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The James S. Rogers Collection: Examining the Past to Inform the Future

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THE JAMES S. ROGERS COLLECTION: Examining the Past to Inform the Future



DANIEL R. COQUILLETTE RARE BOOK ROOM
Boston College Law Library
SPRING 2018

**THE JAMES S. ROGERS
COLLECTION:
Examining the Past
to Inform the Future**

Boston College Law Library
Daniel R. Coquillette Rare Book Room

SPRING 2018

Curated by:

Laurel Davis and Katie Lewis

A Note from the Curators

We cannot thank Jim Rogers enough for gifting to the Boston College Law Library his collection of books. The books featured in this exhibit are some of our favorites—primarily old and rare books on the subject of commercial law—but the collection extends well beyond these titles. For example, there are more books on commercial law from later in the 19th century and into the 20th and 21st centuries; there are student casebooks, one interleaved with pages for student notetaking; there are standard English case reports such as *Croke's Reports* and important treatises, such as *Coke's Institutes*. All of these titles now contribute to the richness of our collections. We are deeply grateful for not only the gift but also the time that Jim has taken with us to discuss the books and his experiences as a collector.

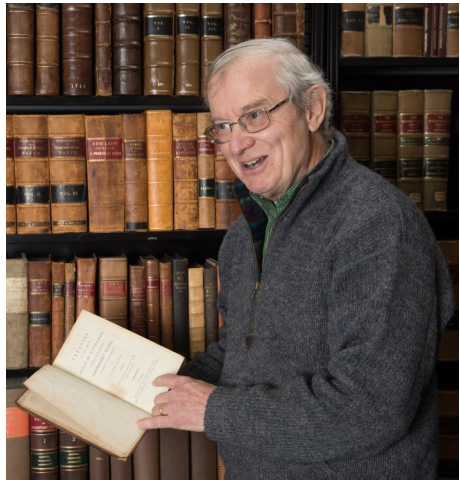
The bulk of the information in this exhibit comes from two books written by Professor Rogers: *The Early History of the Law of Bills and Notes: A Study of the Origins of Anglo-American Commercial Law* (Cambridge University Press, 1995) and *The End of Negotiable Instruments: Bringing Payment Systems Law Out of the Past* (Oxford University Press, 2012).

As always, we are thankful to all of our Boston College Law School colleagues; we are fortunate to have such enthusiastic support for our special collections and exhibitions. We offer a special thank you to the following: Helen Lacouture, for her work cataloging our rare materials and, in this instance, for encouraging and guiding Katie in her first foray into cataloging rare books; Lily Dyer, for her help with the exhibit webpage and catalog; Alex Barton, for his keen editor's eye; Tuananh (Mo) Truong, who was kind enough to do a photo shoot for us and provided us with the cover image; and, finally, to Daniel R. Coquillette, J. Donald Monan, S.J., University Professor, for his invaluable guidance and support for this exhibit and beyond.

~L.D. and K.L.

“Concern for the future of commercial law led me to examine its past.” — James S. Rogers

This exhibition features books donated to the Rare Book Room by Professor James S. Rogers. Professor Rogers, who retired from Boston College Law School this past year, spent his years in academia teaching and writing in the areas of contracts, modern commercial law (particularly payment systems), the law of restitution, and the history of Anglo-American commercial law.



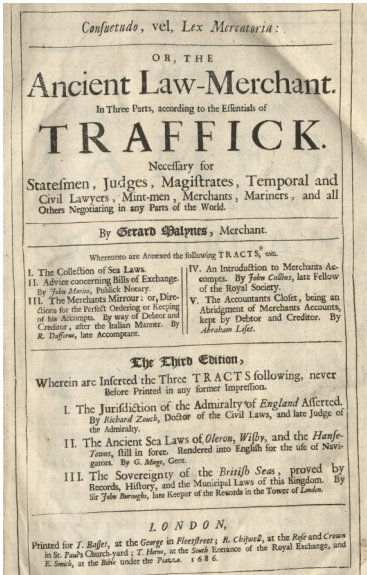
Professor Rogers started building his rare book collection when he was researching and writing his first book, *The Early History of the Law of Bills and Notes* (Cambridge University Press, 1995). Years of teaching law students and working on the Uniform Commercial Code led him “to the realization that something was amiss with the law of negotiable instruments [e.g., checks, promissory notes] as embodied in Articles 3 and 4 of the American Uniform Commercial Code.” This realization in turn led him to look to the past for answers.

