BLACK'S LAW DICTIONARY

THIRD EDITION

BLACK'S LAW DICTIONARY

CONTAINING

DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE, ANCIENT AND MODERN

AND INCLUDING

THE PRINCIPAL TERMS OF INTERNATIONAL, CONSTITUTIONAL, ECCLESIASTICAL AND COMMERCIAL LAW, AND MEDICAL JURISPRUDENCE, WITH A COLLECTION OF LEGAL MAXIMS NUMEROUS SELECT TITLES FROM THE ROMAN, MODERN CIVIL, SCOTCH, FRENCH, SPANISH, AND MEXICAN LAW, AND OTHER FOREIGN SYSTEMS, AND A TABLE OF ABBREVIATIONS

BY

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THIRD EDITION

BY

THE PUBLISHER'S EDITORIAL STAFF

PREFACE TO THE THIRD EDITION

TWENTY-THREE years have passed since the publication of the Second Edition of Black's Law Dictionary. These years, covering the period of the greatest war in history, followed by a period of prosperity never before equaled, and succeeded by the most widespread depression ever known, have of necessity been fraught with changes and complexities of law, which are reflected in legal nomenclature and definitions. New terms have come into use, and old terms have taken on new meaning.

In the present edition of this work, attempt has been made to meet changed conditions by adding new words and modernized definitions, together with illustrations and current authorities supporting new use of old terms.

The same general alphabetical plan pursued in the two former editions has been followed, but the separation of secondary headings from principal ones has been made clearer.

The publishers offer this work to the legal profession with the firm belief that it merits the same favorable reception accorded the earlier editions.

THE PUBLISHERS.

ST. PAUL, MINN.
July 27, 1933.

PREFACE TO THE SECOND EDITION

IN THE preparation of the present edition of this work, the author has taken pains, in response to a general demand in that behalf, to incorporate a very great number of additional citations to decided cases, in which the terms or phrases of the law have been judicially defined. The general plan, however, has not been to quote seriatim a number of such judicial definitions under each title or heading, but rather to frame a definition, or a series of alternative definitions, expressive of the best and clearest thinking and most accurate statements in the reports, and to cite in support of it a liberal selection of the best decisions, giving the preference to those in which the history of the word or phrase, in respect to its origin and use, is reviewed, or in which a large number of other decisions are cited. The author has also taken advantage of the opportunity to subject the entire work to a thorough revision, and has entirely rewritten many of the definitions, either because his fresh study of the subject-matter or the helpful criticism of others had disclosed minor inaccuracies in them, or because he thought they could profitably be expanded or made more explicit, or because of new uses or meanings of the term. There have also been included a large number of new titles. Some of these are old terms of the law which had previously been overlooked, a considerable number are Latin and French words, ancient or modern, not heretofore inserted, and the remainder are terms new to the law, or which have come into use since the first edition was published, chiefly growing out of the new developments in the social, industrial, commercial, and political life of the people.

Particularly in the department of medical jurisprudence, the work has been enriched by the addition of a great number of definitions which are of constant interest and importance in the courts. Even in the course of the last few years medical science has made giant strides, and the new discoveries and theories have brought forth a new terminology, which is not only much more accurate but also much richer than the old; and in all the fields where law and medicine meet we now daily encounter a host of terms and phrases which, no more than a decade ago, were utterly unknown. This is true—to cite but a few examples—of the new terminology of insanity, of pathological and criminal psychology, the innumerable forms of nervous disorders, the new tests and reactions, bacteriology, toxicology, and so on. In this whole department I have received much valuable assistance from my friend Dr. Fielding H. Garrison, of this city, to whose wide and thorough scientific learning I here pay cheerful tribute, as well as to his constant and obliging readiness to place at the command of his friends the resources of his well-stored mind.

Notwithstanding all these additions, it has been possible to keep the work within the limits of a single volume, and even to avoid materially increasing its bulk, by a new system of arrangement, which involves grouping all compound and descriptive terms and phrases under the main heading or title from which they are radically derived or with which they are conventionally associated, substantially in accordance with the plan adopted in the Century Dictionary and most other modern works of reference.

H. C. B.

WASHINGTON, D. C., December 1, 1910.

PREFACE TO THE FIRST EDITION

THE dictionary now offered to the profession is the result of the author's endeavor to prepare a concise and yet comprehensive book of definitions of the terms, phrases, and maxims used in American and English law and necessary to be understood by the working lawyer and judge, as well as those important to the student of legal history or comparative jurisprudence. It does not purport to be an epitome or compilation of the body of the law. It does not invade the province of the text-books, nor attempt to supersede the institutional writings. Nor does it trench upon the field of the English dictionary, although vernacular words and phrases, so far as construed by the courts, are not excluded from its pages. Neither is the book encyclopædic in its character. It is chiefly required in a dictionary that it should be comprehensive. Its value is impaired if any single word that may reasonably be sought between its covers is not found there. But this comprehensiveness is possible (within the compass of a single volume) only on condition that whatever is foreign to the true function of a lexicon be rigidly excluded. The work must therefore contain nothing but the legitimate matter of a dictionary, or else it cannot include all the necessary terms. This purpose has been kept constantly in view in the preparation of the present work. Of the most esteemed law dictionaries now in use, each will be found to contain a very considerable number of words not defined in any other. None is quite comprehensive in itself. The author has made it his aim to include *all* these terms and phrases here, together with some not elsewhere defined.

For the convenience of those who desire to study the law in its historical development, as well as in its relations to political and social philosophy, place has been found for numerous titles of the old English law, and words used in old European and feudal law, and for the principal terminology of the Roman law. And in view of the modern interest in comparative jurisprudence and similar studies, it has seemed necessary to introduce a considerable vocabulary from the civil, canon, French, Spanish, Scotch, and Mexican law and other foreign systems. In order to further adapt the work to the advantage and convenience of all classes of users, many terms of political or public law are here defined, and such as are employed in trade, banking, and commerce, as also the principal phraseology of international and maritime law and forensic medicine. There have also been included numerous words taken from the vernacular, which, in consequence of their interpretation by the courts or in statutes, have acquired a quasi-technical meaning, or which, being frequently used in laws or private documents, have often been referred to the courts for construction. But the main body of the work is given to the definition of the technical terms and phrases used in modern American and English jurisprudence.

In searching for definitions suitable to be incorporated in the work, the author has carefully examined the codes, and the compiled or revised statutes, of the various states, and from these sources much valuable matter has been obtained. The definitions thus enacted by law are for the most part terse, practical, and of course authoritative. Most, if not all, of such statutory interpretations of words and phrases will be found under their appropriate titles. Due prominence has

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also been given to definitions formulated by the appellate courts and embodied in the reports. Many of these judicial definitions have been literally copied and adopted as the author's definition of the particular term, of course with a proper reference. But as the constant aim has been to present a definition at once concise, comprehensive, accurate, and lucid, he has not felt bound to copy the language of the courts in any instance where, in his judgment, a better definition could be found in treatises of acknowledged authority, or could be framed by adaptation or re-arrangement. But many judicial interpretations have been added in the way of supplementary matter to the various titles.

The more important of the synonyms occurring in legal phraseology have been carefully discriminated. In some cases, it has only been necessary to point out the correct and incorrect uses of these pairs and groups of words. In other cases, the distinctions were found to be delicate or obscure, and a more minute analysis was required.

A complete collection of legal maxims has also been included, comprehending as well those in English and Law French as those expressed in the Latin. These have not been grouped in one body, but distributed in their proper alphabetical order through the book. This is believed to be the more convenient arrangement.

