

# Mozley & Whiteley's Law Dictionary

**Ninth edition by  
John B Saunders**

**Butterworths**

# Mozley & Whiteley's Law Dictionary

*Ninth Edition*

By John B Saunders Esq

OF LINCOLN'S INN, BARRISTER



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Law Dictionary

# Preface to the Ninth edition

It is seven years since the last edition of this work was published, and during those years many changes have taken place, making necessary a considerable revision of the dictionary. The United Kingdom is now increasingly becoming subject to European Community law; local government in England and Wales has been reorganised by the Local Government Act 1972; the Sex Discrimination Act 1975 has taken its place upon the statute book; national insurance and social security legislation has been consolidated, for the time being, in the Social Security Act 1975; whilst political considerations have led to further alteration in the law relating to industrial relations. In almost every direction new laws are coming into being and old laws are being amended.

It is against this constantly moving background that this new edition has been prepared, the entries having been revised up to 31st December 1976.

Some Scottish and Canadian definitions have been added.

J.B.S.

*May 1977*

# Extract from Authors' Preface to First edition

THE primary object of this Work is to give an exposition of legal terms and phrases of past and present use. But, as the mere exposition of a word or phrase would often be barren and unsatisfactory, we have in many cases, especially when dealing with the legal terms of the present day, added an exposition of the law bearing upon the subject-matter of the Title.

To many of the Titles which have reference to the historical portions of the law, we have appended the law-Latin or Norman-French words which were used as their equivalent by the mediaeval lawyers when writing (as they often did) in one or other of those languages respectively.

There is a difference in the practice of lexicographers as to the order of Titles consisting of more than one word. Some place the order according to the letters of the Title considered as a whole; others regulate the order by the letters of the first word. This being so, it may be as well to state that we have adopted the latter principle. Thus, "Writ of Right" has precedence over "Writer to the Signet," because "Writ" would precede "Writer" if the words stood alone, notwithstanding that "e" (the fifth letter in "writer") precedes in the alphabet "o" (the first letter of "of").

We append to this Preface a list of the abbreviations used in the course of the Book. We do not in this list include authorities which are referred to in full, nor any series of Legal Reports. A catalogue of all the Reports, with the abbreviations generally used to denote them, will be found under the Title "Reports," pp. 302-319.

# List of Abbreviations

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[*As to* REPORTS, *see pp.* 302–319]

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Annual Practice .....	The Annual Practice of the Supreme Court.
Bl.....	Sir Wm. Blackstone's Commentaries.
Cheshire.....	Cheshire's Modern Real Property.
Cowel .....	Cowel's Interpreter.
Hals. Stat .....	Halsbury's Statutes of England.
Hill & Redman .....	Hill & Redman's Law of Landlord and Tenant.
May .....	May's Parliamentary Practice.
R.S.C. ....	Rules of the Supreme Court.
Rayden .....	Rayden on Divorce.
Stone .....	Stone's Justices' Manual.
T.L. ....	Termes de la Ley, or Terms of the Law.

# A Concise Law Dictionary

## A

**A 1.** In shipping phraseology, this denotes a first-class vessel.

**A and B lists.** [CONTRIBUTORY.]

**A FORTIORI** (from a stronger [reason]), all the more.

**A MENSA ET THORO.** From table and bed. [JUDICIAL SEPARATION.]

**A POSTERIORI.** [A PRIORI.]

**A PRIORI.** An argument derived from considerations of an abstract character, or which have but a remote and possibly indirect (though none the less real) bearing upon the point under discussion, is called an argument *a priori*; whereas an argument derived from actual observation or other direct consideration is called an argument *a posteriori*.

**A.R.** *Anno regni*—in the year of the reign.

**A, TABLE.** [TABLE A.]

**A VERBIS LEGIS NON RECE-  
DENDUM EST** (from the words of the law there should not be any departure). A rule to be applied in the interpretation of Acts of Parliament whereby the words of the statute are to be the primary guide for the court rather than the intention of the legislature.

**A VINCULO MATRIMONII.** From the bond of matrimony.

**AB ANTIQUO.** From ancient time.

**AB INITIO** (from the beginning), specially in relation to trespass. If a man abuse the authority given him by the law, he becomes, by the common law, a trespasser *ab initio*, so that the legality of his first proceedings is vitiated by his subsequent illegal acts.

**AB INTESTATO** (from an intestate). Succession *ab intestato* means the succession to the property of a person dying intestate, *i.e.*, without a will.

**ABANDONMENT.** 1. In marine insurance, abandonment is the act of cession, by which, in case of the constructive total loss of a vessel or goods in the progress of a voyage, the owners give up to the insurers or underwriters what remains of the vessel or goods on condition of receiving the whole amount of insurance. Notice of such abandonment must be given to the underwriters within reasonable time after the loss. See Marine Insurance Act 1906. [TOTAL LOSS.]

2. Service of a notice of discontinuance under R.S.C. 1965, Ord. 21 enables a party to abandon an action in the High Court.

