# WORDS AND PHRASES LEGALLY DEFINED

Volume 1: A-C

# *Words and Phrases*

## *Legally Defined*

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under the General Editorship of

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# *Preface*

WORDS AND PHRASES was, in its original form, an anthology of judicial definitions. The First Edition, conceived and brought into being a quarter of a century ago, was made up exclusively of extracts from speeches made and judgments given in the House of Lords, the Judicial Committee of the Privy Council, and the superior Courts of the United Kingdom, Australia, Canada and New Zealand. With the exception of some explanatory headnotes, where these were called for, every extract was reproduced in the words in which it was originally reported. Nothing else went into the volumes.

While this new Edition remains predominantly a work of judicial interpretation, its scope has been broadened and at the same time its arrangement has been radically simplified. The broadening has been achieved by the addition of a selection of textbook and statutory definitions; the simplification by the re-grouping of material and the re-styling of main headings.

Wherever possible these main headings are now limited to a single word or a short phrase of two or three words. Sub-headings, where warranted, are also used. This has made it possible in most cases to gather together groups of definitions which, under the former strictly alphabetical arrangement of phrases, would have fallen on different pages or in different volumes. Thus, whereas such phrases as Close company, Investment company, Public company and so on would, under the previous arrangement, have been widely separated, all now appear, more logically, under the main heading COMPANY.

The selection of textbook definitions has been added in order to fill some of the *lacunae* which inevitably resulted from the restricted scope of the First Edition. Whilst books so venerable as BLACKSTONE'S COMMENTARIES have been consulted, and many modern textbooks searched for suitable material, the larger number of the new extracts have been taken from the Third Edition of HALSBURY'S LAWS OF ENGLAND, a work famous for its explanation of legal terms and its concise summaries of the law. Other references to HALSBURY, wherever useful, are provided throughout the volumes in order to facilitate reference to the relevant information contained in that work. Thus WORDS AND PHRASES continues in its former role as a companion to HALSBURY'S LAWS OF ENGLAND.

The major problem which the editors had to face in the preparation of this newly-styled Edition was that of the choice of statutory definitions. That there could be no more than a selection was apparent; any attempt to include all would have engulfed the more solid contents of the volumes in verbiage, much of it repetitious and much of doubtful value in a publication of this kind. Added difficulties were that many existing statutes are under threat of repeal while new statutes proliferate.

Those statutory definitions which were finally included were carefully chosen to give reasonable representation to this field of legal interpretation, the selection being based upon general interest and usefulness and the need to fill gaps where other suitable material could not be found.

Many such definitions are taken from the interpretation sections which are a feature of most modern statutes, others from the bodies of the statutes themselves. In some cases a statutory definition is applicable to part only of an Act, in others to a particular section. The meanings which a number of expressions in common use are to bear when used in an Act, unless a contrary intention appears, are defined by the Interpretation Act 1889, and a few definitions of general application are contained in other Acts. For example, the expression "United Kingdom" is defined by s. 2 (2) of the Royal and Parliamentary Titles Act 1927; and "parish" is generally defined by s. 116 (8) of the General Rate Act 1967.

The rules for the interpretation of statutes are set out in HALSBURY'S LAWS OF ENGLAND (3rd Edn.), Vol. 36, at pp. 382–419, and the following passages in particular must be noted here. First, at p. 385:

> "Most modern statutes contain an interpretation, or definition, section in which is declared the meaning which certain words and expressions are to, or may, bear or include for the purposes of the statute in question. As a rule, it ought as a matter of drafting to be used for interpreting words which are ambiguous or equivocal only, and not so as to give an artificial meaning to words the ordinary meaning of which is plain. An interpretation section does not necessarily apply in all the possible contexts in which a word may be found in the statute. If a defined expression is used in a context which the definition will not fit, it may be interpreted according to its ordinary meaning. In practice, interpretation sections in modern statutes almost invariably contain express provision that the meanings thereby assigned are to apply unless the context otherwise requires. The fact that a particular meaning may be assigned to a term for the purposes of a particular statute by an interpretation section contained therein does not necessarily alter the generally accepted meaning of the term when used for other purposes. In the construction of an interpretation section it must be presumed that Parliament has been specially precise and careful in its choice of language, so that the rule that words are to be interpreted according to their ordinary and natural meaning carries special weight."

And again, at p. 410:

> "Statutes *in pari materia* must generally be carefully distinguished from those *alio intuitu*, and comparison between statutes not *in pari materia* or the decisions on them affords no guide to their construction. The same words used in different statutory codes may have different meanings in each code, according to the intentions of the statutes and the mischiefs they are designed to prevent."

It is hoped that the inclusion of this third category of material will be of help to the user of the work who, bearing such rules of interpretation as the above in mind, wishes to be referred quickly to the principal statutory definitions and to be guided to their sources.

As has already been said, WORDS AND PHRASES is still largely a work of judicial definition, and it is appropriate, therefore, to end this Preface with the words of two of Her Majesty's Judges.

In *Bourne* v. *Norwich Crematorium, Ltd.*, [1967] 2 All E.R. 576, at p. 578, the Hon Mr. Justice Stamp, in refusing to hold a dead body to be "goods and materials, said:

> "English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back again into the sentence with the meaning which you have assigned to them as separate words, so as to give the sentence or phrase a meaning which as a sentence or phrase it cannot bear without distortion of the English language. That one must construe a word or phrase in a section of an Act of Parliament with all the assistance one can from decided cases and, if one will, from the dictionary, is not in doubt; but having obtained all that assistance, one must not at the end of the day distort that which has to be construed and give it a meaning which in its context one does not think it can possibly bear."

Finally, in *Allen* v. *Thorn Electrical Industries, Ltd.*, [1967] 2 All E.R. 1137, at p. 1141, the Master of the Rolls, Lord Denning, said:

> "We are not the slaves of words but their masters. We sit here to give them their natural and ordinary meaning in the context in which we find them."

It is in the hope that these volumes will help in this task of retaining the mastery of words that WORDS AND PHRASES LEGALLY DEFINED is now presented.

J.B.S.

# A

## ABANDON OR DESERT

"Whatever be the distinction between the terms 'abandon' and 'desert' when applied to a parent in connection with his child, both words imply in ordinary language a disregard of parental duty, and carry with them the idea of moral blame." *Re O'Hara*, [1900] 2 I. R. 232, C. A., *per* Holmes, L.J., at p. 252.

