, foresees the fact that human beings, being what they are, will from time to time, whether from tiredness, illness or any other reason, not exercise a very high degree of care for their own safety." *Sheppey* v. *Matthew T. Shaw & Co., Ltd.*, [1952] 1 T. L. R. 1272, *per* Parker, J., at p. 1274.

"I agree that the word 'safe' in the regulation [reg. 5 of the Building (Safety, Health and Welfare) Regulations 1948 (revoked; see *supra*)] cannot mean absolutely safe, since it is seldom, if ever, possible, let alone reasonably practicable, to attain absolute safety. I concede further that, in determining what is safe within the meaning of the regulation, some regard must be had to the capabilities of the person by whom the means of access is to be used. But the extent to which the statutory requirement of safety can be qualified on this account has its limits." *Trott* v. *W. E. Smith (Erectors), Ltd.*, [1957] 3 All E. R. 500, *per* Jenkins, L.J., at p. 502.

SAFE PORT

"The charterparty states that the ship shall forthwith proceed (wind and weather permitting) to a safe port in Chili (with leave to call at Valparaiso), or so near thereunto as she may safely get, and deliver the cargo, on freight being paid for the same. Carrisal Bajo was a port in Chili, safe so far as the ordinary incidents of ports are concerned, but a port into which the master could not take the ship without confiscation, unless he or the charterers could obtain a permit from the Government for the time being for her to enter. Neither the master nor the charterers were able to obtain such an order, and therefore the vessel, unless she ran the risk of confiscation, could not enter that port. The charterers named the port of Carrisal Bajo as the port to which the ship was to be taken. Was such a port safe within the meaning of the charterparty? Did it come within the terms of a safe port in Chili? I do not know what force can be given to the word 'safe' when added to the word 'port'. As Carrisal Bajo was a port into which the vessel could not enter without confiscation, it seems to me clearly not within the term contemplated by the parties. It may be that the charterers were perfectly innocent on this occasion as regards any knowledge of the danger that might be incurred by the vessel, but at the same time here is a contract that she is to go into a safe port in Chili, which the charterers shall name. The contention on behalf of the charterers is, that when they named that port, and it was safe in the sense of navigation, they had done all that was necessary, and that, although the vessel could not go to Carrisal Bajo without being confiscated the moment she arrived there, that port was a safe port within the meaning of the charterparty. I think that would be an unreasonable construction." *Ogden* v. *Graham* (1861), 1 B. & S. 773, *per* Wightman, J., at pp. 779, 780.

"I am of opinion that the question in this case depends really upon the construction of the words used in the charterparty. The owner of the freight, that is the person chartering the ship, had a right to order the ship to proceed to any safe port to deliver there, or to go as near thereto as the ship could safely get, and there to 'always lay and discharge afloat'. Upon the construction of the charterparty, independent of the evidence that the experts gave as to what is meant by a safe port, I am of opinion that the plain meaning of the expression a safe port is a

port in which the condition of safety was to be got which is referred to afterwards, that is to say, a port into which she could 'safely get and always lay and discharge afloat'." *The Alhambra* (1881), 6 P. D. 68, C. A., *per* James, L.J., at p. 71.

"The charterparty provides that the port to which the ship is ordered to go must be a safe port. The port to which she was in fact ordered to go was Gloucester, and that was in my opinion not a safe port for this ship, for she could not get safely there with her cargo. She drew far too much to get beyond Sharpness with all her cargo on board. . . . In *The Alhambra* [*supra*] . . . a master, whose ship was chartered to go to a safe port in the United Kingdom, was ordered to go to Lowestoft. It was found that the vessel drew too much water to allow of his getting into the harbour. He refused to lighten the ship in Lowestoft Roads as requested, and went on to Harwich, where he discharged. The Court held that he was justified in so doing on the ground that Lowestoft was not a safe port." *Reynolds & Co.* v. *Tomlinson*, [1896] 1 Q. B. 586, D. C., *per* Day, J., at pp. 589–591.

"The *Saxon Queen* . . . was to be employed, according to the charterparty, in such lawful trades between such safe ports between Hamburg and Brest and the United Kingdom as the charterers should direct. . . . A port may be unsafe at the moment of any order and yet it may be really a safe port under different circumstances. You have to look undoubtedly to see whether it is a safe port at the moment, but I do not think it follows from that that the converse is true, that any port which is safe at the moment, but which is liable to become dangerous at short notice, is necessarily a safe port within the meaning of a charterparty like this." *Johnston Brothers* v. *Saxon Queen S.S. Co.* (1913), 108 L. T. 564, *per* Rowlatt, J., at p. 565.

"By the . . . charterparty the vessel was 'to call at Teneriffe for orders to discharge at a safe port in the United Kingdom, or so near thereto as she can safely get, always afloat, and deliver such cargo in accordance with the custom of the port for steamers'. The *Peerless* duly called at Teneriffe and received orders to discharge at King's Lynn. She proceeded on her voyage, but her draught was such that it was impossible for her at any time, on any tide, to enter the dock at King's Lynn, and she accordingly lightened at a spot known as the Bar Flat Light Buoy, which is about eleven miles off down the Wash. She then went on and discharged the remainder of the cargo in the dock. . . . Was King's Lynn a safe port within the meaning of the charterparty? In my view it was not. A safe port means a port to which a vessel can get laden as she is and at which she can lay and discharge, always afloat." *Hall Brothers S.S. Co., Ltd.* v. *Paul (R. & W.) Ltd.* (1914), 111 L. T. 811, *per* Sankey, J. at pp. 811, 812.

"In my view the word 'safe' when used in connection with the word 'port' implies that the port must be both physically and politically safe, and I think that the action either of nature or man may render a port unsafe." *Palace Shipping Co., Ltd.* v. *Gans S.S. Line*, [1916] 1 K. B. 138, *per* Sankey, J., at p. 141.

"'Safety' must always be a question of fact and a question of degree, and it involves a consideration of the character of the port itself, the mode of access to it, the dangers of the particular voyage, and the character of the particular vessel concerned." *Dollar & Co.* v. *Blood Holman & Co.* (1920), 36 T. L. R. 843, *per* McCardie, J., at p. 843.

See, generally, 35 Halsbury's Laws (3rd Edn.) 439, 440.