It remains to mention the sources from which the definitions herein contained have been principally derived. For the terms appertaining to old and middle English law and the feudal polity, recourse has been had freely to the older English law dictionaries, (such as those of Cowell, Spelman, Blount, Jacob, Cunningham, Whishaw, Skene, Tomlins, and the "Termes de la Ley,") as also to the writings of Bracton, Littleton, Coke, and the other sages of the early law. The authorities principally relied on for the terms of the Roman and modern civil law are the dictionaries of Calvinus, Scheller, and Vicat, (with many valuable suggestions from Brown and Burrill), and the works of such authors as Mackeldey, Hunter, Browne, Hallifax, Wolff, and Maine, besides constant reference to Gaius and the Corpus Juris Civilis. In preparing the terms and phrases of French, Spanish, and Scotch law, much assistance has been derived from the treatises of Pothier, Merlin, Toullier, Schmidt, Argles, Hall, White, and others, the commentaries of Erskine and Bell, and the dictionaries of Dalloz, Bell, and Escriche. For the great body of terms used in modern English and American law, the author, besides searching the codes and statutes and the reports, as already mentioned, has consulted the institutional writings of Blackstone, Kent, and Bouvier, and a very great number of text-books on special topics of the law. An examination has also been made of the recent English law dictionaries of Wharton, Sweet, Brown, and Mozley & Whitley, and of the American lexicographers, Abbott, Anderson, Bouvier, Burrill, and Rapalje & Lawrence. In each case where aid is directly levied from these sources, a suitable acknowledgment has been made. This list of authorities is by no means exhaustive, nor does it make mention of the many cases in which the definition had to be written entirely *de novo;* but it will suffice to show the general direction and scope of the author's researches.

H. C. B.

WASHINGTON, D. C., August 1, 1891.

A TABLE

OF

BRITISH REGNAL YEARS

Sovereign.	Accession.	Length of reign
William I	Oct. 14, 1066	21
William II	Sept. 26, 1087	13
Henry I	Aug. 5, 1100	36
Stephen	Dec. 26, 1135	19
Henry II	Dec. 19, 1154	35
Richard I	Sept. 23, 1189	10
John	May 27, 1199	18
Henry III	Oct. 28, 1216	57
Edward I	Nov. 20, 1272	35
Edward II	July 8, 1307	20
Edward III	Jan. 25, 1326	51
Richard II	June 22, 1377	23
Henry IV	Sept. 30, 1399	14
Henry V	March 21, 1413	10
Henry VI	Sept. 1, 1422	39
Edward IV	March 4, 1461	23
Edward V	April 9, 1483	—
Richard III	June 26, 1483	3
Henry VII	Aug. 22, 1485	24
Henry VIII	April 22, 1509	38
Edward VI	Jan. 28, 1547	7
Mary	July 6, 1553	6
Elizabeth	Nov. 17, 1558	45
James I	March 24, 1603	23
Charles I	March 27, 1625	24
The Commonwealth	Jan. 30, 1649	11
Charles II	May 29, 1660	37
James II	Feb. 6, 1685	4
William and Mary	Feb. 13, 1689	14
Anne	March 8, 1702	13
George I	Aug. 1, 1714	13
George II	June 11, 1727	34
George III	Oct. 25, 1760	60
George IV	Jan. 29, 1820	11
William IV	June 26, 1830	7
Victoria	June 20, 1837	64
Edward VII	Jan. 22, 1901	9
George V	May 6, 1910	—

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A

A. The first letter of the English alphabet; used to 'istinguish the first page of a folio from the second, marked b, thus: Coke, Litt. 114a, 114b; or the first page of a book, the first foot-note on a printed page, the first of a series of subdivisions, etc., from the following ones, which are marked b, c, d, e, etc.

It is also used as an abbreviation for many words of which it is the initial letter.

An abbreviation of *adversus* used for *versus*, indicating the parties to an action.

At Roman criminal trials the judge, on a table covered with wax, provided for the purpose, inscribed the letter A (absolvo) when he voted to acquit.

The letter A (i. e. *antiquo*, "for the old law") was inscribed upon Roman ballots to indicate a vote against a proposed law. Tayl. Civ. Law, 191, 192.

An adulteress among the Puritans was condemned to wear the initial letter "A" in red cloth on her dress.

In Latin phrases a preposition, denoting from, by, in, on, of, at, and is of common use as a part of a title.

In French phrases it is also a preposition, denoting of, at, to, for, in, with.

The article "a" is not necessarily a singular term, it is often used in the sense of "any," and is then applied to more than one individual object, National Union Bank v. Copeland, 141 Mass. 266, 4 N. E. 794; Snowden v. Guion, 101 N. Y. 458, 5 N. E. 322; Thompson v. Stewart, 60 Iowa, 225, 14 N. W. 247; Commonwealth v. Watts, 84 Ky. 537, 2 S. W. 123; Deutsch v. Mortgage Securities Co., 123 S. E. 793, 795, 96 W. Va. 676; Bourland v. First Nat. Bank Bldg. Co., 237 S. W. 681, 683, 152 Ark. 139; Philadelphia & R. R. Co. v. Green & Flinn, 119 A. 840, 846, 2 W. W. Harr. (Del.) 78; sometimes as "the," Ex parte Hill, 23 Ch. Div. 695, 701.

@. A symbol meaning "at." Bilford v. Beatty, 34 N. E. 254, 255, 145 Ill. 414.

A 1. Of the highest qualities. An expression which originated in a practice of underwriters of rating vessels in three classes,—A, B, and C; and these again in ranks numbered. Abbott. A description of a ship as "A 1" amounts to a warranty. Ollive v. Booker, 1 Exch. 423.

A/C. In bookkeeping it means account. As used in a check it has been held not a direction to the bank to credit the amount of the check to the person named but rather a memorandum to identify the transaction in which the check was issued. Marsh v. First State Bank & Trust Co. of Canton, 185 Ill. App. 29, 32.

A. D. Lat. Contraction for *Anno Domini*, (in the year of our Lord).

A. M. Lat. *Ante meridian.* After the general use of solar time became obsolete, the abbreviations "A. M." and "P. M." in designating time remained in use to distinguish between forenoon and afternoon. Orvik v. Casselman, 105 N. W. 1105, 1106, 15 N. D. 34.

A. R. *Anno regni*, the year of the reign; as, A. R. V. R. 22, (*Anno Regni Victoriæ Reginæ vicesimo secundo*,) in the twenty-second year of the reign of Queen Victoria.

A. U. C. Lat. *ab urbe condita.* From the foundation of the city, Rome. The era from which Romans computed time, being assumed to be 753 years before the Christian Era.

A AVER ET TENER. L. Fr. (L. Lat. *habendum et tenendum.*) To have and to hold. Co. Litt. §§ 523, 524. *A aver et tener a luy et a ses heires, a touts jours*,—to have and to hold to him and his heirs forever. Id. § 625. See Aver et Tener.

A CŒLO USQUE AD CENTRUM. From the heavens to the center of the earth.

A communi observantia non est recedendum. From common observance there should be no departure; there must be no departure from common usage. 2 Coke, 74; Co. Litt. 186*a*, 229*b*, 365*a*; Wing. Max. 752, max. 203. A maxim applied to the practice of the courts, to the ancient and established forms of pleading and conveyancing, and to professional usage generally. Id. 752-755. Lord Coke applies it to common professional opinion. Co. Litt. 186*a*, 364*b*.

A CONSILIIS. (Lat. *consilium*, advice.) Of counsel; a counsellor. The term is used in the civil law by some writers instead of *a responsis*. Spelman, "*Apocrisarius*."

A CUEILLETTE. In French law. In relation to the contract of affreightment, signifies when the cargo is taken on condition that the master succeeds in completing his cargo from other sources. Arg. Fr. Merc. Law, 543.

A DATU. L. Lat. From the date. Haths v. Ash, 2 Salk. 413. *A dato*, from the date. Cro. Jac. 135.

A DIE DATUS. From the day of the date. Hatter v. Ash, 1 Ld. Raym. 84. Used in leases to determine the time or running of the estate, and when so used the time includes the day of the date. Doe v. Watton, 1 Cowp. 189, 191. But for contrary construction, see Haths v. Ash, 2 Salk. 413.

A digniori fieri debet denominatio. Denomination ought to be from the more worthy. The description (of a place) should be taken from the more worthy subject (as from a will). Fleta, lib. 4, c. 10, § 12.

A digniori fieri debet denominatio et resolutio. The title and exposition of a thing ought to be derived from, or given, or made with reference to, the more worthy degree, quality, or species of it. Wing. Max. 265, max. 75.

A FORFAIT ET SANS GARANTIE. In French law. A formula used in indorsing commercial paper, and equivalent to "without recourse."

A FORTIORI. With stronger reason; much more. A term used in logic to denote an argument to the effect that because one ascertained fact exists, therefore another, which is included in it, or analogous to it, and which is less improbable, unusual, or surprising, must also exist.

