JOWITT'S DICTIONARY OF ENGLISH LAW

Second Edition

by

JOHN BURKE

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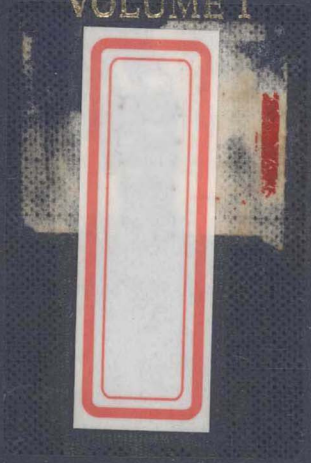

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PREFACE TO THE SECOND EDITION

The materials for the first edition of this Work, published in 1959, were, to a large extent, derived from Byrne's *Law Dictionary* (1923) and the fourteenth edition of Wharton's *Law Lexicon* (1938).

The object of this Work is to provide a really comprehensive lexicon covering English law from earliest times to the present day, giving a definition and an explanation of every legal term old and new. When seeking information the user will do well to ignore the normal classification of subject-matter and go straight to the word wanted. But although this work is primarily a dictionary of English legal terms, it will serve as a short encyclopaedia of the whole law of England.

An effort has been made to keep this edition to a size comparable with its predecessor by cutting out a certain amount of wholly obsolete matter, by eliminating duplication and by excising the terms derived from Scots law which are better dealt with in Gibb's *Scottish Legal Terms*. But the Latin maxims and the terms derived from the Civil Law have been retained as have the quotations from the writings of Glanvil, Bracton, Britton, Fleta, Fortescue, Littleton, Fitzherbert, Coke, Hale and Blackstone which are a treasury of material not readily available.

The years since 1959 have seen great and, lately, frenzied activity in the output of statute law. This is in part due to the work of the Law Commission and of the Criminal Law Revision Committee, the results being a desirable simplification and clarity. Good work has also been done in producing consolidation Acts. But of late there has been a cataract of large complex Acts which seek to legislate in detail for every human activity.

An attempt is made hereunder to draw attention to the changes which are of interest to lawyers.

The reorganisation of the courts has resulted in the disappearance of the assizes. The High Court can and does sit anywhere in England and Wales. Courts of quarter sessions have been abolished and a new court, the Crown Court, which is a superior court of record, deals with offences triable on indictment. County courts remain but there are no county court judges. Instead there are the circuit judges whose jurisdiction includes the county courts and Crown Court. The Palatine Courts have been merged with the High Court. The Mayor's and City of London Court, the Bristol Tolzey and Pie Poudre Courts, the Liverpool Court of Passage, the Norwich Guildhall Court and the Salford Hundred Court have all been abolished. So have nearly 150 borough civil courts and their recorders have gone with them. The Court of Criminal Appeal has ceased to exist. Its jurisdiction is exercised by the Criminal Division of the Court of Appeal. The Probate, Divorce and Admiralty Division of the High Court has gone. Its jurisdiction is divided between the Family Division of the High Court, the new Admiralty Court which is part of the Queen's Bench Division, and the Chancery Division in respect of contentious probate matters. There is a Commercial Court as part of the Queen's Bench Division but this is new only in official name.

Basically justices of the peace continue unchanged but they sit with the presiding judge in the Crown Court to hear appeals from magistrates' courts and proceedings on committal for sentence.

The structure of local government has been remodelled. The local authorities are now the county councils, the district councils, and the parish councils (in Wales community councils). In London there are the Greater London Council, the London borough councils and the Common Council of the City of London. Counties in England are divided into metropolitan counties and non-metropolitan counties. Boroughs (other than the London boroughs), urban districts and rural districts have disappeared, but variety is reintroduced to the local government scene by giving parish councils power, by their own resolution, to promote themselves to be towns with a Town Mayor. District councils which were formerly boroughs may apply for a charter to become boroughs again complete with Mayor and Deputy Mayor. The privileges and rights of the citizens and burgesses have been preserved. Wales has acquired a fine new set of historic names for its counties.

Changes in the structure and names of the departments of the central Government are bewildering and the task of tracking a statutory power to its present holder calls for determination and patience (see, *e.g.*, the heading "Aviation, Ministry of"). Secretaries of State have proliferated. There are now fourteen Principal Secretaries of State supported by Ministers of State and ministers of departments. Many ministries have been swallowed up—the Ministry of Labour by the Department of Employment, the Ministries of Town Planning, Local Government, Transport and Housing and the Public Works Department by the Department of the Environment; the separate Ministries of Health and Social Security by the Department of Health and Social Security; the Board of Trade and the Ministry of Civil Aviation by the Department of Trade (which was split off from the Department of Trade and Industry); the Admiralty, the War Office and the Air Council are parts of the Ministry of Defence; the Ministry of Education and the short-lived Ministry of Science and Technology are within the Department of Education. The Colonial Office and the Commonwealth Office have merged with the Foreign Office to form the Foreign and Commonwealth Office. The Home Office remains serenely aloof from this turmoil. The Ministry of Overseas Development was put down but rose from the dead a few years later. A new department, complete with Secretary of State, is the Department of Prices and Consumer Protection.

There has been consolidation of the statute law relating to juries, income tax, friendly societies, building societies, town and country planning, insurance companies, solicitors, slaughterhouses, land charges, local land charges, salmon and freshwater fisheries, adoption, fatal accidents, legitimacy, restrictive trade practices and lotteries. But the ink is hardly dry even on consolidation Acts before they are amended. Some Acts carry their own amendments in their intestines. Some Acts have been amended even before they receive their chapter numbers. And statutes are amended by order under statutory powers, *e.g.*, the Health and Safety at Work etc. Act, 1974.

The common law has taken a beating. The law relating to liability for animals has been restated in modern form. A scruple is merely something to disturb a conscience. It is no longer a unit of measurement. The action *per quod servitium amisit* has gone and so have those colourful antique characters the eavesdropper, the common barrator, the common scold and the common nightwalker. Champerty and maintenance are no more.

