

WHARTON'S LAW-LEXICON:

FORMING

AN EPITOME OF THE LAW OF ENGLAND;

AND CONTAINING

*FULL EXPLANATIONS OF THE TECHNICAL TERMS AND PHRASES
THEREOF, BOTH ANCIENT AND MODERN.*

INCLUDING THE VARIOUS

LEGAL TERMS USED IN COMMERCIAL BUSINESS;

TOGETHER WITH

A Translation of Latin Law Maxims,

AND SELECTED TITLES FROM

THE CIVIL, SCOTCH, AND INDIAN LAW.

THE SEVENTH EDITION.

BY

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PREFACE TO THE SEVENTH EDITION.

THE first edition of this well-known work was brought out in 1848, the second in 1860, the third in 1864, the fourth, by the late Mr. Brandt, in 1867, and the fifth and sixth by Mr. Shires Will in 1872 and 1876. Mr. Will subjected the work to a thorough revision, and added as many as five hundred and fifty articles.

The present editor has endeavoured, in addition to bringing the various articles up to date of publication, to effect further improvements. By expunging matter which appeared to be out of place, such as the medical details which were to be found under the articles 'combustibility,' 'mental alienation,' and 'poisons,' by abstracting statutes, and abridging or omitting Rules of Court which were set out in full, and by cutting down some few articles which ran too much into detail, the bulk of the Lexicon has been reduced by nearly one hundred and fifty pages, notwithstanding the many additions that it has been deemed necessary or desirable to make.

The additions and alterations have not been confined to subjects upon which new legislation has taken place or cases been decided, but have been extended much further:—e.g., the articles on Audit, Intoxicating Liquors, Quiet Enjoyment, Schools, Solicitors, Compensation for Tenants' Improvements, and Stamp Duties, have been newly inserted, amplified, or re-written, the editor's object being to make the book more useful to the practitioner without being any less so to the student.

Articles on the subjects of the Bills of Exchange Act, the Married Women's Property Act, the Settled Land Act, and all the other important statutes of 1882, have been inserted in their proper places.

The editor wishes to acknowledge his obligations to *Bouvier's Law Dictionary*, to *Bell's Law Dictionary*, and to *Wilson's Indian Glossary*, and to many friends and correspondents for various valuable suggestions.

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PREFACE TO THE FIRST EDITION.

It is not without very considerable diffidence that this Lexicon is submitted to the indulgence of the Profession and the Public, for no man can be more conscious of the difficulties besetting such a subject—of the many requisites of the task—and above all, of the great discrepancy usually exhibited between what a book *ought to be*, and what it *is*—than the author of the present undertaking. Knowing, however, from his own experience, the want of a Dictionary especially adapted to ready reference, which should contain the modern law and alterations, as also the terminology comprehended in our varied and intricate jurisprudence, was the inducement to commence, continue, and complete this work. The aims attempted, throughout its arrangement, have been compression, avoiding obscurity, and yielding information easily and effectually. A word-book, when it obviates tediousness of search by giving a concise answer to one consulting it, possesses a peculiar virtue; for irksome is the process of turning out a word, where, instead of finding its explanation, there is a reference to another part of the book; but should the place referred to again direct the inquirer elsewhere, or perchance, disclose neither notice nor interpretation, nor, in fact, anything concerning it, then patience becomes exhausted, and perseverance indeed hopeless.

Often has disappointment ensued when, after reading up a given point of practice or theory, the Author has referred to the Dictionaries extant, in order to learn the precise force of the words and phrases that he had met with in his researches; for frequently they have not even been noticed, or being noticed, their interpretation has involved more confusion, since for the most part the very imperfect impression which was entertained before concerning them, often became obliterated by the utterly obscure manner in which the lexicographer had treated them. Some of these works handle a subject in a mass; for instance, under the head 'Bills of Exchange,' an unmethodical essay is written, in which are explained, after a fashion, the several characters of acceptor, drawer, indorsee, payee, and the several subjects of acceptance, presentment, notice of dishonour, protest, and so on; for instead of breaking up the whole subject, and distributing the elements under their appropriate heads, the inquirer searching for Acceptor, etc., is referred to Bills of Exchange, where he must wade through the greater part of a long and rambling statement before he comes to the precise point he wants. A Dictionary is not consulted for an essay or treatise on a particular theme, but to answer a sudden doubt or explain a present difficulty, as to the proper meaning of a certain technicality. 'In considering any complex matter,' writes Burk,* 'we ought to examine every distinct ingredient in the composition, one by one, and

* Preface to the 'Inquiry into the Origin of our Ideas of the Sublime and Beautiful.'