SAFE SYSTEM OF WORKING. *See* SYSTEM

SAFELY

[A charterparty provided that a ship should proceed to Riga via Bolderas, or as near thereto as she could "safely" get, and there load a full cargo of timber.] "It is perfectly clear what the meaning of this contract is—that the vessel cannot be said to get safely to that place from which she cannot safely get away with a full cargo. The word 'safely' means safely as a loaded vessel. Suppose the place to have been such that she could not have taken in with safety to herself a single deal, that would not have been a place whereto she could safely get; and, consequently, as she could not safely get away from within the bar with a full cargo, that was not such a place within the terms of this charterparty." *Shield* v. *Wilkins* (1850), 5 Exch. 304, *per* Rolfe, B., at p. 305.

"I think it may be taken as settled law, that when, by the terms of a charterparty, a loaded ship is destined to a particular dock, or as near thereto as she may safely get, the first of these alternatives constitutes a primary obligation; and, in order to complete her voyage, the vessel must proceed to and into the dock named, unless it has become in some sense 'impossible' to do so. It is only in the case of her entrance into the dock being barred by such 'impossibility' that the owners can require the charterers to take delivery of her cargo to a place outside the dock. When a vessel in the course of her voyage is stopped, by an impediment occurring at a distance from the primary place of discharge, it has been decided that she cannot be held to have got 'as near thereunto as she could safely get', and therefore cannot claim to have completed the voyage in terms of the second

alternative." *Dahl* v. *Nelson, Donkin & Co.* (1881), 6 App. Cas. 38, *per* Lord Watson, at p. 57.

Safely and securely

[The plaintiff by his declaration alleged that at the request of the defendant he hired the hackney carriage of the defendant, who promised the plaintiff to carry and convey him and his luggage in the hackney carriage "safely and securely" from Paddington Station to Basing Lane. The defendant contended that the words "safely and securely" in the declaration imported a promise of absolutely safe conveyance.] "Apart from authority, the words 'safely and securely' are undoubtedly open to the observations addressed to us on the part of the defendant. But it seems to me that a long course of authorities has put a construction upon those words, limiting and restricting them to the particular promise or duty the breach of which is charged. . . . The precedents cited, as well antient as modern, shew that it has been usual, in all cases of bailment, to allege the undertaking to be 'safely and securely' to keep or convey the goods, without regard to the particular degree of care resulting in law from the nature of the bailment; and, in the breach, to impute a neglect of that duty. I therefore think we are warranted in saying that the undertaking alleged here is an undertaking to carry the plaintiff and his luggage with that degree of safety and security which in law results from the relation of the parties." *Ross* v. *Hill* (1846), 2 C. B. 877, *per* Coltman, J., at p. 891.

Safely landed

Where the risk on goods or other moveables continues until they are "safely landed", they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases (Marine Insurance Act 1906, Sch. 1 (5)).

[A policy of insurance on goods from London to Archangel insured them until they should be there discharged and "safely landed".] "The question here is, whether these goods were seized and detained by the Russian government before they were discharged and safely landed. I see no evidence of such seizure or detention. The goods were landed according to the usual course of trade at the port of Archangel. This is all the underwriters undertook for. . . . If the goods are once landed in the usual course of business, the underwriters, on such a policy as the present, are not liable for any subsequent loss. It was meant to indemnify against marine not terrene perils." *Brown* v. *Carstairs* (1811), 3 Camp. 161, *per* Lord Ellenborough, C.J., at pp. 162, 163.

SAFETY

Place of safety

"Place of safety" means any home provided by a local authority under Part II of the Children Act 1948, any remand home, . . . or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person (Children and Young Persons Act 1933, s. 107 (1), as amended by the Children Act 1948).

"Place of safety", in relation to a person not being a child or young person, means any police station, prison or remand centre, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person means a place of safety within the meaning of the Children and Young Persons Act 1933 (Mental Health Act 1959, s. 80).

SAFETY, MOORED IN. *See* MOORED IN GOOD SAFETY

SAFETY CARTRIDGE. *See* CARTRIDGE

SAID

"The testator . . . makes the residuary bequest in the following words: 'In trust for all and every the children and child of my body living at the time of the decease of my dear wife, equally to be divided between or amongst such children (if more than one) share and share alike as tenants in common' . . . 'and if any such children or child shall be deceased before my dear wife' . . . 'and such children or child shall leave issue of their, his or her body lawfully begotten, then the children or child of such my son or daughter shall be entitled to the portion of such my son and daughter who may be deceased before the decease of my dear wife, upon their attaining the age of twenty-one years: provided always that, until the portions hereinbefore provided for any of the said children of my said sons or daughters' . . . 'who may have died before their mother, shall become vested, it shall be lawful for my trustees or trustee for the time being to apply the interest and dividends of the portion or portions to which any such child or children may be entitled in expectancy, for the maintenance and education of such child or children.' . . . I have looked through the will from the beginning, in order to see whether there had been any mention previously made of sons and daughters so as to account for the testator's making use of the words such and said, when he here speaks of them: and I find that there is no mention made of any son or daughter, except the son Edward. The consequence therefore is that no other meaning can

be affixed to the words 'said sons or daughters', but that meaning which is before expressed, namely, children or child; and, if that is the case, and you find that he had four sons and two daughters, and that one daughter was dead (though it is very true that these words may be taken to refer to a future daughter that might be born), yet it is obvious that the testator must have had more in his mind the remembrance of the child that had been born and died, than the anticipation of a future child to be born and be a daughter." *Giles* v. *Giles* (1837), 8 Sim. 360, *per* Shadwell, V.-C., at pp. 364, 365.

[A testator bequeathed a sum of money to his executors upon trust for his four grandchildren, A., B., C., and D., children of his late son X., and the residue, upon the happening of certain contingencies, to his "said" four grandchildren, and devised his real estate, subject to a life interest, to A., charged and chargeable with the payment thereout of £1,500 apiece to B., C., and D., and he directed that if any of the children of his late son X., being a son or sons, should die under the age of twenty-one, or being a daughter or daughters, should die under that age without being or having married, then as well the original share or shares of the children so dying, as the share or shares which by virtue of that present proviso should have survived or accrued to him, her, or them, and in the said several last-mentioned sums of £1,500 apiece of and in the rest of his personal estate and effects thereinbefore bequeathed to them, should go, remain and be to the other or others of the "said" children, and, if more than one, in equal shares as tenants in common.] "The construction depends on the meaning to be given to the words 'said children' occurring in two clauses of the will, whether they necessarily mean all the children mentioned in the former part of the will, i.e. the four children; or whether they mean the three children to whom the legacies were given when speaking of the legacies, and the four children when speaking of the residue. I think that the words are sufficiently clear and have reference to the four children." *Dickason* v. *Foster* (1861), 4 L. T. 628, C. A., *per* Lord Westbury, L.C., at p. 630.