Larceny with all its fascinating distinctions has been replaced by theft, malicious damage by criminal damage. Felony has become indistinguishable from misdemeanour, suicide is no longer a crime, abortion is legal and homosexuality in private between two consenting persons over twenty-one has the blessing of the law. Infants come of full age at eighteen and may be described as minors.

Divorce is obtainable on the sole ground that the marriage has broken down irretrievably but this is not quite the change it seems to be. The old grounds of divorce survive as the necessary proof that the marriage has broken down. Husbands and wives are free to sue each other in tort and are criminally liable in respect of offences committed on each other's property. The secrets of the marriage bed are no longer sacrosanct but evidence thereof is not compellable in criminal proceedings. A deserted wife has a statutory right to stay in the matrimonial home but she is no longer able to pledge her husband's credit as agent of necessity. Actions for breach of promise have been abolished. So have suits for restitution of conjugal rights. Damages for adultery can no longer be claimed so the last echoes of the action of crim. con. have faded away. But jactitation of marriage survives as a suit in the Family Division. Gifts between betrothed couples are returnable if the engagement is broken off, with the possible exception of the engagement ring.

Decimal currency was introduced in 1971. The yard and the pound (weight) have suffered the indignity of being defined as a percentage of a metre and a kilogramme respectively.

Church law has been substantially modernised. The Church Assembly has become the General Synod of the Church of England. The secular sanctions attached to excommunication have been formally removed and last and least, the power of Her Majesty in Council to hear and determine a suit of *duplex querula* has been abolished. Case law occupies only a small space in this work which includes only cases of general principle. But the reports, with the vital assistance of *Current Law*, have been thoroughly combed to produce this meagre result.

It is not possible in a work whose ambit is the whole of English law to avoid error but I have the poor satisfaction of knowing that any error is wholly my own.

I must express my awed gratitude to the typesetters and proof readers of The Eastern Press who have dealt in masterly fashion with Greek, Latin, Old English and my manuscript.

The law is stated, generally, as at January 1, 1976, but while the work was going through the press it was found possible to squeeze into the proofs references to the statutes which received the Royal Assent down to the end of the parliamentary session. The work can reasonably be claimed to be up to date to October 1, 1976.

JOHN BURKE.
October 4, 1976

Dictionary of English Law

A

A 1, used, but without statutory sanction in Lloyd's Register (*q.v.*) of shipping to indicate that a vessel has been built to Lloyd's highest class. The period for which the symbols A 1 are applicable is indicated by a prefixed number. Thus a vessel classed 18 A 1 will be allowed to remain in the A 1 class for eighteen years without re-survey.

A and B lists. The lists of members liable, in so far as their shares are unpaid or in accordance with their guarantees, as the case may be, to contribute towards the discharge of the liabilities of the company or towards the adjustment of the rights of the contributories among themselves (Companies Act, 1948, ss. 26, 212, 257). See CALL; CONTRIBUTORY.

A, Table. See TABLE.

A.B. See ABLE-BODIED SEAMAN.

A coelo usque ad centrum (from heaven to the centre of the earth). See CUJUS EST SOLUM, ETC.

A communi observantia non est recedendum (Co.Litt. 229). (Common usage is not to be departed from.) This maxim merely expresses the conservatism of the common law. "Commonly a new invention doth offend against many rules and reasons of the common law" (Co.Litt. 379). See MINIME MUTANDA, ETC.; OMNIS INNOVATIO, ETC.; PERICULOSUM EST, ETC.

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

A fortiori (by so much stronger (reason)). It is thus applied:—A private person, and *a fortiori* a peace officer (it being his especial duty), may arrest without warrant a person whom he with reasonable cause suspects to be guilty of an arrestable offence. See ARREST.

A mensa et thoro, from board and bed. Prior to the enactment of the Matrimonial Causes Act, 1857, a decree in the ecclesiastical courts for a divorce *a mensa et thoro* had the same effect as a decree for judicial separation (*q.v.*) had after the passing of that Act. In the ecclesiastical courts a decree for the complete dissolution of marriage was known as a decree for a divorce *a vinculo matrimonii.* See A VINCULO MATRIMONII.

A non posse ad non esse sequitur argumentum necessarie negative, licet non affirmative (Hob. 336). (From the fact that a thing cannot be done you necessarily draw the conclusion that it is not done; but from the fact that a thing has not been done you are not justified in concluding that it cannot be done.)

A posteriori. See A PRIORI.

A priori. All arguments may be divided according to the relation of the subject-matter of the premises to that of the conclusion, into (1) *a priori* (from the antecedent to the consequent), or those of such a nature that the premises would account for the conclusion, were that conclusion granted, which is the Aristotelian method of reasoning; and (2) *a posteriori* (from the consequence to the antecedent), or those the premises of which could not have been used to account for the conclusion, which is the Baconian method of reasoning. The former class is manifestly argument from cause to effect, since to account for anything signifies to assign the cause of it. The latter class comprehends all other arguments.

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

A.R. (Avis de reception or **Advice of receipt) form,** an acknowledgment of delivery or non-delivery of a registered article.

A rescriptis valet argumentum (Co.Litt. 11a). (An argument drawn from rescripts is sound.) A rescript is a decision of the Pope or Emperor on a doubtful point of law. The maxim is applied, at the reference given above, to original writs in the register. These were the ancient writs, as to which see ACTION ON THE CASE.

A rubro ad nigrum, literally, from the red to the black. Statutes were written or

printed in black, but the titles were in red; and to argue *a rubro ad nigrum* was to deduce the meaning of the statute from the title.

A tempore cujus contrarii memoria non existet. (From a time where there is no memory to the contrary.) See MEMORY.