A GRATIA. From grace or favor; as a matter of indulgence, not of right.

A justitia (quasi a quodam fonte) omnia jura emanant. From justice, as a fountain, all rights flow. Brac. 2 *b*.

A LATERE. Lat. Collateral. Used in this sense in speaking of the succession to property. Bract. 20*b*, 62*b*. From, on, or at the side; collaterally. *A latere ascendit (jus)*. The right ascends collaterally. Justices of the *Curia Regis* are described as *a latere regis residentes*, sitting at the side of the King; Bract. fol. 108*a*; 2 Reeve, Hist. Eng. L. 250.

In Civil Law and by Bracton, a synonym for *e transverso*, across. Bract. fol. 67*a*.

Applied also to a process or proceeding. Keilw. 159.

Out of the regular or lawful course; incidentally or casually. Bract. fol. 42*b*; Fleta, lib. 3, c. 15, § 13.

From the side of; denoting closeness of intimacy or connection; as a court held before auditors *specialiter a latere regis destinatis*. Fleta, lib. 2, c. 2, § 4.

Apostolic; having full powers to represent the Pope as if he were present. Du Cange, *Legati a latere;* 4 Bla. Com. 306.

A LIBELLIS. L. Lat. An officer who had charge of the *libelli* or petitions addressed to the sovereign. Calvin. A name sometimes given to a chancellor, (*cancellarius*,) in the early history of that office. Spelman, "*Cancellarius*."

A l'impossible nul n'est tenu. No one is bound to do what is impossible.

A ME. (Lat. *ego*, I.) A term in feudal grants denoting direct tenure of the superior lord. 2 Bell, H. L. Sc. 133.

Unjustly detaining from me. He is said to withhold *a me* (from me) who has obtained possession of my property unjustly. Calvinus, Lex. To pay *a me*, is to pay from my money.

A MENSA ET THORO. Lat. From table and bed, but more commonly translated, from bed and board. A kind of divorce, which is rather a separation of the parties by law, than a dissolution of the marriage.

A NATIVITATE. From birth, or from infancy. Denotes that a disability, status, etc., is congenital. 3 Bla. Comm. 332; Reg. Orig. 266*b*.

A non posse ad non esse sequitur argumentum necessarie negative, licet non affirmative. From impossibility to non-existence the inference follows necessarily in the negative, though not in the affirmative. That which cannot be done is not done. Hob. 336*b*.

A PALATIO. L. Lat. From *palatium*, (a palace.) Counties palatine are hence so called. 1 Bl. Comm. 117. See Palatium.

A PRENDRE. L. Fr. To take; to seize. *Bref à prendre la terre*, a writ to take the land. Fet Ass. § 51. A right to take something out of the soil of another is a profit *a prenare*, or a right coupled with a profit. 1 Crabb, Real Prop. p. 125, § 115. Distinguished from an easement. 5 Adol. & E. 758. Sometimes written as one word, *apprendre, apprender*. See Profit à prendre.

Rightfully taken from the soil. 1 N. & P. 172; Waters v. Lilley, 4 Pick. (Mass.) 145, 16 Am. Dec. 333.

A piratis aut latronibus capti liberi permanent. Persons taken by pirates or robbers remain free. Dig. 49, 15, 19, 2; Gro. de J. B. lib. 3, c. 3, § 1.

A piratis et latronibus capta dominium non mutant. Things taken or captured by pirates and robbers do not change their ownership. Bynk. bk. 1, c. 17; 1 Kent, Comm. 108, 184. No right to the spoil vests in the piratical captors; no right is derivable from them to any recaptors in prejudice of the original owners. 2 Wood. Lect. 428.

A POSTERIORI. Lat. From the effect to the cause; from what comes after. A term used in logic to denote an argument founded on ex-

periment or observation, or one which, taking ascertained facts as an effect, proceeds by synthesis and induction to demonstrate their cause.

A PRIORI. Lat. From the cause to the effect; from what goes before. A term used in logic to denote an argument founded on analogy, or abstract considerations, or one which, positing a general principle or admitted truth as a cause, proceeds to deduce from it the effects which must necessarily follow.

A QUO. Lat. From which. A court *a quo* (also written "a qua") is a court from which a cause has been removed. The judge *a quo* is the judge in such court. Clegg v. Alexander, 6 La. 339.

A term used, with the correlative *ad quem* (to which), in expressing the computation of time, and also of distance in space. Thus, *dies a quo*, the day from which and *dies ad quem*, the day to which, a period of time is computed. So, *terminus a quo*, the point or limit from which, and *terminus ad quem*, the point or limit to which, a distance or passage in space is reckoned.

A RENDRE. (Fr. to render, to yield.) That which is to be rendered, yielded, or paid. *Profits à rendre* comprehend rents and services. Ham. N. P. 192.

A rescriptis valet argumentum. An argument from rescripts [*i. e.* original writs in the register] is valid. Co. Litt. 11 *a*.

A RESPONSIS. L. Lat. In ecclesiastical law. One whose office it was to give or convey answers; otherwise termed *responsalis*, and *apocrisiarius*. One who, being consulted on ecclesiastical matters, gave answers, counsel, or advice; otherwise termed *a consiliis*. Spelman, "*Apocrisiarius*."

A RETRO. L. Lat. Behind; in arrear. *Et reditus proveniens inde à retro fuerit*, and the rent issuing therefrom be in arrear. Fleta, lib. 2, c. 55, § 2; c. 62, § 14.

A RUBRO AD NIGRUM. Lat. From the red to the black; from the rubric or title of a statute (which, anciently, was in *red* letters), to its body, which was in the ordinary *black*. Tray. Lat. Max.; Bell, "*Rubric;*" Erskine, Inst. 1, 1, 49.

A summo remedio ad inferiorem actionem non habetur regressus, neque auxilium. From (after using) the highest remedy, there can be no recourse (going back) to an inferior action, nor assistance, (derived from it.) Fleta, lib. 6, c. 1, § 2. A maxim in the old law of real actions, when there were grades in the remedies given; the rule being that a party who brought a writ of right, which was the highest writ in the law, could not afterwards resort or descend to an inferior remedy. Bract. 112*b*; 3 Bl. Comm. 193, 194.

A tempore cujus contrarii memoria non existet. From time of which memory to the contrary does not exist.

A verbis legis non est recedendum. From the words of the law there must be no departure. 5 Coke, 119; Wing. Max. 25. A court is not at liberty to disregard the express letter of a statute, in favor of a supposed intention. 1 Steph. Comm. 71; Broom, Max. 268.

A VINCULO MATRIMONII. Lat. from the bond of matrimony. A term descriptive of a kind of divorce, which effects a complete dissolution of the marriage contract. See Divorce.

Ab abusu ad usum non valet consequentia. A conclusion as to the use of a thing from its abuse is invalid. Broom, Max. 17.

AB ACTIS. Lat. An officer having charge of *acta*, public records, registers, journals, or minutes; an officer who entered on record the *acta* or proceedings of a court; a clerk of court; a notary or actuary. Calvin. Lex. Jurid. See "*Acta.*" This, and the similarly formed epithets *à cancellis*, *à secretis*, *à libellis*, were also anciently the titles of a chancellor, (*cancellarius*,) in the early history of that office. Spelman, "*Cancellarius.*"

AB AGENDO. Disabled from acting; unable to act; incapacitated for business or transactions of any kind.

AB ANTE. Lat. Before; in advance. Thus, a legislature cannot agree *ab ante* to any modification or amendment to a law which a third person may make. Allen v. McKean, 1 Sumn. 308, Fed. Cas. No. 229.

AB ANTECEDENTE. Lat. Beforehand; in advance. 5 M. & S. 110.

AB ANTIQUO. Of old; of an ancient date.

Ab assuetis non fit injuria. From things to which one is accustomed (or in which there has been long acquiescence) no legal injury or wrong arises. If a person neglect to insist on his right, he is deemed to have abandoned it. Amb. 645; 3 Brown, Ch. 639; Jenk. Cent. Introd. vi.

AB EPISTOLIS. Lat. An officer having charge of the correspondence (*epistolæ*) of his superior or sovereign; a secretary. Calvin.; Spiegelius.