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reduce everything to the utmost simplicity; since the condition of our nature binds us to a strict law and very narrow limits. We ought afterwards to re-examine the principles by the effect of the composition, as well as the composition by that of the principles. We ought to compare our subject with things of a similar nature, and even with things of a contrary nature; for discoveries may be, and often are, made by the contrast, which would escape us on the single view. The greater number of the comparisons we make, the more general and the more certain our knowledge is like to prove, as built upon a more extensive and perfect induction.'

The constituents of the great subjects have been distributed under their proper letters, with a view to prevent as much reference to other parts of the book as possible; and when a phrase or technicality belongs in common to several departments of our laws, an analysis has been made, in order to keep separate the details of the particulars and distinctions. Occasional passages from the Jewish, Greek, and Roman antiquities have been quoted, either to illustrate a doctrine or to indicate an analogy; but of this, sparing use has been made, as their too frequent insertion would have increased bulk, without perhaps augmenting value. The authorities relied upon are referred to for examination, in order that the subject may be more fully studied by those who desire to acquire a fuller knowledge of historical jurisprudence or the polity of the ancients. Method has been attended to, as the main design of a Dictionary is immediate use.

'Thus useful arms in magazines we place,
All rang'd in order, and disposed with grace:
Nor thus alone the curious eye to please,
But to be found, when need requires, with ease.' *

Whether the work is successful or not, in attaining its avowed purpose, cannot here be determined: its real value—its suitableness as a Lexicon—will be tested by experience, which neither a persuasive preface nor an unfavourable review can influence. The Author craves pardon for any trivial error or misprint, as the greater part of the book was written, and the proofs corrected, during his academical studies; and he will be grateful for any suggestions, which, supplying the defects and elucidating the obscurities of this edition, would increase the utility of a second, should a second be called for.

* Pope's Essay on Criticism.

ing to treason; libels upon the Queen's ministers, the judges, or other high officers, reflecting upon their conduct in the execution of their official duties; obstructing such officers in the execution of their duties; against officers themselves for bribery, or for other corrupt or oppressive conduct. The information is filed in the Crown Office without the previous leave of the court. (2) Information by the Master of the Crown Office, which is filed at the instance of an individual, with the leave of the court; and usually confined to gross and notorious misdemeanours, riots, batteries, libels, and other immoralities. The application is for a rule to show cause why a criminal information should not be filed against the party complained of, and must be founded upon an affidavit disclosing all the material facts of the case. If the court grant the rule *nisi*, it is afterwards, upon showing cause, discharged or made absolute. When an information is filed, either thus or *ex officio*, it must be tried by a petit jury of the county where the offence arose, and for that purpose, unless the case be of such importance as to be tried at bar, it is sent down by writ of *Nisi Prius* into that county, and tried either by a common or special jury, like a civil action, and if the defendant is found guilty, he must afterwards receive judgment from the Court of Queen's Bench.—4 *Bl. Com.* 308. The practice on the Crown side of the Queen's Bench is retained by the Judicature Acts (Jud. Act, 1873, s. 34; Jud. Act, 1875, s. 19).

Criminal Law. This division of our jurisprudence comprises: (1) The general criminal law administered throughout the kingdom, and (2) The Crown law as administered by the Queen's Bench Division of the High Court of Justice, consisting principally of a sort of *quasi* criminal law—as indictments for nuisances, the repair of roads, bridges, etc., informations, *quo warranto*, mandamus, certiorari, and the judicial decision of questions concerning the poor laws.—Consult *Russell on Crimes*, and *Archbold's Practice of the Crown Office*.

Criminal Lunatic Asylum. See 23 & 24 Vict. c. 75; 27 & 28 Vict. c. 29; 30 & 31 Vict. c. 12; and 32 & 33 Vict. c. 78.

Criminal Statutes Consolidation Acts. See 24 & 25 Vict. cc. 94, 96, 97, 98, 99, 100; and see 34 & 35 Vict. c. 32.

Crimp, one who decoys and plunders sailors under cover of harbouring them.

Crocards, a sort of old base money.

Crocia, the *crozier*, or pastoral staff.

Crociarius, the cross-bearer, who went before the prelate.

Croft [A. S., fr. *creaft*, Old Eng., handy-craft, or *croit*, Gael., a hump], a little close adjoining to a dwelling-house or homestead, and enclosed for pasture or arable, or any particular use.

Croises, and **Croisado**. See CROYSSES.

Croiteir, a crofter, one holding a croft.

Crop, corn, hay, and such other produce as can be cut and stored up. As to setting fire to crops, see 24 & 25 Vict. c. 97, s. 16.

Creore, ten millions.—*Indian*.

