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## Glossary of Early Nineteenth-Century Legal Terms

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Editor(s): Gordon A. Madsen, Jeffrey N. Walker, and John W. Welch

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# Glossary of Early Nineteenth-Century Legal Terms

*The nineteenth-century legal terms in this glossary appear at least once in the preceding volume. This glossary draws primarily on Bouvier's Law Dictionary (1839). Original wordings have been modified for clarity and brevity, while remaining true to the historical definitions.*

**Adjudge:** To declare, to announce formally.

**Administrator:** A person appointed by a court to manage the estate of a deceased person who died without a will. An administrator had the authority to take possession of the deceased's estate, to collect debts, and to represent the deceased in all matters related to his or her property. An administrator also had the authority to pay the debts of the deceased and was entitled to compensation for services.

**Affidavit:** A written oath or affirmation sworn or affirmed to before an officer of the court. It differed from a deposition in that a deposition could be cross-examined by the opposing party, whereas an affidavit could not.

**Answer:** The name of the document used by the defense to answer the plaintiff's "bill" or "information." It contained statements of facts (not arguments), and

confessions or denials of material accusations of the bill.

**Appeal:** The act by which a party submitted an inferior court's decision to a higher court for review.

**Appellant:** The party who initiated the appeal.

**Appellee:** The party in a suit that has been appealed who did not initiate the appeal.

**Application:** The act of making a request, the paper on which the request is written, or the use or disposition of a thing (as "the application of purchase money"). The term was often used regarding trusts and property law.

**Appurtenances:** Rights, privileges, easements, or improvements that belonged to and passed with a piece of property.

**Arbitration:** A type of dispute resolution in which litigants attempted to solve a dispute through investigation

and determination by one or more persons selected to resolve the dispute and grant an award, rather than engaging in a judicial proceeding. The decision of the third-party arbitrator was binding.

**Assault:** An attempt or threat to violently hurt another. When an injury was inflicted, it amounted to a battery. There were two kinds of assault: simple and aggravated. Simple assault occurred when there was no intention to do injury. This was punishable by a fine and imprisonment. Aggravated assault occurred when there was an intention to do harm as well as an intention to perform an additional crime. For example, if a man fired his pistol at another and missed, the man would have been charged with aggravated assault with intent to murder.

**Assign:** (1) To transfer a right over to another, as in “to assign an estate,” (2) To appoint, as in “Justices are assigned to keep the peace,” (3) To set forth or point out, as in “to assign false judgment.”

**Assignment:** The transfer of all kinds of property (real, personal, mixed) from one person to another. Technically, it was restricted to only those transfers which involved terms of years (transfers for a specified period of time). But in regular parlance, the term was used for any transfer of property. When making an assignment, the words “assign, transfer, and set over” were the proper terms to use in deeds. However, “grant, bargain, and sell” or similar phrases were also accepted. Furthermore, the deed by which an assignment was made was also called an “assignment.”

**Assumpsit:** See “*Writ of Assumpsit*” below.

**Attachment:** See “*Writ of Attachment*” below.

**Bail:** A surety or collateral meant to insure that a party would appear in court. The persons who posted this surety were also called “bail.” Furthermore, the term was applied to the security given by a defendant in order to obtain a stay of execution. The term *Special Bail* referred to a surety posted by one or more persons on behalf of another that he or she will appear at a certain time and place to answer charges against him or her.

**Bail Bond:** Occurred when the defendant and other individuals (usually two or more) became bound to the sheriff for the amount equal to the demanded bail as assurance that the defendant would appear in court. A bail bond could only be issued when the defendant was arrested or in the custody of the sheriff.

**Bailiff:** An officer of the court who was given administrative authority over lands and goods for the benefit of another.

**Battery:** The crime or tort of intentionally or recklessly causing offensive physical contact or bodily harm. This included striking another individual, or even spitting in one’s face.

**Bill:** A written complaint issued by the complainant in a Court of Chancery. The complaint included the names of the parties in the suit, a statement of the facts from the complainant’s point of view, the allegations which the complainant made in connection with the facts, and a prayer for relief.

