

Where directors are empowered to issue a note or accept a bill of exchange, they may give several notes or bills, equal to the sum specified.<sup>1</sup> See *ANY*; *THE*.

5. The Latin preposition: from, away from, by, in, on. Compare *AB*.

*A fortiori*. With stronger (reason); with more right; much more.

A private person, and a *fortiori* a peace-officer, present when a felony is committed, is bound to arrest the felon.<sup>2</sup>

*A multo fortiori*. By far the stronger—reason, right, equity.<sup>3, 4</sup>

*A gratia*. Out of favor; from mere indulgence, and not of right. See *GRACE*.

*A latere*. By the side: collaterally.

Said of succession to property; but now of rare occurrence.

*A mensa et thoro* (*thoro*). From table and bed: from bed and board. *A vinculo matrimonii*. From the bond of matrimony.

The former describes a "partial" divorce: separation of the parties by law, with all rights preserved; the latter, a "total" divorce: complete dissolution of the marriage relation with all incidental rights. See further *DIVORCE*.

*A nativitate*. From birth, from infancy.

The legal settlement of an idiot *a nativitate* is that of his father.<sup>5</sup>

*A posteriori*. From what comes after—the effect. *A priori*. From what goes before—the cause.

Reasoning from an effect back to its supposed cause is described as *a posteriori*; reasoning or argument from an assumed cause to the result it may or must produce is termed *a priori*.<sup>4</sup>

*A prendre*. F. See *PROFIT*, *A prendre*.

*A quo*. From which.

As, the court *a quo* a cause has been removed, by an appeal or a writ of error. Correlative *ad quem*, to which. See further *QUI*, *Quo*.

*A retro*. In arrear, *q. v.*

*A sociis*. From its associates; from its surroundings; from the context. See further *NOSCITUR*.

*A teneris annis*. From tender years; by reason of youth. See *NEGLIGENCE*.

*A verbis legis*. See *LEX*, *A verbis*, etc.

*A vinculo*. See *A mensa*, etc.

*AB*. L. From.

Takes the place of *a* before a vowel sound. See *A*, 5; *ABS*.

*Ab assuetis*. See *INJURIA*, *Ab assuetis*.

*Ab inconvenienti*. From hardship, *q. v.*

*Ab initio*. From the beginning; from inception.

A contract is said to be illegal, a writ, an action, or a service, irregular or void, *ab initio*. See *TRESPASS*. *Ab initio*.

*Ab intestato*. From an intestate (owner).

*Ab invito*. By one unwilling: unwillingly. See *INVITUS*.

*Ab irato*. By one in anger—displeased.

A gift, bequest or devise, adverse to the interest of any heir is sometimes said to be made *ab irato*.

**ABANDON**.<sup>1</sup> To relinquish, surrender, disclaim, desert, forsake, give up wholly. Whence abandonment, non-abandonment, and (though rare) abandoner, abandonee.

As, to abandon property, a relation, a proceeding—any species of right.

"Abandon" includes the intention and the external act by which it is carried into effect.<sup>2</sup>

To constitute an abandonment of a right, there must be an unequivocal and decisive act of the party showing a determination not to have the benefit designed.<sup>3</sup> See *ESTOPPEL*.

For example, a homestead is abandoned by an act which shows an intention wholly to relinquish it; not by temporary absence.<sup>4</sup>

A statute may require that this intention be proven by a declaration duly executed and recorded.<sup>5</sup>

There is a difference between "abandoning" and "surrendering" a right or thing; between giving it up because regarded as useless, and assigning or transferring it to another as valuable. When one surrenders a thing by solemn agreement in writing, he certainly does not "abandon" it in the sense in which that word is generally understood.<sup>6</sup>

1. Property. An object of property remains the owner's till such time as he does some act which shows an intention to abandon it; then it becomes *publici juris* once

<sup>1</sup> *Thompson v. Wesleyan Association*, 65 E. C. L. 849 (1849). See also *Sharff v. Commonwealth*, 2 Binn. \*516, 519 (1810).

<sup>2</sup> 4 Bl. Com. 292.