Cross-bill, answering to the *reconventio* of the Canon Law, as a mode of defence by cross-examination, was one filed by a defendant against the plaintiff or other defendants in the same suit, either to obtain (1) a necessary discovery of facts in aid of his defence to the original bill; or (2) full relief to all parties, touching the matters of the original bill, as in a suit for the specific performance of a written contract, which the defendant at the same time insisted ought to be delivered up or cancelled, in order to protect him from the plaintiff hereafter bringing an action at law upon such contract, a relief which the defendant must have prayed for by a cross-bill.—*Mif. Pl.* 97; *Sto. Eq. Plead.* s. 389 *et seq.* This is now obsolete. The analogous proceeding by cross-action may often be now dispensed with, as by the Judicature Act, 1875, Ord. XIX., r. 3, a defendant may set up any counter-claim in his defence to an action. See COUNTER-CLAIM.

Also, if a bill of exchange or promissory note be given in consideration of another bill or note, it is called a cross or counter-bill or note.

Cross-examination, the examination of a witness on one side by the other, generally after examination in chief, but sometimes not; as in the case of an examination on the *voir dire*, which is in the nature of a cross-examination (See VOIR DIRE); and if one party calls a witness, and he is sworn, the other party may cross-examine him, although the party who has called him put no question at all to him. Sometimes cross-examination takes place by leave of the judge after re-examination. See RE-EXAMINATION. And if a witness be called to prove some preliminary and collateral matter only, as the handwriting of a document tendered in evidence, he is a witness in the cause, and may be cross-examined as to any of the issues in the cause.

As to the form of the cross-examination, leading questions are allowed, which is not the case in examination in chief.

The questions must be relevant to the issue (see heads in this title *infra*), but great latitude is allowed, as a question seemingly irrelevant often turns out otherwise

In the case of a witness proving himself hostile from interest or otherwise, the judge will allow the examination to assume the form of cross-examination.

The following are some of the chief heads of cross-examination :—

I. *To cause the witness to alter or amend his evidence.*

1. (a) by showing—

(1) he has spoken on a misconception of fact ; or

(2) misunderstands the meaning of a word ; or

(3) has given his idea of the effect of a transaction instead of the details.

(b) by inquiring the causes of his belief.

(c) by appealing to his consciousness of a weak memory [this course is taken with very old people].

(d) reminding him that he has spoken otherwise, or that others have ; and other methods of showing his evidence ought not to be believed, which will come more fully under II.

2. *To modify the evidence given in chief, by causing the witness to speak to supplementary facts to show*

(a) the reason for what was done.

(b) the circumstances surrounding it. See *infra* II. B.

(c) the manner in which it was treated at the time.

II. *To discredit the evidence of the witness.*

A. *From reasons connected with himself.*

(a) that he is of bad character.

(1) generally.

(2) in regard to truthfulness.

(3) in regard to the subject-matter of the issue.

(b) that he is not impartial, as being

(1) a friend of the other side, through

(a) relationship.

(β) favour.

(γ) corruption.

(2) a friend of his cause.

(a) to screen his own character.

(β) to conduce to his profit.

(3) an enemy of the cross-examining party.

(a) presumably, having been punished or unjustly injured by him.

(β) apparently, having spoken revengefully of, or previously injured him.

(4) As under A., (b) 2.

N.B. Greater latitude is allowed in examin-

ing (on these heads) a party to a cause, than another witness.

B. (to discredit his evidence continued). From reasons arising out of his evidence, by causing him to give further evidence inconsistent—

(1) with all reason and probability.

(a) absolutely.

(β) under the circumstances [as that he should remember the matter in hand, but nothing else at the same distance of time].

(2) with the evidence of witnesses of indisputable credit.

(3) with parts of the case not in dispute.

(4) with what he himself has previously said,

(a) on a previous occasion.

(b) in the examination in hand.

(a) in chief.

(β) in the prior part of his cross-examination.

(5) with what a witness on the same side has said on the same subject. Now this will show either that the variance is a sign that the whole story is a fiction, or that one of the two speaks true and the other false ; and that, as it does not appear which speaks true, it is not safe to believe either, or it should be attempted to cast the discredit on the one whose evidence is more important.

(6) with his own conduct in the transaction, or the conduct of witnesses of undisputed credit.

(7) with his demeanour in court, as (if he deposes he was calm under provocation) to irritate him.

III. *To cause him to give evidence to be received as true.*

(A) confirming the evidence of the questioner's witnesses.

(B) contradicting that of the opponent's witnesses.

(C) on a region of facts not previously entered upon, but this topic is more in the nature of examination in chief.

Of these, the First is the most generally useful. The Second (A) may not be resorted to without just grounds of suspicion. The propriety of selecting any of the others must depend upon the view suggested at the moment by the air of the witness and the general complexion of the case. It has been well laid down that the cross-examination of each witness should be made subservient to the general conduct of the case.

Cross-remainders, reciprocal contingencies