3. Abandonment of a child or young person is a misdemeanour under s. 1 of the Children and Young Persons Act 1933. As to when a child is deemed to be abandoned, see s. 2 (9) of the Children Act 1948, as substituted by the Children Act 1975.

**ABATEMENT** sometimes signifies the act of the abator, and sometimes the result of the act to the thing abated.

1. *In Commerce* it means a deduction made from payments due, and it is also used to denote the allowance sometimes made at the custom-house for damages received by goods in warehousing or during importation.

2. *Abatement amongst Creditors* takes place where the assets of a debtor are not sufficient to pay his creditors in full, so that they are compelled to share the assets in proportion to their debts.

3. *Abatement amongst Legatees* in like manner is enforced where there are not



**ABATEMENT**—*continued*.

sufficient assets to pay the legacies in full. But pecuniary or general legacies abate proportionally before specific legacies and before demonstrative legacies until the fund out of which the latter are payable is exhausted; and in addition a legacy may be expressly preferred to another of the same class.

4. *Abatement of an Action or Suit* takes place when, from some supervenient cause, one of the parties thereto is no longer before the court; so that, unless his place be supplied, there is no one to proceed therein.

Now by R.S.C., 1965, Ord. 15, where a party dies or becomes bankrupt, but the action survives, it shall not abate by reason of the death or bankruptcy.

5. *Abatement of Freehold* was where a person died seized of an inheritance, and before the heir or devisee entered, a stranger, who had no right, made entry and got possession of the freehold: this entry was called an abatement, and he an abator. [DISSEISIN; INTRUSION; OUSTER.]

6. *Abatement, Pleas in*, were those showing ground for quashing the proceedings. They did not dispute the cause of action, but only pointed out an error, unconnected with the merits of the case, *e.g.*, misnaming or misdescription of parties, which unless remedied was fatal to the suit. Now abolished in both civil and criminal proceedings.

7. *Abatement of Nuisances, i.e.*, their removal. A self-remedy allowed to one injured by a nuisance. The abatement must be done peaceably and without causing unnecessary damage.

A local authority must serve an abatement notice on any person responsible for the existence of a nuisance prejudicial to the health of the inhabitants of the neighbourhood. If an abatement notice is not complied with, a court of summary jurisdiction may make a nuisance order requiring the defendant to comply with the abatement notice. See the Public Health Act 1936, ss. 92–100.

**ABBREVIATURE.** A short draft.

**ABDICATE.** 1. To renounce or give up the throne or government.

2. (Roman Law.) To disinherit.

**ABDUCTION.** The leading away of any person. More strictly the taking away

of a wife from her husband, a child from its parent, a ward from her guardian and a female servant from her master. In some cases the act is criminal, and in others a civil action will lie against the aggressor; and see Sexual Offences Act 1956, ss. 19, 20, as to girls under the ages of 16 and 18 years respectively. [HEIRESS.]

**ABEARANCE.** Behaviour. [GOOD BEHAVIOUR.]

**ABET** (Fr. *Bouter*; Lat. *Impellere, Excitare*). To encourage or set on. Thus an abettor of a crime is one who, being present either actually or constructively, aids in the commission of the offence. A person who supplies the instrument for a crime or anything essential to its commission aids in the commission of it; if he does so knowingly and with intent to aid, he abets it as well and is guilty of aiding and abetting: *National Coal Board v. Gamble*, [1959] 1 Q.B. 11. Aiding and abetting almost inevitably involves a situation in which the secondary party and the main offender are together at some stage discussing the plans which they may be making in respect of the alleged offence, and are in contact so that each knows what is passing through the mind of the other: *A.-G.'s Reference (No. 1 of 1975)*, [1975] 2 All E.R. 684, C.A. [ACCESSORY.]

**ABEYANCE** (probably from the Fr. *Bayer*, to expect).

1. An estate is said to be in *abeyance* when there is no person *in esse* in whom it can vest; though the law considers it as always potentially existing, and ready to vest whenever a proper owner appears. This estate has also been called *in nubibus* (in the clouds) and *in gremio legis* (in the bosom of the law). The fee simple of the glebe of a parson is said to be in abeyance.

2. The doctrine of abeyance of a peerage relates to the state of suspense into which a peerage falls when co-heirship occurs in the succession.

**ABJURATION, OATH OF.** The oath formerly required to be taken by every person holding any office in the state; and whereby the person taking it *abjured* any allegiance to the Pretender. Abolished. For present form of oath of allegiance, see the Promissory Oaths Act 1868, s. 2.

**ABJURATION OF THE REALM.** [SANCTUARY.]

**ABODE.** A man's residence, where he lives with his family and sleeps at night. It may include a place where the person in question works and has his business.

**ABORTION.** A miscarriage, or the premature expulsion of the contents of the womb before the term of gestation is completed. To procure abortion was a felony but it has now been legalised under certain circumstances by the Abortion Act 1967. [CHILD DESTRUCTION.]

