IPSE DIXIT:

Game Worth the Candle?

By Edward J. Walters, Jr.

Hobson's Choice. So I'm sitting in this lawyer's library waiting for the deposition to start and I notice a book on his shelf titled *Cassell's Dictionary of Word and Phrase Origins* by Nigel Rees. I had just been informed, in a matter unrelated to the case I was there for, that a decision I was about to make was a "Hobson's Choice." I pulled *Cassell's* off the shelf (this lawyer still had actual books) and looked it up. There really was a Tobias Hobson who lived in Cambridge (until 1631) and who owned a livery at which one could hire a horse. The rule was, however, that you could hire any horse you wanted, as long as it was the one next to the door, or no horse at all. Thus, "Hobson's Choice" is no choice at all.

That led me to wonder if Cassell chronicled any other phrases that we lawyers encounter and use every day but have no idea of the derivation. I looked up a few. (It was a long wait.)

Red Herring. How often have we heard, "Your Honor, their argument is a red herring!" We all know that the phrase implies that the argument is meant to distract the court from the REAL issue in the case — YOUR issue. According to Cassell, there is no fish known as a red herring. The phrase was derived from the practice of using a kipper (usually a herring), soaking it in brine, smoking it to produce a very pungent smell, which caused the flesh of the fish to turn reddish. Then the herring was dragged across a trail to see if the dogs would be distracted from the scent they were there to find.

Draconian. We've all heard how draconian some laws are or some judge's decision is. Who is this guy and why are lawyers talking so bad about him? According to Cassell, Drakon (aka Draco) was an Athenian legislator known for his harsh, sweeping, drastic and severe legislation causing heavy penalties for small infractions. In response to the unjust interpretation of oral law by Athenian aristocrats, he wrote the Draconian code near the end of the 7th century BC.

Hoist on His Own Petard. This is a favorite of Vince Fornias who we all miss writing in this spot. It is from Shakespeare's *Hamlet*. Hamlet discovers a plot on his life by Claudius and resolves to respond by letting the plotter be "hoist on his own petard." A petard is a small explosive device. When the bomb maker accidentally explodes his own explosive device intended to hurt another, but hurts himself instead, he can be hoist into the air and, thus, hoist on his own petard. Used to denote an ironic ending or a just reward. Foiled by one's own plan. An often occurrence in our business.

One Fell Swoop. A swoop is the rapid descent made by a bird capturing its prey. A fell is a swift, ruthless attack. Shakespeare used it in *Macbeth* when Macduff learned that his family and servants had been killed. He said, "All my pretty ones? Did you say all? O hell-kite! All! What, all my pretty chickens and their dam at one fell swoop?"

Have an Axe to Grind. We owe this one to Benjamin Franklin. We know it means having an ulterior motive, but where did it come from? Seems Ben wrote about it in one of his essays, "Too Much for Your Whistle," relating the story of how a man showed interest in Ben's grindstone and asked how it worked. In the process of explaining, Ben — using much energy — sharpened the visitor's axe for him. This was clearly what the visitor intended all along. Ben always had to ask himself whether other people he encountered had "another axe to grind."

Beyond the Pale. We hear, "Your Honor, that action is 'beyond the pale.'" Beyond WHAT pale? Beyond the pale WHAT? We know it means outside the bounds of acceptability, but where did the phrase come from? According to Cassell, "the pale" was the area of English settlement around Dublin in Ireland, dating from the 14th century, in which English law had to be obeyed. The derivation is from the Latin *palus*, meaning "a stake." Anyone who lived beyond this stake or fence was thought to be beyond the bounds of civilization — beyond the pale.

Is the Game Worth the Candle? This phrase arose when people used candles for lighting when they gambled or played a game of cards. When the amount at stake was very small, it was questioned whether the game was worth the cost of the candle needed to provide the light by which to play the game. Sometimes it wasn't worth the time and effort involved. ♦

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