A verbis legis non est recedendum. (You must not vary the words of a statute.) A construction ought not to be put upon statutes against the express letter of the statute; for nothing can so express the meaning of the makers of the statute as their own express words, for *index animi sermo* (language conveys the intention of the mind) (5 Co.Rep. 118b); and *maledicta expositio quae corrumpit textum* (an exposition which corrupts the text is bad (4 Co. Rep. 35; *Sussex Peerage Case* (1844) 11 Cl. & F. 143). It would be dangerous to give scope to make a construction in any case against the express words, when the meaning of the makers does not appear to the contrary, and when no inconvenience will thereupon follow; and therefore in such cases *a verbis legis non est recedendum* (Broom 442). See QUOTIENS IN VERBIS, ETC.

A vinculo matrimonii, from the bond of wedlock. It was a total divorce obtained from the ecclesiastical court on some canonical impediment existing before marriage and not arising afterwards, for the marriage was declared void, as having been absolutely unlawful *ab initio*, and the parties were therefore separated *pro salute animarum* (for the safety of their souls), the issue (if any) were illegitimate, and the parties might contract another marriage.

Though this divorce could not have been obtained from the ecclesiastical court where the marriage was not void *ab initio*, yet it was frequently granted before the establishment of the Divorce Court in 1857, on the ground of adultery, by private Act of Parliament.

Ab., Abr., abridgment (*q.v.*).

Ab abusu ad usum non valet consequentia. (From the abuse of a thing you can draw no conclusion as to its legitimate use.)

Ab antiquo, from old times.

Ab assnetis non fit injuria. (From things to which we are accustomed no wrong can arise.) See ACQUIESCENCE.

Ab initio, from the beginning. If a person authorised by law to enter upon the land of another, after entry commits a positive act of misfeasance (*q.v.*) which amounts to a trespass (*q.v.*), he becomes a trespasser *ab initio*, that is to say, from the beginning, and everything done by him in purported exercise of such authority becomes wrongful; but where the authority or licence is given otherwise than by the law, as by the landowner himself, and is abused by the person to whom it is given, then such person is not a trespasser *ab initio* and is liable only for the abuse (*Six Carpenters' Case* (1611) 8 Co.Rep. 146a).

Ab intestato, from an intestate. Succession *ab intestato* means succession to the property of a person who has not disposed of it by his will. See INTESTATE.

Ab irato, by a man in anger (Civil Law).

Abacinare, to punish by blinding by means of red hot irons held before the face.

Abacot, the name of the ancient cap of State worn by the kings of England. It was made in the shape of two crowns (Jacob).

Abactor, one who stole and drove away cattle in herds, not merely one by one, as distinguished from *fur*, a person who stole a single beast only (Cowel). See ABIGEAT; ABIGEUS.

Abalienation, a making over of realty, goods or chattels to another by due course of law (Civil Law).

Abandonee, one to whom anything is relinquished.

Abandonment [Fr. *abandonner*], the relinquishment of an interest or claim.

The civil law permitted a master who was sued for his slave's tort, or the owner of an animal who was sued for an injury done by it, to free himself from liability by abandoning the slave or animal to the person injured. See NOXA. SEQUITUR CAPUT.

As to the abandonment of his property by a debtor for the benefit of his creditors, see CESSIO BONORUM.

Customary rights cannot be lost by disuse or abandonment (*New Windsor Corporation* v. *Mellor* [1975] Ch. 380).

Abandonment of action. This can now be effected only by a party serving before trial a notice of discontinuance under R.S.C., Ord. 21, or by allowing at trial a verdict or judgment to be recorded against him.

Abandonment of appeal. An appeal to the Court of Appeal can be withdrawn only by leave of the court. See R.S.C., Ord. 59, r. 5, notes. An appeal to the Criminal Division

of the Court of Appeal may be abandoned on notice (Criminal Appeal Rules, 1968, r. 10; *R.* v. *Peters* (1973) 58 Cr.App. R. 328).

Abandonment of canal. See the Transport Act, 1968, s. 112.

Abandonment of cargo; claim; ship. In marine insurance there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable or because it could not be preserved from actual total loss without an expenditure which would exceed its total value when the expenditure had been incurred (Marine Insurance Act, 1906, s. 60). When there is a constructive total loss the insured may abandon the subject-matter insured to the insurer (s. 61) by giving notice of abandonment to the insurer in any way which clearly indicates his intention within a reasonable time (s. 62), and thereupon the insurer is entitled to take over the interest of the insured in whatever may remain of the subject-matter insured (s. 63). No abandonment is necessary where there is nothing which, on abandonment, can pass to or be of value to the insurer (*Rankin* v. *Potter* (1873) L.R. 6 H.L. 83). The abandonment of a sunken ship frees the owner from responsibility (*The Snark* [1900] P. 105).

Abandonment of children. Abandonment of a child or young person under the age of sixteen is an offence under the Children and Young Persons Act, 1933, s. 1, as amended by the Children and Young Persons Act, 1963, s. 31, Sch. 5; Criminal Law Act, 1967, Sch. 2, para. 13, Sch. 3 Pt. III.

The birth of an abandoned child may be registered under the Births and Deaths Registration Act, 1953, s. 3A; Children Act, 1975, s. 92.

Abandonment of domicile. See DOMICILE.

Abandonment of easements. An easement (*q.v.*) may be lost by abandonment, of which non-user for twenty years may be sufficient evidence.

Abandonment of excess, the relinquishing of an amount which could be claimed in an action in order to bring the action within the limited jurisdiction of a particular court (see, *e.g.*, the County Courts Act, 1959, s. 41).

Abandonment of mines, etc. See the Mines and Quarries Act, 1954, ss. 20, 139, 151. See also the Petroleum (Production) Act, 1934, s. 7.

Abandonment of vehicles. See MOTOR VEHICLES.

Abandum or **Abandun,** anything abandoned, sequestered, or proscribed. Abandon, *i.e.*, *in bannum res missa*, is a thing denounced as forfeited or lost, whence to abandon, desert or forsake, as lost and gone (Cowel). Pasquier thinks it a coalition of *a ban donner*, to give up to a proscription, in which sense it signifies the ban of the empire. *Ban* in the old dialect signifies a curse; and to abandon, if considered as compounded of French and Saxon, is exactly equivalent to *diris devovere* (Du Cange).