**ABRIDGMENT.** A short comprehensive treatise or digest of the law, *e.g.*, the works of Fitzherbert, Brooke and Rolle, Viner, Comyns and Bacon.

**ABROGATE.** To annul or repeal.

**ABSCOND.** To go out of the jurisdiction of the courts, or to conceal oneself to avoid legal process. It is an act of bankruptcy (*q.v.*).

**ABSCONDING DEBTOR.** See the Bankruptcy Act 1914, s. 23.

**ABSENCE.** 1. Non-appearance of a party to an action.

2. Unheard of for seven years, a presumption of death; absence of husband or wife for seven years is under certain circumstances a defence to an indictment for bigamy, and a ground for divorce under the Matrimonial Causes Act 1973, s. 19 (3). The fact that the parties to a marriage have lived apart continuously for at least five years will be sufficient reason for a divorce: see s. 1 (2) of the Act of 1973.

**ABSOLUTE.** Complete, unconditional. A rule or order absolute is one which is complete and can be put into force at once, in contradistinction to a rule or order *nisi*, which is made on the application of one party only (*ex parte*) to be made absolute unless the other party appear and show cause why it should not be made absolute. As to applications generally, see R.S.C., 1965, Ord. 8 [DECREE ABSOLUTE.]

**ABSOLUTE TITLE.** Under the Land Registration Act 1925, land may be registered with an absolute title. The first registration of any person as proprietor of freehold land with such a title vests in the person so registered an estate in fee simple in possession in the land, together with all rights, privileges, and appurtenances, belonging or appurtenant thereto, subject to the following rights and interests:—

(a) To the incumbrances, and other

entries, if any, appearing on the register; and

- (b) Unless the contrary is expressed on the register, to such overriding interests, if any, as affect the registered land; and
- (c) Where the first proprietor is not entitled for his own benefit to the registered land, as between himself and the persons entitled to minor interests, to any minor interests of such persons of which he has notice,

but free from all other estates and interests whatsoever, including estates and interests of the Crown (Land Registration Act 1925, s. 5).

For the effect of registration of leaseholds with an absolute title, see *ibid.*, s. 9.

**ABSTRACT OF TITLE.** A summary or abridgment of the deeds constituting the title of an estate, furnished by a vendor or mortgagor to an intending purchaser or mortgagee. This is usually perused by the purchaser's or mortgagee's solicitor and verified by an examination of the original deeds. This is followed by requisitions on title (*q.v.*).

An *Abstract-in-Chief* is one made direct from a document and not from a mere recital of it. Under the Law of Property Act 1925, s. 10, abstracts of title are not to include an instrument relating only to interests or powers, which will be overreached by the conveyance of the land to which title is being shown. See also specimens contained in Sched. VI to the Act. [CURTAIN CLAUSES; TITLE.]

**ABUNDANS CAUTELA NON NOCEAT.** Excess of caution does no harm.

**ABUSE OF DISTRESS.** The using of animal or chattel distrained. This renders the distrainer liable as for a conversion.

**ABUSE OF PROCESS** is the malicious and improper use of some regular legal proceeding to obtain some advantage over an opponent.

**ABUTTALS, or ABBUTTALS** (Fr. *Abutter*). The buttings or boundings of lands, showing to what other lands, highways or places they belong, or are abutting.

**ACCELERATION.** The hastening of the vesting in possession of a reversion or remainder by the determination of the prior particular estate by surrender, etc., before its natural termination.

**ACCEPTANCE.** "A thing in good part, and as it were a kind of agreeing to some act done before, which might have been undone and avoided if such acceptance had not been." *Cowel*.

1. If, for instance, a lease for more than three years be made verbally, acceptance of rent from the lessee if he obtained possession will create a tenancy from year to year binding upon the lessor; and on the same principle, acceptance of rent may confirm a lease, which has been put an end to by notice, the acceptance here operating as a withdrawal, waiver or abandonment of the notice. This did not apply if the premises were within the Rent Restriction Acts. See now the Rent Act 1968.

2. A buyer is deemed to have accepted goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them. Sale of Goods Act 1893, s. 35.

3. Acceptance of an offer may be made by express words or may be inferred from conduct showing an unqualified intention to accept. A mere intention to accept not shown by words or conduct is insufficient.

**ACCEPTANCE OF A BILL** is an engagement by the drawee (*i.e.*, the person on whom the bill is drawn) to pay the bill according to the tenor of his acceptance. After the acceptance the drawee is called the *acceptor*. The acceptance must be in writing, and it is usually made by the acceptor's writing the word "accepted" across the bill and signing his name. See Bills of Exchange Act 1882, s. 17.

**ACCEPTANCE SUPRA PROTEST**, or an *acceptance for honour*, is an acceptance of a bill for the honour of the drawer or an indorser, when the drawee refuses to accept. It is made by some friend of the drawer or indorser to prevent the bill being sent back upon him as unpaid, after a protest (*supra protest*) has been drawn up declaratory of its dishonour by the drawee. This operates not as an engagement to pay absolutely, but only to pay in the event of its being presented to, and dishonoured by, the drawee when it arrives at maturity, on

its then being protested for non-payment, and afterwards duly presented for payment to the "acceptor for honour." See Bills of Exchange Act 1882, ss. 65-68.