At Professor Rogers’s retirement party, his friend and colleague Mary Bilder, Founders Professor of Law, noted that *The Early History of the Law of Bills and Notes* “was received as an extraordinary work of legal history—and one that has helped to reinvigorate scholarly interest in the history of money, payment systems, and commercial law . . . with a focus on commercial practice—that is, how lawyers and merchants had actually operated—rather than how the things had been written down in books. Indeed, if Jim’s work could be summed up in one insight, it is that just be-

cause something appears in a law book, it doesn't mean that anything actually worked that way or should work that way."

Professor Rogers told us that in doing the historical research for his first book—delving into how the law was discussed in legal literature and then thinking about that treatment critically in relation to the realities of commercial life—he “started thinking that some of these books would be useful to have. . . . So I started collecting, and like lots of people, you start collecting old books, and you get bitten by the bug.”

FLAT CABINET



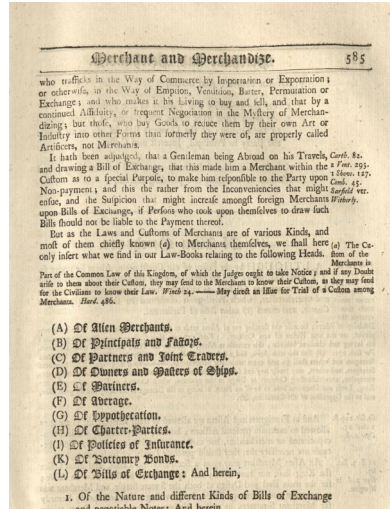
Gerard Malynes, *Consuetudo, vel, Lex Mercatoria; or, The Ancient Law-Merchant*...London, 1686.

First published in 1622, this is usually described as the first English book on commercial law. However, Professor Rogers explains that Malynes' primary focus was monetary policy and the influence of foreign trade on England. Works like this one contributed to the long-held idea, disputed by Professor Rogers, that English commercial law came out of a separate, substantive body of customary law from the mercantile courts called the Law Merchant, or *Lex Mercatoria*. He demonstrates that English commercial law, particularly the law of bills of exchange, actually was developed by the English common law courts.

Purchased in honor of James S. Rogers, who donated the 1981 reprint

Matthew Bacon, *A New Abridgement of the Law*. London, 1759-1766.

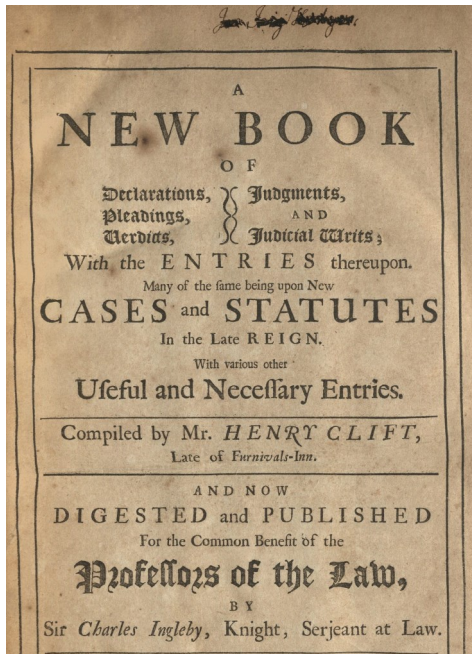
In Volume 3 of Bacon’s influential abridgement, he includes a heading for “Merchant and Merchandize,” under which a researcher could easily find cases about bills of exchange and other commercial law topics. Before the 18th century, abridgements did not have topical headings for mercantile law. Instead, these cases were classified under the heading for the writ through which they were brought (e.g., debt or assumpsit). Thus, they were all but hidden from historians, and the misconception arose that English common law courts had not been hearing these cases. In fact, English common law courts had always dealt with commercial matters. They looked to the “law merchant” to understand how merchants operated, but the law itself developed squarely within the common law system.



CABINET II

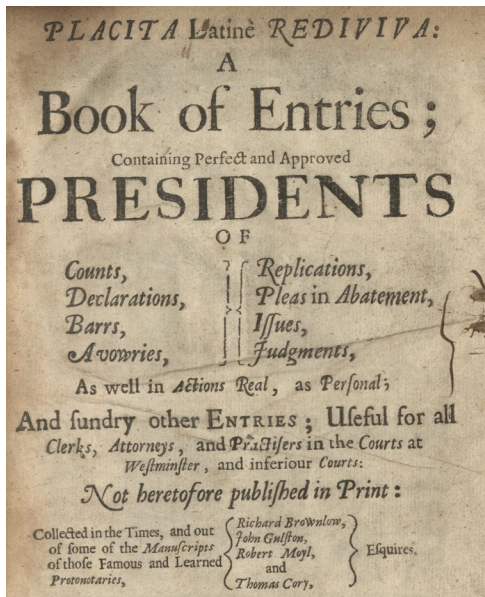
FORM BOOKS

One of the most important categories of legal literature is the form book, which Professor Rogers collected and used in his research. Books of entries, containing real examples of lawyers’ pleadings, were an early type of form book. Today, lawyers use form books for model documents when drafting contracts, motions, etc.