**Bill of Indictment:** A written accusation presented before a grand jury accusing one or more individuals with a misdemeanor or a felony. If the grand jury was satisfied that the accused should be tried, it returned the bill with the words “true bill” written on it. If the grand jury was not satisfied, it would write “ignoramus” on it.

**Bind Over:** The act of holding someone on bail in order for them to appear in court at a later date. A person may also be bound over, or kept on bail, to act in a certain fashion, such as being bound over for good behavior or to keep the peace. This latter type of bail was often referred to as a Recognizance.

**Body Politic:** (1) A group of individuals organized under a single government authority; (2) When referring to a corporation, the members of such a corporation.

**Bona Fide:** Latin for “with good faith.” The law required transactions to be made in good faith. If one party did not act in good faith, the contract could be voided at the pleasure of the injured party.

**Bond:** An obligation where one “obliges” to pay a certain sum of money by a specified date or after the occurrence of a specified activity. Bonds were also used as ways to ensure the good behavior of an individual. A surety (the person posting the bond) would place a bond to ensure that person’s performance in accordance with the law.

**Capias:** Latin for “thou mayest take.” A writ issued commanding an officer to take the body of the person named therein or to arrest that person. Also called a writ of *capias*.

**Cause Continued:** An order of a court to have the case continued or postponed until the next term.

**Chancery, Court of:** Also known as Courts of Equity. There was a distinction between courts of “law” and courts of “chancery” (or equity). During medieval times, the courts of law were the only courts used in England, through which the king enforced his laws. By

the thirteenth century, the courts of law gradually froze the types of cases that they would hear and the procedure governing how they would hear them, which caused the procedure to become very technical. Another way for plaintiffs to seek relief was through petitioning directly to the king, who had discretionary judicial powers based on his mercy or conscience. In time, these petitions became so numerous that the king delegated authority to hear them to his chancellor, a high-ranking official of the king’s court who was originally a spiritual advisor. Before long the Chancery (the king’s secretarial department) resembled a judicial body and became known as the Court of Chancery. The Court of Chancery developed rules about what types of cases they could hear, and the procedures governing the court. In time, they became as complex and technical as the Courts of Law. Courts of Chancery migrated with the settlers to the United States and became an essential part of American law. Eventually courts of Chancery and Courts of Law were merged, but that was after Joseph Smith’s time.

**Color of Office:** This term referred to wrongs committed by an officer under the pretended authority of his office.

**Common Law:** The body of law derived from judicial decisions rather than law expressed by the legislative branch through a written statute or law.

**Complainant:** The party, in a Court of Chancery, that made a complaint.

**Complaint:** The allegation made by the accusing party that was filed with the court, requesting the offender be punished according to the law.

**Consideration:** The reason that moved the contracting party to enter into the

contract, or the compensation that was paid for the performance of a contract.

**Consignment:** The goods or property sent from one or more people in one place (the consignors) to one or more people who are in another place (consignees).

**Constable:** An officer, often popularly elected, who was charged with maintaining the peace in the area over which he had responsibility.

**Contempt:** The willful disregard or disobedience of a public authority. Each court of justice had the power to punish all those who disobeyed its rules, processes and for disturbed the proceedings.

**Coverture:** The legal theory under which a wife was viewed as being merged with her husband. In coverture, the wife, generally, could make no contracts without the express or implied consent of her husband.

**Credit:** (1) The arrangement for a deferred payment of a loan, the terms governing such an arrangement, and the time allowed for the payment. (2) The reputation a person had for repaying their debts, although in the 1830s credit was connected with an individual's social position. (3) The right-hand column in an accounting book which contained entries due to a creditor (the opposite of debit).

**Debt, Action of:** The name of an action used for the recovery of a debt.

**Declaration:** A document filed by the plaintiff in a Court of Law (as opposed to Chancery) that set forth the facts from the view of the plaintiff, named the parties, and requested the court to find in his or her favor.

**Default:** (1) Failure to do something that was required (such as the failure to pay back a loan); (2) Failure to defend an issue at court. If a defendant, for example, did not attend court on the day of his or her case, the court assumed that their absence meant he or she did not contest the charges. The court entered a default judgment against them.