"I do not think the facts in this case amount to abandonment or desertion. I think the words 'abandoned or deserted the child' [in the Custody of Children Act 1891, s. 1] point at the parent leaving the child to its fate. But in this case, although the petitioner did little for her child, she never really abandoned or deserted it, because she knew and approved of the steps which the respondent took for its maintenance." *Mitchell* v. *Wright* (1905), 7 F. (Ct. of Sess.) 568, *per* the Lord President, at p. 574.

"By s. 3 (1) (*a*) of the Adoption Act 1950 [repealed; see now s. 5 (1) (*a*) of the Adoption Act 1958], it is provided that the court may dispense with the consent of a parent of an infant if the parent has abandoned, neglected or persistently ill-treated the infant . . . I am satisfied that the respondent has not abandoned the child as contemplated by s. 3 (1) (*a*) of the Act of 1950. She was not leaving the child to her fate; she was giving her over to people who desired to adopt her and in whom she had confidence, and, when one finds that s. 3 (1) (*a*) deals with abandonment, neglect or persistent ill-treatment, I think it is clear that abandonment means abandonment that would have rendered her liable to the criminal law. . . . There is certainly high dictionary authority supporting what was, apparently, Lord Dunedin's view [in *Mitchell* v. *Wright* (*supra*)] that 'abandon' or 'desertion' in the context in which he was construing them [Custody of Children Act 1891] have the same meaning. The Oxford English Dictionary gives, as one of the meanings of 'abandon', 'to desert', and, if one turns to see the meanings given by that same high authority to the word 'desert', one finds that the first meaning given is 'to abandon'. It is significant, however, that, after giving the meaning 'desert' to the word 'abandon', the dictionary goes on to add 'leave without help'. It is true that Lord Dunedin was considering the provisions of another Act, but it was one closely akin to the one which we have to consider and for this purpose there can be no distinction between them." *Watson* v. *Nikolaisen*, [1955] 2 All E. R. 427, *per cur.*, at pp. 430, 431.

**Canada.** — "The word 'abandoned' is not given any definition in the Act [Wife's Protection Act, R. S. B. C. 1948, c. 364 (repealed; see now R. S. B. C. 1960, c. 407)] but the dictionary meaning of the word indicates that it has a connotation of finality. It means the relinquishment or extinguishment of a right, the giving up of something absolutely." *Read* v. *Read*, [1950] 2 W. W. R. 812, *per* Sloan, C.J.B.C., at p. 814.

## ABANDONMENT

### Of contract

**Canada.** — [Section 22 (1) of the Mechanics and Wage-Earners Lien Act, R. S. O. 1914, c. 140 (repealed; see now Mechanics' Lien Act, R. S. O. 1960, c. 233, s. 21 (1)) provided that a claim for lien by a contractor or sub-contractor, in cases not otherwise provided for, might be registered before or during the performance of the contract, or within thirty days after the completion or "abandonment" thereof]. "An abandonment of the contract contemplated by this section is, not leaving a work under the belief that the contract is completed, but, knowing or believing that the contract was not completed, declining to go on and complete it." *Anderson* v. *Fort William Commercial Chambers, Ltd.* (1915), 34 O. L. R. 567, C. A., *per cur.*, at p. 570.

### Of distress

The remedy by distress must not be used in an oppressive manner, and the general rule is that a landlord may not split one entire demand and distrain twice for the same rent when he might have taken enough on the first occasion. . . . The rule against a second distress applies where the landlord having distrained enough voluntarily abandons the distress, that is to say, where he surrenders or forbears to exercise his power of making the distress fruitful. Abandonment is a question of fact for a jury (12 Halsbury's Laws (3rd Edn.) 149, 150).

"Inasmuch as the goods were taken away without any intention whatever to abandon the distress, but with the knowledge that they would certainly be brought back again, when they were restored by the voluntary act of the person who took them away, they continued subject to the distress." *Kerby* v. *Harding* (1851), 6 Exch. 234, *per* Parke, B., at p. 241.

"The quitting possession of goods, by the landlord, after he had distrained them, was not necessarily an abandonment of the distress." *Bannister* v. *Hyde* (1860), 2 E. & E. 627, *per* Wightman, J., at p. 631.

**Of goods**

Property, both in lands and moveables, being . . . originally acquired by the first taker, which taking amounts to a declaration that he intends to appropriate the thing to his own use, it remains in him, by the principles of universal law, till such time as he does some other act which shows an intention to abandon it: for then it becomes, naturally speaking, *publici juris* once more, and is liable to be again appropriated by the next occupant. So if one is possessed of a jewel, and casts it into the sea or a public highway, this is such an express dereliction, that a property will be vested in the first fortunate finder that will seise it to his own use. But if he hides it privately in the earth, or other secret place, and it is discovered, the finder acquires no property therein; for the owner hath not by this act declared any intention to abandon it, but rather the contrary: and if he loses or drops it by accident, it cannot be collected from thence, that he designed to quit the possesson; and therefore in such case the property still remains in the loser, who may claim it again of the finder. And this, we may remember, is the doctrine of the law of England, with relation to treasure trove (2 Bl. Com. 9).

Abandonment of goods takes place when possession of them is quitted voluntarily without any intention of transferring them to another (29 Halsbury's Laws (3rd Edn.) 371).

**Of notice**

**Canada.** — [C. S. C. c. 66, s. 11 (16) (see now R. C. Can. 1952, c. 234, s. 221 (1)) provided that, where in a case of expropriation of land by a railway company, the notice improperly described the land, etc., intended to be taken, or if the company decided not to take the land, etc., mentioned in the notice, it might "abandon" the notice and all proceedings thereunder, but would be liable to the person notified for all damages or costs incurred by him in consequence of such notice and abandonment; and the company might give to the same or any other person notice for other land, etc., otherwise described, notwithstanding the abandonment of the former notice.] "C. S. C. c. 66, s. 11 (16) is *in pari materia* with 51 Vict. c. 29, s. 158 (D). The marginal note to both is the same, and well expresses the meaning of both, 'company may desist on payment of costs.' In the text the earlier statute uses 'desist,' the later 'abandon'; but by the dictionaries these words have a common meaning, i.e. to leave off or discontinue. Whether voluntarily or compulsorily makes no matter." *Re Oliver & Bay of Quinte Ry. Co.* (1903), 6 O. L. R. 543, *per cur.*, at p. 544.