Henry Clift, *A New Book of Declarations, Pleadings, Verdicts, Judgments, and Judicial Writs...* London, 1719.

By examining pleadings in form books like Clift's, Professor Rogers demonstrated that 1) common law courts always dealt with commercial law cases, despite assumptions to the contrary, and 2) it was not until well into the 17th century that the execution of a bill of exchange created a legal obligation in itself. Before that, the bill (an unconditional order for a third party to pay—think of today's bank checks) was tangential to the exchange between the purchaser and seller of goods.



***Placita Latinè Rediviva: A Book of Entries.* London, 1661.**

One of the earliest books in Professor Rogers's collection, this is a compilation of forms from experienced pleaders in the courts of Westminster, such as Richard Brownlow. Books of entries helped practitioners with their own pleading tasks by providing real pleadings to use as samples. Those real pleadings can help us to understand what types of cases were being heard, what procedural tactics and maneuvers were used, and how the pleaders understood and framed the law.

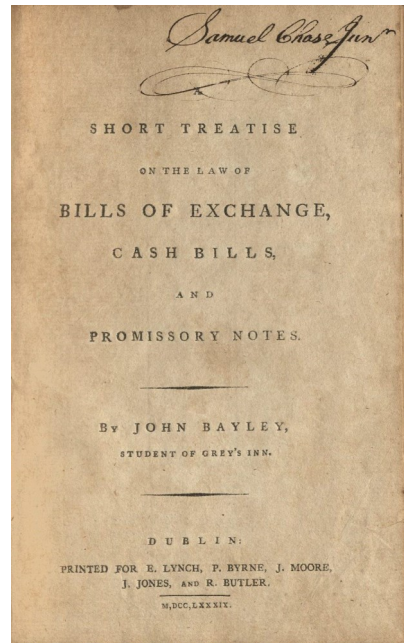
THE BIG FOUR

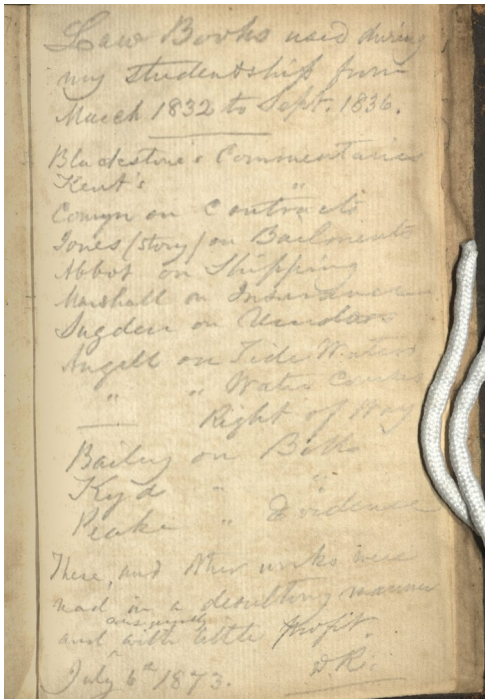
Professor Rogers explains that “the modern tradition of bills and notes treatises begins with the generation of legal writers who flourished just after the retirement of Lord Mansfield as Chief Justice of the King’s Bench in 1788.” Mansfield looked to mercantile practices to develop a sensible body of English commercial law. Four important writers who came in his wake were John Bayley, Stewart Kyd, John Byles, and Joseph Chitty (see next cabinet).

John Bayley, *A Short Treatise on the Law of Bills of Exchange, Cash Bills, and Promissory Notes*. Dublin, 1789.

Professor Rogers learned that the fixation on negotiability in our U.C.C. Article 3 was not present in these early modern treatises. Negotiability (the ability of a holder in due course to take free of defenses) was indeed a vital feature of bills and notes before the rise of the modern banking system, but the outsized focus on it now causes problems.

Professor Rogers’s collection also includes the 1826 Boston edition of this work, which went through many editions.





Stewart Kyd, *A Treatise on the Law of Bills of Exchange and Promissory Notes*. Albany, NY, 1800.