**ACCEPTING SERVICE** is where the solicitor for a defendant on his behalf accepts service of a writ or other process of a court, and undertakes to appear, so as to avoid the necessity of such writ or process being served on his client. [SERVICE, 3.] This undertaking the courts will enforce, if necessary, by attachment. [ATTACHMENT.]

**ACCEPTOR.** A person who accepts a bill of exchange. [ACCEPTANCE OF A BILL; BILL OF EXCHANGE.]

**ACCESS**, approach, or the means of approaching. (1) The presumption of a child's legitimacy is rebutted if it be shown that the husband had not access to his wife within such a period of time before the birth as admits of his having been the father; but neither husband nor wife may give evidence to prove non-access. (2) A parent may, following divorce proceedings on the making of a custodianship order, be given, by the court, a right of access to see a child or children. See *e.g.* s. 34 of the Children Act 1975.

**ACCESSION.** 1. A mode of acquiring property by right of occupancy, founded on the civil law; whereby the original owner of anything which receives an accession by natural or artificial means, as by the growth of vegetables, etc., the pregnancy of animals, etc., is entitled to it under such its state of improvement; but if the thing itself, by such operation, is changed into a different species, as by making wine, oil, or bread, out of another's grapes, olives, or wheat, it belongs to the new operator; who is only to make a satisfaction to the former proprietor for the materials which he has so converted.

2. In international law, accession is occasionally used as a technical expression denoting the absolute or conditional acceptance, by one or several states, of a treaty already concluded between other sovereignties.

3. The word means also the coming of a king or queen to the throne on the death of the prior occupant thereof.

**ACCESSORY** is he who is not the chief actor in an offence, nor present at its

performance, but is some way concerned therein, either *before* or *after* the fact committed. An accessory *before* the fact is one who being absent at the time of the crime committed, yet procures, counsels, or commands another to commit a crime. An accessory *after* the fact is he that receives, favours, aids, assists, or comforts any man who has committed an offence, of which the accessory knows; as by furnishing means of escape or concealment, or assisting to rescue or protect him.

The former law relating to accessories after the fact was replaced by s. 4 of the Criminal Law Act 1967, which provides penalties for assisting any person who has committed an arrestable offence, with intent to impede his apprehension or prosecution.

**ACCIDENT.** As a ground for seeking the assistance of a court of equity, accident means not merely inevitable casualty, or the act of God, or, as it is called, *Vis major*, but also such unforeseen events, misfortunes, losses, acts, or omissions as are not the result of negligence or misconduct.

Against the consequences arising from the accidental loss, or destruction, of a deed, the courts will grant relief. In the case of the loss of a negotiable instrument, see Bills of Exchange Act 1882, ss. 69, 70.

In the Social Security Act 1975 the word is used in the popular and ordinary sense and means a mishap or untoward event not expected or designed.

**ACCOMMODATION BILL.** A bill to which a person has put his name, whether as drawer, acceptor, or indorser, without consideration, for the purpose of accommodating some other party who desires to raise money on it. The accommodation party thus becoming liable upon it, may, if compelled to pay, have his remedy over against the person accommodated. [ACCEPTANCE OF A BILL: BILL OF EXCHANGE.]

**ACCOMMODATION LAND.** Land bought by a builder or speculator who erects houses thereon and then leases portions thereof upon an improved ground rent.

**ACCOMMODATION WORKS.** Works such as gates, bridges, etc., which the railways are required to make and maintain for the accommodation of the

owners and occupiers of land adjoining the railway.

**ACCOMPLICE.** A person associated with another in the commission of a criminal offence, whether as principal or accessory before or after the fact, or committing, procuring, or aiding and abetting. See *Davies v. Director of Public Prosecutions*, [1954] 1 All E.R. 507, H.L.

**ACCORD AND SATISFACTION.** An agreement between the party injuring and the party injured, by reason of any trespass or breach of contract; which when performed is a bar to all actions on account of the injury, the party injured having thereby received satisfaction for, or redress of, the injury. [SATISFACTION.]

**ACCOUNT or ACCOMPT.** 1. Open, or current: Where the balance is not struck or is not accepted by all the parties. Formerly an "action of account" lay to obtain a statement, but now recourse is usually had to the Chancery Division, where the account may be obtained summarily under R.S.C., 1965, Ord. 43.

2. Stated: An account no longer open or current, but closed by the statement, agreed to by both the parties, of a balance due to the one or other of them. Action will usually be brought thereon in the Queen's Bench Division and the writ indorsed with a statement of claim enabling the plaintiff to take summary proceedings under R.S.C., 1965, Ord. 14.