Abarnare [Anglo-Saxon, *abarian*], to lay bare, discover, detect. Hence *aebere theof*, a detected or convicted thief; *aebere morth*, a detected homicide. Also to detect and discover any secret crime to a magistrate (*Leg. Canuti*, c. 104).

Abatamentum, Abatement, an entry by interposition (Co.Litt. 277).

Abate [Fr. *abbattre*], to prostrate, break down, remove or destroy; also to let down or cheapen the price in buying or selling (*Encyc. Londin.*).

Abatement, termination, destruction, reduction, intrusion (Britt. 122b, 155, 161; Co.Litt. 134b, 277a; 3 Bl.Comm. 167; Cowel).

In commerce it means a rebate, allowance or discount made for prompt payment.

As a badge in coat-armour it indicates a dishonour of some kind; it is also called a rebatement.

Abatement of annuities. See ANNUITY.

Abatement of civil proceedings. See R.S.C., Ord. 15, r. 7.

Abatement of criminal proceedings. Criminal proceedings are not abated, that is to say, are not terminated, either by the death of the prosecutor, who in theory acts for the Crown (*R.* v. *Truelove* (1880) 5 Q.B.D. 336), or by the death of the sovereign (see the Demise of the Crown Act, 1702 (1 Anne, c. 2), but on the death of the accused the proceedings drop. Any warrant or summons remains in force notwithstanding the death of the judge or justice who issued it or his ceasing to hold his office (Magistrates' Courts Act, 1952, s. 101).

Abatement of customs and excise duties. Duties may be remitted on goods lost or

destroyed under the Customs and Excise Act, 1952, s. 263.

Abatement of debts, the proportionate reduction of payments where a fund is insufficient to meet all claims. See ADMINISTRATION.

Abatement of false lights. Under the Merchant Shipping Act, 1894, s. 667, if the general lighthouse authority, which in England is the Trinity House (s. 634), serves notice requiring that any light liable to be mistaken for the light from a lighthouse shall be screened or extinguished, then, if, within seven days, such notice is not complied with the authority may enter and extinguish the light at the expense of the person served with the notice, and recover from him the expense of so doing, and he is liable to a penalty not exceeding £100.

Abatement of freehold. In the law of real property, where a person died seised of land and a stranger entered upon the land before the entry of the heir, such entry was known as abatement, and the person so entering was known as an abator (Co.Litt. 277a). The effect was to convert the heir's seisin in law into a mere right of entry. An actual entry by the heir would turn his right of entry into a seisin in deed.

Abatement of freehold became obsolete on the passing of the Land Transfer Act, 1897, which vested the real estate of an intestate in his administrator instead of his heir. Pending a grant of administration in respect thereof, his real and personal estate vests in the President of the Family Division of the High Court (Administration of Estates Act, 1925, s. 9; Administration of Justice Act, 1970, s. 1, Sch. 2 para. 5). Descent to the heir was abolished by s. 45 (1) (*a*) of the Act of 1925. See DISSEISIN; INTRUSION; SEISIN.

Abatement of legacies. This takes place when legatees receive none or only a part of their legacies, although what was bequeathed to them remains and has not been adeemed (see ADEMPTION) before the testator's death.

As to the division of legacies into general, specific, and demonstrative, see LEGACY.

If the assets are insufficient, general legacies, other than those given in payment of a debt due to the legatee or in consideration of the legatee abandoning any right or interest, abate proportionately between themselves, unless the intention is clear that any particular legacy shall be paid in full; but this rule does not operate in favour of a residuary legatee, even though no residue will be left after payment of the other general legatees.

Specific legacies take priority of general legacies, and are liable to abatement only if the assets are insufficient for the payment of debts.

Demonstrative legacies are not subject to abatement (unless the assets are insufficient for the payment of debts) until the fund out of which payment is directed becomes exhausted, in which case they are liable to abatement in common with general legacies as regards so much as is payable out of the assets other than such fund.

Abatement of nuisances. To abate a nuisance is to remove or put an end to it. Nuisances (*q.v.*) are divided into public nuisances and private nuisances. A public nuisance may be abated by anyone to whom it does a special injury, but only to the extent necessary to prevent such injury. Thus, anyone may remove an obstacle placed on a public highway, if such removal is necessary to enable him to pass along the highway. But he must do no more injury than is necessary to enable him to exercise his right of passage (*Colchester* v. *Brooke* (1845) 7 Q.B. 339, 377). A private nuisance may be abated by anyone aggrieved. If, for instance, A builds on his land a wall which obstructs ancient lights on adjoining land, the owner of the adjoining land may, after giving A reasonable notice, enter on A's land and pull the wall down. But this must be done without committing a breach of the peace, and without doing more damage than is unavoidable. No notice to A is necessary in case of emergency or if the nuisance can be abated without entry on his land (*Lemmon* v. *Webb* [1895] A.C. 1). This right of entering upon another man's land and abating a nuisance there probably does not extend to a nuisance arising from mere nonfeasance (*Lonsdale* v. *Nelson* (1823) 2 B. & C. 302, 311; *Campbell-Davys* v. *Lloyd* [1901] 2 Ch. 508). The local authority may serve abatement notices in respect of statutory nuisances under the Public Health Act, 1936, ss. 91-99. See also the Clean Air Act, 1956, s. 16; the London Government Act, 1963, s. 40; the Public Health (Recurring Nuisances) Act, 1969, s. 3, and the Control of Pollution Act, 1974.

Abatement of purchase-money. The reduction of the agreed purchase price by way of compensation, when a vendor has misdescribed property and is unable to convey it as described.