**Of ship**

"The appellants, on the 10th of June, 1867, wrote to the Underwriters in these terms: 'With regard to the *Northland*, we regret to say that she is a total wreck, and we have hereby to give you notice that we shall claim payment of the policies we hold against her cargo and disbursements.' . . . The case upon which the Recorder founded his judgment of the insufficiency of the notice was a *nisi prius* case of *Parmeter* v. *Todhunter* [(1808), 1 Camp. 541] in which there having been a verbal notice that the ship insured had been captured, recaptured, and carried into Grenada, and that the Underwriters were required to settle as for a total loss, and to give directions as to the disposition of the ship and cargo, Lord Ellenborough said 'the abandonment must be express and direct and I think the word "abandon" should be used to render it effectual.' But whatever strictness of construction may have been applied to notices of abandonment in former times, it never could have been absolutely necessary to use the technical word 'abandon'; any equivalent expressions which informed the Underwriters that it was the intention of the assured to give up to them the property insured upon the ground of its having been totally lost, must always have been sufficient. There can be no doubt that the letter of the 10th of June from the assured to the Underwriters was a sufficient intimation of the intention of the assured to divest themselves of the property in the *Northland*, and to vest it in the Underwriters, subject, of course, to the question of their right to abandon, upon the ground of either an actual or a constructive total loss." *Currie & Co.* v. *Bombay Native Insurance Co.* (1869), L. R. 3 P. C. 72, *per cur.*, at pp. 77–79.

"The word 'abandon' is one in ordinary and common use, and in its natural sense well understood; but there is not a word in the English language used in a more highly artificial and technical sense than the word 'abandon'; in reference to constructive total loss, it is defined to be a cession or transfer of the ship from the owner to the underwriter, and of all his property and interest in it, with all the claims that may arise from its ownership, and all the profits that may arise from it, including the freight then being earned." *Rankin* v. *Potter* (1873), L. R. 6 H. L. 83, *per* Martin, B., at p. 144.

"There is no set form or sacrosanct ritual to constitute abandonment. . . . The question in each case must be whether the facts warrant

the inference in law that the vessel was abanddoned. For this purpose it must be steadily borne in mind also that abandonment here connotes the leaving of the vessel *sine spe revertendi*, made in good faith and to save life on the order of the master or person in charge." *The Albionic*, [1941] P. 99, *per* Langton, J., at pp. 112, 113; affd. on appeal, [1942] P. 81, C. A.

"The word 'abandon', as was said in *Bradley* v. *Newsom* [[1919] A. C. 16], has in the English legal use several different meanings. It is used in three different senses in the very group of sections [of the Marine Insurance Act 1906] which deal with constructive total loss. Indeed, it is used in two different senses in s. 60 (1). When the ship is spoken of as abandoned because of ' its actual . . . loss appearing unavoidable,' the word is used in nearly the same sense as when, according to the law of salvage, the ship is left by master and crew in such a way as to make it derelict, which condition confers on salvors a certain, but not complete, exclusiveness of possession, and a higher measure of compensation for salvage services. But to constitute the ship a derelict, it must have been left (*a*) with that intention (*animo derelinquendi*): See *The John and Jane* [(1802), 4 Ch. Rob. 216]; (*b*) with no intention of returning to her; and (*c*) with no hope of recovering her. Obviously that sense of the word is frequently inappropriate to the second case to which sub-s. (1) applies, viz. because it could not be preserved from total loss (i.e. an economic test) 'without an expenditure greater than her value when the expenditure had been incurred.' Another distinction between those two alternative grounds in sub-s. (1) for claiming a constructive total loss is that, in the latter case, the financial estimate is one which normally would be made by the owner; whereas the forecast of the probability of actual total loss would, at any rate a century ago, nearly always have to be made by the master on the spot; and even in these days of easy and quick wireless communication, the decision would very often devolve on the master. The making of the financial estimate is, of course, merely an exercise of business judgment and discretion. The abandonment which follows after it may be expressed in a letter and not in boats as in the first alternative; or be a mere mental decision by the owner that he will exercise the option which s. 61 allows him." *Court Line Ltd.* v. *R., The Lavington Court*, [1945] 2 All E. R. 357, C. A., *per* Scott, L.J., at pp. 362, 363.

### Of voyage

There is an abandonment of the voyage, when a purpose of abandoning the original place of destination for some other place of discharge is definitely formed, and as soon as such purpose is definitely formed and manifested the underwriter is *ipso facto* discharged from liability for all subsequent losses. If the resolution is formed after the commencement of the risk, the voyage is said to be changed (22 Halsbury's Laws (3rd Edn.) 68).

## ABATEMENT

### Of annuities

Where immediate annuities are given by will and the estate is insufficient for their repayment in full, the general rule is that the annuities must be valued and abate rateably and the abated sum paid to each annuitant. For this purpose an annuity is a pecuniary legacy and annuities must abate with pecuniary legacies, so that the rule applies not only in the case where there is more than one annuity, but also where there is one or more pecuniary legacies and one or more annuities (*Williams on Wills* (3rd Edn.) 207).

### Of legacy

"The rule is that in the case of a deficiency, all the annuities and legacies abate rateably, for since they cannot all be paid in full, they shall all abate rateably on the principle of the maxim 'equality is equity' or 'equity delighteth in equality.' This rule is indeed subject to exceptions, for there are cases in which some annuities or legacies are to be paid in priority to others; but it is settled that the onus lies on the party seeking priority to make out that such priority was intended by the testator, and that the proof of this must be clear and conclusive. . . . The onus is upon those who contend for a priority to show that the testator meant to give a preference to a particular legatee." *Miller* v. *Huddlestone* (1851), 3 Mac. & G. 513, *per* Lord Truro, L.C., at pp. 523, 524.

*See*, generally, 16 Halsbury's Laws (3rd Edn.) 330.

### Of nuisance

Abatement means the summary removal or remedy of a nuisance by the party injured without having recourse to legal proceedings. It is not a remedy which the law favours and is not usually advisable. There is authority for saying that its exercise destroys any right of action in respect of the nuisance (28 Halsbury's Laws (3rd Edn.) 150).