"In following as you read it any document, when you come upon a word such as the 'said' or 'such' containing a reference to an earlier part of the document and to some person or thing already mentioned, you do not begin by re-reading the document from the beginning; you look backwards, and you take the nearest sensible antecedent as the appropriate antecedent for the word of reference. It was not denied that that was the natural and ordinary way of reading a document, whether it be a will or anything else, but there was some demur to its being called a rule of interpretation or a rule of law, and it was suggested that it might preferably be called a rule of grammar. I think the name does not matter. What matters is that we should follow, in construing the document, the ordinary natural sequence of thought which the testatrix followed in writing it and which the reader follows automatically as he reads it currently." *Shepherd's Trustees* v. *Shepherd*, [1945] S. C. 60, *per* the Lord President (Normand), at p. 65.

SAIL

"It is clear that a warranty to sail, without the word *from*, is not complied with by the vessel's raising her anchor, getting under sail, and moving onwards, unless at the time of the performance of these acts she has every thing ready for the performance of the voyage, and such acts are done as the commencement of it, nothing remaining to be done afterwards." *Lang* v. *Anderdon* (1824), 3 B. & C. 495, *per* Abbott, C.J., at p. 499.

"'Sail' is certainly a very strong expression. In insurance cases it is almost a technical word: it means 'start on the voyage'." *Barker* v. *M'Andrew* (1865), 18 C. B. N. S. 759, *per* Byles, J., at p. 774.

"If a ship, being perfectly ready to start, having completed her loading and having all her crew on board, leaves the wharf where she has been loading, and proceeds ever so short a distance upon her voyage, and then some physical reason prevents her proceeding further, I think that the proper inference in such a case would generally be that she sailed within the meaning of the word 'sail' as used in policies of marine insurance. But I agree that the sailing must be a sailing which is a commencement of the voyage; and, therefore, if a ship, when she leaves the wharf, is not ready for the voyage by reason of not having all her crew on board or some other reason, that may be evidence that she did not then commence her voyage." *Sea Insurance Co.* v. *Blogg*, [1898] 2 Q. B. 398, C. A., *per* Vaughan Williams, L.J., at p. 401.

"Final sailing" in charterparty

[A charterparty contained the words "final sailing of the vessel from the port of loading".] "We all think, upon reading this charterparty, that something more is meant than the sailing of the vessel, because they use the term 'the final sailing of the vessel', and we are not at liberty to reject that term, and we must consider that it is adopted with reference to the particular port of Cardiff where the vessel is to take on board her cargo, and that it means something more than merely having the clearances on board and being ready, and that it means her final departure from that port, and being out of the limits of that artificial port,

and being at sea ready to proceed upon her voyage." *Roelandts* v. *Harrison* (1854), 23 L. J. Ex. 169, *per* Parke, B., at p. 173.

"The question is, whether this vessel had finally sailed from her last port in the United Kingdom. Final sailing, I apprehend, means getting clear of the port for the purpose of proceeding on the voyage. Here the vessel left the port of Cardiff with no intention of going back. If a vessel goes seven or eight miles from Penarth Dock she is out of port, for she is fairly at sea." *Price* v. *Livingstone* (1882), 9 Q. B. D. 679, C. A., *per* Lindley, L.J., at p. 682.

"Sailed or about to sail"

[A clause in a contract described a ship as now "sailed or about to sail".] "To say that a ship 'has sailed' is obviously to represent that she has done so. To say that she is 'about to sail' is to represent that she is loaded and just about to sail, or that, if she is not already loaded, she will be loaded in a day or two, and will then sail. Taken in connection with the first words 'now sailed' it seems to me that the words 'or about to sail' amount to a representation that the ship is just ready to sail." *Bentsen* v. *Taylor, Sons & Co.* (2), [1893] 2 Q. B. 274, C. A., *per* Lord Esher, M.R., at p. 278.

SAILING VESSEL

[The Sea Regulations 1896 (revoked; see now the Collision Regulations (Ships and Seaplanes on the Water) and Signals of Distress (Ships) Order 1965, r. 26), provided that every vessel under steam, whether under sail or not, should be considered a steam vessel, and, by art. 26, that "sailing vessels" under way should keep out of the way of "sailing vessels" fishing with nets, or lines, or trawls.] "The *Pitgaveney* is a Scotch screw steam drift-net fishing vessel of eighty-nine tons gross and twenty-nine tons net register. . . . Giving the best consideration I can to the rules and to the various decisions upon them, the conclusions at which I have arrived upon the various points raised are as follows. The *Pitgaveney* was a 'steam vessel', and not a 'sailing vessel' fishing with nets within the meaning of art. 26. She was a 'steam vessel under steam' notwithstanding that she might not, without fouling it, work her propeller by steam." *The Pitgaveney*, [1910] P. 215, *per* Evans, P. at pp. 217, 218, 221.

See, generally, 35 Halsbury's Laws (3rd Edn.) 681, 682.

SALARY.

See also ANNUAL SALARY; REMUNERATION

[A testator by his will gave to each of his employees a sum equivalent to two months of their respective current "salaries or wages" at his decease.] "Although the words 'salary or wages' may be used so as to express the whole of the remuneration payable for the services rendered or the work done, what I have to determine here is the sense in which this testator has used the words. The legacies have reference to a period of two months prior to the testator's death, and it may be difficult to ascertain the extra remuneration by commission during that time. On the whole, I think the testator contemplated something which could be easily calculated, namely a sum equivalent to salaries or wages as distinct from commission or from any profits earned as additional remuneration. The employees are therefore only entitled to two months' actual salary apart from commission." *Re Smith, Phillips* v. *Smith*, [1915] W. N. 12, *per* Eve, J., at p. 12.