Abatement, Pleas in. These, under the old system of pleading, were pleas which, without either admitting or denying the existence of the cause of action, alleged some fact (such as the non-joinder of a necessary party or the disability of either party) which would preclude the plaintiff from recovering upon the writ as then framed. See BAR, PLEA IN; DILATORY PLEA.

Abatement, Writ of. See DE NOCUMENTO AMOVENDO.

Abator, or **Abater,** one who abates a nuisance or enters into a house or land vacant by the death of the former possessor, and not yet taken possession of by his heir or devisee (Cowel). See ABATEMENT OF FREEHOLD; ABATEMENT OF NUISANCES. Also an agent or cause by which an abatement is procured.

Abatuda, or **Abatude,** anything diminished. *Moneta abatuda* is money clipped or diminished in value (Du Cange).

Abavia, a great-grandmother's mother.

Abavus [Lat.], a great-great-grandfather,

Abbacy [Lat. *abbatia*, or *abbathia*], the government of a religious house and the revenues thereof, subject to an abbot, as a bishopric is to a bishop (Cowel).

Abbas [Ang. Sax.; Lat. *aestuarium*], the site of an abbey or land belonging to one.

Abbatis, an avener or steward of the stables; an ostler (Spelman).

Abbe [Norm. Fr.], an abbot.

Abbey, or **Abby** [Lat. *abbatia*], a place or house for religious retirement, governed by an abbess where nuns are, and by an abbot where monks reside. No fewer than 190 abbeys were dissolved by Henry VIII, the yearly revenue of which amounted to £2,853,000 per annum, a great part of which went to Rome, the governors and governesses of several of the richest among them being foreigners resident in Italy. See the statutes, 1535, 27 Hen. 8, c. 28, and 1539, 31 Hen. 8, c. 13.

Abbot, or **Abbat** [Lat. *abbas*; Fr. *abbé*; Sax. *abbud*; Syr. *abba*, father], a spiritual lord or governor, who had the rule of a religious house. An abbot, with the monks of the same house, who were called the convent, made a corporation (*Termes de la Ley*).

Mitred abbots were those privileged to wear the mitre and allowed full episcopal authority within their precincts. They were also lords of Parliament, and at the time of the dissolution of the monasteries by Henry VIII were twenty-six in number (1 Bl. Comm. 151).

Abbreviatio Placitorum, a collection of cases decided in the superior courts from the reign of Richard I down to the commencement of the Year Books (*q.v.*). It was compiled early in the seventeenth century from the rolls, or records of the proceedings of the courts, and was printed in 1811 by the Record Commission, with an introduction, in which the collection is attributed to Arthur Agarde, Deputy Chamberlain of the Exchequer, and other keepers of the records. It is only an abridgment of pleas, containing many copying errors. See Stephen on *Pleadings*, 7th ed., p. 410.

Abbreviation, an abridging or contraction, very frequent in old statutes, as of *rationabilem* by *ronabilem* in the Statute de Prerogativa Regis, 1323, and of " every " by " evy " in the statute, 1531, 22 Hen. 8, c. 5, s. 4, and writings. The statute, 1730, 4 Geo. 2, c. 26, provided that all law proceedings should be in the English language, written legibly and provided also that they should be in words at length, and not abbreviated. See [1923] W.N. 288.

Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis (9 Co.Rep. 48). (In abbreviations, the number and sense is to be so interpreted that the grant be not made void.)

Abbreviators, officers who assisted in drawing up the Pope's briefs, and reducing petitions into proper form, for their conversion into Papal Bulls.

Abbreviature, a short draft.

Abbrochement, Abbroachment or **Abroachment** [Lat. *ab*; Fr. *broche*, a spit]. To abbroach is to buy up food or other wares so as to commit the offence of engrossing, forestalling, or regrating (*q.v.*).

Abbuttals. See ABUTTALS.

Abdicant. giving up, renouncing.

Abdicate, to renounce or refuse anything (*Termes de la Ley*).

In the civil law it means to disinherit.

Abdication, where a magistrate or person in office voluntarily renounces it or gives it up. 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.

Notwithstanding the cases of (1) Edward II, who assented to the succession, in his lifetime, of his son Edward III; (2) of Richard II, who executed a deed of resignation, whereupon Henry of Lancaster claimed the Crown and was accepted as king by the Houses of Parliament; and (3) of James II, upon whose flight it was declared by the Bill of Rights, 1688, that he had abdicated the government and that the throne was thereby vacant, it would appear that at present the abdication of the sovereign can be effected only by Act of Parliament (5 Parl.Hist. 61; 1 Bl.Comm. 211; iv, 78). The abdication of Edward VIII was so effected; see His Majesty's Declaration of Abdication Act, 1936.

On James II's leaving the kingdom and abdicating the crown, the Lords would have had the word " desertion " made use of, but the Commons thought it was not comprehensive enough, for that the king might then have the liberty of returning, and the Lords ultimately gave way (Macaulay, X).

Involuntary resignations are also termed abdications, as Napoleon's abdication at Fontainebleau.

Abditorium, an abditory or hiding-place to conceal and preserve goods, plate or money, or a chest in which reliques are kept, as mentioned in the inventory of the Church of York (Dugdales' *Monasticon Anglicanum*).

Abduction. Apart from certain obsolete enactments (see, for instance, c. 35 of the Statute of Westminster II, 1285, dealing with the carrying away of married women with the goods of their husbands and the abduction of nuns and wards), the abduction or carrying away of women or girls is now punishable mainly under the Sexual Offences Act, 1956.

It is an indictable offence where any person takes away or detains against her will any woman of any age with intent to marry her or have sexual intercourse with her or to cause her to be married or to have sexual intercourse with any other person, if she is so taken away or detained by force or for the sake of her property or expectations of property (s. 17).

In ecclesiastical law, force inducing a ceremony makes it *ipso jure* void (Ayliffe's *Parergon*, p. 361); it may be that in modern times such a marriage is only voidable.