**ABET.** *See* AID AND ABET

## ABEYANCE

### Of peerage

The doctrine of abeyance relates not to the extinction of a peerage, but to the state of suspense into which a peerage falls when co-

heirship occurs in the succession. Hitherto the doctrine of abeyance has been accepted by the House of Lords only in respect of baronies in fee, that is, created by writ of summons and sitting. Two claims have been made in respect of earldoms in fee, but no direct decision was given on the point of abeyance. Abeyance does not apply to Scottish peerages and is of recent origin, not being known before the seventeenth, nor fully developed until the nineteenth, century. When the owner of a fief died leaving no male issue but more than one daughter, his land fell to such daughters in equal shares, though for a landed barony it was held that the eldest must have the *caput baroniae* where seisin was taken for the whole. A dignity being impartible and all the daughters having equal rights in it, the peerage right is held to be latent in all the co-heirs (29 Halsbury's Laws (3rd Edn.) 253).

**ABILITY**

"That section [s. 6 of the Statute of Frauds Amendment Act 1828] provides, that no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, monies, or goods upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith. . . . But when we take the word 'ability' (by which is of course meant pecuniary ability), the case becomes somewhat ambiguous. For, though a man's pecuniary ability depends on the value of the whole and of every part of his property; yet a representation confined wholly to the value of a particular portion of his property in possession, remainder, or expectation, may or may not relate to his pecuniary ability, and increase the value of his personal responsibility to the person making the inquiry, according to the circumstances under which it is made. If the querist is about to trust to his intended debtor's personal responsibility, and the object of the question is to ascertain how far he will be safe in so doing, there can be no doubt that such a representation does relate to the third person's ability." *Lyde* v. *Barnard* (1836), 1 M. & W. 101, *per* Alderson, B., at pp. 106, 108.

[In determining what sum is reasonable for a husband to pay to a wife by way of maintenance under s. 19 of the Matrimonial Causes Act 1950 (repealed; see now s. 61 (1) (*b*) of the Matrimonial Causes Act 1965), the court must take into account the fortune of the wife, the "ability" of the husband, and the conduct of the parties.] "In relation to the word 'ability' counsel for the wife, in addition to *N.* v. *N.* [(1928), 138 L. T. 693], referred me to *Klucinski* v. *Klucinski* [[1953] 1 All E. R. 683], where Lord Merriman, P., said, in relation to the husband's capacity to earn by working overtime, that his 'earning capacity' must be taken into account. Attention was also called to the President's phrase in *Chichester* v. *Chichester* [[1936] 1 All E. R. 271], where in relation to the facts there under consideration he observed parenthetically as to the word 'ability' that it 'means ability to pay, of course'; and to Lord Greene, M.R.'s words in *Howard* v. *Howard* [[1945] 1 All E. R. 91] where he says: 'What has to be looked at is the means of the husband, and "means" means what he is in fact getting or can fairly be assumed to be likely to get.' And finally I note that the word 'ability' in relation to financial matters was already in use in a pecuniary connotation in 1857 in another statute, viz. s. 6 of the Statute of Frauds Amendment Act 1828 and that in *Lyde* v. *Barnard*, [*supra*] Parke, B., said that the word 'means in its ordinary sense some quality belonging to the third party.' From these authorities it appears that the word 'ability', so carefully used in the statute without adjective or ancillary words, should be broadly construed in the light of the realities of each case. It seems highly inadvisable to try to list or define the many varying elements that may constitute 'ability' to provide maintenance, especially as each generation has its own ways in relation to money matters. Suffice it to say that ability, in my view, undoubtedly may include in certain circumstances ability to provide money by overdrafts or through loans." *J.* v. *J.*, [1955] 2 All E. R. 85, *per* Sachs, J., at p. 95; see also [1955] P. 215, and [1955] P. 236 (C. A.).

**ABLE AND WILLING**

[By a contract in writing, the owner of certain property instructed a firm of estate agents to procure for him a person "able, ready and willing" to purchase the property.] "These words do not mean a person ready, able and willing 'to make an offer' or even 'to enter into a contract'; they mean a person ready, able and willing 'to purchase', that is, to complete the purchase. He must be a person who is 'able' at the proper time to complete; that is, he must then have the necessary financial resources. He must also be 'ready'; that is, he must have made all necessary preparations by having the cash or a banker's draft ready to hand over. He must also be willing; that is, he must be willing to hand over the money in return for the conveyance." *Dennis Reed Ltd.* v. *Goody*, [1950] 2 K. B. 277, C. A., *per* Denning, L.J., at p. 287.

[A firm of estate agents were instructed to find a person "able and willing" to purchase a

business.] "Was the purchaser here a person willing and able to purchase the business? Willing, certainly. Able? Counsel for the agents invited us to construe the word 'able' as meaning financially able. . . . But it seems to me that 'able' cannot be confined to financial ability. A purchaser must be able, in the case of a leasehold, to satisfy the lessor that he is a suitable tenant so that the lessor is willing to accept him as a tenant and to give his consent to the assignment. Otherwise he is not an 'able' purchaser; for he is not able to complete the purchase. I think 'able' means 'able not only to sign a contract but also to go on and complete the purchase'." *Dellafiora* v. *Lester*, *Lester* v. *Adrian Barr & Co., Ltd.*, [1962] 3 All E. R. 393, C. A., *per* Lord Denning, at p. 396.

**ABLE-BODIED**

A seaman shall not be entitled to the rating of A.B., that is to say, of an able-bodied seaman, unless he has served at sea for three years before the mast, but the employment of fishermen in decked fishing vessels registered under the first part of this Act shall only count as sea service up to the period of two years of that employment; and the rating of A.B. shall only be granted after at least one year's sea service in a trading vessel in addition to two or more years' sea service on board of decked fishing vessels so registered (Merchant Shipping Act 1894, s. 126, as amended by the Merchant Shipping Act 1906, s. 58 (1)).

"The test of able-bodiedness is not whether a man can get work, but whether he can do work." *Melrose Parish Council* v. *Gordon Parish Council*, [1924] S. C. 1034, *per* Lord Alness (Lord Justice-Clerk), at p. 1039.