<sup>3</sup> 100 U. S. 633.

<sup>4</sup> Although strictly terms in logic, these expressions are so common in law language that they may be considered *quasi* legal.

<sup>5</sup> *Shippen v. Gaines*, 17 Pa. 42 (1851).

<sup>1</sup> F. *a*, to; *ban-*, to proscribe, give up. See *BAN*.

<sup>2</sup> *Livermore v. White*, 74 Me. 455 (1883), *Appleton, C. J.*

<sup>3</sup> *Dawson v. Daniel*, 2 Flip. 309 (1878), *Hammond, J.*

<sup>4</sup> *Hurt v. Hollingsworth*, 100 U. S. 104 (1879); 29 Minn. 20.

<sup>5</sup> *Tipton v. Martin*, 71 Cal. 328 (1886); Cal. Civ. Code, §§ 1243-44.

<sup>6</sup> *Hagan v. Gaskill*, 42 N. J. E. 217 (1886), *Bird, V. C.*

more, liable to appropriation by the next occupant.<sup>1</sup>

"If a man be dissatisfied with his immovable estate and abandon it, immediately he departs from it corporally, with the intention that it shall no longer be his; and it will become the property of him who first enters thereon."<sup>2</sup> See DERELICTION, 2.

Property is abandoned when it is thrown away, or its possession is voluntarily forsaken by the owner,—in which case it will become the property of the first occupant; or, when it is voluntarily lost or left without the hope or expectation of again acquiring it,—then it becomes the property of the finder, subject to the superior claim of the owner; except that in salvage cases, by the admiralty law, the finder may hold possession until he is paid his compensation or till the property is submitted to legal jurisdiction for ascertainment of the compensation.<sup>3</sup> See FIND, 1.

To an abandonment of "land" there must be a concurrence of the act of leaving the premises vacant, so that they may be appropriated by the next comer, with an intention of not returning.<sup>4</sup> See VACANT.

No rule of law, applicable to all cases, can be laid down, as to what change of a "station" will constitute an abandonment or relocation. Every relocation involves, in one sense, an abandonment of the old station.<sup>5</sup>

The abandonment of an "easement" imports a non-user of it. All acts of enjoyment must have totally ceased for the same length of time that was necessary to create the original presumption.<sup>6</sup> See EASEMENT.

A person may abandon an "invention" in two senses: (1) When he gives up his idea, abandons it in the popular sense, relinquishes the intention of perfecting it, so that another person may take up the same thing and become the original and first inventor; (2) when, having made an invention, he allows the public to use it without objection.<sup>7</sup> See PATENT, 2.

In the law of marine insurance, abandonment is the act of cession, by which in cases where the loss or destruction of the property, though not absolute, is highly imminent, or its recovery is too expensive to be worth the attempt, the assured, on condition

of receiving at once the whole amount of the insurance, relinquishes to the underwriters all his property and interest in the thing insured, as far as it is covered by the policy, with all the claims that may ensue from its ownership, and all profits that may arise from its recovery.<sup>1</sup>

The yielding up or surrendering to the insurer by the insured of his interest in the property.<sup>2</sup>

Usually made by the owner of the property when informed of the peril or loss. He gives the insurer notice of the abandonment, the effect of which is to place the insurer in his position to the extent of the interest insured.<sup>3</sup>

To be made within reasonable time; which is a question of fact and of law. No particular form is necessary, nor need it be in writing; but it should be explicit, and not left to be inferred from equivocal acts. The insured must yield up all his interest in the subject. Regularly made, operates as a transfer of the property to the underwriter.<sup>4</sup>

"The right of abandonment does not depend upon the certainty, but on the high probability, of a total loss, either of the property or of the voyage, or both. The insured is to act, not upon certainties, but upon probabilities, and if the facts present a case of extreme hazard, and of probable expense exceeding half the value of the ship, the insured may abandon; though it should happen that she was afterward recovered at less expense." If the abandonment, when made, is good, the rights of the parties are definitely fixed, and do not become changed by subsequent events; if not good, subsequent circumstances will not impart validity to it.<sup>4</sup>

Where the interest insured is that of a part owner, or when the entire owner insures some definite part, the abandonment is limited to a cession of the insured interest; but, when the insurance reaches every part of the ownership indiscriminately, the abandonment extends to the entire property, though its value exceeds the amount of the insurance. For the protection of the underwriter, the abandonment relates back to the date of the loss.<sup>6</sup> See DERELICTION, 3; Loss, 2.