AB EXTRA. (Lat. *extra*, beyond, without.) From without. Lunt v. Holland, 14 Mass. 151.

AB INCONVENIENTI. From hardship, or inconvenience. An argument founded upon the hardship of the case, and the inconvenience or disastrous consequences to which a different course of reasoning would lead. In re Halsey Electric Generator Co., 175 F. 825, aff State of New Jersey v. Lovell, 179 F. 321, 102 C. C. A. 505, 31 L. R. A. (N. S.) 988, cert:den 31 S. Ct. 471, 219 U. S. 587, 55 L. Ed. 347; Barber As-

phalt Paving Co. v. Hayward, 154 S. W. 140, 248 Mo. 280.

AB INITIO. Lat. From the beginning; from the first act; entirely; as to all the acts done; in the inception. A party may be said to be a trespasser, an estate to be good, an agreement or deed to be void, a marriage or act to be unlawful, *ab initio*. Plow. 6*a*, 16*a*; 1 Bl. Comm. 440; 11 East 395; Sackrider v. M'Donald, 10 Johns. (N. Y.) 253; Hopkins v. Hopkins, 10 Johns. (N. Y.) 369; In re Millers' & Manufacturers' Ins. Co., 106 N. W. 485, 493, 97 Minn. 98; State v. Poulin, 74 A. 119, 105 Me. 224, 24 L. R. A. (N. S.) 408, 134 Am. St. Rep. 543; Bennett v. Bennett, 53 So. 986, 169 Ala. 618, L. R. A. 1916C, 693.

Before. Contrasted in this sense with *ex post facto*, 2 Shars. Bla. Comm. 308; or with *postea*, Calvinus, Lex., *initium*.

AB INITIO MUNDI. Lat. From the beginning of the world. *Ab initio mundi usque ad hodiernum diem*, from the beginning of the world to this day. Y. B. M. 1 Edw. III. 24.

AB INTESTAT. Intestate. 2 Low. Can. 219. Merlin, Repert.

AB INTESTATO. Lat. In the civil law. From an intestate; from the intestate; in case of intestacy. *Hæreditas ab intestato*, an inheritance derived from an intestate. Inst. 2, 9, 6. *Successio ab intestato*, succession to an intestate, or in case of intestacy. Id. 3, 2, 3; Dig. 38, 6, 1. This answers to the descent or inheritance of real estate at common law. 2 Bl. Comm. 490, 516; Story, Confl. Laws, § 480. "Heir *ab intestato*." 1 Burr. 420. The phrase "*ab intestato*" is generally used as the opposite or alternative of *ex testamento*, (from, by, or under a will.) *Vel ex testamento, vel ab intestato* [*hæreditates*] *pertinent*,—inheritances are derived either from a will or from an intestate, (one who dies without a will.) Inst. 2, 9, 6; Dig. 29, 4; Cod. 6, 14, 2.

AB INVITO. Lat. Unwillingly. By or from an unwilling party. A transfer *ab invito* is a compulsory transfer.

AB IRATO. Lat. By one who is angry. A devise or gift made by a man adversely to the interest of his heirs, on account of anger or hatred against them, is said to be made *ab irato*. A suit to set aside such a will is called an action *ab irato*. Merlin, Repert. *Ab irato*. See Robinson v. Duvall, 27 App. D. C. 535, aff 28 S. Ct. 260, 207 U. S. 583, 52 L. Ed. 351; Snell v. Weldon, 87 N. E. 1022, 239 Ill. 279.

AB URBE CONDITA. See A. U. C.

ABACTOR. In Roman law. A cattle thief. Also called *abigeus*, *q. v.*

ABADENGO. In Spanish law. Land owned by an ecclesiastical corporation, and therefore exempt from taxation. In particular, lands or towns under the dominion and jurisdiction of an abbot. Escriche, Dicc. Raz.

ABALIENATIO. In Roman law. The perfect conveyance or transfer of property from one Roman citizen to another. This term gave place to the simple *alienatio*, which is used in the Digest and Institutes, as well as in the feudal law, and from which the English "alienation" has been formed. Inst. 2, 8, pr.; Id. 2, 1, 40; Dig. 50, 16, 28; Calvinus, Lex., *Abalienatio*.

ABAMITA. Lat. In the civil law. A great-great-grandfather's sister, (*abavi soror.*) Inst. 3, 6, 6; Dig. 38, 10, 3; Calvinus, Lex. Called *amita maxima*. Id. 38, 10, 10, 17. Called, in Bracton, *abamita magna*. Bract. fol. 68*b*.

ABANDON. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. Burroughs v. Pacific Telephone & Telegraph Co., 220 P. 152, 155, 109 Or. 404. To give up or to cease to use. Southern Ry. Co. v. Commonwealth, 105 S. E. 65, 67, 128 Va. 176. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. Commonwealth v. Louisville & N. R. Co., 258 S. W. 101, 102, 201 Ky. 670. It includes the intention, and also the external act by which it is carried into effect.

ABANDONEE. A party to whom a right or property is abandoned or relinquished by another. Applied to the insurers of vessels and cargoes. Lord Ellenborough, C. J., 5 Maule & S. 82; Abbott, J., Id. 87; Holroyd, J., Id. 89.

ABANDONMENT. The surrender, relinquishment, disclaimer, or cession of property or of rights. Stephens v. Mansfield, 11 Cal. 363; Dikes v. Miller, 24 Tex. 417; Middle Creek Ditch Co. v. Henry, 15 Mont. 558, 39 P. 1054; Munsey v. Marnet Oil & Gas Co. (Tex. Civ. App.) 199 S. W. 686, 689; Shepard v. Alden, 201 N. W. 537, 539, 161 Minn. 135, 39 A. L. R. 1094; Union Grain & Elevator Co. v. McCammon Ditch Co., 240 P. 443, 445, 41 Idaho, 216; Talley v. Drumheller, 130 S. E. 385, 388, 143 Va. 439.

It is the relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property. Foulke v. New York Consol. R. Co., 127 N. E. 237, 238, 228 N. Y. 269, 9 A. L. R. 1384. Mere nonuser is not necessarily an abandonment. Barnett v. Dickinson, 93 Md. 258, 48 A. 838; Welsh v. Taylor, 134 N. Y. 450, 31 N. E. 896, 18 L. R. A. 535; Phillis v. Gross, 143 N. W. 373, 378, 32 S. D. 438. See, however, Corkran, Hill & Co. v. A. H. Kuhlemann Co., 111 A. 471, 474, 136 Md. 525. Distinguished from neglect: City of Vallezo v. Burrill, 221 P. 676, 64 Cal. App. 399.

The giving up of a thing absolutely, without reference to any particular person or purpose, as throwing a jewel into the highway; leaving a thing to itself, as a vessel at sea; vacating property with the intention of not returning, so that it may be appropriated by the next comer. 2 Bl. Comm. 9, 10; Pidge v. Pidge, 3 Metc. (Mass.) 265; Breedlove v.

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Stump, 3 Yerg. (Tenn.) 257, 276; Richardson v. McNulty, 24 Cal. 339, 345; Judson v. Malloy, 40 Cal. 299, 310. Intention to forsake or relinquish the thing is an essential element, to be proved by visible acts. Sikes v. State (Tex. Cr. App.) 28 S. W. 688; Jordan v. State, 107 Tex. Cr. R. 414, 296 S. W. 585, 586; Kunst v. Mabie, 77 S. E. 987, 990, 72 W. Va. 202; Pocoke v. Peterson, 165 S. W. 1017, 1021, 256 Mo. 501; Doherty v. Russell, 101 A. 305, 306, 116 Me. 269; Dow v. Worley, 256 P. 56, 60, 126 Okl. 175; Duryea v. Elkhorn Coal & Coke Corporation, 124 A. 206, 208, 123 Me. 482.

"Abandonment" differs from surrender, in that surrender requires an agreement, Noble v. Sturm, 178 N. W. 99, 103, 210 Mich. 462; and from forfeiture, in that forfeiture may be against the intention of the party alleged to have forfeited, Gila Water Co. v. Green, 241 P. 307, 308, 29 Ariz. 304.

In the Civil and French Law

The act by which a debtor surrenders his property for the benefit of his creditors; Merlin, Répert. See Abandonment for Torts.