This copy features copious annotations from an early owner, including his reading list and a bit of whining about the task. He apparently read the books, including Blackstone's *Commentaries*, this work by Kyd, and Bayley (which he spells Bailey) on Bills, “in a desultory manner and consequently with little profit.” Not a four star review!

John Byles, *A Treatise of the Law of Bills...* London, 1862.

Byles is the source of perhaps the only joke about bills of exchange. According to Pro-

fessor Rogers, Byles reportedly named his horse Bills so that when people saw him riding up, they would say, “Here comes Byles on Bills!”

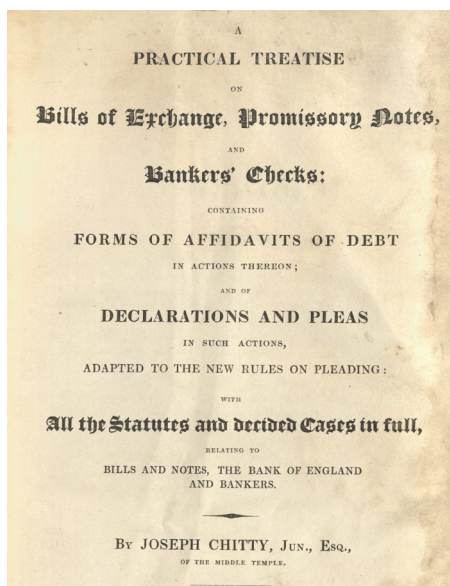
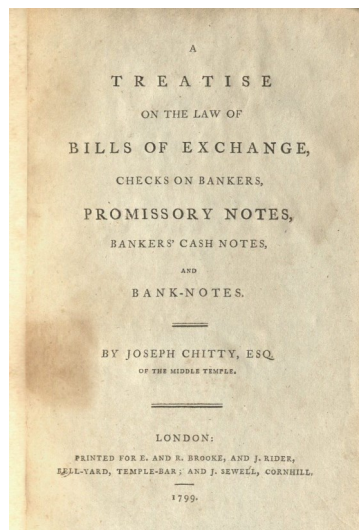
CABINET IV

ALL THE CHITTYS

The fourth of the big four treatise writers was Joseph Chitty (1775-1841), a popular writer of books for practitioners. Publishing law books became a family business for the Chittys as Joseph's sons, Edward, Thomas, and Joseph, followed in his footsteps.

Joseph Chitty, *A Treatise on the Law of Bills of Exchange*...London, 1799.

Professor Rogers writes that by the time Chitty, Bayley, Byles, and Kyd came along, there was “an explicit emphasis on the idea that pieces of paper had come to have major economic and legal significance.” The conceptual framework had evolved from being contract-based to one that focused on the specific rights and obligations that flowed from being parties to the bill. This was Chitty’s first work.



Joseph Chitty [Jr.], *A Practical Treatise on Bills of Exchange, Promissory Notes, and Bankers' Checks*...London, 1834. 2 vols.

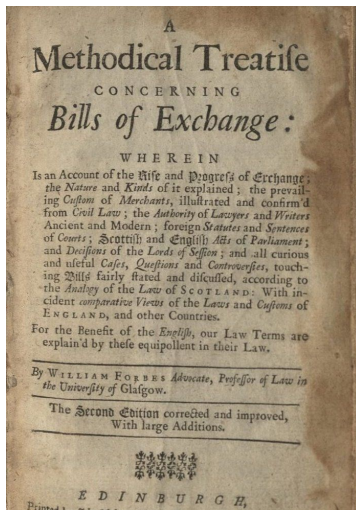
In this work, Joseph Chitty (the younger) gathered significant cases involving bills and notes from the early 17th century until 1833 and reprinted the decisions in full. Professor Rogers explained that this source provided a handy way to read relevant cases and to learn what issues involving bills were actually being heard by the common law courts.

Edward Chitty, *The Commercial and General Lawyer*. London, 1834. 2 vols.

Edward, another son of the elder Chitty, laid out the body of English commercial law using the same organizational structure used by Blackstone in his *Commentaries*.

SCOTS LAW

Scotland, unlike England, has a hybrid legal system that incorporates elements of the common law and civilian (Roman) law traditions. While English commercial law developed within the common law courts, Scottish lawyers often looked for inspiration to continental Europe, where substantive commercial law largely had developed as an independent body of law.



William Forbes, *A Methodical Treatise Concerning Bills of Exchange*. Edinburgh, 1718.

Professor Rogers explains that despite Forbes's best efforts, it quickly becomes clear that he "found the continental literature to be of little use in his effort to create a modern but systematic body of law for bills of exchange." Continental law had developed in a completely different cultural setting. For example, on the continent, there was a strong focus on preventing usury (the lending of money at unreasonably high interest rates), which was not a major concern in Britain.