**ABLE TO EARN**

[It was contended for a workman that because he was unable to find work, or was in the Army and was thus debarred from finding work, he was entitled to say that he was not "able to earn" within s. 9 (3) of the Workmen's Compensation Act 1925 (repealed) and was therefore entitled to be awarded compensation as for total incapacity.] " 'Able to earn' has regard to the workman's physical capacity for earning, and the question to which the arbitrator has to apply his mind is: If there is suitable work for this partially incapacitated man, what can he earn in that work, having regard to his physical capacity? He is not concerned with whether the man can find work, or whether the conditions are such that he is debarred from seeking it." *Baggs* v. *London Graving Dock Co., Ltd.*, [1943] 1 K. B. 291, C. A., *per* Goddard, L.J., at pp. 294, 295.

**New Zealand.** — [Section 5 (6) of the Workers' Compensation Act 1922 (N.Z.) (repealed; see now s. 14 (4) of the Workers' Compensation Act 1956), provided that, during any period of partial incapacity, the weekly payment was to be an amount equal to sixty-six and two-thirds per centum of the difference between the amount of the worker's weekly earnings at the time of the accident and the weekly amount which the worker was earning after the accident in any employment or business or was "able to earn" in some suitable employment provided or found for him after the accident by the employer by whom he was employed at the time of the accident.] "The fact is that the defendant county did provide a job for plaintiff and paid him his full pre-accident rate of pay, and that plaintiff left the job after working for some five weeks. He was able for five weeks to do what he was called upon to do. That is *prima facie* evidence that he could carry on the job. His reasons for knocking off—(i) that he could not take weight on his fingers, (ii) that the doctor told him to knock off—are not supported by his doctor. The fact that he decided not to work until his claim is settled must also be taken into consideration in deciding whether he could or could not have carried on the job. Having regard to these facts, I am unable to say that plaintiff has displaced the *prima facie* evidence that he could carry on the job. The fact that he was being paid full wages is not conclusive evidence that he is earning or able to earn those wages. The fact is the job was made to suit plaintiff." *Lammas* v. *Manawatu County*, [1946] N. Z. L. R. 232, *per* Ongley, J., at p. 235; also reported, [1940] G. L. R. 117, at p. 118.

**ABLE TO SECURE**

"The only express point of construction in para. 30 of the case stated was that the words 'able to secure' in the Finance Act 1939, s. 15 [repealed and replaced by s. 260 of the Income Tax Act 1952] mean 'able to secure by lawful means.' . . . The Board of Referees held that 'able to secure' meant 'able to secure by lawful means'; this view has been disapproved of by Wrottesley, J., and by all the learned judges of the Court of Appeal. So far I agree, and the question of law falls to be answered in the negative." *Inland Revenue Comrs.* v. *L. B. (Holdings), Ltd.*, [1946] 1 All E. R. 598, H. L., *per* Lord Thankerton, at pp. 602, 603.

**ABNORMALITY OF MIND**

[Section 2 (1) of the Homicide Act 1957, provides that a person shall not be convicted of murder if he was suffering from such "abnormality of mind" as substantially impaired his mental responsibility for his acts, etc.] " 'Abnormality of mind', which has to be contrasted with the time-honoured expression in the M'Naghten Rules 'defect of reason', means a

state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters and the ability to form a rational judgment whether an act is right or wrong, but also the ability to exercise will-power to control physical acts in accordance with that rational judgment." *R.* v. *Byrne*, [1960] 3 All E. R. 1, C. C. A., *per cur.*, at p. 4; also reported [1960] 2 Q. B. 396, at p. 403.

"There may be cases in which the abnormality of mind relied on cannot readily be related to any of the generally recognised types of 'insanity'. If, however, insanity is to be taken into consideration, as undoubtedly will usually be the case, the word must be used in its broad popular sense. It cannot too often be emphasised that there is no formula that can safely be used in every case—the direction to the jury must always be related to the particular evidence that has been given, and there may be cases where the words 'border-line' and 'insanity' may not be helpful. In the result, their Lordships are of opinion that the direction given to the jury by which they were told to assess the degree of abnormality of mind in terms of the border-line between legal insanity and legal sanity as laid down in the M'Naghten Rules was a serious and vital misdirection which would, no doubt, not have been given had the Chief Justice had the benefit of Lord Parker's judgment in *R.* v. *Byrne* [*supra*]." *Rose* v. *R.*, [1961] 1 All E. R. 859, P. C., *per cur.*, at p. 864; also reported in [1961] A. C. 496, at pp. 507, 508.

**ABODE.** *See also* RESIDENCE

[A rule of Court provided that the true place of abode of the deponent of an affidavit should be inserted in such affidavit.] "The words 'place of abode' did not necessarily mean the place where the deponent slept; . . . the object of the rule of Court was to ascertain the place where the deponent was most usually to be found, which in the present case was the office at which he was employed during the greater part of the day, and not the place whither he retired merely for the purposes of rest." *Haslope* v. *Thorne* (1813), 1 M. & S. 103, *per* Lord Ellenborough, C.J., at p. 104.

"A man's residence, where he lives with his family and sleeps at night, is always his place of abode in the full sense of that expression." *R.* v. *Hammond* (1852), 17 Q. B. 772, *per* Lord Campbell, C.J., at pp. 780, 781.

"A place of business is a 'place of abode.' " *Mason* v. *Bibby* (1864), 2 H. & C. 881, D. C., *per* Pollock, C.B., at p. 888.

"A man may have two places of abode, one where he abides at night, and another where he abides by day." *Ibid.*, *per* Martin, B., at p. 888.

[The Summary Jurisdiction Act 1848 (repealed), provided that every summons should be served by delivering the same to the party personally, or by leaving the same with some person for him at his last or usual place of abode.] "For the purposes of some statutes the words 'place of abode' might include place of business, but there are others in which it does not. . . . But in this case, which is a criminal matter, the provisions of s. 1 of the Summary Jurisdiction Act 1848 [see now Magistrates' Courts Rules 1952, S.I. 2190] ought to be strictly construed, and in that section I think 'place of abode' means place of residence." *R.* v. *Lilley, Ex p. Taylor* (1910), 104 L. T. 77, *per* Ridley, J., at p. 78.

"In ordinary language I do not think one would speak of a place of business as a man's place of abode or residence—phrases which, I think, ordinarily mean the same thing; but when the words are used in a statute one must consider the purpose of the statute and the object to be effected by requiring the place of abode or residence to be described or visited." *R.* v. *Braithwaite*, [1918] 2 K. B. 319, C. A., *per* Scrutton, L.J., at p. 330.