In Insurance

A relinquishment or cession of property by the owner to the insurer of it, in order to claim as for a total loss, when in fact it is so by construction only. 2 Steph. Comm. 178; Chicago S. S. Lines v. U. S. Lloyds (C. C. A. Ill.) 12 F. (2d) 733, 738; Dwpuy v. Ins. Co., 3 Johns. Cas. (N. Y.) 182; Allen v. Ins. Co., 1 Gray (Mass.) 154; St. Paul Fire & Marine Ins. Co. v. Beacham, 97 A. 708, 128 Ind. 414, L. R. A. 1916F, 1168.

The exercise of a right which a party having insured goods or vessels has to call upon the insurers, in cases where the property insured has, by perils of the sea, become so much damaged as to be of little value, to accept of what is or may be saved, and to pay the full amount of the insurance, as if a total loss had actually happened. Park, Ins. 143; 2 Marsh. Ins. 559; 3 Kent, Comm. 318-335, and notes; The St. Johns (D. C.) 101 Fed. 469; Roux v. Salvador, 3 Bing. N. C. 266, 284; Mellish v. Andrews, 15 East, 13; Cincinnati Ins. Co. v. Duffield, 6 Ohio St. 200, 67 Am. Dec. 339.

Abandonment is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured. Civil Code Cal. § 2716.

The term is used only in reference to risks in navigation; but the principle is applicable in fire insurance, where there are remnants, and sometimes, also, under stipulations in life policies in favor of creditors. Cooley's Briefs on Insurance, pp. 5025-5035; 3 Kent, 265; Cincinnati Ins. Co. v. Duffield, 6 Ohio St. 200, 67 Am. Dec. 339; 6 East 72; Klein v. Globe & Rutgers Ins. Co. of New York City, 2 F. (2d) 137. But see Hicks v. McGehee, 39 Ark. 264.

In Maritime Law

The act by which the owner of a ship surrenders the ship and freight to a trustee for the benefit of claimants. See 46 USCA § 185; Ohio Transp. Co. v. Davidson S. S. Co., 148 F. 185, 78 C. C. A. 319, aff 131 F. 373, cert den 27 S. Ct. 782, 203 U. S. 593, 51 L. Ed. 332.

In France and other countries it is the surrender of a vessel and freight by the owner of the same to a person having a claim arising out of a contract made with the master. American Transp. Co. v. Moore, 5 Mich. 368; Poth. Chart. § 2 art. 3, § 51.

In Patent Law

As applied to inventions, abandonment is the giving up of his rights by the inventor, as where he surrenders his idea or discovery or relinquishes the intention of perfecting his invention, and so throws it open to the public, or where he negligently postpones the assertion of his claims or fails to apply for a patent, and allows the public to use his invention without objection. Woodbury, etc., Machine Co. v. Keith, 101 U. S. 479, 485, 25 L. Ed. 939; American Hide, etc., Co. v. American Tool, etc., Co., 1 Fed. Cas. 647; Mast v. Dempster Mill Co. (C. C.) 71 Fed. 701; Bartlette v. Crittenden, 2 Fed. Cas. 981; Pitts v. Hall, 19 Fed. Cas. 754. There may also be an abandonment of a patent, where the inventor dedicates it to the public use; and this may be shown by his failure to sue infringers, to sell licenses, or otherwise to make efforts to realize a personal advantage from his patent. Ransom v. New York, 4 Blatchf. 157, 20 Fed. Cas. 286.

Of Rights in General

The relinquishment of a right. It implies some act of relinquishment done by the owner without regard to any future possession by himself, or by any other person, but with an intention to abandon; 14 M. & W. 789; Dyer v. Sanford, 9 Metc. (Mass.) 395, 43 Am. Dec. 399; Dawson v. Daniel, 2 Flip. 309, Fed. Cas. No. 3,669; Moore v. Sherman, 159 P. 966, 52 Mont. 542.

Abandonment is properly confined to incorporeal hereditaments, as legal rights once vested must be divested according to law, though equitable rights may be abandoned. Great Falls Co. v. Worster, 15 N. H. 412; Cox v. Colossal Cavern Co., 276 S. W. 540, 210 Ky. 612; Cringan v. Nicolson's Ex'rs, 1 Hen. & M. (Va.) 429; Barker v. Salmon, 2 Metc. (Mass.) 32; Inhabitants of School Dist. No. 4 v. Benson, 31 Me. 381, 52 Am. Dec. 618.

Of Easements in General

Permanent cessation of use or enjoyment with no intention to resume or reclaim. Welsh v. Taylor, 134 N. Y. 450, 31 N. E. 896, 18 L. R. A. 535; Corning v. Gould, 16 Wend. (N. Y.) 531; Tucker v. Jones, 8 Mont. 225, 19 P. 571; McClain v. Chicago, etc., R. Co., 90 Iowa, 646, 57 N. W. 594; Oviatt v. Big Four Min. Co., 39 Or. 118, 65 P. 811; Finch v. Unity Fee Co., 208 N. Y. S. 369, 211 App. Div. 430. Intention and completed act are both essential. Town of Orlando v. Stevens, 215 P. 1050, 1051, 90 Okl. 2; Goodman v. Brenner, 188 N. W. 377, 219 Mich. 55; Pascal v. Hynes, 152 N. W. 26, 27, 170 Iowa, 121.

Of Oil Lease

The relinquishment of a right, resting upon the intention of the parties. "Forfeiture," as distinguished from "abandonment," does not

rest upon the intent to release the premises, but is an enforced release. Fisher v. Crescent Oil Co. (Tex. Civ. App.) 178 S. W. 905, 908. There must be intention to abandon and actual relinquishment of the enterprise. Sigler Oil Co. v. W. T. Waggoner Estate (Tex. Civ. App.) 276 S. W. 936, 938; U. S. v. Brown (D. C. Okl.) 15 F.(2d) 565, 567; Chapman v. Ellis (Tex. Civ. App.) 254 S. W. 615, 618. The drawing of the casing from an oil or gas well with no intention of replacing it is an act of abandonment within Ky. St. § 3914a, requiring plugging of well. Seaboard Oil Co. v. Commonwealth, 237 S. W. 48, 50, 193 Ky. 629.

Of Right of Way

Mere nonuser is not an abandonment of a right of way acquired by grant. Burnham v. Mahoney, 111 N. E. 396, 398, 222 Mass. 524; Raleigh, C. & S. Ry. Co. v. McGuire, 88 S. E. 337, 339, 171 N. C. 277; Williams v. Atlantic Coast Line R. Co. (C. C. A. S. C.) 17 F.(2d) 17, 22; Western Union Telegraph Co. v. Louisville & N. R. Co., 81 So. 44, 202 Ala. 542.

Of Water Right

To "abandon" a water right means to desert or forsake it. The intent and an actual relinquishment must concur. In re Willow Creek, 144 P. 505, 522, 74 Or. 592; Central Trust Co. v. Culver, 129 P. 253, 254, 23 Colo. App. 317; Sander v. Bull, 135 P. 489, 492, 76 Wash. 1; O'Shea v. Doty, 218 P. 658, 659, 68 Mont. 316; Lindblom v. Round Valley Water Co., 173 P. 994, 996, 178 Cal. 450.

Of Mining Claim

Relinquishment of a claim held by location without patent, where the holder voluntarily leaves his claim to be appropriated by the next comer, without any intention to retake or resume it, and regardless of what may become of it in the future. McKay v. McDougall, 25 Mont. 258, 64 P. 669, 87 Am. St. Rep. 395; St. John v. Kidd, 26 Cal. 263, 272; Oreamuno v. Uncle Sam Min. Co., 1 Nev. 215; Derry v. Ross, 5 Colo. 295; Tripp v. Silver Dyke Mining Co., 224 P. 272, 274, 70 Mont. 120. The leaving of a claim by the owner with the express or implied intention of not returning to it, and the leaving it open to subsequent location. O'Hanlon v. Ruby Gulch Mining Co., 135 P. 913, 918, 48 Mont. 65. The term includes both the intention to abandon and the act by which the abandonment is carried into effect. Peachy v. Frisco Gold Mines Co. (D. C. Ariz.) 204 F. 659, 668. It differs from "forfeiture," which occurs by operation of law, without regard to the appropriator's intention, when he fails to comply with the statutory conditions. Shank v. Holmes, 137 P. 871, 875, 15 Ariz. 229.