It is an indictable offence unlawfully to take any unmarried girl under sixteen out of the custody of her parent or guardian against his will (Sexual Offences Act, 1956, s. 20; Firearms Act, 1968 Sch. 1 paras. 6, 8, 9).

It is an indictable offence unlawfully to take any unmarried girl under eighteen as last above mentioned with intent that she shall have unlawful sexual intercourse with men or a particular man (Sexual Offences Act, 1956, s. 19).

Reasonable belief that the girl was sixteen or over is no defence in the former case (*R.* v. *Prince* (1873) 2 C.C.R. 122); but reasonable belief that the girl was eighteen or over is a defence in the latter case (s. 19 (2)). Consent of the girl is not a defence in either case (*R.* v. *Manktelow* (1853) 22 L.J.M.C. 115).

It is an indictable offence to take a female defective out of the possession of her parent or guardian against his will, with intent that she shall have unlawful sexual intercourse with men or a particular man. Reasonable belief that the woman was not a defective is a defence (s. 21).

It is an indictable offence unlawfully by force or fraud (practised either on the child or any other person) to lead or take away or decoy or entice away or detain any child under the age of fourteen with intent to deprive the parent or other lawful custodian of the possession of the child, or to steal any article belonging to such parent or guardian which is upon the person of the child, or with like intent to receive or harbour such child with knowledge that it has been so led or taken away or decoyed or enticed away or detained (Offences against the Person Act, 1861, s. 56). This offence is sometimes described as abduction. See also ABUSING CHILDREN; CHILDREN; RAPE.

The term is also sometimes applied to the common law misdemeanour of forcibly stealing or carrying away any person of either sex or of any age, more properly described as assault and false imprisonment, which, when there is a removal beyond seas, comes within the Habeas

Corpus Act, 1679, s. 11 and the term is also sometimes used to describe the statutory misdemeanour committed by a person who by abduction, duress or fraud succeeds in interfering with the free exercise by a voter of his franchise at any parliamentary or local election (Representation of the People Act, 1949, s. 101).

The removal of a ward of court out of the jurisdiction of the court—sometimes described as abduction—is a contempt of court punishable by committal. See CONTEMPT OF COURT.

Abearance, behaviour. Formerly a recognisance to be of good abearance meant the same thing as a recognisance to be of good behaviour (4 Bl.Comm. 53).

Aberemurder; Aberemurdrum [Sax. *abere*, apparent, notorious; *mord*, murder]. In the laws of Canute, c. 93, and of Henry I, c. 13, this meant wilful murder, as distinguished from manslaughter and chance-medley (Spelman; Cowel; Blount).

Abessed [Fr. *abaisser*], humbled, depressed, abased.

Abet [Old Fr. *à, bêter*, to bait or excite an animal; Sax. *bedan, beteren*, to stir up or excite], to maintain or patronise; to encourage or set on. The act is called abetment. An abettor or abettator is an instigator or setter on, one who promotes or procures a crime to be committed (Old Nat.Br. 21). A person may be found guilty of aiding and abetting although the principal is acquitted (*R.* v. *Cogan* [1975] 3 W.L.R. 316). A person who, knowing that a motorist is going to drive, surreptitiously adds alcohol to his drink so as to bring his blood-alcohol concentration above the statutory limit is guilty of procuring the subsequent offence (*Att.-Gen.'s Reference* (No. 1 of 1975) [1975] 3 W.L.R. 11. See ACCESSORY; PRINCIPAL AND ACCESSORY.

Abeyance, or **Abbayance** [Norm. Fr. *baer, bayer*, to gape, to expect], in expectation, remembrance, and contemplation of law (*in gremio legis*, in the bosom of the law; *in nubibus*, in the clouds). This term denotes the condition of an inheritance which has no present owner (Litt. 645–7; 2 Bl.Comm. 107; Co.Litt. 165a, 342b; Cowel; *Termes de la Ley*).

The word *abeyance* has been compared to what the civilians call *hereditas jacens*; for, as the civilians say land and goods *jacent*, so the common lawyers say that things in a similar condition are in abeyance, as the logicians term it *in posse* or in understanding. It is now used chiefly in connection with peerages (*q.v.*); but it is also used in the law of real property, as regards which there are abeyance of the fee simple and abeyance of the freehold. Thus, the fee simple of the glebe (*q.v.*) of a church is in perpetual abeyance, for it is not in the patron, in the ordinary, or in the incumbent, although the freehold is in the incumbent. But again, the freehold of the glebe is in abeyance after the death of one incumbent and until another incumbent takes possession; and again, where A, being seised in fee of lands, makes a lease to B for life, with remainder to the heir of B, the fee simple is in abeyance during the life of B. It was a rule of the common law that there must be no abeyance of seisin, and any attempted disposition of land which contravened this rule was void. The rule was overcome by various devices and ceased to operate when the new law of property came into effect on January 1, 1926.

Abigeat, the crime of stealing cattle by droves or herds. It was severely punished by the Roman law, the delinquent often being condemned to the mines, banishment, or death (4 Bl.Comm. 239). Also a miscarriage produced by art (Ash's Dict.). See ABACTOR.

Abigeus; Abigevus, the same as abactor (*q.v.*).

Abishering; Abishersing, quit of amercements. Where the word is used in a grant or charter, the persons to whom the grant is made share the forfeitures and amercements of all others, and are themselves free from the control of any, within their fee. It originally signified a forfeiture or amercement. It seems by some authors to signify a freedom or liberty (Blount).

Abjudge, forjudge (*q.v.*) (2 Fleta, c. 50 (8); 2 P. & M. H.E.L. 62).

Abjuratio et juramentum latronum (the abjuration and oath of thieves), the form of oath which a thief or other felon had to take when he had fled into sanctuary and proposed to escape punishment by abjuring the realm. It is printed among the Statutes of Uncertain Date. This species of abjuration was abolished by the Abjuration Act, 1530 (22 Hen. 8, c. 14). See 1 Stephen, Hist. Crim.Law, 491.