Andrew McDouall, *An Institute of the Laws of Scotland*. Edinburgh, 1751-53.

Using the structure of Justinian's *Institutes* (a student textbook that formed part of the body of civil law), McDouall attempted to organize Scots law into a civilian structure. Like the *Institutes*, his work is divided into four "books," or large sections, which are then subdivided into "titles." Bills of exchange are covered in Book I (Personal Rights), Title XIII.

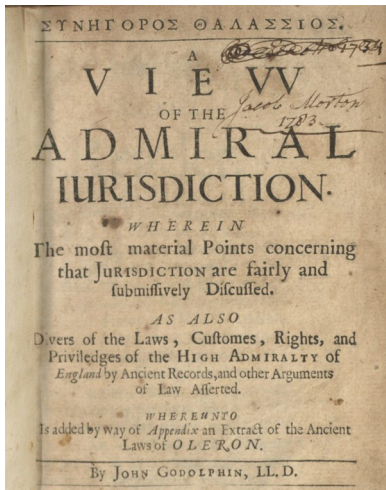
MARITIME LAW

Rules governing disputes arising during the course of maritime trade formed an important part of early commercial law. In England, the common law courts and the Admiralty Court, which applied principles of civil law, had a jurisdictional battle in the 16th century over mercantile cases that arose on the high seas. The common law courts ultimately won, but it remained an area where the continental civilian tradition was present.

Charles Molloy, *De Jure Maritimo et Navali: Or, A Treatise of Affairs Maritime and of Commerce*. London, 1690.

In maritime cases, the English common law courts often referred to Molloy's work, which was first published in 1676, as well as continental treatises on the topic. Professor Rogers's copy contains a frontispiece with two symbolic engravings, one in peacetime and the other in a time of international turmoil.





John Godolphin, *Synēgoros Thalassios: A View of the Admiral Jurisdiction*. London, 1661.

Professor Rogers notes that Godolphin (an Admiralty Court judge) and other English civilians “argued that certain subjects were inherently within the jurisdiction of the Admiralty Court.” They did not try to claim bills of exchange, however, which remained squarely under the purview of the common law courts.

CABINET VII

JOSEPH STORY & COMMERCIAL LAW IN EARLY AMERICA



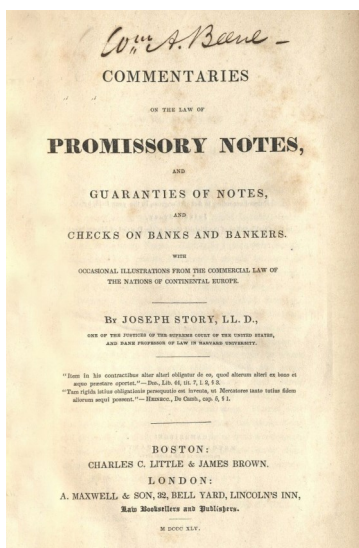
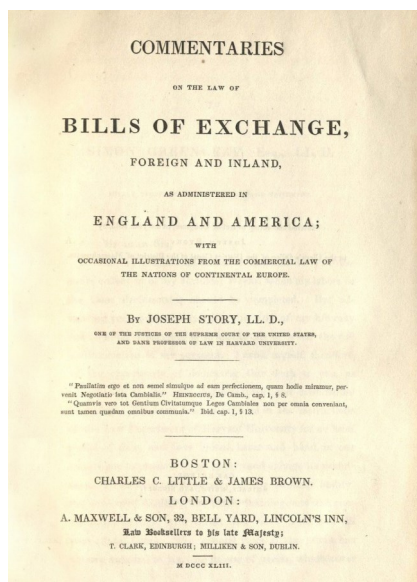
Joseph Story (1779-1845) served on the U.S. Supreme Court from 1812 until his death. During his tenure on the court, the Marblehead native also served as Dane Professor of Law at Harvard Law School and kept the school afloat in its early years. In his spare time (!), Story wrote nine “commentaries” on various legal topics, including commercial law. He then assigned them as textbooks in his classes. The portrait to the left is from the Collection of the Supreme Court of the United States.

Joseph Story, *Commentaries on the Law of Bills of Exchange*...Boston, 1843.

Story cited Bayley, Chitty, and Kyd, but also noted that America has “constructed her own system of Commercial Jurisprudence, and . . . added to the common stock some valuable illustrations and some solid doctrines.”

Joseph Story, *Commentaries on the Law of Bills of Exchange*...Boston, 1847.