"The argument on behalf of the tenant is largely based on the provision of s. 23 of the Landlord and Tenant Act 1927, and in particular on the words 'last known place of abode in England and Wales'. It is contended that 'place of abode' in that phrase means the place where the tenant dwelt—his residence in the sense of the place where he slept at night, if nothing more. However, a large number of authorities show that, at any rate for certain purposes, 'residence' or 'place of abode' may include a place where the person in question works and has his business. The reason why those results have been reached in those cases really depends on the purposes for which the statutory provisions are intended, and if they are intended to make sure that proceedings or notice of proceedings and the like shall come to the knowledge of a certain person (as has been pointed out in these cases) it often may be far more likely that a person will receive due notice of the matters in question if the notice is sent to him at his usual place of business rather than the place where he happens to go home and sleep at night." *Price* v. *West London Investment Building Society*, [1964] 2 All E. R. 318, C. A., *per* Danckwerts, J., at p. 321.

**ABOLISH**

"I cannot conceive myself but that the word 'abolished' there [in a repealed Education Act] involves dissolution; it means that the

school boards and school attendance committees shall be abolished, and it really is not denied that the effect of that section is that from the happening of 'the appointed day' the school board and the committee would be incapable of doing anything." *Oldham Corpn.* v. *Bank of England*, [1904] 2 Ch. 716, *per* Vaughan Williams, L.J., at p. 723.

## ABOUT

### Place

"The words 'about a factory' [in s. 7 (1) of the Workmen's Compensation Act 1897 (repealed)] . . . were evidently intended to meet the case of something being done in direct connection with the factory, though not exactly within it, as, for example, loading goods at a gate, or doing work in an annexe, though possibly separated from the principal yard by a street. It appears to me to be plain that this was the intention in inserting the word 'about,' and that it is not a word suitable to indicate that wherever a workman be sent to do work for his master, he, as it were, carries the factory to that place, or establishes a factory for his employers at that place, so that he is doing work 'about' the factory." *Barclay, Curle & Co.* v. *M'Kinnon* (1901), 3 F. (Ct. of Sess.) 436, *per* the Lord Justice-Clerk, at p. 438.

**New Zealand.** — "The word 'about' . . . is a geographical expression involving the idea of a certain physical contiguity, 'but it also involves the idea of an employment connected with the business carried on at the place indicated': *Owens* v. *Campbell, Ltd.* [[1904] 2 K. B. 60, C. A., *per* Collins, M.R., at p. 64]." *Public Trustee* v. *Gill*, [1934] N. Z. L. R. 832, *per* Reed, J., at p. 837; also reported [1934] G. L. R. 693, at p. 695.

### Quantity

"The question depends on the construction of the charterparty. By it, the defendant undertook to load a 'full and complete cargo of iron ore, say about 1,100 tons.' . . . The cargo actually loaded was 1,080 tons and the ship could carry 1,210 tons. . . . It had been decided in *Thomas* v. *Clark & Todd* [(1818), 2 Stark. 450] and *Hunter* v. *Fry* [(1819), B. & Ald. 421] that when it was stipulated in a charterparty that the charterer should be bound to load a full and complete cargo, but at the commencement of the charterparty there was a statement of the capacity of the ship, such a statement had no effect on the contract to load a full and complete cargo. . . . Now we find that instead of that statement at the commencement of the document, it has become usual to insert in the very sentence in which the charterer undertakes to load the phrase 'say about' so many tons. . . . It seems to me impossible to hold that the words 'say about 1,100 tons' are what have been termed mere 'words of expectation' and . . . they must be words of contract. . . . The reasonable meaning seems to be that the shipowner undertakes, if the ship is of much greater capacity than 1,100 tons, to accept a cargo of about 1,100 tons as equivalent to a full cargo and thus effect is given to the words 'say about,' etc., as words of contract. . . . What, then, is the meaning of the word 'about'? This is partly matter of fact and partly matter of law. I think the direction to the jury has always been that the deviation must not be very large. The difference must be such as people would ordinarily consider as included in the word 'about.' There can be no exact rule of law as to the percentage of difference allowed, but I have known juries often allow in practice 3 per cent." *Morris* v. *Levison* (1876), 1 C. P. D. 155, *per* Brett, J., at pp. 156–158.

**Australia.** — "The question now is whether the contract contained in this correspondence, and acted upon to a large extent, is an agreement on the part of the defendants to supply the quantity of flour that may be required by the French Government for 1882, now limited to the second quality of flour; or whether the quantity of flour to be supplied by the defendants is limited to about 1,500 or 1,600 tons —in other words, whether the words in the plaintiff's letter of 8th December, 1881, 'the quantity required will, we expect, be about 1,500 or 1,600 tons,' are words of mere expectation only or words of contract. . . . It appears to us that the words now in question are . . . mere words of expectation and not words of contract." *Stokes* v. *Hart* (1887), 8 N. S. W. L. R. (Law) 447, *per cur.*, at pp. 453, 457.

## ABOUT TO SAIL

"What do the words 'now sailed or about to sail' represent to the charterers? 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 either 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.* (No. 2), [1893] 2 Q. B. 274, C. A., *per* Lord Esher, M.R., at p. 278.

## ABOVE. *See also* OVER

[The appellants had erected a girder across a river. The question was whether this contravened a local Act regulating erections "above" the river.] "I think . . . that the words 'above

the bed or waterway' mean, or at any rate include, 'over' the bed or waterway." *Burnley Co-operative Society* v. *Pickles* (1898), 77 L. T. 803, *per* Wright, J., at pp. 807, 808.

[Reg. 31 (3) of the Building (Safety, Health and Welfare) Regulations 1948 (revoked; see now the Construction (Working Places) Regulations 1966), laid down that suitable and sufficient ladders, etc., should be provided in cases where workmen, working on or near fragile roofs, had to pass over or work "above" such roofs.] "What does the word 'above' mean? Does it mean above in the vertical plane of the fragile roof, or does it mean above merely in the sense of at a greater height? I think it means the former." *Harris* v. *Brights' Asphalt Contractors, Ltd.*, [1953] 1 All E. R. 395, *per* Slade, J., at p. 398 (also reported in [1953] 1 Q. B. 617, at p. 628).

## ABROAD

The expression "abroad" means outside Great Britain and Ireland (Children and Young Persons Act 1933, s. 30).

"Abroad" means outside Great Britain (Adoption Act 1950, s. 45).