Abjuration, a forswearing or renouncing by oath. To abjure is to retract, recant or abnegate a position on oath. At common law this was an oath to leave the realm for ever, taken by a person who had claimed sanctuary. This oath ceased to be used when sanctuary was abolished. See SANCTUARY.

Abjuration was one of the penalties imposed on Popish recusants (*q.v.*) by the statutes 1592, 35 Eliz. 1, c. 2, and 1605, 3 Jac. 1, c. 4.

All the enactments and oaths relating to abjuration were repealed by the Promissory Oaths Act, 1871.

Abladium, cut corn (Cowel).

Able-bodied man. Under the old poor law (*q.v.*) this phrase meant a man who did not suffer from such disability from working as to prevent him from earning wages sufficient for his subsistence (*Macpherson* v. *Kilmore & Kilbride P.C.* 1921 S.C. 300).

Able-bodied seaman. The conditions subject to which a seaman is entitled to be rated as an able-bodied seaman are laid down in the Merchant Shipping Act, 1894, s. 126 as amended by the Merchant Shipping Act, 1906, s. 58; Merchant Shipping (Safety Convention) Act, 1949, Sch. 3. The section has been prospectively repealed by the Merchant Shipping Act, 1970, Sch. 5, and replaced by s. 43 under which standards of competence may be prescribed by regulations. This section does not become operative until brought into force by statutory instrument made under s. 101. See SEAMEN.

Ablegate [*ablego*], to send abroad a person on some public business or embassy.

Ablegati, Ablegates, Papal ambassadors of the second rank, who are sent to a country where there is not a nuncio, with a less extensive commission than that of a nuncio.

Ablocation, a letting out to hire for money.

Ablution. In ecclesiastical law this is the ceremonial washing, during the Communion Service, of the chalice and paten, by pouring into them, and then drinking, wine and water so as to consume what remains of the consecrated elements. It is not illegal when done after the blessing, when, upon the true construction of the rubric, the service is at an end; but it is illegal if done before the blessing or, at any time, with prayers and gestures (*Read* v. *Bishop of Lincoln* [1891] P. 9, 30–32; [1892] A.C. 644, 659).

Abnepos, the son of a great-grandchild.

Abo, the carcase of an animal killed by a wolf or other beast of prey.

Abode, habitation or place of residence; stay or continuance. In law it is used in different senses, to denote the place of a man's residence, or business, temporary or permanent. For some purposes in law a man may be deemed to have an " abode " where he has a place of business, even although he resides elsewhere, or where he has a temporary residence, although his permanent residence is elsewhere or even abroad. But " abode " or residence is quite distinct from domicile, which means much more than even a place of permanent residence (see DOMICILE); whereas it would seem that " abode " does not even necessarily imply that. " Abode " seems larger and looser in its import than the word " residence " which in strictness means the place where a man lives, *i.e.*, where he sleeps or is at home.

There is no strict or definite rule as to what is a man's abode, that is to say, his habitation or place of residence. It is a question rather of fact than of law (*Courtis* v. *Blight* (1862) 31 L.J.C.P. 48). A man's house or other residence in which he lives with his family and sleeps at night is always his place of abode (*R.* v. *Hammond* (1852) 21 L.J.Q.B. 153). But, apart from that, the test is whether there has been such a degree of inhabitancy as to constitute residence in the ordinary sense of the word. Thus, where a man has a town house and a country house, it is entirely a question of fact, depending on the use made of them, whether he has two places of abode or only one.

The word " abode " is, however, sometimes capable of being used in a sense contrary to its ordinary meaning. Thus, where a solicitor was required to give his " place of abode " in a notice of action it was held that he could give his place of business, though he certainly did not reside there (*Roberts* v. *Williams* (1836) 5 L.J.M.C. 23; *Stylo Shoes* v. *Prices Tailors* [1960] Ch. 396). Under the Public Health Act, 1848, s. 150, a notice which had to be served at " the owner's or occupier's place of abode " was held to have been well served by service at his place of business though he did not

reside there (*Mason* v. *Bibby* (1864) 33 L.J.M.C. 105). All those who have, under the Immigration Act, 1971, s. 2, the right of abode in the United Kingdom are free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under the Act or as may be otherwise lawfully imposed (s. 1 (1)). Persons having the right of abode in the United Kingdom are termed " patrials " (s. 26 (6)). See PLACE OF ABODE.

Abolition, leave given by the Crown or the court to abandon criminal proceedings.

Abominable crime. This was the term used in the Offences against the Person Act, 1861, s. 61, to describe the crimes of buggery and bestiality. Under the Sexual Offences Act, 1956, s. 12, it is an indictable offence for a person to commit buggery with another person or with an animal. Any attempt, or assault with intent, to commit either of these crimes is also an indictable offence (Act of 1956, s. 16). Solicitation or incitement to commit either of these crimes is an indictable offence at common law (*R.* v. *Ransford* (1874) 13 Cox C.C. 9). The foregoing must be read subject to the Sexual Offences Act, 1967, which declares that a homosexual act in private between two consenting persons over twenty-one is not an offence. See SODOMY. As to accusing, or threatening to accuse, any person of such offences, see BLACKMAIL; INFAMOUS CRIME.

Aborigines, the original or first inhabitants of any country. As to the rights and status of aboriginal tribes, see *Re Southern Rhodesia* [1919] A.C. 211.

Abortion, a miscarriage, or the premature expulsion of the contents of the womb before the term of gestation is completed. In law, this means the confinement of a pregnant woman at anything short of the full term, that is to say, her miscarriage. The Abortion Act, 1967, made lawful the termination of a pregnancy by a registered medical practitioner if two registered medical practitioners are of the opinion formed in good faith that continuance of the pregnancy would involve a greater risk to the pregnant woman or to her children than if the pregnancy were terminated, or if there is substantial risk that if the child were born it would be seriously handicapped by physical or mental abnormalities. A pregnancy may lawfully be terminated without taking the opinion of two medical practitioners in case of emergency although evidence of professional practice and medical probabilities is necessary, the question as to whether a doctor has acted in good faith in deciding to terminate a pregnancy is for the jury to decide on the totality of the evidence (*R.* v. *Smith* [1973] 1 W.L.R. 1510).