[The Liverpool City Council passed a resolution in September, 1914, that any member of the corporation staff who should join the armed forces should (*inter alia*) be paid such sum as, with the pay and allowances received from the Government, would make up his full salary or wages.] "It seems to me, and I think I am entitled, after the decision in the House of Lords in *Railway Clearing House* v. *Druce* [(1926), 135 L. T. 417], to say that when the resolution speaks of a man's full salary or wages it is not speaking of something that somebody also in the same grade may be entitled to, but it is speaking of his full salary or wages, and I think *Druce's* case does establish that where the word used is 'salary' or 'pay' or 'wages' you are entitled to interpret that language as meaning something to which a person is contractually entitled." *Adams* v. *Liverpool Corpn.* (1927), 137 L. T. 396, C. A., *per* Bankes, L.J., at p. 397.

Australia. — "Where the engagement is for a period, is permanent or substantially permanent in character, and is for other than manual or relatively unskilled labour, the remuneration is generally called a salary." *Federal Comr. of Taxation* v. *Thompson* (*J. Walter*) (*Aus.*) *Pty., Ltd.* (1944), 69 C. L. R. 227, *per* Latham, C.J., at p. 233.

New Zealand. — "The term 'salary' is ordinarily used to signify the periodical remuneration paid to professional men, clerks, or persons whose duty it is to superintend, and who have in every case an appointment of some permanency. It is never ordinarily used as signifying the remuneration of manual labour, or of any labour when the element of permanency of employment is absent." *Re Industrial Conciliation & Arbitration Act* 1908 (1909), 28 N. Z. L. R. 933, C. A., *per cur.*, at p. 940; also reported 11 G. L. R. 750, at p. 754.

In Bankruptcy Acts

"Section 90 [of the Bankruptcy Act 1869 (repealed; see now s. 51 (2) of the Bankruptcy Act 1914)] . . . enables the Court to deal with 'a salary or income . . .' of which the bankrupt is in the receipt. What is the meaning of the word 'salary' in the section? It must be a salary of the same kind as those things which have been already mentioned, though it is not paid in respect of similar services. Then there is the general word 'income'. . . . 'Income' . . . must mean 'income' in the nature of a 'salary'. . . . The question is whether the income which a man earns by the exercise of his personal skill, and which is dependent upon the accident whether people come to consult him or not, and upon whether he chooses to be consulted, is income of the nature of a salary. It is only necessary to state the case to shew that it is not." *Re Hutton, Ex p. Benwell* (1884), 14 Q. B. D. 301, C. A., *per* Brett, M.R., at p. 307.

"The Act of Parliament [Bankruptcy Act 1883, s. 53 (repealed; see now Bankruptcy Act 1914, s. 51 (2))] is plain; it says, s. 53, sub-s. 2, 'where the bankrupt is in receipt of a salary or income', other than those mentioned in sub.-s. (1) . . . 'the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary . . . to the trustee, to be applied by him in such manner as the court shall direct'. The question is, did the debtor [a commercial traveller in receipt of an annual salary which could be terminated by a week's notice] receive a salary? and his counsel says he did not, but merely weekly wages; but I am of opinion this was a salary terminable by a short notice. It is not suggested what length of notice is required in order to make weekly wages become salary. Will one month do? It cannot make any difference to the bankrupt what is the length of notice. What he here earned was salary, and the Act applies." *Re Brindle, Ex p. Brindle* (1887), 56 L. T. 498, D. C., *per* Mathew, J., at p. 498.

"Two questions arise on the construction of s. 53, sub-s. 2 [repealed; see *supra*], of the Bankruptcy Act 1883. The first question is, whether this money which was to be earned by the bankrupt (assuming him to have earned the whole of it) was salary, or income in the nature of salary. The money was to be paid to him under a contract made between himself—an actor—and the manager of a theatre. . . . The money was to be paid for services, and it was to be paid at ascertained periods. . . . I cannot doubt that the sum payable to the bankrupt under this agreement is a 'salary', but at any rate it is 'income'." *Re Shine, Ex p. Shine*, [1892] 1 Q. B. 522, C. A., *per* Lord Esher, M.R., at pp. 526, 527.

"In my opinion the applicant is entitled to the preferential payment he claims. He had given his services to his master, and for those services he was paid at the rate of £2 a week and a certain commission as well. That, in my opinion, is 'salary' within the meaning of the Act [Preferential Payments in Bankruptcy Act 1888 (repealed)]." *Re Klein, Ex p. Goodwin* (1906), 22 T. L. R. 664, *per* Bigham, J., at p. 664.

See, generally, 2 Halsbury's Laws (3rd Edn.) 456, 457.

SALE.

See also ADAPT FOR SALE; AUCTION; BAILMENT; SALE OF GOODS; SELL

"The action is brought upon a guarantee given by the defendants, whereby they undertook, that, if after any sale of certain property referred to, the purchase-money should not be sufficient to satisfy a sum of £1200 which had been advanced on mortgage, thereof, and all interest, costs, charges, and expenses which might be due in respect of the mortgage, they would immediately thereafter make good and pay to the plaintiff such deficiency. The question turns upon the construction of the word 'sale' in that instrument. I am clearly of opinion, that, taken in conjunction with the rest of the document, it means a completed sale." *Moor* v. *Roberts* (1858), 3 C. B. N. S. 830, *per* Cockburn, C.J., at p. 841.

[The Stamp Act 1870, s. 71 (repealed; see now Stamp Act 1891, s. 55), enacted that where the consideration, or any part of it, for a conveyance on "sale" consisted of any stock or marketable security, such conveyance was to be charged with *ad valorem* duty in respect of the value of such stock or security.] "I do not know what is necessary to constitute a sale, except a transfer of property from one person to another for money, or for the purposes of the Stamp Act, for stock or marketable securities." *Foster (John) & Sons* v. *Inland Revenue Comrs.*, [1894] 1 Q. B. 516, C. A., *per* Lindley, L.J., at p. 528.