Of Contract

To constitute "abandonment" of a contract by conduct, action relied on must be positive, unequivocal, and inconsistent with the existence of the contract. Mood v. Methodist Episcopal Church South (Tex. Civ. App.) 289 S. W. 461, 464.

Of Actions and Proceedings Therein

The result of a failure for an indefinite period to prosecute an action or suit, Morris v. Phifer State Bank, 105 So. 150, 90 Fla. 55, unless caused by an injunction, Barton v. Burbank, 71 So. 134, 138 La. 997. By statute in some states a definite time has been stated which will render a suit abandoned and subject to dismissal. City of Los Angeles v. Superior Court of California in and for Tuolumne County, 197 P. 79, 185 Cal. 405; Wheeler v. Whitney, 194 N. W. 777, 156 Minn. 362; Teutonia Loan & Building Co. v. Connolly, 63 So. 63, 64, 133 La. 401; Public Utilities Commission v. Smith, 131 N. E. 371, 375, 298 Ill. 151.

A failure to submit issue by instruction thereon constitutes "abandonment" of issue. Unterlachner v. Wells, 317 Mo. 181, 296 S. W. 755, 756.

Failure to perform the conditions necessary to a valid appeal or writ of error is usually considered the abandonment thereof. Lewis v. Martin, 98 So. 635, 210 Ala. 401. Taking out a second writ of error is an abandonment of the first. Board of Public Instruction for Marion County v. Goodwin, 104 So. 779, 89 Fla. 379.

Of Children

Separation from the child and failure to supply its needs. Brock v. Commonwealth, 268 S. W. 315, 316, 206 Ky. 621; Fry v. State, 136 S. E. 466, 467, 36 Ga. App. 312; State v. Clark, 182 N. W. 452, 453, 148 Minn. 389; Campbell v. State, 92 S. E. 951, 20 Ga. App 190.

The "abandonment," which, in California (Civil Code, § 224), New York (Domestic Relations Law, § 111), North Carolina (Code 1931, § 189), Utah (Compiled Laws 1917, § 20) and Washington (Rem. Comp. St. Supp. 1927, § 1696) gives a right of adoption without the parents' consent, may consist of placing the child on some doorstep, or leaving it in some convenient place in the hope that some one will find and take charge of it, or abandonment entirely to chance or fate. Jensen v. Earley, 228 P. 217, 220, 63 Utah, 604. Abandonment in this connection does not mean that a parent has no interest in the child's welfare. It means rather a withdrawal or neglect of parental duties. In re Potter, 85 Wash. 617, 149 P. 23; In re Bistany, 201 N. Y. S. 684, 685, 121 Misc. 540; Truelove v. Parker, 132 S. E. 295, 299, 191 N. C. 430.

Of Domicile

Permanent removal from the place of one's domicile with the intention of taking up a residence elsewhere and with no intention of returning to the original home except temporarily. Stafford v. Mills, 31 A. 1023, 57 N. J. Law, 570; Mills v. Alexander, 21 Tex. 154; Jarvais v. Moe, 38 Wis. 440.

Of Office

Abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal relinquishment, while abandonment is a voluntary relinquishment through nonuser. Steingruber v. City of San Antonio (Tex. Com. App.) 220 S. W. 77, 78; State v. Harmon, 98 A. 804, 805, 115 Me. 268. Abandonment of an office creating a vacancy is not wholly a matter of intention, but may result from the complete abandonment of duties of such a continuance that the law will infer a relinquishment. Wilkinson v. City of Birmingham, 68 So. 999, 1002, 193 Ala. 139.

By Husband or Wife

The act of a husband or wife who leaves his or her consort willfully, and with an intention of causing perpetual separation. Gay v. State, 105 Ga. 599, 31 S. E. 569, 70 Am. St. Rep. 68; People v. Cullen, 153 N. Y. 629, 47 N. E. 894, 44 L. R. A. 420; Domb v. Domb, 186 N. Y. S. 306, 308, 195 App. Div. 526; Heinmuller v. Heinmuller, 105 A. 745, 746, 133 Md. 491; Shockey v. Shockey, 231 S. W. 508, 191 Ky. 839.

ABANDONMENT FOR TORTS. In the civil law. The relinquishment of a slave or animal who had committed a trespass to the person injured, in discharge of the owner's liability for such trespass or injury. Just. Inst. 4, 8, 9. A similar right exists in Louisiana. Fitzgerald v. Ferguson, 11 La. Ann. 396; Civil Code, art. 2321.

ABANDUN, ABANDUM, or ABANDONUM. Anything sequestered, proscribed, or abandoned. *Abandon, i. e., in bannum res missa*, a thing banned or denounced as forfeited or lost, whence to *abandon, desert,* or *forsake*, as lost and gone. Cunningham; Cowell.

ABARNARE. Lat. To discover and disclose to a magistrate any secret crime. *Leges Canuti*, cap. 10.

ABATAMENTUM. L. Lat. In old English law. An abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor and the entry of the heir. Co. Litt. 277*a*; Yel. 151.

ABATARE. To abate. Yel. 151.

ABATE. To throw down, to beat down, destroy, quash. 3 Shars. Bla. Com. 168; Case v. Humphrey, 6 Conn. 140; Klamath Lumber Co. v. Bamber, 142 P. 359, 74 Or. 287. See Abatement; Abatement and Revival.

ABATEMENT.

Of Debts

In equity, when equitable assets are insufficient to satisfy fully all the creditors, their debts must abate in proportion, and they must be content with a dividend, for *æquitas est quasi æqualitas.*

Of Freehold

The unlawful entry upon and keeping possession of an estate by a stranger, after the death of the ancestor and before the heir or devisee takes possession. Such an entry is technically called an "abatement," and the stranger an "abator." It is, in fact, a figurative expression, denoting that the rightful possession or freehold of the heir or devisee is overthrown by the unlawful intervention of a stranger. Abatement differs from intrusion, in that it is always to the prejudice of the heir or immediate devisee, whereas the latter is to the prejudice of the reversioner or remainder-man; and disseisin differs from them both, for to disseise is to put forcibly or fraudulently a person seised of the freehold out of possession. 1 Co. Inst. 277*a*; 3 Bl. Comm. 166; Brown v. Burdick, 25 Ohio St. 268. By the ancient laws of Normandy, this term was used to signify the act of one who, having an apparent right of possession to an estate, took possession of it immediately after the death of the actual possessor, before the heir entered. (Howard, Anciennes Lois des Français, tome 1, p. 539.)

Of Legacies

A proportional diminution or reduction of the pecuniary legacies, when the funds or assets out of which such legacies are payable are not sufficient to pay them in full. Ward, Leg. p. 369, c. 6, § 7; 1 Story, Eq. Jur. § 555; 2 Bl. Comm. 512, 513; Brown v. Brown, 79 Va. 648; Neistrath's Estate, 66 Cal. 330, 5 P. 507; Towle v. Swasey, 106 Mass. 100; Brant v. Brant, 40 Mo. 280; Armstrong's Appeal, 63 Pa. 312; In re Hawgood's Estate, 159 N. W. 117, 123, 37 S. D. 565.

Of Nuisance

The removal of a nuisance. 3 Bla. Comm. 5. See Nuisance.

In Contracts

A reduction made by the creditor for the prompt payment of a debt due by the payor or debtor. Wesk. Ins. 7.

In Mercantile or Revenue Law

A drawback or rebate allowed in certain cases on the duties due on imported goods, in consideration of their deterioration or damage suffered during importation, or while in store. A diminution or decrease in the amount of tax imposed upon any person. Varied remedies and procedure are provided by the different states for the abatement and equalization of taxes. Rogers v. Gookin, 85 N. E. 405, 198 Mass. 434; State v. McVey, 115 N. W. 647, 103 Minn. 485; Central National Bank v. City of Lynn, 259 Mass. 1, 156 N. E. 42.

ABATEMENT AND REVIVAL.