The doctrine is not applicable to fire insurance.<sup>6</sup>

<sup>1</sup> [1 Bl. Com. 9-10.

<sup>2</sup> Partidas, 3, Tit. 4, law 50; *Sideck v. Duran*, 67 Tex. 202 (1887), cases.

<sup>3</sup> *Eads v. Brazelton*, 22 Ark. 509 (1861), cases, *Fairchild*, J.

<sup>4</sup> *Judson v. Malloy*, 40 Cal. 310 (1870), *Rhodes*, C. J.

<sup>5</sup> *Attorney-General v. Eastern R. Co.*, 137 Mass. 48 (1884).

See also 64 Ill. 238; 49 N. Y. 346; 2 Johns. 98; 9 Pa. 273; 21 W. Va. 286; 40 Am. Dec. 464, n.; 2 Washb. Real Prop. 370.

<sup>6</sup> *Corning v. Gould*, 16 Wend. 535-36 (1837), cases; 3 Mas. 275.

<sup>7</sup> [*American, &c. Dressing Machine Co. v. American Tool Co.*, 4 Fish. P. C. 299 (1870). And see *Planing-Machine Co. v. Keith*, 101 U. S. 485 (1879); *Bump*, Patents, 246.

<sup>1</sup> 2 Arnould, Mar. Ins. 912.

<sup>2</sup> [*Merchants', &c. Mar. Ins. Co. v. Duffield*, 2 Handy, 127 (Ohio, 1855).

<sup>3</sup> *Chesapeake Ins. Co. v. Stark*, 6 Cranch, C. C. 272 (1810), *Marshall*, C. J.; *Patapsco Ins. Co. v. Southgate*, 5 Pet. 621 (1831); *The City of Norwich*, 118 U. S. 492, 508 (1886); 4 Pet. 144; 4 B. Mon. 544; 6 Ohio St. 203; 12 Mo. Ap. 250-51; 33 E. C. L. 110-20; 2 Arn. Mar. Ins. 912-942; 2 Pars. Mar. Ins. 111-200.

<sup>4</sup> *Bradley v. Maryland Ins. Co.*, 12 Pet. 397 (1838), *Story*, J., quoting 3 Kent, 321; *Marshall v. Delaware Ins. Co.*, 4 Cranch, 206 (1808). Same cases approved, *Orient Mut. Ins. Co. v. Adams*, 123 U. S. 67 (1887), *Harlan*, J.

<sup>5</sup> *The Manitoba*, 30 F. R. 129 (1887).

<sup>6</sup> *May*, Ins. § 421*a*.

2. Relation or Duty. The relation of husband and wife, of parent and child, or of master and servant.

(1) The act of a husband in voluntarily leaving his wife with an intention to forsake her entirely, — never to return to her, and never to resume his marital duties toward her or to claim his marital rights.<sup>1</sup>

Such neglect as either leaves the wife destitute of the common necessities of life, or would leave her destitute but for the charity of others.<sup>2</sup>

Exists when a man fails to supply his wife with such necessities and comforts of life as are within his reach, and by cruelty compels her to quit him and seek shelter and protection elsewhere.<sup>3</sup> See further CAUSE, 1 (2), Reasonable; DESERTION, 1; DIVORCE.

(2) The act of a parent in exposing an infant of tender years (usually under seven) in any place, with intent wholly to desert it.<sup>4</sup> See DISPOSE, 2.

(3) For an apprentice, a sailor, or a soldier, to quit his service, intending not to return to it. See DESERTION, 2, 3.

3. Of Legal Proceedings. *Voluntary*, when of the plaintiff's own accord; *involuntary*, when the defendant compels him either to abandon or to continue the action. See NON-SUIT; RETRAXIT.