"'Sale' undoubtedly in our law generally imports the exchange of some commodity or some article of property for money, and it will be found so defined in Mr. Benjamin's book on Sale, and I think in Lord Blackburn's book also. That is obviously the general meaning of the word; and therefore, if that section [Stamp Act 1891, s. 54, which defines a "conveyance on sale"] stood alone and was not qualified by the subsequent section, it would be necessary to see whether the transaction in question was a sale for money. But then there comes s. 55, which says (I omit words which are immaterial and do not help one for this purpose): 'Where the consideration for a conveyance on sale con-

sists of any stock', and by the definition that includes any shares, 'the conveyance is to be charged with the *ad valorem* duty in respect of the value of the stock or security'. That is a clear indication that there may be, within the meaning of these sections, a conveyance on sale when the transaction is not properly a sale in the ordinary understanding of the word, because it is not for money." *Coats (J. & P.), Ltd.* v. *Inland Revenue Comrs.*, [1897] 1 Q. B. 778, *per* Wills, J., at p. 783; *affd.* on appeal, [1897] 2 Q. B. 423, C. A.

"A sale *prima facie* means a sale effectual in point of law, including the execution of a contract where the law requires a contract in writing." *Rosenbaum* v. *Belson*, [1900] 2 Ch. 267, *per* Buckly, J., at p. 269.

"I was referred to s. 205 (1) (xxiv) of the Law of Property Act 1925, which says: '"Sale" includes an extinguishment of manorial incidents, but in other respects means a sale properly so called.' It is argued for the plaintiff that a sale means in the case of land, as in the case of goods, an exchange of land (or goods) for money. It is laid down quite clearly in the books which deal with sale of personal chattels that a sale or a contract of sale is an agreement to exchange goods for money, although it is possible that part of the consideration might be something other than money, as, for example, when a person buys a new car for an agreed price, part of which he pays in money and part of which he satisfies by means of surrendering another car. But the general principle of English law is that a sale means the exchanging of property for money. That applies—and I think both counsel agree with this—to a sale of land and a sale of chattels equally. The real problem is: Is it still a sale if no money passes, but one person says to another, as in this case: If you give me a piece of land, I will excuse you the debt which you owe me. Is the agreement one for the discharge of a debt conditional upon the handing over of land, or is it for the sale of land, i.e. for the transfer of land in return for money? In my view, it is a fine point, but, doing the best I can in the absence of authority, on the principles so far as I understand them, I come to the view that it is not properly so called a contract for the sale of land, because it is not really an agreement to hand over land in return for money. It is an agreement to extinguish an existing debt if land is transferred." *Simpson* v. *Connolly*, [1953] 2 All E. R. 474, *per* Finnemore, J., at pp. 476, 477.

"To say of a man who has had his property taken from him against his will and been awarded compensation in the settlement of which he has had no voice, to say of such a man that he has sold his property appears to me to be as far from the truth as to say of a man who has been deprived of his property without compensation that he has given it away. Alike in the ordinary use of language and in its legal concept, a sale connotes the mutual assent of two parties." *Kirkness (Inspector of Taxes)* v. *Hudson (John) & Co., Ltd.*, [1955] 2 All E. R. 345, H. L., *per* Viscount Simonds, at p. 348; see also [1955] A. C. 696.

"The word is unambiguous and denotes a transfer of property in the chattel in question by one person to another for a price in money as the result of a contract express or implied. This is, in substance, the definition of sale given in Benjamin's Sale of Personal Property (2nd Edn., p. 1), but for present purposes it is sufficient to emphasise that mutual assent is an essential element in the transaction. It is, no doubt, true that the contract or agreement to sell may precede the formal instrument or act of delivery under which the property passes, but to describe a transfer of property in a chattel which takes place without the consent of transferor and transferee as a sale would seem to me a misuse of language." *Ibid.*, *per* Lord Tucker, at pp. 366, 367.

[It was successfully contended on behalf of the defendant in this case that proceedings under R. S. C. Order XIVA, r. 1 (revoked; see now R. S. C. 1965, Ord. 86, rr. 1, 3), did not lie in the case of a contract of sale for which there was no money consideration. Upjohn, J., considered various statutory and other definitions of "sale" and "purchase" and concluded:] "I am really being asked to give to the phrase 'sale or purchase' not its plain *prima facie* meaning of sale or purchase for money, but to cover a transaction for valuable consideration. The order does not use that phrase. I can find no context which would entitle me to extend the *prima facie* meaning of 'sale or purchase' in this order. I cannot see how I can enlarge it, for instance, to include an exchange which plainly is not a sale or purchase. Nor, for instance, could I extend it to the case of a transfer in consideration of what is not normally described as a sale or purchase, e.g. marriage. I must give to these words their strict primary meaning, and that is sale or purchase in consideration of money." *Robshaw Bros., Ltd.* v. *Mayer*, [1956] 3 All E. R. 833, *per* Upjohn, J., at p. 836; also reported in [1957] Ch. 125, at p. 132.

Australia. — "The word 'sale' is used in various metaphorical senses. When a man enters into a contract of employment he is sometimes said to 'sell his labour', but really there is no transaction of sale; the contract is a contract of employment, not a contract of sale. Similarly, when a banker 'deals in credit' he makes loan contracts and does not sell anything." *Bank of New South Wales* v. *Common-*

wealth (1948), 76 C. L. R. 1, *per* Latham, C.J., at p. 234.

New Zealand. — "In *Joel* v. *Barlow* [(1903), 22 N. Z. L. R. 900] it was held by His Honour the Chief Justice that, where a person enters into possession of a property under an agreement that he shall give up possession when the property is 'sold', the term 'sold' must be construed in its ordinary popular meaning, and means that the property is 'sold' when a binding bargain is made by the vendor to convey the property and by the purchaser to accept a conveyance. In the present case I am of opinion that the agreement between Matthews Bros. and the plaintiff was that the plaintiff was to retain possession up to the time the property was 'sold' in the ordinary meaning of the term, and that his right to possession determined when he knew that a binding agreement of sale and of purchase was made between Matthews Bros. and Corringham." *Schollum* v. *Barrip*, [1916] N. Z. L. R. 1050, *per* Cooper, J., at p. 1055; also reported [1916] G. L. R. 683, at p. 685.