Subject as above stated it is an indictable offence where any pregnant woman unlawfully administers to herself any poison or other noxious thing or unlawfully uses any instrument or other means with intent to procure her own miscarriage; or where any person unlawfully administers to or causes to be taken by any woman, whether pregnant or not, any noxious thing with intent to procure her miscarriage or uses any instrument or other means with like intent (Offences against the Person Act, 1861, s. 58). The jury may acquit of this offence and convict of child destruction (Infant Life (Preservation) Act, 1929, s. 2 (2)). It is an indictable offence where any person unlawfully supplies or procures any noxious thing, or any instrument or thing whatever, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of any woman, whether pregnant or not (Act of 1861, s. 59). If death results from a criminal abortion there must be at least a conviction for manslaughter (*R.* v. *Buck and Buck* (1960) 44 Cr.App.R. 213).

A woman can be convicted of conspiracy to procure her own miscarriage (*R.* v. *Whitchurch* (1890) 24 Q.B.D. 420), or with aiding and abetting the commission of the offence by another (*R.* v. *Sockett* (1908) 72 J.P. 428).

About. See MORE OR LESS.

Above-cited, or -mentioned, quoted before. A figurative expression taken from the ancient manner of writing books or scrolls, where whatever is mentioned or cited before in the same roll must be *above*.

Above par, at a price above nominal or face value, at a premium.

Abrasion, wearing or rubbing off, *e.g.*, loss of weight of coins caused by the ordinary wear and tear of circulation as distinguished from loss by " sweating."

Abridge [Fr. *abréger*; Lat. *abbreviare*], to make shorter in words retaining the sub-

stance. Also the making a declaration or count shorter by subtracting or severing some of the substance therefrom, *e.g.*, a man was said to abridge his plaint in assize, and a woman her demand in action of dower, where any land was put into the plaint or demand which was not in the tenure of the defendant; for if the defendant pleaded non-tenure, joint-tenancy, or the like, in abatement of the writ as to part of the lands, the plaintiff might leave out those lands, and pray that the tenant might answer to the rest (Brooke, Abr.; 1 Wms. Saund. 207). Now obsolete in consequence of the abolition of real and mixed actions by the Real Property Limitation Act, 1833, s. 36, and the Common Law Procedure Act, 1860, s. 26.

Abridgment. An abridgment on which understanding and intellectual labour were expended so as to produce a substantial condensation was formerly not an infringement of copyright (*Butterworth* v. *Robinson* (1801) 5 Ves. 709), but the question must now be decided on a construction of the Copyright Act, 1956, s. 6 of which enumerates the acts which do not constitute an infringement.

The term "abridgment" was used by early writers to describe a digest (*q.v.*) of the laws of England. Such digests were later described sometimes as abridgments and sometimes as digests. Those of most authority are:—

Statham's *Abridgment*, published in the reign of Edward IV. It contains cases from the Year Books and other authorities down to 1461, arranged according to subjects. An English translation was published in 1916.

Fitzherbert's *Grand Abridgment*, first published in 1516, in 3 vols., and containing a digest of the Year Books down to 1506, together with some cases from Bracton's *Note Book*. The best edition is that of 1565, in 2 vols., folio.

Brooke's *Grand Abridgment*, first published in 1568, founded on Fitzherbert, and, like it, a digest of the Year Books. The best and most easily consulted edition is that of 1573.

Rolle's *Abridgment of Cases and Resolutions of the Law*, temp. Car. 2, published in 1668.

Viner's *Abridgment: a General and Complete Abridgment of Law and Equity*, in 24 vols., folio, published first in 1741–58, and again in 24 vols., 8vo, 1791–95, with a supplement in 6 vols., 8vo, 1799–1806.

Comyns' *Digest of the Laws of England*, in 5 vols., folio, first published in 1762–67. The author had died in 1740. It is the best and most authoritative work of its kind. The 5th and last edition was published, in 8 vols., 8vo, in 1822.

Bacon's *New Abridgment*, published in 1736–66. The 7th and last edition, in 8 vols., 8vo, was published in 1832.

Cruise's *Digest of the Laws of England respecting Real Property*, in 7 vols., 1804–7. The 4th and last edition was published, in 7 vols., in 1835.

See Cowley, *Bibliography of Abridgments*.

Abroad. This term depends on the context, but even statutes vary in definition. Thus by the Children and Young Persons Act, 1933, s. 30, the term means "outside Great Britain and Ireland." In private international law, or conflict of laws (*q.v.*), the term "abroad" signifies any law-district not that of the forum (*q.v.*).

Abroad, Offences committed. The English courts have jurisdiction to try prisoners accused of offences committed outside England in the following cases, in addition to those mentioned under COLONIAL GOVERNORS:

(1) Treason and misprision of treason committed outside the United Kingdom by a British subject (Treason Act, 1351; *R.* v. *Casement* [1917] 1 K.B. 98); or by a person owing allegiance to the Crown (*Joyce* v. *D. P. P.* [1946] A.C. 347).

(2) Treason-felony wherever committed (Treason Felony Act, 1848, s. 3).

(3) Offences under the Explosive Substances Act, 1883, s. 3, committed outside the Queen's dominions by a British subject.

(4) Offences under the Foreign Enlistment Act, 1870, s. 4, committed outside the Queen's dominions by a British subject.

(5) Offences under the Official Secrets Acts, 1911 and 1920, committed in any part of the Queen's dominions or by British officers or subjects outside the Queen's dominions (Act of 1911, s. 10, as amended by the Criminal Justice Act, 1948, Sch. 10 Pt. I; Criminal Law Act, 1967, Sch. 3 Pts. I, II).

(6) Misdemeanours by British subjects in