3. Settled: Where discharged. Sometimes used to mean an account stated.

**ACCOUNTABLE RECEIPT.** A written acknowledgment of the receipt of money or goods to be accounted for by the receiver.

**ACCOUNTANT-GENERAL.** [PAYMASTER-GENERAL.]

**ACCRETION.** Generally synonymous with accrue. [ACCRUE.] But the word is specially used to denote an accession to an owner of land on the sea shore, or fresh land recovered from the sea by alluvion or dereliction.

As to the annexation of accretions from the sea by adjoining parishes, see s. 72 of the Local Government Act 1972. [ALLUVION; DERELICTION.]

**ACCROACH, or ACCROCHE** (Fr. *accrocher*, to fix or hook), means attempting to exercise royal power.

**ACCRUE.** *Lit.* to grow to, as interest accrues to principal. It also means to arise, as when a cause of action is said not to have accrued to the plaintiff within six years, *actio non accrevit infra sex annos*.

**ACCUMULATION.** When the interest of a fund, instead of being paid over to some person or persons, is itself invested as often as it accrues, so as to be reserved for the benefit of some person or persons in the future, the income is said to be accumulated. Restrictions are imposed upon accumulation, partly by the rules against perpetuities [PERPETUITY], and partly by the Law of Property Act 1925, ss. 164-166.

**ACCUMULATIVE JUDGMENT OR SENTENCE.** A sentence passed on a person already under sentence for a crime; the second sentence to commence after the expiration of the first and not to run concurrently.

**ACKNOWLEDGMENT.** 1. Of debt, if in writing signed by the debtor or his agent, will prevent the limitation period from running except as from the date of such acknowledgment. Similarly, as regards acknowledgment of title to land. Limitation Act 1939, ss. 23, 24.

2. Of signature to a will by testator. If the signature be not made in the presence of two witnesses its subsequent acknowledgment in their presence will satisfy the Wills Act 1837.

**ACKNOWLEDGMENT OF DEEDS, BY MARRIED WOMEN.** This was formerly required in cases where a married woman conveyed her separate property by deed. The necessity for such acknowledgment was abolished by the Law of Property Act 1925, s. 167.

**ACKNOWLEDGMENT OF RIGHT TO PRODUCTION OF DOCUMENTS.** If a vendor retains any portion of the property to which title-deeds relate he is entitled to retain the deeds, and will give to the purchaser an acknowledgment of right to production and to copies, and an undertaking for safe custody. If the whole property is disposed of but to two or more separate purchasers, the largest purchaser will take the deeds and give acknowledgment and undertaking. See s. 64 of the Law of Property Act 1925, which deals with the effect of an acknowledgment.

**ACQUIESCENCE.** Consent either express or implied. A means by which a right may be lost, though the party entitled thereto might have asserted it successfully had he presented his claim in due time.

**ACQUISITIVE PRESCRIPTION.** Prescription whereby a right is acquired, otherwise called positive prescription. [PRESCRIPTION.]

**ACQUITTAL** (Fr. *Acquitter*; Lat. *Acquietare*, to discharge, or keep in quiet).

1. A deliverance, and setting free from the suspicion or guilt of an offence. Thus he that is discharged of a criminal offence by judgment, on its merits, if subsequently charged with the same, or legally the same offence, may plead *autrefois acquit*.

2. To be free from entries and molestations by a superior lord for services issuing out of lands. [QUIT RENT; RENT.]

**ACQUITTANCE.** A discharge in writing of a sum of money, or other duty which ought to be paid or done. If under seal, it is called a release.

**ACT IN PAIS** (Fr. *Pais*, or *Pays* country). An act done "in the country," *e.g.*, an ordinary conveyance, as distinguished from an act done in court, which is a matter of record. [MATTER, 2.]

**ACT OF ATTAINDER.** An Act of Parliament passed for attainting a person, or rendering a person liable to the consequences of attainder. [ATTAINDER.]

**ACT OF BANKRUPTCY.** An act or event done or suffered by a person, which would be available within three months as the ground for a petition by a creditor or creditors to the amount of £200 for a receiving order against the debtor's estate. Enumerated in Bankruptcy Act 1914. [ADJUDICATION; BANKRUPT.]

**ACT OF GOD.** A phrase which may be defined as an extraordinary occurrence or circumstance which could not have been foreseen and which could not have been guarded against; an accident due to natural causes, as *e.g.* a destructive storm, or a sudden and unforeseen death (*cf.* *Vis MAJOR*).

**ACT OF GRACE.** An Act of Parliament proceeding from the Crown in the first instance instead of receiving royal assent after passing through parliament, *e.g.*, an Act at the commencement of a reign

granting pardons. In Scotland an Act so termed was passed in 1696 for providing maintenance for debtors imprisoned by their creditors.

**ACT OF INDEMNITY.** [INDEMNITY ACT.]

**ACT OF LAW.** An event happening otherwise than by act of party. Specially title so acquired. Thus, before 1926, the eldest son of an intestate succeeded to his father's real estate by act of law. Also remedy given by law, *viz.*, retainer by executor, or remitter (*q.v.*).