### Testamentary condition

"When the testator talks of the children being maintained in England, with regard to that I think there is no reasonable doubt. Then he says 'and do not reside abroad except for a period not exceeding six weeks in each year.' What does that mean? Is 'abroad' contrasted with England, or has the word 'abroad' the ordinary meaning in the English language? Mr. Hart says that 'abroad' means anywhere out of England. . . . I do not think that contention can be sound. . . . The word 'abroad' can never be used by anybody in talking of a person who has gone to Scotland, nor I think of a person who has gone to Ireland *rebus sic stantibus*. There is, therefore, some little difficulty in deciding whether 'abroad' means out of England, or means, as it ordinarily means, outside the British Islands. I think myself it must mean outside the British Islands." *Re Boulter, Capital & Counties Bank* v. *Boulter*, [1922] 1 Ch. 75, *per* Sargant, J., at pp. 82, 83.

## ABSENCE

[Section 14 (3) of the Matrimonial Causes Act 1950 (repealed; see now s. 12 (3) of the Matrimonial Causes Act 1965), provides that the court may reverse a decree for judicial separation on the ground that it was obtained in the "absence" of the person making the application.] "It would be strange indeed if the section were held to apply in favour of a spouse who has not taken the trouble to enter an appearance, but not in favour of a spouse who enters an appearance, but, without fault on his or her part, fails to receive the notice of setting down to which he or she is entitled. I prefer to construe the section in accordance with the ordinary meaning of the language used. 'Absence' to my mind connotes the opposite of physical presence." *Wilkinson* v. *Wilkinson*, [1962] 1 All E. R. 922, C. A., *per* Willmer, L.J., at p. 927.

**Canada.** — "The absence intended by the Act [Moncton Incorporation Act], 53 Vict. c. 60, s. 65, is not actual absence from the jurisdiction or even from the place of trial, but it includes inability to attend to the business of the Court." *R.* v. *Steeves, Ex p. Cormier* (1909), 39 N. B. R. 435, *per* McLeod, J., at p. 437.

**Canada.** — "Acting under art. 3262 (a) of the R. S. Q. [repealed] Judge Choquette was empowered to hold the Court of Sessions of the Peace only 'in case of the absence or inability to act of one or more of the [judges of the Court of Sessions of the Peace].' . . . 'Inability to act' may or may not involve 'absence.' It is usually accompanied by physical absence; and absence may be due to physical inability to be present. But, as used in the statute, 'absence' clearly means something different from 'inability to act.' It connotes physical non-presence from whatever cause." *Brunet* v. *R.* (1918), 57 S. C. R. 83, *per* Anglin, J., at p. 91.

**Canada.** — [Under the Municipal Act, R. S. O. 1937, c. 266, s. 213 (2) (repealed), a majority of a municipal council could themselves call a meeting in the "absence" of the mayor.] "[Counsel] urges . . . that 'absence' . . . should be construed in its widest sense; that it requires no particular degree or amount of absence, viz. from the city or the Province, and that the applicants, going as they did, to the respondent's office in the City Hall and remaining from 9.30 to 11 a.m. and finding the mayor not present, absence is established within the meaning of the section. . . . I cannot conclude that there was an absence here to warrant the applicants taking the steps they did. The respondent was in the city; he had been in his office the evening before; he would be in later in the day, and it was no doubt known that in the forenoon when the applicants called, he was on duty with the regiment to which he belonged." *Cooper* v. *Croll*, [1940] 1 D. L. R. 610, *per* Gillanders, J., at pp. 615, 616.

## ABSENT

"In my opinion when you find a shop is shut up, no address left, and no means of finding out where the trader has gone, and

when the evidence is sufficient, as it is here, to show an intention to evade service of proceedings, that is an 'absenting' within the subsection [Bankruptcy Act 1883, s. 4 (1) (d) (repealed; see now Bankruptcy Act 1914, s. 1 (7) (d))]." *Re Worsley, Ex p. Lambert*, [1901] 1 K. B. 309, *per* Lord Alverstone, C.J., at p. 314.

"In the construction of an article like clause 97 of the articles of this bank it has been held that the expression 'absents himself' means something more than the expression 'is absent.' . . . He [a director] could not be taken to have absented himself within the meaning of that article until there was a meeting which he ought to have attended. . . . I do not think that the period of absence began to run until then." *Re London & Northern Bank, McConnell's Claim*, [1901] 1 Ch. 728, *per* Wright, J., at pp. 731, 732.

**Australia.** — [An indenture of apprenticeship provided (*inter alia*) that the employer would pay the apprentice certain wages as therein set out with a proviso that no wages should accrue due to be payable for any period during which the apprentice should be "absent" through sickness, holidays or otherwise, except as provided for by the Apprentices and Minors Acts, 1929 to 1934.] "It was agreed that the word 'absent' merely means 'not present'—as it ordinarily does—and that therefore even if the absence of the respondent were due to the wrongful act of the appellant in preventing the respondent from being present the proviso applied and wages ceased to be payable. . . . Reading the whole indenture, it is plain that the parties could never have contemplated that the master was at liberty at any time in breach of the contract to shut out the apprentice, and then relying upon his own wrongful act to assert that the apprentice was 'absent'. . . . I feel that we are necessarily driven to imply, after the words 'shall be absent through sickness, holidays or otherwise,' some such words as 'without default of the employer'." *Evans, Deakin & Co., Ltd.* v. *Allen* (1946), St. R. Qd., 187, *per* Philp, J., at pp. 204, 205.

**New Zealand.** — "The rule of the New Zealand Code . . . which has come under discussion is r. 53. . . . The material part of it is as follows:—'In actions founded on any contract made or entered into or wholly or in part to be performed within the colony, on proof that any defendant is absent from the colony at the time of the issuing of the writ, and that he is likely to continue absent . . . the Court may give leave to the plaintiff to issue a writ and proceed thereon without service.' . . . The . . . contention related to the word 'absent.' . . . The appellant seeks to confine it to persons who at some previous time have been domiciled or resident in New Zealand. It is not easy to appreciate the reasons why such an artificial sense should be put upon the word; and during the argument their Lordships expressed agreement with the judges of the Court of Appeal, who held that the word is used in its ordinary sense, and describes persons who are not in New Zealand." *Ashbury* v. *Ellis*, [1893] A. C. 339, P. C., *per cur.*, at pp. 341, 345.