New Zealand. — "In general a 'sale' in law means a sale for a price in money. Where goods are the subject-matter of a contract this definition of a 'sale' was well settled before the passing of the Sale of Goods Act, and that Act defines a contract for the sale of goods as being one whereby the seller agrees to transfer the property in goods to the buyer for a money consideration called the 'price'. In Williams on Vendor and Purchaser [2nd Edn., Vol. I, pp. 226–7] the learned author refers to the meaning put by conveyancers upon the term 'sale'. He states: 'It is important to note, with regard to the exercise of a trust for or power of sale, that the term "sale" is, as a rule, taken in the strict sense of conveyance in consideration of a price paid in money. Trustees acting under a trust for or power of sale are not, therefore, at liberty to accept any other consideration for their conveyance than the payment of money.' . . . I think that if a person agrees to sell his property at a particular price, and to take as payment in lieu of money an equivalent for a money consideration, and the transaction is carried out on that basis, it may well be called a 'sale' of the property." *Hamill & Co.* v. *Loughlin*, [1917] N. Z. L. R. 784, *per* Cooper, J., at pp. 788–790; also reported [1917] G. L. R. 453, at p. 455.

SALE OF FOOD. *See* SELL

SALE OF GOODS

Sale is the transfer, by mutual assent, of the ownership of a thing from one person to another for a money price. Where the consideration for the transfer consists of other goods, or some other valuable consideration, not being money, the transaction is called exchange or barter; but in certain circumstances [e.g. where payment is made partly by money and partly by other goods] it may be treated as one of sale (36 Halsbury's Laws (3rd Edn.) 5).

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred (Sale of Goods Act 1893, s. 1).

"Contract of sale" includes an agreement to sell as well as a sale (Sale of Goods Act 1893, s. 62).

"Sale" includes a bargain and sale as well as a sale and delivery (Sale of Goods Act 1893, s. 62).

By description

Goods are sold by description where the buyer enters into the contract of sale in reliance on the description of the goods given by or on behalf of the seller. There may be a sale by description although the goods are specific; and goods may be sold by description although sold across the counter (34 Halsbury's Laws (3rd Edn.) 47, 48).

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description (Sale of Goods Act 1893, s. 13).

"The term 'sale of goods by description' must apply in all cases where the purchaser has not seen the goods, but is relying on the description alone. It applies in a case like the present, where the buyer has never seen the article sold, but has bought by the description. In that case, by the Sale of Goods Act 1893, s. 13, there is an implied condition that the goods shall correspond with the description,

which is a different thing from a warranty." *Varley* v. *Whipp*, [1900] 1 Q. B. 513, *per* Channell, J., at p. 516.

By sample

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. The mere exhibition of a sample during the negotiation of the contract does not constitute the contract one for sale by sample (34 Halsbury's Laws (3rd Edn.) 55).

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample—

(*a*) There is an implied condition that the bulk shall correspond with the sample in quality:

(*b*) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample:

(*c*) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample (Sale of Goods Act 1893, s. 15).

SALE OR RETURN

"What is the position of a man who has goods sent to him on sale or return? The owner sends the goods to him with the option of keeping them, and that option the person to whom they are sent may exercise in one of three ways—he may say that he accepts them at the price named, or he may sell them, or he may keep them so long that it would be unreasonable that he should afterwards return them to the sender." *Re Florence, Ex p. Wingfield* (1879), 40 L. T. 15, C. A., *per* Jessel, M.R., at p. 16.

[Section 18 of the Sale of Goods Act 1893 lays down (*inter alia*) the rule (r. 4) for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer, when goods are delivered to the buyer on "sale or return".] "The case raises a nice point of law under s. 18 of the Sale of Goods Act. The true view of the contract is that the defendants were only to have the benefit of the right of rejection contained in the contract on the terms that they should actually return the goods. Lord Coleridge observed in *Moss* v. *Sweet* [(1851), 16 Q. B. 493]:—'When goods are sold under a contract of sale or return they pass to the purchaser, subject to an option in him to return them within a reasonable time, and if he fails to exercise that option within a reasonable time the price of the goods may be recovered as upon an absolute sale.' That is the true effect of the contract in the present case, and s. 18 does not overrule that statement of the law, for it begins with the limitation 'unless a different intention appears'." *Ornstein* v. *Alexandra Furnishing Co.* (1895), 12 T. L. R. 128, *per* Collins, J., at p. 128.

"The position of a person who has received goods on sale or return is that he has the option of becoming the purchaser of them, and may become so in three different ways. He may pay the price, or he may retain the goods beyond a reasonable time for their return, or he may do an act inconsistent with his being other than a purchaser. The words of the Act [Sale of Goods Act 1893, s. 18 (*see supra*)], are difficult to construe; but it seems to me that if the recipient of the goods retains them for an unreasonable time he does something inconsistent with the exercise of his option to return them, and thereby adopts the transaction. So if he does any other act inconsistent with their return, as if he sells them or pledges them, because if he pledges them he no longer has the free control over them so as to be in a position to return them. In all these cases he brings himself within the words of the section by adopting the transaction, and the property in the goods passes to him." *Kirkham* v. *Attenborough*, [1897] 1 Q. B. 201, *per* Lopes, L.J., at p. 204.

"'Sale or return' are technical words, but they are only so when used in reference to a buyer. . . . There are, of course, different sorts of dealing on sale or return. If a tradesman sends me goods on sale or return he intends that I shall buy them myself, not that I shall sell them either for him or for myself so as to enable me to pay him. But if he sends them to a retail dealer or the like on sale or return for the purpose of his selling them to other people as if they were his own goods, I think that the ordinary doctrine of holding out would apply." *Weiner* v. *Harris*, [1910] 1 K. B. 285, C. A., *per* Farwell, L.J., at pp. 294, 295.

SALEABLE UNDERWOODS.

See UNDERWOODS

SALMON

"Salmon" includes any fish of the salmon species (Sea Fish (Conservation) Act 1967, s. 22 (1)).

SALVAGE

The term "salvage" may signify either the service rendered by a salvor or the reward payable to him for his service. Salvage service in the present sense is that service which saves or contributes to the ultimate safety of a vessel, her apparel, cargo, or wreck, or to the lives of persons belonging to a vessel when in danger

at sea, or in tidal waters, or on the shore of the sea or tidal waters, provided that the service is rendered voluntarily and not in the performance of any legal or official duty or merely in the interests of self-preservation. The person who renders the service, that is the salvor, becomes entitled to remuneration termed "salvage reward".