In Chancery Practice

A suspension of all proceedings in a suit, from the want of proper parties capable of proceeding therein. See 2 Tidd Pr. 932; Story Eq. Pl. § 354; Witt v. Ellis, 2 Cold. (Tenn.) 38.

It differs from an abatement at law in this; that in the latter the action is entirely dead and cannot be revived; but in the former the right to proceed is merely suspended, and may be revived; 3 Bla. Comm. 301; Boynton v. Boynton, 21 N. H. 246; Sto. Eq. Pl. § 20 n. § 354; Ad. Eq. 403; Mitf. Eq. Pl., by Jeremy 57; Brooks v. Jones, 5 Lea (Tenn.) 244; Clarke v. Mathewson, 12 Pet. 164, 9 L. Ed. 1041; Kronenberger v. Heinemann, 104 Ill. App. 156; Zoellner v. Zoellner, 46 Mich. 511, 9 N. W. 831; Spring v. Webb (D. C. Vt.) 227 F. 481, 483; F. A. Mfg. Co. v. Hayden & Clemons (U. S. C. C. A. Mass. 1921) 273 F. 374.

All declinatory and dilatory pleas in equity are said to be pleas in abatement, or in the nature thereof; see Story, Eq. Pl. § 708.

In England, in equity pleading, declinatory pleas to the jurisdiction and dilatory to the persons were (prior to the judicature act) sometimes, by analogy to common law, termed "pleas in abatement."

Of Actions at Law

The overthrow of an action caused by the defendant's pleading some matter of fact tending to impeach the correctness of the writ or declaration, which defeats the action for the present, but does not debar the plaintiff from recommencing it in a better way. 3 Bla. Comm. 301; 1 Chit. Pl. (6th Lond. Ed.) 446; Guild v. Richardson, 6 Pick. (Mass.) 370; Doe v. Penfield, 19 Johns. (N. Y.) 308; Sayles v. Daniels Sales Agency, 196 P. 465, 100 Or. 37; Wirtele v. Grand Lodge A. O. U. W., 111 Neb. 302, 196 N. W. 510. See Plea in Abatement.

ABATOR. In real property law, a stranger who, having no right of entry, contrives to get possession of an estate of freehold, to the prejudice of the heir or devisee, before the latter can enter, after the ancestor's death. Litt. § 397. In the law of torts, one who abates, prostrates, or destroys a nuisance.

ABATUDA. Anything diminished. *Moneta abatuda* is money clipped or diminished in value. Cowell; Dufresne.

ABAVIA. Lat. In the civil law. A great-great-grandmother. Inst. 3, 6, 4; Dig. 38, 10, 1, 6; Bract. fol. 68b.

ABAVITA. A great-great-grandfather's sister. Bract. fol. 68b. This is a misprint for *abamita* (q. v.). Burrill.

ABAVUNCULUS. Lat. In the civil law. A great-great-grandmother's brother (*abaviæ frater*). Inst. 3, 6, 6; Dig. 38, 10, 3; Calvinus, Lex. Called *avunculus maximus*. Id. 38, 10, 10, 17. Called by Bracton and Fleta *abavunculus magnus*. Bract. fol. 68b; Fleta, lib. 6, c. 2, § 19.

ABAVUS. Lat. In the civil law. A great-great-grandfather. Inst. 3, 6, 4; Dig. 38, 10, 1, 6; Bract. fol. 67a.

ABBACY. The government of a religious house, and the revenues thereof, subject to an abbot, as a bishopric is to a bishop. Cowell. The rights and privileges of an abbot.

ABBEY. A monastery or nunnery for the use of an association of religious persons, having an abbot or abbess to preside over them.

ABBOT. A prelate in the 13th century who had had an immemorial right to sit in the national assembly. Taylor, Science of Jurispr. 287.

ABBOT, ABBAT. The spiritual superior or governor of an abbey. Feminine, *Abbess*.

ABBREVIATE OF ADJUDICATION. In Scotch law. An abstract of the decree of adjudication, and of the lands adjudged, with the amount of the debt. Adjudication is that diligence (execution) of the law by which the real estate of a debtor is adjudged to belong to his creditor in payment of a debt; and the abbreviate must be recorded in the register of adjudications.

ABBREVIATIO PLACITORUM. An abstract of ancient judicial records, prior to the Year Books. See Steph. Pl. (7th Ed.) 410.

ABBREVIATIONS. Shortened conventional expressions, employed as substitutes for names, phrases, dates, and the like, for the saving of space, of time in transcribing, etc. Abbott. The abbreviations in common use in modern times consist of the initial letter or letters, syllable or syllables, of the word. Anciently, also, contracted forms of words, obtained by the omission of letters intermediate between the initial and final letters were much in use. These latter forms are now more commonly designated by the term *contraction*. Abbreviations are of frequent use in referring to text-books, reports, etc., and in indicating dates, but should be very sparingly employed, if at all, in formal and important legal documents. See 4 C. & P. 51; 9 Co. 48; 1 East 180, n. As to how far a judicial record may contain abbreviations of English words without invalidating it, see Stein v. Meyers, 253 Ill. 199, 97 N. E. 297.

For Table of Abbreviations, see Appendix.

Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis. In abbreviations, such number and sense is to be taken that the grant be not made void. 9 Coke, 48.

ABBREVIATORS. In ecclesiastical law. Officers whose duty it is to assist in drawing up the Pope's briefs, and reducing petitions

into proper form to be converted into papal bulls.

ABBROCHMENT, or ABBROACHMENT. The act of forestalling a market, by buying up at wholesale the merchandise intended to be sold there, for the purpose of selling it at retail. See Forestalling the Market.

ABBUTTALS. See Abuttals.

ABDICATION. The act of a sovereign in renouncing and relinquishing his government or throne, so that either the throne is left entirely vacant, or is filled by a successor appointed or elected beforehand.

Also, where a magistrate or person in office voluntarily renounces or gives it up before the time of service has expired.

The act of abdicating; giving up of office, power or authority, right or trust; renunciation. McCormick v. Engstrom, 241 P. 685, 688, 119 Kan. 698.

It differs from resignation, in that resignation is made by one who has received his office from another and restores it into his hands, as an inferior into the hands of a superior; abdication is the relinquishment of an office which has devolved by act of law. It is said to be a renunciation, quitting, and relinquishing, so as to have nothing further to do with a thing, or the doing of such actions as are inconsistent with the holding of it. Chambers.

An instrument purporting to be a renunciation and "abdication" of rights to property may constitute in legal effect an "assignment." In re Johnston's Estate, 203 N. W. 376, 377, 186 Wis. 599.

ABDITORIUM. An abditory or hiding place, to hide and preserve goods, plate or money. Jacob.

ABDUCTION. In criminal law. The offense of taking away a man's wife, child, or ward, by fraud and persuasion, or open violence. 3 Bl. Comm. 139–141; Humphrey v. Pope, 122 Cal. 253, 54 P. 847; State v. George, 93 N. C. 567; State v. Chisenhall, 106 N. C. 676, 11 S. E. 518; People v. Seeley, 37 Hun (N. Y.) 190; State v. Hopper, 119 S. E. 769, 772, 186 N. C. 405.

The unlawful taking or detention of any female for purposes of marriage, concubinage, or prostitution. 4 Steph. Com. 84; People v. Crotty, 55 Hun, 611, 9 N. Y. S. 937. In many states this offence is created by statute and in most cases applies to females under a given age.

By statute in some states, abduction includes the withdrawal of a husband from his wife, as where another woman alienates his affection and entices him away and causes him to abandon his wife. King v. Hanson, 13 N. D. 85, 99 N. W. 1085.

ABEARANCE. Behavior; as a recognizance to be of good abearance signifies to be of good behavior. 4 Bl. Comm. 251, 256.

ABEREMURDER. (From Sax. *abere*, apparent, notorious; and *mord*, murder.) Plain or downright murder, as distinguished from the less heinous crime of manslaughter, or chance medley. It was declared a capital offense, without fine or commutation, by the laws of Canute, c. 93, and of Hen. I. c. 13. Spelman; Cowell; Blount.

ABESSE. Lat. In the civil law. To be absent; to be away from a place. Said of a person who was *extra continentia urbis*, (beyond the suburbs of the city.)