**Demurrer:** A plea in a response to an allegation. It admitted the truth of the allegation, but at the same time asserted that it was not sufficient as a cause of action. If the court found the allegations insufficient, the court could dismiss the case.

**Discharge:** The act by which an individual who was in confinement under some legal process or accusation was set at liberty.

**Discontinue:** An act by the plaintiff to terminate his or her cause of action.

**Docket:** A formal record of judicial proceedings.

**Empanel:** To form a jury by summoning and selecting members.

**Engrossed:** (As in an "engrossed bill") A bill in a written form ready for final passage, or the form in which it was passed by one house of a legislature.

**Ex parte:** An action usually taken at the request of only one of the parties to an action, or to indicate that one party did not receive notice of the action. Usually used in emergencies.

**Equity, Court of:** See "*Chancery, Court of*" above.

**Error, Writ of:** A writ issued from a superior court to an inferior one (for example, from the Court of Common Pleas to a Justice of the Peace Court) commanding

the latter to send up the record of the case at issue.

**Esquire:** An unofficial title of respect, having no precise significance. It did apply to men in the field of law, but not only to them.

**Execution, Stay of:** A term during which no execution could be issued on a judgment.

**Executor:** An individual appointed, as set forth by a will, to manage the estate of a deceased person.

**Fieri Facias:** Latin for “cause to be made.” The name of a writ issued by a court commanding the sheriff to levy property belonging to a party against whom there was a judgment in order to pay off his or her creditor(s).

**For the Use of:** For the benefit or advantage of another. Thus, where an assignee is obliged to sue in the name of his assignor, the suit was entitled “A for the use of B v. C.”

**Grand Jury:** A body of between twelve and twenty-four men summoned by the court to determine whether an indictment should be given charging an individual with a crime.

**Grantee:** The party to whom land was granted.

**Grantor:** The party who granted land.

**Hands and Seals:** A legal instrument with “hands and seals” or under “hand and seal” was signed and sealed by the parties named to certify the document.

**Habeas corpus:** Latin for “you have the body.” The writ was employed by a court to grant an opportunity to discern whether or not imprisonment was lawful. It required the one who held the prisoner to bring the prisoner in front of the court

so the court could make a determination of lawfulness.

**Indictment:** A written accusation found by a Grand Jury that charged an individual for a crime.

**Injunction:** A court order that either commanded or prevented an action.

**Instrument:** A writing that contained an agreement.

**Judgment:** The decision or sentence of the law given by a court as the result of proceedings instituted therein.

**Jurisdiction:** (1) The authority given to a judge to decide certain issues and to carry his sentence into execution; (2) The area over which a judge had authority. Jurisdiction can be original (the right to hear a case from its inception), or appellate (the right to hear a case that has already been decided to look for legal defects).

**Justice of the Peace:** A public officer possessing judicial powers with the responsibility of preventing breaches of the peace and punishing those who violated the law. They were elected by the people and were commissioned by the executive. In some states they held their offices for life dependant on good behavior, while others served for a limited period.

**Law, Court of:** There was a distinction between courts of “law” and courts of “chancery” (or equity). During medieval times, the courts of law were the only courts used in England through which the king enforced his laws. In order to be heard before a court of law, the petitioner’s case had to fit certain fact patterns. These fact patterns corresponded to various “writs” (see “*writ*” below), which the petitioner would apply for. If the court granted the writ, then a case would begin. Over time, the rules of the

courts of law became so technical that legitimate causes were denied on minute details. Thus arose the court of chancery. See “*Chancery, Court of*” above.

**Leave to Amend:** Time granted by a court to a party in order to amend a plea that had been submitted.

**Levy:** The seizure by a court of money or property belonging to a party in order to pay off a judgment issued against them.

**Libel:** A defamatory statement made in a fixed medium such as writing.

**Lien:** A judgment placed upon a piece of property belonging to a debtor that ordered the property to be sold to satisfy the creditor.