**ACT OF PARLIAMENT.** A statute; a law made by the legislature, the Queen, lords, and commons in parliament assembled.

See, however, the provisions of the Parliament Acts 1911 and 1949.

Acts of parliament are of three kinds:—

1. Public.
2. Local or special.
3. Private or personal.

[STATUTE.]

**ACT OF SETTLEMENT, 1700,** by which the crown was settled (on the death of Queen Anne) upon Sophia, Electress of Hanover, and the heirs of her body being Protestants.

**ACT OF STATE.** An act done by the sovereign power of a country that cannot be challenged in the courts; the exercise of the Royal Prerogative. [PREROGATIVE.]

**ACT OF SUPREMACY, 1558,** by which the supremacy of the Crown in matters ecclesiastical was established.

**ACT OF UNIFORMITY.** An Act regulating public worship. Such Acts, were passed in 1548, 1551, 1558, and 1662; the latter, of the reign of Charles II, legalising the Book of Common Prayer at present in use in the Church of England.

The Act of 1551 was repealed in 1669. Those of 1548 and 1558 were repealed, so far as unrepealed, by the Church of England (Worship and Doctrine) Measure 1974. The latter Measure also repealed the Act of Uniformity 1662, except for ss. 10, 15. The effect of the Measure of 1974 is that the General Synod of the Church of England may sanction alternative forms of service but the forms of service contained in the Book of Common Prayer *must* continue to be available for use.

**ACTA EXTERIORA INDICANT INTERIORA SECRETA.** Acts indicate the intention.

**ACTIO PERSONALIS MORITUR CUM PERSONA.** [ACTIONS PERSONAL.]

**ACTION** (Lat. *Actio*). The lawful demand of one's right. It is defined by Justinian, *jus prosequendi in judicio quod alicui debetur*; a right of prosecuting, in a judicial proceeding, that which is due to any one. Now generally used to denote the actual pursuit of this right, or the means of its exercise. In this view, *i.e.*, with reference to the right enforced or redress obtained, actions are divided into *civil* and *penal*, and also into *real*, *personal*, and *mixed*. [ACTIONS CIVIL AND PENAL; ACTIONS MIXED; ACTIONS REAL AND PERSONAL.]

**ACTION OF THE WRIT.** A phrase used when the defendant pleaded some matter by which he showed that the plaintiff had no cause to have the writ he brought, though it might well be that he might have another writ or action for the same matter. Now obsolete.

**ACTION ON THE CASE** (Lat. *Actio super casum*). A remedy, given by the Statute of Westminster the Second, 1285, for wrongs and injuries causing indirect damage, *e.g.* trespass, and so called because commenced by newly-framed writs in which the plaintiff's whole case or cause of complaint was set forth at length. [TRESPASS.]

**ACTIONS CIVIL AND PENAL.** A *civil* action is brought to enforce a civil right merely, as if a man seeks to recover a sum of money formerly lent, etc. A *penal* action aims at some penalty or punishment in the party sued, be it corporal or pecuniary; specially an action brought for recovery of the penalties given by statute. [QUI TAM ACTIONS.] *Criminal* actions, usually styled prosecutions, are of a public nature, in the name of the Queen, against one or more individuals accused of a crime. [ACTION.]

**ACTIONS MIXED** partook of the nature both of real and personal actions, for therein real property was demanded and also personal damages for a wrong sustained. These suits are all abolished. Arrears of rent may be recovered by the landlord by ordinary action, in which the possession of the property may also be

**ACTIONS MIXED**—*continued.*

recovered. [ACTIONS REAL AND PERSONAL.]

**ACTIONS PERSONAL.** 1. An action for a personal right, *i.e.*, for a bodily injury or an injury to the reputation. The Law Reform (Miscellaneous Provisions) Act 1934, modifies the effect of the maxim *actio personalis moritur cum persona* (a personal action dies with the person) by making it the general rule that on the death of any person all causes of action subsisting against or vesting in him shall survive against or for the benefit of his estate. But there is no survival of causes of action for defamation or seduction or for inducing one spouse to leave the other.

2. As opposed to real action. [ACTIONS REAL AND PERSONAL.]

**ACTIONS POPULAR.** [QUI TAM ACTIONS.]

**ACTIONS REAL AND PERSONAL.**

1. Real actions were the old feudal actions brought for the recovery of land or any freehold interest therein. By an Act of 1833, all the real and mixed actions then in existence were abolished, with four exceptions therein specified. And, of these four, one (the action of "ejectment") was entirely remodelled by the Common Law Procedure Act of 1852, and by the Judicature Act and rules thereunder was superseded by an ordinary action for recovery of land; and the three others (writ of dower, writ of right of dower, and *quare impedit*), by the Common Law Procedure Act of 1860, were assimilated in their procedure to personal actions. Dower is now abolished.