This is the second edition of the above title. Professor Rogers explained that one way he traced changes in the law was by looking at successive editions of a title. Online databases of early law books have made this research task easier for legal historians, if less fun.



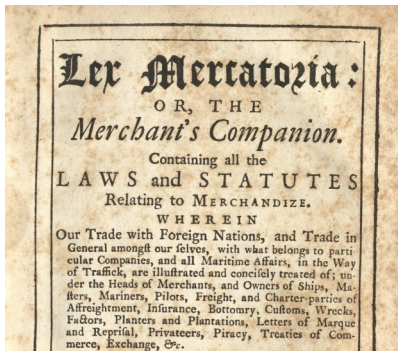
Joseph Story, *Commentaries on the Law of Promissory Notes, and Guaranties of Notes, and Checks on Banks*...Boston, 1845.

Story explained that his law students were confused by the traditional texts, such as *Bayley on Bills*, which combined discussion of bills and notes. He decided to separate them.

Professor Rogers’s collection includes five of Story’s nine works. In addition to the titles on bills of exchange and promissory notes in this exhibit, he also collected Story’s works on bailments, agency, and equity.

EVERYMAN BOOKS

These “everyman books” were written for laypeople who navigated the complexities of law in their work or needed model forms for legal transactions. They also provided condensed information in a smaller, cheaper format than lengthy treatises. The 19th century volumes highlight industrial printing innovations, including decorated cloth and colorful paper bindings.

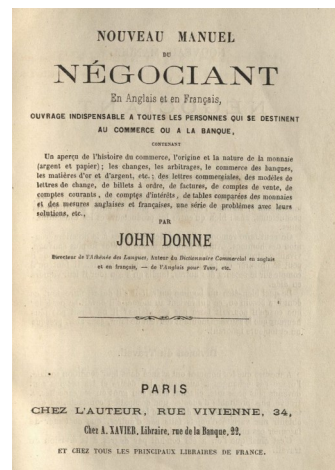


Giles Jacob, *Lex Mercatoria; or, The Merchant's Companion...* London, 1729.

Jacob, who wrote many “everyman” books, made this work more accessible by not “entering into the tedious Accounts of Antiquity, or what does not immediately relate to our English Commerce, which other books are very guilty of.”

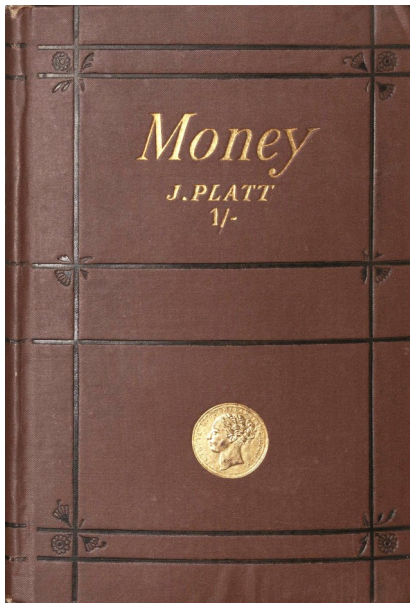
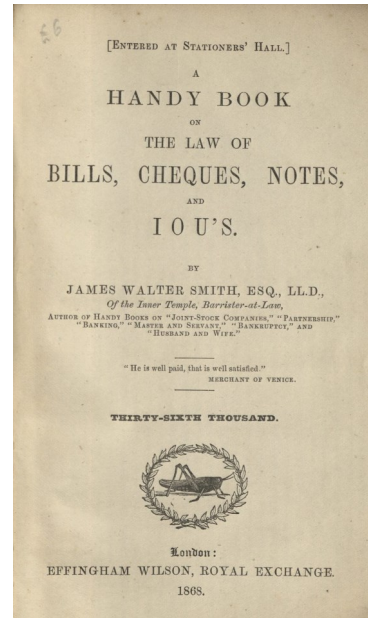
John Donne, *Nouveau Manuel du Négociant* (The Merchant's New Manual). Paris, 1869.

Bound in eye-catching paper, this volume also includes John Donne's bilingual commercial dictionary. It was sold at a *librairie pour les langues étrangère*, or foreign language bookstore, in Paris. The book contains a statement, saying that without the author's authentic signature, the book is likely a counterfeit. This book is signed with a flourish.



Walter James Smith, *Wilson's Legal Handy Books: The Law of Bills, Cheques, Notes, and IOU's*. London, 1868.