Any services rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, are deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel; and where salvage services are rendered by an aircraft to any property or person, the owner of the aircraft is entitled to the same reward for those services as he would have been entitled to if the aircraft had been a vessel (35 Halsbury's Laws (3rd Edn.) 731, 732).

The expression "salvage" includes all expenses, properly incurred by the salvor in the performance of the salvage services (Merchant Shipping Act 1894, s. 510).

"Salvage" means the preservation or recovery of vessels wrecked, stranded or in distress, or their cargo or apparel, or the recovery of any other property from the water and includes the removal of wrecks, and "salvage operations" and "salvage purposes" shall be construed accordingly (Pensions (Mercantile Marine) Act 1942, s. 10).

"Salvage" means the preservation of a vessel which is wrecked, stranded or in distress, or the lives of persons belonging to, or the cargo or apparel of, such a vessel (Road Traffic Act 1960, s. 257 (1); Road Traffic Regulation Act 1967, s. 104).

"The taking care of goods left by the tide upon the banks of a navigable river, communicating with the sea, may in a vulgar sense be said to be salvage; but it has none of the qualities of salvage, in respect of which the laws of all civilized nations, the laws of *Oleron*, and our own laws in particular, have provided that a recompence is due for the saving, and that our law has also provided that this recompence should be a lien upon the goods which have been saved." *Nicholson* v. *Chapman* (1793), 2 H. Bl. 254, *per* Eyre, L.C.J., at p. 257.

"Salvage, in its simple character, is the service which those who recover property from loss or danger at sea, render to the owners, with the responsibility of making restitution, and with a lien for their reward. It is personal in its primary character, at least; and those who are so employed in the service are those whom the law considers as standing in the first degree of relation to the property and to the proprietors. This is necessary for the protection of the owner, who ought not to be burthened with artificial claims, and it is the natural mode of tracing effects to their efficient causes; for by whom can the service be said to be ostensibly performed, but by those who recover the thing, and on whom can the duty of restoring it lie, but on those who actually regain the possession? These are the principles on which the Court proceeds in compelling restitution, when necessary, or in assigning a reward. It looks primarily to the actual salvor, and has uniformly rejected all claims founded on prerogative rights, as of the Lord High Admiral in former times, of lords of manors, of magistrates, and of flag officers, except with reference to assistance substantially and beneficially afforded." *The Thetis* (1833), 3 Hagg. Adm. 14, *per* Robinson, J., at pp. 48, 49.

"The right to salvage may arise out of an actual contract, but it does not necessarily do so. It is a legal liability arising out of the fact that property has been saved, that the owner of the property who has had the benefit of it shall make remuneration to those who have conferred the benefit upon him, notwithstanding that he has not entered into any contract on the subject." *The Port Victor* (*Cargo Ex*), [1901] P. 243, C. A., *per* Jeune, P., at p. 247.

"When a ship, which is in risk, accepts a service, it is none the less an acceptance, and none the less a salvage service, because some one else whose orders the ship must obey has ordered the ship to accept, or because the acceptance is under protest." *The Kangaroo*, [1918] P. 327, *per* Hill, J., at pp. 331, 332.

"It is said . . . that even if no benefit was conferred, the services were rendered at request and the *res* was ultimately saved, and therefore the services must be rewarded. But as I understand the rule as to the rewarding of services rendered at request it is that if a salvor is employed to do a thing and does it, and the property is ultimately saved, he may claim a salvage award, although the thing he does has produced no good result." *The Tarbert*, [1921] P. 372, *per* Hill, J., at pp. 376, 377.

Canada. — "In its popular sense the word 'salvage' is used either as a verb, a noun or as in this case [regarding licensing of salvage yards] an adjective. As a verb, it means to rescue or save from wreckage, not necessarily marine wreckage; as a noun it means that which is so rescued or saved. It is used as an adjective in this bylaw to qualify the 'shop' or 'yard' in which salvaged material is kept on hand either for storage or for sale or both." *R.* v. *Greenspoon Bros., Ltd.*, [1965] 2 O. R. 528, *per* Roach, J.A., at pp. 529, 530 (Ont. C. A.).

Salvage charges

"Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred (Marine Insurance Act 1906, s. 65).

"Salvage charges may, no doubt, in some connection mean claims for volunteer salvage services. But it is quite common to use the words for the purpose of describing those expenses which come within the scope of suing and labouring expenditure; and several witnesses of great experience were called before me to say, and they did say very plainly, that used in a policy such as this they were always understood to bear that meaning." *Western Assurance Co. of Toronto* v. *Poole*, [1903] 1 K. B. 376, *per* Bigham, J., at p. 389.

See, generally, 22 Halsbury's Laws (3rd Edn.) 129.

SALVOR

"Salvor" means, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of that ship (Merchant Shipping Act 1894, s. 742).

"What is a salvor? A person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship: not so the crew, whose stipulated duty it is (to be compensated by payment of wages) to protect that ship through all perils, and whose entire possible service for this purpose is pledged to that extent." *The Portreath*, [1923] P. 155, *per* Hill, J., at p. 159.

SAME

Australia. — "That the word 'same' can have that meaning [i.e. "similar" or "analogous"] is clear not only from decided cases but also from the definition of the word as given in Webster's Dictionary." *Kingsbury* v. *Martin* (1901), 1 S. R. N. S. W. 272, *per* Stephen, J., at p. 278.

"The word 'same' has two meanings. One meaning no doubt is 'identical', but the other meaning is 'corresponding to', 'similar to'." *Ibid.*, *per* Owen, J., at p. 279.

SAMPLE. *See also* SALE OF GOODS

Australia. — "I understand the word 'sample', whether as a matter of law or as a matter of popular speech, to mean a part of a fluid or substance taken from some larger quantity because it is a fair representation of the whole." *Lawry* v. *West* (1947), 73 C. L. R. 289, *per* Dixon, J., at p. 299.

SANCTION

[Section 131 of the Companies Act 1862 (repealed; cf. now s. 282 of the Companies Act 1948) empowered a liquidator to "sanction" share transfers after the commencement of a voluntary winding-up.] "It was contended in argument that s. 131 only contemplated the sanction of the liquidator in order to relieve him from difficulty in ascertaining who was to receive the surplus assets if any should be distributable. But notice to him would suffice for this purpose. Sanction by him means approval and implies a power of disapproval." *Re National Bank of Wales* (1897), 66 L. J. Ch. 222, C. A., *per* Lindley, L.J., at p. 227.