2. *Actions personal*, as opposed to actions real, are such whereby a man claims a debt, or personal duty, or damages in lieu thereof; and likewise whereby a man claims a satisfaction or damage for some injury done to his person or property. The former are said to be founded on contracts, or to arise *ex contractu vel quasi ex contractu*; the latter upon torts or wrongs, or to arise *ex delicto vel quasi ex delicto*. Of the former nature are all actions for debts, and claims of that nature, non-delivery of goods, and non-performance of agreements; of the latter, all actions for trespass, assaults, defamatory words, and the like. [ACTIONS PERSONAL.]

**ACTIVE TRUST.** A trust requiring active duties on the part of the trustee. The Statute of Uses (repealed by the Law of Property Act 1925) did not apply to these. [BARE TRUSTEE TRUST.]

**ACTOR.** The proctor or advocate in civil courts or causes. *Actor* was also a plaintiff, as contrasted with *reus*, a defendant. *Cowel*.

**ACTS OF COURT.** Legal memoranda in the nature of pleadings formerly used in the Admiralty Courts.

**ACTS OF SEDERUNT** are ordinances for regulating judicial procedure in the Court of Session in Scotland.

**ACTS OF UNION.** The incorporation of Wales into the realm was effected by two statutes of Henry VIII, 1535 and 1542. The Union with Scotland Act 1706 united England and Scotland in the reign of Queen Anne. The Union with Ireland Act 1800 (George III) united Great Britain with Ireland from 1st January, 1801; but much of the Act was virtually repealed by legislation consequential upon the establishment of the Irish Free State (Eire) in 1922.

**ACTUARY** (Lat. *Actuarius*). 1. A clerk or scribe who registered the canons and constitutions of a convocation.

2. Now usually a person who calculates the risks and premiums for fire, life, and other insurances.

**ACTUS REUS.** "I desire to make an observation on the expression *actus reus*. . . . Strictly speaking, though in almost universal use, it derives, I believe, from a mistranslation of the Latin aphorism: *Actus non facit reum nisi mens sit rea*. Properly translated, this means, 'An act does not make a man guilty of a crime, unless his mind be also guilty.' It is thus not the *actus* which is *reus*, but the man and his mind respectively. Before the understanding of the Latin tongue has wholly died out of these islands, it is as well to record this as it has frequently led to confusion." *Haughton v. Smith*, [1973] 3 All E.R. 1109, H.L., per Lord Hailsham of St. Marylebone, L.C.

**AD MEDIUM FILUM AQUAE.** To the centre line of the stream.

**AD MEDIUM FILUM VIAE.** To the centre of the road.

**AD HOC.** Where there is no settlement or trust for sale under which equitable



interests can be overreached (i.e., a purchaser takes free from them) the estate owner can overreach them by creating a trust for sale or a settlement for the purpose (*ad hoc*). It is provided by the Law of Property Act 1925, s. 2 (2), as amended by the Law of Property (Amendment) Act 1926, Schedule, that where a legal estate which is burdened with an equitable interest is subject to a trust for sale, the equitable interest, even though it has priority to the trust for sale, shall be overreached by a conveyance under the trust, provided that the trustees are either (a) two or more individuals approved or appointed by the court or the successors in office of the individuals so approved or appointed; or (b) a trust corporation. This statutory innovation enables a trust for sale to be created, where none already exists, with the object of overreaching an equity. This is called an "*ad hoc*" trust for sale. For example, if land is held by a beneficial owner in his own right (i.e., subject neither to a strict settlement nor to a trust for sale) but burdened by the payment of a rent charge, which impedes the passing of an absolute title to a purchaser, all that the owner need do is to take advantage of the statute by creating a trust for sale with trustees of the specified kind. The effect of a conveyance by the trustees will then be to create a trust in the proceeds of sale in favour of the chargee, and to give an absolute title to the purchaser.

An alternative method open to the owner is to create an "*ad hoc*" settlement (Settled Land Act 1925, s. 21). He must execute a vesting deed declaring that the legal estate is vested in him upon trust to give effect to all equitable interests affecting the estate, and the deed must appoint as trustees, either a trust corporation, or two or more persons approved or appointed by the court. The result is that the land becomes settled land within the meaning of the Settled Land Act, and the owner as tenant for life under the settlement can make a conveyance to a purchaser which will overreach equitable interests to the same extent and within the same limits as where a conveyance is made by approved trustees for sale.

**AD IDEM.** Tallying in the essential point. There must be *consensus ad idem* in a valid contract.

**AD JURIS REGIS.** A writ that lay for one holding a Crown living against him that sought to eject him, to the prejudice of the king's title in right of his crown.

**AD LITEM** (for the suit). A guardian appointed by the court to defend a suit on behalf of an infant is called a guardian *ad litem*. [GUARDIAN; INFANT.]

**AD LONGUM.** At length.

**AD MELIUS INQUIRENDUM.** A common law writ commanding a coroner to hold a second inquest. Statutory authority is also given by s. 6 of the Coroners Act 1887.

**AD OSTIUM ECCLESIAE** (at the door of the church). One of the five species of dower formerly recognised. After Edward IV it fell into total disuse and was abolished in 1833.