**ABATE.**<sup>5</sup> To quash, beat down, destroy.<sup>6</sup>

"Abating" is used in three senses. The first and primitive sense is that of beating down a nuisance; the second, that of abating a writ or action — its overthrow or defeat by some fatal exception to it; in the third denotes that the rightful possession or freehold of an heir or devisee is overthrown by the rude intervention of a stranger.<sup>7</sup>

In such expressions as to abate a demand, duties, rents, taxes, the word has no distinctly technical meaning. Compare REBATE.

**Abater; abator.** He who actually removes a nuisance; also, he who abates a freehold. See 1, *infra*.

**Abatement.** Demolition, destruction, diminution, removal, suspension.

In equity practice, a suspension of proceedings in a suit from want of parties capable of proceeding therein.<sup>1</sup>

1. **Abatement of a freehold; of an estate.** Where a person dies seized of an inheritance, and, before the heir or devisee enters, a stranger, who has no right, makes entry and gets possession of the freehold.<sup>2</sup> Compare AMOTION, 1.

2. **Abatement of a legacy.** The reduction of a legacy, in case of insufficiency of assets to pay all debts and other legacies.

First, general legacies, and then specific legacies, abate proportionately.

The rule is that where bequests are made in the form of a general legacy, and are pure bounty, and there is no expression in or inference to be drawn from the will manifesting an intention to give them priority, in case of a deficiency of funds to pay them in full, they abate ratably: on the principle that equality is equity.<sup>3</sup> See LEGACY.

3. **Abatement of a nuisance.** The removal of a nuisance.

Whatever unlawfully annoys or doeth damage to another may be abated, *i. e.*, taken away or removed by the party aggrieved thereby, he committing no riot.<sup>4</sup>

An injunction may prevent, and a verdict for damages may punish, but neither will "abate" a nuisance.<sup>5</sup> See further NUISANCE.

4. **Abatement of a writ.** Quashing or setting it aside on account of some fatal defect in it.<sup>6</sup>

A plea in abatement is one mode. Sometimes it is the duty of the court to abate a writ *ex officio*. Where the writ is a nullity, so that judgment thereon would be incurably erroneous, it is *de facto* abated.<sup>7</sup>

**Plea in abatement.** Matter of defense which defeats an action for the present, because of a defect in the writ or declaration.<sup>8</sup>

Such plea is: (1) *of the writ* — for an irregularity, defect, or informality, in its terms, form, issue, service or return, or for want of jurisdiction in the court; (2) *to the action* — as misconceived, or because the right has not yet accrued, or because another action is pending;<sup>1</sup> (3) *to the declaration*, on account of — (a)

<sup>1</sup> Moore v. Stevenson, 27 Conn. 25 (1858), Ellsworth, J. A *feme-sole* trader law.

<sup>2</sup> Washburn v. Washburn, 9 Cal. 476 (1858), Field, J. A divorce case.

<sup>3</sup> Levering v. Levering, 16 Md. 219 (1860), Bartol, J. A divorce case.

<sup>4</sup> See State v. Davis, 70 Mo. 468 (1869); 4 Bl. Com. 198.

<sup>5</sup> F. *abatere*: L. *ab-batuere*, to beat down, prostrate.

<sup>6</sup> Case v. Humphrey, 6 Conn. 140 (1836).

<sup>7</sup> 3 Bl. Com. 168.

<sup>1</sup> See Story, Eq. Pl. §§ 20, n. 354.

<sup>2</sup> 3 Bl. Com. 168.

<sup>3</sup> Titus v. Titus, 26 N. J. E. 114, 117-19 (1875), cases, Runyon, Ch.; Brown v. Brown, 79 Va. 650 (1884), cases.

<sup>4</sup> 3 Bl. Com. 5, 168.

<sup>5</sup> Ruff v. Phillips, 50 Ga. 132 (1873).

<sup>6</sup> 3 Bl. Com. 168, 302.]

<sup>7</sup> Case v. Humphrey, 6 Conn. 140 (1836).

<sup>8</sup> 3 Bl. Com. 302. See also Steph. Plead. 47; Gould, Plead. 235.