SANITARY CONVENIENCE

"Sanitary conveniences" includes urinals, water-closets, earth-closets, ash-pits, privies and any similar convenience (Mines and Quarries Act 1954, s. 182; cf. Factories Act 1961, s. 176).

"Sanitary convenience" means a closet, privy or urinal (Food and Drugs Act 1955, s. 135 (1)).

SATISFACTION.

See also ACCORD AND SATISFACTION

Satisfaction is the gift of a thing with the intention that it shall be taken either wholly or partly in extinguishment of some prior claim of the donee. Satisfaction may occur (1) when a covenant to settle property is followed by a gift by will or settlement in favour of the person entitled beneficially under the covenant; (2) when a testamentary disposition is followed during the testator's lifetime by a gift or settlement in favour of the devisee or legatee; and (3) when a legacy is given to a creditor.

Ademption is the term which correctly describes, among other matters, the second category of instances in which the doctrine of satisfaction applies; and where a testamentary gift is wholly or partly extinguished by a subsequent gift or disposition made by the testator in his lifetime the testamentary gift is said to be adeemed in whole or part (14 Halsbury's Laws (3rd Edn.) 598).

"The distinction between ademption and satisfaction lies in this: in ademption the former benefit is given by a will, which is a revocable instrument, and which the testator can alter

as he pleases, and consequently when he gives benefits by a deed subsequently to the will, he may, either by express words, or by implication of law, substitute a second gift for the former, which he has the power of altering at his pleasure. Consequently, in this case the law uses the word *ademption*, because the bequest or devise contained in the will is thereby *adeemed*, that is, taken out of the will. But when a father, on the marriage of a child, enters into a covenant to settle either land or money, he is unable to adeem or alter that covenant, and if he give benefits by his will to the same objects, and states that this is to be in satisfaction of the covenant, he necessarily gives the objects of the covenants the right to elect whether they will take under the covenant, or whether they will take under the will. Therefore this distinction is manifest. In cases of satisfaction the persons intended to be benefited by the covenant, who, for shortness, may be called the objects of the covenant, and the persons intended to be benefited by the bequest or devise, in other words, the objects of the bequest, must be the same. In cases of ademption they may be, and frequently are, different." *Chichester* (*Lord*) v. *Coventry* (1867), L. R. 2 H. L. 71, *per* Lord Romilly, at pp. 90, 91.

"When a testator gives a direction that a particular thing shall be taken by any one in or towards satisfaction of his share, and the thing spoken of exists and belongs to the testator, I cannot doubt that, according to the plain and obvious meaning of the words, he gives that thing to the legatee, and this plain meaning is not controlled or varied, but is rather corroborated, by the addition of such words as 'and shall be brought into hotchpot and accounted for accordingly'." *Re Cosier*, *Humphreys* v. *Jadsden*, [1897] 1 Ch. 325, C. A., *per* Rigby, L.J., at p. 333; *affd. sub nom. Wheeler* v. *Humphreys*, [1898] A. C. 506.

SATISFACTORY

Australia. — [Section 22 (4) of the Racing Regulation Amendment Act 1930 (Queensland) provides that it shall be the duty of any bookmaker making any credit bet or any other bet on a racecourse to issue a stamped betting ticket or give other "satisfactory" acknowledgment indicating the nature of the bet.] "The Full Court (Queensland) held that a 'satisfactory' acknowledgment must be an acknowledgment which was held by a court to be satisfactory, and not merely an acknowledgment which was accepted by the parties as satisfactory. . . . The decision of the Full Court upon the meaning of the word 'satisfactory' was not challenged upon the appeal, and in my opinion it was clearly right." *Defina* v. *Kenny*, [1947] A. L. R. 81, *per* Latham, C.J., at p. 82.

Australia. — [Section 18 of the Police Offences Act 1953–1961 (S.A.) provides that any person who lies or loiters in any public place and who on request by a member of the police force does not give a "satisfactory" reason for so lying or loitering shall be guilty of an offence.] "I have come to the conclusion that the section is satisfied if a person in the position of the appellant gives a reason which is in fact true and lawful, even though it does not convince the constable who puts the question, and even if that constable is acting reasonably in remaining unconvinced. It is true that in most cases a man who has an innocent reason for his loitering will be well advised to amplify his reason so as, if possible, to satisfy the constable concerned and thereby save himself from the danger of arrest and prosecution. I consider, furthermore, that a reason, to be 'satisfactory' must be not only true and lawful, but sufficiently particularised to have some real meaning." *Mills* v. *Brebner*, [1962] S. A. S. R. 209, *per* Hogarth, J., at p. 213.

SATISFIED

"I hold . . . that in this statute [Matrimonial Causes Act 1950 (repealed; see now s. 5 (3) of the Matrimonial Causes Act 1965)] the word 'satisfied' does not mean 'satisfied beyond reasonable doubt'. The legislature is quite capable of putting in the words 'beyond reasonable doubt' if it meant it. It did not do so. It simply said *on whom* the burden of proof rested, leaving it to the court itself to decide what standard of proof was required in order to be 'satisfied'." *Blyth* v. *Blyth*, [1966] 1 All E. R. 524, H. L., *per* Lord Denning, at p. 536.

"The phrase used in s. 4 (2) of the Act of 1950 is simply 'is satisfied', with no adverbial qualification. The formula 'satisfied beyond reasonable doubt' has been a very familiar one for a great many years, and if that meaning had been intended the formula could and should have been used. The phrase 'is satisfied' means, in my view, simply 'makes up its mind'; the court on the evidence comes to a conclusion which, in conjunction with other conclusions, will lead to the judicial decision. There is no need or justification for adding any adverbial qualification to 'is satisfied'." *Ibid.*, *per* Lord Pearson, at p. 541.

Australia. — [Section 18 of the Entertainments Tax Assessment 1942–1953, provides that where the Commissioner is "satisfied" that the whole of the net proceeds of an entertainment are devoted to public, patriotic, philanthropic, religious or charitable purposes, the entertainment tax may be repaid.] "The right to a refund under s. 18 depends upon the satisfaction of the Commissioner. But the satisfaction is not an arbitrary satisfaction. It must be