**AD QUOD DAMNUM.** 1. A writ which, at common law, used to be sued out before the Crown granted certain liberties, as a fair, market, or such-like, which might be prejudicial to others.

2. A writ to be sued out whenever it was proposed to alter the course of a common highway, for the purpose of inquiring whether the change might in any way be prejudicial to the public.

3. A similar writ was given by a statute of 1299 (Edward I), preliminary to a licence being granted by the Crown to alienate in mortmain.

All are now obsolete.

**AD SECTAM** (at the suit of). Used, generally, in its abbreviated forms *ads.* and *ats.*, in the designation of the title of an action when the defendant's name is placed first. Thus, the suit *Brown v. Smith* may also be described *Smith ats. Brown*.

**AD TERMINUM QUI PRAETERIT.** A writ of entry which formerly lay for the lessor or his heirs after the term granted had expired, and the lands were withheld. Other remedies were provided by the Landlord and Tenant Act 1730, and the Distress for Rent Act 1737; and the writ itself was abolished. [DOUBLE RENT; DOUBLE VALUE.]

**AD VALOREM** (according to the value). A duty, the amount of which depends upon the value of the property taxed, is called an *ad valorem* duty.



**AD VENTREM INSPICIENDUM**, or *de ventre inspiciendo*. 1. A writ formerly issued where a widow was suspected to feign herself with child, in order to produce a supposititious heir to an estate, to examine whether she were with child or not. Now obsolete.

2. The phrase was also used sometimes to designate the order of a court (before whom a woman was capitally convicted and pleaded in stay of execution that she was quick with child), directing a jury of matrons to inquire into the fact. [JURY OF MATRONS.]

**AD VITAM AUT CULPAM** (for life or until misbehaviour). [QUAMDIU BENE SE GESSERIT.]

**ADAPTATION**. In the case of a literary or dramatic work, this means (a) the conversion of a non-dramatic into a dramatic work, or vice-versa; (b) a translation of the work; (c) the conversion of the work into picture form; or (d) in relation to a musical work, an arrangement or transcription of the work. Copyright Act 1956, s. 2 (6).

**ADDITION**. A title given to a man besides his proper name and surname; that is to say, of what estate, degree, or mystery he is, and of what town, hamlet, or country.

**ADDRESS FOR SERVICE**. Address given by one party to an action or proceedings for service of notices, etc., by the other. As to address to be given by plaintiff, see R.S.C., 1965, Ord. 6.

**ADEMPMENT OF A LEGACY** is the implied revocation of a bequest in a will by some subsequent act of the testator; as when a specific chattel is bequeathed, and the testator afterwards sells it; or when a parent bequeaths a legacy to his child, and afterwards makes a provision for the child in satisfaction thereof. [SATISFACTION.]

**ADHERENCE**. The action by which, in Scotland, the mutual obligation of marriage may be enforced by either party. It corresponds to the former English action for the restitution of conjugal rights.

**ADHERENT**. Being *adherent* to the Queen's enemies, as by giving them aid, intelligence, or the like, constitutes high treason, by the Treason Act 1351.

**ADJOURN**. To put off the hearing of a case to a future day or *sine die*. Usually in discretion of the court.

**ADJOURNED SUMMONS**. A summons taken out in the chambers of a judge of the Chancery Division may be "adjourned" from the master to the judge in chambers, or if of sufficient importance direct into open court to be argued by counsel.

**ADJUDICATION**. 1. The giving of judgment; a sentence or decree; as in the expression, it was adjudged for the plaintiff, etc.

2. An adjudication of bankruptcy, or that A B was adjudicated a bankrupt following the making of a receiving order if no composition was accepted. [BANKRUPT.]

3. By Commissioners of Inland Revenue as to amount of stamp duty chargeable upon a document where in case of doubt application has been made to them under s. 12 of the Stamp Act 1891. A stamp indicating their decision is impressed or affixed. There is an appeal to the High Court.

**ADJURATION**. A swearing or binding upon oath.

**ADJUSTMENT**, in marine insurance, is the settling of the amount of the loss, and of the indemnity which the assured is entitled to receive, and, in the case of several underwriters, of the proportion which each underwriter is liable to pay in respect thereof. Average (*q.v.*) may be the subject of adjustment. Marine Insurance Act 1906.

**ADMEASUREMENT OF DOWER** (Lat. *Admensuratio dotis*). A writ, now abolished, which lay for the heir against a widow, who held from the heir or his guardian more land as dower than she was by law entitled to. [DOWER.]

**ADMEASUREMENT OF PASTURE** (Lat. *Admensuratio pasturae*). An old writ which lay for surcharge of pasture. [SURCHARGE OF COMMON.]

**ADMINISTRATION** has several significations. The Queen's ministers, or collectively the ministry, are not infrequently called the *Administration*, as charged with the administration or management of public affairs. The administration of justice by judges, magistrates, etc.

The affairs of a bankrupt may be said to be *administered* by his trustee; and the affairs of an absent person, by his agent, factor, or attorney, etc. But the word is