ABET. To encourage, incite, or set another on to commit a crime. This word is always applied to aiding the commission of a crime. To abet another to commit a murder is to command, procure, or counsel him to commit it. Old Nat. Brev. 21; Co. Litt. 475.

"Aid" and "abet" are nearly synonymous terms as generally used; but, strictly speaking, the former term does not imply guilty knowledge or felonious intent, whereas the word "abet" includes knowledge of the wrongful purpose and counsel and encouragement in the commission of the crime. People v. Dole, 122 Cal. 486, 55 P. 581, 68 Am. St. Rep. 50; People v. Morine, 138 Cal. 626, 72 P. 166; State v. Empey, 79 Iowa, 460, 44 N. W. 707; Raiford v. State, 59 Ala. 106; White v. People, 81 Ill. 333; State v. Ankrom, 103 S. E. 925, 927, 86 W. Va. 570; People v. William Yee, 174 P. 343, 345, 37 Cal. App. 579; State v. Start, 132 P. 512, 513, 65 Or. 178, 46 L. R. A. (N. S.) 266; People v. Powers, 127 N. E. 681, 682, 293 Ill. 600.

See Abettor; Aid and Abet.

ABETTATOR. L. Lat. In old English law. An abettor. Fleta, lib. 2, c. 65, § 7. See Abettor.

ABETTOR. In criminal law. An instigator, or setter on; one who promotes or procures a crime to be committed. Old Nat. Brev. 21. One who commands, advises, instigates, or encourages another to commit a crime; a person who, being present or in the neighborhood, incites another to commit a crime, and thus becomes a principal. See State v. Baldwin, 137 S. E. 590, 591, 193 N. C. 566.

The distinction between abettors and accessories is the presence or absence at the commission of the crime. Cowell; Fleta, lib. 1, c. 34. Presence and participation are necessary to constitute a person an abettor. 4 Sharsw. Bla. Comm. 33; Green v. State, 13 Mo. 382; State v. Teahan, 50 Conn. 92; Connaughty v. State, 1 Wis. 159, 60 Am. Dec. 370; Russ. & R. 99; 9 Bingh. N. C. 440; White v. People, 81 Ill. 333; Doan v. State, 26 Ind. 495; King v. State, 21 Ga. 220; Thompson v. State, 95 S. E. 292, 293, 147 Ga. 745; Bradley v. Commonwealth, 257 S. W. 11, 13, 201 Ky. 413.

ABEYANCE. In the law of estates. In expectation, remembrance, and contemplation of law; the condition of a freehold when there is no person in being in whom it is vested. In such cases the freehold has been said to be *in nubibus* (in the clouds), McKown v. Mc-

Kown, 117 S. E. 557, 559, 93 W. Va. 689; *in pendenti* (in suspension); and *in gremio legis* (in the bosom of the law). It has been denied by some that there is such a thing as an estate in abeyance; Fearne, Cont. Rem. 513. See also the note to 2 Sharsw. Bla. Comm. 107; 1 P. Wms. 516; 1 Plowd. 29. Where there is a tenant of the freehold, the remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance; Lyle v. Richards, 9 S. & R. (Pa.) 367; 3 Plowd. 29 *a*, *b*, 35 *a*; 1 Washb. R. P. 47.

The term may also be applied to the franchise of a corporation; Trustees of Dartmouth College v. Woodward, 4 Wheat. (U. S.) 691, 4 L. Ed. 629. So, too, personal property may be in abeyance or legal sequestration, as in case of a vessel captured at sea from its captors until it becomes invested with the character of a prize; 1 Kent, 102; 1 C. Rob. Adm. 139; 3 *id.* 97, n.; or the rights of property of a bankrupt, pending adjudication; Bank v. Sherman, 101 U. S. 403, 25 L. Ed. 866. See Dillingham v. Snow, 5 Mass. 555; Jewett v. Burroughs, 15 Mass. 464.

Sometimes "abeyance" is used to denote a condition of being undetermined. Fenn v. American Rattan & Reed Mfg. Co., 130 N. E. 129, 130, 75 Ind. App. 146.

ABIATICUS, or AVIATICUS. L. Lat. In feudal law. A son's son; a grandson in the male line. Du Cange, *Avius;* Spelman; Lib. Feud., Baraterii, tit. 8, cited Id.

ABIDE. To accept the consequences of; to rest satisfied with.

With reference to an order, judgment, or decree of a court, to perform, to execute, Taylor v. Hughes, 3 Greenl. (Me.) 433; Hodge v. Hodgdon, 8 Cush. (Mass.) 294; Jackson v. State, 30 Kan. 88, 1 P. 317; Petition of Griswold, 13 R. I. 125. Where a statute provides for a recognizance "to *abide* the judgment of the court," one conditioned "to *await* the action of the court" is not sufficient; Wilson v. State, 7 Tex. App. 38. And under Alabama Code 1928, § 1943, defendant does not "abide the judgment" of the appellate court until costs of appeal are paid. Ex parte Tillery, 22 Ala. App. 193, 114 So. 15. And see State v. Gregory, 205 Iowa, 707, 216 N. W. 17, 19.

To abide and satisfy is used to express the execution or performance of a judgment or order by carrying it into complete effect; Erickson v. Elder, 34 Minn. 371, 25 N. W. 804. Cp. Woolfolk v. Jones (D. C. Va.) 216 F. 807, 809.

Where it is said by an appellate court that costs are to abide the final result, "abide" is synonymous with conform to. Getz v. Johnston, 125 A. 689, 691, 145 Md. 426.

To abide by an award means to await the award without revoking the submission. It does not mean to "acquiesce in" or "not dispute," in the sense of not being at liberty to contest the validity of the award when made; Hunt v. Wilson, 6 N. H. 36; Quimby v. Melvin, 35 N. H. 198; Marshall v. Reed, 48 N. H. 36, 40; Shaw v. Hatch, 6 N. H. 162; Weeks v. Trask, 16 A. 413, 81 Me. 127, 2 L. R. A. 532.

ABIDING BY. In Scotch law. A judicial declaration that the party abides by the deed on which he founds, in an action where the deed or writing is attacked as forged. Unless this be done, a decree that the deed is false will be pronounced. Pat. Comp. It has the effect of pledging the party to stand the consequences of founding on a forged deed. Bell.

ABIDING CONVICTION. A definite conviction of guilt derived from a thorough examination of the whole case. Hopt v. Utah, 120 U. S. 439, 7 S. Ct. 614, 30 L. Ed. 708. A settled or fixed conviction. Davis v. State, 62 So. 1027, 1033, 8 Ala. App. 147.

ABIGEATORES. See Abigeus.

ABIGEATUS. Lat. In the civil law. The offense of stealing or driving away cattle. See Abigeus.

ABIGEI. See Abigeus.

ABIGERE. Lat. In the civil law. To drive away. Applied to those who drove away animals with the intention of stealing them. Applied, also, to the similar offense of cattle stealing on the borders between England and Scotland. See Abigeus.

To drive out; to expel by force; to produce abortion. Dig. 47, 11, 4.

ABIGEUS. Lat. (Pl., *abigei*, or more rarely *abigeatores.*) In the civil law. A stealer of cattle; one who drove or drew away (*subtraxit*) cattle from their pastures, as horses or oxen from the herds, and made booty of them, and who followed this as a business or trade.

The term was applied also to those who drove away the smaller animals, as swine, sheep, and goats. In the latter case, it depended on the number taken, whether the offender was *fur* (a common thief) or *abigeus*. But the taking of a single horse or ox seems to have constituted the crime of *abigeatus*. And those who frequently did this were clearly *abigei*, though they took but an animal or two at a time. Dig. 47, 14, 3, 2. See Cod. 9, 37; Nov. 22, c. 15, § 1; 4 Bl. Comm. 239.

ABILITY. When the word is used in statutes, it is usually construed as referring to pecuniary ability, as in the construction of Tenterden's Act (*q. v.*); 1 M. & W. 101.

A Wisconsin Act (1885), making a husband "being of sufficient ability" liable for the support of an abandoned wife, contemplates earning capacity as well as property actually owned; State v. Witham, 70 Wis. 473, 35 N. W. 934; a contrary view was taken in Washburn v. Washburn, 9 Cal. 475, where the term was limited to the possession by the husband of the means in property to provide such neces-

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