This “cheap and compendious code of the inland negotiable instruments” was meant for men of business and students. A bracketed note indicates that the title was entered at the Worshipful Company of Stationers, London’s printing livery. The book was published by the company founded by radical printer Effingham Wilson. The title page has a handsome imprint of a wreathed cricket and a line from *The Merchant of Venice* that would likely appeal to the book’s reader: “He is well paid, that is well satisfied.”



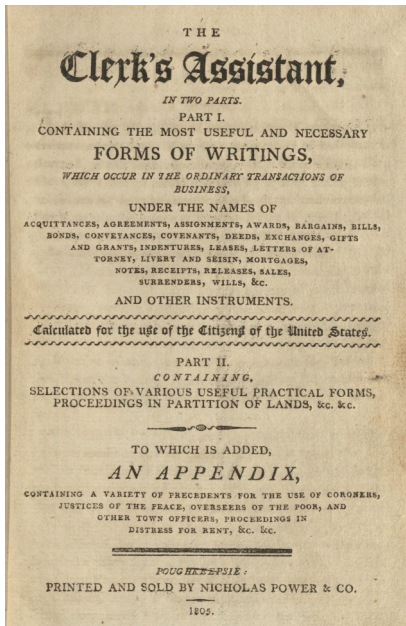
James Platt, *Money*. London, 1881.

This compact cloth book is adorned by a Young Victoria shilling coin, suggesting the promise of wealth. Small decorative flourishes like gold-colored lettering and floral details illustrate how cloth binding allowed for increased marketability of books. This volume is displayed along with two other works by James Platt, *Economy* and *Business*.

Platt also wrote books on topics that seem to reflect Victorian values and concerns, including the titles *Progress*, *Poverty*, and *Morality*.

FOR THE CITIZENS

The books in this case attempt to attract readers by advertising their usefulness for specific professions, or even for the “everyman.” Authors created many iterations of legal materials that were, in theory, easier for people to use without extensive legal training or experience.



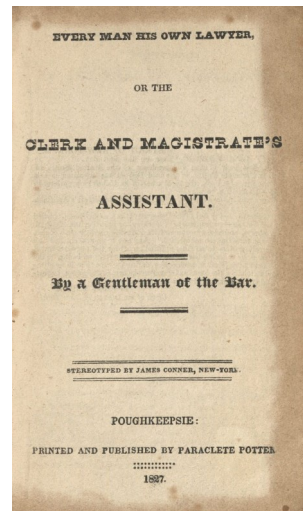
The Clerk's Assistant, in Two Parts. Poughkeepsie, NY, 1805.

A Gentleman of the Bar, Every Man His Own Lawyer... Poughkeepsie, NY, 1827.

These two titles may have been written by publisher and printer Paraclete Potter. Potter owned a bookstore that was known to be a gathering place for many influential lawyers and politicians.

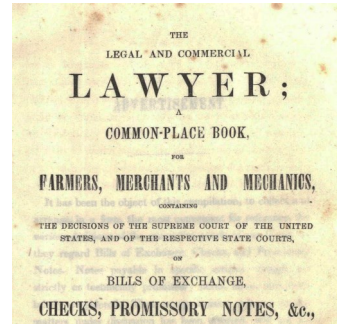
The title page of the 1805 edition uses bold

fonts and spacing to emphasize the accessibility of its contents, written for many professions outside the courts or any United States citizen. The later edition has much of the same content but a simpler title page.



William Linn, *The Legal and Commercial Lawyer; A Common-Place Book for Farmers, Merchants and Mechanics*. New York, 1859.

A commonplace book was typically a personal collection of organized quotes, references, or other notes. The book's title suggests that it is easier to navigate than a treatise, and perhaps less intimidating to a farmer or mechanic.



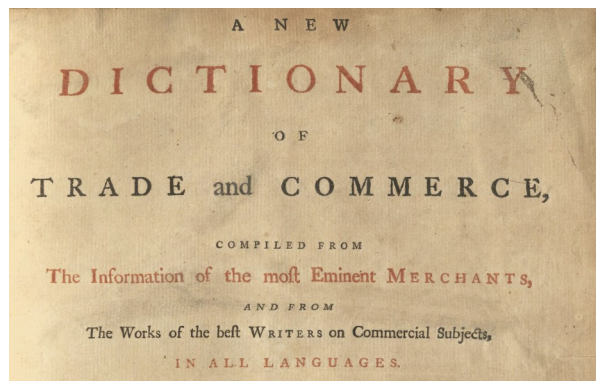
FLAT CABINET

LEGAL DICTIONARIES

Each of these dictionaries offers a snapshot of English history: the transition of languages used for the practice of law, a demonstration of monarchical power, and global trade of the British Empire. Defining words was an active process that could be subjective or even, on occasion, contentious.