**Lis Pendens:** Latin for “pending quarrel or dispute” (1) A pending suit; (2) Written notice of a pending suit; (3) The principle that the filing of a suit constitutes notice of the claim asserted.

**Litigant:** One engaged in a suit.

**Mayor’s Court:** The name of a court established in cities where the mayor, recorder, and aldermen served as officers. These courts generally had jurisdiction over offenses committed within city boundaries and over matters that were given to them by statute (often contained within the city charter).

**Mens Rea:** Latin for “guilty mind.” *Mens rea* described the state of mind at the time that an act was committed. If the defendant had sufficient *mens rea* required by common law or statute he or she could be convicted.

**Misdemeanor:** An offense, inferior to a felony, that was punishable by imprisonment or fine.

**Mittimus:** Latin for “we send.” A writ from a Justice of the Peace that directed a

gaoler (or jail keeper) to receive and keep safely a person charged with an offence until the prisoner was delivered by due course of law.

**Mortgage:** A conveyance of land by a debtor to a creditor as security for the repayment of a sum of money the debtor had borrowed from the creditor.

**Mortgagee:** The party who provided the money for a mortgage.

**Mortgagor:** The party who entered into a mortgage.

**Motion:** An application by one of the parties to a court in order to obtain some court order.

**N. B. (Nota Bene):** Latin for “note well,” “observe carefully.” Take special notice.

**Non Assumpsit:** The name of a plea to the declaration of assumpsit.

**Non Suit:** The name of a judgment given against a plaintiff when he or she was unable to prove his or her case, or when he or she abandons the case altogether.

**Notary or Notary Public:** An officer appointed by the executive of the state who attested deeds, agreements, and other instruments in order to give them authenticity. They also certified copies of agreements and other instruments.

**Notice:** The information given of some act done, usually in writing.

**Oath:** A declaration made according to law, before a competent tribunal or officer, to tell the truth.

**Orator:** In a Court of Chancery, an orator is the party that filed the bill.

**Overrule:** To annul, to make void.

**Petition:** An instrument of writing containing a prayer from the person presenting

it (the petitioner) for the redress of some wrong or for the grant of some favor.

**Plaintiff:** The party who initiated a lawsuit. Plaintiffs would ask the court, through a declaration, to perform a specific writ against a defendant. Over time, each writ developed certain criteria that had to be met in the declaration and in the plea (or answer) by the defendant.

**Preliminary Hearing:** In a criminal matter, a hearing held to determine whether or not there is enough evidence to prosecute the case. The hearing serves the same purpose in state court that a grand jury proceeding serves in federal court.

**Prior restraint:** A governmental suppression of speech or a publication prior to its actual expression. During the twentieth century the Supreme Court of the United States deemed such restraints to violate the First Amendment as applied to the federal government and the states.

**Probable Cause:** Reasonable grounds to suspect that a person has committed a crime.

**Process:** The process, through a writ, mandate, etc., by which a cause is brought before a court.

**Promissory Note:** A written, unconditional, promise to pay a disclosed sum of money at a future date. Promissory notes were also used as a form of currency and were exchanged from one person to another.

**Quit Claim:** Transferring of land without including any warranties or assurances as in quit claim deed.

**Receipt:** A written acknowledgment from a seller indicating that he or she had received the money or thing that had been bargained for.

**Recognizance:** An obligation given to an individual commanding him or her to do some court-required act, usually accompanied by bail.

**Record:** *noun*—A written memorial made by a public officer. Often found in deeds. *verb*—The act of making a record.

**Replevin:** The name of an action for the recovery of goods and chattels.

**Respondent:** In a Court of Chancery, a respondent was the party responding to a bill, complaint, or other proceeding in court.

**Seal:** An impression upon a wafer or some other substance that was capable of being impressed.

**Security:** (1) An instrument that certified the performance of a contract; (2) A designated person who guaranteed that someone else would perform a certain action and becomes liable, usually by paying some amount of money, if that person did not perform.

**Scire Facias:** A judicial writ that was founded on some record that required the defendant to “show cause why the plaintiff should not have the advantage” of the record.