**Without leave**

In this Act "absent without leave" means absent from any hospital or other place and liable to be taken into custody and returned under this section, and kindred expressions shall be construed accordingly (Mental Health Act 1959, s. 40).

**ABSOLUTE.** *See also* FEE SIMPLE ABSOLUTE; TERM OF YEARS ABSOLUTE

[It was held that the obligation imposed by s. 81 (1) of the Mines and Quarries Act 1954 (to maintain machinery, etc.) was "absolute."] "The word 'absolute' in this connexion has become part of the dictionary of the law. Sometimes the word 'continuing' is substituted for it. Either word means that, in effect, the employer warrants that the machine or other equipment which he is obliged to maintain will never be out of order." *Hamilton* v. *National Coal Board*, [1960] 1 All E. R. 76, H. L., *per* Viscount Simonds, at p. 78; also reported in [1960] A. C. 633, at p. 639.

**Canada.** — "In my opinion the word 'absolute' even when used in a technical sense in connection with the vesting of property may signify at least two different legal concepts. In one sense it may be used to denote the lack of limitation of the extent or duration of an interest in personal property while in another it may mean the freedom of the interest from dependence on other things or persons." *Halley* v. *Minister of National Revenue*, [1963] Ex. C. R. 372, *per* Thurlow, J., at p. 375 (Ex. Ct.).

**ABSOLUTE AND INDEFEASIBLE**

"Absolute and indefeasible means absolute and indefeasible against the whole world. Unless the enjoyment gives a title against all persons having any interest in the *locus in quo* it gives no title at all." *Wheaton* v. *Maple & Co.*, [1893] 3 Ch. 48, C. A., *per* Lopes, L.J., at p. 68.

**ABSOLUTE ASSIGNMENT.**

*See* ASSIGNMENT

**ABSOLUTE INTEREST**

A person shall [for the purpose of the interpretation of Part XIX : Administration of estates] be deemed to have an "absolute

interest" in the residue of the estate of a deceased person, or in a part thereof, if and so long as the capital of the residue or of that part thereof, as the case may be, would, if the residue had been ascertained, be properly payable to him, or to another in his right, for his benefit, or is properly so payable, whether directly by the personal representatives or indirectly through a trustee or other person (Income Tax Act 1952, s. 423 (2)).

## ABSOLUTELY

"What is the meaning of the word 'absolutely'? If an independent meaning can be given to it, it must be 'unconditionally.' " *Re Pickworth, Snaith* v. *Parkinson*, [1899] 1 Ch. 642, C. A., *per* Rigby, L.J., at p. 651.

"I return to this simple will: 'I give all my property to the person who, at the time of my death shall be or shall act as the abbess of the said convent absolutely.' . . . The real difficulty in this case is the use of the word 'absolutely.' 'Absolutely' means free of some fetter in some form. . . . I think that the word not only means that the recipient will retain the full ownership, for the purposes indicated, of that which is given, but also that she is to be free from any fetter or trust which would bind her to keep the fund intact for the purposes of the community." *Re Ray's Will Trusts, Re Ray's Estate, Public Trustee* v. *Barry*, [1936] Ch. 520, *per* Clauson, J., at pp. 525, 526.

**Australia.** — "Its [the word "absolutely"] ordinary meaning is 'without condition or limitation.' And in legal parlance it is commonly used with regard to vesting as meaning 'indefeasibly'." *Re Thompson, Rhoden* v. *Wicking*, [1947] V. L. R. 60, *per* Herring, C.J., at p. 67.

## ABSTRACT OF TITLE

The abstract of title is a summary of the documents by which any dispositions of the property have been made during the period for which title has to be shown, and of all the facts, such as births, marriages, deaths, or other matters affecting the devolution of the title during the same period. As far as possible it is (as regards transactions dated since 1925) confined to dispositions of a legal estate (34 Halsbury's Laws (3rd Edn.) 274).

"Now, I apprehend that an abstract is delivered whenever a number of sheets of paper, call it what you will, whenever a document is delivered to the purchaser, which contains, with sufficient clearness and sufficient fullness, the effect of every instrument which constitutes part of the title of the vendor, and that that is a delivery of the abstract, even though it takes place, as it must, I apprehend, in all cases take place, before the actual comparison of the abstract with the deeds themselves, which they purport to abstract." *Oakden* v. *Pike* (1865), 34 L. J. Ch. 620, *per* Kindersley, V.-C., at p. 622.

## ABSTRACTION

"Abstraction", in relation to water contained in any source of supply in a river authority area, means the doing of anything whereby any of that water is removed from that source of supply and either—

(*a*) ceases (either permanently or temporarily) to be comprised in the water resources of that area, or

(*b*) is transferred to another source of supply in that area, and "abstract" shall be construed accordingly (Water Resources Act 1963, s. 135).

## ABUSE

"The information contains a charge of assaulting and abusing a certain woman; therefore, on the face of it, there is a complaint of something more than a mere assault. The expression 'abusing' appears to me to import 'assaulting' and something more. . . . I am not aware that the word 'abuse' applied to a woman is ever used except with reference to sexual intercourse. Certainly, in more than one Act of Parliament the word 'abuse' has had that meaning applied to it." *Re Thompson* (1860), 6 H. & N. 193, *per* Pollock, C.B., at p. 200.

"To my mind the word 'abused' conveys no definite meaning: it is not a word of art; in popular language it means calling names—abusing by words. The only instance in which it is used as a term of art shows that it does not mean 'ravish,' because I find in the 9 Geo. 4, c. 31, s. 18 [repealed by the Offences against the Person Act 1861], as to trials for the crimes of 'rape and of carnally abusing girls' under the ages therein mentioned, the term 'carnally abusing' is used as meaning something different from rape. The word 'abusing' without the concomitant words 'unlawfully and carnally' has no definite meaning. The expression 'unlawfully assaulted and abused' alleges an assault, with a word which may mean that the prisoner did something else." *Ibid.*, *per* Bramwell, B., at pp. 202, 203.

## ABUSE OF PROCESS

Abuse of process of the Court is a term generally applied to a proceeding which is wanting in *bona fides* and is frivolous, vexatious, or oppressive, the ordinary remedy in such a case being to apply to strike out a pleading or stay the proceedings, or to prevent further pleadings being taken without leave. Beyond this the Court has jurisdiction to punish abuse of process by committal or attachment as a