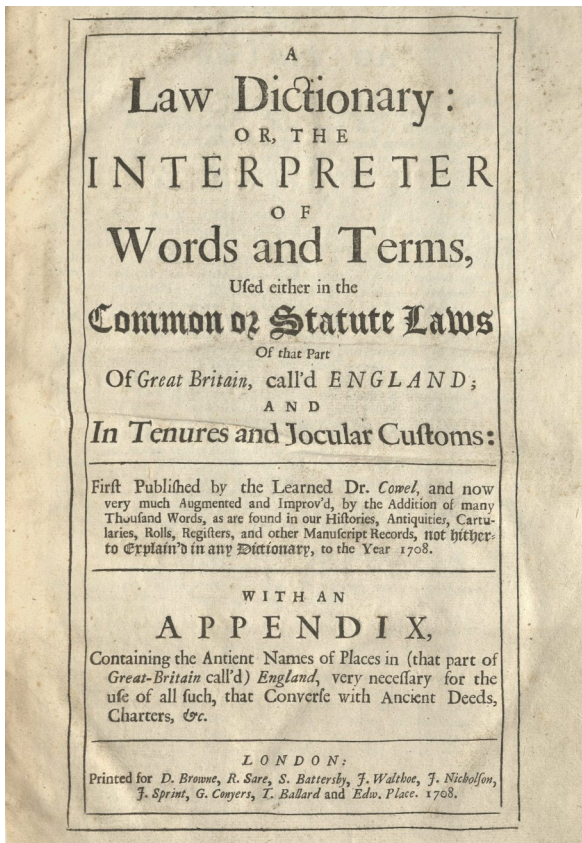
Richard Rolt, *A New Dictionary of Trade and Commerce...* London, 1756.

Professor Rogers uses a passage from this book to demonstrate London's dominant position in British global trade: "Some landed men say, that the immoderate growth of London undoes and



ruins the country ... that the Kingdom is like a rickety body, with a head too big for the other members.” This book features detailed entries on commercial products, ports of entry, and insurance policies for ships and shipments. Tucked inside this folio volume, we found a handwritten note on Puerto Rican import fees.

**John Cowell, *A Law Dictionary: Or, the Interpreter of Words and Terms...*
London, 1708.**

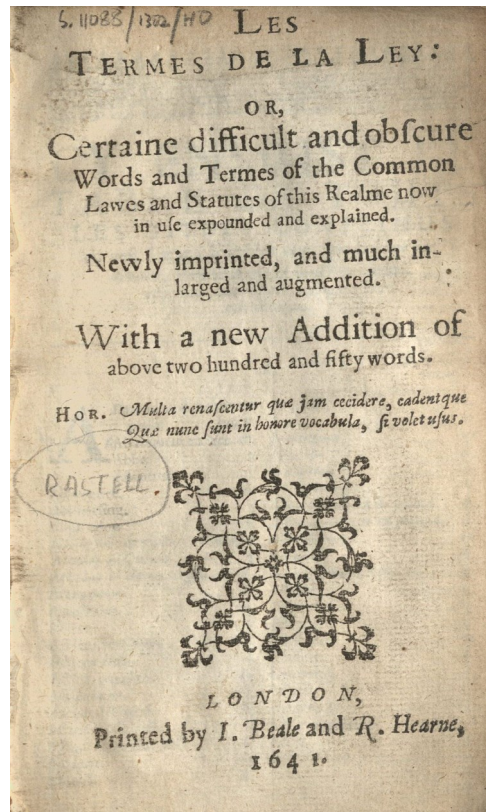


King James I suppressed the first edition of this book in 1610, declaring that Cowell was “in some Poynts very derogatory to the supreme Power of this Crowne; In other Cases mistaking the true State of the Parliament of this Kingdome.” Cowell was arrested and his books publicly burned at the urging of Parliament and Chief Justice Edward Coke, with whom Cowell had a rivalry.

Disagreement over the definitions of words, including “king” and “parliament,” highlight the political tension leading up to the English Civil War. This edition, printed almost a century later, includes the history of the book’s suppression and King James’s proclamation.

John and William Rastell, *Les Termes de la Ley*...London, 1641.

The first edition of this book is credited as being the first English language dictionary of any sort. This later edition was published by John Rastell's son William. A dialect of French was used in English law courts after the Norman invasion of England, but had become predominantly a written language by the 16th century. Even as spoken French became archaic in the English legal system, many French terms remained embedded in legal terminology. In this text, Rastell placed Law French and English entries side-by-side in neat columns and in distinct fonts allowing a reader to quickly find a definition in each language.



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