**Seizure:** The act of taking possession of property belonging to a person against whom there is a judgment in order to pay the sum of money indicated within that judgment.

**Serve (Service):** To deliver a copy of a summons to the house of the party, to the party personally, or to read it to the party.

**Sheriff’s Sale:** In order to execute on a lien against a person’s property, sheriffs sold the land at an auction, also called a Sheriff’s Sale.



**Slander:** A defamatory statement made through speech or some other transitory medium.

**Special Session, Court of:** A court comprised of three justices who gathered to try an individual who was accused of certain offenses.

**Statute of Limitations:** A fixed period wherein a case could be brought before a court.

**Subpoena:** A document that commanded a witness to appear and give testimony before a court on the date and time mentioned, under which failure to comply would result in a penalty therein mentioned.

**Summons (writ of):** A document prepared by the court that summoned an individual to come to court, typically to answer the complaint of the plaintiff, stand trial, be a witness, or be a member of a jury.

**Supersedeas:** A writ or bond that suspended a judgment creditor's power to execute the judgment.

**Surety:** A person who promised to pay a sum of money or to carry out a certain performance for another person who is also bound for the same thing.

**Testate:** Dying after having made a will.

**Testimony:** The statement made by a witness under oath.

**Trust:** A right, title, or interest (held in a court of equity) in real or personal property that was distinct from its legal ownership. For example, Joseph Smith held certain pieces of property in trust for the Church, which meant that he did not actually own the property, but managed it on behalf of the Church.

**Trustee:** The person to whom an estate has been conveyed in trust.

**Truster:** The party who created a trust.

**Use:** Or "usury," another word for "interest."

**Venue:** The county from which the jury was selected.

**Verdict:** The unanimous decision made by a jury on the matters submitted to them during the course of the trial.

**Ward:** (1) An infant placed by authority of law under the care of a guardian; (2) A district within a city; (3) To watch during the day time (ex. it was the duty of all police officers to keep ward over their districts).

**Warrant:** A writ issued by a justice of the peace directing a constable to arrest a person named within the warrant and bring him or her before that or some other court.

**Warrantee Deed:** A deed containing warranties. Also spelled as Warranty Deed.

**Wit (to wit):** A common legal way of saying "that is to say," "namely," etc.

**Witness:** One who is sworn in and relates their knowledge of the facts that are at issue during a case.

**Writ:** A mandatory precept that was issued by the authority of the state (or sovereign) that ordered the defendant to do something therein mentioned. There were several different kinds of writs.

**Writ, Return of:** The sheriff was often ordered to deliver writs to the parties named therein. He was also ordered to return the original copy of the writ to the court with the means whereby he had served the parties written on the back. This was called the "return of the writ."

**Writ of Assumpsit:** To apply for a writ of assumpsit, an issue had to involve a contract that was made verbally, or in writing, but not under seal. Traditionally, formal agreements like the transfer of land or other large contracts were accepted in court only after the seals of the parties were attached to the documents. Therefore, the writ of assumpsit came to take the place of all those agreements that did not have the formality of a seal, but at the same time, gave some consideration.

**Writ of Attachment:** (1) A writ requiring the sheriff to apprehend an individual who was accused of a contempt of court and to bring that person before the court; (2) This was also the writ which commanded the sheriff to seize any property, belonging to the defendant, in whatever hands they may be found, to satisfy the demands of the plaintiff against him. The writ was always issued before a judgment and in that way differed from an execution. It was issued on an oath or

affirmation, made by a creditor or someone on his behalf confirming the truth of the debt and the facts surrounding the case.

**Writ of Error:** The writ through which a party could send a case to an appellate court in order for an alleged error to be corrected.

**Writ of Execution:** The writ that put in force the sentence of the judge.

**Writ of Process:** A writ that forced the defendant to appear in court, either by arresting him, or by seizing his property, etc.

**Writ of Replevin:** (1) The name of a writ issued for the recovery of moveable goods. (2) The wrongful detention of moveable property.

**Writ of Trespass:** A writ through which a party may have sued for damages that were committed against the person or his or her property.